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Independent Report

The Political Seizure Of Schapelle Corby's Book Royalties

The Expendable Project
www.expendable.tv

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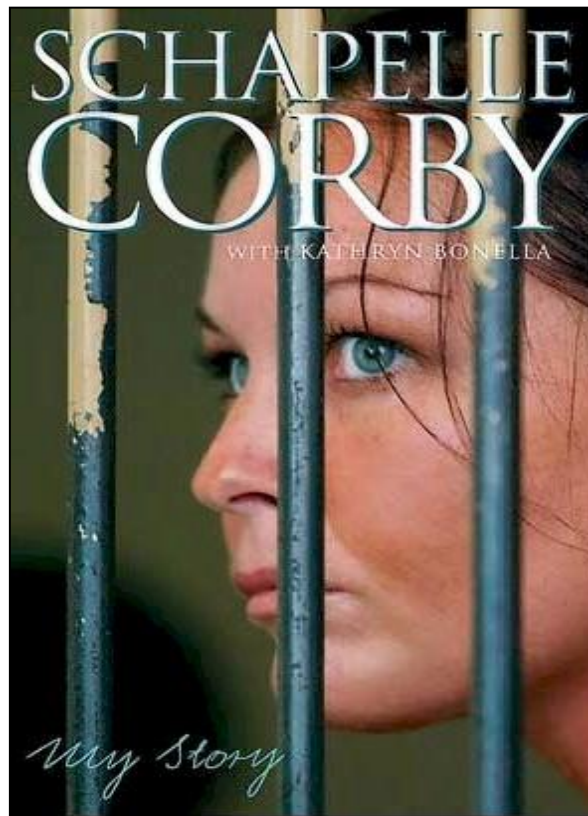
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1. INTRODUCTION

1.1 SCHAPELLE CORBY'S BOOK: *MY STORY*

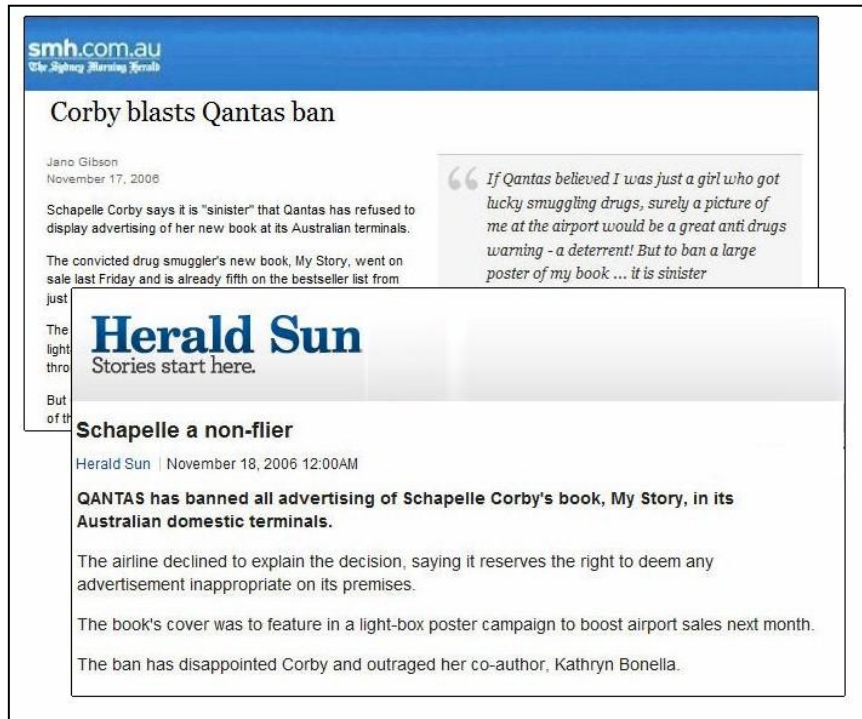
During the early months of her imprisonment, Schapelle Corby was desperate to set the record straight, as best she could, from her squalid cell. The only way she could do this was to recount her own experiences, describe exactly what had happened to her, and articulate her feelings.

Working closely with professional journalist Kathryn Bonella over a 10 month period, spending countless hours hand-writing notes in her cell, providing numerous diary entries, and meeting with Kathryn Bonella in the visiting area to impart her story, Schapelle finally achieved this goal through the book, '*My Story*', which was published on 10th November 2006. It was an immediate best seller in Australia.



The book itself was direct and honest. It openly documented interactions with a number of parties, and recorded, in chronological sequence, the questionable involvement of the AFP, SACL, Qantas, and the Australian government, in her tragic situation.

Given the role of some of these parties, as also revealed by *The Expendable Project*, it was a book which was greeted with hostility. Qantas, for example, banned all advertising for it in their Australian terminals.



