

Bowraville takes on the state

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Families of murder victims in a tiny, disadvantaged North Coast town have had a big win in their quest for justice, writes Ava Benny-Morrison.

When Evelyn Greenup disappeared from her bed in 1990, police told her aunt the four-year-old might have gone walkabout. A month earlier, Colleen Walker's mother was given the same baseless explanation when she reported her daughter missing. When Clinton Speedy-Duroux's body turned up in bushland outside of Bowraville, crucial lines of inquiry were not followed up.

Over the next two decades the families of these children - killed within five months of each other in eerily comparable circumstances - were dealt a string of similar let-downs. Yet they have managed to achieve more than many people in positions of power could have dreamed of. They have fought for - and won - changes to double-jeopardy that has existed under common law for 800 years; forced NSW Police, the very organisation that let them down, to reform and make changes in the way they deal with indigenous people, and raised awareness about "Aboriginal English".

This week marked a sweet victory for the families of the Bowraville murder victims, with the NSW Attorney-General sending an application for a retrial to the Court of Criminal Appeal. It is a monumental step towards justice for the victims but also another achievement in a long journey for their families.

They hail from the small NSW north coast town of Bowraville, a community of about 1000 people where 24 per cent of the population identified as being Aboriginal in the 2011 census. It has previously been identified as one of the most socially disadvantaged towns in the state. This was the backdrop for the disappearance of three children from their loving homes in the 1990s.

Sixteen-year-old Colleen was last seen on September 13, 1990, walking away from a party in the mission on the town's outskirts. A fisherman on the Nambucca River found Colleen's clothes weighted down with rocks in April the following year.

Less than a month after Colleen disappeared, four-year-old Evelyn vanished from the bed in which she was sleeping with her mother and siblings. In April 1991, her skeletal remains were found on Congarinni Road in Bowraville.

In January 1991, Clinton, 16, went missing after sleeping the night in the caravan of Jay Hart, a local white man who lived near the mission. His body was found a month after he vanished in bushland just off Congarinni Road.

Hart - who has since changed his name and moved out of the area - was charged and acquitted of Evelyn's and Clinton's murders in separate trials.

No one has been charged over Colleen's murder.

The point of contention for police and the families has always been that the cases of the three children have not been heard together in court. The acquittals were devastating for the families yet Clinton's sister-in-law, Leonie Duroux, and Colleen's and Evelyn's families mustered the time and strength to campaign to have the matters heard together.

"My children ... the older ones particular, they see their grandfather and grandmother upset, they see their aunties and uncles upset and they grieve like they knew Clinton," she said.

"He has been kept very much alive but to think that my kids are prepared to take on the fight for someone they never even met it is pretty extraordinary really."

In 2006, after campaigning from the families, the NSW government changed the double jeopardy laws so an acquitted person could be retried for murder if there was fresh and compelling evidence and it was in the interests of justice. But the families' pursuit for justice came unstuck on a single legal word - "adduced" - with the debate around whether "adduced" meant "tended" or "admitted", when the state argued that the new evidence police claimed warranted the cases coming back to court had actually been previously presented to a judge but ruled inadmissible.

Three retrial applications were made - one to the Director of Public Prosecutions and two to former attorneys-general but all were knocked back. At the centre of these killings is a relationship of animosity between the police and the families at the time of the disappearances.

When Michelle Jarrett reported her niece Evelyn missing in 1990, the local policeman told her he was about to knock off and what did she want him to do about it? The police also dismissed concerns of relatives in Colleen's case, telling her mother that she might have gone walkabout.

It is this reluctance to take the families' concerns seriously that police now acknowledge led to investigative opportunities being missed in the crucial 72 hours after a killing.

"It is very nice for society to say that all victims are treated equally," Detective Chief Inspector Gary Jubelin told a 2014 parliamentary inquiry into the Bowraville cases. "Unfortunately in this situation I do not think that is entirely correct."

"Race and to a lesser degree socio-economic factors" impacted how these matters were investigated, Inspector Jubelin, who took over the case in 1996, conceded in his blunt evidence that day.

Now, the inspector remembers driving to the country town with a city attitude. "I understood when the community voiced anger at me, it wasn't directed at me personally. It was directed at me because of my role as a police officer," he said.

"Given the well known animosity between Aboriginal people and police, once I understood this I didn't react to the comments personally because I understood where these communities were coming from and the pain they had suffered."

At a protest this month, almost 20 years after Inspector Jubelin took over the case, they referred to him as their Gumbaynggirr warrior.

His approach to Bowraville's Aboriginal community will be a model for generations of police to come.

After fierce campaigning by the families, the inquiry recommended the NSW Police Force overhaul the way it trained officers in Aboriginal cultural awareness, to avoid repeating the failures of Bowraville.

A similar recommendation was made for the training of criminal lawyers and politicians in NSW.

The case also highlighted the lack of understanding around the little-known complexities of Aboriginal English in the courtroom. Some Aboriginal communities speak versions of English that are influenced by traditional Aboriginal languages and cultures, which academics call "Aboriginal English".

During Evelyn's murder trial, Dr Diana Eades, who specialises in sociolinguistics, watched Aboriginal people in the witness box, with long silent pauses, avoiding eye contact and answering leading questions from lawyers with "gratuitous concurrence", she says. It is not unusual, particularly on serious issues, for Aboriginal people to take long pauses in conversation without explanation or feeling uncomfortable, she explains.

To a juror, this may come across as the trait of an unreliable witness.

If jurors are directed by a judge to have this cultural communication trait in the back of their mind, it may remind them that it is not a negative thing, Dr Eades says.

"If there is a fundamental difference in the way people communicate then I think that can greatly influence ... the way anyone assesses the credibility of a witness," she said.

Dr Eades made a submission to the NSW Law Reform Commission after the Bowraville trials to see jury instructions about Aboriginal English, like those in Queensland and the Northern Territory, implemented in NSW.

In the next couple of months, the relatives of Evelyn Greenup, Colleen Walker and Clinton Speedy-Duroux will travel to the Court of Criminal Appeal in Sydney to finally see the case heard for a retrial.

It will be the latest, but arguably the most significant, feat this family from a tiny, socially disadvantaged town on the north coast has achieved in a 26-year pursuit of justice.