

**COMMONWEALTH OF AUSTRALIA**

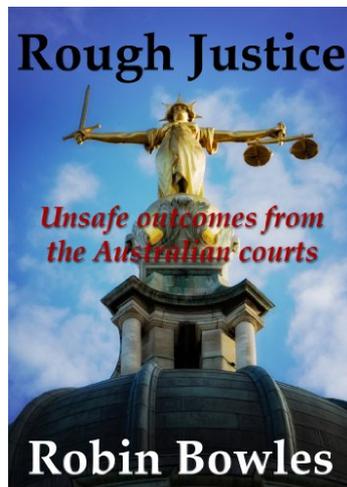
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Bowles, R. (2011). *Rough justice: unsafe outcomes from the Australian courts*. Australia: F.U.N. & K.Y.

## **CHAPTER FOUR - The State he's in.**

In 1914, in Highgate, London a woman named Margaret Lloyd drowned in her bath. To those who found her, and subsequently the police, the drowning appeared accidental, even though the bathtub was unusually small. Police may have closed the case but for a letter sent to one of the detectives. Accompanying the letter were two newspaper clippings containing obituaries of Margaret Lloyd and another woman who'd drowned in their tubs. The other victim's husband had been George Joseph Smith, who also turned out to be the husband of Margaret Lloyd, under an assumed name. Detectives then discovered that Smith had been married three times, and all three wives had died mysteriously in their baths.

Police don't like co-incidences, although they were unable to explain how a person could be drowned in a bathtub with no evidence of a struggle. In all three cases, there had been no mark of violence on any of the three bodies.

Eminent British pathologist Bernard Spilsbury decided to experiment with young women in bathing suits who sat in filled bathtubs and allowed him and a detective to try to drown them. All attempts to do so quickly and cleanly failed and it seemed impossible to force a person to drown this way. They decided Smith must be released.

But fortunately, before the release took place, they worked it out: Smith had killed each woman by grabbing her by the feet and pulling her torso and head quickly under the water. The sudden action and resulting rush of water had rendered her helpless immediately. When they tried this experiment with the volunteer girls one of them instantly lost consciousness. This provided enough evidence to charge Smith with the three murders done to take advantage of money or life insurance his widows left behind. Smith/Lloyd was convicted, and in 1915, executed.

This case became known as 'The Brides in the Bath' and went a long way towards making a name for Bernard (later Sir Bernard) Spilsbury as a leading pathologist in the early 20th century.

About 80 years later, on the other side of the world, another bride-to-be died inexplicably in her bath. Anna-Jane Cheyney was a popular and pretty girl. She was 29 years old, a lawyer and much loved daughter of Dr Kevin Cheyney and his wife, Joanne. She had a brother, Marc, who was married to her best friend, Susan. After having worked in several positions as a lawyer she was offered a fairly senior position at the Law Society of South Australia. At the time of her death, on Friday 18 March 1994, (three days after her birthday) she was Acting Manager and in the process of investigating a fellow solicitor—always a difficult

task for a professional.

Anna-Jane was engaged to Henry Keogh and they were due to marry at the end of April. He had joined the State Bank in 1988, working mainly in the newly established Investment Services Unit. His progress through the bank was steady, working as a District Manager and later, as Head of Products and Customer Service. The State Bank had been the subject of a Royal Commission and Keogh was alert to the possibility that his work environment, although senior, was not very secure.

Six weeks before his fiancée died he left the State Bank, having been head-hunted by stockbroking firm Baker Young to set up a new financial planning and investment unit. His duties were extensive and there was not the same degree of infrastructure support afforded by a major bank. But Keogh had good people skills and a demonstrable track record and he threw himself into the task.

On the home front, his life had not gone so smoothly. Henry Keogh was at this time in his late thirties and a father of three young girls. His wife, Sue Keogh, later told police they were married in 1977, but that he had left her in 1991, after having had an 18-month affair with Anna-Jane Cheyney. Their divorce became absolute in May 1992. Sue was very unhappy about the divorce and wanted Henry back. She said he had never once exhibited any sort of angry or violent behaviour towards her or the girls. Around the same time, (May 1992), although involved with Anna-Jane Cheyney, Keogh began another affair with Miss A, who told police later that the affair continued until December 1992, but that after the affair ended she continued to see Henry Keogh every few months until about February 1994. Throughout their friendship she said he gave her the impression he was not involved with anyone else (including Anna-Jane, although they were living together some of that time) and that he was broke.

On the afternoon of 18 March 1994, Anna-Jane rang Henry at work and suggested a drink at the Norwood pub after work. They met, Henry had three white wines and Anna-Jane had four and some potato wedges, then they went home. Anna-Jane rang Susan Cheyney to see if she wanted a walk with their dogs. They went out together between about 7.30 and 8 p.m. Anna returned home and Henry said in one of the statements he gave the police later that Anna-Jane had started running a bath as he left the house to visit his mother, who lived quite nearby, for about 20 minutes. This visit stretched into nearly an hour, with Henry feeling a bit guilty that his mother had not been invited to the forthcoming wedding, in case there were ructions between his mother and his father, who was attending.

Henry arrived home some time after 9.15p.m.. As he walked into the house he called Anna, but received no reply. The light was on in the bathroom and

when he arrived at the bathroom door he saw her slumped on her right side in the bath, with her face in the water. He tried to lift her from behind, under her armpits, but could not get her out of the bath. Then he tried from the front and managed to part-lift and part-drag her out of the bath and into the bedroom, laying her on her back near the bathroom door. Mucous and water round her mouth prevented him from getting a good seal to try mouth-to-mouth resuscitation. After wiping her mouth with some clothing he tried chest compressions and more mouth-to-mouth. He felt unable to get her airway clear. A thin dribble of water was running from her mouth and she was turning blue.

