



Schapelle Corby's Bali Vacation Turned Into 20 Year Prison Sentence By Planted Drugs

By Serena Nicholls

Twenty-seven year old Schapelle Corby and her brother left Brisbane, Australia on October 8, 2004, bound for a vacation on the Indonesian island of Bali. When they arrived at Bali's Denpasar airport, Indonesian customs officers found nine pounds (4.1 kg.) of marijuana in Schapelle's boogie board bag. When questioned Schapelle claimed she knew nothing about the marijuana and didn't know how it got in her bag. She was arrested and charged with violating Indonesia's harsh drug importation law that carries a maximum sentence of death by firing squad. The charges were grave because Indonesia vigorously enforces its drug laws and many convicted drug smugglers have been sentenced to death and executed.

Schapelle's trial

Schapelle was held in a Bali jail without bail pending her trial. Indonesia's legal system is based on the European Civil Law system, and a jury is comprised of a panel of three judges. The judges control the proceedings by asking questions of both the prosecution and defense.

Schapelle's trial began on January 28, 2005. The prosecution's primary evidence was provided by the airport customs officer who testified Schapelle was reluctant to open her bag when asked, and when she did she admitted that the marijuana found inside was hers.¹

During her testimony Schapelle recounted a far different encounter with the customs officer. She testified she readily opened the bag, which was unlocked, and that until she opened it and saw the plastic bag, she did not know there was marijuana in it. She said that what she admitted to the customs officer was that the boogie board bag was hers – not that the marijuana was hers.

A witness for the defense corroborated Schapelle's testimony, explaining to the court that Schapelle opened the unlocked bag without hesitation and that "when she saw the plastic transparent bag, she was shocked and stepped back."²

After checking their bags in Brisbane, Schapelle and her brother James had to change planes in Sydney, where her bag was handled by airport baggage handlers. After arriving at Denpasar's airport, James carried the bag from the baggage claim area to the customs inspection counter. Schapelle's lawyers suggested that without her knowledge the marijuana could have been stashed in her bag by baggage handlers in Sydney.

The defense put forward evidence to support the claim that Schapelle was a victim of a drug smuggling network operating in Australian airports. At trial John Ford, an Australian prisoner, testified that he overheard prisoners talk about a stash of marijuana that had been lost while trying to be smuggled by a group of baggage handlers. While Schapelle was imprisoned an inquiry into Australia's baggage handlers revealed a multi-million dollar cocaine syndicate operating through Australian airports with the assistance of corrupt baggage handlers.³ As a result of this inquiry 15 Australians were arrested on charges of importing drugs. So it is known baggage handlers consider airline luggage as a good conduit for transporting drugs.

Australian Prime Minister John Howard wrote to the Indonesian court outlining the fresh evidence against corrupt baggage handlers in Australian airports. The Indonesian court considered that evidence was irrelevant in determining Schapelle's fate.

To disprove that Schapelle's prints were on the plastic bag containing the marijuana, her lawyers made numerous requests that the Indonesian authorities analyze the bag for fingerprints. All the requests were denied. Another problem for Schapelle's defense was her luggage was not individually weighed or recorded at either the Brisbane or Sydney airport. Consequently, she could not prove that the boogie board bag weighed more in either Sydney or Bali, than when it was checked-in at the Brisbane airport.

On the last day of Schapelle's trial, April 29, 2005, she made the most important statement of her life: "I would like to say to the prosecutors I cannot admit to a crime that I did not commit...I am an innocent victim of a tactless drug smuggling network...I believe the seven months which I've already

been in prison is severe enough punishment for not putting locks on my bags...I swear that as God is my witness, I did not know that the marijuana was in my bag".⁴ Before the court began its deliberations, the presiding judge said Schapelle's tearful address carried absolutely no legal weight and therefore it would not be taken into account.

In May 2005, after Schapelle's trial concluded but before her verdict was announced, the head of the Balinese drug squad, Colonel Bambang Sugiarto, admitted during an interview with Australian Channel Nine that the case against Schapelle was weak and that the investigation was flawed for a number of reasons. He concluded that her case was only 50% investigated.⁵ However, Sugiarto's statements didn't constitute new evidence supporting her innocence, they only supported that the Indonesian police conducted an unprofessional and incomplete investigation.

Schapelle's plight gripped the heart of millions of Australians. On May 27, 2005, Australia stood still as people across the country breathlessly watched the verdict announced live on national television. The panel of judges decided that Schapelle had attempted to illegally import drugs into Indonesia and sentenced her to 20-years imprisonment. Since she admitted the bag was hers, the judges held her responsible for its contents. The judges were particularly critical of the impact the marijuana, if undetected, could have had on Balinese youth. Schapelle cried, and then fought with the police, before being dragged out of the courtroom by a cadre of police.

