A prospect we all regard with horror is that an innocent person might go to jail, or worse, be executed for a crime he or she did not commit. There have been some celebrated overseas cases, most notably the post-execution exoneration of Timothy Evans, a case that played a large part in the repeal of capital punishment in England. In 1950, Evans was convicted of murdering his wife and child in London and was hanged. Some years later the notorious serial killer, Reginald Halliday Christie, who had been convicted of the murder of his wife and five other women at 10 Rillington Place, London, confessed that he had also murdered Evans’ wife. We now find, with rapid advances in the sciences surrounding DNA, that this nightmare is more common than anyone supposed, at least in the United States. On April 8, 2002, Ray Krone, who was convicted and sentenced to death in 1992, was the 100th Death Row DNA exoneration in the USA. An analysis of the first 70 exonerations shows how the inexact legal system can be brought to heel by an exact science. Elements in the trials of the first 70 Death Row residents to be freed show that their trials were shot through with false witness testimony (17), incompetent defence (23), false confessions (15), prosecutorial misconduct (34), plus a frightening 61 cases of mistaken identity.

The Button case

The Western Australian case of John Button, who faced the gallows when he was charged with the wilful murder of his girlfriend Rosemary Anderson in 1963, is one Australian case that demonstrates that our legal system, which prides itself on fixing its own mistakes, is not immune. It is true that the system finally released John Button from his inner prison, but it took almost 40 years for the science to catch up with the law, or vice versa. John Button turned 19 the day his particular...
nightmare began. He was 58 when he walked into the central police station in Perth and finally witnessed the destruction of his criminal record.

His 19th birthday dinner at his parents' Perth suburban home had been pleasant, until he and Rosemary, aged 17, had a tiff. She flounced out and started to walk home. John jumped into his car, a 1962 French-designed Simca Aronde, and followed her, trying to persuade her to get in. But she was determined to walk. When she disappeared under a train-track subway, he stopped the car, lit a cigarette and waited. He knew that on the other side was a deserted industrial strip. The darkness and the loneliness might make her change her mind. But when he drove through four minutes later, he spotted her lying in the sand several metres from the road, fatally injured. Thinking there was a crazed hit and run driver at large, he carried the bleeding girl to his car and rushed her to a doctor's surgery. The doctor called an ambulance and the police. When the cops arrived they noticed damage to the left front corner of Mr Button's car. He told them he had had a minor accident when he ran into the back of a Ford Prefect car three weeks before and had not had the damage fixed. The police turned up a report of this accident. But it looked suspicious. He was the boyfriend, there had been an argument, he was on the scene, there was damage to the car and there was blood on the car which, it transpired, was transferred from the girl and his own bloodstained hands as they brushed past it. He also had a bad stutter, which investigating police took as nervousness at the questions he was being asked.

After about five hours in police custody and learning that his girlfriend had died in hospital, Mr Button signed a confession that had been typed out by a detective. The jury at his trial convicted him of manslaughter, and he was sentenced to 10 years hard labour. Had he been convicted of wilful murder, as charged, he could have hanged.

**Cooke's confession**

There his case would have rested had it not been for the arrest four months later of Eric Edgar Cooke, a 32 year old father of seven who had confessed to eight murders, including the killing of Rosemary Anderson.

He provided great detail of how he had spotted her just after she walked under the subway, waited for the traffic to clear then lined her up with a car he had stolen that night, a 1962 Holden. He described how she flew over the bonnet, over the roof and disappeared. He had then driven the car to a park 3km away and crashed it into a tree to disguise the damage. The Holden's owner was contacted and he and police records confirmed that his car was found crashed into a tree in Kings Park the next morning, just as Mr Cooke described. As would be expected, John Button appealed on the basis of this confession. Cooke gave evidence at the appeal, but the judges, already sickened by the details of his other crimes, refused to believe anything he said. They said he was inventing the story to delay the death sentence he had been handed for other murders. He was hanged in October 1964. John Button was released from jail after five years, but never gave up trying to clear his name.

In 1998 I agreed to publish the superb biography of Eric Cooke for author Estelle Blackburn. The book purported to include new evidence from two witnesses who had come forward during Ms Blackburn's research. Their stories cast doubt on the conviction of John Button. The book's publication received wide publicity and the new evidence led to the WA Attorney General agreeing to re-open Mr Button's case. Public expectations were raised that the new evidence would exonerate Mr Button.