Whilst Schapelle Corby paid an extremely heavy price for her openness, through indirect retribution by the authorities in Indonesia, it is apparent that the Australian government, and establishment, also set upon her with a vengeance.

The hostility towards her and her family, through media channels, was intensified (as evidenced by other *Expendable Reports*). But further, the government embarked upon a path to deprive her of the much needed funds which 'My Story' had started to generate.

1.2 THE COSTS OF INDONESIAN IMPRISONMENT

Schapelle Corby's family were not wealthy. Yet, from 8th October 2004, they were confronted with a myriad of substantial costs as they desperately fought for justice for Schapelle, and eventually for her very survival. This was against, what transpired to be, the government apparatus of two nations.

Legal costs, travel costs from Australia, hotel costs, food for Schapelle, and much more, all had to be covered. For a normal working class family this was, quite simply, beyond them, both in the short and long term.

Whilst initially, some of the costs were covered by media organizations seeking exclusive coverage, it was hoped that the book royalties would free them from such exploitation.

The royalties were also intended to provide for an extraordinary legal appeal, cover Schapelle's physical needs, and pay for the medical treatment of her already deteriorating condition.

The Australian government, however, had their own agenda, and were apparently intent on punishing her, by denying her this crucial form of revenue. Certainly, having adopted a high risk strategy in managing her appeal, a potential opportunity to curtail her future legal recourse would have been self-evident.

1.3 THE PROCEEDS OF CRIME

Schapelle Corby's book did not describe drug smuggling or any other crime, other than, perhaps, the crimes against her own human rights. It merely related, from her own perspective, what happened to her following her arrest.

The government was well aware of the wholesale abuses of her human rights during the Bali trial. They were also aware that she was convicted in Indonesia, under Indonesian law, and not under Australian law, where, for example, she would have been presumed innocent until proven guilty.

They were aware that the book was written in Indonesia, not in Australia.

They were aware that the book royalties were derived from a number of nations, not just from Australia. They were aware that the royalties were going to Indonesia to fund Schapelle Corby's basic needs, and not to Australia.

They were aware that never before, in the history of the nation, had proceeds of crime legislation been used to seize book royalties, let alone, book royalties in such disturbing circumstances.

Yet, without any moral, ethical, or established legal basis whatsoever, the government of Australia embarked on the pursuit of these funds, which Schapelle Corby so desperately needed.

The seizure itself was discussed and initiated from the very top of the Australian government. A number of ministers were involved, both in decision making and in public commentary.

Even members of the opposition party endorsed and encouraged confiscation:

[Introduction]

From: Clark, Christine on behalf of Ministerial
Sent: Monday, 27 November 2006 3:39 PM
To: Keelty, Mick; Lawler, John; VanDam, Trevor; Colvin, Andrew; Prendergast, Frank; Jevtovic, Paul; Phelan, Michael; Wardlaw, Grant; Negus, Tony; Gaukroger, Allan; Robertson, Jim; Ney, Mark; Newton, Mandy; Morris, Tim
Cc: Ministerial; Milin, Katrina; Pescott, Victoria; Boughton, Jennine; CT-Executive-Services-Team; McTavish, Sharon; O'Kane, Cath; IDG-OMC; Jerrim, Kim; Borucinski, Margaret
Subject: Question time Senate & House of Reps Monday 27 November 2006.
[SEC=UNCLASSIFIED]
Categories: SEC=UNCLASSIFIED

Classification : SEC=UNCLASSIFIED

Senate

The Minister took a question from Ludwig re comments that profits from Shapelle Corby's book could be confiscated under Proceed of Crime. Minister using AGD prepared PPQ in responding and confirming that the matter is being considered by the AFP & DPP.

It should be further noted that questions were asked in Parliament on the 27th of November 2006 by Senator Ludwig to Senator Ellison as to why the Commonwealth were not pursuing the proceeds of the sale of Corby's book.

INDONESIAN LEGAL PROCESS

Even more disturbingly, the action was initiated whilst Schapelle Corby was still in legal process within Indonesia, a fact which the Australian government was well aware of.

The signal to Indonesia, therefore, that the Australian government was initiating an action on the basis that Schapelle Corby had committed a crime, could not have been clearer.

Whilst the impact of this, upon her position before the Indonesian Supreme Court, can only be speculated, it is certain that both the Indonesian judiciary and Indonesian politicians were well aware of it.

2. THE SECRET TRIALS

2.1 INTRODUCTION

Another alarming aspect of the government's efforts to seize Schapelle Corby's money was the method they adopted.

This was no open action, through a fair, honest and transparent judicial system. It was practically the opposite.

