

# AusDoc podcast: Killers, lawyers and their victims

Interview with Professor Roger Byard by *AusDoc*'s Ciara Seccombe

**Ciara Seccombe:** Hello and welcome to the *AusDoc* Podcast. I'm Ciara. I'm a reporter for Australian Doctor, and if you're a regular reader, you might be surprised to see a podcast from us. We speak to a lot of interesting people here at *AusDoc*, so we thought, why not try making some longer form interviews with our guests for you all to listen to?

And our first guest really is a fascinating person. I'm speaking to Professor Roger Byard, a forensic pathologist with a long and influential career that includes starting his work as a pathologist investigating the bodies in the barrels from the Snowtown murders in 1999.

He was also one of a group of influential Australian researchers who uncovered the factors behind sudden infant death syndrome, a triumph in the history of evidence-based medicine which has saved thousands of lives around the world.

I sat down with Professor Byard to hear about his career and how that shaped his views on death, evil and true crime. So, Roger, let's start from the beginning. How do you even end up deciding to become a forensic pathologist?

**Prof Byard:** Yeah, well, I, I was going to...I trained in general practice, and did that in Canada, but, got the qualification, then realised how difficult general practice is and, you know, GPs think I'm patronising them when I say that, but far from it, you know, I mean, GPs are at the cutting edge, the coalface and often without support from hospitals.

So I was smart enough to realise that was a bit difficult. And so I thought I'd do emergency. And then, I was on my way back to Canada to do it and ended up doing too much skin diving in Belize and, and by the time I got back there were no positions. So I ended up in pathology.

**Ciara:** And then you end up in forensics and pretty soon you're in Snowtown, right?

**Byard:** Yeah. That's correct, I um what I did, I specialised in paediatric pathology and then got interested in sudden infant death syndrome and then threw that into forensics, and so did some forensic training. And then my first week on call, I got the call from the head of major crime about the so-called 'bodies in the barrels'.

**Ciara:** Just for context, Snowtown was the small community in rural South Australia, where eight bodies were found in barrels in an abandoned bank vault. A man, John Bunting, and his associates were convicted of their murder.

It later emerged that the victims were targeted because Bunting claimed they were paedophiles or homosexuals. But you were called in to go through the contents of those barrels.

That was your first week as a forensic pathologist. Walk me through that.

**Byard:** Well, I got the call. It was probably about 9:00 on Thursday night. And, I wondered whether there was a hydroponic set up, but I was assured that it didn't smell like that. And so, Paul Schramm, the head of major crime, said "do you want to come up?"

And I said, well, there's no point, really, because whatever information is in the barrel. So just take a lid off and, and give me a call back if you find something disturbing and they called back about ten minutes later, said he'd found a couple of feet. So that really upped the ante a bit. And we got the barrels down to Adelaide.

And that was Friday morning. And then we didn't know what the bodies had been stored in, whether it was, you know, toxic chemicals or whatever. So we had to get the fluid tested and it was quite harmless. Any acid had sort of just been diluted. And then we had to work out how to actually manipulate these really heavy barrels and to drain them and not lose any evidence, because everything would come out in a rush.

So we got archeological sieves. So we're sieving all the fluid that came out looking for projectiles, looking for any weapons, anything that might help us you know, work out what had happened. And then once the fluid had been drained out, we then pulled the remains out of the barrels and gave them, just letters and put them in separate areas and then once we drained all the barrels we then went on to actually look at the bodies and try and identify them and see what might have happened.

**Ciara:** So you get called in by the police. What was it like working with officers? Can you explain your role? You have to be independent, but you can't be influenced by what the police think. Do they attempt to sway you about what's happened?

**Byard:** It varies. Sometimes it'll be just. "Oh, there's a shooting, you know, come to this" and everybody knows it's a shooting. Other times they will explain in a fair amount of detail. And there's this whole process that people talk about cognitive bias.

But the reality is that that forensics is an art as well as a science. And you need to know background, because if you know what a possibility is, then you might look specifically for something. So you really need as much information as you can.

Usually when you get to the scene, then the police will actually inform you of, you know, who they think the person is, what they think has happened and what the timeline is, it doesn't prejudice you because, you know, they may be completely wrong. But at least you've got their view of it. And when I approach a case, I always think, well, okay, what, what are the police and the prosecution interested in?

