

FRIENDS OF NICK TUCKER (F.O.N.T.)

Nick Tucker's case is one of the most tragic miscarriages of justice in recent times. Not only was he convicted of a murder that never took place, but it was for the accidental death of his wife. The grief and tragedy was double-fold: not only did he lose his wife and liberty, but his two children lost both their mother through her death, and their father through his imprisonment. He had also devoted 28 years of his life to serving his Queen and Country only to be denied the justice and freedom he believed in, served to uphold, expected and was entitled to.

The enclosed summary of the case, including previous judicial comments and the relevant opinions from all six pathologists, serve to highlight the immorality of the situation and the continued injustice and indifference of the authorities and the British establishment.

We need to maintain the public profile of Nick Tucker's case in order to expose the lack of moral conscience, common sense and adherence to the principles of law and proof of evidence.

Principal campaigners:

- Jenny Peacock (fiancée) and James Tucker (son), 17 St Barnabas Close, Thetford, Norfolk, IP24 3EW (01842 766145)
- Brian Prescott (publisher), 5 Leefields Close, Uppermill, Oldham, Lancashire, OL3 6LA (01457 870944)
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- Michael O'Brien (fellow MOJ victim), 7 Michaelston Court, Pyle Road, Cardiff CES 5JA
- Dennis Eady (South Wales Liberty), 2 Taff Cottages, Station Terrace, Llanharry, Pontyclun, Wales, CF72 2DF
- Dr. Michael Naughton (sociologist), Department of Sociology, University of Bristol, 12 Woodland Road, Bristol, BS8 1UQ
- Bob Woffinden (investigative journalist), 28 Wilton Way, Hackney, London, E8 3EE
- Miscarriage of Justice UK, 22 Berners Street, Birmingham, B19 2DR (0121 554 6947) (maintain a website file on: www.mojuk.org.uk)

Legal Representatives:

- Campbell J. Malone/Michael J. Pemberton, Stephenson's Solicitors, 10-14 Library Street, Wigan, Lancashire (01942 777777)
- Tim Owen, QC
- Hugh Southey, Took's Court Chambers, London

Concern and support also expressed by:

- Lord Carlile of Berriew, QC
- Phil Woolas, MP
- Terry Waite, CBE
- Martin Bell, OBE

We invite those with a conscience, and those who care about Nick Tucker and the situation he faces, to join the Friends of Nick Tucker (F.O.N.T.). Please enter your name and details below, together with as many of your colleagues, family or friends, who will also add their names, and return it to:

Friends of Nick Tucker, 17 St Barnabas Close, Thetford, Norfolk, IP24 3EW.

Name	Address	Telephone/Fax/email

You could also help by sending a copy of the enclosed to your local Member of Parliament, c/o House of Commons, Westminster, London, SW1A 0AA.

A Case that Concerns the Reputation of British Justice

It therefore concerns every member of Britain's judicial and parliamentary system

In July, 1995, Carol Tucker died when the car driven by her husband, Nick Tucker, (then a Squadron Leader in the R.A.F.) veered off the road in avoiding two deer and crashed into a shallow river. Carol Tucker was found floating in the water and pronounced dead at the scene: Nick Tucker was discovered unconscious, in the water beside the driver's door.

Initially treated as the tragic road traffic accident that it was, he was arrested 28 days later on suspicion of having murdered his wife. But it was eight months before he was charged and 28 months before the case came to trial. Yet, in that extraordinary length of time no direct or material evidence emerged to show any murder had taken place.

Despite being charged with murder, in April, 1996, he was released from remand in custody and granted bail by **Mr Justice Hooper** who asked: **'Where is the evidence that a murder has taken place?'**

His trial started in November, 1997. The prosecution's case alleged that:

- Nick Tucker's account did not match the beliefs of the investigating officers.
- The car crashed at a low speed insufficient to render either occupant unconscious – it was therefore staged, and Nick Tucker's condition feigned.
- Both occupants should have survived the crash, and petechial haemorrhages found in Carol Tucker at autopsy suggested some form of mechanical strangulation.
- A blood smear on the outside of the passenger door, attributed to Nick Tucker, could not have been deposited by anyone else at the scene and suggested he had not been rendered unconscious.
- The motive for such a crime was a brief relationship Nick Tucker had had with a Serbian interpreter whilst serving in the Former Yugoslavia.

