

Submission
No 7

INQUIRY INTO FAMILY RESPONSE TO THE MURDERS IN BOWRAVILLE

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Partially Confidential

Clinton's

older brother Dwayne (or Marbuck as he preferred to be known) was my partner for 16 years. We had two children, Marbuck Jnr 18 and Elijah 16. Marbuck passed away in 2009 and so I would like to be his voice and let you know how he felt about losing his brother in one of the most horrible ways imaginable. I will be referring to Clinton as "Bubby" as this was his nickname and the name everyone knew him as.

Marbuck had many personal demons, due to a number of factors in his life. He was a heavy drinker prior to Clinton's murder, and when Clinton was murdered, this compounded his issues.

I met Marbuck nearly 3 years after Bubby died, so I never got to meet Bubby, but I saw the effects of his murder not only on Marbuck but the rest of the family. However, I can only really speak for Marbuck. Like a lot of young Aboriginal men, Marbuck already had a mistrust of the system but more so after Bubby was murdered. We were together for a few years before he even really spoke about it. He felt completely powerless, not knowing what happened to his brother, not being told what was going on, feeling like no-one was doing anything about it because he was just another black kid and it didn't matter. Once spoken about, there was the realization that he didn't have to remain silent and he had a resolve to fight. There was the determination that Bubby's death would not be in vain, that his memory would be kept alive and our kids would know what a great person their Uncle was, what a beautiful Uncle he would have been and that he would keep on fighting for justice until we got it. Marbuck was just over 1 year older than Bubby. His birthday was on the 12th February. Clinton went missing on the 1st February 1991 and his remains were located on the 18th February 1991. Marbuck turned 18 on the 12th February 1991. He distinctly remembers the last thing he said to Bubby was "don't forget to come back for my 18th". As you can imagine Marbuck's 18th was a memorable one, but not for the reason it is for most 18 year olds.

As Marbuck and I had only been together a short time when the trial for Clinton's murder was held in Grafton in February of 1994. We did not attend the trial, however travelled to Grafton for the verdict. Looking back I do not believe Marbuck would have been able to cope with the trial and sitting through the evidence at that stage. The verdict was something that has had a lasting impact on me. Because of what we had been told, we just assumed that he was going to get found guilty and it was a big shock to the system when the "Not Guilty" verdict was read out. Marbuck's Nan, Lavinia Duroux nearly collapsed with shock.

Marbuck hardly ever spoke about Clinton unless he was really drunk. It wasn't until around the year 2000 when he had not been drinking for about 2 years where we sat down and spoke about it with my sister Anne. It was from that time on he spoke about his memories of Clinton, he played for the under 16's footy grandfinal when he was 14 and scored two tries and won the game for them. He was so strong he could walk around the footy oval on his hands, he was the fastest runner in school when he was in primary school. He was a talented artist. His dancing was legendary, whenever they were at discos he would be in the middle of a circle with all eyes on him. He was so good, he could put Michael Jackson to shame. Marbuck although he would never dance in public himself, continued Bubbys legacy by teaching our son Marbuck Jnr to dance and it is something we are all very proud of. We wrote to former Commissioner Peter Ryan to inquire about the status of the investigation and this was when my first contact with Detective Gary Jubelin took place. In 2002 we made the decision to return from Tasmania to the mainland to begin asking questions of the politicians about why Justice has not been afforded to the Bowraville Families. This was the beginning of a very long journey for us.

We started writing letters to everyone. I went to Sydney and read the court transcripts. Marbuck could never understand why Clinton would be hitchhiking, he believed that he didn't really know anybody in Macksville and if he wanted to get away from he would have gone in the other direction up to the mission back to his dads. He never believed he was ever hitchhiking and this evidence was discounted soon after Detective Jubelin and Evers took over the case.

With horror when I was reading the court transcripts, I read that the investigators informed that they were taking his caravan for forensic testing and because the Aboriginals might trash it and they then continued to ask him what he wanted out of it. He asked for his weights and was given them. At this stage a boy was missing, presumed murdered. The cause of death was most likely a blow to the jaw (quite possibly with the weights). He lived in that caravan. He was not questioned as to whether he wanted his toothbrush, or his shampoo or his clothes. The weights were handed to him without question. I noted with great disappointment in the transcripts that he wasn't questioned very vigorously about this at the trial. I also note that at that time, it was possible to wipe off blood and there was not the technology to prove that the blood had previously been there.