The process was pursued behind closed doors, through what, in effect, was a series of secret hearings. Wikipedia attributes the following characteristics to such a process: *"The accused is not able to obtain the counsel of an attorney or confront witnesses for the prosecution, and the proceedings are characterized by a perceived miscarriage of justice to the benefit of the ruling powers of the society"*. It concludes that *"Secret trials have been a characteristic of almost every dictatorship of the modern era"*.

Schapelle Corby and her family were not permitted to represent themselves, or to have any input at all into the proceedings. They were not even aware that such a process had been launched, until the revenue had been frozen.

The legal proceedings were, in every respect, totally secret, with Schapelle Corby having no rights whatsoever, and being given no opportunity to defend herself against this politically driven action.

Her first knowledge of the situation came when papers were served on her in Kerobokan prison by the Indonesian Police, on 16th March 2007, stating that the Australian Federal Police had frozen all her money and assets.

2.2 PURSUING THE FUNDS

Schapelle Corby had begged the AFP to investigate the source of the marijuana in Australia. She had urged them to investigate herself, to search her home, property and bank account. But they had refused. When pressed by her family, and by supporters, in subsequent years, they continued to refuse.

However, when it came to an investigation to trace her book royalties, the AFP set about the task with vigour. They embarked on a major project of tracking and surveillance. This embraced not only Schapelle Corby, but her family, co-author Kathryn Bonella, and her publishers.

[The Secret Trails]

The investigation stemmed from a referral, originally made in November 2006, as confirmed by a prepared AFP response to a Senate committee:

- On 8 November 2006 the AFP received a referral from the **Attorney-General's Department** to investigate the allegation that Ms Schapelle Corby has derived literary proceeds from the publication of the book "My Story" and articles published in magazines.
- The AFP has accepted this referral for investigation.


For reasons known only to themselves, they named this large scale police operation '*Operation Bridie*'. From this point onwards, a series of secret hearings ensued.

COURT HEARING 1

The case was first presented to the District Court of Brisbane on the 12th December 2006, and was adjourned.

COURT HEARING 2

The case was reconvened on the 15th February 2007, under Judge SC McGill:

State Reporting Bureau  **Queensland Government**
Department of Justice and Attorney-General

Transcript of Proceedings

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Issued subject to correction upon revision.

DISTRICT COURT
CIVIL JURISDICTION
JUDGE MCGILL SC

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS Applicant
and
SCHAPELLE LEIGH CORBY Respondent

BRISBANE
..DATE 15/02/2007

RESTRICTED ACCESS TRANSCRIPT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the Child Protection Act 1999, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

1

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

[The Secret Trails]

That the action required considerable departure from the real life situation, and clear misuse of the legislation to succeed, is plainly evident from the partial list of factors referenced earlier. Any one of the aspects discussed could have been used to dismiss the case, and indeed, Judge McGill did so, on the basis that the royalties were not derived in Australia:

15022007 T10-13/JIR(BNE) M/T 2/2007 (McGill DCJ)	
MR FLANAGAN: It simply means this, that Schapelle Corby co-operated for a year in the writing of a book described as her autobiography for free.	1
HIS HONOUR: No, but she did it in Indonesia.	
MR FLANAGAN: She did that part of it in-----	
HIS HONOUR: And whatever she derived in return for that, she derived in Indonesia. I think that's - I think it's clear as crystal to me.	10
MR FLANAGAN: Had she simple co-operated in the - in the book being written in Indonesia without it being published in Australia, there would be no benefits.	
HIS HONOUR: Well, I mean, as I said on the last occasion, where the book is published I think is completely irrelevant. That is concerned with the issue of whether should derive profit from the publication of the book. It has nothing whatever to do with where the respondent derives anything.	20
It seems to me that the material that you've shown doesn't really cause any departure from the position that I set out in my reasons of the 12th of December 2006. Now, can you do any better or will I dismiss the application now?	
MR FLANAGAN: We would - may I just seek instructions, your Honour?	30
HIS HONOUR: Yes, all right.	
MR FLANAGAN: Would your Honour dismiss the application.	
HIS HONOUR: Yes, very well.	
MR FLANAGAN: Your Honour, may I ask you one thing though, I think at this stage I would ask that the files will be kept confidential.	40
HIS HONOUR: Yes, but in return, will your client pay the filing fees.	
MR FLANAGAN: Yes.	
HIS HONOUR: All right. Very well.	
TAKE IN ORDER	50

This is clearly the case, and Judge McGill was correct. Schapelle Corby was in an Indonesian prison when the book was conceived, written and published. The book was sold widely, and not only in Australia. For example, it was published in New Zealand in late 2006, where it became an instant big seller.

However, rather than accept this legally based judgement, the government immediately sought leave to appeal, in continued pursuit of its political agenda.

COURT HEARING 3

They made an application to the Supreme Court of Queensland the very next day, accusing Judge McGill of having "erred".

