

BARRY GEORGE AND THE CELEBRITY EFFECT:

A MISCARRIAGE OF JUSTICE IN THE MAKING

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FOR LIFE, LIBERTY AND PROPERTY



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ROBERT HENDERSON

On 2 July 2001 Barry George, 41, was convicted at the Old Bailey of the murder of the broadcaster Jill Dando, best known as the presenter of the BBC programme *Crimewatch*. Few, if any recent convictions, have been greeted with such disquiet by the media. Leader comment (3 July) from the *Daily Mail* and *Daily Telegraph* give the gist of press feeling: “Despite his loathsome character and criminal record, the evidence against George was hardly compelling.” (*Daily Mail*) “... [T]here can be few convictions that need the imprimatur of the higher courts [ie the agreement of the Court of Appeal that the conviction is sound] more than this.” (*Daily Telegraph*) The comment is all the more noteworthy for coming from the two British national newspapers most unfriendly to the criminal and most supportive of the courts and the police.

From the moment that prosecuting counsel Orlando Pownall said in his opening speech that the Crown’s case against Barry George was in effect (because the forensic evidence was utterly inconclusive) entirely dependent on circumstantial evidence, the alarm bells started ringing. They rang even louder when Pownall said that the evidence was “compelling”, for a strong case needs no such gratuitous promotion but speaks for itself. As the prosecution unfolded it became all too clear that even by the standards of lawyerly hyperbole, “compelling” was going it a bit.

The prosecution were unable to show that (1) George had a motive, (2) that he was particularly interested in, let alone fixated with, Dando, (3) that he was in the immediate area of Dando’s house at the time of the killing and (4) that he had access to a gun since 1982. They produced no direct witnesses of the killing, no weapon and no unambiguous forensic evidence. Moreover, they failed to do all this despite devoting immense amounts of money and manpower to the investigation — forty to fifty detectives worked on the case full time for more than a year. In addition, George at no time admitted to the police that he had committed the murder or had any knowledge of the crime, i.e. he did not make a confession (or any compromising statement) and then retract it. Throughout he strongly maintained his innocence.

Occasionally, as in the case of the murderess Rosemary West, circumstantial evidence is of a nature where a conviction is safe even if it is the only evidence. To find her not guilty, the jury would have had to believe that she was able to live in the same house with her husband over a period of many years during which time he buried umpteen bodies of young women and girls he had befriended without Rosemary having an inkling of what was going on. There was also evidence given by girls befriended by the Wests who escaped being murdered, that Rosemary had accompanied her husband when he had gone out looking for girls to befriend and that she had been present when they were later subjected to physical abuse by Fred West. The evidence against Rosemary West strained credulity past the breaking point because, although it was entirely circumstantial,

it was also powerfully linked to the crimes being tried. In the Dando trial there is nothing to strain credulity past the point of no return nor was it linked powerfully to the crime. Indeed, the very opposite, for the weakness of the evidence presented against George was quite startling. So weak in fact, that even if there had been a really “killer” piece of evidence linking George directly to the murder, for example, if the murder gun had been found in his flat, it is difficult to see how the evidence presented at his trial would have added to the case against him because it relied so heavily on fanciful supposition mounted on the most contentious premises. The best that could be said for the prosecution case was that the evidence they presented was extremely voluminous.

THE FACTS OF THE SHOOTING

Jill Dando was shot at about 11.30am on Monday, 26 April 1999 on the doorstep of her house at 29 Gowan Avenue, Fulham, West London. Shortly before her killing she was captured on CCTV in several places. There was no evidence from the videotapes of anyone following her.

Miss Dando was found lying with her head against her front door. Her car keys were in her hand and her handbag open with the strap over her arm. She was almost certainly about to open her front door when attacked.

Damage to the lower part of the door suggested that Miss Dando was crouching when shot. There was a small bruise on her right forearm which was probably made by the killer grasping her arm. The killer probably forced her to the ground and held her in position for the killing.

Miss Dando was killed by a single shot to the head made at very close range. The fatal bullet went into her head just behind the top of the left ear and exited above the right ear.

Prosecuting counsel described the result of this shot thus:

An impression of the muzzle and foresight of the weapon used was discernible in the area surrounding the entry wound which suggested it had been pressed firmly against the left side of her head upon discharge.