The judgement sparked enormous sympathy for Schapelle and anger at the Indonesian judicial system. There were calls to boycott Bali – a popular resort for Australians – and to ban Indonesian products being imported. At the extreme, there were threats and attacks on Indonesians that were living in Australia. Australian Prime Minister John Howard pleaded with Australians not to interfere with the Indonesian justice system, "But I do ask that we all pause and understand the situation and recognize and respect that when we visit other countries, we are subject to the laws and the rules of those countries."⁶

After the trial a survey revealed that 92% of Australians believe that Schapelle knew nothing about the marijuana found in her boogie board bag.⁷ This strong response was a result of the prosecution's failure to present evidence proving Schapelle was aware of the marijuana, which was consistent with the fact there is no evidence of any kind implicating

Corby continued on page 21

Corby continued from page 20

her in the purchase or handling of the marijuana, or ever having been involved in the illegal drug business. She was a typical Aussie, and a middle-class beautician in Brisbane.

Schapelle appeals

Schapelle filed an appeal against her conviction and 20-year sentence, requesting that her case be re-opened and fresh evidence heard that she was the unwitting victim of drug smugglers. Indonesian prosecutors also appealed against Schapelle's conviction on the basis that she should have received a sentence of life imprisonment. On October 12, 2005, Bali's High Court denied Schapelle's appeal of her conviction, but reduced her sentence from 20-years to 15-years imprisonment. Schapelle was not satisfied with this reduction, as she was steadfast in her claim of innocence.

Parallel appeals were then filed with Indonesia's Supreme Court. Schapelle sought to have her conviction quashed and the prosecution wanted her 20-year sentence reinstated. Schapelle's appeal was rejected on January 19, 2006, but the prosecution's counter appeal was successful. The Supreme Court reinstated her 20-year sentence, and in a further blow to Schapelle, ordered the destruction of all evidence in the case – including the boogie board bag, the plastic bag, and the marijuana – signaling that the Court's judgment was final and the case was closed.

Schapelle is currently in Bali's notorious Kerobokan Prison, serving her 20-year sentence. It is difficult for people familiar with prison conditions in western countries such as Australia and the United States to grasp the primitiveness of conditions in third-world prisons such as Kerobokan. According to human rights organizations, rampant untreated diseases and a lack of basic medical and dental care, and unsanitary food, water and living conditions, and constant exposure to Bali's oppressive tropical climate (8° south of the equator) combine to weaken a once healthy prisoner to the point that they can die after 10 to 15 years imprisonment.⁸

Was Schapelle's brother involved in smuggling the marijuana in Schapelle's bag?

The circumstances surrounding the behavior of Schapelle's brother James after their arrival in Bali, after Schapelle was arrested, and then later in Australia, can at a minimum be described as suspect.

James carried Schapelle's bag from the Denpasar airport's baggage claim to the customs

check-in-counter. Schapelle didn't touch her unlocked bag until the customs officer asked her to open it. The obvious question is why James didn't notice that the boogie board bag weighed an extra nine pounds (4.1kg) and was larger in size?

It is also suspicious that James left Bali immediately after Schapelle was arrested. It is further suspect that unlike the rest of Schapelle's family, he did not return to Indonesia to visit her or support her during her trial.

Then on January 19, 2006, the day Schapelle's 20-year sentence was reinstated by Indonesia's Supreme Court, James was denied bail in an Australian court on eight charges, including drug production, assault and deprivation of liberty. Queensland police successfully opposed the granting of bail by tendering an affidavit that detailed James was suspected of "some involvement in the exportation of cannabis for which his sister has received a 20-year imprisonment sentence."⁹

No reason was ever given for James' sudden departure from Indonesia or his failure to return to the country to visit Schapelle in jail or attend her trial. However, many Australians believe he was involved in the stashing of the marijuana in Schapelle's bag without her knowledge by baggage handlers in Sydney when it was transferred to their Bali bound plane. He would have then intended to remove the marijuana in Bali before Schapelle would have needed to open the bag to use her boogie board. When this theory was suggested to Schapelle in an interview she told the reporter that to her knowledge the drugs did not belong to her brother.¹⁰ Even if Schapelle now knows the truth and is 'covering-up' for her brother, it would not lessen her innocence of the drug charge.

