

Sir Laurence Street

[Start of recorded material]

[00:00:00 - 00:00:02 – Background conversation]

Interviewer: Sir Laurence, good morning.

Respondent: Good morning, Jim.

Interviewer: And welcome, and thank you for your time in being interviewed. A revered judicial figure in Australian legal history, former Chief Justice of the Supreme Court of New South Wales. Now it's the case that you've taken an interest in the Breaker Morant matter, a matter that goes back to 1902, Lieutenants Morant and Handcock were tried and both executed [00:00:30] by the British military, and George Witton was sentenced to life imprisonment, later represented by none other than Sir Isaac Isaacs, noted jurist, later Governor General and Chief Justice of the High Court, and George Witton was released after two and a half years. Why do you think this case has remained controversial in Australian history?

Respondent: Well I think there's probably two things [00:01:00] to that. One is the upsurge of colonial sensitivities in relation to this past mode of dealing with the criminal law that formed part of the military justice system until the intervention of the Australian government with some current legislation, so there's the legislation... there's the constitutional background there [00:01:30], and secondly I think it was allowed to languish simply through lack of interest in current Australians, we're not big enough to have a real movement to get the Australian government, still less the British government, to interfere with past convictions.

Interviewer: When Morant and Handcock were executed they were given eighteen hours' notice of the execution [00:02:00] and denied their rights of appeal. What's your view of that?

Respondent: A gross injustice. I agree with the general tenor of everything that Geoffrey Robertson said. I'm a great admirer of Geoffrey Robertson, we need more Geoffrey Robertsons in the system. But it was a gross injustice to... I mean just to go through the motions of a period of time that it would [00:02:30] be impossible for them to do anything in that [unintelligible 00:02:34].

Interviewer: One of the other issues of the case is that when these men were tried by Court Martial they were provided with one defending officer, a solicitor from Tenterfield by the name of Thomas, and he was given one day's preparation to defend men charged with serious crimes. What's your view of that?

Respondent: Well it compounds the [00:03:00] supercilious way that the prosecution dealt with the whole exercise. It was very much a Court Martial sort of flavour, you

know, wheel in the guilty bastard from the Captain's table that I'm sure you're familiar with and I'm familiar with. Happily those days have gone, but it was that sort of general flavour of the administration of [00:03:30] military law that I think poisoned the whole climate of the trials of these three men and then their later attempts to get the... well later attempts made on their behalf to have the intervention of a proper legal assessment of their exposure to military justice.

Interviewer: In March 2010 this case was run before the House [00:04:00] of Representatives Petitions Committee in Canberra, and the Committee heard the evidence and described the case for review as strong and compelling. Would you like to comment about that outcome?

Respondent: Well I would class that if anything as an understatement as being it was not just strong and compelling their case, their case represented a gross miscarriage of justice. [00:04:30]

Interviewer: Justice... now deceased, but Justice [SL - 00:04:34 Zelling] of South Australia also studied the case and described it much in the same terms that you've used of a gross injustice, so you're well supported.

Respondent: Oh that's reassuring, I'm a great admirer of [SL - 00:04:49 Zellings], and the [unintelligible 00:04:53] of it is it's an incredible blot on the... not just our system of justice, but on the philosophy [00:50:00] with which justice was administered in military circles.

Interviewer: The... to get this matter reviewed there's been a petition to the Queen which the British government has rejected. What would you like to see the British government do to bring this case to a conclusion?

Respondent: I think the British government should intervene and appoint an enquiry, [00:05:30] the outcome of which I'm sure would be that the conviction should not be allowed to stand and would quash the convictions.

Interviewer: The former Australian Attorney General, Robert McLelland was supportive of just what you've said, but the two subsequent Attorneys General, Roxon and Dreyfus, have resisted that call for an inquiry. What do you think the Australian... a future Australian government should do?

Respondent: [00:06:00] The same thing again. I don't mean... I don't mean refusing an inquiry, but they should... the current government... current and future governments should be sensitised to current attitudes in relation to the criminal law and the fact that a man... well there's only one man now has been sentenced to death for a crime which [00:06:30] was not properly heard or dealt with by the military system, and who's labouring under that yoke in the current climate.

Interviewer: Perhaps the Australian government could make representations to the British government to say that something needs to be done to bring this case to a conclusion?

Respondent: Yes. Undoubtedly. We've got to bring it to a... we can't have a loose end like this trailing. Yeah. This is an [00:07:00] appalling affront to any general notions of justice, and an appalling injustice to the remaining living man.

Interviewer: Well, Sir Laurence, thanks for your time this morning, and I appreciate your comments.

[00:07:18 - 00:07:21 - Background conversation]

Interviewer2: Could you give us a brief outline of why you believe it was a gross injustice [unintelligible 00:07:29] had to deal [00:07:30] with in terms of the law?

Respondent: Well I can put myself in the shoes of the then colonial government and the British assessment of it. This was just simply some relic of the Boer War colonial issues involving an alleged miscarriage of justice, but this was the great [00:08:00] system of British justice which was on trial, not these three men. It was the system that was on trial, and it was the system which broke down, so my assessment of it would be very similar to what Geoffrey Robertson had to say. I find myself on many issues lined up with Geoffrey Robertson, not just in this instance but in other cases that he's taken up and run with. Yeah. And [00:08:30] I'm appalled that it's gone on for as long as this, it ought never to have been allowed to get out of the gate let alone be galloping over the paddocks of freedom.

Interviewer: Well hopefully the matter will come to a conclusion.

