

691857



Thesis
LG
712
.M4
.L3
no 478
copy 1

MACQUARIE UNIVERSITY

LLB

LEGAL RESEARCH PROJECT – LAW 514

MISCARRIAGE OF JUSTICE

HOW AND WHY THE MEDIA AND POLICE

CONSTRUCT CRIME AND GUILT:

PHUONG NGO – A CAUSE FOR CONCERN

HELEN NGUYEN

2002

SUPERVISOR: GILL BOEHRINGER

Thesis
LG
712
.M4
.L3
no 478

CONTENTS

| | |
|--|----|
| <u>INTRODUCTION</u> | 4 |
| <u>SECTION ONE – THE KEY PLAYERS AND EVENTS</u> | 7 |
| <u>THE EVENTS</u> | 12 |
| <u>THE TRIALS</u> | 14 |
| <u>THE DISSENTING JUROR’S OPINION</u> | 20 |
| <u>SECTION TWO - THE SETTING</u> | 28 |
| <u>INTRODUCTION</u> | 28 |
| <u>THE INDOCHINESE OF CABRAMATTA AND FAIRFIELD</u> | 28 |
| <u>CONCLUSION</u> | 35 |
| <u>SECTION THREE - MEDIA AND CRIME</u> | 37 |
| <u>INTRODUCTION</u> | 37 |
| <u>MEDIA AND CRIME</u> | 38 |
| <u>MEDIA MORAL PANICS IN SYDNEY</u> | 46 |
| <u>MEDIA REPRESENTATIONS OF FAIRFIELD AND CABRAMATTA</u> | 50 |
| <u>SECTION FOUR – WRONGFUL CONVICTION</u> | 53 |
| <u>SECTION FIVE – POLICE ABUSE OF CRIMINAL PROCEDURES</u> | 61 |
| <u>INTRODUCTION</u> | 61 |
| <u>ROYAL COMMISSION EXPOSES POLICE CORRUPTION</u> | 62 |
| <u>MISCARRIAGE OF JUSTICE – BRITISH PERSPECTIVE AND PHUONG NGO</u> | 65 |

INTRODUCTION

On the night of the 5th of September 1994, the local Member of Parliament for Cabramatta, John Newman was murdered. This was claimed to be Australia's first political assassination.

This research analyses the three trials which resulted from the killing of John Newman, and finds many problems with the process of securing a conviction, that of Phuong Ngo. It also analyses the media coverage of the shooting, and of the trials.

In order to put the trials and the media coverage into perspective, I will first look at the main players and the main details of the three trials. One trial was aborted another resulted in a hung jury, before the final trial resulted in the conviction of Phuong Ngo, yet freed the two who were alleged to be his accomplices. No person was convicted for the actual shooting.

Then I will give some background to the murder and the trials. I will start by looking at the suburb of Cabramatta, and its controversial image in the media. I will examine media coverage like the following: "Cabramatta was simultaneously the fulfillment of our migration dream and its nightmarish conclusion" (*Sydney Morning Herald*, 7 September 1994, p. 8). "Streets where decent citizens were afraid to walk must be cleansed of drug pushers and menacing local gangs" (*Sun-Herald*, 11 September 1994, p. 28).

Then I will look at the media itself, the way it portrays crime, and in particular, ethnic crime. I will support the view of Barnao and Lipson who wrote: "*Ethnic minorities are sometimes the target of sensational press reporting which can give an impression that their criminal involvement is far greater than is actually the case*" (Hazlehurst, 1996, p. 341).

Next I will examine examples of miscarriages of justice in Australia, and weaknesses in the NSW Police Service. At the same time I also will use a critiques of the British justice system, to discover systemic problems in policing and justice in the British-Australian model of justice.

Finally, I will examine the media coverage of the killing and trials. A large number of newspaper articles were looked at and catalogued in order to determine whether the media reported the trials fairly.

This thesis will examine the following questions.

- (1) Why is there doubt about the role of the police in the conviction of Phuong Ngo amongst those who closely observed the case?
- (2) How was the media able to vilify Phuong Ngo, to a point where it appears there was very little sympathy for him, and little understanding of his case in the broader community outside Cabramatta?

Overall, my argument in this thesis is that firstly, there were irregularities in the trials; secondly, there is a suspicion that the case made by the police and prosecution was "irregular"; thirdly, the police and prosecution were able to do this because there was

to be a climate of hostility toward Asians, and in particular, Cabramatta Vietnamese; fourthly, Phuong Ngo was a convenient target. Fifthly, the media in general appears to have failed to fulfil its basic public function to thoroughly investigate, report fairly and comprehensively on all matters of public interest. Here there was a murder of a public figure. The media joined in a "moral panic," and was largely responsible for inflaming the public to the extent that Phuong Ngo was denied a fair trial. Further the media did not raise questions about what appear to be contentious issues in the cases run against Phuong Ngo. Nor has the media been at all interested in the question which arises from Ngo's conviction of complicity and the acquittal of all those directly charged with Newman's murder: who is the killer?

SECTION ONE – THE KEY

PLAYERS AND EVENTS

There were three trials for the murder of John Newman. There were several “key players” involved in the trials. It is important to understand who they are. So I include here a brief biography of the main ones. Also, the main events are outlined.

WHO WAS JOHN NEWMAN?

Lest we forget! John Paul Newman was born on the 8th December 1946 in Europe. He was a graduate of Liverpool High School, and completed postgraduate studies in Industrial Law at the University of Sydney, as well as various trade union and training authority education programs. As a teenager he changed his name from Naumenko to Newman.

He served as state union organiser of the Federated Clerks Union from 1970-86. From 1977 until 1987 he was an Alderman for Fairfield City Council serving as Deputy Mayor from 1985-86 and Acting as the Mayor in 1986.

For eight years he was the state MP for Cabramatta, from 1 February 1986 until 5 September 1994. The electorate of Cabramatta is made up of suburbs including Bonnyrigg, Cabramatta, Canley Vale, Lansvale, Mount Pritchard, St. John’s Park.

He was a member of the Canley Heights Branch of the Australian Labor Party where he held executive positions. He was associated with the ALP Policy Committee for Sport, Recreation and Tourism. Karate was his main sport, and he was a karate coach for local RSL Youth Club. He also was on the NSW Health Advisory Council for three terms and Sports Health Advisory Committee. He was a member of the Australian Sports Commission 1985-87, and President of the Federation of Australian Karate. From 1978-87 he was the Director of the Confederation of Australian Sport 1979-87.

He was married in 1973, but lost his first wife and child in a car accident, in December 1979. At the time of his death, he was living with and apparently engaged to a Chinese woman, 26 year old Xian Jing (Lucy Wang), who had been his interpreter. They had planned to marry the next year, in July 1995, shortly after the state election.

He was a Catholic. He was killed on Monday evening, September 5th, 1994.

Mr Newman was outspoken, and quite fearless. He spoke out against gangs, especially Asian gangs, and the tactic of "home invasions" that had become very common. He campaigned for tougher laws, including ten year jail sentences for home invasions (<http://www.parliament.nsw.gov.au/prod/parliament/Members>).

BACKGROUND OF PHUONG NGO

Phuong Ngo was a penniless refugee when he came to Australia in 1982. He worked in Queensland operating fishing trawlers, and became the first Vietnamese-born elected public official when he was elected as a local councillor at Fairfield in the late 1980's.

Phuong Ngo joined the ALP in April 1993. Earlier, he had stood against Newman in the 1991 election as an independent. He had directed votes away from Newman to the Liberals. In fact he was friendly with prominent Liberals such as Ted Pickering and Philip Ruddock. He travelled to South East Asian refugee camps with Ruddock in 1989.

He had been very much involved in the community. He has a share in a Vietnamese language newspaper and a real estate firm. He does not have many assets accorded to corporate affairs and land title records, although he is rumoured to be a millionaire.

He began to use a room at the Cabramatta Community Centre to help members of the Vietnamese community, and there he approached community workers for referral information. His sincerity, dedication and openness have made a good impression with those workers, a number of whom have continued to support him.

During his time on Council, Phuong was involved in many local projects including development of a new community centre, and helping a number of community groups with projects for the aged and for youth services. He had been appointed to the South

Western Sydney Area Health Board, and also has a seat on the Ethnic Affairs Commission. He is not married.

In the Labor Party, Phuong Ngo did not like to be pigeon-holed. He told the Four Corners Programme “no bird in this world can fly with one wing only”, but he was aligned to the Right wing of the party. He had many good friends in the Right, and was part of the factional politics. His base was in the Canley Vale branch, which met in the Mekong Club, which Phuong Ngo had founded. He was a good friend of Nick Lalich, the current Mayor of Fairfield. On the other hand, Newman was in the Centre Left, and based in the Canley Heights branch of the ALP.

Both Newman and Phuong Ngo had brawled over factional matters, including branch-stacking. They did not like each other, both believed the other to be corrupt (Hogarth, 1998).

OTHER PLAYERS

QUANG TU DAO

Quang Dao was 38 years old. He was alleged to be the driver of the car which carried the “hit squad”. He was acquitted. He was allowed bailed throughout the period. He previously had been a social worker in Bankstown, and had given evidence to parliamentary committee on juvenile justice and a paper to the Criminology Institute of Victoria (Brown M., 2000).

DAVID DUY THAI DINH

David Dinh is 29 years old, he was alleged to be the killer in the third trial. He had previously spent three years in jail for manslaughter, after stabbing a person during a home invasion (Davey K., 2001). He was also acquitted in the third trial.

TUAN VAN TRAN

Although accused of being the man who pulled the trigger in the first trial, in the second trial Tuan Van Tran was one of the Crown witnesses, in exchange for indemnity from prosecution. He had been in jail for 18 months and it is alleged by supporters of Ngo that he was subjected to great pressure to “roll over,” as was his family. In the second and third trial it was claimed he was only a passenger in the car and a lookout.

MARK TEDESCHI

The prosecutor for Newman’s case, he was also prosecutor in one of the Hilton Bombing cases (discussed in Section 4 below), later proved to be a miscarriage of justice. He was also the prosecutor in the recent case of Les Cooper, an Aboriginal who was convicted of the baby Le case – the Vietnamese baby who died in the car which his mother left in a shopping center car park. The witness said the person who took the car looked Asian. Cooper is Aboriginal. He claims he was in the car after it was abandoned by the car thief – and ran away when he saw the death baby. The case was appealed and the conviction was quashed!

THE EVENTS

THE MURDER OF JOHN NEWMAN

On 5 September 1994 Cabramatta MP John Newman was murdered. This is the first political assassination in Australia. He was shot dead, outside his home, while going outside to put a covering on his car. He died in front of his fiancé. Two shots from a .22 bullet were fired into his chest, at about 9.30 pm (Campaign Exposing the Frame-Up of Phuong, Sydney, 2001, p. 1) (Committee's pamphlet).

John Newman had been an anti-drug campaigner, and had called for more police and for the deportation of 'Asian criminals'. It appears that John Newman had many enemies. Newman was regarded as arrogant. He had received warnings that he will be killed, and he had told friends that "the triads were out to kill him" (Kennedy L., James B., & Seymour T., MP, 1994). Also he had experienced vandalism of his car and office. Paint bombs had been thrown at his car, and a shot had been fired through the window of his electorate office. Earlier that evening he had been at a Labor Party meeting.

PHUONG NGO ACCUSED

Early on, there were many suspects. The 5T gang, and John Newman's fiancé Lucy Wang were two major suspects promoted by the media. Since Phuong Ngo and John Newman had previously been political rivals within the Labor Party, Phuong Ngo was from an early stage a main suspect. It took three years after the murder until he was arrested. This was in 1998.

Soon after the murder a 'Sixty Minutes' televised forum helped promote the idea of a Vietnamese connection. Phuong Ngo was a high profile community leader involved in Cabramatta. Rumours, never brought up in court, were that Phuong Ngo was involved in drugs (Committee's Pamphlet, p.1, 2001) and was an "Asian Crime Boss." There appears to be no evidence of such involvement.

THE MOTIVE

The alleged motive for the crime, according to Prosecutor Mark Tedeschi, was that Phuong Ngo was a political rival and wanted Newman's lower house seat (Cabramatta) in Parliament. This was refuted by two Labour political heavyweights, Graham Richardson and John Della Bosca. John Della Bosca, MP in the State Parliament said: "*Phuong Ngo indicated he would not run against Newman.. [he had] clear ambition to be elected to the Upper House .. I was generally supportive of his candidature*" (Committee's Pamphlet, p.1, 2001).

The same day Newman was murdered, Ngo and Della Bosca, a powerbroker in the Labor Party, sat down to lunch. Della Bosca promised Ngo that he would support him with a seat in the upper house. So, the political motive appears to have been a false claim.

Also, surely Della Bosca would have noticed something, this being the very day the murder happened, if Ngo was really planning the death of Newman. Della Bosca's evidence should have been regarded as extremely important.

THE TRIALS

On March 1998, Phuong Ngo, Quang Dao and Tuan Van Tran were arrested during the coroner's inquest into John Newman's death.

| Trial No. | Dates | Defendants | Judge | Outcome |
|-----------|---|--|-----------------------|--|
| 1 | 19 July 1999 - 3 August 1999 | Ngo and Tuan Van Tran (Dao not tried, Dinh arrested later) | Justice James Wood | Trial aborted due to prosecution misconduct |
| 2 | Feb 7 2000 – May 7 2000 | Ngo and Dao (Dinh to be tried separately) | Justice James Wood | Hung Jury. One juror disagrees |
| 3 | March – 29 June 2001 (Sentencing 14 Nov. 2002) | Ngo, Dao and Dinh | Justice David Hunt | Ngo convicted, Dao and Dinh not guilty. |

FIRST TRIAL

In the first trial, Phuong Ngo and Tuan Van Tran were charged. Tran was the alleged gunman. Some witnesses were questioned on video-link, because it was alleged that they were frightened to be face-to-face with the defendants in court. They were actually in the same building, close-by. The prosecution and defence agreed to keep this secret from jury to avoid prejudicing the jury on the basis that witnesses were intimidated by Ngo. When Prosecutor Tedeschi told the jury that a witness was actually in another part of the building, the judge order that the jury be discharged, as Tedieschi had breached the judge's orders based on the agreement (Committee's Pamphlet, 2001).

SECOND TRIAL

Before the second trial, Tuan Van Tran became a Crown witness, in exchange for indemnity from prosecution. In the first trial he had been accused of being the shooter. In his place, David Dinh was now accused of being the hired gunman.

Tran complained to the court about threats to his family (Brown M., February 2000). Tran had consistently maintained his innocence. While in jail for 18 months, the police persuaded him to become a witness, and to cooperate with the prosecution.

The jury was split ten to one. A juror had been discharged earlier, leaving eleven jurors. The eleventh juror held out. This is described more fully in Appendix Four. His comments have been included following in this Section, "The Dissenting Juror's Opinion." A major reason for the dissenting juror holding out was the unreliability of the evidence; he observed that racism was involved in the whole proceedings.

THIRD TRIAL

In the third and final trial, three men, Phuong Ngo, Quang Dao and David Dinh faced murder charges. Dinh was the alleged shooter, Dao the driver of the car, and Ngo was complicit through organising, and allegedly supervising from a short distance away on the night. While Dao and Dinh were acquitted, Ngo was convicted.

WITNESSES

The witnesses had many reasons to give false evidence. The police gave indemnities to many people. It is believed that a number were under a lot of pressure from the police, and would say anything to avoid trouble. Some witnesses actually disappeared during the trial. They were not cross-examined.

