

A Second Chance for Justice

A Second Chance for Justice:
The Prosecutions of Gabe Watson
for the Death of Tina Thomas

By

Asher Flynn and Kate Fitz-Gibbon

**CAMBRIDGE
SCHOLARS**

P U B L I S H I N G

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FOREWORD

Bring someone to justice: arrest someone for a crime and ensure that they are tried in court: Everything will be done to bring those responsible to justice.

—Oxford Dictionary

It was on the night of 21 October 2003 that I first met Gabe and Tina Watson. They were on their honeymoon. Tina was bubbly, energetic and personable, while Gabe seemed to be the more serious of the two—but nothing that does not make up the mix of a normal couple. I was the trip director and dive master on board the *Spoilsport*, which was taking scuba divers from around the world, including Gabe and Tina, on a seven-day expedition. Our first dive was to be the *SS Yongala* wreck. Part of my role included conducting interviews with the guests about their diving experiences and what they wanted to get out of the expedition, as well as performing the many detailed dive safety briefings. In speaking with Gabe and Tina, due to her limited diving experience, I recommended that Tina have an initial orientation dive to make sure she was comfortable in the water. This offer was extended to Gabe as the accompanying dive buddy, as some people prefer to dive with their partners. Tina and Gabe both turned down the offer. Gabe stated that he was a rescue diver and he was comfortable with the dive and with accompanying Tina on the dive, while Tina explained that she was comfortable just diving with Gabe. The offer of an orientation dive was made a second time during the interview and then again the following morning, but these offers were met with the same response. Before they headed off on their dive on 22 October 2003, Tina hugged me. The next time I saw Tina, I was attempting to rescue her from where she lay unconscious under water, with her eyes open and all her scuba diving equipment in place.

While leading my orientation dive group down towards the *SS Yongala* just after 10am or so on 22 October 2003, I saw a person lying unresponsive a bit off from the wreck. I immediately began a rescue dive. When I reached the diver, I saw that it was Tina. Gabe was nowhere in sight. I grabbed Tina and we quickly ascended to the surface and I did everything I could to ensure every chance of her survival. Despite our best efforts, including around 40 minutes of resuscitation attempts, Tina passed

away on board a second dive vessel, the *Jazz II*, at 11:21am. This tragic moment formed the beginning of almost nine years of legal proceedings, and the beginning of my realisation that justice is not what it seems.

A Reflection on Justice

Over the course of the legal proceedings in the *Watson* case, I have provided statements to the Queensland Police Service about the events that occurred on 22 October 2003, assisted in the collation of evidence as part of the dive re-enactment tests carried out by the police, and testified as a prosecution witness at the capital murder trial of Gabe Watson in Alabama. Until having these experiences with the law, I had always held the belief that justice was about correcting wrongs and bringing right to those who had been wronged. It may have seemed an innocent way to think of justice, maybe even naive, but then again, shouldn't something like right and wrong be simple in principle? Is it wrong to expect that when they say justice is to be done, that justice will be done? The simplest of concepts: who is right and who is wrong? Who did right and who did wrong? I had always held the belief that justice entailed finding the truth, regardless of what "need" or "cost" it took to get there.

A business is focused on the bottom line: what have I got to sell, who wants to buy, and how can I get more people to buy what I am selling? What does this have to do with justice? I have come to realise, a great deal. The prosecutors, the defence lawyers and their clients are all in the business of selling. They are trying to sell their version of events to the judge, the public and the jury—if the case is "lucky" enough to get to a jury trial. The better that they can do this, the better chance that team will have of winning their case. Justice is not about the facts or the truth; it's about how and who best sells their story. In the *Watson* case, this was no different—it was just that selling your story was based solely on what money and resources you had available.

Money doesn't just make the world go around, money makes justice viable or out of reach. In Queensland, getting justice in the *Watson* case was subject to the restriction of cost. Early on in Queensland, it was made clear in the many challenges blocking the police investigation, and in the prosecution's decision to forego a murder trial, that the matter—for a reason that has never been made clear—needed to be wrapped up as quickly as possible. Justice was to be obtained swiftly, with the "added" benefit of not expending "unnecessary" costs. The cost of justice again became an issue when the case made its way to Alabama, with even the trial being postponed because of budgetary cuts. Nine months further

down the track, when the case was finally heard, the state-funded prosecution was limited in the resources they had, and could only call a handful of the important witnesses needed to fully present its case. In both Queensland and Alabama, justice was limited by what the state was able and willing to pay. And in this case, that figure was not much at all.

A Second Chance for Justice?

In *A Second Chance for Justice*, Asher Flynn and Kate Fitz-Gibbon examine the different ways in which the Queensland and Alabama criminal justice systems responded to Tina's death, and how resource and efficiency issues can shape perceptions and outcomes of justice. The authors provide a unique insight into the ways in which justice was sought and denied—subjectively, substantively and procedurally—in both countries. And despite the different approaches used by the two legal systems, they find a similar pattern emerging from both prosecutions of Gabe Watson: that justice was decided by resources and the voice of one.

