

HUMAN RIGHTS AND HUMAN WRONGS

me on the phone, it would look bad to plead guilty at a preliminary hearing and change it to not guilty at trial. Bad for whom? The judge gave him twelve years with a minimum of eight.

Through the available Legal Aid service we appealed—a process which neither the prisoner nor his defence team were informed of or present at. It resulted in a reduced sentence of nine years with a minimum of seven. After much internal agitation and threats from me about going public here and abroad, the Prothonotary's Office of the Supreme Court finally suggested that I apply for a petition of mercy under the *Crimes Act* of 1958. Such a petition could be granted either by way of a full rehearing of the case by the Court of Appeal or by a pardon. The former was agreed to by Arthur Rylah with reluctance and much pressure from me about a possible article in *The Age* or a discussion on current affairs television.

I went through every rape sentence since 1957 and presented the Court of Appeal with an affidavit showing comparable rape sentences, listing ages of the accused and victims, circumstances of the crimes, previous convictions and maximum and minimum sentences. Darrell's original sentence was the most severe in recent Victorian history. The three Appeal judges thanked me for the interesting research but declared that debate about comparative sentencing was, though not improper, highly unusual and unacceptable. They then indulged in animated discussion about 'Brother x being a bit lenient there, don't you think, Brother y was too tough there' and so on. They had their day's entertainment and reduced the sentence to six and four, a half of Kerang. We had our day in court but Darrell should never have been there in the first place. It was a landmark case. It showed how exposed Aborigines were to the criminal justice system and to police pressure. It showed the gross disparities in Aboriginal and non-Aboriginal sentencing and it showed that one doesn't always have to succumb to 'the system'. Petitions of mercy are rare but they are there for the asking.

The Board was often asked to help place Aboriginal children, especially from Queensland, with White families, usually over Christmas holidays. All

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too often the middle- and upper-class families wanted to keep 'the cute kiddies' for longer and sometimes forever. There was a great deal of trafficking, fostering and adopting that left a bad and bitter taste. I once wrote that the Harold Blair holiday scheme was misused for this sort of unofficial 'fostering'. Harold was a noted Aboriginal opera singer, a man the arch Australian genocide denialist Keith Windschuttle claims I have defamed in this context but doesn't say how I did so. (Windschuttle was nowhere near these scenes, nor did he receive the phone calls asking for 'cute' holiday children or for their return.)

There was an evident looseness about the handling of Aboriginal children. We couldn't have known it at the time but the case of James Savage (born Russell Moore) was to have international repercussions. Taken from his teenage Aboriginal mother Beverly Whyman in Gippsland, under what may have been duress, he was adopted by a Salvation Army couple and taken to the United States. There he was later convicted of a drug-fuelled murder of a woman and sentenced to death in Florida in 1989. His sentence was changed to three terms of life without parole. His case sparked considerable public interest, especially in the manner of his removal and adoption. (The court was reluctant to listen to evidence about his Stolen Generation history.)

Another such case involved one (close) Monash University colleague who sought to adopt an Aboriginal child. I attended the application proceeding, objecting fiercely: the man had eight children of his own and I deemed this Samaritanism at its worst. My argument won the day and though I lost a friend, I have no regrets about my opposition to these kinds of adoptions.

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~~In 1966 the Davey-Holden-Howe trio presented a three-line motion to the Board that Lake Tyers settlement, established as a mission in 1861 on some wooded and fertile 1,600 hectares, should be closed and residents scattered across the state. Rumours persisted that the Board wanted to sell~~