And then I think, what are the defense interested in? And then I think, what's the most reasonable explanation, looking at everybody's point of view.

**Ciara:** And you're in your early career here, how are you handling seeing these really quite horrifying things?

**Byard:** I think that pathologists are actually very lucky compared to, say, police officers or mortuary attendants, because we've, we've got a job to work out, the scientific basis of what has happened, what the injuries are, what could have happened.

So it's a protective, sort of an inadvertent protective shield that we've got. And so we will focus on that where somebody just coming across a body de novo, they see the horror of the entire scene. And if I go and visit my colleagues overseas and go into the mortuaries, I find it quite unpleasant because I'm focusing on the whole environment, not on one specific thing.

So I think that was part of it. The other part is it was so unbelievable. It was, it was surreal and it didn't really impact. I tell people that I've only had nightmares a few times after cases, and I did get nightmares after Snowtown. I dreamt the bodies were coming back to life, but that only lasted for a few days.

I don't know where we develop the resilience to actually deal with the horrors. As I get to the towards the end of my career, I am reflecting more and more on the dreadful things I've seen. And, I'm starting to feel that if I never saw another dead body again, that wouldn't be a bad thing, really.

**Ciara:** You've spoken about the impact on the private lives of forensic pathologists, that exposure to violence and death in the line of work and the rates of PTSD and the need to better support pathologists. Could you go into that in a bit more detail?

**Byard:** Well, I think deaths are sort of a taboo topic in today's society. And I, we, we don't put grandma out on the kitchen table and have a wake to celebrate her life, which I think is a really healthy thing because I think that, you know, death is a part of life.

And in this way, you honour the person. You don't honour a person by getting them whipped out of the house, put into a coffin and cremated. That doesn't give people, I think, the closure that they need.

And I think with forensics, we're just seeing such awful things day after day, week after week, we're going around and finding dismembered bodies, burnt bodies, traumatised bodies. Bodies that are decomposed. We have to find the pieces. We have to describe them in great detail. You sometimes have to go into court and explain it to a jury and have your credibility attacked.

So it's, it's a bit of a tough gig, I think. And we never talk about the emotional toll that it takes.

But part of I think the way we deal with it is, our colleagues, we talk to our colleagues about it because they know what, what is going on. I talked to a, retired homicide cop, Gary Jubelin. He runs a podcast in Sydney, and we were just talking about the horrible things that we've seen, but I found it a very...won't say comforting podcast, but it was, it was with somebody who knew what it was like, and that, that gives you support.

**Ciara:** And on the topic of horrors, a lot of your professional life involves dealing with lawyers.

**Byard:** Yes, yes, yes, that's probably the most horrible part of the job, I'm afraid.

**Ciara:** You have to appear in court and present expert evidence, but the barristers job is often to tear your credibility apart. We wanted to know, do you get any training on how to handle that? And what was your first time like?

**Byard:** Medicos hate court because we're all control freaks. And here we are in this environment that we have absolutely no control over. There are all these weird rules that you don't understand. You can't. You can't sit where you want to.

You can't sit, you know, at all sometimes until you're told, so, it is quite intimidating. But my, boss, when I started forensics was...he'd been around for years...and, when my first court case came up, I was sort of sitting in the corner quietly sobbing, and, he just said, look, you know, Roger, I don't know how to explain this to you, but it's not about you.

You know, you're just there to help the court, and you might make a mistake. Just tell them you made a mistake. You know, just leave your ego at the door and, and realise that you're there to help the, the prosecution, the defense, the accused, the victims, the jury and the judge. And that, that way it helps.

But sometimes it's, it's tough, particularly when they're really going for you.

**Ciara:** What sort of tactics do they try and use on you?

**Byard:** A barrage of the same question just phrased different ways or the, the five-minute question with a few double negatives thrown in so that, you know, you don't you're not really sure what happens then you just appeal to the judges.

"Say 'I'm sorry, Your Honour. This needs to be broken down for me'." Otherwise I might mislead the court. Sometimes they will ask you little pieces and they want to compartmentalise things, so, you know, it's got to be this time and this time and this time, the mistake I think you can make early on is you want to help, so you want to be as useful as possible.