This book is split into three parts, each addressing the moments in which justice had the opportunity to be achieved. The analysis follows the case from 2003 until its conclusion, at least in a legal sense, in Alabama in February 2012. Across the three parts, this captivating book takes readers on a journey through some of the key, contentious legal issues, injustices and obstacles that emerged throughout the Queensland and Alabama legal responses to the *Watson* case, and leaves readers asking significant questions of the Queensland and Alabama justice systems, including: what does justice look like in a resource-starved, efficiency-driven legal system? Can the decision of one reflect justice? Do we accept the changing face of justice? How many other cases have faced the same or similar injustices?

Although this book focuses primarily on the *Watson* case, it contains much discussion that will be of interest to those unfamiliar with the case, and for those interested in justice—something that should be considered of vital importance for all members of society. In recognising the significant contributions of their participants, the authors provide a generous voice to the perspectives of those most involved in the case, including the police investigators, prosecutors, defence lawyers and members of the Thomas and Watson families. This offers readers a truly unique insight into the very real consequences that arise from experiences of justice and injustice.

At the conclusion of this book, readers will have gained a broader perspective on how “justice” truly operates within the Queensland and Alabama legal systems. Beyond this, readers will also have gained a

unique insight into and appreciation of the practical operation of the justice system. As someone directly affected by this case, I cannot emphasise the importance and significance this book provides in shedding light on how the “justice” system really works.

Final Thoughts

I am no longer a dive master or instructor. I work as an Advanced Care Paramedic with the Queensland Ambulance Service in Brisbane, Australia. I have contributed to this book as a person not intimately knowledgeable, but intimately involved in the almost nine-year legal proceedings surrounding Tina’s death. I no longer believe that justice is about proving right from wrong. Rather, it all comes down to who can afford the resources to best “sell” their story. So, should I ever seek justice from the law, I hope that I have the state-funded side up against me, because as long as justice comes at a cost, my chances of attaining some version of it are far higher as the one accused, than as the victim.

Wade Singleton

ACKNOWLEDGEMENTS

When we first envisaged writing this book, we were driven by the obscure concept of justice and a desire to understand the many contentious legal decisions that have surrounded the *Watson* case since October 2003. Along the way, we have met a range of people who have been affected by this case—personally, emotionally, financially and legally. We found that they were also driven by this obscure notion of justice and a desire to understand why and how this case was able to proceed in the manner that it had for almost nine years. We hope this book will provide some insight and answers to these issues.

We would like to thank the following people for their support, participation and guidance—without them, this book simply could not have been written. First and foremost, we would like to thank the individuals who shared their stories, experiences and invaluable memories with us. We feel incredibly privileged for the generosity that these individuals showed in speaking with us, often at a very difficult time in their lives. We are very grateful that we have been given the opportunity to gain some understanding of their experiences of justice in the Queensland and Alabama legal systems.

To Tommy and Cindy Thomas, we are deeply sorry for the loss of your beautiful, energetic and bubbly daughter Tina. Thank you for sharing your memories of Tina with us and for allowing us such a personal insight into how your lives have changed and what you have experienced since 22 October 2003. Our discussions with you were invaluable in helping decipher what really happened in the justice systems of both countries.

To Lieutenant Brad Flynn and Detective Senior Constable Kevin Gehringer, thank you for sharing your expertise and for providing us with a personalised insight into the difficult and prolonged experiences that both of you have had in understanding and working within the constraints imposed by the resources, decisions and obstacles thrown up in the Queensland and Alabama legal systems. We are indebted to you for the generosity you both showed in the time that you spent with us, in your willingness to answer our questions and in your very kind spirits. To Commissioner David Glasgow, we thank you for your generous contribution to our book, for sharing your views, and for providing us with a glimpse into the significant problems that exist within the resource-

starved climate of the Queensland criminal justice system. Thank you for your time and support. To Alabama Assistant Attorney-General Don Valeska, thank you for supporting this book from the outset and for your willingness to share with us an understanding of your experiences prosecuting a case that has raised so many unique questions.

To David Watson and Bob Austin, we thank you for sharing your perspectives and the experiences of what your son and friend, Gabe Watson, endured throughout this emotional, challenging and exhausting nine years. We value your support and contribution in providing us with an understanding of the effects of the legal processes on your family. To Brett Bloomston and Jo Basgier, thank you for sharing your astute perspectives on a case that clearly meant a lot to both of you. We appreciate your guidance and thank you for allowing us access to what has remained the hidden side of this case—the defence. Thank you also for your support of the book and for providing us with various materials to contribute to its accuracy.

We are very thankful to Wade Singleton who contributed the foreword to this book and provided a reflection on his experiences with, and changing perceptions of, justice. Wade is a remarkable person and remains to many, including the Thomas family, a true hero.