Although there was a phone in the bedroom he ran to the one in the hallway and called an ambulance, returning to Anna after this to try more chest compressions.

The ambulance dispatcher logged Henry's call at 9.33 p.m. and the first crew to attend radioed in that they had arrived at 9.38 p.m..

Ambulance Officer Kerry Stevenson later told police that they went into the bedroom and saw a woman on the floor. She did not appear to be wet and neither did the carpet. Her hair was damp, but not soaking wet. A man was hunched over the body, crying. She moved him out of the room and the officers commenced trying to save the woman, who was already displaying the signs of being clinically dead. She had no pulse or BP and was blue. They tried CPR and only got water and some vomit from her mouth. The ambos later commented that if someone had been trying CPR before they arrived they would have expected water and vomit to run onto the carpet as the chest was compressed. They noticed no vomit on the bedroom or bathroom floor. Officer Murgatroyd, Stevenson's partner, told police 'the bathwater was slightly cloudy, but there was no sign of vomit.' After about ten minutes, Stevenson told the man there was nothing they could do. His hands covered his face while he wept. She noticed the bathroom floor was not wet, but that a bathmat was screwed up on the floor.

Police were notified by the ambulance dispatcher that a woman had drowned in her bath. When the first police arrived they saw a woman with wet hair on the floor covered by a blanket. A man lying beside her on the floor was very distressed and sobbing—too emotional to be interviewed at that time.

After the police arrived Officer Murgatroyd told police they had tried CPR for about ten minutes, but could not get any air through the airway, which was full of water and possibly vomit. Stevenson said the bath contained water that was warm, but not as warm as she would like for a bath.

Shortly after, the Coroner's representative arrived, as did Dr and Mrs Cheyney and Anna's brother Marc. Henry Keogh joined them in the lounge

room of the house while police arrived in greater numbers and took notes of the scene. At some time during all the to-ing and fro-ing, someone (it's not certain who it was) 'tidied up' Anna's appearance and put some make-up on her face.

The Inspector recorded, 'no suspicious marks on the body, no recent injuries, vomit on the carpet near her head, no wrinkles on hands and feet, no injuries to the scalp or head, nil suspicious.' He noticed the bath was three-quarters full, not quite clear, and he also noticed water in the slide channel of the partly open bathroom window. (This is interesting because it is the only sign that water may have been flying around the bathroom and been overlooked if the bathroom was mopped up, but it was never followed up). The inspector makes no mention of water on the bathroom floor, but the report says the bathmat was soaking wet and crumpled up on the floor. There were no signs of a struggle in the bathroom or bedroom. By about 11.15 p.m. the police conferred and agreed it had been a situation of drink causing her to fall asleep in the bath and drown. They wrote 'Nil suspicious' in their notebooks as Anna-Jane was taken away by Constable Walkley from the Coroner's office.

After everyone had left, Joanne Cheyney asked, 'Should we empty the bath?' Dr Cheyney went to do so, and noticed the bath was only half full and had bits of 'amorphous material' floating round the bottom. He found the plug, which Anna had been sitting on, very difficult to pull out. They were reluctant to leave Henry alone that night, but he wanted to stay at his own home.

In less than a week, the police had decided that Anna-Jane had been murdered and that Henry Keogh was the culprit. By the end of the week he was on the slippery slope leading to a conviction.

How did this happen?

Firstly, Dr Colin Manock, the Director of Forensic Pathology in Adelaide, performed an autopsy on Sunday morning along with one assistant from the Forensic Science Centre. No police were present. The assistant discovered bruising on the top of Anna's head. Dr Manock undertook to report this to the Coroner. He discovered fluid in the lungs but did not examine this fluid to ascertain if it was oedema or bathwater. He failed to record the weights of Anna's organs, blaming his assistant for rubbing them off the whiteboard when he left the autopsy room.

On Monday afternoon, Constable Walkley went by to view Anna's body. She noticed some bruises on Anna's right leg. She also discovered that day that Henry Keogh was the beneficiary to several insurance policies on Anna's life, her superannuation and the house she owned. Henry Keogh, who was acting as an insurance agent, had taken out the life policies.

Later that day, police discussed the bump on Anna's head. They said that Dr

Manock had told them his ‘inexperienced assistant’ had overlooked the bruises on Anna’s leg. Manock also told police, ‘A person could have lifted the legs to drown her’. He showed police a book that contained the story of Sir Bernard Spilsbury’s ‘Brides in the Bath’.

Further police inquiries about Keogh revealed he was not well liked by Anna-Jane’s family and friends—or even by some of his own acquaintances. He was described as secretive, a liar, a snake-oil salesman, and a cheat on his wife and fiancée. Police were told that ‘money is everything to him’. They asked Keogh for Anna’s will and insurance policies, which showed he could benefit by around \$600000.

Meanwhile the marks on Anna’s leg were darkening up. The police photographer was sent to take photos. Inexplicably, he used a black and white film, almost unheard of in modern forensics. Manock said later he’d told police to use coloured film. The photographer was unaware if Manock had taken any photos at autopsy. This is usually the case, but none were produced for a very long time. At Keogh’s second trial, Professor Gale Spring, one of Australia’s leading forensic photographic experts, expressed an unchallenged opinion that the black and white photographs showed no evidence of the existence of a bruise. He also said that a photographic print should not be accepted as evidence unless accompanied by the negative from which it was printed, in case the marks on the photo resulted from the printing process. To date, the negatives have not been produced.