The many people affected by the death of Ms Anderson and Mr Button's conviction were traumatised all over again. Following publication of the book, I re-interviewed both new witnesses. It quickly became apparent to me that they had nothing to add to the available evidence, and so it proved in court two years later. I felt strongly that in the interests of justice and the peace of mind of the many people affected, something now had to be done to resolve the question of Mr Button's guilt, publicly and once and for all.
all. I went looking for the equivalent of DNA evidence.

**Search for an expert**

Court files included good police photographs of Mr Button’s car, alleged to have been the murder weapon.

A search for the world’s leading expert on pedestrian crashes found William “Rusty” Haight in the United States. He is a former police officer with engineering training and is well qualified in both the theory and practice of pedestrian crash reconstruction. He has driven in more than 700 staged crashes, analysed the results and testified in scores of court hearings.

Now with a private consultancy based in San Diego, he was then employed by the engineering department of a Texan university. A large amount of his time was spent instructing police officers in traffic crash investigation.

After Mr Haight agreed to review the available evidence, he said that no firm conclusion could be reached about which car killed the girl. The problem was that no cars of the vintage of those said to be involved had ever been crash-tested in a car vs pedestrian situation.

I then arranged for Mr Haight to travel to Western Australia to carry out such tests. He brought with him a biomedical human-form dummy, that behaves exactly as a human body in a pedestrian crash situation.

I had purchased three 1962 Simca sedans and a 1962 Holden sedan. The tests were designed to show whether the prior accident damage to Mr Button’s car could have masked further damage caused by an impact with Ms Anderson.

Mr Haight also wanted to measure the displacement of the dummy to one side of the car. Ms Anderson’s body was found well off the road. Different vehicle profiles cause different displacement distances. The Holden has a square-fronted look while the Simcas have rounded lines.

**Crash investigation**

A major problem with Cooke’s evidence at John Button’s original appeal was that the car he stole was fitted with a steel sun visor. The appeal judges simply did not believe that a body could have been flung over the top of the car and displaced well to the left-hand side without being caught by the visor or ripping it off. They ridiculed Cooke as he stuck firmly to his story in the witness box.

At the test venue, video equipment was installed to record the impacts from various angles for court purposes, including cameras inside the cars. Still photos were also taken before, during and after the tests.

The dummy was stood on the bitumen road and held upright with a breakable knot from a “gallows” contraption that we built. This knot presented no resistance when the dummy was struck by a car.

The three Simcas were crash-tested at speeds of 27, 31 and 37 mph (43, 50, 59 km/h).

The amount of damage to each car varied with the speed, but its position on the cars was consistent. It was stark and obvious in each case. The leading edges of...
the cars sustained some damage, and there were pronounced dents to the rear of the bonnets caused by the dummy's head striking the metal.

Mr Haight explained that the physics is quite simple. The centre of gravity of an adult is above the top of the striking edge of the bonnet. On impact, the body begins to rotate around the axis of the leading edge, causing the head to impact towards the rear of the bonnet, depending on the length of the bonnet and the design of the car. At highway speeds, this head strike often occurs on the windscreen.

The body continues to cartwheel. Because of the shape of the front of the Simca, something like an upturned boat, the dummy was flung to one side before contacting the windscreen and ended up on the road within a metre of the side of the vehicle.

The three test Simcas sustained none of the damage shown in the police photos of Mr Button's car. And Mr Button's car had none of the massive bonnet damage suffered by the test cars.

After the three Simca tests, Mr Haight was able to declare immediately that Mr Button's Simca could not have struck Ms Anderson with sufficient force to kill her, or even seriously injure her.

Mr Haight concluded that the damage that so aroused the suspicions of the original investigating police, was all caused by the earlier collision between the Simca and the Ford Prefect.

Mr Haight's Simca tests also failed to displace the "body" more than about one metre to the side of the car - nothing like the two to three metres described by witnesses at the time.

There remained only the test of the Holden fitted with a visor to check the veracity of Cooke's statement that he had driven the car at the girl at 35-40 mph and she had been flung over the top of the car.

No photographs are available of the damaged Holden Cooke stole that night, but there is a detailed account from the panel shop that repaired it for the insurance company.

Mr Haight hit the dummy with the Holden at 35mph (56km/h) just to the left of centre of the bonnet. To everyone's surprise except Mr Haight's, the dummy behaved quite differently from when it was hit by the Simcas.