We would also like to thank the following individuals for their support, guidance and/or contributions to the book: Tina Coker Hammonds, Andrew Arrington and John Hensley from the Office of the Alabama Attorney-General; Michael Hanle, Garner Thompson and Ashley from the defence team in Alabama; Detective Senior Sergeant Gary Campbell; Andy Toulson; Mel Flynn; Linda Valeska; Lyn Lewis; Eric Velasco; Tuck Thompson; Butch Dill; Chief Doug Jones; Judge Tommy Nail; and the court staff and security personnel at Jefferson County Courthouse.

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Finally, to our incredible families and our wonderful partners—Mark and Mick—thank you for your continual love and support.

Our purpose in writing this book has been to provide a better understanding of the Queensland and Alabama legal systems' responses to the fatal dive that occurred on 22 October 2003, and we hope that we will have shed some much-needed light on the problems that exist within the resource-starved climates in which justice is determined. The legal issues that are examined in this book are reflective of the problems confronting criminal justice systems globally, and we hope that our analysis propels a discussion as to how we can attempt to address these concerns. Most importantly, we hope that this book honours Tina's memory.

ABOUT THE AUTHORS

Dr Asher Flynn is a Lecturer and Researcher in Criminology at Monash University, Victoria, Australia. Her research encapsulates a diverse range of socio-legal and critical criminology concerns, with a particular focus on plea bargaining, sentencing, criminal prosecutions and the criminal justice system. Asher has published in a range of high quality, high impact criminology, socio-legal and law journals. *A Second Chance for Justice* is her first book.

Dr Kate Fitz-Gibbon is a Lecturer and Researcher in Criminology at Deakin University, Victoria, Australia. She researches in the area of the law's response to lethal intimate partner violence and the effects of law reform in Australian and international jurisdictions. Dr Fitz-Gibbon has published on the operation and effects of homicide law and sentencing reform with a key focus on gender and justice.

INTRODUCTORY NOTE

22 OCTOBER 2003 — 23 FEBRUARY 2012

A person who was full of life and energy. She was the type of person who walked into a room and lit it up ... People didn't forget her. She was my big sister and we would talk just about every day either on the telephone or in person. We worked together and spent a lot of our time together. It was like us against the world. We talked about everything together. We talked about our work lives, our private lives, our relationships and our future plans ... We even talked about being in the same nursing homes together as roommates. Tina was a bubbly person ... [She] was a true romantic.¹

—Tina's sister, Alanda Thomas

Christina Mae Thomas Watson (Tina Thomas) had a smile that exhumed warmth and happiness. She had a cheeky sense of humour and a kind spirit. Tina was one of those special people, who was so bright and bubbly that you couldn't help but get captured in her aura. Tina loved animals, college football and shopping. Her favourite movie was *Gone with the Wind* and over the years, with the help of her parents, Tommy and Cindy, she had collected a range of memorabilia, including figurines and posters. During high school, Tina would join as many extra-curricula classes and clubs as possible, usually alongside her best friend Amanda Phillips, mostly so they would have lots of pictures in the year book. When the end of each year arrived, Tina would sit with her mum, Cindy, laughing as they went through all the pictures, and reading all the comments and signatures that people had written in Tina's book. At Christmas time, Tina would hand out the presents. She would count each present, because Tina and her sister, Alanda, had to receive the same amount, so they could be exactly the same. For her 18th birthday, Tina's parents bought her diamond earrings and wrapped them in multiple boxes—starting with a really big box, then a slightly smaller box, then an even smaller box and a smaller box. This game continued for some time. Tina loved these types of surprises, where she would be laughing and

¹ Alanda Thomas, witness statement, 30 April 2007.

guessing what the present could possibly be and when she would finally get to it.

Tina met David Gabriel Watson (Gabe Watson) when they were both students at the University of Alabama, Birmingham campus. They began dating in 2002 and on 11 October 2003, Tina married Gabe at the Southside Baptist Church in Birmingham, Alabama. For their honeymoon, Gabe had planned a trip to Australia and they arrived in Sydney in the state of New South Wales on 17 October 2003 to begin their lives together as husband and wife. After a few days spent visiting sites like Taronga Zoo, where they took photographs cuddling koalas, and the Opera House, Tina and Gabe arrived in Townsville in the state of Queensland and boarded the *Spoilspport*, a dive vessel that would take them on a seven-day scuba diving expedition to the Great Barrier Reef, the Coral Sea and the historic *SS Yongala* wreck.

On 22 October 2003, the first day of their diving expedition, and five days into their honeymoon, Tina entered the water twice with Gabe. On their first dive attempt, Tina and Gabe resurfaced after descending just one to two metres, as Gabe had complained of a fault in his dive computer. In order to rectify the problem, which Gabe has claimed was the result of an incorrectly inserted battery, Tina and Gabe reboarded the *Spoilspport*. After fixing the dive computer battery and returning to the diver's drop point, Gabe and Tina entered the water for the second and final time together. Within minutes of descending, Gabe has claimed that Tina gestured to him with her thumb pointing behind her shoulder, to indicate that she wanted to go to the surface. From this point, Gabe has provided approximately 16 varying accounts of what happened next. These accounts have been given to a range of people, including the police, fellow divers on the *Spoilspport*, members of Tina's family and as part of a sworn declaration made in conjunction with a civil lawsuit in the United States (US). There are some slight and some significant variations among the 16 accounts that Gabe has provided. However, across these statements, as noted by the Queensland Assistant Director of Public Prosecutions, Brendan Campbell SC, Gabe has:

consistently claimed that ... [Tina] indicated that she was in difficulty ... [and] they attempted to return to the access line. He was assisting her by holding her ... There was then an incident where his mask and regulator were dislodged and [Tina] ... sank away from him and he then decided to surface.²

² Brendan Campbell, sentencing hearing, 5 June 2009.