NOTICE OF APPEAL COURT OF APPEAL SUPREME COURT OF QUEENSLAND	
C.A. NUMBER: 1365 of 2007	
NUMBER:	
APPELLANT:	COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
RESPONDENT:	SCHAPELLE LEIGH CORBY

NOTICE OF APPEAL	
To the respondent	
And to the Registrar, District Court Brisbane	
TAKE NOTICE that the appellant appeals to the Court of Appeal against the whole of the order of the District Court.	
1. THE DETAILS OF THE JUDGMENT APPEALED AGAINST ARE:-	
Date of Judgment:	15 February 2007
Description of Proceedings:	BD/06
Description of parties involved in the proceedings	
Commonwealth Director of Public Prosecutions as Applicant	
AND: Schapelle Leigh Corby as Respondent	
Name of Primary Court Judge:	District Court Judge McGill SC
Location of Primary Court:	Brisbane
2. GROUNDS:-	
(1)	His Honour erred in finding there were no reasonable grounds to suspect (for the purposes of making a restraining order pursuant to s. 20 of the <i>Proceeds of Crime Act 2002</i> (Cth) that the benefit to the Respondent had been directly or indirectly derived in Australia.

Filed on behalf the Appellant Form 64, R.747(1)	Commonwealth Director of Public Prosecutions Level 19 15 Adelaide Street BRISBANE Q 4000 Reference: M Freier QR06101547 Telephone: (07) 3224-9444 Facsimile: (07) 3224-9473 Email: CommDPP.Brisbane@cdpp.gov.au
--	---

On 2nd March 2007 the Court of Appeal sat to consider the case, again *in camera*.

Following the initial judgement, three judges were assigned, who were sympathetic to the government's position: JA Williams, JA Keane and J Helman.

SUPREME COURT OF QUEENSLAND	
CITATION:	<i>DPP (Cth) v Corby</i> [2007] QCA 58
PARTIES:	DIRECTOR OF PUBLIC PROSECUTIONS (COMMONWEALTH) (applicant) v SCHAPELLE CORBY (respondent)
FILE NO/S:	Appeal No 1365 of 2007 DC No 577 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave to Appeal
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	2 March 2007
DELIVERED AT:	Brisbane
HEARING DATE:	2 March 2007
JUDGES:	Williams JA, Keane JA and Helman J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	1. Leave to appeal granted 2. Appeal allowed and the order of His Honour Judge McGill SC made 15 February 2007 dismissing the Amended Originated Application dated 15 February 2007 is set aside and in lieu thereof, Upon counsel for the applicant having undertaken to the Court on behalf of the Commonwealth that the Commonwealth will pay to any person adversely affected by the making or operation of this order such damages, if any, as may have been incurred by the making or operation of this order as the Court deems appropriate 3. Pursuant to s 20 of the <i>Proceeds of Crime Act 2002</i> (Cth) the following specified property of the respondent, namely any money or property held on behalf of the respondent by the respondent's brother-in-law, I Wayan Widyartha or by the respondent's sister, Mercedes Corby, up to the value of AUD \$267,750, must not be disposed of, or otherwise dealt with by any person except in the manner and circumstances specified in this order 4. Pursuant to s 20 of the <i>Proceeds of Crime Act 2002</i> the

These three individuals overturned the original judicial outcome, freezing not only the book royalties, but the earnings of Schapelle Corby's sister, Mercedes, from a totally independent magazine interview.

Again, Schapelle Corby and her family were oblivious to these secret court hearings, and they were again totally un-represented.

It's not known whether Williams, Keane and Helman made any effort to identify how inappropriate the application of the legislation was to Schapelle Corby's situation, but in effect, they gave the government everything they sought.

In addition, they ruled that any future hearing must be held in the Supreme Court, rather than in the original District Court.

Keane: "... For these reasons, I am respectfully of the opinion that the learned District Court judge erred in taking too narrow a view of s 153(1) and, consequently, of the scope of s 20(1) (d) of the Act."

Williams: "I agree with the reasoning of Keane J. The order sought should be made. Any consequential proceedings should be brought in the trial division of the Supreme Court."

Helman: "I agree."

This manipulated and convoluted use of the *Proceeds of Crime Act* instantly prevented any book or similar revenue being transferred to Bali to help Schapelle Corby survive her ordeal, or continue her legal challenge.

2.3 THE NOTIFICATION

On 16th March 2007, Schapelle Corby and her family were finally notified of the secret hearings, and their outcome.

Once again the Corby family found themselves confronted by the hostility of their own government.

Once again they were distraught, confronted by an organ of state of their own nation, when the need for support could hardly have been more pressing.