All the strands of the prosecution case were circumstantial, and each had innocent, credible alternative explanation. However, after 15 days of evidence the jury returned a verdict of guilty, by a majority of 10:2.

The issue to be decided by the jury was: **was it murder, an accident, or death by natural causes?** Therefore, why had this case not first passed the test of a coroner's inquest?

There was no medical evidence to support homicide. Six pathologists have so far examined the evidence, two of whom conducted autopsies: Dr David Harrison and Dr Iain West; the others were: Professor Bernard Knight; Dr Nathaniel Cary; Dr Richard Shepherd; and Professor Derrick Pounder. (A summary of relevant extracts from their opinions is attached.) The first four provided opinions prior to trial (but the prosecution declined to call Professor Knight – for obvious reasons): the latter two as a result of fresh investigations. **All conclude that there is no evidence of murder, foul play, assault, defence injuries, or that Carol Tucker's death was due to the actions of anyone.**

Surely, and logically, the issue before the court dictated that the primary issue to be established was the cause and mechanism of death? If the pathologists, the experts on this issue, are unanimous then logically they cannot all be wrong. How can it be left to untrained, unqualified laymen and women, prone to misunderstanding such technical evidence, to say otherwise? It is an *Alice in Wonderland* scenario.

In granting leave to appeal in July, 1998, **Mr Justice Coleman** stated: **‘I am giving leave because looked at as a whole the evidence of guilt is extremely tenuous and so much so that it is arguable that the jury must logically have been left in doubt.’** This was solely on legal argument with no fresh evidence.

In December, 1998, following appeal, **Lord Justice Judge** wrote: ‘When examining the safety of a conviction where the evidence for consideration is the same as the evidence which was before the jury, the court cannot ignore the fact that the jury disbelieved the appellant’s testimony about crucial issues in the trial.’, but; **‘We immediately recognise that there was and is no direct evidence that the appellant murdered his wife.’** Yet the appeal was disallowed in order not to undermine the constitutional pre-eminence of the verdict of the jury in our criminal justice system.

Notwithstanding the pathological evidence supporting Nick Tucker’s innocence, the evidence now available is substantially different to that put before any court.

Following the first appeal **an independent investigation commissioned a scientific reconstruction of the crash which has established that:**

- The police measurements and claimed ergonomics of the crash were wrong.
- The impact velocity would have been double that claimed in court.
- **Nick Tucker’s head injury was caused by impact with the steering wheel, and was sufficient to render him unconscious.**
- Critically, there was no neurological evidence provided at trial or appeal.
- **Having been rendered unconscious Nick Tucker could not have committed any offence,** and any testimony of his was unreliable.
- Four independent experts have criticised the forensic evidence and handling of the car: they conclude that it is not possible to establish when, where, how or by whom the blood smear was transferred to the passenger door.
- This leaves the innocent explanations as the only ones valid for the extraneous circumstantial issues.

The case was submitted to the Criminal Cases Review Commission in 1999. In 2003, it rejected the application and declined to refer it to fresh appeal, despite the new evidence, which also answers the second most fundamental direction of **Mr Justice Gage** at trial: **‘if Nick Tucker was not lying about the crash, and it was true or may be that he was knocked out, then that was an end of the prosecution case.’**

The primary issue in this case, whether or not any murder had taken place, has direct legal and medical parallels with cases such as Angela Canning’s. In that appeal **Lord Justice Judge** stated: ‘... there was no direct evidence and very little indirect evidence to suggest that [murder had taken place]’ and **‘If murder cannot be proved, the conviction cannot be safe. In a criminal case, it is simply not enough to be able to establish even a high probability of guilt.’**

Nick Tucker’s case falls into the same category. His present situation and continued imprisonment questions the moral integrity of the British judicial system, and, in any charge of murder, the requirement to prove *actus reus*, that the deed was committed.