By Tuesday night, after hearing all the negative information about Keogh, seeing the amount by which he would benefit, learning about his various affairs with women and his possible ongoing sexual relationship with his ex-wife whilst engaged to Anna (his ex-wife denies this) police had Henry firmly in their sights. Their notes say, ‘At this point, Keogh is a suspect.’

On Wednesday, police put their suspicions to Keogh. They said they thought he’d taken Anna to the hotel to get her drunk (she had rung him to go to the hotel) and then once she was in the bath, had pulled her legs over her and caused her to drown. They put to him that a healthy 27-year-old does not just slide into a bath and drown. They advised him of inconsistencies in his two statements (both made while he was distraught) and said there was no evidence of a break-in, theft or attack.

By Friday, the media was on board. In all the cases in this book the media has played a huge part, both positive and negative. It is only through the media that the public learns of such incidents and the tone that is adopted in each case can have a huge influence on public opinion. And of course, juries are drawn from the same public who read the newspapers.

The first headline on the Keogh case read, 'Police suspect murder in lawyer death probe'. This ran in the Advertiser, a morning paper, which means the story would have been leaked to them the night before, only five days after Anna died.

Saturday's Advertiser said 'Police quiz man on lawyer murder'. And from that date the public viewed Anna-Jane Cheyney's death as 'murder'. Sunday featured a story headed 'Help find my girl's killer', attributed to interviews with Anna Cheyney's mother. The paper said that police had failed to rule out that Anna-Jane had known her killer.

Now this was all a bit premature. Dr Manock was still prevaricating about the cause of death, although drowning was his first choice. He had still not received the results of histology samples taken, which may have shown drugs, abnormalities in her blood or some other cause of death. The chain-of-evidence had not been done, which would show that no one else at any time could have interfered with Anna's body. The chain-of-evidence is a mandatory policing process whereby each person handling evidence signs for the evidence upon receiving it from the previous person. Thus it should be demonstrated that the evidence, in this case Anna's body, could not have been interfered with. This basic police procedure was not finalised until ten days after Anna died.

Graham Archer, producer of Today Tonight in Adelaide, is scathing about the lack of accepted procedures being applied to Dr Manock's important role in convicting many people in SA. 'Crucial to Henry Keogh's conviction was the evidence of the State's Chief Forensic Pathologist Dr Colin Manock who despite being inadequately qualified and the provider of notoriously bizarre scientific evidence in scores of serious cases was allowed to continue unchallenged for almost thirty years. Just days after Henry Keogh's conviction the Sate Coroner released findings which revealed that in the early 1990's Dr Manock had hopelessly misdiagnosed the deaths of three babies. He found that all three severely battered infants had died of natural causes which he attributed to bronchial pneumonia despite there being no signs of the disease in the lungs of any of them. In the Coronial findings Dr Manock was described as "having seen things which couldn't be seen." No one has ever been held responsible for the deaths.'

While there was intense media interest in the coronial inquest itself no one queried why these damning findings against the State's Chief Forensic Pathologist had been held back until after he had given expert evidence essential to the prosecution's case against Henry Keogh. Nor for that matter were questions raised about the implications of these findings for every other of the 9000 autopsies Dr Manock had performed and the hundreds of cases in which he had given expert evidence. Needless to say the authorities must have been

relieved by the silence of the media.

There was not a scrap of real evidence that Keogh had murdered his fiancée, just a lot of gossip from people who didn't like him much. And some who did. On 28 March a Miss B emerged saying she also had been having an affair with Keogh for the previous two years; that they'd flown to Hong Kong together and that he'd been living at her house and that she could prove he was a liar. Things were looking bleak for Henry Keogh.

Then Dr Manock made another amazing decision. He released Anna-Jane's body for cremation and personally signed the cremation order, before any charges re foul play had been laid; before the histology was returned (the Coroner's running sheet for 28 March says 'toxicology and diatoms [tiny little atoms that are found in water which can be matched to water in which an alleged drowning has occurred] report to come'); and before any legal proceedings relating to her death had really even begun. The cremation meant that no pathologist other than Dr Manock was able to examine the body, or to check his autopsy observations and findings.

By 7 May, police had also found out that Henry Keogh had forged Anna-Jane's signatures on her five insurance policies. They were now convinced they had the man and the motive for the murder. They took Keogh into custody, after he refused to answer their questions about the policies. He was refused bail.

Eleven days later Dr Manock finally sent off the biological samples he'd taken from Anna-Jane to have them tested for drugs, chloroform, etc. He later explained this delay by saying that the Forensic Services were busy and things had to take their course. Meantime, a man had been charged with murder without ruling out overdose or other possible causes of death.

On Monday 27 June, Dr Manock visited the bathroom where Anna-Jane had died—for the first time. Although he'd never seen the location before, in his earlier reports he had no hesitation in describing how Keogh could have drowned his fiancée. He also had no knowledge of the depth of the water, or any information other than that supplied by Henry Keogh on how the body had been situated in the bath. Was it possible for Anna to slide into the water and drown? We will never know for sure.

At a later Medical Board hearing it was put to Dr Manock 'now you've got this assailant having to not only pull the legs up in the way described by you, but now twist the head around to get the head on the side. Your theory can't survive without that proposition.' Manock replied, 'It all depends on the depth of the water, and we don't know what it is.' Dr Manock based his theory on the manner of death on the unjustified assumption that the bath was 'more than half full' of water. It was later estimated that the bath was only one third full.