So I say it could be that, could be that time. Then at the end of the day, they say, well, you've said, you know, it's this time and it's like, you know, suddenly you've got a giraffe instead of a donkey.

And so with that, I just say, look, you know, I'm terribly sorry, Your Honour, I don't want to mislead the court, but I think that I have been, basically moved into an area that, that I'm not comfortable with. My opinion is this. And usually the court is, is reasonable and says, yeah, okay, we'll go with that.

**Ciara:** Is there anything you've learned that doctors should never do in court?

**Byard:** Oh, I never barrack. I mean, this is, I was a clinician for five years and we used to have, you know, clinical pathological rounds and it would be a sort of an ego, battle between the consultants, you know, who was right and who did this and who did that.

And sometimes I take that into court. Or because you're called by the prosecution, you support the prosecution. Or the defense, and you just support the defense. Whereas I think you've just got to realise that, you know, you're here to help the people that are making the judgment. You know, you're not making the call.

**Ciara:** One of the rules of thumb for lawyers is to never ask a question you don't know the answer to. Do you feel like barristers actually understand the medical issues?

**Byard:** Never ask a question that you don't know the answer to, that should limit their questioning. Judges are incredibly impressive with their understanding of medical matters and, I've sometimes been corrected and helped by judges. And really appreciate that. Lawyers vary, sometimes they they know a lot about the area, other times they don't.

And that's one of the techniques. If they don't know, then they'll advance on all fronts. They'll be asking you questions about all sorts of things and flipping from one to the other and really not having a focus. I like being in court with experienced prosecutors and defense lawyers who probably know each other, who are quite happy for me to talk to both sides.

And clearly I don't, you know, tell them, the other side what their tactic's gonna be. But if I go to the defense and I say, look like, you know, this is, I think, inflicted head trauma, the weakness in my case would be this. I'm not a neuropathologist. So if you can find a neuropathologist who can actually give a, a different answer, and it's somebody that I, whose opinion I respect and I would defer to it.

So I think the point about that is I really want to show that I'm not a barracker. You know, to me it is not, it's got nothing to do with me the way the court decides.

**Ciara:** So I also wanted to talk about SIDS, sudden infant death syndrome. I don't think people are generally aware of the role Australian researchers have played in preventing the deaths of babies from SIDS, much of it the result of long standing advice to place babies on their front to sleep.

The realisation that this was a factor came through the work of Adelaide paediatrician Susan Beale in the 1970s.

**Byard:** Susan Beale is one of the most extraordinary medicos I've had the privilege of meeting and working with. I came to Adelaide in 1989, and Susan, was working as a paediatrician at the hospital, and she was very interested in SIDS.

And she had gone out and I think in total interviewed something like 400 families. And so she provided emotional support. She provided information for the families. She provided information to the pathologists. And then she made the observation that most of the babies she saw had been sleeping facedown. Now, that was pretty much ignored by the mainstream SIDS researchers.

But she went to England and she talked to the people at the Avon study. She went to Tasmania. She talked to the people with the Menzies study, and she went to New Zealand with a New Zealand cot death study and the, the three fellows in charge who I know very well have told me that they, just to keep this woman quiet, decided to put the question in about sleeping position and then Terry Dwyer down in Hobart halfway through the trial, had to break it because it became very obvious that the prone position was dangerous.

So that was Susan. And, you know, over 8000 babies alive in Australia today who wouldn't be because of the 'Reduce the Risk' campaign. And Susan was instrumental in getting that into the media and and getting 'SIDS and kids' behind it. So, no, an amazing woman.

**Ciara:** So you actually get into this a bit later, something called the 'Reduce the Risk' campaign. What was happening there?

**Byard:** Well, Fiona Stanley and I, basically ran a meeting in Canberra back in I think the early 90s, talking about the risk factors and we're all saying, well, my god if we put them on their back, you know, maybe they'll aspirate. And we were really worried about it, but we pushed the prone position and you know, it became obvious it was 8 to 10 times the risk of dying if you're sleeping face down.

Exposure to cigarette smoke, overheating from soft toys and things in the cot. All of these things were identified and the SIDS rate tumbled. It was it was one of the most dramatic health changes in the 1990s. It was really a privilege to be part of it. And I've worked with some, some excellent people both here and, overseas.