These witnesses who disappeared had crucial evidence. One contradicted the crown case that Ngo offered him \$50,000 to kill Newman. In another incident, two different stories about how a gun was disposed of could not be examined in court because a crucial crown witness claimed he was too sick to attend. Key witnesses were excused from appearing in court because of illness. Others simply left the country.

Thanh Duc Nguyen (a former poker machine manager at the Mekong Club) was exposed as a liar. Prosecutor Tedeschi, made excuses for him, claiming he was just “not particularly intelligent”(Committee’s Pamphlet, 2001).

The main witness, Tuan Van Tran had been in jail for 18 months. He had been first accused of being the gunman. He was promised his freedom in exchange for evidence against Phuong. At first, he strongly protested his innocence. Whilst he was in jail, his family had been threatened. He agreed to testify against his former co-accused. This made the prosecution case a lot stronger. Instead of circumstantial evidence, there was a key witness. David Dinh became the man who pulled the trigger. However, Tuan Tran’s evidence must have been rejected by the third jury since the man he directly accused, Dinh, was acquitted.

In the end, **Phuông** was convicted on circumstantial evidence, based on the evidence of these and other witnesses.

Basically, **Ngo**'s counsel warned the jury of the motives of these witnesses, implying that they had motives to protect themselves, by incriminating **Ngo** (Brown M., 2000) The warning was to no avail.

BERETTA PISTOL

One of the key pieces of evidence in the case was a Beretta pistol which was found in the Georges River, in June 1998, four years after the murder. This was proposed to be the murder weapon. Forensic evidence for the prosecution claimed only that it might have been, since the murder weapon was alleged to have been a Beretta.

Recent PIC hearings have reveal that a group of detectives, Major Crime Squad North, regularly planted guns on suspects, and had a collection of guns for this purpose. They called it the "Future Exhibits" collection. With a sophisticated understanding of the field, they would put the guns in water to age them, and make ballistic tests difficult. Similar evidence came out from the Police Royal Commission; it was endemic in the past. So it seems that this sort of thing is not new, and not unique to Major Crime Squad North.

EVIDENCE FROM MOBILE PHONE RECORDS

Telstra mobile phone records were used in the case, and in particular the records of the mobile phone towers. This was used to locate the movements of Phuong Ngo, and the finding of the gun. This seems improbable, for reasons given below.

THE PROSECUTION EVIDENCE

In the trials, there were two categories of evidence using by the prosecution - phone records, and the evidence of indemnified witnesses.

MOBILE PHONE

Calls had been made from Phuong Ngo's mobile phone. Evidence from Telstra was used to locate him around the time of the murder. But Prosecutor Tedeschi went too far when he exaggerated the 'precision' with which people can be located through mobile phone towers "we can say almost exactly where he went". This was incorrect; records from mobile towers can only locate people within a general suburban area. Despite this Tedeschi tried to place Phuong Ngo exactly near where the murder occurred, and also near where the alleged murder weapon was found. Ngo claimed to be elsewhere, carrying out some business activities.

PURCHASE OF THE PISTOL

Regarding the purchase of the gun, security guards from the Mekong Club in Cabramatta were indemnified and called as witnesses to say that Phuong Ngo had tried to purchase a gun. Some did, while others of these security guards did not turn up to the court, for a variety of reasons.

PHUONG NGO AT THE MURDER SCENE

The prosecution claimed that Phuong's own car, a white Camry, was at the scene of the murder. This is because a similar car was allegedly seen near the scene of the crime. This is an odd claim, because would somebody hire killers, in order to distance himself from the crime, and then drove there to have a look?

The prosecution claimed that Phuong Ngo picked up the weapon from the killers, shortly after the murder. Again, this would have been a very foolhardy thing to do.

PHUONG NGO'S DEFENCE

Phuong Ngo claimed that he was not near the scene of the crime that night. He had driven home to pick up a press-release which he then delivered to a newspaper in Moorebank.

A reputable corrosion expert found that the weapon claimed to be the murder weapon, the Berretta pistol, had been in the water for up to 12 years. There was no proven link between Phuong and that weapon - and that gun may not even have been the murder weapon.

The mobile phone records show that Phuong Ngo was in the area of Liverpool and Cabramatta at the time of the murder, just like thousands of other people. They did not and could not pin-point him accurately to any specific location within that general area.

The white sedan seen after the shooting could have belonged to anyone. There were hundreds of similar cars in the area.

Labor Party bosses John Della Bosca and Graham Richardson both told the court Ngo was going to get ALP support for an Upper House seat. This disproved the major motive proposed by the prosecution, that Phuong wanted John Newman's seat.

THE DISSENTING JUROR'S OPINION

Quite remarkably, the Juror who held out at the second trial, set up a web page to argue "his" reasons (<http://www.skybusiness.com/phuong-ngo/>). The opinions of the juror are quite interesting. They point out many weaknesses in the case against Phuong Ngo.

The juror's identify was revealed in a Sydney morning Herald article of 17 May 2000. Also, there is an account of the juror in "One Man Against Ten...the Jury that went to War" (Lagan B., & Nixon S., 2000 - See Appendix One). The juror, an African male, tertiary educated is aware of, and sensitive to, what he considers to be the underlying racism in the case. The writing draws upon literature, history, sociology and Biblical references, showing an intelligent intellect, and a keen sense of duty and awareness of injustice (ibid).

TELSTRA EVIDENCE

The juror wrote, in his web page; "The Telstra evidence was itself discredited by the "expert" witnesses themselves. They said unambiguously in the second trial that it is not possible to pinpoint the exact location of a caller or a receiver of a mobile

telephone call. Their evidence suggested that the caller or receiver could be anywhere within or without Cabramatta borders. The best estimate they could make is in which cell a caller or receiver was at the time of the conversation. This estimate would by itself be a very rough one judging by the manner the cells overlap according to the sketches they produced as exhibits. Notice that these overlaps would NOT allow an expert to even attempt to estimate the location of the caller or the receiver. Overlaps mean a caller or a receiver could be in many of the cells converging on any given point of the overlap web. This view casts doubt on the merit of the judge's reasoning. It introduces a deficiency in the high standard of proof required in a case of murder. Thus pointing to reasonable doubt which, in terms of the oath of affirmation, imposes the obligation on the juror to acquit" (ibid). The juror shows an excellent understanding of the flaws in the use of Telstra mobile phone records to pin-point Phuong Ngo. He grasps the technical aspect of the problems.

NO MOTIVE FOR MURDER

Regarding the motive, the juror stated: "In the same case (second trial) NO motive was proved according to both the prosecution and the defence teams. They found it necessary to emphasise this fact to guide the jury not to focus very much on motive because it is not necessary in law for the proof of murder. This is the only point the jury, which I was a member, unanimously agreed on - NO motive. All the evidence adduced in this regard cogently showed two things. One, Phuong was not interested in the lower house seat and he had no chance of winning anyway in a constituency whose majority voters are "rednecks" - to quote a respected witness who was once a member of federal parliament. Two, John Newman lacked the capacity to stop Phuong from getting whatever he wanted. This includes a licence for Mekong Club

and the Chinese/Taiwanese sister city relationship with Fairfield council. The evidence before the court was that John Newman was against all these initiatives which were the brainchild of Phuong Ngo”(ibid).

Once again, the juror shows that he carefully deconstructed the prosecution’s alleged “motive” of Phuong Ngo, and how the need for a motive had been downplayed. He makes an interesting argument for why Phuong Ngo was not interested in a Lower House seat, which, although aired in court, received very little publicity outside. The fact that there are many “rednecks” in the Cabramatta electorate, who would have made it difficult for Phuong Ngo’s election, was not discussed in the media.

WITNESSES LYING

The juror commented on the role of the media. He was upset that the judges critique was not reported. “The press did not report what the judge's view was on the contradictions (and confessions of lying) of the witnesses especially the two star witnesses. Neither did they report or comment on the conflicting verdicts of the two juries (ibid)”.

The Juror was shocked by the low standard of the prosecution’s witnesses, and commented about this quite frequently. One incident, of witnesses being obviously on drugs, shocked him. He blamed the media for not reporting this.

LACK OF SHOOTER

The dissenting juror has a very deep understanding of the legal issues involved, as can be seen from the following. He took notice of a difference between the two presiding judges, with regard to the weight that should be given to the evidence of two major witnesses.

“The reasoning of this judge was clearly at odds with that of Justice Wood. In guiding the jury, the latter said that if the jurors could not believe that David Dinh was the shooter, they had to acquit the accused persons. On the confessions of the two star witnesses' role in the planning and their alleged attempts to murder John Newman, the judge stressed that these confessions could not be connected to the accused persons. That means their confessions are theirs and theirs alone and could not be connected to the accused persons. The judge was in effect saying that the accused persons could not be held vicariously liable for the stars' confessions” (ibid).

Then followed a very sophisticated analysis of how the judge of the third trial conveniently overcame the fact that a principal to a crime had no agents, because the agents were acquitted.

“However the judge in the recent trial redefined the word contract (read enterprise) to justify the harsh sentence. In his judgement he finds that Phuong was the principal. By error, either of omission or commission, he avoided to name the agent(s). He must have found himself in a dilemma because the would-be agents, David and Quang, had been acquitted by the jury. Strangely he agrees with the jury verdict on these two co-accused” (ibid).

He shows the lack of logic, and the inconsistencies, in the prosecutor's case. He stretches the logic to its ridiculous conclusion. Also, he shows the flaws in the argument that Phuong Ngo drove past the scene of the crime immediately afterwards; hard, if he was also the one who did everything.

"I would have expected the judge to find that by acquitting the would-be agents, the jury destroyed the existence of both the principal and the enterprise itself. By definition the principal and the agent are mutually inclusive - one cannot exist without the other. This judgement must have created a dangerous precedent because it now makes it possible for one legal person to play both roles - that of the principal and the agent. Simply the judge was saying Phuong acted alone. That includes pulling the trigger. This is untenable because no evidence was adduced to tell the jury that Phuong was at the scene of the crime. The closest evidence in this regard was that an unidentified white Toyota Camry was seen speeding in the opposite direction to that of the imaginary (its existence too was not established because it was definitely not Quang's - and the jury has spoken!) get-away car. This Camry was NOT shown to be Phuong's or who its driver was. Neither was there any evidence to show that there was only one car fitting that vague description, "white Camry", in Australia. That rendered all the white Camry owners in Australia murder suspects" (ibid).

The evidence of the mysterious white Camry was designed to throw mud on Phuong Ngo, but no convincing evidence was given to show any connection; in reality, the car could have belonged to anyone in Australia.

JOHN NEWMAN'S ENEMIES

John Newman was a controversial MP. In his web page, the dissenting juror discussed his view that the real killer had not been caught.

“Let me state that from my understanding of the evidence, John Newman was murdered by a person or persons now at large. Evidence adduce showed he had many enemies who were the creation of his own character. Many of his personality traits that earned him enemies had nothing to do with politics. To call his murder assassination is to spruce up a common crime of murder with a third world outfit” (ibid).

“Witnesses told us Newman had received many death threaten from many sources. His murder was expected - only the date unknown until 5th September 1994” (ibid). This was a key factor in the case. There were many people with anger towards John Newman. Why had these avenues not been pursued? And if Phuong Ngo was not the killer, then the real killer was still uncaught.

POLICE AND DUBIOUS WITNESSES

In the web-page, the dissenting juror made it obvious he was shocked by the low credibility of the prosecution witnesses. He mentioned elsewhere that one was obviously on heroin when he gave evidence, and he wondered how he had got held of it, when he was been held by the police. He was thoroughly sceptical of the police.

“It would have cost less for the police to prevent this murder than it has cost them to "buy" the measly amount of evidence which was scotched by the massive amount of lies from the same witnesses. They failed to realise lies and truths in any proportions

do not blend. The judgement disagrees with my opinion on this by the acceptance of the testimonies of the star witnessesOn the other hand the court trivialised valuable testimonies of witnesses such as that of Della Bosca in spite of acknowledging it as the truth" (ibid).

LUCY WANG – DUBIOUS WITNESS

The juror was not impressed by John Newman's wife, Lucy Wang. He said:

"Needless to say Lucy is of course a great economic winner. Her evidence was less than impressive. Her testimony that she ran after a "near-stationary" car for nearly ten meters was bizarre in the extreme. It was like running on a treadmill blind-folded!

That is why she could not see even one letter or number on the number plate of the car she was chasing"(ibid).

I have quoted the juror at length because he consistently shows the flaws in the prosecution argument. He demonstrates a great commitment to searching for the answers, and for justice to be done.

CONCLUSION

There is still a huge question mark over the killing of John Newman. Despite a multi-million dollar investigation, a coronial inquest, a committal hearing, and three trials, there is only a man alleged to be the mastermind, who is in jail. The person who pulled the trigger and any others who were involved have not been found.

Yet there were so many inconsistencies about the trial; questionable circumstantial evidence, unconvincing witnesses, together with the fact that the convicted man was a

successful and community-minded member of his community, which leads to the conclusion that this case ought to be re-examined closely if Ngo's appeal fails.

SECTION TWO - THE SETTING

INTRODUCTION

I want to look at the Cabramatta and Fairfield areas, to give a realistic background to the events of the Newman trials. I want to show the demographics and migration issues, which include the problems of the Vietnamese youth, unemployment and crime, including drugs. These form the background to the way in which the media reported on Cabramatta in the period just prior to and subsequent to the murder of Newman. It also helps to explain how and why the police operated as they did.

THE INDOCHINESE OF CABRAMATTA AND FAIRFIELD

POPULATION AND DEMOGRAPHICS

The Fairfield Local Government Area (which includes the suburb of Cabramatta) was one of the most popular destinations for immigrants, taking 8.3% of newly arrived migrants (Castillo and Hirst. p.11).

Since the late 1970's, a high proportion of migrants from Indochina had settled in the Fairfield Local Government Area. There are a number of ethnic minorities among the Indochinese communities – Chinese, Lao Loum, Lao Thai, Lao Theung, Lao Sung, Vietnamese and others (Yamine & Associates Consulting, 1994, pp. 12-13). Reasons for this included the close proximity of the migrant hostel at Villawood, the development of welfare, language, cultural and religious organisations in the area

including the Vietnamese Community in Australia/NSW Chapter, the development of Cabramatta as a distinctively Asian business centre. There are also lower housing costs and multilingual services catering for people from Indochina-China.

REASONS FOR MIGRATION

Most Indochina migrants had come to Australia under refugee or special humanitarian migration programs including the author. Over recent years there has been an increase in the number of people arriving from Vietnam under the Family Reunion Program.

The Vietnamese Australian Welfare Association (VAWA) Report notes a number of reasons why Vietnamese young people had left their country of origin, including government harassment of family, escaping communism, lack of education and employment opportunities, avoiding conscription and religious persecution (VAWA, 1991, p. 6).

PROBLEMS OF YOUTH

A study by Yamine & Associates Consulting, looked closely at Laotian youth. The findings, in my view hold true for Vietnamese and Khmer young people and their families. It was found that Laotian youth are made up of two quite distinct groups. The first group was those recent settlers, who experience the same sorts of problems of resettlement that their parents had, such as disrupted educational experience and a lack of English language ability. The other group was Australian born. They could mostly speak English and have adopted some of the values and attitudes of a Western society. Often they are caught between cultures as well as between generations. As Yamine & Associates stated: "*Parents' expectations (of children) are high ... they*

want their children to take in 50% Australian culture and 50% Laotian culture ... but this is not happening ... the children want to forget about their background" (Yamine & Associates Consulting, 1994, p. 36).

