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Independent Report

**Breaches of the Indonesian Code of Criminal
Procedure, and the UN International Covenant on
Civil and Political Rights, in the Schapelle Corby
Trial**

An Assessment of the Case

Main Findings of the original Independent Report
Published in May 2008.

The Expendable Project
www.expendable.tv

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1. INTRODUCTION

The general nature of Schapelle Corby's Bali Trial is well documented. The following script, for example, is derived from a popular YouTube video:

- 1- The value of marijuana in Indonesia was much lower than in Australia. There was no motive.
- 2- Schapelle is a non-drug user, with no criminal record, and she tested negative for everything
- 3- They refused to weight her luggage. If it was heavier than when she left they would have had to release her.
- 4- She was illegally interrogated for 9 hours
- 5- They refused to test the drugs for country of origin. If they were Indonesian they would have to free her.
- 6- They refused to DNA or fingerprint the evidence
- 7- They refused to allow her cross examine customs officers
- 8- They presumed guilt and not innocence
- 9- They refused to seize CCTV footage from the airport
- 10- They burned the evidence so it could never be used to free her
- 11- The judge had never acquitted anyone in 500 cases
- 12- They talked about sending a warning to other Australians, a clear political intervention.
- 13- The 20 year sentence was more than murderers, rapists and terrorists often receive
- 14- She will never have kids, never see them play, and will probably die in a filthy cell.

In addition, in other reports, *The Expendable Project* has shown that the Australian government and the Australian Federal Police (AFP) withheld critical primary evidence both from Schapelle Corby and the court itself.

The *Mutual Evasion Report*, and others, also shows that they took a number of steps to avoid fulfilling their responsibility to provide full support, for example, with respect to the testing of the marijuana for country of origin.

This report, however, focuses on courtroom matters, and documents specific breaches of the *Indonesian Code of Criminal Procedure*, and the *UN International Covenant on Civil and Political Rights*.

2. GENERAL BREACHES

The following breaches occurred with respect to general preliminary aspects:

Articles 54 and 56 (1) – *The right to legal aid lasts throughout the whole proceedings whenever the defendant is interrogated, from the beginning of the preliminary examination by the police interrogator to the trial, and at every stage.*

Observation

Schapelle Corby did not have legal counsel at the preliminary interrogation at Denpasar airport.

Article 177 (1) – *The right to the assistance of an interpreter free of charge if one cannot understand or speak the language used in court. The interpreter, to be appointed by the judge/chairman of the session, must promise under oath or pledge to truly interpret all that has to be interpreted.*

Article 53 – *Extends the right outlined in Article 177 (1) to the preliminary examination.*

Observation

Schapelle Corby did not have an interpreter at the preliminary interrogation. She was interrogated by airline staff whose English-language proficiency has never been established and she did not understand Indonesian. For example, when Customs Officer Winata was interviewed by Liz Hayes on '60 Minutes' in November 2004, her questions to Winata were translated into Indonesian, and Winata's responses, in Indonesian, were translated by an interpreter into English. Would this have been necessary if Winata had had good English speaking skills and good English listening skills?

Article 51 – *The suspect or defendant has the right to be clearly informed in a language he understands about what has been presumed about him at the start of an examination or the charges brought against him: a formulation which already implies the right to the assistance of an interpreter. (See Article 53, above)*

Articles 52 and 153 (2) - *When the suspect is interrogated he must be in the condition to speak freely without pressure being brought to bear upon him by anyone and in any form.*

Observation

Best calculations suggest that Schapelle Corby was interrogated for nine hours – after 12 hours of travel. The drive to Brisbane Airport began at 4.30am, so Schapelle Corby would have awakened around 3.30 am to prepare for the drive to the airport.

[General Breaches]

How much sleep did she have that night? How long had she been awake by the time the preliminary interrogation started? At the very least she must have been suffering from travel fatigue, a recognized medical condition, and would have been in no condition to be interrogated, especially without the assistance of a lawyer and interpreter.

Articles 69 and 70 (1) – *If the suspect has been arrested or detained, the legal adviser in turn has the right to be present and to speak with his client whenever he is being questioned, from the moment of arrest or detention and at all stages of the proceedings.*

Observation

Schappelle Corby's access to a lawyer appears to have been hampered or denied for many hours. If "prima facie" evidence is all that the Indonesian justice system needs to convict a suspect, why did the airport authorities interrogate Schappelle Corby for so long before allowing her to contact a lawyer?

Article 66 - *The suspect or defendant shall not be burdened with the duty of providing evidence.*

Observation

The following events resulted in Schappelle Corby being forced to seek evidence of any kind, in a bid to prove her innocence:

- The outer plastic bag was handled by many people without protective gloves before the bag could be tested for fingerprints.
- The total weight of the baggage was not compared with the total weight checked in at Brisbane airport.
- Neither an audio nor a visual recording was presented to the court of the initial discovery of the drugs at the customs counter, nor of the initial interrogation which took place in the interview room later.
- The X-ray machine was not equipped to take photographs - so no image was available to show the location of the marijuana in the boogie-board bag before it got to customs.

Article 72 – *The evidence collected by the investigators is accessible to the suspect and his counsel. On their request, the official concerned must provide them with a copy of the report of the preliminary examination.*

Observation

Access to the marijuana, for example, for forensic testing, was refused throughout.

General breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (3) (a) - *To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.*

Observation

Self evident breach.

3. CHRONOLOGICAL BREACHES

Monday, 11 October 2004:

On this day, Lily Lubis (case Lawyer) stated that: "*There is no bail for drug-related offences in Indonesia, the only way to get her out is to prove she didn't do it.*"

Breaches of the Indonesian Code of Criminal Procedure (KUHAP):

Article 8 - *Presumption of Innocence.*

Observation

The defence were in error when they stated that "*The only way to get her out is to prove she didn't do it.*" And the police, prosecution and judges appear to have conformed to this false assumption even though it does not comply with Indonesian law.

Breaches of Indonesian Human Rights Law:

Article 18 - *Every person who is arrested, detained, charged or brought before a court has the right to be considered innocent until proven guilty.*

Observation

Indonesian law presumes innocence, and in fact, the term itself was used in the final verdict. Therefore, the onus is on the prosecutor to prove guilt, not on the defendant to prove innocence. Failure to apply this fundamental principle precludes the establishment of reasonable doubt.

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (2) - *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

Observation

Self evident breach.

Tuesday, 12 October 2004:

On this day Bambang Sugiarto, Head of Bali's drug squad, claimed the marijuana was "*high purity and quality and would sell in Bali for about 14 times the price of locally grown marijuana.*"

The Bali police, prosecutors and court accepted this claim as the truth without any supporting evidence.

Despite their continuous and repeated demands, the defence were denied access to the evidence to test the marijuana for its quality and origin and to have the inner plastic bag and the inside surface of the boogie-board bag tested for fingerprints. Throughout the trial, the High Court appeal and Supreme Court appeal, the defence was denied access to the evidence.

Finally, on 17 March 2006, the whole of the evidence was destroyed despite last minute pleas by the defence to preserve a sample.