It is relevant to this story to mention another set of media reports that were doing the rounds at this time. These were the reports on the infamous South Australian ‘Baby Deaths’—three unrelated deaths of babies who had been examined by Dr Manock. His findings had caused enormous concern amongst his medical colleagues, the babies’ parents and hospital staff. Of course the media picked up the information and reported that firstly Manock had told a court that ‘some SIDS babies are deliberately suffocated’. Then he’d attributed the three deaths to suffocation—in his expert opinion.

However senior paediatricians and Child Protection authorities refuted this and said the post-mortem X-rays of these babies had shown multiple fractures from severe abuse. An article in the Advertiser said that Dr Manock had been severely criticised by three detectives and a medical specialist. The inquest into the deaths of these babies was adjourned until February 1995 to allow further investigations to take place. Dr Manock’s role in the incorrect diagnoses was referred to the Medical Board.

Henry Keogh’s committal began on 26 July 1994 without the protection of suppression orders that apply to media reporting. These orders are usually made to avoid biasing potential jurors if a trial follows. So without suppression orders the media had a field day, reporting ‘\$1M motive’; ‘Man to face murder trial’; Anna killed ‘like brides in the bath’; ‘Man accused of bath murder’.

In February 1995 Keogh’s first trial began and ran for two weeks. Whilst the jury was still considering its verdict, the Advertiser published an extremely prejudicial article, saying that Henry’s case was ‘an intriguing who-dunnit about love, greed, betrayal, adultery and death.’ The journalist asked, ‘How could anyone be so treacherous, so evil?’ After nearly ten hours the jury was unable to reach the required majority of ten jurors for a unanimous verdict and a new trial was ordered. The Advertiser was later admonished for running this article whilst the jury was still trying to reach a decision.

Meanwhile, at the scheduled February re-opening of the Baby Death inquests the South Australian Coroner had formed adverse opinions concerning Dr Manock’s competence and integrity, but that judgment was kept from the defence, and therefore the jury, until after Keogh’s scheduled second trial had been concluded. That meant that Keogh’s defence team was unable to cross-examine Dr Manock in relation to those cases or his professional competence and therefore the jury continued to rely on Dr Manock as an expert witness. Part of what the Coroner said, ‘... I consider that the post-mortem examinations and reports prepared by Dr. Manock in these three cases fell a long way short of achieving these aims [of a forensic autopsy], and I am very concerned that serious crimes may have gone unpunished,’ was never put before Keogh’s jury.

Keogh's second trial began five long months later. The delay was partly due to the need for the damage done by the adverse media articles to dissipate a bit. The Crown alleged 'greed, not need' as a motive and told the jury about Keogh's deceptive love life and the forged policies. In his defence Keogh said he had signed policies for Anna, it was common practice with married partners to occasionally sign for each other (his ex-wife, Sue told the court he had often signed things on her behalf while they were married) and that he had only drawn up the policies to show some sales occurring during a rough patch in his job. The defence also highlighted an application Anna had made to her bank for finance where she wrote she was paying \$36 a week for insurance—the amount of the policy payments, and in April 1993 Anna told her brother Marc that she was insured for over \$400000, all of which showed she knew about the policies.

But the clincher in the trial was the evidence of Dr Manock and a Dr James who had been asked by the DPP before the trial to review some of Dr Manock's work. Manock was presented to the jury as 'the most experienced pathologist who was called to this trial'. A man who had, over 30 odd years, conducted 10,000 autopsies. Manock said the bruises on Anna's leg were 'consistent with a grip mark and I can't think of anything else it could be.' He hypothesised to the jury that Keogh had grabbed Anna's leg and bent it up, causing her to slide under the water. Manock was emphatic that drowning had occurred. This exchange took place between Dr Manock and the defence barrister at the trial.

Dr Manock: When I examined the main blood vessel in the body, the aorta, I noted red staining of the lining of the aorta called haemolytic staining. This was in contrast to the colour of the pulmonary artery ...

Mr Rofe (DPP): Is that an indicia of drowning.

Dr Manock: It is a classical sign of fresh water drowning.

At a later Medical Board Hearing Manock was further questioned on this finding by Mr Borick representing Henry Keogh's interests.

Mr Borick: You've heard me put to Dr James the list of textbooks written over the last three decades and you've heard me say to Dr James that there is absolutely no reference in any of the texts over the three decades to staining of the aorta being – whether associated with the pulmonary artery or not – associated with diagnosis of drowning.

Dr Manock: That's quite correct.

Mr Borick: You were aware of that when you decided to come to your diagnosis.

Dr Manock: Yes.

Mr Borick: Have you ever had your view about analytic staining as expressed by you - -

Dr Manock: Haemolytic.

Mr Borick: Haemolytic staining, I'm sorry – ever tested by any of your professional peers.

Dr Manock: No.

But of course the jury did not hear this later evidence. They were presented with a 'leading expert' and of course his emphatic evidence carried plenty of weight. 'A classical sign' of freshwater drowning from an expert was hard to ignore, even if it had no peer support whatsoever.

Dr James supported Manock at the trial on the right leg bruises being indicative of a grip and said 'it is the obvious conclusion in the absence of anything else'. They said that healthy young girls did not drown in the bath. But Dr Manock was unaware, as he hadn't made any effort to find out, that Anna had consulted a dozen different doctors on 37 occasions in the time leading to her death. Manock did not ask for her medical records and did not see them until ten years later at another Medical Board Hearing and even then was not interested in their contents.