**Ciara:** Prone sleeping for infants was popularised in the west by the American paediatrician Dr Benjamin Spock. He argued that it reduced vomiting risk. How did we get it so wrong?

**Byard:** And again, I think it just shows, what can happen with good intentions based on not enough information. I mean, it sort of made sense, but it's interesting, the only, deaths from aspirating gastric contents I've had are in babies who are sleeping

facedown on soft bedding because the vomit pooled around their noses to mouth, and they inhaled that. So it's completely the opposite. Yeah. Thousands of babies died. So it was a mistake.

It's not the first mistake medicine has made. But I think it just emphasises the fact we need, good research information before we initiate some health change. And that's what we were worried about in the 90s in Canberra, that we didn't have enough information to actually, go ahead with this. But it turned out we did it and it turned out that it was very successful.

**Ciara:** So that brings us to Sally Clark. She was a British woman, a solicitor, and she was charged with killing her two young boys, Christopher and Harry. This is the case involving the paediatrician Roy Meadow, who gave expert evidence claiming the likelihood of two cot deaths in the same family was 73 million to 1.

Sally Clark spent several years in prison before you took part in her appeal.

**Byard:** The conviction was partly due to the, and I think it's called conviction by mathematical failure. But it was also the pathology. The pathology changed in the two boys. Christopher. The initial cause of death was supposed to be a respiratory infection. And then when Harry died a little over a year later, they changed that to smothering.

He was supposed to have some injuries, which they documented but hadn't paid any attention to, but they hadn't photographed them properly, they hadn't done histology on them. Then when Harry died, the initial cause of death was shaking, and that was based on retinal haemorrhages and lacerations of the brain. Now brain laceration is not a fatal shaking. It turns out that the laceration of the brain was a postmortem artifact.

When the morticians took the, or the mortuary attendants took the brain out the retinal haemorrhages were just retinal congestion. So the pathology was wrong, and wrongly interpreted. So then they said oh this is smothering as well. So then it went to court and the famous "the chance was happening a one-in-73 million", which is now known as Meadow's Law, that was used.

We now clearly realise you cannot apply statistics to individuals because if you did, nobody would win the lottery. But people do, you know, so, so things happen. The interesting thing I got called in, was the second court of criminal appeal by the family, and I just reviewed the findings, and I just said there was a disturbing change in the interpretation of pathological findings.

You know, Christopher had a resp infection. It was so bad, it was lethal. And yet, on review, he didn't have it. He was smothered. Harry actually had, swabs taken from bacteria from five separate sites that showed a pure growth of staph aureus. This was kept from the court, so information wasn't provided and findings were misinterpreted. So I said, in my opinion, the cause of Christopher's death was undetermined because we just don't know what happened there.

Harry, certainly, was steph sepsis. And you know, on the basis of that and a few other people's opinions, the conviction was quashed and, Sally was released. Unfortunately, died of an alcohol drug overdose, several years later. But what she and her husband, Steven, had been through was dreadful.

**Ciara:** Does that leave you with a lot of soul searching about how forensic pathology could get it wrong?

**Byard:** I look, there were mistakes at a number of different levels. I think in the investigation, I think in the autopsy, I think in the interpretation and presentation to court in 2004, we organised the meeting in Canberra, and we, agreed as forensic paediatric pathologists, we agreed to a, an accepted definition of SIDs and, an autopsy approach.

So we standardised the approach and that was the problem. There was no standardisation. And pathologists are working on their own, people giving opinions on paediatric cases that really shouldn't have. So I think that's one of you asked me that advice to, doctors going to court. Don't give an opinion outside your area of expertise.

And one of the one of the traps that I had fallen into when I was younger is, you have been giving testimony for five hours. No further questions, Your Honour. You think thank god. Oh, one further question. Do you think a child of the age of six would have the intellectual capacity to actually, you know, make this observation? Oh, no, I don't think so. And then I'm walking. I'm thinking suddenly I'm a child psychiatrist, you know? So I fell into that trap.

Beware the question. At the end of the day, if you ever watch Vera on, television, the detective in Yorkshire, when she's interviewing somebody, she'll always stop at the door and say, oh, just one more thing. And that's, that's the bullet. Not not the rest of it.