UNEMPLOYMENT

The employment opportunities of Indochinese young people, as with other young people have been badly affected by structural and technological changes in the economy. Indochinese young people comprise 37 % of all 15-24 year olds unemployment registered with the CES (now called Job-Network) in Fairfield and Cabramatta (Hasleton, 1995, pp. 15-7).

Most of these young people are looking for work in unskilled or lowly skilled occupations. Contributing to these problems of unemployment, over one third of unemployed Indochinese young people have poor English and literacy skills. In September, 1994 there 1,673 Indochinese young people aged 15-24 years in Fairfield claiming income support from Department of Social Security (now called Centrelink) (ibid).

CRIME AND THE INDOCHINESE COMMUNITY

Although this paper that focuses on the media exaggerated representation of crime in the Cabramatta area, and in particular the sensationalisation of the trial of Phuong Ngo, it must be stated that there has long been a crime problem in South West Sydney.

EMD Consultants, who did a major study of crime in the area, outlined the characteristics of this youth crime issue, notably "the crime being concentrated in areas of high Indochinese population; the existence of drug abuse which leads to crime as a means of drug purchase; psychological stress caused by alienation and the difficulties associated with integrating into a new society; and rebellion amongst younger people who are questioning the authoritative nature of their ethnic culture especially as a comparison to more participatory western lifestyle traits, and greater emphasis on individual rights" (EMD Consultants, 1994, p. 43). They pointed out another reason, that this rebellion may arise from a false sense of "freedom" among some Indochinese young people, a belief that one is "free" to do anything in Australia after the age of 18 and thus need not follow their parents' instruction.

John Egan, the Senior Policy Officer of the NSW Department of Juvenile Justice, drew attention to "a significant increase in the percentage of Indochinese young people in Juvenile Justice Centres from 1.6 % in 1991 to 6.2 % at 31 May 1993" (EAC, 1995, p. 36). His department gathered statistics of clients from the courts who were placed on a community-based court order, or sentenced to a period of detention (ibid). The number of young people from Indochinese backgrounds who were being referred to the Juvenile Justice system was increasing.

Indochinese was over-represented compared to their percentage of the population. They often are there for drug related offences (ibid) According to the Metropolitan South Region of the Department of Juvenile Justice there was a detention rate of 1.3% for 15-21 years old people (that is, for every 100 young people age between 15-21 years old 1.3 people were in detention). For young people of Indochinese background

(who comprised 9.7 % of the youth population in the region) was a detention rating of 16.4% (DJJ, October 1993). In a report "Youth Needs and Issues of Concern" prepared as part of the Fairfield Community Plan, it was stated that: *"Given that Vietnamese young people comprise only 2.4 % of the total Juvenile Justice Centre population it is alarming that they constituted 32.2% of all drug offenders in custody ... Also the average length of time in detention for young people is 5.5 months, for Indochinese ... it is 16.3 months"* (ibid., p. 17).

Accordance New South Wales Department of Juvenile Justice Information Package, there was:

Sex & Ethnicity Of Juveniles On Supervised Orders

By Department Of Juvenile Justice Area - (as at June 1994)

| Area | Sex | | Ethnicity | |
|--------------------|-------|--------|------------|--------|
| | Male | Female | Aboriginal | NESB |
| Eastern Sydney | 269 | 41 | 66 | 82 162 |
| Southern Sydney | 413 | 28 | 38 | 136 |
| Western Sydney | 212 | 30 | 35 | 42 |
| Metropolitan total | 894 | 99 | 139 | 260 |
| Sub-Total | 90% | 10% | 14% | 26.2% |
| Southern | 233 | 42 | 52 | 3 |
| Western | 182 | 23 | 83 | 1 |
| Northern | 164 | 25 | 93 | 1 |
| Hunter | 152 | 18 | 31 | 3 |
| Non-Metro total | 731 | 108 | 259 | 8 |
| Sub-Total | 87.1% | 12.9% | 30.9% | 1.0% |
| Total | 1625 | 207 | 398 | 268 |
| | 88.7% | 11.3% | 21.7% | 14.6% |

(Zibert, E. & Caine, M., 1994, New South Wales Department of Juvenile Justice Information Package 1993/1994).

In Southern Sydney 31% or the 441 clients came from non-English speaking background (136/441). However, the Southern Sydney region has the highest number of offenders overall (441) which includes Fairfield LGA, so geographic location is probably as important a factor as ethnic or social background.

POLICING

There was another aspect to this; the actions of the police in singling young Asians out. The "Nobody Listens" report produced by Youth Justice Coalition and the Youth Action & Policy Association found that young Asians experienced unacceptably high rates of contact with Police. By *contact* is meant: being searched by Police, being questioned by Police, being fingerprinted by Police and being detained by Police. This "over policing" tends to increase when the young people were in the company of other young people from non-English speaking backgrounds. The report concluded that this indicates at least the presence of individual racism within the police, if not more broadly within the justice system.

DRUG ISSUES AND THE POLICE – THE FISHER REPORT

The scale of the use and sale of heroin in Cabramatta increased dramatically in the period 1993 to 1996 as indicated by arrest rates, the number of clients using the needle exchange program as well as observations of the local residents (Sox, 1997). Because of the size and visibility of the problem, the problem became widely publicised.

In 1996, South Western Sydney Area Health Service proposed to establish a new Drug Intervention Service on the eastern side of Cabramatta in Fisher Street. There was tremendous local opposition to this both from residents in the immediate area, businesses and local Government representatives (*ibid*).

With regard to policing in the Southern Sydney, including Fairfield LGA, 68.2% of respondents stated that they had contacted or used the NSW Police Service and 31.8% stated they had not. Of those who have used or contacted Police, 66.67% stated that they were not satisfied, or very unsatisfied, with the service that Police were providing before Operation PUCCINI started. (Operation PUCCINI was a crack-down on drug dealers in the area). However, the number of respondents who were not satisfied with their contact with Police dropped to 33.33% after Operation PUCCINI began (*ibid*). This is an important improvement for the NSW Police Service. Because their reputation was on the line, the Police were forced to act; when the public saw them “getting stuck into” crime, their reputation improved.

Some negative views expressed about NSW Police services were that police ignore complaints or do not respond quickly when called out, police are not doing their best to stop drug problems in the area and police seem to be scared of the drug dealers (*ibid*).

Some positive comments about NSW Police services were that police do what they can in the circumstances; that people feeling more secure with current Police patrol, they were eager to help but some Police are not so friendly; police are doing a good job now but were not in the past; and police arrived within a reasonable time when

called. This shows that there is not a "wall of silence" in the Cabramatta area regarding drugs as has been alleged in the media. When the police show they are concerned, community attitudes support them (ibid).

MEDIA FOCUS ON YOUTH

Why was there a focus on youth crime? First, there was a problem. Second, the media reported it sensationally and helped to develop a moral panic. Third, Aussies were becoming concerned about Asians "swamping" the country (Hanson, 1996, p. 3862). Fourth, part of the story was "drug lords" and "triads" such as the "5T" gang. Fifth, Phuong Ngo was portrayed as an evil "drug lord" and it was alleged that he used the Mekong Club to develop control over drugs, young drug dealers, young users etc. Sixth, here was a target waiting to be picked on, a focal point to combine all the anxiety and issues. Lastly, the police needed a target, to prove they were dealing with crime effectively.

CONCLUSION

In light of the above, there are real problems in the Fairfield area and these should not be overlooked. Both John Newman and Phuong Ngo recognised this. However, what appears to have happened is that each man had a different view of how the problems should be dealt with. It was this that brought Phuong Ngo and John Newman into conflict and "competition". For example it is said that Phuong Ngo was very concerned about these problems, and he brought young Vietnamese "street kids" to work at the Mekong Club. He was the first Vietnamese politician elected to office, and he had a great interest and involvement in social work to help his fellow Vietnamese. John Newman was also a local citizen and politician. He preferred to

work with community and social work “behind the scene”. Newman was outspoken in public; he railed against drugs, dealers etc. He criticised the gangs such as the 5T. He had death threats from them reported in the media.

SECTION THREE - MEDIA AND CRIME

INTRODUCTION

In this section I will examine theories regarding the way crime is reported in the media. It involves looking at “traditional” journalism and theories developed in the UK in the seventies and eighties in the field of “law and order.” The terms “moral panic” and “folk devil” are used in this section. I believe that the media coverage of Phuong Ngo is a classic case of these phenomena, because there were two “moral panics” about drugs and crime, and Phuong Ngo was made into a “folk devil.”

In this section, I also will discuss how the Sydney media has played a negative role in the representation of suburbs such as Cabramatta, Fairfield and Bankstown. Tabloid newspapers and television pander to the taste of the public for the news, the sensational and the unusual. This was why we see so much of the media focusing on “bad news”. Crime sells newspapers, and the Southwest of Sydney has provided a large number of news stories which had excited the interest of tabloid newspapers and TV: drugs, sex, violence, murder, and prostitution.

MEDIA AND CRIME

TRADITIONAL AND PUBLIC JOURNALISM

This paper involves a critiques of “traditional” journalism “the kind of reporting that only looks at one side of the story” and which “simply raises the alarm about a problem without asking the community to be part of the solution” (Castillo & Hirst, 2001, p. V). Castillo and Hirst have produced a media kit “Journalism: Look Both Ways” which used Fairfield and Cabramatta as an example in which to expound ideas about “Public Journalism.” A key idea, in their critique of “traditional journalism” is the role of “moral panics.” Traditional journalism “focuses on the “bad” news. Crime reporting becomes a means of promoting a “moral panic” and reinforcing a “law and order” response to essentially economic and social problems.” (Castillo & Hirst, 2001, p. V).

NEWS AS A SOCIAL CONSTRUCTION

Stuart Hall describes news as a “social construction. “Earlier, US academics McCombs and Shaw coined the phrase “agenda setting” for the process of selecting news that will be reported.” (Castillo & Hirst, 2001, p. 56). This way of conceptualising news, emphasises aspects of selection and construction, and the subjectivity of newsgathering – particularly the role of journalists and editors.

Innovative writing on crime, law and the media in the 1980’s in Britain, represented by texts such as *Representing Order* and *Visualising Deviance* by Ericson, Barnek and Chan took this paradigm further, offering a theory of “crime, deviance and

control news.” They sought to understand and explain the wide range of story-types relying on sensationalism, both in the quality and pulp news market.

The basic idea was that much news on crime is about establishing a “norm.” An act of deviance is reported, and this is discussed in public, particularly by respected authorities. By showing what is “deviant” behaviour, the public idea of what is the “normal” behaviour is established. Other news about celebrities, and human interest, politics etc is also about “deviance” and “norms,” but crime offers a ready-made source of on-going stories, which the public enjoy (Ericson, Barnek and Chan, 1987, Chapter two & pp. 44-70). Their theory rests on notions of “negotiated social order” which could be seen within society (ibid., p. 54).

The news fits in with this negotiation of social order, occurring at all levels of human discourse. “Along with other cultural products, the news attends to what will fit within existing plausibility and reassurance structures and thus is impelled towards eternal recurrence (myth) and ideological reassurance. It serves to acknowledge order” (Ericson, Baranek and Chan, 1987, p. 60).

The authors gave a closer description about how the news organizations define deviance and offer solutions. “On a more everyday basis, news organizations are active in constituting what are social problems and what should be done about them. They do this by focussing on a few dramatic incidents of criminal victimization of the elderly, children or women, to manufacture a problem in a local community. They do so by ignoring, or selecting stereotypical features of, minority groups such as women the mentally ill, racial minorities and homosexuals. They do so by focussing upon a

control news.” They sought to understand and explain the wide range of story-types relying on sensationalism, both in the quality and pulp news market.

The basic idea was that much news on crime is about establishing a “norm.” An act of deviance is reported, and this is discussed in public, particularly by respected authorities. By showing what is “deviant” behaviour, the public idea of what is the “normal” behaviour is established. Other news about celebrities, and human interest, politics etc is also about “deviance” and “norms,” but crime offers a ready-made source of on-going stories, which the public enjoy (Ericson, Barnek and Chan, 1987, Chapter two & pp. 44-70). Their theory rests on notions of “negotiated social order” which could be seen within society (ibid., p. 54).

The news fits in with this negotiation of social order, occurring at all levels of human discourse. “Along with other cultural products, the news attends to what will fit within existing plausibility and reassurance structures and thus is impelled towards eternal recurrence (myth) and ideological reassurance. It serves to acknowledge order” (Ericson, Baranek and Chan, 1987, p. 60).

The authors gave a closer description about how the news organizations define deviance and offer solutions. “On a more everyday basis, news organizations are active in constituting what are social problems and what should be done about them. They do this by focussing on a few dramatic incidents of criminal victimization of the elderly, children or women, to manufacture a problem in a local community. They do so by ignoring, or selecting stereotypical features of, minority groups such as women the mentally ill, racial minorities and homosexuals. They do so by focussing upon a

particular habit of the populace, such as the use of illicit drugs" (ibid., 1987, p 70).

This is how Cabramatta is so often portrayed in the media.

"The murder story... and the law reform story... illustrate that news provides and active discourse about the legal control and justice activities of the people and organizations reported on, including journalists themselves. In these stories there is a lot more at stake than the exhibition of a particular tragedy or injustice. The society's system of institutional authority is at stake. A murder provides the occasion not simply for a primary factual account of what happened, but for a morality play of how what happened first into the order of things" (ibid., p 343). The murder of John Newman, like that of so many others, became a "story" upon which many issues were trumpeted, and many prejudices aired.

MORAL PANIC

Also developing in the late 1970's was the concept of "moral panic." Stanley Cohen defined it, in his book *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, as: "A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylised and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more invisible" (Cohen S., 1980, p. 9).

This idea did not simply blame the media, but saw moral panic as having ideological roots in society, and whipped up by experts, community leaders and the media. Moral panics tend to occur at time of social crisis, so there are deeper causes.

FOLK DEVIL

Closely allied with the concept of "moral panic" is that of "folk devil." In *Policing the Crisis* (Hall, S. et al, 1978, p. 161), this was described very well. "The Folk Devil - on to whom all our most intense feelings about things going wrong, and all our fears about what might undermine our fragile securities are projected is...a sort of alter ego for Virtue. In one sense, the Folk Devil comes up at us unexpectedly, out of the darkness, out of nowhere. In another sense, he is all too familiar; we know him already, before he appears. He is the reverse image, the alternative to all we know: *the negation*. He is the fear of failure that is secreted at the heart of success, the danger that lurks inside security, the profligate figure by whom Virtue is constantly tempted, the tiny, seductive voice inside inviting us to feed on sweets and honey cakes when we know we must restrict ourselves to iron rations. When things threaten to disintegrate, the Folk Devil not only becomes the bearer of all our social anxieties, but we turn against him the full wrath of our indignation."

When the book was written, Hall et al, focus on "the black mugger" which was the current folk devil in Britain at the time (ibid). In Australia, we could easily list several folk devils: historically the teenage gangs, bodgies, widgies, mods, sharpies, punks and today perhaps the Lebanese rapist gangs. Also there were Robert Trimbole and Italian mafia in Australia and Abe Safron and various Kings Cross gang leaders. In the early 1990s, it was the Asian and in Sydney particularly, the Vietnamese

drugs/crime gangs including Vietnamese 5T gang, Mr Asia and various drug importers. Phuong Ngo became the incarnation of the Asian Folk Devil.