We put in several requests for a post mortem report. After some time we received a post mortem report. The date on the report was a year after Clinton was buried. The report was the result of the examination of only two bones which were located after Clinton was located. We received this report by accident. Nobody from Clinton's family were told at the time these bones were located and they sat at Glebe Coroners Court for 12 years. Upon investigation we were told by NSW Police that family was informed, yet told by the Coroners Court that it wasn't common practice for families to be told of such finds.

The detectives immediately did DNA testing to confirm that they were Clinton's, however, there was no DNA on the bones. When we eventually received the original post mortem report it was obvious that those two bones were missing. The family buried the bones with Clinton on what would have been his 30th Birthday.

One of the things that Marbuck always wanted explained was who found those bones and what were they doing at the time they were located and why the family wasn't advised. This is something I know he would want me to address in this submission.

Marbuck was diagnosed with Motor Neurone Disease in October 2004. During the trial for Evelyn's murder he travelled to Port Macquarie everyday and sat either in the court room or waited outside with his father. He could not walk, he was being fed via a peg tube in his stomach and could hardly talk and could not toilet himself. He was so determined in his fight for justice and in showing his support for the other families and so desperately wanted to see closure for his brothers murder before he died. We have always held the view that if we got for one murder, then we would be satisfied because we believe there is no doubt that he is responsible for the 3 murders. What was really disappointing to see at that trial was that the riot squad was brought in for the verdict. I believe that this is not common practise for murder trials. That was an outrageous, insulting and racist act. An assumption was made that if a guilty verdict came in there would be a riot. There were so many riot police in the court room that there was standing room only in the courtroom while the verdict was read. The families were heartbroken but showed an enormous amount of dignity in dealing with the verdict. No Riot Police were needed.

[OMITTED AT REQUEST OF THE AUTHOR]

Sadly Marbuck lost his battle with Motor Neurone Disease in September 2009 so he was never able to see this matter brought to justice. I find it extremely sad that our children who are now 18 and 16 feel the pain their father and the extended family felt and continue to feel.

My current partner was also a cousin to Bubby and has two young boys. 23 years later, all our children who never even knew their Uncle shouldn't have to carry this pain with them and shouldn't have to keep asking the NSW Government for answers. It needs to stop and someone needs to be accountable for it. It's as simple as that.

During Clinton's trial in 1994, there was no media liaison. As mentioned previously we went down for the verdict and it is something that will stay with me for the rest of my life. The media was everywhere. June Speedy, Clinton's mother, came out of that trial in shock to have a tv camera shoved in her face and being asked the question "Do you think you will ever get over it"(or words to that affect).....June is a very quiet shy woman and was already in shock and found it very hard to answer. They then turned to Troy his youngest brother who was 16 at the time and he was left to give a statement to the media. He was so traumatised that he does not remember giving this interview. We were ushered into a room with high windows and looked up to see the journalists had climbed up to get to the windows with their cameras and get footage of the grieving family. There was no sensitivity or respect shown to the family. I believe that there was a media unit attached to NSW Police at this time however it did not appear that it was utilised for this trial. When we attended the inquests at Bellingen in 2004, Kylie Keogh from Police Media Liaison attended and the contrast in the treatment by the media was astounding and made such a big difference.

After Evelyn's trial we became aware that there was talk about the Double Jeopardy Legislation being amended. We decided that the only chance we had of ever getting justice was to fight for these changes. In December 2006, these laws were overturned with our cases in mind. Below is an excerpt from Hansard in an address given by Andrew Stoner, on 19th September 2006.

".....In giving my support for these bills, I would like to reflect briefly on a situation that occurred in the township of Bowraville in my electorate on the mid North Coast. Sixteen years ago three young Aboriginal children disappeared within a few months of each other. They were 16-year-old Colleen Walker, 16-year-old Clinton Speedy and four-year-old Evelyn Greenup. The bodies of Clinton Speedy and Evelyn Greenup were located some months after their disappearance. The police established that both had been murdered. Colleen Walker's remains have never been located. Her clothing was found in a nearby river, and the clothing had been weighted down. In 1994 a local man was charged with the murder of Clinton Speedy. He was subsequently acquitted. This year the same man was charged with the murder of Evelyn Greenup. Again he was acquitted.

The families of those children who were tragically killed have been campaigning long and hard for justice.It is a tragic story and the cases have never been resolved to the satisfaction of the families, the indigenous people who reside in Bowraville and the community in general. The changes to the legislation, particularly relating to double jeopardy, give some hope to those families that justice may eventually be done.

In support of those people I commend the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill.....