Gabe has claimed that after Tina gestured to him underwater, he began towing her by her arm, and/or her dive vest, and/or her hand, against the current, back towards the access line of the *Yongala* (the rope line used by divers to descend and ascend from the *Yongala* to the ocean's surface). Gabe has explained that he turned and indicated for Tina to inflate her buoyancy control device (BCD) by pressing a button located on her scuba diving vest, which would enable her to quickly ascend to the surface, but for unknown reasons she failed to do so. Gabe has claimed that at some point he turned towards Tina and she either grabbed hold of his mask, or knocked his mask, or knocked his mask and regulator ajar, at which stage he let go of her to clear and readjust his mask and regulator, or to clear and readjust his mask and put his alternate regulator in, referred to as the "safe second". It was at this point that Gabe has said that Tina began sinking downwards towards the ocean floor. He has explained that she was facing upwards, with her eyes open and her arms stretched outwards towards the surface. Gabe has claimed that Tina was somewhere between two and four metres, five to ten feet, or at least out of arm's reach away and below him. He has described her as sinking at a pace which despite wearing flippers, meant he was unable to reach her.

Gabe has suggested to some that he attempted to swim after Tina, but the pressure in his ears caused too much pain for him to continue; while to others, he has explained that when swimming after Tina, as fast as he was attempting to reach her, she was sinking at a quicker rate. In other versions, Gabe has suggested that despite thinking of the various ways he could assist his wife—including removing Tina's weights, and inflating his and/or her BCD which would enable them both to ascend to the ocean surface quickly—he ultimately felt there was nothing further he could do to help Tina, so he decided to leave her and begin ascending alone to seek help.

During his ascent to the surface, Gabe initially claimed that he approached two other divers, possibly of Asian descent, on the access line and attempted to seek their assistance, without success. However, given the location of where Gabe ultimately resurfaced, and that no witnesses support this version of events, it is now accepted that this did not occur. Upon resurfacing, Gabe was seen signalling for help and was overheard saying, "she's gone to the bottom and she's disappeared. She's in trouble".³

Within approximately two and a half minutes of Gabe resurfacing alone, the *Spoilsport* dive master and trip director, Wade Singleton—the

³ Craig Haslett, witness statement, 22 October 2003.

man in charge of the dive expedition—surfaced holding Tina in his arms. Singleton has claimed that while underwater he sighted a diver motionless at the bottom of the ocean and upon reaching her, identified the diver as Tina. He has also noted that her eyes were open, her mask and regulator were in place, but she was not breathing. To immediately ascend with Tina, Singleton has explained that he removed his weight belt and successfully inflated Tina's BCD. During the ascent, he then forced air into her regulator, referred to as "purging her regulator", in an attempt to provide her with oxygen to enable her to breathe. Singleton's ability to do this indicated that there was air remaining in Tina's tank, and that her equipment was working, including the BCD that Gabe had earlier said she could not inflate. Upon reaching the surface, and placing Tina onto a second dive vessel, the *Jazz II*, which was at the *Yongala* site for a daytrip, resuscitation attempts were made to revive Tina for approximately 40 minutes. Tina was pronounced dead at 11:21am on 22 October 2003, 11 days after her wedding.

Initially, Tina's death was considered a tragic accident. It was only after preliminary police investigations revealed Gabe's rescue diving accreditation levels; the various inconsistencies and perceived implausibility in his version of events; his seemingly bizarre conduct, including his actions towards Tina's family in the days, months and years following her death; and the emergence of evidence suggesting a financial incentive and Gabe's perceived controlling and jealous character, that the investigation shifted towards a potential homicide inquiry. Over the next four to five years, the police investigation which began with the Townsville Water Police Division and the Townsville Criminal Investigation Branch (CIB) spread to the US, to include members of the Helena Police Department, located in the state of Alabama, and the Federal Bureau of Investigation. Through this multi-agency investigation, the CIB collected evidence which would later be used for two prosecutions of Gabe Watson for the death of Tina Thomas.

In response to the initial police investigation, a coronial inquest was held in Townsville, Queensland, to determine the cause and circumstances of Tina's death. The inquest commenced over four years after Tina's death on 13 November 2007 before Coroner David Glasgow. The hearing lasted 24 days, but was spread over seven months. Gabe did not provide evidence or attend the inquest. On 20 June 2008, after 64 oral and written statements had been given by witnesses located across eight countries, Coroner Glasgow found that there was "evidence of sufficient reliability which ... satisfy me, that a properly instructed jury could make a finding

of guilt against David Gabriel Watson on a charge of murder”.⁴ Coroner Glasgow then committed Gabe to stand trial for murder in Queensland and issued a warrant for his arrest. Gabe remained in Alabama when this finding was delivered.