Respondent: Jim, thanks to the efforts and the commitment of yourself and others who share your view, and I like to think who share my view, yeah, [00:09:00] I'm sure that ultimately justice will prevail. But it's desperate to think that one has to go through this, to force through a relatively insignificant amendment as it is in the big scheme of things, but of course a matter of life to these who are remaining individual and reputational death to the other two men.

Interviewer: Well [00:09:30] the one good thing that came out of Morant's and Handcock's execution was that in 1903 the Defence Act was amended in Australia to provide that any Australian soldiers serving under British military command, World War II being an example, if the rest of them tried for capital offences such as desertion could not be executed, and that's why in World War I, despite the large number of Commonwealth [00:10:00] soldiers who were executed for desertion, no Australian prisoner was so executed, and that was brought about by the death of Morant and Handcock.

Respondent: Well that's a wonderful result for those two men, but it doesn't solve this blot on the escutcheon of our much [unintelligible 00:10:20] system of British

justice. British justice should be the same for everybody. Sir Douglas Menzies once said [00:10:30] injustice is justice according to the law, and this was an exercise of criminal... the administration of criminal justice which sadly miscarried.

Interviewer: Well I appreciate your comments.

Interviewer: Yes, that was very good, thank you very much.

Interviewer: They're wonderful words. They'll be valuable in the documentary.

Interviewer: Yes, absolutely.

Interviewer: Very valuable.

Respondent: Well I often used to quote Sir Douglas Menzies [00:11:00] that justice is justice according to law.

Interviewer: Well I think one of the wonderful passions about this case is that Sir Isaac Isaacs, of course, in his legal opinion, and the petition that he drafted on behalf of George Witton successfully had... was very successful, was signed by 80,000 Australians and it was sent to King Edward VII in August of 1902, and Witton was released [00:11:30] about 12 months later, and Isaacs tried to get him a pardon. It didn't work, but he got him released, and I think that's a great jurist.

Respondent: I think you're absolutely right. Yeah. It's a... but we couldn't move the law in those days, as I say we... I wasn't involved in that movement at that stage. Yeah. And I wish I had been, not that my presence would have made any difference, [00:12:00] it would have been one more voice crying in the wilderness crying for justice.

Interviewer: Well your voice today joins with others, MPs that I've interviewed, Robert McLelland, Tim Fischer and others, and hopefully it will... at the end it will make a difference.

Respondent: Yes, it's disappointing those men who have expressed interest and support that they haven't been more active when they've been in a position [00:12:30] of power. And I'm not referring to any individual, and I'm not being sexist when I say 'those men' because it's all been men so far, the justice was the prerogative of men until very recently. I remember the outcry when women jurists... women were admitted to sit on civil juries.

Interviewer: Well I will make sure that your comments today are transcribed and joined with the other... [00:13:00] comments from others and forwarded to the British government.

Respondent: Thank you, Jim. Thank you.

Interviewer: I will make sure that that happens.

Respondent: Thank you.

Interviewer: And we can see what the next few months brings.

Respondent: Well...

Interviewer: I look forward to telling you the results.

Respondent: Well it will be a wonderful contribution I think to the administration of criminal justice in this country, and in general common law countries. This is not the prerogative, or the property, if you like, of the British common law, this belongs [00:13:30] to the common law. These issues and the affront to the common law principles that is... that underlies what took place needs to be exposed, and once it's exposed, well, justice is well on the way to being done.

Interviewer: Which is the reason that it's important to not let something go on.

Interviewer: Languish. [00:14:00]

Interviewer: Languish, I guess, unresolved.

Interviewer: Well as I always say justice has it's day, and the day for the Breaker is upon us, and it will be delivered.

I have a fair bit of contact with Geoffrey Robertson, and in fact I wrote and told him this morning by email, so I'll pass on your very best regards.

Respondent: Oh good, and would you pass on my delight that he's edited himself to the extent that he has. [00:14:30]

Interviewer: Yes.

Respondent: Because I know that everybody who has a feeling of having received an injustice thinks of Geoffrey Robertson very early in the day as this man maybe our saviour. Well this is another one to load onto his shoulders. He's a very fine jurist, fortunately he... like Sir Isaac Isaacs, he matches a sense of justice, a burning sense of justice of the idea of justice along with his facility with the [00:15:00] legal system.

Interviewer: I'll send him an email tonight and tell him that I've interviewed you and pass on your very best regards.

Respondent: Thank you, Jim, and that's, I think, a wonderful outcome. It's little enough for me to add my voice to the chorus, what will be an on-going swelling chorus, the sooner that we lance this boil the better.

Interviewer: Well your little voice [00:15:30] has a very large effect, it's booming, and it will have a telling effect on the outcome of this case.

Respondent: Well that's kind of you to say that.

Interviewer: Well it's true.

Respondent: I just wish it was before me the judgment. I could deal with it very quickly, it would be one of the ones that I would have dealt with extemporarily in a court.

Interviewer: That's exactly what... well similar to what Judge [SL - 00:15:54 Zelling] said.

Respondent: Yeah.

Interviewer: Very similar.

Respondent: Is it?

Interviewer: Yes, he said he wouldn't tolerate this case [00:16:00] if it came before him.

Respondent: Yeah.

Interviewer: He would have upheld it on appeal.

Respondent: Yeah. No judge with any ownership of the criminal justice system in his jurisdiction, or her jurisdiction, could tolerate a... something of this sort going unremedied. This is crying out for judicial intervention.

Interviewer: Thank you, Sir Laurence. I'll keep in touch.

Respondent: Thank you, Jim.

[End of recorded material]