Sydney airport security camera tampered with on the day Schapelle went to Bali

The possibility the marijuana had been placed in her unlocked bag en route was recently strengthened when the Australian government revealed that on the day Schapelle traveled through Sydney to Bali, a security camera monitoring the baggage handling area at Sydney's airport had been tampered with.

Senator Chris Ellison, Australia's Minister for Justice and Customs said, "we believe there may have been some human involvement and that has been the subject of a Customs inquiry and investigation."¹¹ The investigation did not identify who may have been responsible for tampering with the security camera. The affected camera monitors baggage handlers as they sift through lug-

gage. Based on this information, it is quite plausible that someone tampered with the camera and then stashed the marijuana in Schapelle's bag without her knowledge. And of course, possibly the bags of other travelers.

What are Schapelle's options?

Much of the evidence that could support Schapelle's claim of innocence is now unavailable. The Indonesian Supreme Court's order to burn the marijuana was carried out on March 17, 2006. The burning of the marijuana and destruction of the other physical evidence went ahead in spite of Schapelle's plea to preserve the evidence so it would be available for any future hearings.

The weakness of the case against Schapelle doesn't change the fact that her future looks quite dim. The evidence in her case has been destroyed and she has exhausted all judicial avenues of appeal. She could seek to reopen her case if new evidence surfaced, such as a confession by her brother or someone else involved that the marijuana was stashed in her bag without her knowledge.

A remote possibility is a pardon from Indonesian President Susilo Bambang Yudhoyono. However, that is unlikely because Schapelle refuses to admit that she committed the crime. Another problem with obtaining a pardon is that since Schapelle's case is a cause celebrity, the Indonesian government will lose face if it even appears they have capitulated to outside influences in releasing her. If Schapelle's brother is guilty, his confession would allow Indonesia to save face by releasing her and imprisoning him in her place. The Australian government, and Australian's in general, would likely be satisfied with that resolution.

Conclusion

Schapelle has been handicapped throughout her case by the Indonesian judiciary's assumption that since the bag was hers, then so was the marijuana inside it.

If she isn't exonerated or otherwise released early, Schapelle's time imprisoned would be under vastly more humane conditions and it would be easier for her family to visit if she could be part of a prisoner exchange between Indonesia and Australia. Although the Australian government has made it clear that because political relations between Australia and Indonesia are at an all time high they have no intention of diplomatically interfering in Schapelle's case, it does claim to be looking into a prisoner exchange.

Corby endnotes on page 22

You almost could have mistaken the start of the three-day Justice for All conference on forensic science at Duquesne University for a DNA revival.

Forensics Under The Microscope

By Martin Yant

"Thank God for DNA!" *Chicago Tribune* reporter Maurice Possley exclaimed.

"I almost jumped and cheered when the first DNA test results came back!" exclaimed former FBI Director William Sessions.

But there was good, rational reason for Possley's and Sessions' religious-like fervor. Possley noted that, in addition to helping prove over a hundred prisoners were innocent, DNA testing has opened the public's mind to the possibility that others have been wrongly convicted even if physical evidence isn't available for DNA testing to prove it. Sessions' joy, on the other hand, was because 30 percent of the first suspects whose DNA was tested by the FBI proved to be innocent. DNA, Sessions said, quickly proved its worth to defense attorneys as well as investigators, and FBI tests still exclude 25 to 26 percent of the suspects whose DNA is tested. Sessions, who along with DNA exoneree Kirk Bloodsworth headed the Washington D.C. based Justice Project's campaign to get the Innocence Protection Act of 2004 passed by Congress, said that was not an easy task. "Mother Justice is a demanding woman," the tall Texan said with his folksy accent.

Other speakers and panelists at the intense April 2006 conference sponsored by The Cyril H. Wecht Institute of Forensic Science and Law, the Duquesne University School of Law, and The Justice Project, noted that DNA is not a panacea for the ills of the American criminal-justice system.

"Don't forget Josiah Sutton, who was convicted with DNA evidence and later exonerated," said Frederick W. Fochtman, an associate director of Duquesne University's five-year master's in forensics and law program. Sutton's tale, Fochtman noted, is a red flag about the limits of forensics science, no

matter how good it is, as long as human beings are involved.

Sutton was exonerated in 2004 after serving 4-1/2 years of a 25-year sentence for a rape he did not commit. Sutton's conviction was the result of a mistaken identification and faulty DNA testing performed by the scandal-plagued Houston police laboratory. As a result of that scandal, Sutton's case gained the attention of University of California criminology professor William Thompson, who said the lab's DNA report was the worst he had ever seen. Thompson's finding led to retesting that concluded the semen once identified as Sutton's was actually that of a different man.