A desperate letter from Schapelle Corby's mother, exemplifies the distress they clearly felt:

On the 16th of March 2007, Schapelle Corby and Wayan Widiyartha (Husband of Mercedes), received official papers, hand delivered by Indonesian Police. These papers state that Mick Keelty (AFP), have frozen money and assets regarding Schapelle Corby's book. We have documents stating it has been taken to court three times.

1. 12th Dec 2006 – The District Court of Brisbane
2. 13th Feb 2007 – The District Court of Brisbane
3. 02nd Mar 2007 – Court of an Appeal Brisbane

There is to be another court day to appeal in the Supreme Court. We have not yet been advised of the date, as in any of these court days, we had not been advised of the dates.

There have been many books written by guilty people and by innocent people that have been charged as guilty. They have the proceeds of their books given to them. I would however, like to bring to your attention, that in Schapelle's book, she does not speak of a crime, as she is innocent. She tells the truth and tells of how she does not know how the marijuana came into her possession and how everything has gone wrong in proving her innocence.

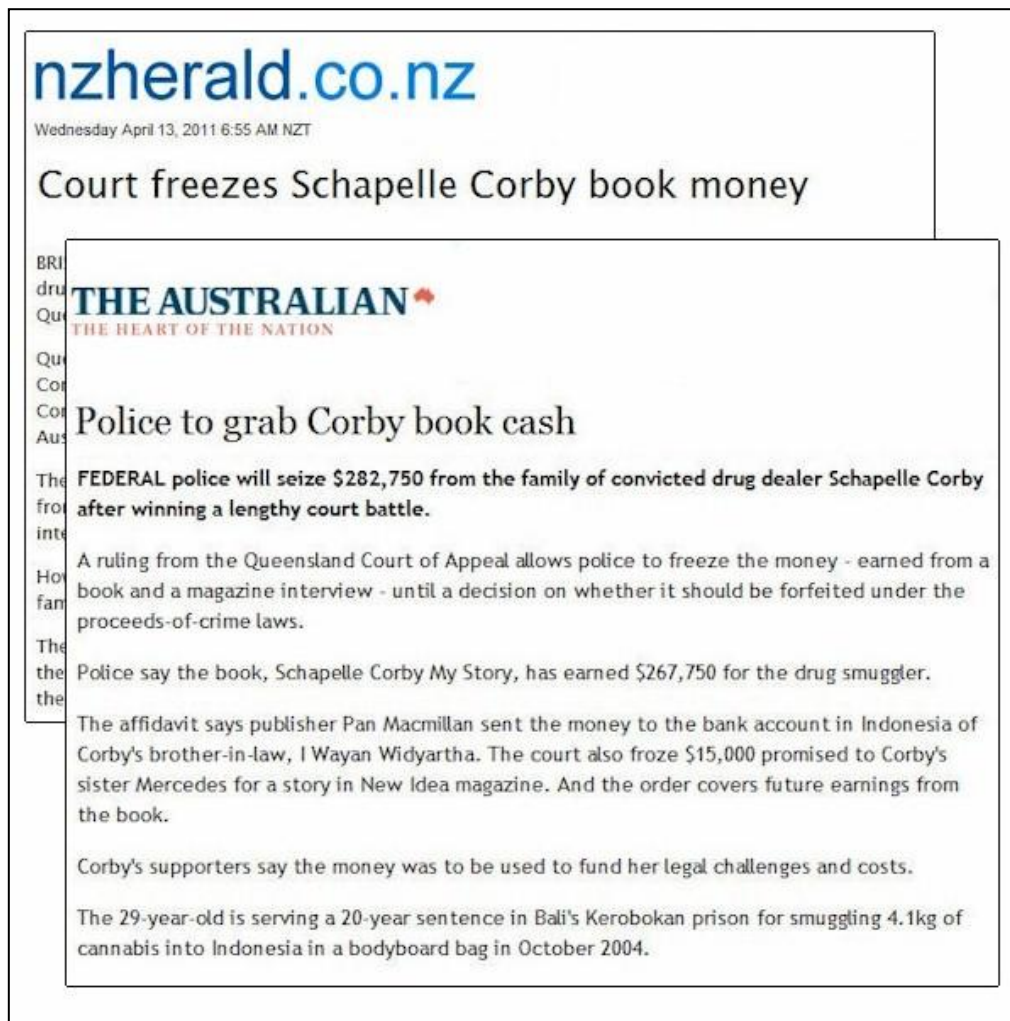
Mick Keelty (AFP), would not help Schapelle when she was a resident of Australia. He wouldn't fingerprint the bag that contained the marijuana and would not organize DNA tests to be done on the marijuana. He said it is out of his jurisdiction. Now, could you please tell me why he (Mick Keelty) is poking his bib in when Mercedes and Schapelle are no longer residents of Australia?

