Committal hearing concludes in Sydney

"Criminally wrong" or "naughty"?--little boy could face trial for manslaughter

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Were the thoughts of a 10-year-old boy "criminally wrong" or simply "naughty" on the day 6-year-old Corey Davis drowned? A Sydney magistrate's answer to that question will determine whether a child, now 11, stands trial for manslaughter. This became clear last month during the final day of submissions in the young boy's committal hearing.

Whatever Magistrate Stephen Scarlett concludes about what the boy was thinking will decide the course of this child's life. He is the youngest person in Australia to be charged with manslaughter, an offence that carries a maximum sentence of 25 years jail. The prosecution alleges that on March 2 last year he pushed Corey Davis into the Georges River in Macquarie Fields, an outer working class suburb where both boys lived.

The lawyers' submissions centred on whether the presumption of *doli incapax* could be rebutted or upheld. *Doli incapax* presumes that children between the ages of 10 and 14 are too young to know the difference between right and wrong and are, therefore, incapable of having the necessary intent to commit a crime. It requires the prosecution to prove, beyond a reasonable doubt, that the child knew what he was doing was "seriously wrong" rather than merely mischievous. (Children below the age of 10 are deemed to be not criminally responsible at all.)

If the magistrate agrees with the prosecution, the boy will be committed to stand trial for manslaughter. The prosecutor, Greg Smith, argued that he should be sent to trial because: "Corey died as a result of a deliberate act by dragging him against his will and throwing him into the river and then not rendering assistance." Smith went on to say: "We must decide on the defendant's state of mind ...The defendant knew that what he was doing was wrong, that it was not just naughty but criminally wrong."

The impossibility of a criminal court genuinely ascertaining the thoughts of a child was highlighted in an exchange between the prosecutor and the magistrate about the general issue of manslaughter. Smith suggested that "it [the charge of manslaughter] could be pursued on the basis of criminal negligence. It [the alleged act of pushing Corey into the river] was intrinsically dangerous--that a reasonable 10 year old would know."

Scarlett asked what a reasonable 10-year-old was. Smith replied that he did not know.

Defence lawyer Mathew Johnston said it was not disputed that Corey ended up in the river because of the older child's actions. He stated, however, that whatever happened on the day, it could be "not dissimilar to what boys have done for time immemorial when playing around near water."

Moreover, Johnston submitted, the older boy was placed in a situation which, without adult guidance, he did not have the capacity to deal with. Unable to swim, he could not save Corey. He had not raised an alarm, but neither had any of the other children at the river that day.

Johnston pointed out that even in the relatively enclosed environment of a school playground, an authority figure, in the form of a teacher, is required to assist the children to obey the school rules. No such figure was present at the river on the day Corey drowned.

The defence counsel said that on the day of the events the accused boy was just 98 days above the age of 10, the lowest age at which a child can be charged with a crime. In addition, assessments from the boy's teachers indicated that academically he was two to three years behind most 10-year-old children and that while he understood the difference between right and wrong, he was not conscious of the consequences of his actions.

Both Corey's grandmother and the young boy charged were visibly distressed as the prosecution outlined in detail the circumstances of Corey's death. The little boy, who at one point became ill, was permitted to leave the courtroom for a period but returned to hear himself described as a slow learner and "not a normal 10-year-old". Whatever the outcome of the committal hearing, he will require considerable assistance to overcome this experience.

What is the point of trying to prove that a 10-year-old child knew that what he was doing was "criminally wrong" rather than "naughty"? It is part of a growing trend by governments, the police and the media to brand individual youngsters as "evil" as a means of diverting attention from the deteriorating social and educational conditions that help produce such

terrible events.

Irrespective of what actually happened on March 2 last year, the case is being used to pursue a definite political agenda--one that will further erode the limited protection afforded to children in the legal system.