When the law changes were introduced this provided a hope that there was a light at the end of the tunnel. A submission was lodged with the DPP for a retrial of all 3 victims. A letter was written to the Director of Public Prosecutors requesting that the matter be reviewed by an independent person so there would be no conflict. The matter was given to the Crown who prosecuted Evelyn's case in 2004. It was subsequently rejected.

This has been a common theme in the last 23 years.

Over the years there has been long delays. I wish to list them as follows:

In 1997 Strike Force Ancud was formed and tasked with re-investigating the murders. An application was put before the DPP for new charges and this took 18 months for a decision to come back. Mark McAdams reviewed and rejected this application. He had been previously involved in Clintons Trial 3 years prior.

In 2004 a coroners inquest was held and Evelyns matter was referred to the DPP for to be ex-officio indictment for the murder of Evelyn. There was no additional evidence except that which came to light during the inquest.

In 2006 a trial was held at Port Macquarie in which was acquitted of Evelyns murder.

On 15/12/06 the Double Jeopardy legislative changes came into effect with the Crimes (Appeal and Review) Act 2001.

On 6/2/07 NSW Police forwarded a submission to the DPP seeking a direction as to the sufficiency of fresh and compelling evidence to warrant an application for a retrial for the murders of Clinton and Evelyn and an ex-officio indictment against for Colleens Murder. On 4/6/07 the DPP ruled there was insufficient evidence. This matter was reviewed by Mr Peter Barnett who had been the Crown in the Evelyn Greenup Trial. We received a letter telling us to contact the Officer in Charge of the Investigation (Detective Inspector Gary Jubelin) and he would be able to provide us with the advice as to whether or not this had been successful. Upon contacting Detective Jubelin, he knew nothing about it.

The Families then obtained the Affidavit prepared by Detective Inspector Jubelin under the FOI Act which summarised the evidence against . It was then provided to Public Interest Law Clearing House (PILCH).

PILCH assessed the information and obtained further legal opinion from a Senior Barrister CT Barry QC of Selbourne Chambers. Mr Barry QC provided written legal advice that in his opinion there was sufficient material to justify an application to the Court of Criminal Appeal for the re-trial of [redacted] for Clintons and Evelyngs murder together and an ex-officio indictment for the murder of Colleen. He felt there was a reasonable prospect that a jury would convict.

PILCH engaged the services of law firm Allens, Arthur & Robinson (AAR) who acted on a pro bono basis for the families. They commenced preparing a written submission. On 15/2/10 AAR forwarded their submission to the Attorney-General (Mr John Hatzistergos) requesting that he exercise his powers under S115 of the Crimes Appeal and Review Act and apply to the Court of Criminal Appeal under S100 of the Act for an order that [redacted], be retried for the murders of Clinton and Evelyn and an ex-officio indictment for Colleen.

Late 2010 after a journalist from the Daily Telegraph had been making inquiries about the matter, we received the news that the application had been unsuccessful. It was late on a Friday afternoon so we were unable to contact anyone for an explanation or clarification.

In December 2010 we held a public meeting in Bowraville. This meeting was addressed by Detective Jubelin, Brendan Ferguson from AAR, Diana Eades, Linguist from UNE and family members. A number of politicians were invited to attend this meeting. NSW Premier Ms Kristina Keneally, NSW Attorney-General, Mr John Hatzistergos, the NSW DPP Mr Nicholas Cowdery, the Commissioner of Police, Mr Andrew Scipione, Mr Andrew Stoner, Mr Andrew Fraser and Mr Rob Oakeshott, and other prominent politicians. Not one member attended and very few responded to this invitation. It was attended by approximately 150 – 200 family/community members.

Prior to the last election Mr Greg Smith promised to review the cases with a view to sending it to the court of criminal appeal if the Liberal party were elected. This raised our hopes again. After the Liberals were successful in the election, another submission was made to Mr Greg Smith in June 2011. It took him nearly 2 years to make this decision which he emphasised was important and was so complex that he took the matter home to review. He also made the promise that we would have an answer before the end of 2012. (copies of e-mails attached). Time and time again we have been told that the matter is important and complex, but time and time again we get treated with the same contempt that the families were treated with 23 years ago. This is really heartbreaking and confusing. My thinking is that if it is such a complex and important decision (which we know it is), why not send it to the Courts and allow them to make the decision?