Breaches of the Indonesian Code of Criminal Procedure (KUHAP):

Article 72 – The evidence collected by the investigators is accessible to the suspect and his counsel. On their request, the official concerned must provide them with a copy of the report of the preliminary examination.

Observation

Despite this being a critical aspect to the case and a fundamental pre-requisite for a fair trial, access was denied throughout.

Please refer to the following for a full account of this issue:
Appendix A - The Refusal To Test The Evidence

Monday, 1 November 2004:

Lily Lubis stated: "*Now we have to prove that it (the marijuana) does not belong to her.*"

Breaches of the Indonesian Code of Criminal Procedure (KUHAP):

Article 8 - Presumption of innocence.

Observation

The defence were in error when they stated "Now we have to prove that it (the marijuana) does not belong to her." And the police, prosecution and judges appear to have conformed to this false assumption even though it does not comply with Indonesian law.

Indonesian law presumes innocence, and in fact the term itself was used in the final verdict. Therefore, the onus is on the prosecutor to prove guilt, not on the defendant to prove innocence. Failure to apply this fundamental principle precludes the establishment of reasonable doubt.

Article 66 - *The suspect or defendant shall not be burdened with the duty of providing evidence.*

Observation

Article 66 was not upheld. The defence attempted to prove Schapelle Corby's innocence because they were always working under the premise that it was their job to prove innocence. They were wrong. It was always the prosecution's responsibility to prove guilt. A failure to prove guilt must therefore result in acquittal.

Breaches of Indonesian Human Rights Law:

Article 18 - *Every person who is arrested, detained, charged or brought before a court has the right to be considered innocent until proven guilty.*

Observation

Self evident breach.

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (2) - *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

Observation

Self evident breach.

Week beginning Monday, 8 November 2004:

It is reported that "*Balinese police say this case is clear-cut: Corby was caught red-handed, so now it's a matter of the sentence she's given.*"

Breaches of the Indonesian Code of Criminal Procedure (KUHAP):

Article 8 - *Presumption of innocence.*

Observation

There is a clear assumption of guilt in this statement which breaches Article 8. The police, prosecution, judges and the defence conformed to this false assumption even though it does not comply with Indonesian law.

Indonesian law presumes innocence, and in fact the term itself was used in the final verdict. Therefore, the onus is on the prosecutor to prove guilt, not on the defendant to prove innocence. Failure to apply this fundamental principle precludes the establishment of reasonable doubt.

Breaches of Indonesian Human Rights Law:

Article 18 - *Every person who is arrested, detained, charged or brought before a court has the right to be considered innocent until proven guilty.*

Observation

Self evident breach.

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (2) - *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

Observation

Self evident breach.

Saturday, 5 March 2005:

The *Sydney Morning Herald* reports: from the outset, prosecutor Wiswantanu insisted that the only way he would accept that Schapelle Corby was innocent was proof - visual or by weight - that the marijuana was not in the boogie-board bag when she checked it in at Brisbane Airport, or visual evidence of someone putting the drugs in the boogie-board bag.

Breaches of the Indonesian Code of Criminal Procedure (KUHAP):

Article 8 - *Presumption of innocence.*

Observation

The prosecutor presumed guilt when he set parameters for evidence for the defence. The prosecutor's role is to prove guilt, not presume it.

Article 66 - *The suspect or defendant shall not be burdened with the duty of providing evidence.*

Observation

The following events resulted in Schapelle Corby being forced to seek any kind of evidence in a desperate bid to prove her innocence:

- The outer plastic bag was handled by many people without protective gloves before the bag could be tested for fingerprints.
- The total weight of the baggage was not compared with the total weight checked in at Brisbane airport.

- Neither an audio nor a visual recording was made of the initial discovery of the drugs at the customs counter, nor of the initial interrogation which took place in the interview room later.
- The X-ray machine was not equipped to take photographs - so no image was available to show the location of the marijuana in the boogie-board bag before it got to customs.
- Denial of access to the evidence for forensic tests.

Breaches of Indonesian Human Rights Law:

Article 18 - *Every person who is arrested, detained, charged or brought before a court has the right to be considered innocent until proven guilty.*

Observation

Self evident breach.

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (2) - *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

Observation

Self evident breach.

Wednesday, 30 March 2005:

Judge Sirait revealed today that he could not comment publicly on the judges' current thinking about Schapelle Corby's guilt or innocence.

Judge Wayan Suastrawan echoed Sirait's comments: "I cannot tell you whether we think [Ford] was credible or not but of course we will consider what he talked about."

Sirait fails to uphold these words later in the trial.

Wednesday, 6 April 2005:

This is *The Bulletin's* cover date, but it would have been distributed a week or more before this date. Judge Sirait tells *The Bulletin* that Schapelle Corby is "*a polite and very well-dressed young girl*", and says he awaits evidence that conclusively proves her innocence.

Breaches of the Indonesian Codes of Criminal Procedure (KUHAP):

Article 158 – *A judge is prohibited from showing by his attitude or by a remark during the trial whether or not he thinks the defendant is guilty.*

Observation

Sirait's pre-verdict comments to *The Bulletin* reveal that at this time, unless further evidence is produced, he has already decided Schapelle Corby is guilty.

Article 8 - *Presumption of innocence.*

Observation

Sirait's pre-verdict comments to *The Bulletin* that he awaits evidence that conclusively proves her innocence revealed that he ignored Article 8. According to the law, he is supposed to be awaiting evidence of her guilt not her innocence.

Article 66 - *The suspect or defendant shall not be burdened with the duty of providing evidence.*

Observation

Sirait's pre-verdict comments to *The Bulletin* that he awaits evidence that conclusively proves her innocence revealed that he ignored Article 66.

Breaches of Indonesian Human Rights Law:

Article 18 - *Every person who is arrested, detained, charged or brought before a court has the right to be considered innocent until proven guilty.*

Observation

Self evident breach. This would also constitute a clear breach of any Judge's Code of Ethics

Breaches of KORPRI rules:

Along with all other public servants, judges must be members of an association called KORPRI which obliges all members to follow the association's rules and policy guidelines, enforceable by sanctions. Comments such as those made above could not align with such rules.

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (2) - *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

Observation

Self evident breach.

Tuesday, 19 April 2005:

It was reported today that Bambang Sugiarto said he was very concerned about the recent increase in drug smuggling cases involving Australians in Bali and said: "*I think we need to send a warning to other Australians.*"

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 26 - All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Observation

Sugiarto's comment singling out Australians is discriminatory on the grounds of national origin and also potentially reveals his personal prejudice against Australians. At such a key stage of the trial, it clearly can be interpreted as setting the scene for the sentence which followed.

Thursday, 28 April 2005:

The eleventh court session. On the day that the defence team delivered its final submission, Judge I Gusti Lanang Dauh was reading a book in court called: *Life Imprisonment*.

Outside the court, Judge Dauh explained he was reading the book before deciding Schapelle Corby's sentence. "*Because there is a demand from the prosecutors for a life sentence, I am reading this book as a reference to add to my knowledge.*"

It was still too early to reveal if he would give prosecutors what they had requested. "*That's a secret*" he said.

Breaches of the Indonesian Codes of Criminal Procedure (KUHAP):

Article 158 – A judge is prohibited from showing by his attitude or by a remark during the trial whether or not he thinks the defendant is guilty.