Dr James showed a chart to the court which indicated that various tissue samples had been taken for histology, but told the court, 'Apparently no slides were taken of the bruises on the back of the neck or on the right shin,' so it was not able to prove conclusively that the marks on the right leg were even bruises, given that the photos were all black and white and there were no samples. The defence hypothesis was that they could have been marks caused by a fall, or even by something that happened prior to the day of her death. At a later Medical Board Hearing Dr James was asked 'You were absolutely convinced that there was no proof that it [the mark on the inner side of the left leg] was a bruise?' He replied, 'That's right.' Representing Keogh, Mr Borick QC asked, 'Why didn't you explain that to the jury?' Dr James replied, 'I didn't think it was particularly relevant.'

At the trial, two other pathologists, Dr Stephen Corder and Dr Tony Ansford, differed from Dr Manock, suggesting that Anna's death might have resulted accidentally, perhaps from a fall in the bath when she banged her head, or falling asleep and sliding under the water. Neither was convinced the leg bruises, if that's what they were, were 'grip marks'.

The 'grip' marks had been matched to Dr Manock's hand, not Henry Keogh's. No attempt had been made to match Keogh's grip with the marks on Anna's leg.

On 23 August 1995, Keogh was found guilty and on 15 February 1996 was sent to jail for a minimum of 25 years. Other than Dr Manock's expert evidence, the case against Keogh was circumstantial. He was basically jailed for 25 years

for murder on the evidence that he was a womaniser and a bit suspect in relation to some of his business dealings. He did not win the hearts and minds of the jury. Anna-Jane's family was convinced of his guilt and felt he'd got what he deserved.

In November 1995 Keogh made his first application to Appeal. This application was granted but it was dismissed at appeal. On 13 May 1997 he applied to re-open the first Appeal. This application to re-open was also dismissed. Between 1996 and 2003 Henry Keogh tried three times to have his case re-opened through a Petition for Mercy to the Governor. None of these three petitions was successful.

Others, however, were not convinced of his guilt at all. One of these people was retired solicitor Valerie Armfield. In 1998, after reading through the court transcripts, Valerie was convinced that Keogh had not received a fair trial. She arranged to visit Keogh in prison and told him she was taking up his case. Keogh could barely believe that after three years, a true possibility had emerged that a respected lawyer might become his champion on the outside. Although he'd had similar visits before this from all sorts of cranks, Valerie impressed him as the real deal.

And she was. She communicated her misgivings on several occasions to the then Attorney General, citing the wide professional criticism of Dr Manock and the fact that he permitted Anna-Jane's body to be cremated before any other pathologist could examine her and before any charges had been laid against Keogh. Many months later, the Attorney answered her, saying the criticisms of Manock had only 'related to paediatric issues'. (This was incorrect. The criticisms related to his procedures whilst undertaking autopsies on the babies. These procedures are accepted methodology for all autopsies.) In 2000 the Premier (John Olsen) wrote to say the cremation of the body was lawful.

Heartened by the interest of Valerie and her growing band of supporters, and a 4 Corners Program which exposed the unprofessional medical activities of Dr Manock, Keogh thought he might try for another appeal. However, before that got under way, Graham Archer says, 'another extraordinary media event involving the case was just around the corner. In December 2001 the Adelaide version of the Sunday Mail decided the questions raised by 4 Corners deserved further exposure. They planned an expose which was almost the inverse of that ill-fated article their sister paper The Advertiser had published after the first trial. The one thing both had in common was their disastrously flawed execution.

'The Sunday Mail had been provided with a copy of a video recording a re-enactment of the murder scenario as presented to the court. The experiment was conducted in the same bath in which Anna Jane Cheney died using a similar

aged and sized model. Dr Manock's hypothesis was that the left calf of the victim had been grasped by her killer and both her legs raised over her head while her face was forced underwater. The re-enactment found scenario to be almost physically impossible to achieve. It was dramatic stuff. But the article itself was doomed to miscarry.

'Sadly the Mail, desperate for a headline and readership, plastered the shocking image of the simulated drowning across their entire front page and above it they splashed the breath-takingly misleading headline "Bath Murder Video". On first glance it appeared to readers that they were being confronted actual moment of death of the tragic victim. All hell broke loose. It was unpopular enough to suggest that Keogh might not be a murderer but add to that an image, real or otherwise, of the moment of death was understandably too much. Again Henry Keogh was the loser.

'Whatever the weight of the arguments in the body of the article about flawed forensics simply didn't matter. The public outrage and naturally enough that of the Cheney family simply overwhelmed any issues of due process. Politicians joined the chorus and the newspaper's long serving editor's career was over. The newspaper never touched the case again and neither did their sister paper. All photographs of the case held in their library were marked "never to be released". The Keogh case became a media untouchable.' Keogh could only watch this setback from prison, reflecting on whether he was ever going to get a 'fair go'.

In 2002 Keogh registered a Complaint to the Medical Board of South Australia concerning Dr Manock's competence and professional behaviour. This was eventually heard, after obfuscations and difficulties being thrown in Henry's way, in November 2004. Medical Boards are responsible in Australia for the regulation of proper practice by practitioners. Keogh alleged that Dr Manock's practice of medicine had affected him in an improper and/or unethical way and that Dr Manock had been incompetent and/or negligent within the definition of 'professional conduct'. It was extremely rare, or quite probably unique, for a prisoner to bring an action of this nature.