IDEOLOGIES OF CRIME – BLAMING THE VICTIM

As well as understanding the role of the news media in the moral panics directed towards “crime” and immigrant groups, it is important to grapple with the ideologies and underlying causes. In *Policing the Crisis*, there was interesting argument put forward as to the reasons working class people so readily turn their aggression on to “folk devils.” The authors argue that working class people tend to take on extreme versions of the attitudes of the higher social classes. They wish to emulate the successful, and in doing so, take on many of the worst ideologies of the rich – lack of compassion, and a tendency to blame the weak (ibid).

In Australia, the working class are a major part of the groups, which blame immigration for Australia’s economic problems, and see a connection between Asians and drugs and crime. “People who are successful believe that success is a reflection of some moral superiority. They rate enterprise and initiative as the most worthwhile of all human characteristics, and what they rather vaguely call fecklessness or spinelessness as the most contemptible. But because their own success stems from virtue, its opposite must be true, that failure stems from vice. People at the bottom of the scale are felt to be a vaguely menacing influence, not in any obvious revolutionary way, but they do undermine the beliefs which legitimate those who are in positions of superiority. This is why the references to criminals, shirkers, drunks, are so venomous” (Hall et al, 1978, p. 163).

SOCIAL ANXIETY

Hall et al blamed the appearance of the "folk devil " on "the suppressed, distorted or unexpressed responses to thirty years of unsettling social change, which failed to find political expression... When the impulse to articulate, to grasp and organise 'needs' in a positive collective practice of struggle is thwarted, it does not just disappear. It turns back on itself, and provides the seed-bed of 'social movements' which are collectively powerful even as they are deeply irrational: irrational, to the point at least where any due measure is lost between actual threat perceived, the symbolic danger imagined, and the scale of punishment and control which is 'required'. These streams of social anxiety and eddies of moral indignation swirled and bubbled, in the 1960s and 1970s, at some level right beneath the surface ebb and flow of electoral politics and parliamentary gamesmanship" (ibid., p. 162). So, the folk devil took the heat for all the social anxiety, in the community, it is both a distraction and a symptom of underlying problems. They are "scapegoats." Moral panics came into play when this deep structure of anxiety and traditionalism connects with the public definition of crime by the media, and is mobilized (ibid p.165).

This could describe the situation in Australia, with regard to Asian migration and related problems, such as drugs and organised crime, about which Australians have had moral panics. This social anxiety, it seems, was taken advantage of by Pauline Hanson.

TWO MAIN EXPLANATIONS OF CRIME

Hall et al proposed “two basic ‘lay ideologies’ of crime, two basic explanatory frameworks.” These are polar opposites (ibid 168). These were the liberal and traditionalist, they were actually interconnected. Here, I shall look at one of these, the *conservative* explanation of crime. This “lays fundamental stress on the primitiveness of crime, and the state of mind leading up to it. It predicated on the eternal struggle between Good and Evil. Human nature is fundamentally nasty, brutish and vile. But the seed of Good is planted in us all. It requires, of course, eternal vigilance on the part both of society and of conscience. All of us are involved in this perpetual spiritual warfare against the ‘evil that is in us’. Most of us manage to subdue the Devil. For the explicitly religious version, the submission to the authority of God and the moral law; for the secularised version, the submission to social authority and hierarchy, are the armour-plates of conscience which help us to surmount Evil and do Good. The criminal, however, has chosen not to fight the good fight. He has embraced Evil. We must be protected against him. And a clear warning must be delivered to all others who for the sake of gain, impulse or base motive are tempted to follow him in this path to unrighteousness. There is a sort of calculus - both divine and utilitarian - by which the greater the crime, the more severe the punishment” (ibid p.168).

This could describe the outlook in the media in Sydney in the early nineties, with its focus on the “drug menace” and Asian gangs in Cabramatta.

PROBLEM OF AUTHORITY

There was a crisis in the ideology that sustained the UK since World War Two. The old certainties disappeared. The consensus ideologies from this time were not

working, in the new period of conflict and economic downturn. Rather than consensus, there was a move towards coercion. The sanction of the law was being emphasised now. This move in state power had to be seen to be natural, and legitimate.

Gradually these panics merge, converge and overlap. As Hall suggests the public saw them becoming one and the same. Underneath it all, they are all caused by same thing. At this stage we enter the “law and order society”.

Something like this seems to have happened in Sydney and Australia as a whole. The politics of State Government focus on law and order, while Federal politics has seen great divisive debates on immigration, Aborigines, the treatment of refugees.

Although the economy of Australia has been growing, unlike the stagnation in Britain in the 1970's, socially there has been enormous change. We have had massive immigration, since the seventies, and in the eighties and nineties enormous restructuring of the economy, in response to globalisation. Many people have lost previously secure jobs. The Public Service has been decimated. The rural sector has been badly affected, with a large drift of population to the cities. This sort of social disjunction, and crisis, is very similar to the kind of crisis of legitimisation described by Hall et al. It is no wonder, that Australia is experiencing the same scape-goating, moral panics and creation of folk devils, as was experienced in the UK in the 1970's.

MEDIA MORAL PANICS IN SYDNEY

GANGS IN THE MEDIA

Australia has a history of moral panics, involving gangs. The Ned Kelly Gang was the first “ethnic” gang, being made up of young Catholic Irish settlers. In the 1880’s and 1890’s there was the “larrikins” including the Rocks Push, a more hardened type, perhaps, “razor gangs” of 1920s, in 50’s the bodgies and the widgies, the surfies and the sharpies as well as mods and the rockers in the 1960’s and the punks and skinheads in the 1970’s (Collins, Nobel, Poynting, Tabar, 2000, p. 35).

BANKSTOWN

In *Kebabs, Kids, cops and Crime*, the authors discuss that in late 1998, after a fourteen year old Korean schoolboy was stabbed in a Punchbowl street, the police mounted a massive operation in the area targeting ethnic youth. Two weeks after the stabbing event, there was a drive-by shooting of the local Lakemba police station. The Premier of New South Wales blaming “the Lebanese” (ibid., p. 2) was reported in the Sydney Morning Herald (3/11/98) saying that “*Police investigators have revealed that a Lebanese gang involved in drugs and car theft has been identified in relation to recent disturbances in the Canterbury Bankstown region... You’re dealing here with a gang that is fully employed in criminal behaviour* (ibid., p. 3). The whole Lebanese community was blamed, as can be seen from the newspaper account in the Daily Telegraph published on 3/11/98 that “*Ethnic leaders have a responsibility to co-operate with Mr Carr and Mr Ryan to provide information that will lead to the arrest of these criminals, not make claims of racial slurs.*” In the same issue, there was a

cartoon of a “community leader in Muslim garb, with head buried in the sand as bullets whistled past” (ibid., p. 3).

CANTERBURY ROAD

In an unpublished thesis, “Zero Tolerance Policing and Arabic-Speaking Young People,” Kennedy describes the effect of “zero tolerance” policing on a police crackdown on street prostitution on the five kilometre section of Canterbury Rd., from Campsie to Bankstown, which ran through Belmore, Lakemba, Wiley Park and Punchbowl. This has been frequented by prostitutes since the late 1970s (Kennedy M., 2000). The *Torch* 21 August. 1996 stated “... *the battle to clean up Canterbury Road is not just about ensuring it is properly policed, it is also about ensuring that the associate services which compound the problem like the mobile needle exchange and condom unit are brought into line ... Member for Lakemba, Tony Stewart has applauded the decision to remove the mobile needle service ... removing the needle exchange program from Belmore streets will also help in our fight to eliminate local street prostitution*”.

Tony Stewart, was praised by the media, along with other ‘councillors and residents’ for their determination to ‘clear their street of drug addicts, prostitutes ...’ (The *Torch* 21 August 1996, p.1). Touted by the media was ‘leading the battle for Belmore’, Stewart was seen to be selfless maintained his campaign despised the fact that he had ‘made many enemies’ and had ‘received death threats to himself and his young son’ (ibid.). Stewart also alleged that he had received death threats after making a speech in Parliament in support of multiculturalism. This is very similar situation with ex-Parliament Member – Mr. John Newman (Kennedy M., 2000).

ARAB COMMUNITY BLAMED FOR OVERSEAS EVENTS

During the Gulf War, callers on talk-back radio called for the internment of all Muslims in Australia, and threaten the burning of mosques in the event of death of an Australian serviceman in the Gulf (Hage, 1991, p. 11). There were many cases of Muslim women being abuse and having their veils taken away in the streets. Multiculturalism was attack in such media for undermining loyalty to Australia. The usual racist attacked about migrant communities keep to themselves, speaking their own languages and had shop signs in foreign scripts focused on Arabic languages such as those around Lakemba and the surrounding areas including Belmore and Punchbowl (Collins et al, 2000, p. 34).

In 1991, the Human Rights and Equal Opportunity Commission's publication, *Racist Violence: Report of the National Inquiry into Racist Violence in Australia* said that the media coverage may have been contributing to an increase in acts of racial hostility and violence against Arabs and Muslims communities (ibid., pp. 364-5).

After the September 11 terrorist destruction of the World Trade Centre and other areas, a similar media focus on the role of "Arabs" in the event, led to much fear of Middle-Eastern communities in Sydney.

VILLAWOOD RIOTS

Over the Christmas period in 1995, there is an incident at the Villawood Housing Estate where there were conflict between young people around a bonfire and the fire brigade who came to put it out. Having a Christmas bonfire was a local tradition, which had carried on for twenty years. In the intense media attention that

accompanied this "riot" this fact was not mentioned. The area was labelled "the Bronx of the West," and local youth was described as delinquents. This led to police and the authorities making a lot of improvements to services on the estate, but lastly it was bulldozed and sold to the private owner (Castillo and Hirst, 2001, p. 135, quoted in the "Fairfield Youth Profile, 1999 by Berryman et al, 1999).

CONSTRUCTING A RIOT - BREWARINA

In August 1987, in Brewarina an event occurred which was fanned by the media to appear to be a riot caused by Aboriginal communities. A week earlier, a young Aborigine called Lloyd Boney had died while in police custody. A group of about 100 Aborigines gathered around a fire in a park, holding a wake in his memory. A high police presence led to small incidents, which resulted in dozens of police being mobilized with batons, shields and helmets.

ABC reporters recorded most of the events, and gave a "fair" account of the matter and trouble, accordance to researcher Dr. Heather Goodall in *Constructing a Riot: TV News and Aborigines*. But when it was shown on the commercial stations, the sequence of events was completely changed. This was despite the fact they used the ABC footage. "The sequence of events had (has) been totally changed, so that the episode of throwing stones towards the hotel and smashing windows seems to have occurred before the police arrived. The police presence, in other words, appears as a response to the destruction of windows and throwing stones at the hotel. Channel 7 also removed the original sound from the events, so there is no available indication at all of Aboriginal motivations" (Goodall, 1994, p. 76).

As the above examples demonstrate Australia has had many cases of “moral panics” directed towards migrants and indigenous people. Phuong Ngo was just one of the many “folk devils” created by the media, and became the object of public anger.

MEDIA REPRESENTATIONS OF FAIRFIELD AND CABRAMATTA

BACKGROUND

Cabramatta had long been portrayed as a centre for Vietnamese concentration, leading to ethnic separateness. In 1988, history Professor Geoffrey Blainey (1988, p. 18) stated his dissatisfaction that a Vietnamese ghetto, which he labelled a “*Little Saigon*” had formed around Cabramatta.

Critiques of Vietnamese concentration were in fact smokescreens for other critiques of immigration from Asia. The debate about the “Vietnamese concentration” is politically charged. The debate has been reported in both the ‘quality’ and tabloid media; and they influenced Australian policy makers and the regulation of immigration and other matters concerning Asians and their concentration as a whole in Cabramatta (Thomas, 1999, pp. 111-4).

ASIAN GHETTOS

In *Dreams in the Shadows: Vietnamese Australian Lives in Transition*, Thomas discusses the tendency for the newly arrived immigrants to settle in particular locations so that they have mutual support and protection; these “ghettoes” are a

common phenomenon throughout the world over many centuries. In Australia, and in Sydney, Vietnamese migrants have to some extent maintained boundaries around themselves to protect and maintain their culture, language and to restrict access to their resources. This has been in order to build up financial, social and political capital in their community (Thomas, 1999).

On the negative side, this can lead to marginalisation, due to lack of employment and to alienation from the European society. Wyn and White, discussing youth alienation, state: "Life on the margins is difficult financially. It is difficult from the point of view of making ends meet, and from achieving the status of 'worth' as a human being in a wage-based capitalist economy" (Wyn and White, 1997, p. 123). It is not surprising that being on the margins, the migrants tend to "stick together".

MEDIA FOCUS ON CABRAMATTA

Cabramatta, or "Vietnamatta" as it is sometimes called, has given the news media much copy. The two examples quoted in the introduction of this paper indicate the angle taken: "Cabramatta is simultaneously the fulfilment of our migration dream and its night-marish conclusion" (*Sydney Morning Herald*, 7 September 1994, p. 8); "Streets where decent citizens are afraid to walk must be cleansed of drug pushers and menacing local gangs" (*Sun-Herald*, 11 September 1994, p. 28).

In the early to mid 90's, news about Cabramatta focused on topics including gangs, particularly the infamous youth gang, the 5T; the easy access to drugs, including the sale of drugs in public, and the use of children from local high schools for dealing as well as using drugs; the selling area around the Railway Station; the policing of

Cabramatta (which ultimately was part of the campaign leading to the dismissal of the last police commissioner, Mr Ryan).

Pauline Hanson, an Independent Member of the Australian Federal Parliament told the Australian Parliament that Australia is "*in danger of being swamped by Asians*", whom she argued, "*have their own culture and religion, form ghettos and do not assimilate*" (Hanson, 1996, p. 3862). Public opinion polls reported frightening levels of community support for these views.

APPLICATION TO JOHN NEWMAN'S ASSASSINATION

Fitting neatly into this charged media coverage of Cabramatta are the sensational issues of the shooting of John Newman and the trials of Phuong Ngo. The media coverage of the Newman murder also reinforced racial stereotypes about Asian-Australians (Thomas, 1999, p. 104). For example, the following editorial from Australia's national business newspaper, which argued that:

Whether or not Mr. Newman was murdered because he got in the way of an Asian gang, the fact was that this style of criminal activity accompanied the recent immigrants from Asia (*The Australian Financial Review*, 8 September 1994, p. 20).

SECTION FOUR – WRONGFUL CONVICTION

INTRODUCTION

In Australia, as well as every other country, innocent people are convicted unjustly. When politics is involved, and there is a need for a guilty person to be found for a high profile murder, the pressure is on the police to cut corners. It does not help if the media are “beating” the case up.

The following examples show that innocent people do go to jail, and were sometimes executed. Things go wrong, systems and people are not perfect. And sometimes the problem is more sinister. There is an attempt to get a conviction by any means necessary.

When there are hints that things are wrong in the system of criminal justice, there is a need to question the judicial system and the authorities. We have to ensure that proper procedures are followed – by the prosecutors, the defence, the judges, the police and the witnesses. This is vital to a democracy, and to ensure that all citizens are ensured protection.

The case of Phuong Ngo raises many questions. There is a strong possibility that he has been wrongly convicted. Even if he was involved in some way with the murder of John Newman, there seems to be evidence that the conviction was gained through wrongful proceedings. This is above all, a question of the human rights of a

Vietnamese immigrant, who may have been guilty only of having been successful. It is also a question of the rule of law.