This judge showed by his attitude in court that he had already decided Schapelle Corby was guilty and only the sentence needed to be determined.

Article 8 - Presumption of innocence.

Observation

This judge's attitude in court strongly suggests that he did not comply with the spirit of Article 8.

Breaches of Indonesian Human Rights Law:

Article 18 - *Every person who is arrested, detained, charged or brought before a court has the right to be considered innocent until proven guilty.*

Observation

Self evident breach.

This would also constitute a clear breach of any Judge's Code of Ethics

Breaches of KORPRI rules:

Along with all other public servants, judges must be members of an association called KORPRI which obliges all members to follow the association's rules and policy guidelines, enforceable by sanctions. Comments such as those made above could not align with such rules.

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (2) - *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

Observation

Self evident breach.

Thursday, 28 April 2005:

Judge Sirait says the defence team has not "*done enough*" to prove Schapelle Corby's innocence. As far as can be determined, he made the remarks today but the interview was published in *The Weekend Australian* on 30th April.

Judge Sirait said: "*From Corby's defence I haven't heard anything to prove she is innocent.*"

Judge Sirait said Schapelle Corby's final plea (Thursday 28 April) made no difference: "*Not enough. He or she has to prove he or she is not guilty. Every inmate would say: 'I'm not guilty'. I'm still looking for something related to the law.*"

Regarding the sentence, Sirait is reported to have said: "*I'm already 75-percent decided, but I can't tell you our conclusion.*"

Clearly, if he is already 75 per cent decided about the sentence, it means that he has already decided whether she is guilty or innocent.

Judge Sirait also revealed he had never acquitted an accused drug offender in the estimated 500 such cases he had presided over in his 15 years on the bench.

In another article it is reported that Sirait made his controversial remarks to the Nine Network via a translator.

Vasu Rasiah says today that he is puzzled by the statement from Judge Sirait that he is 75 per cent decided on what sentence Schapelle Corby should be given. Vasu Rasiah: *"I'm surprised the judge can come openly and make a statement like that. My gut feeling is that they are experienced judges - they can see there is nothing conclusively that says Schapelle Corby is guilty."*

Breaches: see Thursday 5th May 2005

Thursday, 5 May 2005:

Vasu Rasiah criticised Judge Sirait over his pre-verdict observations that Schapelle Corby had not done enough so far to prove her innocence and said those comments could pave the way for a higher court appeal. Rasiah said the comments were amazing. *"I cannot believe a judge as senior as him would say that. I don't think the judge has any right to say that."*

Breaches of the Indonesian Codes of Criminal Procedure (KUHAP):

Article 158 – *A judge is prohibited from showing by his attitude or by a remark during the trial whether or not he thinks the defendant is guilty.*

Observation

Sirait's pre-verdict comments cast significant doubts on his objectivity.

Article 8 - *Presumption of innocence.*

Observation

Sirait's pre-verdict comment: *"He or she has to prove he or she is not guilty"* revealed that he completely ignored Article 8.

Article 66 - *The suspect or defendant shall not be burdened with the duty of providing evidence.*

Observation

Sirait's pre-verdict comment: *"He or she has to prove he or she is not guilty"* revealed that he ignored Article 66.

Breaches of Indonesian Human Rights Law:

Article 18 - *Every person who is arrested, detained, charged or brought before a court has the right to be considered innocent until proven guilty.*

Observation

Self evident breach.

This would also constitute a clear breach of any Judge's Code of Ethics.

Breaches of KORPRI rules:

Along with all other public servants, judges must be members of an association called KORPRI which obliges all members to follow the association's rules and policy guidelines, enforceable by sanctions. Comments such as those made above could not align with such rules.

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (2) - *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

Observation

Self evident breach.

Sunday, 1 May 2005:

This weekend Sugiarto made a number of controversial comments on Bali television station SCTV and which were aired on Channel Nine. The interview was conducted in the Indonesian language. He stated that:

- The case had not been properly completed and only 50 per cent of the necessary work had been carried out.
- The prosecution case has many gaps and weaknesses.
- The prosecution case was only half there because Indonesian Police have never done any fingerprinting. No fingerprinting was ever conducted on the drugs or on the boogie-board bag.
- The unlocked boogie-board bag had been contaminated by the number of people who handled it before it reached police headquarters.

· The lack of video footage of the arrest at the airport was the prosecution's main shortcoming.

In the Nine Network's *Sunday* program, Ross Coulthart observed that by contrast, 'when the Bali Nine were arrested last month, Indonesian Police were at pains to videotape themselves wearing gloves to ensure no evidence was contaminated. But nothing was filmed of Corby's arrest, nor the crucial search at Airport Customs where she disputes stopping officers from searching her bag'.

Breaches of the Indonesian Code of Criminal Procedure (KUHAP):

Article 72 – The evidence collected by the investigators is accessible to the suspect and his counsel. On their request, the official concerned must provide them with a copy of the report of the preliminary examination.

Observation

Access to the marijuana, for example, for forensic testing, was refused throughout.

Friday, 27 May 2005:

Schappelle Corby is pronounced guilty and sentenced to 20 years in prison.

Breaches of the Indonesian Code of Criminal Procedure (KUHAP):

Article 183 – A criminal charge is proved when the judge is convinced that the criminal act has really been committed and that it is the defendant who is guilty of perpetrating it, based on at least two pieces of evidence.

The judge based his decision on:

Evidence 1: the marijuana was found in her boogie-board bag.

Evidence 2: the disputed testimony of customs officer Winata, and others, whose English-language proficiency was never tested.

Article 199 (1) (b) – A defendant can be acquitted on the grounds of insufficiency of proof.

Observation

This is the concept known as “reasonable doubt” and should have been applied to Schappelle Corby because there was insufficient proof of her guilt.

Breaches of the International Covenant on Civil and Political Rights (ICCPR):

Article 14 (1) - All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Observation

Self evident breach.

4. FURTHER BREACHES & NOTES

- Schapelle Corby was charged under Article 82 which appears to be reserved for those working in a drug syndicate rather than alone. This would be a breach of the special narcotics laws of the Criminal Code (KUHAP). According to the prosecution indictment, if there is not enough evidence to convict her of trafficking, she could be convicted under two lesser laws carrying maximum prison terms of 15 years and 10 years respectively. So there is significant doubt about the propriety of the conviction under Article 82.
- The destruction of the evidence before all legal appeals had been exhausted. There are precedents in Indonesia where samples of drugs have been preserved before the bulk was destroyed. The authorities refused to preserve a sample from Schapelle Corby's case.
- The influence of public opinion and prejudice on the judges' decision. See: Appendix B - The Principle Of Judicial Independence And Impartiality
- The English-language proficiency of Winata, and the other airport witnesses who testified for the prosecution, was challenged at least twice in court but never tested.
- The value of Australian marijuana in Bali was never proved.
- The existence of Australian marijuana on the streets of Bali was never proved.
- Lily Lubis's post-trial un-cooperation in providing Erwin Siregar with records of court proceedings and the police evidence brief could have been a breach of law.

