

Child psychiatrist discusses Supreme Court manslaughter trial of young boy in Australia

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On December 3, a New South Wales Supreme Court jury in Sydney rejected manslaughter charges laid against an 11-year old boy. The child—the youngest-ever person charged with manslaughter in Australia, an adult crime that carries a maximum sentence of 25 years jail—was brought to trial following the accidental death of Corey Davis on March 2, 1998. Davis drowned after being pushed in a local river by the boy.

Although the 12-member Supreme Court jury found the boy not guilty the trial set a dangerous precedent and represented one of the most serious attacks on the legal and democratic rights of children seen in decades.

The trial was held after Nicholas Cowdery, the NSW Labor government's Director of Public Prosecutions, issued an *ex-officio* statement overruling the Senior Children's Court Magistrate who had dismissed manslaughter charges against the boy last May. The DPP ignored evidence showing that the young boy, who was 10 years old at the time of the incident, had the mentality and social skills of an eight-year-old child and ordered a Supreme Court trial.

Throughout the gruelling 14-day Supreme Court trial, which began in late November, the Crown Prosecutor alleged that the 11-year old child had an underlying violent streak and understood the implications of pushing Davis in the river.

One of the two expert defence witnesses called to give evidence was Dr Brent Waters, a highly respected child psychiatrist, who made a clinical assessment of the boy on trial. The psychiatrist told the court that the child was intellectually and socially immature for his age and was incapable of understanding the consequences of pushing Davis into the river.

Waters, who has many years experience in child psychiatry and written numerous scientific papers on the influence of television and modern media on children, spoke to the *World Socialist Web Site* about the case and the psychological impact of the trial on the child.

WSWS: Could you comment on the outcome of the trial?

Dr Brent Waters: My feeling is that it was a fair outcome.

The jury weighed up the evidence and the circumstances and made a correct decision that the child was not guilty of manslaughter.

It was perhaps a nasty trick to push someone in the river, but this was a prank and the sort of thing you see extraordinarily frequently amongst children in that age group—at swimming pools and popular swimming places, the beach, rivers, everywhere. In fact, swimming pools are papered with signs telling children not to do this sort of thing.

So, as a prank, it is clearly a part of everyday experience, particularly with boys, and especially in the case of this boy who, at the time of the act, had a mental age of a child of eight. I think that the judgement was right and I think the sentiments of the Children's Court magistrate last May dismissing the charges were correct.

WSWS: The prosecution argued that pushing Corey Davis into the river was part of an underlying violent trend or characteristic of this child.

BW: From what I saw there simply wasn't any evidence to prove this. In fact, the evidence was quite to the contrary. In my opinion, and the testimony given by teachers, was that he was a shy boy who had a poor sense of self confidence, who tended to be a follower rather than a leader, and who didn't have a track record of violent behaviour.

Of course it is possible to take some of his actions out of their social context and beat them up into something else, but my view is that it was transparently obvious that this was not the case, and the jury saw this also. They obviously didn't misperceive the evidence. They saw these isolated instances for what they were and properly identified what was the true nature of this boy.

WSWS: As you know, to secure a conviction the prosecutor had to rebut *doli incapax*, which presumes that children between the age of 10 and 14 are incapable of understanding the difference between right and wrong and therefore cannot form the necessary intent to commit a crime. What do you think about attempts, including during this trial, to undermine this principle by arguing that popular

entertainment and television makes children socially aware at an earlier age?

BW: *Doli incapax* enshrines the fact that there is a transition between taking an exclusive child rights focus and the development of personal autonomy and responsibility. Without doubt it is a difficult problem because maturity varies from individual to individual and is shaped by social forces that affect when these transitions occur. But the problem of transition is recognised in this principle.

Many people argue that childhood is being shrunk through exposure to movies, video games and so on, but I don't think popular entertainment has any impact on the sort of act that this boy carried out—pushing someone in a river. In my opinion all the social evidence today indicates that childhood is being extended in a number of ways.

If you go back 400 years when the average life span was perhaps 35 years, people had their families almost in their teenage years. Society at the time required children to assume all sorts of responsibilities earlier in their lives.

Things are totally different today. More and more children are being retained for a longer period in a dependant sort of status. Retention rates, not just in secondary education, but in tertiary education are extremely high and there is a forced dependency that goes along with it. So the extent to which this mitigates against an understanding of personal responsibility and liability makes the issue quite complicated. But it is certainly not the time to be assuming that children have a greater understanding of personal responsibility at a younger age. There are a couple of instances where that may be the case because of particular social learning experiences, but by and large I would think the problem is the other way, that young people are more immature than mature.

WSWS: What psychological impact would this case have had on this boy and what sort of help would be required to overcome this?

BW: This has been very distressing for him. As the evidence in the court showed, he will not talk to anybody about what happened. And I think this is just straight out terror. In a very simple way he realised that he had done something wrong and so, in his own way, decided he was not going to talk about it. This is not to say that he appreciated this when the incident occurred, but it dawned on him soon after.

A boy like this is very difficult to counsel and so the most important thing in terms of his healing will be to get him away from a situation where he feels that there is daily prejudice and victimisation occurring.

Even though he is not a terribly reflective boy this will have caused him a lot of pain, which he is very aware of, and that will have to be dealt with and overcome. His self-esteem

will have sunk far lower than his teachers identified prior to the incident. He will need help to rebuild this. You don't need to go over your past endlessly to improve your self-esteem. There are techniques in helping kids who are not intrinsically thoughtful or reflective. One of the most important things in this process would be for him to move out to another area.

WSWS: Could you comment on the media response to the case?

BW: The sensationalisation of things like this in the media is quite alarming. The sad thing is that it runs the risk of creating a repetition of the incident itself. A second aspect is that it gives young people a reputation that they don't deserve and can never put behind them. And finally—and this may seem paradoxical—in some children it creates an appetite to be at the centre of this kind of media attention. This may seem pretty strange but I have seen adults who, for a variety of reasons, completely lose sight of the harm that notoriety of this sort does to them and their families.

You have all sorts of grotesque revelations on the type of programs that play on people's weaknesses and this appetite for media attention. Shows like the Riviera television show from the US is one example and there are the so-called current affairs, exposé type programs, in Australia like *A Current Affair*, *Real Life* and similar shows. These programs are often pretty base and even though they are marketed as trying to help people, they do the opposite. I don't think the media has any appreciation of the damage it leaves in its wake.

WSWS: After the jury handed down its not-guilty verdict, the Director of Public Prosecutions said that he did not consider his *ex-officio* directive for a Supreme Court trial of the 11-year-old child incorrect and that he "would make the same decisions again if presented with the same circumstances". Can you comment on this?

BW: I don't know what motivated the DPP to say that. My reading of that was there must be some arcane aspect of the law that makes him feel obliged to say this. I hope that this is a correct interpretation.

WSWS: And if this is not the case?

BW: And if it's not, then it's shameful.



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