Just over five months later, on 28 November 2008, the Queensland Office of the Department of Public Prosecutions (ODPP) presented the Brisbane Supreme Court with an indictment, charging Gabe Watson with the murder of Tina Thomas. Gabe was initially indicted to attend court on 3 February 2009; however, this date was later adjourned as both the prosecution and defence requested additional time to prepare their cases.

Throughout the five-year police and coronial investigation, Gabe continually denied any involvement in his wife’s death, until a plea bargain agreement was reached with the Queensland ODPP which included, among other concessions, the withdrawal of the murder charge. After voluntarily returning to Australia on 13 May 2009 and spending 23 days in custody, Gabe was officially indicted before the Honourable Justice Lyons at the Brisbane Supreme Court on 5 June 2009, where he pleaded guilty to manslaughter by criminal negligence. Under s 290 of the *Criminal Code 1899* (Qld), manslaughter carries a maximum penalty of life imprisonment. However, informed by the agreed statement of facts prepared by the prosecution and defence as part of the plea bargain agreement that was reached, Gabe was sentenced to a maximum term of four and a half years imprisonment, which was to be fully suspended after 12 months, including the time he had already served. This meant that Gabe would serve a further 11 months and seven days imprisonment for his negligent role in Tina’s death.

In response to a bevy of national and international backlash, alongside strong pressure from the then Alabama Attorney-General Troy King, the (former) Queensland Attorney-General, Cameron Dick, lodged an appeal against the manifest inadequacy of Gabe’s sentence. This matter was heard on 17 July 2009. On 18 September 2009, in a two-to-one decision, the Queensland Court of Appeal found in favour of the prosecution and determined that Gabe’s maximum sentence should remain at four and a half years, but that the period of suspension was to be increased from 12 months to 18 months, including time already served.

On 22 October 2010, seven years to the day that Tina died, Gabe was serving the last 20 days of his sentence in Borallon Correctional Centre in Queensland. On another continent, in the city of Birmingham, Alabama, a

⁴ Transcript of Proceedings, *Inquest into the death of Christina Mae Watson* (20 June 2008) 64 (Coroner David Glasgow).

grand jury of 18 was listening to Alabama Assistant Attorney-General Don Valeska and Tina's father, Tommy Thomas, present evidence to indict Gabe for Tina's murder. Within five hours, the grand jury indicted Gabe on two charges of capital murder—capital murder for pecuniary gain and capital murder by kidnapping—both of which carry a potential death sentence.

As a general principle, Australia does not condone the implementation of capital punishment. Accordingly, under ss 22(3)(c) and 25(2)(b) of the *Extradition Act 1988* (Cth), Australia's federal Attorney-General can refuse to authorise the extradition of an individual facing a capital offence, unless the extradition country provides an undertaking that the person will not be tried; or if they are tried for the offence, that the death penalty will not be imposed; or if the death penalty is imposed, that it will not be carried out. While Australia was able to deport Gabe at the conclusion of his sentence, meaning that technically these extradition protections did not extend to his situation, the Australian Government refused to deport Gabe to the US until it received a written undertaking that the death penalty would not be imposed if he were found guilty of either, or both, of the capital murder charges. As a consequence, upon his release from prison on 11 November 2010, Gabe was escorted by immigration officials to Melbourne in the state of Victoria. Once in Melbourne, Gabe was held in an immigration detention centre until an official written statement confirming that he would not face the death penalty if convicted was received by Australian authorities eight days later.

On 25 November 2010, Gabe was deported to the US where he remained in custody until his bond hearing in the Jefferson County Courthouse in Birmingham, Alabama, on 14 December 2010, at which point he was released on a \$100,000 bond by Judge Tommy Nail. The bond included additional conditions requiring Gabe to wear an electronic monitoring device and obey evening curfews. At the same hearing, Judge Nail scheduled Gabe's murder trial to commence on 23 May 2011. However, due to resource constraints, including the justice budget of the State of Alabama being stripped by approximately \$120 million,⁵ Gabe's murder trial was delayed because the courthouse could not be properly resourced with adequate security staff to run the trial. The trial was consequently delayed by almost nine months, with a new start date of 13 February 2012.

⁵ National Centre for State Courts, *Alabama Overview* (2012)

<<http://www.ncsc.org/information-and-resources/budget-resource-center/states-activities-map/alabama.aspx>>.

On the morning of 13 February 2012, Gabe’s capital murder trial began with the prosecution withdrawing one of the charges—capital murder by kidnapping—and proceeding only on the capital murder for pecuniary gain charge. After nearly a day and a half of pre-trial arguments and an extensive jury selection process, the prosecution began presenting its case. On Thursday 23 February 2012, after six and a half trial days, during which 22 witnesses testified for the prosecution, the defence put forward a motion for a judgement of acquittal, claiming that the prosecution had failed to provide sufficient evidence to sustain a conviction for the capital murder offence. At approximately 1:50pm on 23 February 2012, Judge Tommy Nail granted the defence’s motion and acquitted Gabe of the capital murder charge.