APPENDIX A

The Refusal To Test The Evidence: Chronology

Tuesday, 12 October 2004:

Bali police “*confirmed that the marijuana was of high purity and quality and would sell in Bali for about 14 times the price of locally grown marijuana.*” Sugiarto said that high-quality marijuana heads were known on the streets of the tourist island as “*Lemon Juice*” and sold for about 70 million rupiah (\$10,535) a kilogram. He said local cannabis, sourced from Aceh, is known as “*Cimang*” or “*Aceh Gold*” and sells for only 5 million rupiah a kilogram.[3]

Observation

How can the police “*confirm*” the quality of the marijuana without conducting forensic tests?

Sugiarto used the following conversion rate: Rp 6644 = AUD \$ 1.00, which is accurate for that month. He claims that 4.1 kg of “*Lemon Juice*” is worth AUD \$ 43,193 and that 4.1kg of local cannabis from Aceh is worth AUD \$ 3,085.

Contrast Sugiarto’s claims with the information from an article published in *The Jakarta Post* one week before Schapelle Corby’s trial begins. [1] On 19 January, Sugiarto estimated the value of 4.1kg of “*Lemon Juice*” at AUD \$ 17, 677 - less than half the value that he claimed it was in October 2004.

Even accepting figures which are widely considered to be grossly exaggerated, the question of why an Australian citizen would risk life in prison or a firing squad, for less than \$18,000 remains unanswered. 4.1kg of high quality Australian-grown marijuana would be worth far more in Australia.

In the same month that Schapelle Corby was arrested, a man was arrested in South Jakarta for possession of 1.56 kilograms of marijuana.[2] The prosecutor told the court that the defendant had purchased the marijuana for Rp 2 million per kilogram and sold it for Rp 2.2 million a kilogram. These figures put the value of 4.1kg of local cannabis at AUD \$ 1,357.

Observation:

In October 2004 Sugiarto made unsubstantiated claims about Australian marijuana. He created the impression that it had long been available in Bali but provided no proof. He made reckless claims about the value of this hypothetical Australian marijuana on the streets of Bali for which he provided no evidence, and he also more than doubled the price of local marijuana at that time.

Week beginning Monday, 11 October 2004:

Bali police said it was the largest quantity of cannabis taken into Bali, and the first such case involving an Australian.[4]

Lily Lubis took her former client Bobby Griffiths to inspect the marijuana at the police station to determine its quality, and introduced him to the local police as “an expert”. *“I know good stuff from bad,”* says Bobby, *“and this stuff was average, it wasn’t like the high-quality stuff you got big money ... I know good shit from bad. You could just tell.”* He based his evaluation on personal experience and prior usage in his younger years. [5]

Monday, 1 November 2004:

Defence lawyers say they will this week request a meeting with consular officials to seek help from Australian authorities to have their own independent forensic tests conducted on the drugs to determine the THC content or strength of the marijuana in a bid to prove if it is from Australia or Bali. Before the Australian Federal Police can conduct the tests there must be a request from the Australian Embassy.

The defence says they have not received any positive response to the request nor to requests for information from Australian Airlines on the weight of the luggage when it was checked in at Brisbane airport. *“We did contact the AFP through the consulate but we are still waiting for their response,”* Lubis said.

Sugiarto said no fingerprint tests had been conducted on the bag *“because too many hands had touched the bag after its discovery.”* [6]

Thursday, 25 November 2004:

In a radio interview Alexander Downer (Australian Minister of Foreign Affairs) says:

“What we are trying to do at the moment is get an analysis done of the cannabis that was found in her boogie-board bag, which was over four kilograms of cannabis. That’s an awful lot of it.”

Downer said they also wanted to examine the plastic bag in which the cannabis was found.

“If we can establish where the cannabis came from, that might or might not be of some assistance.”

It is a very curious case this - cannabis is, I am told, much cheaper in Bali than it is in Australia, so why would somebody be taking a large amount of cannabis from Australia to sell in Indonesia.

The quality (of cannabis from Australia) is apparently better. I accept that is one possible explanation, but the price difference is apparently absolutely enormous.”
[9]

3 December 2004:

Having sighted Schapelle Corby's signed consent for the tests to be done, the AFP formally offered assistance to the Indonesian police to conduct DNA tests on the cannabis. [12]

Keelty claims, as a result of a request from Schapelle Corby's defence team to the Australian Government, the AFP wrote to the Indonesian National Police offering forensic assistance (including fingerprinting) in relation to their investigation.[13]

The Australian Consulate General in Bali confirmed Schapelle Corby's consent via a memo.[62]

Late December 2004:

Almost three months after Schapelle Corby's arrest and after repeated requests to have the evidence fingerprinted, the defence lawyers confront Sugiarto.

Sugiarto had the bags brought to his office in Lubis's presence. "*He confirmed the inside bag had not been removed. He said he would have it fingerprinted,*" Lubis said. [11]

Early January 2005:

The Corby family were advised that the Indonesian police would not give any of the cannabis to the AFP for testing. [53]

First week in January, 2005:

Sugiarto is informed by Lubis that there are two plastic bags. Lubis said: "*Mr Sugiarto was not aware of the inner bag until I informed him. He was astounded and ordered the bags brought to his office so he could see for himself. I told him the inside bag was not contaminated. If it had any fingerprints on it, they were put there by the drug dealers who packed the marijuana. It is important evidence. Mr Sugiarto said he would have it fingerprinted.*" [14]

Thursday, 6 January 2005:

Lubis says the internal bag was still uncontaminated until today when it went to the prosecutor with other evidence.[15]

A DFAT spokesman stated that the Indonesian authorities have declined an Australian offer to conduct tests on the marijuana to determine where it originated.

Downer offered the assistance of Australian Federal Police to test the cannabis to find out where it was grown due to the unusual nature of the case.

An AFP spokesman stated: "*Australian Federal Police had offered assistance to the Indonesian National Police (INP) in regards to the testing of drugs in the Corby matter. However the INP have declined assistance at this time.*" [16]

January 2005:

Two news sources reveal a serious contradiction between the Bali police's version of events in January 2005 and statements made by the AFP in April 2005. The Bali police claim that the AFP did NOT approach them to test the marijuana, and the AFP claim that they DID seek permission to test the marijuana.

The chain of events is reported as follows:

After Downer met with the defence team in Australia in November, he called the case very curious and offered AFP help to test the origin of the cannabis - something that required Schapelle Corby's consent.

Schapelle Corby gave her consent in December 2004 and the AFP said it had offered to help determine where the cannabis was grown.

An AFP spokesman said Indonesian police had declined the offer of help.

Bali police said, sometime in January 2005, that the AFP had NOT asked to test the drugs. Sugiarto told AAP: *"The AFP never asked to test the drugs [and] we never asked them to test the drugs. We have our own forensic lab and our tests are enough to prove that what Corby brought in to Bali is marijuana. What else would we need to check the marijuana for?"*

On 6 January 2005, Bali police handed all evidence and paperwork to the prosecutors.

