Malcolm McKenzie PARK, “The strange case of Andrea Yates and Dr Park Dietz” - published 143 *Victorian Bar News* 85 (Autumn 2008)

**KEYWORDS:**

**ABSTRACT:**
Following the erroneous testimony of a celebrated expert witness, a mentally disturbed mother was convicted of murdering her five children. The witness’s evidence was the foundation for an inference that the defendant had concocted an insanity defence based upon a popular television drama series episode. In fact the expert had “falsely remembered” a non-existent episode of the series. The conviction was reversed upon appeal on the sole ground of the witness’s erroneous testimony. Upon re-trial, the defendant was found not guilty by reason of insanity.

**The strange case of Andrea Yates and Dr Park Dietz**

*It’s not what he doesn’t know that bothers me. It’s what he knows for sure that just ain’t so.*
- Will Rogers

Andrea Yates is the mentally disturbed Texas woman who drowned her five children (of ages six months to seven years) in June 2001. Following her second trial she is currently detained at an institution for the insane. Dr Park Dietz is the celebrity expert witness who testified on behalf of the prosecution in Yates’s first trial and through a monumental “stuff up” ensured a “guilty” verdict when he testified that shortly before the murders, an episode of the NBC *Law & Order* television series aired and the plot of the episode was of a mother killing her children and using a postpartum psychosis defence to gain an acquittal. There never was such an episode. Dr Dietz also incorrectly testified that Yates had informed him that she was a regular viewer of the programme. Dr Dietz is a consultant to the series and the character of Dr George Huang played by the actor BD Wong is supposedly based upon him.

Dr Dietz’s erroneous testimony was doubly damaging to the defendant Yates. Not only did it make the prosecution case but it also damaged the credibility of the
psychiatrist called by the defence: how incompetent was that witness, Dr Lucy Puryear, who had failed to join the dots between the TV programme broadcast shortly before the event and a mother’s cold-blooded and premeditated murder of her children with the intent of sheltering behind a psychiatric illness? “If you’d known that,” prosecutor Joseph Owmby asked of her in cross-examination, “… would you have investigated whether she got the idea somehow she could do this and not suffer hell or prison?”

Later it came to light that Dr Dietz had “misremembered” the Law & Order episode, after the “guilty” verdict but prior to the sentencing phase of Yates’s trial. The Texas Court of Appeals allowed her appeal in January, 2005 solely on the basis of the “mistestimony” of Dr Dietz. The other 18 grounds of appeal were not considered. It is an interesting comment on the Texas criminal justice system and the prosecution mentality that the reversal of her conviction and the ordering of a re-trial was appealed. Thereafter, at her re-trial she was found not guilty by reason of insanity in July 2006. An episode of Law & Order: Criminal Intent titled “Magnificat” and partly based upon the Yates case was broadcast in 2004.

After their “guilty” verdict the jurors were outraged to learn of Dr Dietz’s “error” and perhaps, to the enlightenment of the Texas citizenry who are required to serve as jurors, the trial judge refused the defence application to declare a mis-trial when the true facts came out. Not to worry, during the sentencing phase of the trial the prosecutor magnanimously informed the jurors that while he was not abandoning the death penalty previously sought by him he would accept their decision should they elect to bring in a lesser life sentence.
One must consider the expertise of the witness in a “death penalty” case of his “misremembering”. That the President of the US can commit such verbal monstrosities does not excuse the $500 per hour charged by Dr Dietz or the fact that the life of the criminal accused was wholly dependent on his expertise. Given the extreme consequences flowing from his failure to provide his usual expertise demands a high standard of care in discharging his duty to the criminal justice system and providing expert testimony. For a person who values his expertise so highly, this observer suggests we can require of him to fully investigate and research his conclusions rather than just “winging it” in the witness box. After all, the time spent researching and confirming his conclusions would have entailed the meter continuing to tick over at $500 per hour.

In addition to the flaws exposed in the Texas criminal justice system, the case is an indictment on the US medical health insurance industry. Yates was no “trailer park trash” mother; being married to a mid-level NASA engineer she had the benefit of generous employer-funded health insurance benefits. But her prognosis was always subject to the bottom line. That she had received so many hours of psychiatric consultation and counselling meant that she was to have no more. It didn’t matter that the health professionals in charge of her case were concerned. The meter had run out — too bad, Mother Yates! Perhaps her health insurer should have been criminally prosecuted. I mean, the possibility of such corporate criminal culpability has never inhibited prosecuting attorney Jack McCoy of the original Law & Order TV series. Further, the parsimonious penny-pinching by her health insurer may have led to her condition being erroneously diagnosed with the result that her prescribed medication exacerbated rather than relieved her psychiatric problems.

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