MISCARRIAGE OF JUSTICE – LEGAL DEFINITION

Before we go further, it is worth looking at the formal understanding of miscarriage of justice in the law.

“Where an accused person has lost a chance which was fairly open of being acquitted by reason of a failure to apply the rules of evidence, procedure, and the relevant law: *Mráz v R* (1955) 93 CLR 493 at 514; [1955] ALR 929. It can occur as a result of misdirections by the trial judge, the nature and quality of the evidence relied upon by the prosecution, or the fact that certain evidence was not before the trial court. Where a misdirection by the trial judge on the evidence forms a foundation for the drawing of the ultimate inference of guilt, there is a miscarriage of justice: *Prasad v R* (1994) 119 ALR 399 (Nygh, O., & Butt, P., 1997, p. 752). It should be notice that in Ngo’s case, there a number of grounds of appeal which if accepted would bring his case formally under the definition above.

Of course, this is only the formal view. There is much more to wrongful conviction than the formal definition would allow for. It is worth comparing the nature and extent of wrongful conviction in other common law countries, for the light it can shed on police and on prosecution practices in Australia, where we are only beginning to learn about these matters.

WRONGFUL CONVICTION IN THE USA

Over the last several decades, more than 100 people on death row, have now been freed after it had been shown that they were wrongly convicted. There could have been many more, but they may now be dead and their files closed.

“The Boston Strangler,” who confessed to murders, was probably not guilty in these cases. He had been correctly convicted of other crimes. But the media and police had convinced the public of his guilt (Boehringer G., 2002).

Another case is that of a woman in Pennsylvania. She had been convicted of murdering her boyfriend's previous lover. She was released after an appeal. The Federal judge involved said that she had been railroaded by the establishment. He concluded that “... The police had hidden and distorted and misrepresented - and “lost” - important relevant evidence; the prosecutors carefully selected certain witnesses only to give evidence; witnesses gave false testimony; the jurors were misled; the judge in the case was obviously biased” (ibid). He reported the judge, the prosecuted lawyers and the police to their disciplinary bodies. At last notice, none of them were disciplined and in some cases their careers prospered. The woman was sent back to jail after a Federal Appeal Court reversed the order freeing her on a technicality (without rejecting the Judge's findings of malpractice).

I will now give some Australian examples.

HILTON BOMBING CASE

One of the most infamous cases of wrongful conviction and miscarriage of justice, was the Hilton Bombing case where three young members of Ananda Marga, a religious sect, spent seven years in jail for allegedly placing a bomb in a rubbish bin outside the Hilton Hotel, which killed a council worker in February 1978 (Hogg, 1990, p.249). The three, Tim Anderson, Ross Dunn and Paul Alister, were unconditionally pardoned and received compensation.

In a second trial, one of the three, Tim Anderson was convicted in October 1990, of three counts of murder for the Hilton bombing. Like the other cases of wrongful conviction mentioned later in this section, there was a great deal of police and media prejudice. The three were labelled "the Hilton Bombers" by the media and many of the public were swayed by this. However there was an absence of evidence.

Interestingly, Prosecutor Tedeschi was criticised in the Court of Appeal which reversed the conviction, and is now under investigation by the Bar Council for his performance during the trial.

Hogg suggests that some aspects of the criminal justice system encourages public prejudices being generated by the media, and miscarriages of justice.

To show how this happened in Tim Anderson's case, Hogg tells how the principal witness to the trial was a former Andanda Marga member call Evan Pedrick. He confessed to a priest and then to the Queensland Police. He said he planted the bomb, but that Anderson had ordered him. The trouble was that Pedrick's evidence was full of contradictions. The Queensland police did not believe him. However, later the

NSW police extradited him and used him as a witness against Anderson. After giving a very detailed account of events Pedrick's story was found to be quite wrong in some fundamental ways. Pedrick's records of interview with Queensland and NSW police had been linguistically analysed. His story was changed 18 times, and it seems many of these were as a result of suggestions by police. The result was that Pedrick was convicted, and so was Anderson. But Anderson was later freed (ibid.).

This is an example of a case where authorities were so anxious to convict, that they were prepared to coach a witness. It also shows that juries can get it wrong. Likewise, the Australian public, barraged with one side of the argument, can also become the victim of prejudice.

THE CHIDIAC CASE

In February 1989 Neil Chidiac was convicted for imported heroin into NSW. He served eight years in jail. On March 25, 1997, the Witness programme on Channel 7, showed a key witness, Alfred Oti repudiating his testimony at the trial, and admitting that the police had encouraged him to lie. This helped his own case (Brown, 1997, p. 237).

The case against Chidiac depends on the testimony of two crown witnesses, both of whom had been indemnified. Even at the time of the case, the credibility of both witnesses was an issue. Even the judge criticised the Crown case: "I have been sitting on these courts for something like eight years and I have never heard two witnesses so readily admit that they lied on oath. Now that does not mean that they may not be telling the truth, but what I am saying to you is you will look very carefully at what

they said before you would hang a dog on their evidence. Really it is appalling and you heard it as much as I didn't" (ibid., p. 237).

The trial judge did not mince words: "They are down and out villains, not only are they drug smugglers themselves but they are self confessed perjurers and liars" (ibid.).

And to make matters worse, the appeal was rejected. Chidiac argued that he was innocent and being framed. This meant that the evidence was based on falsehood. However, in the current legal climate, the appellate courts prefer to examine legal error, rather than to accept that a prosecution was based on falsehood. The argument that one has been framed is not an argument favoured in appeals. Yet it occurs in reality (ibid., p. 238).

Brown points out the problems in the whole criminal justice appeal process. First, the narrow focus of the appeal process; second, the strong judicial reluctance to overturn a jury verdict; the requirement to form an independent assessment evidence and pragmatic limits on the ability to do this; and third, a lack of sensibility to the possibility of miscarriage of justice (ibid., p. 238).

The Chidiac case highlights a number of problems, which 'come up in many of the cases described in this paper, and of course, the Phuong Ngo case. First, the use of informers, especially those susceptible to inducements or threats. Second, the indemnification of witnesses. Third, awareness, based on evidence from the Royal Commission into NSW Police concerning corruption in Australian police forces; in this case, the Australia Federal Police in the relevant period. Fourth, change of

evidence by key witnesses; in this case the subsequent retraction by Oti, of earlier evidence and his assertion that he pressured to implicated Chidiac falsely. Fifth, a more general problem, is the contradictory role of police in the pre-trial process; investigating a crime and the formulation of a case against the suspected person – one requiring an open investigative approach, and the other requiring a partisan, selective approach, committed to an outcome of conviction. Sixth, another general problem was the control the police have over the prosecution process – despite the supervisory role given to the DPP, the police role seems difficult to check. Lastly, the narrow nature of the appeals process, with its lack of sensitivity to miscarriage of justice (ibid., pp. 242 and 247).

All of these points have come up again in the Phuong Ngo case.

JOHN PAT

An extreme example of police cover-up, is the death of John Pat in Roebourne in Western Australia. John Pat died as a result of a brawl between police and Aborigines.

It appears that he was a victim of police brutality and that Western Australia police acted to cover up the outrage. One of the ways they did this was by trying to have the 'Four corners' television investigation of John Pat's death suppressed ('Four Corners' program on ABC television, 28 September 1983).

Instead of a fair outcome, the five police charged were acquitted and returned to their old positions. On the other hand, the Aborigines who had been arrested along with

John Pat, were charged and jailed. Police intimidation is also visible in this case, as they called for the closure of the Western Australia Aboriginal Legal Service.

CONCLUSION

Wrongful conviction and police cover-ups are a world-wide phenomena. It has been documented in countries with very good legal systems, and we must accept that it happens in Australia.

There is already, sadly, a long history of police cover-ups and police involvement in wrongful conviction in Australia, along with media compliance in hiding this from the public. The Mickleberg Western Australia case is only the most recent and widely publicized miscarriage at the hands of corrupt police.

SECTION FIVE – POLICE ABUSE OF CRIMINAL PROCEDURES

INTRODUCTION

I will look at two examples of police abuse of criminal procedures. The first was exposed by the NSW Royal Commission into Police Corruption in 1996-7. This showed convincingly, that the police in NSW openly abuse the system.

The other is a British study “Criminal Injustice” by Frank Belloni and Jacqueline Hodgeson, which showed how the police could manipulate court cases. I examine the British example because the British legal system is often thought to be a leading model for other countries. If this sort of thing can go wrong in Britain, then it can also go wrong in Australia.

All this shows that the police gathering of evidence in the Phuong Ngo case, the conduct of prosecution in the trials, and the tactics used, should not be regarded as an aberration. The NSW Royal Commission, and the British study, show that manipulation is not uncommon.

ROYAL COMMISSION EXPOSES POLICE CORRUPTION

SETTING UP ROYAL COMMISSION

In 1996, a Royal Commission into Policing in NSW was begun. Earlier there had been numerous attempts to reform the Police Service. A Police Board, with civilians involved, had been introduced, the Ombudsman's powers had been strengthened, and there had been improvements in police training. This was supervised by Commissioner John Avery, who held office from 1984 to 1991 (Dixon, 1999, p. 2).

On the surface, the NSW Police service seemed in good shape. It had even applied for an Australian Quality Award (*ibid*). Independent M. P. John Hatton, long a critic, put a motion to establish the Royal Commission and was widely criticised. The recently resigned Police Commissioner (he resigned in February, 1996), Tony Lauer told the Royal Commission that 'in today's Police Service, institutionalised corruption does not exist' (SMH, 22 October 1996).

The terms of the Royal Commission were to inquire into 'the nature and extent of corruption within the Police Service, particularly of an entrenched or systemic kind'. A single Royal Commissioner, the Hon J.R.T. Wood was appointed. Ironically, Wood was the judge in the first and second trials of Phuong Ngo.

CORRUPTION AND REFORM

The Royal Commission's investigation found a 'state of systemic and entrenched corruption' (ibid, p. 3), which extended throughout certain squads, across whole areas, and reached very senior officers. The two most notable features of the Royal Commission's approach were that, first, it defined corruption as including 'process corruption' and, secondly, that it regarded the treatment of corruption as inevitably requiring a comprehensive analysis of the Police Services structure, activity, and culture.

Wood defines "process corruption" as 'male fide exercise of police powers' (ibid., p. 169). Examples of such corruption were, mistreatment of suspects, unlawful searches and interrogations, planting of evidence, fabrications of confessions, and institutionalised perjury. This corruption was found to be 'routine' in some police stations. Wood stated that 'the "police verbal" and "loading" of accused 'had' become an art form within certain sections of the NSW Police Service' (Wood, 1996, pp. 39- 40). He also commented that it was 'a widely held perception that the NSW Police Service is a law unto itself' (ibid., p. 168).

THE ROYAL COMMISSION AND MINORITIES

The Royal Commission does not adequately deal with policing and minorities. Although lip service was paid to it, with the report saying that minorities are vulnerable to 'extortion and corrupt conduct' and they lack the capacity to complain, this was covered only lightly (Dixon, 1999, pp. 168-9).

It was mentioned that 'verbal and physical harassment, insult and intimidation of these groups tends to more pronounced either because of bias or ignorance of racial, cultural and gender issues' (ibid).

CABRAMATTA

Kings Cross got far more attention, in the Royal Commission, than Cabramatta, which has policing and drug problem at the time of the commission.

In fact, the police was very defensive about Cabramatta, A research reported that showed that apparently unlawful and improper practices in the treatment of Indo-Chinese heroin users had carried on during the Royal Commission's tenure (Maher et al 1997), some officers were very angry. Even although the Royal Commission had shown what sort of behaviour was going one, the police was indignant, and refused to accept the criticism.

POLICE CORRUPTION AND THE PHUONG NGO TRIAL

Police corruption moves in cycles. During periods of Royal Commissions, there was a cleaning up of corruption, but at other times, it understood that it exists. Gains made during the commission, are easily lost later, when the public's eye is off. A call for more law and order, can easily undo all the good work of a royal commission, by placing extra power on police, and encouraging them to get results at any cost.

The importance of the Wood Royal Commission is that it showed how entrenched corruption was by the mid 1990's. This shows us what can happen in the police force.

In Wood's report he wrote of mistreatment of suspects, unlawful searches and interrogations, planting of evidence, fabrications of confessions, and institutionalised perjury. In some stations, corruption was "routine," and 'the "police verbal" and "loading" of accused' had' become an art form within certain sections of the NSW Police Service' (Wood, 1996, pp. 39- 40). The NSW Police Service had become a law unto itself (ibid., p. 116). Shortly after, Carr was giving the police new powers.

It was in this environment that Phuong Ngo's trial took place. We may understand that it was certainly quite possible that police misconduct took place.

MISCARRIAGE OF JUSTICE – BRITISH PERSPECTIVE AND PHUONG NGO

WHY STUDY THE BRITISH CASE

The British legal system is similar to that of Australia. It is instructive to look at British studies of the defects in their legal system, to see if there are parallels to the Australian situation. In fact, the parallels are very obvious, and there are direct implications for the trial of Phuong Ngo.

Belloni and Hodgson evaluate the criminal justice system in the UK; the legal framework, the power it provides and the protections it affords, as well as the daily practices of those who work in the criminal processes (Belloni and Hodgson, 2000).

Dispelling myths about wrongful convictions, Belloni and Hodgeson find that they are “neither exceptional nor the result of isolated human error.” The public are aware of malpractice of police and prosecution, and incompetence of defence lawyers in the high profile cases. However, these are not exceptions – this phenomenon is “typical of the routine processing of criminal defendants which has been well documented by an array of empirical studies over the past twenty years - from police encounters with citizens on the street through to trial and conviction” (ibid., p.20).

Belloni and Hodgeson find that this occurs at lower levels of the court system, out of the spotlight. Here “practices of obtaining confessions, fabricating and failing to disclose evidence and poor defence preparation, together with the greater credibility afforded the evidence of the police than that of the defendant, occur... easily in the mundane surroundings of the magistrates’ court” (ibid).

POLICE POWERS

The authors argue that “most miscarriages of Justice can be traced to the early police investigation” (ibid., p.38). The reason that the problem occurs at this level is that “the police enjoy a high degree of autonomy in their work and their legal powers are framed in such a way as to provide wide discretion in their exercise” (ibid., p.39).

Even at the lowest level, the ordinary constable doing stops, searches and arrests, decisions occur which effect the rights and liberties of individual citizens. The police powers in these areas were wide, and leave a lot to the constable’s own discretion. The media back up this view that what the police do is right. People who disagreed

with what the police are doing are seen as a threat to law and order (ibid). Such suspect groups often, significantly, defined by class and race.

Another alarming feature of police activity is that "police activity is not always concerned simply with law enforcement, but also 'to secure broader objectives: the imposition of order, the assertion of authority, the acquisition of information. The law is used as a control device, facilitating the arrest of those whom officers consider need to be arrested'"(ibid).

There was also the problem in the way that criminal offences are investigated and prosecuted. Often leads, which did not support the police case, are not followed up. Sometimes they were even suppressed. "Crime does not represent an objective reality waiting to be discovered, but, rather, consists of a case which is constructed against the suspect" (ibid).

These generalisations about defects in the British system correspond to the major criticisms of the police investigation in the Phuong Ngo trial.

CONSTRUCTING THE CASE

The police play a major part in the pre-trial process, "constructing" the prosecution case. They enjoy a great deal of autonomy in the initial investigation. They are able to shape the information, which is gathered for the prosecution case.