Vasu Rasiah said he had repeatedly warned the Australian government that once the case went to the prosecutors it would be off-limits; he suspected the AFP did not actually want to help Schapelle Corby; *"When Lily (Lubis) pushed the Bali police to do the tests, they laughed at her. They said: 'The girl's own government don't want to do anything, why should we do it?'"*

The defence team said it had also sought AFP help in conducting fingerprint tests on the plastic bag. Bali police said the bag could not be tested for prints because it was contaminated, but Rasiah maintained there were two bags: one containing the drugs and another on the outside.

Vasu Rasiah said the lack of Australian government help afforded to Corby was in stark contrast to that for Christopher Packer, another Australian being held in Bali. Packer, a multi-millionaire yachtsman from Perth, was arrested in Bali in November on suspicion of arms-smuggling, but was expected to face court soon on reduced charges related to failing to declare half a dozen guns to Indonesian customs.

Vasu Rasiah said: *"The Australian government talk about corruption in Indonesia. They should look at their own system. Why are they running around in circles looking after Packer, but not Corby?"*

Defence lawyers accuse the Australian government of forsaking their client. Vasu Rasiah said: *"We have lost all faith in the AFP and the Australian foreign ministry. They promised us they would help, but it was lip service all the way. They have done nothing and now what do we have in her defence? Absolutely nothing."* [17]

Compare these events with Keelty's April 2005 Media Statement. Keelty said that the AFP wrote to the Indonesian National Police offering forensic assistance (including fingerprinting) in relation to their investigation, and the head of Bali police wrote back to the AFP sometime in January 2005 stating that AFP assistance was not required with forensics. [18]

(Note: See also the special supplementary reference [62])

Thursday, 27 January 2005:

First day of the trial. This was a 30-minute hearing. The prosecution case is presented first. Schapelle Corby appears in court for the first time. Among other things, the prosecutors claim:

- Schapelle Corby had admitted owning the marijuana.
- They repeat claims by the police that the marijuana is 'high-grade' and would sell on the streets for about 14 times the price of locally grown marijuana.

They made no mention of:

- Failure to search or weigh the four pieces of luggage
- Failure to take fingerprints.

After the hearing:

- Vasu Rasiah said that next week they would attempt to force Indonesian police to test the marijuana to see where it came from. *"At the next hearing we will request the court to do this testing, because it's very important to her case."*
- Vasu Rasiah said the defence lawyers would apply for technical experts to conduct tests on the marijuana. No scientific tests had been done by Bali police. Tests on the pollen can determine where the marijuana was grown, but when Australian Federal Police offered to do the tests, Bali police claimed they were not necessary.
- Rasiah also wanted fingerprint tests on the two plastic bags containing the marijuana.
- Downer stated Australia will appeal for clemency if Schapelle Corby receives a death sentence but makes no mention of the concerns he voiced in an interview with John Laws on 25 November 2004.

(From sources [19] to [22])

Post Thursday, 27 January 2005:

- Both the police and the prosecutor have refused repeated requests by defence lawyers to fingerprint the evidence.
- Defence lawyers say it is clear from their actions that neither the police nor the prosecutor has given Schapelle Corby her basic right before law, a presumption of innocence until proven guilty.

[Appendix A]

- Defence lawyers say the police and prosecutors have a strong assumption of guilt. Their attitude is that the marijuana was in her luggage, so she must be guilty, and they are not pursuing evidence that might prove them to be wrong.
- A spokesman for the prosecutor's office told the *Herald*: "*There is no need for the [fingerprint] tests. I think what is important now is that she admit that the marijuana belonged to her. It is common that she denies it. It always happens.*"
- The outside bag has the fingerprints of half a dozen customs and police officers who handled it without wearing gloves at the airport, at a media conference and at police headquarters. Sugiarto told the *Herald*: "*The bag is contaminated.*" He and his senior drug investigator both handled the bag with bare hands in the presence of Lubis.
- Australian police said it was still possible to fingerprint the bag to see if Schapelle Corby's prints were on it.
- The defence is mainly interested in a second bag which contained the marijuana and which was inserted upside down inside the outer bag. Customs did not remove this bag to open the seal, but slit it open at the bottom to get at the marijuana.
- Sugiarto told the *Herald* the bag would not be fingerprinted because "*it is no longer necessary*".

(From sources [23] and [24])

Thursday, 3 February 2005:

The second court session.

- Schapelle Corby told the court she had asked Winata to test the bag containing the marijuana for fingerprints before handling it, but he refused. She said other officials had touched the bag and its contents.
- Photographs show customs officers handling the marijuana through the bottom of the internal bag.
- In front of the three judges, the internal drug bag was taken out of the external bag and handled freely by a number of court officials, including customs officer Winata, prosecutor Wiswantanu and assistant judge I Gusti Lanang Dauh.
- At the close of court, defence lawyers made a formal application to force police to test the inside bag for fingerprints. They also demanded the marijuana be tested to determine its origin and quality.

· Judge Sirait said he would consider these requests. "*There's still plenty of time,*" he said.

(From sources [25] to [28])

Thursday, 17 February 2005:

The fourth court session. The prosecution closed its case today.

Defence lawyers are still waiting for the chief judge's decision regarding fingerprinting the bags.[29]

Thursday, 3 March 2005:

The fifth court session. The defence begins. It is reported that, from the outset, prosecutor Wiswantanu insisted that the only way he would accept that Schapelle Corby was innocent was proof - visual or by weight - that the marijuana was not in the boogie-board bag when she checked it in at Brisbane Airport, or visual evidence of someone putting the drugs in the boogie-board bag. [30]

The first witness for the defence: Professor Loebby Lukman, an academic from the University of Indonesia, who had helped draft Indonesia's narcotic laws. Professor Lukman agreed the fact police had failed to test for any fingerprints on the two plastic bags which contained the drugs was "less than perfect". [31]

Ron Bakir returns to Australia after his first trip to Bali to meet Schapelle Corby and the defence team.

He said although the defence case hinged on determining the origin of the cannabis found in her boogie-board bag, the Australian government had failed to order a DNA test on the drugs.

A spokesman for Downer today denied the accusations, saying the Australian Federal Police had offered assistance to the Indonesian police with testing but the offer had been declined. [32]

Friday, 4 March 2005:

Federal Opposition foreign affairs spokesman, Kevin Rudd, says after speaking to Schapelle Corby's lawyers late last year, he wrote to Downer and the Deputy Prime Minister asking them to help ensure Schapelle Corby received a fair trial. "*I particularly requested the Howard Government to assist Ms Corby's legal team on evidentiary matters which may be important to them.*"

Downer says Indonesian police rejected the Government's request for federal police to test the drugs to determine their source.

Earlier today, both Prime Minister John Howard and Opposition Leader Kim Beazley said they were concerned by some aspects of the trial but did not elaborate. [33]

Friday, 4 March 2005:

Federal Opposition Leader Kim Beazley says he shares Mr Howard's concerns but he is still hoping for a positive outcome in Corby's case.

Downer rejects the claim that the Government is not doing all it can to help. He says the Government will help her defence obtain whatever information it needs. Downer says a request to test the drugs to determine their source was refused. "*The defence came to see me and asked if I could ask the Australian Federal Police to test the cannabis themselves to find out its source*", he said.