The Board convened at last on 3 November 2004. By now Keogh's supporters included Kevin Borick QC who produced a number of high profile witnesses on Keogh's behalf. They said the bruise 'grip' was anatomically impossible; that loss of consciousness does not produce any observable signs; that staining of the aorta does not occur in fresh-water drowning; that weighing and measuring organs is mandatory during autopsy; that the body was cremated preventing further tests for allergic reactions, swelling, or anaphylaxis and that the number of tissue samples were insufficient to arrive at a true cause of death.

An expert anatomist, Dr Maciej Henneburg said that the scenario outlined by Dr Manock flew in the face of all the basic principles of anatomy and in his view, was impossible.

By using the photos showing bathroom tiles above the bath where Anna was found, Keogh's supporters were later able to estimate the depth of the bath in Anna's bathroom at 330mm. Assuming the bath was 1/3 to 1/2 full, as recollections and statements indicate, it meant that she had to be drowned in a bath only 110-165mm deep. If someone were fighting off an attack they would most likely have been able to keep their head above such a shallow bath, but if unconscious and sliding down, this may still have been deep enough to drown in. Henry told police he had found Anna slumped partly on her right side with her face forward under the water.

Unfortunately for Henry Keogh, the Board was unimpressed by all the medical experts speaking on his behalf and in June 2005 they found that Dr Manock had not departed from 'observed or professional standards to a substantial degree'. They also found the matters put to the Board had been fully scrutinised by the criminal justice process.

Dismayed but undeterred, Keogh and his supporters have lodged an application in the Supreme Court for a judicial review of the decisions. Judging by the length of time the Board took to hear his original complaint, it could be years before this application is dealt with.

Whilst the legal processes lumbered along, the groundswell of support was growing, with Valerie's husband, who owned a trucking company, driving around town displaying a billboard on a prime mover saying 'Free Keogh Now'; Bob Moles, lawyer, lecturer and a tireless and vigorous campaigner for justice in South Australia stirring the pot at every opportunity; Kevin Borick, QC, and before being appointed as a judge, Michael David, QC, throwing their not inconsiderable legal weight into the various hearings, petitions, letters to the Governor and providing wise advice; Bibi Sangha, law lecturer at Flinders University and Bob Moles's wife proving support for the campaign; Dr Harry Harding, forensic scientist, researcher and consultant advising on processes; Channel Seven's Graham Archer running a series of hard-hitting articles on Today Tonight that were much less than complimentary about the role of various protagonists in the story, to name only a few. Bob Moles wrote and published a book on the whole sorry affair. In January 2006 Bob's book, 'Losing Their Grip' was launched at a gathering of hundreds of Keogh supporters.



*Bob Moles tireless campaigner for truth and justice nationally and internationally*

Having read Bob Moles's book and heard about Henry Keogh many times from Bob and Bibi, I decided to include his story in this book. To me, Henry seemed a perfect example of how the evidence of one expert witness can have such an impact on the outcome of a trial, particularly a case that for the most part has only circumstantial evidence to get it over the line. It must be comforting for a jury to latch onto evidence presented with such confidence by an expert recommended to them by the legal system, allowing them to dismiss other doubts created by the ephemeral nature of the other circumstantial information.

In his paper, *When Justice Fails*, Professor Paul Wilson cites 'Circumstantial/suspect evidence /Expert as advocate and Media stereotyping/prejudice' as three of the five key factors that he has identified as being factors in unsafe convictions as being factors in Henry Keogh's case.

In March 2007 I visited Henry in his SA prison, out near Murray Bridge. I had only seen a couple of photos of him, but I could tell immediately that prison has aged him past his years. He has now served twelve years of his mandatory 25. Nearly at the halfway mark, which I don't believe cheers him up one bit. He has a reserved kind of faith in his dedicated band of supporters. He told me he couldn't allow himself to get too excited at each initiative they undertake, as so far, all have been in vain. The build-up and the letdown are as punishing as his sentence. But he is not without hope. He has asserted his innocence since Day One and obviously believes that by some miracle the due process of the law will one day accept one of the many representations being made on his behalf. He tells me about the latest one.

'It relies on a couple of grounds we have not used before,' he says, leaning towards me as he speaks. 'It's based upon deception and deceit. My lawyers are saying that because the jury was deceived by the prosecution presenting Dr Manock as an impeccable expert the court should allow me to re-open my first appeal to argue that I did not have a fair trial.'

‘Well, he’s certainly been rapped over the knuckles by a number of his peers, never mind the Medical Board, on the Baby Death cases, but how will that translate to your situation?’ I wondered.

‘They had that finding, that he’d conducted incompetent autopsies, during my second trial and they hid it. The jury was deceived.’ Henry said. He didn’t look angry, just resigned. He also said that the defence lawyers had been deceived during his trial. His legal team plans to put evidence to the court to show that the microscopic histological examination did not support the fact that the mark on Anna’s leg was a bruise and that Dr Manock admitted that he did not disclose this fact to the prosecutor, nor to defence counsel. The argument is that the bruise in question was central to the hypothesis advanced by Dr Manock as to the method of death and in the light of the evidence before the Medical Board, that hypothesis could not now be sustained. They will argue that this was significant non-disclosure by the prosecution.

We moved onto safer topics. He said he had recently moved into a shared ‘house’ in the prison grounds, where the four guys sharing had to budget, shop, cook and clean their ‘home’. He’d resisted at first, because it was a privilege and ‘if they grant privileges they can also take them away.’ He’s as happy as he can be in prison. He misses his children, but hears from them and sees them from time to time. His daughter, Alexis, has been passionate in her support for him and his cause. As we talked I could sense him relaxing a bit and could understand how he may have been very attractive to women. He has an easy-going attitude, in spite of all his years inside. He passes the time painting and writing letters, helping other inmates with various problems and hoping against hope that the next application will succeed.