As enshrined in the Fifth Amendment of the *Constitution of the US* and based on US Supreme Court case law,⁶ Judge Tommy Nail’s decision can never be appealed. Consequently, after almost nine years of investigations, prosecutions and intense media and public scrutiny, the case against Gabe Watson officially ended, at least within the context of the criminal justice system.

Table 1-1: Timeline of events pertinent to the legal proceedings in the Watson case

Date	Event
11 October 2003	Gabe and Tina marry in Alabama.
17 October 2003	Gabe and Tina arrive in Australia for their honeymoon.
21 October 2003	Gabe and Tina arrive in Townsville, Queensland, and board the <i>Spoilsport</i> for a seven-day diving expedition.
22 October 2003	Gabe and Tina have two dive attempts on the <i>SS Yongala</i> wreck. Tina is pronounced dead at 11.21am.
22 October 2003	Gabe provides his first statement to the Townsville police. The statement is taken by Detective Senior Constable Kevin Gehringer. Gabe has a support person present for the statement, Mrs Paula Snyder, a fellow diver from the <i>Spoilsport</i> .
27 October 2003	At his own request, Gabe provides a second statement to the Townsville police. The statement is taken by Detective Senior Constable Kevin Gehringer and Senior Constable Glen Lawrence.

⁶ See *United States v Martin Linen Supply Co.* 430 U.S. 564 at 570-572 (1977); *Sanabria v United States* 437 U.S. 54 at 63-65 (1978).

	Gabe's mother, Glenda Watson, is also present as Gabe's support person.
October 2003	The Townsville Water Police Division take carriage of the investigation.
July 2004	The investigation is moved from the Townsville Water Police Division to the Townsville CIB.
August 2004	The Helena Police Department in Alabama is contacted by the Townsville CIB and its assistance is sought in the investigation, namely to assist with collecting witness statements.
April 2007	Detective Senior Sergeant Gary Campbell, lead investigator on the case, travels to the US to meet with the Alabama police investigators, interview various witnesses and collect evidence.
13 November 2007	The coronial inquest commences in Townsville, Queensland, before Coroner David Glasgow.
20 June 2008	Coroner David Glasgow charges Gabe with murder, which includes committing him to stand trial and issuing a warrant for his arrest.
28 November 2008	The Queensland ODPP presents the Brisbane Supreme Court with a murder indictment against Gabe Watson for the premeditated homicide of Tina Thomas.
27 January 2009	A video conference with several people from the ODPP and Queensland Police Service (QPS), including the Assistant ODPP Director and crown prosecutor in charge of the case, Brendan Campbell SC, ODPP Director Anthony Moynihan SC and the QPS Deputy Commissioner Ian Stewart, is held with Detective Senior Sergeant Gary Campbell and Detective Senior Constable Kevin Gehringer, to discuss the possibility of withdrawing the murder charge and accepting a manslaughter plea in the <i>Watson</i> case.
Late January 2009	Gabe's Australian lawyers travel to the US to meet with him.
3 February 2009	Gabe's arraignment date is rescheduled, with both the defence and prosecution requesting additional time.
13 May 2009	Gabe voluntarily returns to Australia and is remanded in custody.
14 May 2009	Crown prosecutor Brendan Campbell, along with Detective Senior Sergeant Gary Campbell and an ODPP media representative, travel to Alabama to meet with the Thomas family.

16–17 May 2009	Assistant ODPP Director and crown prosecutor in charge of the case, Brendan Campbell SC, meets with the Thomas family and Lieutenant Brad Flynn (Helena Police Department) in Alabama to discuss the Australian trial process and the possibility of a plea deal occurring in which Gabe would plead guilty to manslaughter.
May 2009	Assistant ODPP Director and crown prosecutor in charge of the case, Brendan Campbell SC, informs Tommy Thomas that a plea deal has been reached between the ODPP and Gabe. The deal involves the murder charge being withdrawn and Gabe pleading guilty to manslaughter by criminal negligence.
3 June 2009	Assistant ODPP Director and crown prosecutor in charge of the case, Brendan Campbell SC, meets with members of the Thomas family, Lieutenant Brad Flynn, Detective Senior Sergeant Gary Campbell and Detective Senior Constable Kevin Gehringer in Brisbane, Queensland, to discuss the sentencing hearing and reveals information about the plea deal which implies some inaccuracies in the information he provided to them 18 days earlier.
5 June 2009	Gabe pleads guilty to manslaughter by criminal negligence in the Queensland Supreme Court and is sentenced to four and a half years imprisonment, fully suspended after 12 months, including time served.
17 July 2009	An appeal against the manifest inadequacy of Gabe's sentence, lodged by the (former) Queensland Attorney-General Cameron Dick, is heard in the Queensland Court of Appeal.
18 September 2009	The Queensland Court of Appeal increases the suspension period of Gabe's sentence to 18 months, including time served, but the head sentence remains at four and a half years.
22 October 2010	An Alabama grand jury indicts Gabe on two counts of capital murder – murder for pecuniary gain and murder by kidnapping.
11 November 2010	Gabe is released from Borallon Correctional Centre and escorted to an immigration detention centre located in Melbourne, in the state of Victoria.
19 November 2010	Australian authorities receive a written guarantee from the US that the death penalty will not be sought if Gabe is convicted of a capital murder offence.
25 November 2010	Gabe is deported to the US.