At one point, inexplicably and to the obvious surprise of both the prosecutor and defence lawyer, Magistrate Scarlett asked Smith why he had not directed him to the case of Venables and Thompson, the two 11-year-old boys who, in 1993, were convicted in Britain of the murder of James Bulger. There was no direct legal relationship between the two cases, because the British trial was not decided on the basis of *doli incapax*.

The trial of Jon Venables and Robert Thompson was used to whip up public opinion as part of a rightward shift in attitude toward, and measures used against, juvenile offenders. Both boys were tried and convicted as adults in a virtual lynch-mob atmosphere. Details of the oppressed and deprived conditions of their upbringing, which could have shed light on their actions, were not admitted. Amid blazing headlines, British Home Secretary Michael Howard intervened to increase their sentence from 8 to 15 years on the grounds of "public concern".

Under the Crime and Disorder Act 1998 the British Labour government of Tony Blair went further than the Thatcher regime. It abolished the presumption of *doli incapax* --in existence in Britain since the 14th century. The courts must now presume that children as young as 10 have the same capacity to reason as an adult. In the same Act, the Labour government removed another key protection for accused of such tender years. It allowed courts to draw inferences of guilt if children fail to give evidence or refuse to answer questions during trial.

These reversals of fundamental legal rights in Britain proceeded despite pleas to the contrary from concerned lawyers and academics. One law lecturer had quoted the following proposition from a standard legal text on criminal law: "No civilised society regards children as accountable for their actions to the same extent as adults" (Colin Howard, *Criminal Law*, 1982, Sydney, Law Book Company). The lecturer's article concluded: "If the above contention is true, following the enactment of the Crime and Disorder Bill, ours will no longer be a civilised society."

Magistrate Scarlett made comments indicating that *doli incapax* is also under review in Australia. He said the outcome of the present manslaughter case could go some way in determining the future attitude toward the rule in Australia.

This process is being urged on by the mass media. On the final day of the committal hearing, as on the earlier days, its reporters were clearly uninterested in hearing, let alone reporting, the defence submission. A significant number of the journalists left the courtroom immediately after the prosecutor finished.

A headline in Rupert Murdoch's Sydney *Daily Telegraph* the next day read: "Young and deceitful"--"Boy, 10, lured Corey to river edge, court told". The article began as follows: "A 10-year-old boy who threw a six-year-old into a river where he drowned had deceived his victim, lied to police and known what he did was 'criminally wrong', a court heard yesterday."

Can it seriously be argued that such an account is written to encourage a thoughtful and compassionate assessment of the children involved in these events? How can the reaction of readers of the *Telegraph* article, based on the selective and inflammatory information provided, be anything other than hostile to the child charged?

To consider the events of March 2, 1998 in any other light requires a critical assessment of the social conditions that led to the tragedy. That, however, raises the question of the government policies, budget cuts and increasing unemployment that have plunged areas like Macquarie Fields into deprivation.

Had there existed in Macquarie Fields properly-supervised recreational activity for young children, where their talents could be pursued and developed, and where their interests in art, music or sport could be stimulated and enhanced in safety and security, the possibility of last year's tragedy would be greatly reduced. The reality is that children in such working class areas are more and more left to their own devices as the economic situation at home worsens due to unemployment and poorly-paid jobs with long and difficult hours. The costs of entertainment and travel make outings and recreational activities increasingly prohibitive.

The two families directly affected by the manslaughter trial are embroiled in a process that can only end in further trauma for both. The grief, despair and anger of Corey's grandmother and family is being directed not against the social conditions that led to her grandson's death but against a little boy who is himself a victim of these conditions.

The defence counsel stated that a child's actions could be interpreted in many different ways, an assertion that cannot be contradicted. But he did not ask why the police and the Director of Public Prosecutions interpret the actions of a 10-year-old child as "deliberate and criminally wrong", "unlawful and dangerous" and "an act of retaliation". Without dealing with what is a worldwide trend to further obliterate the difference between children and adults in the criminal justice system, the argument is left in the realm of one child's thoughts--thoughts on which his future now hangs.