Also, "*Well of course the Indonesian police control the cannabis so I got the Federal Police to ask the Indonesian police if that could be done but the Indonesian police refused to allow the Australian Federal Police to conduct that test.*" [34]

Friday, 4 March 2005:

The Federal Government expressed concern about the trial.

Downer said the Indonesians refused requests by the Australian Federal Police to test the cannabis. The AFP wanted to test the drug to ascertain its source. "*The defence lawyers wanted it done, we asked, and yes, it's true the Indonesian police didn't agree to hand over any of the cannabis for testing.*"

Mr Downer said the Indonesians said they "*were perfectly capable of doing that sort of testing themselves*".

Downer said today he was "*not an expert on this topic*" but it would be unusual for someone to smuggle cannabis into Bali, where it was relatively cheap and plentiful. "*Why would they do that?*" Mr Downer asked. "*(But) we are concerned about this case and we are following it very closely.*" [35]

Sunday, 13 March 2005:

Downer is interviewed by Monica Attard:

Monica Attard:

"Did it bother you when you heard the evidence that the Indonesian police had refused the assistance of the Australian Federal Police in testing the drugs and in fingerprinting the bag"?

Downer:

"I wasn't exactly surprised but I mean we obviously made that request and that request was rejected. This is in Indonesia, this wasn't in Australia and it's their sovereign right to make those decisions."

Monica:

"Were you unhappy with that decision?"

Downer:

"We made a request so obviously, so ipso facto that was what I wanted".

Monica:

"Would you be prepared to approach the Indonesian Foreign Minister on this issue, your counterpart over there since he..."?

Downer:

"I've discussed the case with the Foreign Minister, I'm not going into the details of that but I have mentioned it to him."

Monica:

"And was he understanding?"

Downer:

"Well, It's a matter for the courts' is of course going to be his response and it was".

Monica:

"And you're satisfied with that or did that displease you"?

Downer:

"Well I mean look, come on. You cannot expect the Indonesian Foreign Minister to ring up the judge and tell the judge to acquit someone. No country is going to run on that basis, that would be an outrage". [36]

Observation: This confuses the issue. Attard was not suggesting that Schapelle Corby be acquitted. The point was that she be allowed access to the evidence.

Thursday, 24 March 2005:

The seventh court session. The defence case continues.

Today was supposed to be the last day the defence could present evidence, but they sought and were allowed an adjournment to arrange to bring a Victorian prisoner named John Ford to Bali to testify.

It was reported today that PM Howard also takes a personal interest in her case, saying the government was doing everything it could to help her. "*We will do everything that we are properly and reasonably asked to do (by defence lawyers) to see that any relevant evidence is presented.*" [37]

1st / 2nd April 2005:

Cindy Wockner rounds up the case so far:

The handling of the case has not shone a positive light on the Indonesian investigation or on Australian authorities, our airlines or our airport security. It seemed everywhere they turned in Australia, they hit a brick wall.

They had been unsuccessful in getting any video surveillance tapes from Brisbane or Sydney airports which might have showed the bag during the luggage handling phase, and in their battle to have the drugs independently tested for their origin.

In Indonesia the hurdles included:

The marijuana not being tested for its origin, with conflicting accounts from both police forces over this issue.

The plastic bags containing the drugs were not fingerprinted, because police believed too many hands had touched them. [38]

Sunday, 3 April 2005:

The Indonesian President arrived in Australia this evening for a four-day visit to Canberra and Sydney.

Ellison tells the Ten Network everything possible would be done to keep Schapelle Corby alive, including personal representations by Prime Minister John Howard.

Ellison rejected the suggestion a guilty verdict would harm relations between the two countries. *"In Schapelle Corby's case, she has been represented, she has had the opportunity to bring in evidence (and) the court adjourned the hearing to enable fresh evidence to be brought before it. I think the Indonesian authorities have co-operated with our requests and I don't think a finding of guilt will affect our relationship with Indonesia."* [39]

Week beginning 11 April 2005:

Downer said the defence team had *"put up a strong case that this couldn't possibly have been put in the bag by Schapelle Corby"*. [41]

Sunday, 17 April 2005:

The defence team have received information that the prosecutors will ask for a life sentence and a fine when the trial resumes this week.

Vasu Rasiyah criticised the proposed request for a life sentence. He said such a request would demonstrate that prosecutors had taken no account of the witnesses the defence team had produced. *"That [sentence request] is not fair. If it's true, then it shows there is no system of legal fairness in this country,"* Mr Rasiyah said. *"How can Australia boldly come and help a country that does not have a fair legal system?"*

Mr Rasiyah said the judges had told prosecutors they should consider all the evidence presented, but they were interested only in the fact that her bag contained marijuana. *"[They] would not take any other evidence,"* Mr Rasiyah said. *"They have the balls to say I will only consider the importation, the fact the bag was tagged in her name, and the goods were in her bag."*

He said Schapelle Corby should not be convicted of importing drugs if this was not done knowingly or without her consent. *"Prosecutors should find the truth. These guys aren't interested in any other evidence."* [42]

Monday, 18 April 2005:

The defence lawyers have accused Australian police of a cover-up and warned their "bewildering" lack of cooperation may have condemned her.

Rasiah said the AFP should explain to the Australian public why they had refused to assist Indonesian authorities with finger-printing the plastic bag containing the marijuana. [43]

Tuesday, 19 April 2005:

Keelty says that claims made by Vasu Rasiah (18 April) are baseless.

As an example of his cooperation with the defence, Keelty says: "*... as a result of a request from Ms Corby's defence team to the Australian Government, the AFP wrote to the Indonesian National Police in December last year offering forensic assistance (including fingerprinting) in relation to their investigation. The head of Bali police wrote back in January 2005 stating that AFP assistance was not required.*" [44]

Thursday, 21 April 2005:

The tenth court session. The prosecution makes its sentence demands.

On *The 7.30 Report*, Damien Kingsbury says the judges presiding over this trial have a much less stringent approach than their Australian counterparts. "*The level of legal training is pretty low by international standards. Some judges are trained internationally, but these three, I understand, are not. That means that their understanding of rules of evidence and so on and their capacity for evidence to be tampered with or to be otherwise modified is pretty low. Again, they're not going to be looking at the niceties or the fine points of the judicial process. They're going to be looking at essentially the prima facie evidence and judging accordingly.*" [45]

Comment: Kingsbury suggests that rules of evidence do exist in Indonesia, so what are they? This is a fair enough evaluation to make of those three judges, but what about the judges who presided over the High court and Supreme court appeals? Their understanding of the "*fine points of the judicial process*" and rules of evidence must be far superior and their adherence to the rule of law should be their first priority, and yet they found no fault with the lower court.

Tuesday, 26 April 2005:

Schapelle Corby and her defence team are preparing their final submissions for Thursday 28 April. One of the points the defence will argue: "*WHY does a girl, who comes to Bali for a holiday, bring drugs from Australia worth \$40,000, to Bali where they sell for \$5,000*"? [46]

Thursday, 28 April 2005:

The eleventh court session. The defence team delivered its final submission, and then Schapelle Corby spoke.