14 December 2010	The Alabama bond hearing commences and Judge Tommy Nail releases Gabe on a \$100,000 bond with some restrictive conditions, including that he must wear an electronic monitoring device and adhere to an evening curfew. The trial date is set for 23 May 2011.
8 April 2011	Gabe's original trial date is rescheduled from 23 May 2011 to 13 February 2012 due to resource constraints and a lack of adequate security personnel to staff the Jefferson County Courthouse.
13 February 2012	Gabe's capital murder trial commences on what would have been Tina's 35 th birthday.
23 February 2012	The prosecution rests its case and the defence files a motion for judgement of acquittal. Judge Tommy Nail acquits Gabe of the capital murder charge.

INTRODUCTION

Justice embodies notions of fairness to all members of the community, including victims and offenders, and striking a balance between their competing interests is the cornerstone of current criminal justice policy. But it also assumes a consensus on what constitutes justice, and achieving justice.¹

—Dr Susan Easton and Professor Christine Piper

Justice is a peculiar concept. Its meaning is subjective, and obscure. It is arguably illusive, and as the theories underpinning research in the field of justice suggest, it may be that in any particular case one person perceives justice as prevailing, while another disputes its existence.² As Dr Susan Easton and Professor Christine Piper explain, “the notion of justice is not clear-cut ... justice is a slippery concept”.³ Perceptions of justice depend on how an individual understands or defines a situation in terms of “maximizing their self-interests; their needs for status and inclusion; or questions of basic moral right and wrong”.⁴

Within the process of the law, the definitive outcome is the attainment of justice. But what does justice mean and look like? The law is a system of truth and knowledge based on reason, abstraction, neutrality, rationality and objectivity. It is a system of shared consensual social values within society, which serves as a check on governmental power, and operates on the basis of equality for all. It is, at times, criticised as the prize of the powerful, as a patriarchal institution, and as a discourse of power and knowledge. Yet, within a democratic society, like that of Australia or the United States (US), the law and the legal system stand as the fundamental

¹ Susan Easton and Christine Piper, *Sentencing and Punishment: The Quest for Justice* (Oxford University Press, 3rd Edition, 2012) 7.

² Linda Skitka, “Exploring the ‘Lost and Found’ of Justice Theory Research” (2009) 22 *Social Justice Research* 98; Linda Skitka, Christopher Barman and Elizabeth Mullen, “Morality and Justice: An Expanded Theoretical Perspective and Review”, in Karen Hedtvedt and Jody Clay-Warner (eds), *Advances in Group Processes* (Vol. 25, Emerald Group Publishing, 2008) 1–27.

³ Easton and Piper, above n 1, 36.

⁴ Skitka, above n 2, 99.

mechanism through which one can attain traditional, procedural and substantive forms of justice.

In the legal setting, justice is traditionally equated with fairness, equality of treatment, and respect for individual rights. Justice is generally considered to sit under the rule of law, which encompasses procedural and substantive justice ideals. Procedural justice is measured by perceptions of fairness within the legal *processes* that are used to resolve disputes, while substantive justice is measured by perceptions of fairness in the *outcomes* of those legal processes. As identified by the Honourable Martin Moynihan in his review of Queensland's criminal and civil justice systems, the values reflected in the rule of law require that a legal system "provide equal justice for all according to the law ... by disposing of cases impartially, fairly, expeditiously, with the minimum unavoidable delay and with the minimum, but necessary, use of public resources".⁵

Within legal proceedings a number of strict rules of evidence and procedure have been put in place to provide protections for those accused of criminal misconduct, and for those who have fallen victim to such conduct. In this sense, the criminal justice systems in Australia and the US operate within a due process framework, the underlying principle of which is equality for all who come before the law, regardless of their financial means, race, religion, gender, age or sexuality. Examples of due process are evident on a global scale, where the right to a fair trial is enshrined in Article 11 of the *Universal Declaration of Human Rights 1948*, and the right to equality before the law is enshrined in Article 14 of the *International Covenant on Civil and Political Rights 1966*. Due process is also evident at the local level, where the right to a fair trial before an impartial jury is a fundamental right that each state of the US is required to provide, as guaranteed by the Sixth and Fourteenth Amendments of the *Constitution of the US*. Variations of this right similarly exist in Queensland, guided by s 80 of the *Australian Constitution* and s 604 of the *Criminal Code 1899* (Qld), except in the rare event where a trial by judge alone is requested by the accused and supported by the prosecution and the court under s 614 of the *Criminal Code 1899* (Qld).