Nowadays, I think we're a lot better at answering questions if they ask me something I have no idea about I'll just say, I'll tell the jury, I have no idea, the answer to that. And I can see, they're sort of a bit puzzled because they think, well, if this guy's an expert, why doesn't he know that then? Then you can see them processing it. Ah! Of course he doesn't know everything. So when he does say he knows something, then maybe that has more weight and more credibility.

But I think you've, you've really, as I said, this is not a hospital debate. This is, this is serious stuff. And, you know, you get, it gets cast in stone in court.

**Ciara:** That's a big change in your profession as you've been working. How else has it changed?

**Byard:** I think, autopsy practice is far more regulated. Our mortuary technicians are trained properly.



We liaise with grief counselors and the funeral directors more so we, and we're also cognisant of community expectations. In the old days, you know, organs would be retained. So they could be you know, studied endlessly without consultation with families. We don't do that now. And I think that's a really good thing to have happened. And it's part of the reducing the arrogance of medicos.

Also, we're using more technology. We're doing CT scans of bodies. So we can sometimes determine the cause of death without doing an autopsy. You know, if there's a heart attack that the heart's ruptured or if it's an aortic aneurysm rupture or if there's a bleed inside the head. And so that, that's useful. And even if we don't determine the cause of death, the CT scan can provide us with additional information.

In a vehicle accident, you know, you can find bones that you wouldn't have actually identified as being fractured, before, the use of CTs. So that gives you a bigger picture, and it helps you sort of understand more the mechanisms of the crash and the death.

**Ciara:** It wouldn't be a podcast if I didn't ask about true crime podcasts. There's a lot of discussion about why people seem so interested in them. Is the genre respectful to the victims or not? How do you feel about it all?

**Byard:** Look, I think it's, it's not just, a modern phenomenon. If you look at, for example, Ned Kelly, who murdered, three upstanding police officers, at Stringybark Creek. Nobody remembers, their names. Everybody remembers Ned's name, and he's the killer.

So we do tend to, focus on the, the villains rather than the victims. And I think that's, that's I don't know why that happens. But the, the victims have rights. People say to me, well, you know, why are you hurrying to go to a scene? I mean, they're dead, it doesn't matter. Well, the dead have rights and their families have rights. And to dismiss that, I think, is, not very fair.

**Ciara:** You've seen a lot of the worst of humanity. What do you think it is that makes someone evil?

**Byard:** That's...I mean, that's the question isn't it? Is it a spectrum or is there a separation? And I think, like everything, it's probably a bit of both. I think that if, a mother sees her child being threatened, she would be capable of murdering the person doing it.

Sometimes people are just sociopaths, like, you know, Himmler was, was a schoolteacher. And then he became the head of the SS. Was that a quantum leap, or was that just always in him? I um, I talk about the, Tarikjot Singh, who murdered Jasmeen Kaur. He buried her alive. And I went to the, the committal because I, hadn't seen him at court because he pleaded guilty, and I wanted to set eyes on this person, and I was just amazed he looked so ordinary.

I expected to see something like Charles Manson running around in a cage, but he just looked banal and that maybe tells us that, you know, evil is within all of us, I don't know.

**Ciara:** And how do you think about dying?

**Byard:** Well, death doesn't frighten me. In fact, I welcome it. I won't have to pay more taxes.

But how you get there, that's a different, different beast. You know, I, I would very much like to sort of, die in front of the television with a nice glass of red in my hand. Just, you know, bang. There he goes. Compared to some of the horrific ways you can die, you know, from injury, accidents or from just, disease, you know, being eaten away by, malignancy.

That's, that's not a good thing. That's why I think the assisted dying programs are actually, a good thing.

**Ciara:** We're getting into heavy stuff now. How do you deal with your work?

**Byard:** Oh, well, I'm only 28. It's been a tough, it's been a tough time. We'll deal with it with, humour, and support. And I've got some really good friends.

I'm got a really good neighbourhood. Got a great dog. And just realize every day is. Every day is a new day. Maybe the last one you get and just enjoy it. So I think it's, it's made me strangely more positive about life. Although I have my doubts about a lot of humanity.

**Ciara:** Roger, I think that's a nice note to leave on. Thanks so much for speaking with me. It's been really fascinating.

**Byard:** Thanks, Ciara. I really enjoy the opportunity to actually demystify forensics. So, great opportunity. Thanks.