They highlighted the claimed deficiencies in the case:

- The prosecutor had told the court the marijuana was of good quality but the defence reminded the judges it had never been tested.
- They described the prosecutors as "*street magicians*" for claiming the marijuana was of high quality even though they had always refused their request to have it tested to find out its potency and where it was grown. "*Now the same prosecutors who rejected our demand to conduct tests on the marijuana have stated that the marijuana is of very high quality*", they said.
- "*The prosecutors, whose role is to uphold the law, have failed in committing their duty to look for the truth and justice.*"
- "*The prosecutors have manipulated the facts to imprison an innocent tourist,*" he said.
- They also highlighted Schapelle Corby's modest earnings compared to the value of the 4.1kg of marijuana in Australia, which they said was around \$50,000 and which they estimated would only sell for \$10,000 in Indonesia.

(From sources [47] and [48])

Friday, 29 April 2005:

In a radio interview Damien Kingsbury says: "*... the Indonesian judicial system really does have a number of flaws in it ... The rules of evidence are very poor, the training of both the judiciary and the defence teams is often very, very poor, and they don't have rules of sub judice and so on ... This is not even to mention, of course, the capacity for judges to be influenced by external sources – political influence, bribes, and so on.*"

ELEANOR HALL: *"So what do you consider the main flaws in the Indonesian justice system as it applied in this case?"*

DAMIEN KINGSBURY: *"Well, there's essentially an assumption of guilt that appears to apply here. The rules of evidence certainly have significant holes in them, and had the evidence been handled properly, I think that there would have been at least reasonable doubt to assume that Schapelle Corby was not an active drug courier."*

ELEANOR HALL: *"When you say the evidence handled properly, you mean before the case came to court?"*

DAMIEN KINGSBURY: *"That's right. I mean things like fingerprinting, the weighing of the drugs, checking that against the original baggage weight when the baggage was checked in and so on. I mean, these things could have shown that there was external interference in the process, and raised doubt". [49]*

Thursday, 12 May 2005:

The thirteenth and final court session.

The defence repeated that they had continually requested the plastic bags containing the drugs be fingerprinted but to no avail. [50]

The High Court and Supreme Court appeals 2005:

During the two appeals the defence lawyers again asked for the cannabis to be tested but the judges refused. [54]

Saturday, 20 August 2005:

Dr. Lynne Milne, a lecturer and forensic palyntologist from the University of Western Australia's Centre for Forensic Science reveals she was asked to work on the Schapelle Corby case but was not able to access samples due to a communication mix up. *"I may have been able to work out where the cannabis came from as it tends to collect the pollen of the region where it was grown."* [55]

Definition: Palyntology is the study of pollen.

Friday, 26 August 2005:

Dr. Lynne Milne reveals on Perth television:

- She volunteered to test the drugs but Indonesian officials wouldn't release a sample.
- In the process of organizing the test sample, the trial went into the next stage where a sample couldn't be released without the – as she understands it – the prosecution and the judge's permission.
- She believes pollen could finally solve the mystery: Where did the drugs really come from?
- It's still not too late to test the marijuana. As long as the drugs were sealed in bags they could be tested in a hundred years' time. Pollen hangs around for millions of years if it's in the right condition.
- She's already helped police bust several major cases in Australia.
- Dr. Milne is often called upon to identify the origins of cannabis seized in police raids. [56]

Comment: She does not say when she was asked, or volunteered, to work on the case, but subsequent documentation reveals that it was in December 2004. She does not say who asked her to work on the case.

Thursday, 19 January 2006:

At 1:32 pm a news report reveals that James Corby and two other men have appeared in court on drug charges. An hour later Hutapea says he wouldn't be surprised if the Supreme Court increases Schapelle Corby's sentence.

By 5:00 pm Robin Tampoe says "*... everything filters back to the prosecutors. They know exactly what is going on in Australia so it certainly won't paint her in the best possible light as far as the judicial system over there is concerned.*"

By 6:00 pm the Supreme Court announces they have reinstated Schapelle Corby's 20-year sentence and ordered the evidence destroyed. The court says they made the decision on 12 January. Why did they wait a week? Normally these things are leaked hours after the decision is made – usually by a court official who phones the press with the news.

By 8:40 pm the defence, prosecution and Denpasar Court have still not received official word from the Supreme Court.

Monday, 30 January 2006:

The 7.30 Report:

The AFP contradict every previous claim they have ever made regarding testing of the marijuana and fingerprinting, stating that when the AFP explained to the defence lawyers that any result from the testing for fingerprints inside the bag or DNA testing of the marijuana would also be passed onto the Indonesian police, her lawyers declined the offer to carry out the tests. [51]

Tuesday, 31 January 2006:

Rosleigh Rose said the Corby family wanted to have the marijuana forensically tested, but that Indonesian police wouldn't allow it. Rosleigh said Schapelle Corby signed the papers authorising the testing. "*We were pushing to get it done but they (the Indonesian Police) stopped us because the marijuana came from Indonesia*", Ms Rose told the Ten Network.

Keelty (AFP) is reported saying today that the defence lawyers rejected the offer after it was explained that any results would be given to Indonesian authorities. He goes on to speculate in his characteristic manner: "*I think the reality was if it was tested, and the tests didn't come out with what the defence counsel expected, then it may assist the prosecution and not the defence.*" [52]

Comment: If, as Keelty claimed, the defence never wanted the evidence tested, why did he wait until this point in time to make this revelation, which contradicts everything the AFP has said previously, and indisputable public record on the matter? Note here the recent decision by the Indonesian courts to destroy the evidence.

Wednesday, 1 February 2006:

This article repeats the AFP claim that the defence lawyers rejected an offer to DNA test the marijuana to determine the drug's origin.

Rosleigh says her family and legal team had pushed for the marijuana to be tested but the Indonesian Government had refused. "*We were pushing to get it done because we were positive the marijuana came from Indonesia*" she said. "*There's been no investigation done (about the drugs' origin) whatsoever.*" [58]

Friday, 17 March 2006:

The evidence is burned despite a last-minute plea from the defence to have it stopped.

The marijuana has never been tested for origin and Mr Siregar had implored prosecutors to keep it should new evidence be found about the true owner of the drugs. Schapelle Corby has exhausted all avenues of appeal unless fresh evidence comes to light.

As the marijuana burned behind him, Mr Siregar pointed to the flaming drum, describing it as a "*big problem*" if the case were re-opened and there was no marijuana left to test or to compare.

Mr Siregar said the defence team was still working on an extraordinary appeal in a bid to win her freedom. However, the prosecution refused to delay the destruction, which was ordered by the Supreme Court.

Erwin Siregar said "*we don't have a chance any more to bring this evidence to the court when there is an extraordinary appeal*". [59]

Friday, 17 March 2006:

Erwin Siregar, who watched the burning, said he was concerned the evidence had been destroyed. "*If we find new evidence and then reopen the case, and they want to check, the evidence is no longer there.*"

Erwin Siregar said he failed to convince prosecutor I Ketut Arthana to delay the destruction and admitted that there was no obligation to stall the burning, because the case had already been completed.

Still, he said, they should have waited in the interests of "*finding the truth*".