Before leaving the prison reception area, where I had been physically searched, sniffed by a very big dog and photographed before going in, I tried to leave \$50 cash for Henry, to help him with a few small luxuries. The guards would not accept the cash, as they said they had no system to do so, as they seem to in most of the other prisons I’ve visited.

‘You can put it in an envelope and leave it in the prisoners’ mail box,’ one said, gesturing to a small, padlocked box on the wall near me. ‘But it will probably get pinched and we take no responsibility.’

‘Why don’t you?’ I asked. ‘Someone would have to have the key to pinch the contents. That’s you guys, isn’t it?’

‘No. The visitors pinch stuff. We can’t watch them all the time.’

‘But it’s padlocked and right here in your plain view.’ I was thinking if they couldn’t prevent petty theft under their noses, how would they deal with someone trying to smuggle drugs or weapons inside.

They suggested I take the cash to Administration, which was impossible as it was closed on Sundays. I wondered if they knew that! So I posted it to Henry instead.

Back at Bob and Bibi's, Bob explained the new grounds for trying to re-open Henry's first appeal. 'For the sake of convenience,' Bob told me, 'those grounds are referred to as the "deception" ground and the "incompetence" ground.'

Deception can be based on non-disclosure to the defence lawyers, for example in the WA case of Andrew Mallard, police kept vital information from the defence, resulting in Mallard's lawyers presenting a different argument than they would have if they'd had all the information. In Henry's case, the fundamental question is whether there has been nondisclosure to the jury. Would the jury, if it had known about the additional material, have cast doubt on the essential features of the prosecution case. Or, on the other hand, was the evidence that was not presented to the jury potentially significant. This process is attempting to judge the integrity of the trial itself, not the performance of the participants. But in Henry's case, of course, there is equal culpability on the performance of some of the participants. For example, Dr James gave evidence to the Medical Board hearing into Dr Manock's professional competency that indicated Dr James's microscopic examination of the tissue did not confirm that the mark in question was a bruise. Dr James told the Medical Board that he did not disclose this before the jury because he did not think it was "particularly relevant". This, it is said, had the potential to mislead the jury on a significant matter and that this important information was withheld from the defence. As the microscopic examination did not support the view that the mark was a bruise, the evidence that all the bruises occurred at the same time was fundamentally flawed. Other evidence, about whether it was a right-handed or a left-handed grip and how full or empty the bath was all pointed to the unreliability of Manock's expert evidence and the danger of the jury relying upon it.

'If the Appeal Court accepts that there have been deficiencies in the investigation, they may feel that they are significant enough for an acquittal—or a new trial. In Henry's case,' he broke off for a minute. 'Let me read you that part of Michael Hegarty's [a solicitor Bob has 'signed on' for the cause] submission.'

He picked up a large sheaf of papers from his crowded desk. 'Ah yes, here it is. Going on from our earlier discussion, Michael says, "Where the cause and the manner of death are in issue, the autopsy is a critical part of the investigation process. If it is established the autopsy process was so deficient as to be labelled incompetent then any opinion based on that process is inadmissible and if admitted destroys the integrity of the trial process itself. In the case at bar, Dr

Manock was described by the prosecutor as the most experienced of the four pathologists who gave evidence. The jury were not informed that his conduct of the autopsy had failed to comply with the basic recommendations and protocols regarded as being the minimum for a standard quality autopsy. This fact is well recognized by his peers, and confirmed by an examination of the relevant recommendations and protocols. The degree of incompetence involved and the failure to inform the jury of that fact corrupted the trial process and any excuse advanced in an attempt to justify his performance is irrelevant. The jury were invited to rely on his experience in order that they could accept his opinions as to the cause and the manner of death and clearly his opinions were accepted on that basis. The fact that the trial process was subverted by his deficiencies, and the failure to reveal those deficiencies to the jury, is not only “potentially significant” but of such significance as to cast doubt on the essential features of the prosecution case.” So there you have it, really,’ Bob concluded. ‘Now we have to wait and see.’

But of course Henry Keogh’s supporters don’t sit about while they’re waiting. They are constantly active, driving the ‘Free Henry’ prime mover around town; popping up on Today Tonight with new angles; writing letters; updating Bob’s website; researching precedents; pestering politicians; holding ‘megaphone seminars’ on the steps outside the offices of the Attorney-General, the Solicitor-General and the DPP; taking ‘State of Injustice’ stands at local shows and exhibitions; preparing legal arguments and meeting almost daily. Much of this activity is generated and driven from the ‘nerve centre’ of Bob Moles’s big sunny office, in a leafy suburban street in the Adelaide Hills. He is only a mouse-click away from obtaining and disseminating information to help Henry and others he feels have suffered injustice at the hands of the law.

One of the more active and very influential supporters of getting a new hearing for Henry is Channel Seven’s Adelaide Today Tonight producer, Graham Archer. Graham has devoted over five years to Henry’s cause, including a large amount of personal time and commitment, because he believes Henry Keogh could not have acted to kill his fiancée in the way police allege.



*Graham Archer, producer of Ch 7 Today Tonight, committed to exposing injustices and righting wrongs in South Australia*

Graham told me about how he learned that the latest application to the Appeal Court, the one mentioned above, was dealt with.