In Britain, the decision prosecuted is made by the Crown Prosecution Service (CPS). However, the real influence is with the police. They were very dependent upon the police.

The British national prosecution service, CPS is set up by the Prosecution of Offences Act 1985. Its brief, to weed out weak cases, had not been met, accorded to Belloni and Hodgson (p.120). They respond to the initiatives of the police (ibid). So this very much limits them to the perspective of the police. The police control the information.

The Australian prosecuting authorities also are relevant regarding the police construction of a case.

RIGHT TO BAIL

Belloni and Hodgson remind us that “denial of the defendant's right to bail represents a serious infringement of her liberty, as she remains innocent until proven guilty. Yet, one-quarter of defendants incarcerated before trial are acquitted or have the case against them discontinued, and a further quarter of males and nearly half of females receive only a non-custodial sentence” (Belloni and Hodgson, p.121).

This refusal to grant bail, which occurred to Phuong Ngo and Tuan Tran, only adds to the public's perception that the accused is guilty. And it makes it harder for the accused to organise a defence.

EVIDENCE

In British courts, the authors argued that “the nature of the evidence presented at trial, and the weight attached to it, may also contribute to wrongful convictions” (ibid., p.168).

In the case of forensic evidence, which very common, lawyers of both prosecution and defence are reluctant to challenge the view of experts. Experts seen to be irrefutable. However, it had been found that forensic scientists working for the police have tailored their evidence, consciously or unconsciously, in favour of the prosecution. They had neglected explanations, which may be of use to the defence (ibid., 167-8).

Great weight was placed on mobile phone records and a handgun, requiring the use of experts, in the Phuong Ngo case.

BRITISH CASE – IMPLICATIONS FOR PHUONG NGO

This study of the British Justice system showed that even the home of the Australian justice system is not immune to miscarriages of justice. The role of the police in their dual role as investigator at least informally, and prosecutor is a major cause of miscarriages of justice.

SECTION SIX - THE REPORTING OF THE CASE

INTRODUCTION

I had examined the newspaper media coverage of the Newman murder and the links to Phuong Ngo and the trials (See Appendix Two). In this section I will provide an essentially quantitative account of the media coverage. I will argue that the media constructed an account which was firstly, supportive of the view that Phuong Ngo was the murderer and secondly, tailored to indicate that the evidence supported that view.

I have dealt with the background to the trials and the police “input” into wrongful convictions and miscarriage of justice in previous sections. My argument is that Cabramatta had received very negative coverage in the media for years, especially to do with drugs and other crime. A kind of moral panic has developed, and Phuong Ngo became the embodiment of the “folk devil” – the Vietnamese drug over-lord.

NEWSPAPER ARTICLES ON THE CRIME AND TRIAL

I have collected the headings of newspaper articles, on the crime and trial, into tables, which I have included in this section.

A cursory look at the headings is enough to see the themes of the articles. Further reading of the articles is, of course, necessary. But in this paper I will summarise the contents of these articles, using the headings as an indication of the content.

The newspaper articles are in three groups; first, John Newman, second, Phuong Ngo and lastly Phuong Ngo's role in organising parties in jail.

JOHN NEWMAN ARTICLES

The 1994 articles (59-61) are about his death. The 1995 articles (57-8) are about the hunt for his killer.

There were some articles in 1996 which cast the blame in different directions: first, Murdered MP had 'thousands of enemies' (43, 50, 51), and second, Fiancée 'tried to get will changed' (44).

But the main thrust which developed, aimed at Phuong Ngo. We can see the first article to blame Ngo (55) in 1996 – "Councillor asked me to kill Newman".

Then follow many articles developing support for the case against Ngo. First, Witnesses at Risk, climate of Fear etc (34, 35-37), second, the finding of the gun (23, 29) and third, Greed for power led to MP's Killing etc (24 -6).

The articles which focus on John Newman, show an overwhelming number which support the prosecution case.

PHUONG NGO ARTICLES

Cursory looks through the articles on Phuong Ngo show that there only a few which specifically give his side of the story.

| Title | Code number |
|---|-------------|
| Jury Still Out On Unanimous Verdicts | 5 |
| Marsden Vents Anger On Ngo Phone Call Queries | 6 |
| Ngo 'not interested' in Challenging MP | 7 |
| Ngo 'not Lurking Near Newman' | 8 |
| The Lion King is My Alibi: Ngo's Defence | 9 |
| I Didn't Murder MP, Court Told | 10 |
| Ngo Denies Murder Role | 11 |
| Feud No Reason To Kill | 28 |
| Ngo denied ordering MP's murder | 64 |
| I didn't shoot John Newman | 65 |

That is ten out of sixty five articles gathered here, which give the defence point of view, or show Ngo in a positive light.

The other articles come in a variety of themes are: first, Phuong Ngo's power to frighten witnesses; second, security for witnesses, third, the prosecution case against Phuong Ngo – the finding of the gun, Phuong Ngo ordering a gun, etc. Fourth, general news about the trials –such as the aborting of the first trial, and fifth, Phuong Ngo continuing to be on the Health Board.

LATER REPORTS ON PHUONG

The media continued to report on Phuong Ngo, even after he went to jail. He was a good story – an easy “beat-up.” This could be to continue to keep the same kind of media environment where Phuong is held up as an example of evil (like Ivan Milat). This will not help his appeal. The media have made up their mind and they will not investigate.

| Title | Code number |
|---|-------------|
| Chikarovski under attack over jail visit | 1 |
| Carr orders probe into assassin's life inside | 2 |
| Councillors linked to assassin face jail: Carr | 3 |
| Federal inquiry into killer's kitty for Long Bay Bash | 4 |
| Inquiry call into council Assassin Link | 5 |
| Assassination mastermind celebrates with Cabramatta mates | 6 |

By now he has become an “assassin,” and a “killer.” Anybody who had anything to do with him is suspect – councillors, the community group Phuong was involved with, and even the leader of the Opposition, for going to jail parties other than the 2002 parties widely reported.

Phuong Ngo is suspected of still pulling strings at Fairfield Council, because councillors and even the mayor came to visit him.

This whole campaign was based on Ngo's role on a committee, which organises national day parties within the prison system. This is standard procedure in prisons,

and members of parliament often go. In these articles, they appeared to be the brainchild of Ngo Phuong, for his purposes. This type of article, based on a fallacy, could only further blacken his name. This gives further legitimacy to the media for their position on his trial and allows them to avoid asking “was he guilty?” “Was it proved?” “Did the police plant the gun?” etc.

SOME EXAMPLES

NGO’S TEAM IN SHOOTING MATCH WITH 5T GANG (MALCOLM BROWN, SMH, 9/3/1998).

Even though this article was from the point of view of Ngo’s defence team lawyers, and basically sympathetic, the mention of the 5T gang blackens his name. As the case proceeded, there was no evidence of the 5T gang given. Yet the association of this Vietnamese gang, with Mr Ngo, only made links in the public mind that Ngo was connected with gangs.

POLICE FIND HANDGUN IN RIVER (BRAD CLIFTON, DAILY TELEGRAPH. 21/7/1999).

This article succinctly puts the prosecution story, without any questions. The very strange coincidence that the police were able to find a gun in the river, from mobile phone records, is quite bizarre. But it is not questioned in the article, nor later in any newspaper articles.

CAN YOU KILL THIS MAN (BRAD CLIFTON, DAILY TELEGRAPH.

22/7/1999).

This is a very sensational heading. In fact, the quote came from a very dubious witness. Even though he refused to do it, he says he asked about money and he kept the photo. This was very unusual, and a bit suspect.

SCARED INTO SILENCE (BRAD CLIFTON, DAILY TELEGRAPH.

23/7/1999).

A common theme of many articles was that Ngo could scare witnesses. (Even when he went to jail, his power could reach out and affect people including Fairfield Council).

NGO WANTED TO GET DIRT ON MP, AGENT TESTIFIES (MALCOLM BROWN, SMH, 28/2/1998).

The witness here was a policeman for 29 years, before retiring “medically unfit.” This witness built the case that Ngo hated Newman, and wanted “anything” on him. There was no question about his credibility (See Appendix Three).

THE MEDIA AND BALANCE

As can be seen, the great weight of the reporting strengthened the case against Phuong Ngo – by concentrating on the fear of the witnesses and other issues which reflected badly on Ngo, and gave the idea that he is a Mr Big.

THE MEDIA AND THE BIG ISSUES

My analysis of the trial led to a list of inadequacies in the trial or at least disturbing issues raised by the police processes and the prosecution including first: the veracity of the witnesses; second, the indemnities given to the witnesses; and thirdly, the problem of the police complicity in investigating, and prosecuting – especially in their use of witnesses; fourthly, the prosecutor, Mark Tedeschi, also the prosecutor in the Tim Anderson / Hilton Bombing case, where doubtful practices regarding witnesses took place, and changing prosecution stories of the case were developed as his case weakened; fifthly, the different shooters in the first and second trials; sixth, the evidence of the gun and lastly, the Telstra details.

Some of these were raised in the trial although there are also concerns about the effectiveness of the counsel for defence, but they were not adequately taken up and discussed by the media.

Apart from the articles (mentioned above), which outlined the defence case, at the time the defence made statements, there was very little indication of the controversial nature of many aspects of the trial. The main media revelation comes from the “juror who disagreed but except for initial attention given to his story there was no follow up.

CONCLUSION - FAILURE OF THE MEDIA

PHUONG'S VERSION SUPPRESSED

Phuong's version of the story is not treated seriously by the media. They had effectively silenced his version; "silence by default". This silencing of ethnic minorities is quite common. Or what they say is taken out of context. The irony is that the lack of community input is often called a "wall of silence." Quite frequently this term was used in the case of Ngo and, more recently in relation to the Lebanese youth in Bankstown.

In fact the media contributed towards intimidating people from coming out before and during the trials to say that they did not think Phuong Ngo was involved in the murder. It is well known amongst supporters of Phuong Ngo that many in the Vietnamese community who know him do not believe in his guilt. There is in the Vietnamese community grave disquiet about how he was convicted. This also helps to prevent any general scrutiny of why he was convicted. It also cannot help the appeal, which can be influenced by what the community thinks of a decision.

SKILL OF PROSECUTION

Perhaps one reason for unbalanced media treatment of Phuong was the skill of the prosecution in getting their side of the story out to the media.

CONCLUSION

THE TRIAL

THE IDEAL

“The goal of the trial is to determine whether the accused person is guilty as charged.

This requires a decision on the basis of evidence put before the court by the prosecution, and on the countervailing arguments of the defence” (Belloni and Hodgeson, 2000, p.147).

The above is a statement of what should happen. However, the accused was not proven guilty beyond reasonable doubt. In the last section I would like to show why he was not.

WITNESSES

Primarily, the prosecution case was weak because of the necessity to rely upon unreliable witnesses. Yet the testimony of witnesses such as Della Bosca, who disproved the main thesis that Phuong Ngo had political motives to kill John Newman, was discounted.

MOTIVE

While the political motive was disproved by Labor powerbrokers such as Della Bosca, John Newman had many enemies and there were many people who had *other* motives for killing him. These possibilities were not fully explored. The tragedy was that the

judge continued with the line that Phuong Ngo had a political motive for killing John Newman.

LACK OF A SHOOTER

The fact that nobody was convicted for being the shooter is very unusual. It is claimed that the evidence could not be corroborated. But it makes the case against an alleged “mastermind” very difficult, if there is nobody who had being told to kill the victim.

TELSTRA EVIDENCE

The prosecution case depended upon pin-pointing Ngo’s movements using Telstra mobile phone records. Quite simply, these records could not do this. The technology is not capable, not reliable enough, for pin-pointing streets.

THE GUN

NSW police have admitted “loading” suspects, and even keeping guns for evidence to be use for loading. The discovery of a gun, four years later, in a river, miles away from the crime, is too suspicious. It could had easily been planted, when the prosecution case needed to have it.

THE ROYAL COMMISSION INTO NSW POLICE

The Wood Royal Commission showed how entrenched corruption was by the mid 1990’s, which is when the investigation into John Newman’s death taken place.

Wood describe the sorry state of affairs in the NSW Police Service; mistreatment of suspects, unlawful searches and interrogations, planting of evidence, fabrications of confessions, and institutionalised perjury. In some stations, corruption was “routine,” and ‘the “police verbal” and “loading” of accused ‘had’ become an art form within certain sections of the NSW Police Service’ (Wood, 1996, pp. 39-40). The NSW Police Service had become a law unto itself (ibid., p. 116).

With this understood, it could be seen that it was quite possible that police misconduct took place in the investigation of the Newman murder. With such a high-profile death, the political pressured would had been on the police to find a culprit or a scapegoat.

THE MEDIA

BALANCE OF REPORTING

As was shown in Section Seven, the majority of articles gives the prosecution side of the story, and instilled the idea that Phuong Ngo was a Vietnamese “Godfather” or “Mr Big” who influence things outside of jail. This carried on with the incident about the parties he had alleged to have organised (on his own) to invited prominent people to meet him in jail.

THE MAJOR ISSUES

There were many inconsistencies in the trial, such as the very dubious witnesses used by the prosecution, the Telstra records used to pin-point people, and the “evidence” of

the gun. These have been mentioned above. These issues were raised by the defence, in the trial, and could have alerted the media presents.

As a result, the trial had the appearance of being “fair” and the unsuspecting public believed that an evil Vietnamese “Godfather” had got his just deserts. The doubts raised in the court found very little outlet in the media.

THE DISSENTING JUROR ON THE MEDIA

The dissenting juror summed up the role of the media in Phuong Ngo’s second trial which set the stage for a certain conviction in the third trial:

‘How the media aided in a “kangaroo court” applauding from the side-line and therefore failed in its role in a democratic society to keep a watch on the State – a free and independent press should be raising questions – there are many in this case – not constructing a “guilty (evil) man” so that the prosecution can do a “job” on someone and the community is led to believe that the right man was convicted and the world is a safer place!’

“FOLK DEVIL”, “MORAL PANIC” AND WHY WAS THE MEDIA COVERAGE SO HARD ON PHUONG NGO?

The Newman murder (1994) occurred at a time when racism was on the rise in Australia. In 1996, Pauline Hanson, an Independent Member of the Australian Federal Parliament told the Australian Parliament that Australia is “*in danger of being swamped by Asians*”, whom she argues, “*have their own culture and religion, form*

ghettos and do not assimilate” (Hanson, 1996, p. 3862) Her views had supported by a large number of people.

The media coverage of the Newman murder reflected this anxiety about race and immigration that: “Whether or not Mr. Newman was murdered because he got in the way of an Asian gang, the fact is that this style of criminal activity has accompanied the recent immigrants from Asia” (Editorial in *The Australian Financial Review*, 8 September 1994, p. 20). In the following decade, Cabramatta had continued to be in the news, claimed to a suburb out of control with gangs and drugs.

Phuong Ngo met the requirements of a “folk devil” and “moral panic,” at a tumultuous time in Australian history; a time when a consensual legal and immigration environment been replaced by a more coercive law-and-order mentality in the Gramscian sense. He embodied a drug lord, a “godfather”, a “Mr Big.” All the anger that had been directed at Asian immigration, at Cabramatta, could now been directed at one man.

Before that, and later, the anger would be directed at Aborigines, or Bankstown Arab youth, as I had shown. But now the target was Asians, Cabramatta and Phuong Ngo.

His name sold perhaps millions of newspapers – each twist and turn of the trial. The police did not had to try very hard to feed a media insatiable for shocking news.