Sutton's case has shed light on many other Houston area cases where a potentially innocent prisoner is incarcerated as a result of a faulty crime lab examination. Since 2002, errors also have been exposed in the labs divisions that test firearms, body fluids and controlled substances. The Houston Police Department Crime Laboratory was subsequently shut down pending a full-scale investigation of its many problems.

In 2005 the Houston PD chose Michael Bromwich, a former U.S. Justice Department official, to conduct a special investigation of the lab. In his most recent report Bromwich said lab analysts skewed reports to fit police theories in several cases, ignoring results that conflicted with police expectations because of either a lack of confidence in their own skills or a conscious effort to secure convictions.

Houston PD officials hope to introduce enough reforms for the lab to be accredited. But Fochtman said that accreditation has not proved to be a guarantee of lab accuracy. He said the major accreditation agency, the Society of Crime Lab Directors, is dominated by law enforcement agencies and it protects

member labs as much as it inspects and reports their deficiencies.

As important as improvements in true forensic science, as opposed to junk science, has been in the past decade, many conference speakers stressed the importance of not accepting the conclusions of crime lab forensic analysts without confirmation.

George Castelle, the affable chief public defender in Charleston, West Virginia, spoke about Fred Zain, the most notorious crime lab forensic fraud artist yet discovered. Various investigations of Zain over the years found that he testified in West Virginia and later Texas cases about forensic tests and conclusions he was unqualified to conduct and interpret. But testify he did, always saying what the prosecution wanted to hear.

Then came the case of Glen Woodall, who was convicted in 1987 of multiple felonies, including two counts of sexual assault. At Woodall's trial, Zain testified that based upon his scientific analysis of semen recovered from the victims, "[t]he assailant's blood types ... were identical to Mr. Woodall's." Woodall's conviction was affirmed on appeal. However, DNA testing later established that he could not have been the perpetrator. Woodall was freed when his conviction was overturned in 1992. He sued for false imprisonment and received a \$1 million settlement.

The irregularities in Woodall's case ultimately led to a massive investigation of Zain's work ordered by the West Virginia Supreme Court. It concluded that the actual guilt of 134 people was in doubt because the convictions were based on inculpatory reports and/or testimony by Zain. Nine men have been freed because without the suspect expert testimony of Zain – who had never passed a college science course – the remaining evidence offered against them was insufficient for conviction, had.

But the Zain scandal didn't necessarily change the attitude of West Virginia Crime Lab workers. Castille told how, while working on an appeal, he found that a state forensic analyst had greatly exaggerated a scientific rule to gain a conviction. "Don't take anything for granted," said Castelle, who is currently representing the interests of West Virginia prisoners in a new investigation of the crime lab.

One place jurors did take things for granted was in Oklahoma. Jeffrey Pierce spent 15 years in prison there for a rape he did not commit because jurors assumed the truthfulness of Oklahoma City crime lab chemist Joyce Gilchrist, who testified she had matched

Corby continued from page 19

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Endnotes:

- 1 Tracy Bowden, 'Corby Defence Team Hopes for Breakthrough', *The 7:30 Report*, ABC, March 16, 2005
- 2 Transcript of Schapelle Corby Verdict, May 27, 2005, <http://www.usp.com.au/fpss/news-indonesia95.html#TWO>
- 3 Jonathon Harley, 'Airport Baggage Handlers Linked to Drugs, Court Told', November 5, 2005, *The 7:30 Report*, ABC.
- 4 Corby Trial Statement 'I ask for you...to find me innocent', <http://www.usp.com.au/fpss/news-indonesia74.html#FOUR>

- 5 Indonesian police admit Corby case flaws, ABC News Online, May 8, 2005, <http://abc.net.au/news/newsitems/200505/s1362510.htm>
- 6 Hamish Fitzsimmons, 'Political Parties Express Sympathy for Corby', May 27, 2005, Lateline, ABC.
- 7 The Corby Case Timeline, *Nine News*, March 17, 2005, <http://ninemsn.com.au>.
- 8 Schapelle Corby: Kerobokan Prison Conditions, Herald Sun (Melbourne), May 29, 2005.
- 9 Corby's Brother 'not linked to her case', January 23, 2006, <http://usp.com.au/fpss/news-indonesia/news-indo-schapelle121.html>.
- 10 John Stewart and Renata Gombac, 'Corby's Next Door Neighbour Faces Drug Charges', *The 7:30 Report*, ABC, January 30, 2006.
- 11 Cameras 'worked for Corby', April 4, 2006, <http://www.usp.com.au/fpss/news-indonesia/news-indo-schapelle136.html>.



Forensics continued on page 23