No money is being held for Schapelle. All money is being used to pay ongoing legal fees in Australia and in Indonesia, to look after Schapelle and her health while in Kerobokan Jail, Mercedes and her families living costs and family airfares to Indonesia. I would like to add, that Mercedes had given birth in Australia in January of this year and received a government document saying she is not entitled to a baby bonus as she is no longer a resident of Australia. The last Mercedes knew, she was an Australian citizen.

The money from New Idea has been frozen, in which that money was to be used to pay the lawyers in Australia. If the official trustee in bankruptcy takes custody of any of the money and we are unable to pay all legal costs here in Australia and in Indonesia, we want the money to be donated to the Tweed Heads Palliative care unit and Cancer unit.

I would just like to further add, the Australian Government is not helping us with our costs at all, and Schapelle is not and will not profit from her book. In my opinion, Mick Keelty, has a vendetta against my daughters, Mercedes and Schapelle. If he (Mick Keelty) does not like what is written in the book (My Story), it is the truth and everything that was said about him can be backed up. If this is the manner in which Mick Keelty (AFP) do business..... **GOD HELP AUSTRALIA!**

Within days, the media were reporting the situation, again courtesy of *government sources*.



INDONESIA


It should be stressed that Schapelle Corby's legal process in Indonesia was far from complete at this point in time.

By launching, and ultimately publicising, their action, the signal to Indonesia could hardly have been clearer. They were, in effect, endorsing the guilty verdict prior to its final delivery under the Indonesian judicial system.

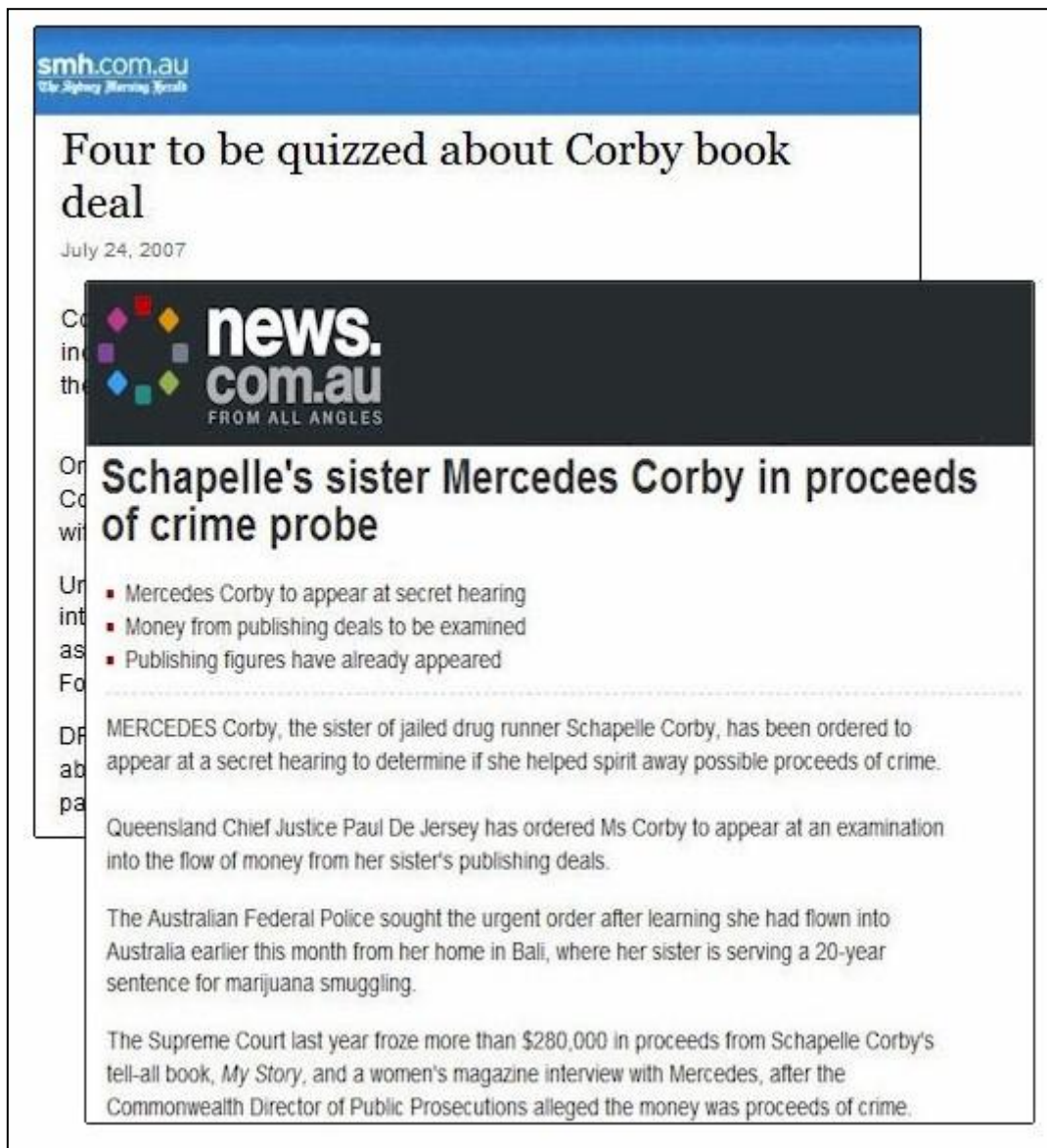
It should also be noted that this action was undertaken, in the context of the withholding of vital evidence by the Australian government from that same Indonesian judicial system, as documented in *The Transit Report*, and others. It was undertaken in the context of the many hostile and false statements made by the government, which are documented throughout *The Expendable Project*.