Yet, there was no hard evidence, just circumstantial support, each item of which was play out for all it was worth. A gun found in the river, witnesses were allegedly terrified to testify Phuong Ngo did not stand a chance.

BIBLIOGRAPHY

Belloni F., and Hodgeson J., 2000, *Criminal Injustice. An evaluation of the Criminal Justice Process in Britain*, St. Martin's Press, New York.

Berryman C., House, E., Hart, D., 1999, *Fairfield Youth Profile*, Fairfield City Council.

Blainey G., 1988, "Australia must break down the walls of the ghettos", *The Weekend Australian*, 12-13 March, p. 18.

Boehringer G., *Notes on the NSW Parliament Inquiry into Policing Cabramatta*, 8 November 2000, Sydney.

Boehringer G., *Miscarriage of Justice: The Broader Perspective on the Conviction of Phuong Ngo*, 2002, Sydney.

Brown D., "The Chidiac Case," *Alternative Law Journal*, Vol 22, No5, October 1997.

Brown M., "Witness in Newman Trial Denies Feeling Pressure," *SMH*, 16 Feb. 2000.

Brown M., "Beware Key Witnesses, Ngo Defence tells Newman Jury," *SMH*, 10 Feb. 2000.

Cohen S., 1980, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, Second Ed, St Martins Press, NY.

Campaign Exposing the Frame-Up of Phuong (Committee's pamphlet), Sydney, 2001.

Castillo A., and Hirst M., 2001, *Journalism: Look both ways, Western Sydney and the media*, University of Western Sydney, Community Relations Commission for a Multicultural NSW.

Chan Janet B. L., 1997, *Changing police culture – policing in a multicultural society*, Cambridge University Press, Sydney.

Chappel D., and Wilson P., 1994, *The Australian criminal justice system the mid 1990s*, Buterworths, Australia.

Collins J., Noble, G., Poynting, S., Tabar, P., 2000, *Kebabs, Kids, cops and Crime* Anandale NSW: Pluto Press.

Davey K., I told police Ngo did it, *Sun Herald*, 7 Jan. 2001.

Dixon D., (ed), 1999, *A Culture of Corruption. Changing an Australian Police*, Service Hawkins Press, Australia.

EMD Consultants, 1994, *A status-needs analysis and an action plan on employment and other related needs for the Indo-China Chinese Community in NSW*, NSW Indo-China Chinese Association Inc., Sydney.

Ericson R. V., Barneke P. M. & Chan J. B. L., 1987, *Visualising Deviance: A Study of News Organization*, Open University Press, England.

Ferris A, Devine, M., "Murder of a Crime Fighter" *Daily Telegraph Mirror*, Sept. 6, 1994.

ABC Television, Four Corners program, *Investigation of John Pat's Death*, 8:30 pm, 28 September 1983.

Goodall H., 1994, *Constructing a Riot: TV News and Aborigines*.

Hage G., 1991, "Racism, multiculturalism and the Gulf War," *Arena*, 96, pp. 8-13.

Hage G., Jonhson L., Langsworth J., Symonds M., 1997, *Home/World - space, community and marginality in Sydney's west*, Pluto Press, Sydney, Australia.

Hall S., Critcher, C., Jefferson, T., Clarke, J., & Roberts, B., 1978, *Policing the Crisis*, London: MacMillan.

Hanson P., 1996, Appropriation Bill (No. 1) 1996-97, Second Reading, Member for Oxley, *Parliamentary Debates*, House of Representatives, 10 September, pp. 3860-3863.

Hasleton S., 1995, *Issues affecting Indochinese young people in Fairfield*, Ettinger House Inc., Fairfield.

Hazlehurst K. M., 1996, *Crime and justice*, LBC Information Services, Australia.

Hogarth M., "The Troubled Life of Phuong Ngo" *SMH*, 16 March 1998.

Hogg R., "The Hilton Bombing Case" *Legal Service Bulletin*, Vol 15, No 6, 1990, pp.249-250.

Human Rights and Equal Opportunity Commission (HREOC), 1991, *Racist Violence: Report of the National Inquiry into Racist Violence in Australia*, Australian Government Publishing Service: Canberra.

Jarratt J. T., *Material presented to Parliament Inquiry into Resources in Cabramatta*, 8 November 2000, Sydney.

Kennedy L., James B., & Seymour T., MP shot dead, *Telegraph Mirror*, 6 Sept. 1994.

Kennedy, M., 2000, *Zero Tolerance Policing and Arabic-Speaking Young People* (unpublished thesis, Faculty of Arts and Social Sciences, University of Western Sydney, Macarthur).

Lagan B. & Nixon s., Hung jury - why, *SMH*, 17 May 2000.

Nygh, O., & Butt P., (eds) , 1997, *Butterworths Australian Legal Dictionary*, Sydney: Butterworths.

Powell D., 1993 *Out West – Perceptions of Sydney's western suburbs*, Allen & Unwin, Sydney.

O'Rourke J., Kidman J., & Benns M., Carr orders probe into assassin's life inside, *Sun Herald*, 10 March 2002.

Thomas M., 1999, *Dreams in the Shadows: Vietnamese Australian Lives in Transition*, Sydney: Allen and Unwin.

Sox L., 1997, *Fisher Street Residents Report – report on Experience of Residents*, Cabramatta Community Centre, Fairfield.

Van Dijk T. A., 1991, *Racism and the Press*, Routledge, London.
Vietnamese Australian Welfare Association (VAWA), 1991, *Access and equity to education employment and training by Vietnamese youth*, DILGED, Sydney.

Wood J.R.T., 1996, *Royal Commission Into the NSW Police Service - Final Report* (Sydney: NSW Parliament).

Wyn J., & White R., 1997, *Rethinking youth*, Sydney, Allen & Unwin, Australia.

Yamine & Associates Consulting, 1994, *A small & emerging group: Laotians in New South Wales*, Indo-China Refugee Association NSW, Sydney.

Youth Justice Coalition and the Youth Action & Policy Association, 1998, "*Nobody Listens*", Fairfield.

Zibert E., & Caine M., 1994, *New South Wales Department of Juvenile Justice Information Package 1993/1994*, Department of Juvenile Justice.

WEBSITES

Vietnam War II (The dissenting juror's site)
<http://www.skybusiness.com/phuong-ngo/>

Obituary of John Newman
<http://www.parliament.nsw.gov.au/prod/parlment/Members>

APPENDIX ONE –

HUNG JURY- WHY

One man against 10 ... the jury that went to war

By **BERNARD LAGAN** and **SHERRILL NIXON** (SMH 17 May 2000)

Ten days ago, as the rest of Sydney enjoyed a mid-autumn Sunday, five women and six men walked off a bus and into the old ground-floor jury room in Oxford Street's Central Criminal Court.

There they ended their three months together in acrimony and bitterness.

One, an Australian citizen of African descent, in his early 40s, rose from the jury table and asked who among them had read Robert Bolt's play, *A Man For All Seasons*.

There was no answer. The man told them a theme of the play was that silence amounted to Consent; he expressed his anger that no other juror had come to his defence the previous Friday when the jury foreman had called him a fool upon learning he was a rogue juror.

He was the one dissenting juror out of 11 in the trial of the former Fairfield councilor, Phuong Ngo, charged with the 1994 murder of the State Labor MP John Newman.

The African strode to the jury room whiteboard, took a marker and wrote in large letters: J1 = J2 = J3 = J4 ... all the way to J11.

He wanted to make the point that all jurors were equal; each had a duty to evaluate evidence.

"All of you are pawns," he told the silent jurors.

"None of you are trying to help the court dispense justice."

That was how the second trial of Ngo and his co-accused, Tu Quang Dao, ended in frustration for both the Crown and the defence - a jury split 10 to 1 after three months of evidence from 90 witnesses and six days of deliberation.

It is a result that has once again led to calls for the Government to abolish the requirement for unanimous verdicts. This week, the *Herald* was contacted by a juror keen to reveal the events that took place inside that heavily guarded, spartan room in the final week of marathon deliberation.

It is a tale of power, civic duty and complex legalese and one group's struggle to deal with the serious task it was assigned.

The tale begins back on September 5, 1994, when Mr Newman was gunned down in the driveway of his Cabramatta home.

Ngo and Dao are jointly charged with his murder. A third man is yet to stand trial. Because Ngo and Dao will now face another trial, the *Herald* is unable to canvass evidence given in the case.

But it can report on how it was that a jury reduced to 11 when one juror was dismissed early in the trial - split into factions and eventual acrimony during the three months it was forced together by day and, for the last week, locked in a Sydney hotel by night.

This group of strangers came together on the second Tuesday in February when the case began before the former NSW police Royal Commissioner, Justice James Wood. There were at least 90 witnesses to be called but, at the end of day one, some of the jurors had already disclosed to their colleagues that they had made up their minds.

Those conversations and the manner in which the jury foreman was appointed - also on the first day of the trial - laid a poor foundation for harmony over the next three months. There was no vote for jury foreman, nor apparently any discussion.

An office worker in his mid-30s, described as having a degree, an outgoing personality and bordering on the egocentric, was unchallenged when he assumed the leadership even before the jurors knew each other's names.

Two other jurors, a middle-aged male taxation specialist and an insurance company worker in his 40s, gravitated towards the foreman. These three male white-collar workers can be described as the "drivers" on the jury.

A larger, far less assertive middle group formed.

Predominantly female, this group was less educated and included a white male machinery operator and a Filipino man. Two of the women were in their 60s and bonded quickly sometimes even baking cakes for the jury. A third woman, in her 30s, worked in a cafe while another, in her 20s, kept working at her night bar job during the trial.

The fifth woman on the jury was in her mid-30s and appeared to lack self-esteem, speaking to her colleagues of health problems and relationship difficulties.

This group appeared largely content to follow the lead and accept the opinions of those men particularly the foreman - who steered the jury.

And then there was the African, also tertiary educated, who alienated himself on day one when he reminded the other jurors that they were required to make up their minds on the whole of the evidence they would hear during the trial.

For three months this disparate group spent their working days in a forced confinement. They were picked up each morning and delivered home each night in groups by hire cars. In the court, their time was split between the jury box and two small rooms - one containing a table and 12 chairs for deliberation, the other stocked with food and drinks. They were banned from speaking to outsiders about the case and had only themselves to share their thoughts on the trial.

The fractures appeared early. In the first days, the jury rejected one juror's suggestion that they assemble after evidence from each key witness to make an evaluation as the trial progressed.

Instead, all deliberation was effectively left until the last of the 90 witnesses had stepped down, the Crown and defence had made their closing remarks and Justice Wood had completed two days of summing up.

On the morning of Monday, May 1, the jurors were sent to the jury room to consider their verdict. They had brought overnight bags in case they could not reach a decision. Few could have imagined they would spend the next six nights together in a Kings Cross hotel - locked in their rooms at night, allowed no access to electronic news broadcasts or newspapers. There were strict alcohol limits - two beers a night.

One juror's suggestion that they take a straw poll on that first day of deliberation was not taken up by the foreman. Instead, he said they would go through all of the evidence - a process that ground on until early Friday afternoon. It was then that the fractures became a chasm.

After the foreman asked each of the jurors to indicate verbally where they stood, 10 of the 11 held the same view. The African disagreed and gave his reasons.

The foreman drafted a note to Justice Wood, which said the jury doubted it could reach a unanimous verdict. But the judge instructed the jury to keep trying, saying: "You should calmly weigh up one another's opinion about the evidence and test them by discussion." However, he added he was not suggesting jurors should join in a verdict if they did not "honestly and genuinely think it is the correct one".

The 11 returned to the jury room where the African made his stance plain. He would not change his mind. He called on the foreman to send another note to Justice Wood, declaring a unanimous verdict would never be reached. He provoked the foreman, asking him to have the judge discharge the jury - because his fellow jurors were incompetent.

That is when the foreman labeled him a fool.

And there the afternoon's deliberations ended. The jurors were given Saturday off and were bused out of Sydney for an outing before resuming deliberations the next day - Sunday.

It was to be fruitless.

By the time the African wrote his pointed message to his fellow jurors on the whiteboard, around noon, it was clear there would never be agreement and the confinement of the 11 strangers was over.

Yet the African made one last stand.

When the final note the foreman proposed to send to the judge stated the jury was split 10 to 1, the dissenter objected.

He said the judge would not be interested in numbers.

APPENDIX TWO –

NEWSPAPER ARTICLES INVOLVING JOHN NEWMAN

The media coverage of the first two trials tended to support the prosecution case, and failed to analyse glaring weaknesses in their case. It was quite sensational and biased. This meant that the atmosphere of trial three was already poisoned, and Phuong Ngo was really not able to get a fair trial.

These go backwards from August 2001 until October 1993.

| Code number | Author | Title | Source | Date |
|-------------|----------------------------------|--|--------|----------|
| 1 | David Humphries | Premier's Department worker arrested in drug investigation | SMH | 21/08/01 |
| 2 | Karen Davey | I told police Ngo did it | SMH | 1/07/01 |
| 3 | Malcolm Brown | He's guilty at last, John: Mother's graveside message | SMH | 30/06/01 |
| 4 | Bernard Lagan and Sherrill Nixon | One man against 10...the jury that went to war | SMH | 17/05/00 |
| 5 | Marnie O'Neill | Going to a third trial | ABIX | 09/05/00 |
| 6 | Malcolm Brown | Newman trial: Jury fails to reach verdict | SMH | 08/05/00 |
| 7 | Malcolm Brown | Political moves preceded Newman murder | SMH | 13/04/00 |
| 8 | Malcolm Brown | I did supply gun: Newman witness recants | SMH | 12/04/00 |
| 9 | Malcolm Brown | Marsden vents anger on Ngo phone call queries | SMH | 07/04/00 |
| 10 | Malcolm Brown | Gough's speech kept murdered MP in safety | SMH | 02/03/00 |
| 11 | Malcolm Brown | Court told of further plots to kill Newman | SMH | 24/02/00 |
| 12 | Malcolm Brown | Man tells of search for killer for MP | SMH | 23/02/00 |
| 13 | Malcolm Brown | Witness in Newman trial denies feeling pressured | SMH | 16/02/00 |
| 14 | Malcolm Brown | Murder witness admits lying | SMH | 15/02/00 |
| 15 | Malcolm Brown | Beware key witnesses, Ngo tells Newman jury | SMH | 10/02/00 |
| 16 | Malcolm Brown | Phone records | SMH | 09/02/00 |