The Holden sustained quite severe damage to the leading edge of its bonnet and some head damage to the rear of the bonnet. The dummy then cartwheeled towards the roof of the car. It struck the visor above the left hand side of the windscreen.

Mr Haight said in his evidence that the visor did play a role in the body motion, but not the role suggested by the Crown at Mr Button's original appeal in 1964. The visor flexed and distorted, but popped back into its original shape without even cracking the paint. There was no discernable damage to the visor.

But contact with the visor caused the dummy to deflect laterally to the left of the car, a distance of 6.5 feet (2 metres), well within the range described by the witnesses who came upon the original crash in 1963.

The forward or down-range projection of the dummy by the Holden was also markedly different from that of the Simcas, and indeed most other cars Mr Haight has tested.

Mr Haight was able to declare in court that the death of Rosemary Anderson could have occurred exactly as Cooke had described it, but that it was not possible for Mr Button's car to have killed her.

Court finding

Strict legal rules govern the acceptance of fresh evidence by appeal courts. They will not allow evidence that was available but not used at
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the time of the original trial. In the same way that modern DNA evidence is now admissible to re-open old cases, the crash tests fitted the "fresh evidence" criteria because the science of surrogate crash reconstruction had not developed in 1963-64.

The three Court of Criminal Appeal judges accepted his evidence, emphasised the importance of the sun-visor evidence and quashed Mr Button's conviction. The judges said Mr Haight's evidence was compelling and convincing. It was the longest time lapse between conviction and exoneration in Australia's legal history.

Notes

1: After the Perth crash tests Mr Haight was invited to take the dummy to Sydney for crash testing on vehicles fitted with roof bars. Mr Haight refused. One hit with a kangaroo bar would completely dismember his $2,500 dummy, he said. Kep that in mind next time you cross the road.

2: Car manufacturers carry out crash tests to assess the safety of occupants. However none carry out pedestrian crash tests. Mr Haight believes they fear lawsuits if they knowingly market vehicles with front end shapes that may cause untoward pedestrian damage.

3: Another murder appeal is now before the West Australian courts in which Mr Haight's crash test evidence could be critical. It is the case of Darryl Beamish, a deaf mute who was in jail for a 1959 axe murder for which Eric Cooke also confessed. At Mr Beamish's original unsuccessful appeal, the judges cross-referenced Cooke's evidence with that of the Button appeal, again declaring him a liar. Referring back to the Button case, the then Chief Justice wrote, "Cooke claims to have had little damage to the car he was driving". "What damage there was resembles in some measure what was found on Button's car. The mathematical odds against such a coincidence beggar the imagination."

Mr Beamish was sentenced to hang. His sentence was commuted and he served 15 years.

The story behind the story

In July, ABC TV broadcast, as part of its Australian Story series, a two part programme on the case of a WA man, John Button, who had served a prison sentence for manslaughter and who had been cleared of the charges almost 40 years later.

On the face of it this story held nothing of particular interest to the Skeptics, until it became apparent that the key to the case for Mr Button's innocence rested on some empirical scientific experiments that showed very convincingly that the victim could not have been killed in the way claimed by the prosecution.

One participant very much involved in the campaign to have the conviction overturned was Bret Christian, the publisher/editor of the Post group of Perth suburban newspapers and a long-time Skeptic subscriber. We contacted Bret and his story appears here.

Episode 2 of Australian Story followed a panel of all those concerned in the case engaging in a session of "restorative justice". What stood out in the interplay between the participants was the way the very elderly parents of the victim gradually realised that the man they had blamed for 40 years for their daughter's death was, in truth, an innocent man; extraordinarily moving TV viewing.

This case raises some disturbing questions about how scientific evidence is (or should be) treated in courts. Most of us probably regard our legal system as reasonably fair, albeit with some blemishes where innocent people have been wrongly convicted. Perhaps we have been too sanguine in our judgement. The technology used in these experiments was not available in the 1960s, and perhaps the original conviction could be justified, but the fact remains that an innocent man was convicted of a crime he did not commit. Furthermore the use of DNA evidence now shows that a substantial number of people in the USA have been wrongly convicted of serious crimes.

Somehow the law must recognise the advances science has made in the forensic field, and the way scientific evidence is treated should be reviewed. There are good arguments for and against the adversarial system of justice we use, but the law needs to understand that, in the scientific area at least, the truth does not necessarily reside with the scientist in the better suit, or the more glib exposition, but with the evidence itself. Incidentally, that should also be the case with the law itself, but we doubt if anyone believes that.  

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