In February 2013, once again on a Friday afternoon about 4.30pm I received a phone call from Andrew Stoner advising that the application was not successful. It was again another blow. Mr Stoner had promised previously that he would go to Bowraville and deliver the news personally, yet he only rang me and it was left to me to relay the news to all the family members. I was living in Brisbane at that time. He mentioned to me that there would be an article in the paper the following day. Later that evening I received a phone call from a journalist from the Sydney Morning Herald. After having a conversation with him, it was revealed that the media had been briefed before the families were told. I believe on both occasions this was tactical. It was late Friday afternoon, most people by 4.30 have gone for the weekend, we were not able to prepare and put out a media release in time for the weekends papers, yet on this occasion the Government had already had theirs prepared. We were not able to gain clarification or speak to anyone at length in relation to this. So again the families were left high and dry.

We have over the last couple of years held 3 protests. The first was in November 2011, which was a small gathering outside parliament house. Then we held one in March and November 2013. It seems that the only way the families can get some action is when there is some media attention on the matter.

After the protest in March 2013 we received a phone call from Ray Jackson who secured us a meeting with the Attorney-General Greg Smith. The meeting was attended by myself, Thomas Duroux (Clintons father) and Jasmin Speedy (Clintons cousin), Mr Smith, his chief of staff, Mr Dominellos chief of staff and another government representative. Thomas travelled on the night train from Macksville in order to get there and travelled straight back on the afternoon train which meant he had very little sleep if any for 24 hours. We left that meeting feeling disappointed, hurt and angry at the lack of understanding Mr Smith has for our plight. He advised us to walk away, move on and get more grief counselling. He was also very open about the fact that he was involved in getting Evelyns matter to trial, therefore we believe there is a huge conflict of interest here. After the meeting Ray Jackson had another meeting with him in relation to another matter. They pulled Ray aside and accused him of winding us up and getting us angry. This is insulting. Arent the families of 3 murdered innocent children entitled to be upset at the lack of empathy and action shown by him and previous governments over the past 20 plus years. (Notes from this meeting are attached)

It was after the November 2013 protest that the Inquiry became a reality and for that we are extremely grateful for this opportunity, particularly to David Shoebridge who up until this point has been the only consistent person in the NSW Parliament so far.

For a long time it seemed like we were all on our own and it certainly made us question whether we were just complaining for no reason. However, one of the most experienced Homicide Investigators in NSW, The Head of Homicide, a QC, a Supreme Court Judge, a Professor of Law and her team at the Jumbunna Institute, one of the biggest law firms in Australia, and the NSW State Coroner have all expressed their belief in the merits of our case and the reasonable chance of conviction if we were to try all three cases together. It is all we have ever wanted, a fair day in court.

I have a lot of issues with this matter, but one issue that stands out for me is that the police for whatever reason didn't use the Norco Corner evidence at the time. There was never any dispute that it wasn't Clinton. There is no-one else fitting that description that went missing or murdered around that time. If it wasn't Clinton, who was it? This is the main reason why Mr Smith will not refer the matter to the court of Criminal Appeal because the matter is not deemed as fresh. 3 children were murdered, from the same town, virtually from the same street, yet somehow their matters aren't linked. Very few of our elected politicians have stopped talking politics to us and been real and honest with us. Over the many years I've written letters, I've asked members not to reply with this is not my jurisdiction, however for the very few responses we've received over the years, most of them refer it on because it is not in their portfolio. I don't care whose portfolio it is, can't someone see that it is the lives of 3 innocent children they are playing their political games with. It's plain and simple. All we want is justice and for some responsibility to be taken for this. Our families were ripped off, not only were our kids brutally taken away, but the NSW Government has never stopped and been real with us.

As a non-Aboriginal person and someone who has never lost anyone in circumstances like this, I can't even start to imagine what it would have been like, but I do believe, if it had ever happened anyone in my family, our experience with the authorities and decision makers would be entirely different.

The Government can sugarcoat it and dress it up anyway it likes, they can say that they are concerned, they can say that it is important to them, they can say they are not racist but this was not Marbucks reality, it was not my partners reality and it is not the reality of the situation. Actions do speak louder than words. With today's political climate being 'committed' to combating child abuse, the truth of it is, that these 3 kids faced the ultimate abuse – MURDER and the people that make the important decisions do not care.

Countless times we have invited the decision makers to come to Bowraville and see where the kids went missing from and where they were found and where Colleen's clothing was found. Time and time again our invitations have been refused. My belief is that unless you come to Bowraville it is impossible to make an informed decision about the matter. Coming to Bowraville puts everything into perspective. These murders are solveable. There is no doubt in my mind that the person of interest in this matter, _____ is the person that murdered Colleen, Evelyn and Clinton.

After 23 years and all the let downs our families have had, this opportunity for us to speak is something that we really appreciate and I thank you for taking the time to read my submission.

Leonie Duroux

23rd February 2014