Professor Austin Sarat argues that due process lies at "the heart of our conceptions of fairness and justice ... [It is] the right to one's day in court, the right to be heard, the right to take part in procedures through which

⁵ Honourable Martin Moynihan AO QC, *Review of The Civil And Criminal Justice System in Queensland* (Queensland Government, 2008) 23, 29.

one's fate is determined".⁶ On this basis, the justice systems central to the *Watson* case—those of Queensland and Alabama—are built on adversarial frameworks that are designed to provide justice, within a context requiring "that the state proves its case against the accused ... and that the accused be given a meaningful opportunity to contest the case against him or her".⁷ The underlying basis of this system, as identified by the Honourable Martin Moynihan, is that a "conviction of a criminal offence should be the result of a 'fair trial' in which an accused has the opportunity to know and to meet the case made against them, with proper legal representation".⁸

Within this context, the jury trial is seen as the "focal point", the stage "at which all the relevant issues can be examined and adjudicated",⁹ with the jury acting "as the ultimate arbitrator of fact".¹⁰ Thus, substantive and procedural justice, due process and the rule of law are underpinned by a perception that justice equates with a trial by jury. Even subjectively, the concept of justice is strongly linked to a jury trial, on the basis that determining whether an outcome is just is not merely informed by what that outcome is, but also by the process through which that outcome is attained.¹¹ The jury trial is subsequently held up as the pinnacle of our legal systems—a process that is used to incorporate community input and a social moral consensus; one that keeps the legal process in line with community expectations and values; and one that provides an essential link between "the law" and society.

⁶ Austin Sarat, "Going to Court: Access, Autonomy and the Contradictions of Liberal Legality", in *The Politics of Law: A Progressive Critique*, ed. David Kairys (Basic Books, 3rd Edition, 1998) 103.

⁷ John Jackson, 'The Adversary Trial and Trial By Judge Alone' in Michael McConville and Geoffrey Wilson (eds) *The Handbook of the Criminal Justice Process* (Oxford University Press, 2002) 336.

⁸ Moynihan, above n 5, 28.

⁹ Jackson, above n 7, 336–7.

¹⁰ Moynihan, above n 5, 28.

¹¹ Allan Lind and Tom Tyler, *The Social Psychology of Procedural Justice* (Plenum Press, 1988); John Thibaut and Laurens Walker, *Procedural Justice: A Psychological Analysis* (Erlbaum, 1975); Tom Tyler and Steven Blader, "The Group-Engagement Model: Procedural Justice, Social Identity and Co-Operative Behavior" (2000) 7 *Personality and Social Psychology Review* 249; Tom Tyler, Robert Boeckmann, Heather Smith and Yuen Huo, *Social Justice in a Diverse Society* (Westview Press, 1997); Linda Skitka and David Houston, "When Due Process Is of No Consequence: Moral Mandates and Presumed Defendant Guilt or Innocence" (2001) 14 *Social Justice Research* 305.

In recognising that the jury trial underpins the foundation of attaining justice, Associate Professor Albert Dzur describes the use of a jury as a process that:

Allows both formal legal rules and community norms to affect judgments, through a setting that keeps decision makers alert to the complexity of context, and the peculiarity of concrete details. In other words, the trial ideally holds open the tensions between formal and informal, system and life-world, citizen and official, and does not allow one side to dominate.¹²

Professor Dzur expands upon this argument by claiming that the jury trial plays an important role in “holding citizen-jurors accountable for laws and their enforcement”,¹³ noting that “the existence of the jury in a criminal trial means that punishment is effectuated through lay people ... Jurors leave the courtroom with an expanded interest in the public sphere and a greater sense of civic responsibility”.¹⁴ In relation to Queensland’s justice system, the Honourable Martin Moynihan expresses a similar view:

There is much to be said in support of the jury system which involves citizens drawn from the community, to determine whether or not the prosecution has proved guilt beyond reasonable doubt, before delivering a verdict of guilty. Jury duty is one of the few civic obligations directly discharged by citizens, rather than by elected representatives or by executive government acting through employed public servants ... There is no doubt the jury franchise should be wide ... and supported.¹⁵

Thus, justice within the legal setting can be viewed procedurally, substantively and even subjectively as being represented by a trial before an independent adjudicator, in which two sides—one representing the state, and to a lesser extent, the victim; and one representing the accused—present their evidence of guilt and innocence, which is debated and tested before a jury comprising 12 members of the community, tasked with determining the culpability of the accused. On this basis, the *Watson* capital murder trial in Alabama arguably provided the opportunity for procedural, subjective and substantive justice to be attained, even within a due process framework.

Specifically, the second prosecution of Gabe Watson for the death of Tina Thomas provided those most intimately involved in the case with the

¹² Albert Dzur, ‘Why American Democracy Needs the Jury Trial’ (2011) 5 *Criminal Law and Philosophy* 87, 88.

¹³ *Ibid.*, 89.

¹⁴ *Ibid.*

¹⁵ Moynihan, above n 5, 30.