



Opening of the first High Court, Melbourne, 6 October 1903. Left to right: Barton, Griffith (Chief Justice), and O'Connor

Australia, the President of the Australian Bar Association, and the President of the Bar Association and Law Society of the Justice's state of residence. These are followed by a speech from the Justice, customarily acknowledging former Justices of the Court and members of other jurisdictions present, frequently expressing gratitude to family, friends and colleagues for their support and assistance, and also perhaps making some general observations about the role of the Court or the rule of law. A similar but abbreviated procedure occurs in each of the states where a welcome is held for a Justice who has not previously sat there. Only one Prime Minister has spoken at a ceremonial sitting: Robert Menzies, who came to speak at the retirement of Dixon in 1964 (110 *CLR* v). Menzies sought and obtained the permission of his former pupil-master to appear without wig or gown. In his speech, he said: 'it must be of all things most embarrassing to have good things said about you to your face.'

Ceremonial sittings serve the useful and valuable purpose of manifesting the role of the Court at the pinnacle of the whole of the judicial hierarchy of the Commonwealth and the states, and as the judicial arm of the polity.

Ian Callinan

*Chamberlain Case* (1984). On 29 October 1982, in the Northern Territory Supreme Court, Lindy Chamberlain was convicted of murdering her nine-week-old daughter, Azaria, by cutting her throat in the front seat of the family car at a camping area beside Uluru (Ayers Rock) in central Australia.

Her husband, Michael, was convicted as an accessory. Appeals to the Federal Court and the High Court were unsuccessful. The convictions were quashed in 1988 after a judicial inquiry.

Few cases have generated as much public controversy. The role of the High Court in this drama was, however, a minor one. Controversy did not stem from the novelty and significance of the doctrinal issues raised by the case but from the 'facts': the question of what had happened to Azaria on the night of her disappearance. Attempts to answer that question were to see law and science become embroiled in an intense polarisation of opinion that permeated Australian society. Unlike the names *Mabo* and *Wik* for example, which were not widely known until the High Court decisions were handed down, the name Chamberlain had assumed legendary significance by the time of the High Court appeal in November 1983.

This process began a short time after Azaria Chamberlain disappeared from the family tent at Uluru on the evening of 17 August 1980. Her body was never found, although her heavily blood-stained singlet, jumpsuit and nappy were discovered a week later. Lindy Chamberlain alleged that a dingo had taken the baby. This allegation aroused public disbelief as widespread as it was ill-informed; but this was only the first sign that ignorance and prejudice would run ahead of the evidence and ultimately dictate its direction in critical ways. Out of bigotry concerning the Chamberlains' adherence to the Seventh Day Adventist faith and a seemingly



Michael and Lindy Chamberlain holding photograph of baby Azaria

endless stream of bizarre rumours—such as the claims that the name Azaria meant ‘sacrifice in the wilderness’ and that the Chamberlains had expressed no grief at the loss of their daughter—was forged the urban myth that Azaria’s death was a sacrificial rite carried out by religious fanatics. In vital respects this formed the unstated subtext of the police investigation and prosecution case.

The rumour mill left the vital evidence that would have supported Lindy Chamberlain’s claims adrift in its wake. This consisted of the observations of a large number of manifestly honest and disinterested witnesses who were present in the camping area at the time the baby disappeared or who joined the search soon after. It appears that none of these witnesses—campers, rangers, trackers, searchers or local police who initially attended the scene—doubted that the baby had been taken by a dingo. Reports of dingo attacks on children had led to officially notified concerns about the problem only weeks before. On the night Azaria disappeared, dingoes were seen close to the camping area, and witnesses in a tent next to that of the Chamberlains heard a growl just before Lindy raised the alarm. Dingo tracks were observed leading away from the tent. There was blood on the interior of the tent. And none of these witnesses, some of whom were with the Chamberlains immediately before or after Azaria’s disappearance, detected anything suspicious in their conduct. They observed Lindy to be a devoted and affectionate mother to the baby and to her two young sons—a conclusion backed by a wealth of evidence from other witnesses, and contradicted by none.

The Crown faced yet more acute obstacles. One witness, a stranger to the Chamberlains until a short time before Azaria’s disappearance, gave clear and unwavering evidence that she heard the baby cry at a time when, according to the Crown case, the baby must already have been dead. It is also remarkable that if the baby’s throat was cut in the front seat of the car, no eyewitness saw any blood on Lindy’s clothing or in the car. These witnesses included a district nurse who, later that night, helped the Chamberlains pack and unpack the car and at their invitation occupied the front seat during a trip from the camping area to a motel.

With no body, no evidence of motive and no eyewitness evidence that even vaguely incriminated the Chamberlains, the Crown case was wholly circumstantial, and supported in the main by the claims of expert witnesses to the effect that the state of Azaria’s clothing was inconsistent with a dingo attack, that there was a bloody handprint on the jumpsuit; and that substantial quantities of blood, including the blood of an infant, had been found throughout the Chamberlain car.