| | | | | |
|----|---------------------|--|---------------------|----------|
| | | used to track Ngo | | |
| 17 | Malcolm Brown | MP 'killed after three attempts' | SMH | 08/02/00 |
| 18 | Brad Clifton | Man Names Newman's assassin' | ABIX | 08/12/99 |
| 19 | Claire Harvey | Newman accused rolls over | ABIX | 08/12/99 |
| 20 | Malcolm Brown | Jury dismissed in Newman murder trial | SMH | 04/08/99 |
| 21 | Malcolm Brown | I was asked to kill MP: witness | SMH | 23/07/99 |
| 22 | Brad Clifton | Witness admits lying after murder of MP | ABIX | 23/07/99 |
| 23 | Malcolm Brown | Newman murder accused: dumped weapon in river | SMH | 21/07/99 |
| 24 | Malcolm Brown | Political greed behind MP's murder, Court told | SMH | 20/07/99 |
| 25 | Claire Harvey | 'Greed for power' led to MPs killing | ABIX | 20/07/99 |
| 26 | Caroline Overington | MP killed for power: Police | The Age | 20/07/99 |
| 27 | Sue Williams | Newman murder trial in TV row | Sun Herald | 04/07/99 |
| 28 | Sue Williams | Newman trial TV row | ABIX | 04/07/99 |
| 29 | Amanda Phelan | Tests may tie gun to murder of MP | SMH | 23/03/99 |
| 30 | Amanda Phelan | Newman accused's tagging offer fails | SMH | 13/01/99 |
| 31 | Malcolm Brown | Evidence of MP murder enough for trial: QC | SMH | 25/09/98 |
| 32 | Greg Bearup | Man tells Court he was asked to kill MP | SMH | 12/08/98 |
| 33 | Philip Cornford | Recollection of Newman witness challenged | SMH | 11/08/98 |
| 34 | Amanda Phelan | Climate of fear over Newman case: judge | SMH | 25/04/98 |
| 35 | Amanda Phelan | Accused in MP murder case granted \$1.2m bail | SMH | 26/03/98 |
| 36 | Richard Macey | Newman witnesses 'at risk' | SMH | 19/03/98 |
| 37 | Steve Pennells | Fears over MP murder bail decision | The West Australian | 17/03/98 |
| 38 | A. Pinn | Three men charged over '94 | Newcastle Herald | 14/03/98 |

| | | | | |
|----|-----------------|--|------------------|----------|
| | | murder of MP | | |
| 39 | Malcolm Brown | Guard in no doubt he was to kill MP | SMH | 10/03/98 |
| 40 | Malcolm Brown | Guard knew who MP's killer was, court told | SMH | 06/03/98 |
| 41 | Malcolm Brown | A case of 'no' to murder, 'yes' to marriage | SMH | 05/03/98 |
| 42 | Malcolm Brown | Mother denies changing statement to give son alibi | SMH | 24/02/98 |
| 43 | Malcolm Brown | Murdered MP had 'thousands of enemies' | SMH | 20/02/98 |
| 44 | Malcolm Brown | Fiancée 'tried to get will changed' | SMH | 14/02/98 |
| 45 | Malcolm Brown | Money found on body a mystery | SMH | 13/02/98 |
| 46 | Malcolm Brown | Driver seen harassing murdered politician | SMH | 10/02/98 |
| 47 | Philip Cornford | Pointing the finger | SMH | 07/02/98 |
| 48 | Malcolm Brown | Neighbour recalls the night MP was murdered | SMH | 07/02/98 |
| 49 | Malcolm Brown | 'Somebody should have been charged' | SMH | 03/02/98 |
| 50 | Malcolm Brown | Letter to MP: 'We'll get you' | SMH | 06/02/98 |
| 51 | Malcolm Brown | MP was target for campaign of harassment, says fiancée | SMH | 04/02/98 |
| 52 | Philip Cornford | Short tempers on a long day | SMH | 04/02/98 |
| 53 | Philip Cornford | State MP's murder: three face charges | SMH | 05/12/96 |
| 54 | Scott Tucker | Newman probe setback | Advance | 23/04/96 |
| 55 | Malcolm Brown | Councillor asked me to kill Newman, says witness | SMH | 04/03/96 |
| 56 | Merryn Porter | MP murder fiasco | Advance | 04/02/96 |
| 57 | Warren Owens | Newman murder | Sunday Telegraph | 03/09/95 |
| 58 | Matthew Watson | Hunt for Newman killer will go on, pledge police | Champion | 19/04/95 |
| 59 | Kate Dwyer | Nation pay last tribute to slain MP | Champion | 14/09/94 |
| 60 | Sid Marris | Anti-crime politician gunned | The Australian | 06/09/94 |

| | | | | |
|----|---|---------------------------------------|------------------|----------|
| | | down outside home | | |
| 61 | Linda Mirris and Sacha Molitorisz | State MP shot dead in drive-by attack | SMH | 06/09/94 |
| 62 | Les Kennedy, Brendan James and Trevor Seymour | MP shot dead | Telegraph Mirror | 06/09/94 |
| 63 | Ron Smith | Target gangs now: Newman | Champion | 10/08/94 |
| 64 | Emma Geary | Toughen penalties says MP | Advance | 07/12/93 |
| 65 | Belinda Tasker | Police response a concern | Advance | 19/10/93 |

NEWSPAPER ARTICLES INVOLVING NGO PHUONG

| Code number | Author | Title | Source | Date |
|-------------|-------------------------------|--|-------------------|----------|
| 1 | Karen Davey | I told police Ngo did it | Sun Herald | 07/01/01 |
| 2 | Candace Sutton | Family relief as two men walk free | Sun Herald | 07/01/01 |
| 3 | Damien Murphy | Ferguson's Relatives 'have Threatened Me' | SHM | 12/08/00 |
| 4 | Damien Murphy & Linda Doherty | Flood Of Venom Watered Down By Done Deal | SMH | 12/06/00 |
| 5 | Bob Watson | Jury Still Out On Unanimous Verdicts | SMH | 20/05/00 |
| 6 | Malcolm Brown | Marsden Vents Anger On Ngo Phone Call Queries | SMH | 07/04/00 |
| 7 | Malcolm Brown | Ngo 'not interested' in Challenging MP | SHM | 06/04/00 |
| 8 | Belinda Smith | Ngo 'not Lurking Near Newman' | Newcastle Herald | 04/04/00 |
| 9 | Malcolm Brown | The Lion King is My Alibi: Ngo's Defence | SMH | 04/04/00 |
| 10 | Marnie O'Neill | I Didn't Murder MP, Court Told | Illawarra Mercury | 30/03/00 |
| 11 | Malcolm Brown | Ngo Denies Murder Role | SMH | 30/03/00 |
| 12 | Brad Clifton | Scared Into Silence | ABIX | 23/07/99 |
| 13 | Malcolm Brown | Newman Witness 'saw Pistol At Mekong Club' | SMH | 07/03/00 |
| 14 | Malcolm Brown | Hit Organiser: 'I Talk For \$400,000' | SMH | 22/02/00 |
| 15 | Malcolm Brown | Witness In Newman Trial Denies Feeling Pressured | SMH | 16/02/00 |
| 16 | Malcolm Brown | Murder Witness Admits Lying | SMH | 15/02/00 |
| 17 | Malcolm Brown | Informers Rolled Over 'for Mum' | SMH | 12/02/00 |

| Code number | Author | Title | Source | Date |
|-------------|-----------------|--|-------------------|----------|
| 18 | Malcolm Brown | Beware Key Witnesses, Ngo Defence Tells Newman Jury | SMH | 10/02/00 |
| 19 | Malcolm Brown | Phone Records Used To Track Ngo | SMH | 09/02/00 |
| 20 | | Men used as 'pawns' in killing, jury told | ABIX | 08/02/00 |
| 21 | Andrew West | Labor To Check On Ngo Records | Sun Herald | 03/10/99 |
| 22 | Damien Murphy | Olympics Security Shuffle | SMH | 17/09/99 |
| 23 | Terry Smyth | This Week In A Minute | Sun Herald | 08/08/99 |
| 24 | Marnie O'Neill | Man needed just \$500 to arrange 'hit' | Champion | 27/07/99 |
| 25 | Tony Taubman | Witness Confused About Site Of Death Meeting | ABIX | 27/07/99 |
| 26 | Malcolm Brown | Counsel Signal Assault On Crown Case Against Ngo For MP's Murder | SMH | 22/07/99 |
| 27 | Brad Clifton | Can You Kill This Man | Daily Telegraph | 22/07/99 |
| 28 | Claire Harvey | Feud No Reason To Kill | ABIX | 22/07/99 |
| 29 | Brad Clifton | Police Find Handgun In River | ABIX | 21/07/99 |
| 30 | Marnie O'Neill | Ngo's Trial Open | Champion | 20/07/99 |
| 31 | Brad Clifton | Political Execution | ABIX | 20/07/99 |
| 32 | Amanda Phelan | Separate Trials Over Killing | SMH | 23/04/99 |
| 33 | Richard Smith | Briefs | The Age | 01/12/98 |
| 34 | Richard Ackland | A Case Of Confused Reporting | SMH | 06/11/98 |
| 35 | Marnie O'Neill | Newman Murder: Ngo To Face Trial | Illawarra Mercury | 26/09/98 |
| 36 | Richard Smith | Man to stand trial for MP's murder | The Age | 29/09/98 |
| 37 | Marnie O'Neill | Key Witness Disappears | Illawarrw Mercury | 25/09/98 |
| 38 | Marnie O'Neill | Newman murder trial starts again | Illawarrw Mercury | 24/08/98 |
| 39 | Marnie O'Neill | Ngo Wanted Someone To Kill MP, Court Told | Illawarra Mercury | 12/08/98 |
| 40 | Marnie O'Neill | Ngo To Remain Behind Bars | Illawarra Mercury | 25/04/98 |
| 41 | Brad Clifton | Witnesses 'fear For Their Lives' | ABIX | 24/04/98 |
| 42 | Brad Clifton | Ngo Case Witness About Face Claimed | ABIX | 21/04/98 |
| 43 | Alex Mitchell | Olympic City Notebook | Sun Herald | 19/04/98 |
| 44 | Paul Sheehan | Lunchtime Legends | SMH | 17/04/98 |
| 45 | Marnie O'Neill | Ngo on health board | Illawarra Mercury | 02/04/98 |
| 46 | Linda Doherty | Ngo To Stay On Health Board, Says Refshauge | SMH | 02/04/98 |
| 47 | Brad Clifton | Ngo To Stay On Health Board, Says Refshauge | ABIX | 02/04/98 |
| 48 | Tomy Smith | Out of bail | Canberra Times | 28/03/98 |
| 49 | Alex Mitchell | Mayor's Backflip Omission | Sun Herald | 22/03/98 |
| 50 | Marnie O'Neill | Newman accused denied | Illawarra Mercury | 20/03/98 |

| | | | | |
|----|---|---|---------------------|----------|
| | | bail | | |
| 51 | Brad Clifton | You Can Stay In Detention, Court Tells Phuong Ngo | ABIX | 20/03/98 |
| 52 | Steve Pennells | Ngo Bail Ruling Delayed | The West Australian | 19/03/98 |
| 53 | Murray Hogarth | Revealed: Phuong Ngo's Labor Power Play | SMH | 17/03/98 |
| 54 | Malcolm Brown | Reasons for Registrar's Decision | SMH | 17/03/98 |
| 55 | Les Kennedy | Buddhist Life For Ngo While Awaiting Trial | SMH | 16/03/98 |
| 56 | Murray Hogarth | The Troubled Life Of Phuong Ngo | SMH | 16/03/98 |
| 57 | Darren Goodsir and Liz Hannan | Threats 'force Ngo Into Hiding' | Sun Herald | 15/03/98 |
| 58 | Phillip Cornford Andrew Clenell and Les Kennedy | Charged With Murder | SMH | 14/03/98 |
| 59 | Malcolm Brown | Ngo 'offered \$65,000 Fee To Collect Debt' | SMH | 13/03/98 |
| 60 | Malcolm Brown | Secret Tape Shows Tran Knew Of Gun Purchases | SMH | 11/03/98 |
| 61 | Malcolm Brown | Ngo's Team Shooting Match With 5T Gang | SMH | 09/03/98 |
| 62 | Malcolm Brown | Ngo wanted to get dirt on MP, agent testifies | SMH | 28/02/98 |
| 63 | Malcolm Brown | The gunpowder trial | SMH | 28/02/98 |
| 64 | Malcolm Brown | Nho denied ordering MP's murder | SMH | 27/02/98 |
| 65 | Steve Warnock | I didn't shoot John Newman | Sun Herald | 30/06/96 |

PHUONG IN JAIL – LATER REPORTS

| Code number | Author | Title | Source | Date |
|-------------|--------------|--|----------|---------|
| 1 | Kathy Lipari | Chikarovski under attack over jail visit | Champion | 11/3/02 |

| | | | | |
|---|---|---|------------|---------|
| 2 | Jim O'Rourke, John Kidman and Mathew Bennis | Carr orders probe into assassin's life inside | Sun Herald | 10/3/02 |
| 3 | Stephen Gibbs | Councillors linked to assassin face jail: Carr | Champion | 9/3/02 |
| 4 | Stephen Gibbs | Federal inquiry into killer's kitty for Long Bay Bash | Champion | 8/3/02 |
| 5 | Stephen Gibbs | Inquiry call into council Assassin Link | Champion | 7/3/02 |
| 6 | Alex Mitchell | Assassination mastermind celebrates with Cabramatta mates | Sun Herald | 3/3/02 |

APPENDIX THREE –

NGO WANTED TO GET DIRT ON MP, AGENT TESTIFIES

SATURDAY, FEBRUARY 28, 1998

SMH

By MALCOLM BROWN

Fairfield councillor Mr Phuong Ngo in 1990 had briefed a private inquiry agent to get "dirt" on the State Labor MP Mr John Newman, the Westmead Coroner's Court heard yesterday.

Mr David Samuel McAfee, private inquiry agent, said Mr Ngo had told him he considered Mr Newman "was corrupt, and wanted me to get evidence".

"I asked him why he considered him corrupt, and he was unable to tell me anything," Mr McAfee said.

"He told me Newman was involved with some woman and to find out who the woman was. He wanted to know anything derogatory. He wanted to know what sort of inquiry I could do about Newman. I told him the first thing I had to know was what I was inquiring about."

Mr McAfee, who served 29 years with the NSW police before retiring medically unfit, said he had felt uneasy about the inquiry and decided it was not the sort of thing he wanted to do. He had



THE NEWMAN INQUEST

quoted an "exorbitant hourly rate" for his services and had not heard from Mr Ngo again.

Mr Newman was shot dead in the driveway of his home in Cabramatta West on September 5, 1994. Mr McAfee said he went to the investigating police three days later and made a statement.

The inquiry had heard other accounts of personal and political conflict between Mr Newman and Mr Ngo. Mr Ngo stood as an independent against Mr Newman for the State seat of Cabramatta and formed an ALP branch at Canley Vale, apparently with a view to challenging Mr Newman for preselection.

Mr Terry Healey, for Lucy Wang, Mr Newman's fiancée,

asked Mr McAfee: "I suppose, to use the vernacular, Mr Ngo wanted to get some dirt on Mr Newman?"

Mr McAfee: "Yes."

Mr Stephen Paul Hodges, solicitor, said Mr Ngo had retained his services in 1989 to assist in a defamation action against the *Fairfield Champion*.

Mr Ngo had claimed that a letter published in the paper, supportive of Mr Newman and signed by four people, had defamed him.

"In private discussions between Phuong Ngo and myself, Phuong Ngo said, 'You know, Stephen, my purpose is to prove that Newman was the author of the letter,'" Mr Hodges said.

"I said, 'If he is, it must be possible to prove, there must have been someone who typed it, we must do some investigation ...'"

He had contacted Mr McAfee and asked him to investigate "adverse reactions" to the letter.

The inquiry resumes on Monday.

lays down the law

MACQUARIE UNIVERSITY LIBRARY



3 2109 01959 9225



which had resulted
and 897 indictable
laid in the pas
continue "until
Cabramatta are
able to the pe
detectives in
the m

GANES
THE STR
"Inva

John Newman

Politics

not key

to MP's

murder

CRIME CAPITAL

Rubbish

MP

calls for

more control

cleanup

DUMPED rubbish is m

'Syringes are an accident waiting to happen'

Carpark

Rubbish

ICE 5/4/0

action

Police gang

raids

killings