SUMMARY OF THE PATHOLOGICAL EVIDENCE

PRE-TRIAL. 1995-7:

Dr David Harrison: (Home Office Pathologist)

First Autopsy, 24 July, 1995, in summary and conclusions:

‘... The petechial haemorrhages ... are in my experience unusual in cases of drowning, but the other **autopsy features indicate death was due to drowning and occurred relatively quickly.**’

‘**Cause of Death: Ventricular fibrillation, secondary to immersion in fresh water.**’

(*ie.* Heart stoppage/arrest subsequent to immersion in water = **drowning.**)

Old Style Committal, October, 1996, under cross-examination:

‘**Was there any evidence that Mrs Tucker was deliberately drowned?**’ ‘**No.**’

Dr Iain West: (Defence Pathologist)

Interim Report, 9 January, 1996, following Second Autopsy:

‘... based on the information available ... Mrs Tucker is likely to have died as a result of a choking episode by regurgitating food from her distended stomach. ... this is likely to have occurred either during or immediately after her attempt to extricate herself from the vehicle.’

Supplementary Report, 18 October, 1996:

‘The minor injuries on the deceased’s body could all have resulted from the low velocity vehicular accident combined with attempts to move her body from the river and subsequent attempts at resuscitation. **There is nothing to positively indicate that the deceased had been subjected to an assault.**’

‘In summary, there is no positive indication as to why this lady died and it is, to a degree, complete speculation to state the various possibilities.’

‘**There is no medical evidence to indicate that Mrs Tucker has died as the result of a direct physical act carried out by another person.**’

Professor Bernard Knight: (Pathologist approached by the police – not called at trial.)

First Report, dated 30 January, 1996:

‘**Given the above problems, it would seem obvious that there is insufficient evidence on medical grounds for any successful hypothesis to be maintained that the death was due to the actions of another person.**’

‘In summary, the cause of death is really unascertained, even though immersion seems the most likely mechanism. **I would suggest that the medical evidence cannot take forward any intention to bring criminal charges ...**’

Second Report, dated 4 April, 1996:

‘In summary, the pathological findings are scanty.’

‘In essence the cause of death remains unascertained.’

AT TRIAL. November. 1997: (As summed up by Mr Justice Gage)

Dr David Harrison:

Under cross-examination: **‘There was no pathological evidence that the deceased had been deliberately drowned by someone else.** ... There were no defence wounds. ... All other injuries could be consistent with her getting out of the car after the accident.’

Dr Iain West:

‘All the minor injuries could have been caused either in the crash or when she was trying to extricate herself from the car, or when she was being lifted from the river, or on resuscitation, or a combination of being lifted out of the river or resuscitation.’

‘There was no evidence of throttling or strangulation.’

‘There is no physical evidence to show that she died as a direct physical result of someone else’s intervention. There were no marks on the body which were other than could have been caused in the road traffic accident combined with an attempt to rescue the body from the river and resuscitate it.’

Dr Nathaniel Cary: (Second Pathologist for the Defence)

‘The injuries were such that could have been caused in a road traffic accident, or removal from the river, or on resuscitation.’

‘There was nothing to show death as a result of a third party and nothing to show it was homicide. It was a bizarre death. ... It was speculative that the cause was some deliberate act. ... The most likely cause of death was drowning.’

Summarising all three:

‘All agree that there is no evidence of a third party causing death. All three agree there are no defensive injuries ...’

‘So far as the cause of death is concerned Dr Harrison said that it was on a balance of probability drowning ... Dr Cary agrees. Dr West said you simply could not say the cause of death.’