There were many problems with the methods and findings of these witnesses, only some of which, however, could be effectively communicated to a jury in a criminal trial. The Crown invited the jury to infer that in a space of five to ten minutes, during which Lindy returned to the tent with the baby and six-year-old Aidan, she had cut Azaria’s throat and stuffed the body into Michael’s camera case while her son apparently stood by. She had then raced Aidan back to the barbecue area, where normal life was resumed, and displayed no signs of unease or distress until the opportunity presented itself of blaming a dingo for the baby’s disappearance. The Chamberlains were said to have later buried the body, then exhumed it so that the clothing could be placed in a strategic location to lend further credibility to the dingo tale.

In February 1984, the High Court refused Lindy Chamberlain’s appeal by majority (Murphy and Deane dissenting). Earlier, Brennan (sitting alone) had refused her application for bail while the appeal was pending (*Chamberlain v The Queen (No 1)* (1983)).

The Court was asked to quash the convictions on the ground that the verdicts were unsafe and unsatisfactory. The majority were in substantial agreement on the principle to be applied. The Court had to decide whether, on the evidence before it, the jury, acting reasonably, could have been satisfied of the guilt of the accused beyond a reasonable doubt. If so, the appeal must fail. Deane took the view that if the appellate court itself was persuaded that a reasonable doubt remained as to the guilt of the accused, it must find that the verdict was unsafe, even though the jury had been persuaded otherwise. Murphy did not explicitly address this issue, although his reasoning and conclusions suggest that he was more inclined to the position adopted by Deane. In most cases, not much will turn on the differences between the two approaches; they both leave the Court with substantial discretion to review the evidence.

The judgments in *Chamberlain* are largely consumed with this task. For the most part, this involved weighing the scientific evidence suggesting guilt against the conflicting scientific evidence offered by the defence, the latter including substantial eyewitness evidence that a dingo had taken

Azaria, evidence of the Chamberlains' good character, and lack of evidence of any motive for the crime.

As to the Crown allegation that foetal blood was found in the car, three Justices (**Gibbs, Mason** and **Murphy**) agreed that the evidence did not justify the jury in safely finding that there was in fact foetal blood in the car. However, Gibbs and Mason concluded that the jury was nevertheless entitled to convict on the whole of the evidence, even if they could not safely have accepted this fact as proven. This was the key point upon which **Murphy** dissented. He argued that there was no way of disentangling the general assessment of the safety of the verdict based on the totality of the evidence from a consideration of the role this one vital piece of evidence may have played in the jury's deliberations. If the jury accepted this evidence as reliable (which it was not) this may have coloured its consideration of all the exculpatory evidence and resolved any doubts about the other incriminating evidence. For **Murphy**, this was the fatal flaw in the Crown case that justified overturning the convictions.

**Deane** also dissented. In weighing all the evidence and concluding that it did not in his mind establish guilt beyond reasonable doubt, he seemed particularly struck by the force of the eyewitness evidence that the baby was heard to cry by three separate witnesses (one of them completely independent of the Chamberlains) at a time when, according to the Crown, she had already been murdered by her mother.

With **Lindy Chamberlain's** supporters disappointed by the outcome but buoyed by the **dissenting judgments** in the High Court, their campaign for her release continued to grow. After the discovery of **Azaria's** matinee jacket at Uluru

in early 1986, the Northern Territory government released **Lindy** and established an inquiry into the convictions chaired by Federal Court Justice **Trevor Morling**. In finding that the convictions were unsafe, the inquiry relied on new evidence, but it also substantially discredited the evidence relied upon by the Crown at the trial.

The relatively minor points of law and nuances in their application aside, the enduring significance of this remarkable case in the annals of High Court jurisprudence lies in the sobering example it provides of the limited capacity of the appellate process to remedy injustice where it stems from a source other than manifest legal error—in this case from prejudice, incompetence, misplaced zeal and excessive confidence in the certitudes of science.

Russell Hogg

#### Further Reading

John Bryson, *Evil Angels* (1985)

Ken Crispin, *The Crown Versus Chamberlain 1980–1987* (1987)

**Chambers.** The rooms in which Justices of the High Court and their staff conduct their work are called chambers. Before the Court's move to **Canberra** in 1980, the Justices had permanent chambers in Little Bourke Street, Melbourne, and subsequently in a wing of the law courts complex in Darlinghurst, Sydney. The Melbourne and Sydney chambers were large but somewhat gloomy. Because of inadequate library facilities, the chambers were surrounded, floor to ceiling, by bookshelves, and there were few facilities for staff or for interaction among the Justices.



The Chief Justice's chambers at the High Court building in Canberra