Friday, 31 March 2006:

Ellison replies to a letter sent to PM Howard by a Schapelle Corby supporter in January 2006, both posted on FreeSchapelleCorby.net:

[Appendix A]

"... In relation to the testing of the marijuana, I can confirm that the AFP made a general offer of assistance to the Indonesian National Police (INP) in December 2004, however due to the finalisation of the police investigation this offer of assistance was declined. As you are aware the AFP can not directly intervene in the legal processes underway in Indonesia unless there is a direct request for assistance from the Indonesian Court or the INP. This advice was provided directly to Ms Corby's lawyers. It was the responsibility of Ms Corby's defence team to initiate this request through the Indonesian Courts. I can also confirm that the AFP has not received a request for assistance from the INP or the Indonesian Courts for any forensic assistance in this matter before or after the conviction of Ms Corby. "[61]

Observation: Ellison is Keelty's direct superior. Ellison's remarks contradict Keelty's claims of January 2006.

APPENDIX B

The Principle Of Judicial Independence And Impartiality

For justice to be administered, judges must be free to interpret laws independently, objectively and impartially, without any undue pressure from police, the government, the military, public opinion, or any other interested person.

"Although the principle of an independent judiciary was already expressed in the Elucidation to the section on the judiciary in the 1945 Constitution and is emphasized in the 1970 Basic Law on Judicial Power, the administration of the court is under the control of the Ministry of Justice. Not only is the budget of the judiciary controlled by the Ministry, but it also decides on posting, transfer and promotion. Presidential Decree No. 82/1971 establishes the mandatory membership of public officials, including judges, in an association under the chairmanship of the Minister of Interior, KORPRI: which obliges all members to follow the association's rules and policy guidelines, enforceable by sanctions.

In March 1986, a new law was passed by parliament, according to which the executive control over the district courts and the courts of appeal will be reinforced and the judges are to be categorized explicitly as officials of the executive. Moreover, in every district there is a so-called 'tripartite' structure, which implies a periodical meeting of the chairman of the district court, the chief prosecutor and the chief of the police. In the so-called MUSIPADA-meetings, the same participants gather with the chief of the local government and the commander of the military district (KODIM). Both meetings are strictly confidential. It has been observed that meetings are held more frequently when important political cases are being tried.

As a result, there is a general fear of reprisals being taken for decisions which are unpopular with the government, particularly in cases with political overtones"

A large number of judges of the Supreme Court are former military officers, while others have first made a political career. These people can be expected to have intense national pride and regard foreign interest in their decisions as 'interference' in their nation's sovereignty. A lack of independence leads to a lack of impartiality.

(Professor J.T. Hart in 'Aspects of Criminal Justice', p. 193)

The obligation to be impartial appears in KUHAP in different ways. Article 158 prohibits a judge from showing by his attitude or by a remark during the trial whether or not he thinks the defendant is guilty. Judge Linton Sirait breached this many times. One could argue that his remarks were motivated by the following:

Public Opinion

It could be argued that he was influenced by public opinion when members of the anti-narcotics group GRANAT carried signs into the court demanding the death penalty for Schapelle Corby. There was also at least one protest street march after the verdict calling for Schapelle Corby's execution.

Australian Criticism

It could also be argued that the judges were negatively influenced by the Australian media: the offensive remarks of talk-show hosts and their callers were frequently published in the press and reported on TV. Australian journalists made insulting remarks about the competence, intelligence and honesty of the Bali police and judiciary. These criticisms were no doubt reported by the Indonesian media. It is likely that the same criticisms were repeated constantly day after day even though they might have been made weeks before. Perhaps that would be enough to make many Indonesians angry and spiteful, including a judge.

Government Pressure

After the verdict, during Schapelle Corby's High Court appeal, the Indonesian president made a very public announcement that he will never pardon drug smugglers and that they must serve the full sentence. It was clear to most observers that Schapelle Corby was his target, but there is no way to prove it. It could be argued that his announcement is an example of government pressure being placed on the judiciary, because his announcement effectively made his personal opinion known.

It can be argued that these three factors, working together, could have undermined all three judges' independence and impartiality and resulted in the guilty verdict plus an unprecedented harsh sentence.

It is impossible to prove that a judge's decision has been influenced by public opinion or government pressure but it is possible for defence lawyers to argue that the potential for influence did occur, thus throwing doubt on the fairness of the District Court's trial procedure, verdict and sentence (influenced by Indonesian public opinion and Australian criticism), and it is possible to argue that the High Court's decision in finding that the original trial was conducted properly (when it clearly was not) was influenced by the Indonesian president's announcement.

[Appendix B]

It is generally accepted that Indonesian courts are frequently influenced by outside forces, but the point is they are not supposed to be. Judges are supposed to be neutral and objective – never swayed by other people’s opinions. The Indonesians frequently state that their legal system is independent, as it should be. The principle of an independent judiciary is contained in the 1945 Constitution (this is the constitution which Indonesia currently follows) and it is emphasized in the 1970 Basic Law on Judicial Power.

The comments, information and facts which are documented throughout this paper indicate that the independence of the judiciary in the Schapelle Corby case was highly unlikely.

APPENDIX C

The Australian Government

Despite the clear and serious issues and abuses documented in this report, the Australian government repeatedly endorsed the proceedings. This is illustrated, for example, by many of Foreign Minister Alexander Downer's unhelpful public statements on the case, both during and after the trial.



“We've no reason to believe, whatever people may feel about the allegations made against Schapelle Corby and the charges brought against her ... that the court is behaving at this stage in an inappropriate way”

It has also since emerged that the Australian government and the AFP wilfully withheld a considerable amount of evidence from Schapelle Corby and her lawyers, some of which was critical primary evidence.

In addition, a number of other reports illustrate that the Australian government repeatedly evaded their obligation to provide assistance, including refusal of the AFP to undertake investigations in Australia, refusal to press specifically for testing of the marijuana, and failure to invoke the Mutual Assistance in Criminal Matters Act.

For Schapelle Corby, this was only the start of an unending catalogue of legal and human rights abuses, which she was to suffer over subsequent months and years.

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Regarding the testing of the marijuana, there follows the transcript of an official consulate memo:

AUSTRALIAN CONSULATE GENERAL - BALI *FILE NOTE - 3 DECEMBER, 2004*

The Consul-General, Brent Hall visited Ms Corby at 1400hrs on 3 December and explained the AFP role, ie; That the AFP have no jurisdiction in Indonesia, and could not be involved in testing without a formal request from the Indonesian authorities, which Ms Corby said she now fully understood, but remained a little concerned that the Indonesian police may not do the tests properly.

Ms Corby then reiterated that she was innocent and therefore she had decided that it is in her interest that the tests be done. Ms Corby then confirmed to the Consul General (Brent Hall) and consular assistant that she gives her consent for the tests requested by her lawyers (as attached).

FILE NOTE - 7 JANUARY, 2005

The AFP (Mike Phelan) then advised us that the head of the Bali police (Kapolda) had officially advised that the AFP will not be able to have the cannabis for testing.

NOTE; The above information has been taken from the files for Schapelle Corby and to the best of our knowledge was true and correct at the time.

Signed; Brian Diamond

Vice Consul. End of doc.

An image of the original document is available on the Expendable.TV website.



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