‘... if Dr West and Dr Cary are correct, or may be correct, all the injuries are just as consistent with drowning by accident as by a deliberate act, if that is right **then obviously it cannot be murder.**

[**Note:** Despite the pathologists’ evidence to the contrary, **in closing speech the prosecution alleged** that Mr Tucker had first rendered his wife unconscious by throttling her before he arrived at the river, and had then driven her unconscious body to the river and drowned her. This was **in total contradiction to the evidence of Dr Harrison, and amounted to a breach of ‘Restrictions on Comment in Closing Speeches at Trial’, and also amounted to a ‘Late Change in Nature of Case’.**]

FURTHER INVESTIGATIONS, 1999-2003

Dr Richard Shepherd: (Independent opinion)

Stated on Just Television's *Trial and Error* programme, November, 2000:

'There's no marks on this lady that would indicate that she was held under the water and drowned. ... I think it would be fair to say that not only do I believe that but ... the four pathologists who reviewed the case early on, none of them say that they think she was murdered. ... The only thing I can say to you with certainty is that there is no pathological evidence that I have seen that indicates that Mrs Tucker was murdered.'

Professor Derrick Pounder: (Independent opinion)

Report, dated 23 December, 2003:

'The case is clearly quite extraordinary from the point of view of the pathology since there is essentially an absence of pathological evidence to support the allegation of homicide.'

'At autopsy ... no anatomical evidence was found of strangulation or any other form of mechanical asphyxiation. ... Thus there was no evidence to support a diagnosis of strangulation or mechanical asphyxiation. ... In this case strangulation could be excluded with reasonable medical certainty.'

'There was no basis whatsoever for the prosecution to suggest that strangulation had taken place either to the point of unconsciousness or to the point of death. Not only was the prosecution position that strangulation had caused death unsupportable on the pathological evidence but the prosecution contention that strangulation leading to unconsciousness had preceded homicide by drowning was equally unsupportable on the pathological evidence. It is difficult to understand how such a prejudicial and unsupportable allegation came to be presented to the jury.'

'The typical features of drowning are found in only a small minority [10%] of cases of drowning. It appears that the jury was seriously misled by the presentation of the pathological evidence so as to believe that the absence of typical signs of drowning in the deceased was in some ways suspicious.'

'Taking the cause of death as drowning, the autopsy findings provide no evidence of an assault to substantiate an allegation of homicidal drowning.'

'In summary an allegation that the deceased was strangled to death or strangled to the point of unconsciousness prior to homicidal drowning is unsupportable on the pathological evidence. The pathological findings are entirely consistent with death by drowning and on pathological grounds there is no basis for suggesting that the cause of death was other than drowning. The autopsy findings provide no physical evidence to give rise to allegation of homicidal drowning since the minor injuries found to the body are more likely the result of the road traffic accident, escape from the vehicle, recovery of the body and attempted resuscitation than assault.'

'There can be little doubt that the pathological evidence presented at trial was in some areas wrong and overall both misleading and highly prejudicial.'

Interview on BBC Radio Suffolk, 10 March, 2004:

‘The evidence that was presented at trial was very misleading indeed. The prosecution raised the issue of strangulation for which there was no medical evidence whatsoever, and of course having raised it would have prejudiced the minds of the jury. There was an allegation that the woman might have been partly strangled and then drowned, but all the pathologists agree that there is no evidence whatsoever, and in fact there is no evidence of a struggle having taken place.’

‘Given the confusion of the way the pathological evidence was presented at trial, the lawyers for the prosecution, I don’t think, had a real grasp of the evidence, they presented it in a misleading way, and I don’t necessarily think that anyone else has got a clear grasp of the signs, other than the pathologists.’

‘Looking just at the pathology, the evidence that was presented was unfair by any standards and would have confused anyone who was other than a pathologist.’

‘It’s quite remarkable to have a conviction for murder where there is no medical evidence of murder.’

Interview on BBC TV Look East, 19 April, 2004:

Professor Pounder reiterated the above opinions, and absence of evidence of murder.

The opinion and evidence of six eminent forensic pathologists, unanimously concluding that there is no evidence of murder or for the allegations made by the prosecution, cannot all be wrong.