2.4 THE SEIZURE OF THE ASSETS

The AFP immediately set about seizing whatever assets they could. The following is a progress report to the Minister for Justice & Customs, Christopher Ellison:

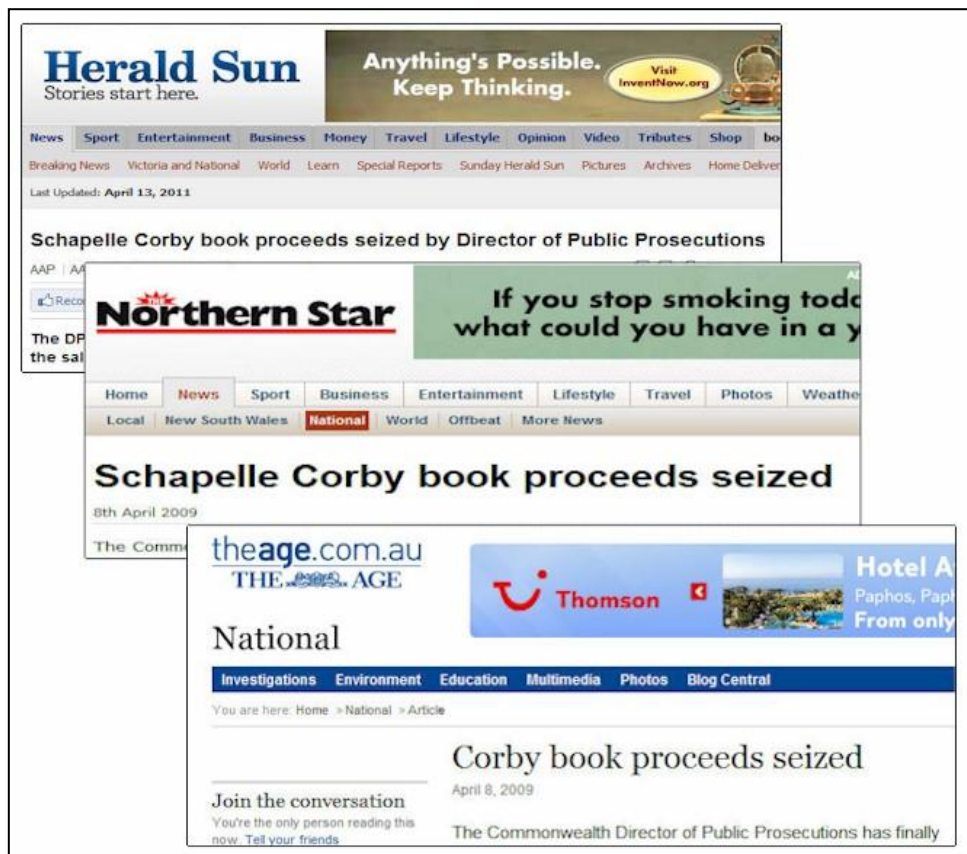
HIGHLY PROTECTED	
MINISTERIAL BRIEF	
 AFP AUSTRALIAN FEDERAL POLICE	Sub Number
AFP Ref: 3556018	
Minister for Justice and Customs	
OPERATION BRIDIE – PROCEEDS OF CRIME ACT 2002 EXAMINATIONS SCHEDULED TO EXAMINE THE LITERARY PROCEEDS OF SCHAPELLE CORBY	
Deadline: Routine.	
Purpose: For Information.	
Information:	
<p>AFP Operation Bridie relates to the investigation and restraint of the proceeds of crime believed to have been derived by Ms Schapelle Corby through the exploitation of her criminal notoriety contrary to Section 20 of the <i>Proceeds of Crime Act 2002</i> (POCA).</p> <p>2. The restraint action relates to literary proceeds obtained from two publications, a book titled <i>My Story</i> by Schapelle Corby with Kathryn Bonella and an article titled <i>It's My Last Chance to have a Baby - Schapelle's Prison Diary</i>, published in the <i>New Idea</i> magazine.</p> <p>3. On 12 December 2006, a Section 20 Literary Proceeds Restraining Order application was filed at the Brisbane District Court and reheard on 15 February 2007. At that time Judge McGill found the court could not determine where the benefit, being the monies generated from the sale of Corby's story, had been derived and he held no reasonable suspicion that it was in Australia and therefore would not issue the order, consequently dismissing the case.</p> <p>4. On 2 March 2007, the Commonwealth Director of Public Prosecutions (CDPP) appealed this decision in the Supreme Court of Queensland. Section 20 POCA Restraining Orders were subsequently granted for \$282,750.00 and were inclusive of all future royalties.</p> <p>5. As part of the ongoing investigation, Examination Orders under Section 180 of the POCA are being utilised. In accordance with the legislation these examinations will take place in private and it is expected that the examiner will give directions preventing or restricting disclosure of the content of the hearing.</p> <p>6. The Examinations will take place in the Administrative Appeals Tribunal, Sydney on 27 and 28 September 2007. The following people will be examined:</p>	