‘The Solicitor General has been looking into a number of the legal issues raised by various members of Keogh’s team. This process has taken three and a half of the twelve years Henry has been incarcerated. A couple of weeks ago, the newsroom got a notification from the Treasurer acting as Attorney General that he was holding a ‘by invitation only’ media conference. No subject was given, so we didn’t get involved. It emerged at the press conference that he wanted to announce that Keogh’s petition has been rejected. This was his petition to the Governor seeking his support for Henry to go back to the Court of Appeal. Apparently there was a lot of hand wringing about how much the [Cheyney] family had suffered and there was detailed attention given to minutiae of the case, but they completely ignored the fresh evidence. Said there was none. When we found out what the press conference had been about, our program asked for a copy of the advice that led to the rejection of the petition. We were refused—they said it was subject to privilege. We told them it couldn’t be, because the Treasurer/Attorney General had already released bits of it at the press conference, and we said we’d go the FOI [Freedom of Information] route. They got back to us and said the advice belonged to the Solicitor General, who is exempt from FOI.’

He’s persistent, I thought. I bet they hate him!

Graham continued, ‘Henry’s got this new senior counsel from Sydney who’s helping and he decided they should re-approach the Full Bench and ask for the First Appeal to be re-opened, rather than seeking a second appeal. The DPP opposed it as a matter of course, with no real matters of fact, just procedural gobbledygook. In spite of this, the Supreme Court judges seemed interested and they’ve retired to make a decision, which we are optimistically awaiting.

‘Meanwhile, we’ve been working hard on getting new evidence, because that’s what you need at an appeal. I’ve now got some pretty substantial evidence about whether there was sufficient water in the bath to drown Anna. It’s always been an issue, but the police never examined it scientifically. Fortunately, they did take photos on the night, before the water was let out by Anna’s father. I’ve found a photogrammetrist in Sydney who can measure how deep the water is as long as I have other measurements for him to calculate against. We are lucky because the people who own the house now are very supportive, and they’ve hardly changed a thing in the bathroom. So in I went and measured tiles, height

of bath, anything fixed in position to give some parameters. Then, when he'd calculated the depth, we went back with a model the same weight and height as Anna and tried everything to get her head under the water, to match the grip marks on her leg, to whack her shin against the bath, a whole series of tests that we videoed.' I was immediately reminded of Sir Bernard Spilsbury's experiments with the girls in their bathers in 1914. Great minds ...

'Back here at the studio, we tried more experiments about how we could duplicate the bruises,' he said, going on to detail a number of the tests they performed.

Privately, I thought that Henry was dead lucky to have someone with the dedication and the financial support to undertake all these tests—which should have been done by the police. This was not the first time in this collection of stories that a person not connected with the police has done work the police should have done.

'Anyway,' he said gleefully, 'we now have evidence so compelling that no argument would counter a 'reasonable doubt' view. If police had investigated properly back then, Henry would not have wasted twelve years of his life.' I really hoped he would get the chance to present it on Henry's behalf when those Supreme Court judges made their decision about reopening the First Appeal.

Only Henry Keogh knows if he's guilty of the murder of Anna-Jane Cheyney. But thanks to Bob Moles and his team, millions know that he did not get a fair trial. Will justice prevail or will the law win? Henry Keogh can do nothing but wait for the answer.



*Coroner's photo of Anna-Jane's right leg, that the forensic pathologist said showed bruising consistent with the Spilsbury method of drowning someone in their bath*



*The bathtub where it was alleged Keogh drowned Anna-Jane*

For the full Henry Keogh story see ‘Losing Their Grip’ by Dr Bob Moles – Elvis Press Adelaide—and visit the Networked Knowledge website on <<http://netk.net.au>, where you will find Henry Keogh home page as well. <http://netk.net.au/KeoghHome.asp>.

**POSTSCRIPT to Henry’s story:**

As we have decided to make Rough Justice available as an e-book a bit of updating is necessary. Henry’s appeal was not reopened. Bob Moles and other supporters of Henry decided to enter a second appeal. After the 2nd Petition was rejected, the Attorney-General explained his actions in the Parliament. Upon realising that his reasons for rejecting the Petition were in error, Henry Keogh's lawyers submitted a Third Petition, asking that the Second Petition be re-considered. In January 2009 a petition (the Fourth Petition) was sent to the Governor of South Australia, seeking a judicial review of Henry’s case. It makes compelling reading at <http://netk.net.au/Keogh/KeoghPetition4.pdf>.

This has also been unsuccessful. In early 2011, 60 Minutes revisited the case and questioned Dr Manock about his role in the conviction of Henry Keogh. (<http://sixtyminutes.ninemsn.com.au/article.aspx?id=8257120>)

Manock has previously stated under oath that the evidence he gave in court was wrong. He was also found to have ‘mixed up’ forensic evidence in three baby deaths in South Australia, Making it impossible to bring charges against their possible murderers.

Manock told 60 Minutes he was ‘too old’ now to worry about the possibility his incorrect evidence might have sent an innocent man to prison. Henry is getting older in prison as well, away from his daughters and granddaughters.

The State Attorney General does not seem inclined to hold a review or new trial for Henry Keogh, which is all Henry and his supporters have been asking for, over the past 16 years. Could it be that he is nervous about opening up for scrutiny the more than 400 cases (Manock’s estimate) in which Manock has

given forensic evidence over the years?

If Henry does come up for parole consideration after serving out his 25 years or part thereof (he's done 16 already) he will first have to demonstrate contrition for his crime. If he continues to assert his innocence, he'll do the full time, like Frits van Beelen.

If you feel strongly after reading about this case you can write to Henry in prison at Port Augusta, or write to the SA Attorney General, protesting the handling of this case. Or put something on the NetK website.