This also initiated a lengthy period of investigation and intrusive surveillance of Schapelle Corby's family and others, by the AFP, for which the term *harassment* would not be misplaced.



With an operation of this nature ongoing, it is little wonder that the Corby family, who had simply sought to help Schapelle survive by managing her book revenue, were reported to have been frightened of the AFP, and persecuted by their own government.

The inevitable outcome of the AFP's actions was eventually reported in the media:



The government had succeeded in depriving Schapelle Corby of this essential revenue, thus preventing her from launching an extraordinary legal appeal. This action also contributed to the substantial deterioration in her mental and physical well being.

3. SUMMARY & CONCLUSIONS

3.1 SUMMARY

There is no doubt that this seizure was politically driven, from a ministerial level, and that it involved the same individuals who were active in a number of the other disturbing aspects of the case.

The requisite re-interpretation of the *Proceeds of Crime Act*, undertaken behind closed doors, also brought the legislation itself, and the Australian judiciary, into disrepute.

The book covered a fight for justice, not a crime. It was written in a foreign country. The royalties themselves were earned internationally, not just in Australia, and they were destined for a person in that foreign country, not for someone resident in Australia.

Even the alleged crime itself raised the most basic of issues.

Schapelle Corby was denied a fair and reasonable trial, which the government was well aware of. Her legal and human rights were repeatedly abused, as documented in the report: *'Breaches of the Indonesian Code of Criminal Procedure, and the UN International Covenant on Civil and Political Rights, in the Schapelle Corby Trial'*. In addition, the trial became politically charged.

Accepting this as the basis for a *'proceeds of crime'* seizure, not only endorsed these abuses, but created a precedent, positioning the state of Australia accordingly with respect to similar human rights abuses.

It is also worth re-emphasizing that this occurred before Schapelle Corby's legal recourse in Indonesia had been exhausted, with the clear signal this must have sent to the Indonesians.

Further, the AFP had been requested by Schapelle Corby, and others, to investigate the alleged crime in Australia, but had refused point blank. The contradiction, of refusing to investigate a crime in Australia, but then enthusiastically investigating contrived proceeds of the same alleged crime, is self evident.

Finally, the concrete reality of the impact of the seizure on this Australian citizen was completely ignored. Schapelle Corby's dire circumstance, her desperate need for the funds for medication, her mounting legal costs, and even the need for funding to cover food, were never taken into account.

Ignoring all the pertinent facts of the situation, the government proceeded, and used this legislation to seize book royalties for the first and only time in Australian history.

It is little wonder that this episode is widely regarded as the purely political seizure of monies which were fundamental to Schapelle Corby's chances of survival.

It is often regarded as a calculated and ruthless political act, designed to prevent Schapelle Corby from launching an extraordinary appeal, which may again have created focus on the situation at Australian airports, and undermined the policy of international appeasement.

3.2 COVERING TRACKS

Given the disturbing political agenda which drove the seizure, it is perhaps not surprising that the DPP sought to cover the tracks of those involved, even years later.

As documented within other *Expendable Reports*, it emerged that the DPP alone held a staggering 7,500 documents relating to Schapelle Corby.

However, when efforts were made to view this material via a *Freedom of Information* request, the DPP refused point blank to allow access, claiming that it involved too much work. They refused to explain why they held so many documents relating to a single citizen.

In their desire to protect those involved in this seizure, the government, through the DPP, had revoked yet another civil and legal right from Schapelle Corby: the right of a citizen to access information on themselves.

FOOTNOTE:

When it became obvious to Schapelle Corby's family that the book royalty funds would be seized, and therefore lost, they requested that the money seized be used to help others, and donated to the Tweed Heads Palliative Care unit and Cancer unit. The request was denied.



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