(*Daily Telegraph* 5/5/01)

The police found a yellow bullet and shell case at the crime scene. The shell case was of 9mm short self-loading pistol calibre. The weapons expert called by the prosecution claimed that “Such ammunition had never been widely distributed.” (*Daily Telegraph* 5/5/01) There were six markings along the top of the cartridge suggesting a pin punch or similar instrument was used to secure the bullet.

From the bullet and shell case it was deduced that the gun used to kill Miss Dando had a smooth-bore barrel which had either been converted from a blank pistol or was a reactivated weapon. It was not fitted with a silencer, but because it was fired so closely to the head, the noise of it firing would have

been substantially reduced. The markings at the top of the cartridge suggested that it had been adapted and may have carried a reduced charge, which would have created a quieter report when the gun was fired.

A single fibre (not from Miss Dando's clothing) was found at the scene of the crime.

Two witnesses (neighbours of Miss Dando) who probably heard but did not see the killing said Miss Dando screamed and then came the sound of a shot. Presumably she must have seen the gun. These neighbours reported seeing a man but neither identified him as George. Indeed, the photofit produced from their description did not greatly resemble George if at all.

The facts of the shooting suggest a most efficient killer. He has moved swiftly to her, rapidly placed her in a position to be killed, killed her quickly with a single shot to the head, muffled the sound by placing the gun against her head and, possibly, reduced the report further by using adapted ammunition. This behaviour was utterly at variance with George's chaotic character.

The prosecution tried to argue that the single shot (professional killers always use two according to the prosecution - such wondrous certainty over the palpably uncertain was displayed by Mr Pownall throughout the trial) and the use of a re-commissioned gun or modified blanks pistol, suggested that the killer was an amateur. The fact that one shot was used is, of course, no evidence of a lack of professionalism. Miss Dando was shot in a public place and the killer may well have decided on one shot to avoid drawing attention to the killing. The fact that the gun was a re-commissioned one or a converted blanks pistol also means nothing. Such guns are commonly used by London's underworld, much more commonly by all accounts since the tightening of the gun laws by the Blair government.

GEORGE'S CHARACTER

The prosecution were, to put it politely, intellectually confused in their arguments relating to George's character. On the one hand they wished us to believe that George was capable of having coldly planned and executed a most efficient killing without leaving any forensic or other direct evidence to convict him. On the other hand, when it suited them, they portrayed George as a reckless near simpleton.

George's character as depicted at the trial suggested a seriously inept and disorganised man. As a boy he was a problematic enough a personality to have been sent to a special boarding school. He has never been able to hold down a job and has spent almost all of the time since he left school unemployed. He suffers from epilepsy to the extent that he was allowed an attendant in the dock at the Dando trial to assist him in the event of a fit. He was said to be of low intelligence. He lived in a terrible physical mess — his flat was covered with a deep "soil" of paper and other oddments such as a large number of rolls of undeveloped films.

of particular importance to the trial was the fact that George is a serial fantasist of Walter Mitty proportions. This had two effects. First, evidence that he had lied to the police became essentially worthless without other corroborating evidence, because lying was second nature to George and, indeed, it is the type of behaviour which would have been reasonably expected from him in the circumstances of being arrested and questioned by the police. Second, much of the other evidence, such as his habit of following women, could be plausibly explained by his tendency to act out his fantasies.

George's fantasy world was one in which he sought satisfaction, and doubtless attention, by pretending to be someone glamorous or connected to someone glamorous or to have been in

glamorous or sensational circumstances. At various times during the twenty years prior to the murder he has claimed to be Steve Majors (a name derived from Lee Majors and the character, Steve Austin, he played in the TV series *The Bionic Man*), an SAS soldier by the name of Thomas Palmer (an SAS soldier involved in the Iranian Embassy siege), Paul Gadd (the pop star Gary Glitter's real name) and Freddie Mercury's cousin (for which he used the name Barry Bulsara) to mention just a few. He has at various times also claimed to be in possession of a rocket propelled grenade launcher and to be able to roller skate over four double decker buses.

George did not merely have fantasies he acted them out. When he was pretending to be Freddie Mercury's cousin, Barry Bulsara, he went to Mercury's home after the singer's death in a hired white limousine and left flowers outside the house. He then proceeded to sign autographs for a while, having persuaded mourning fans that he was related to Mercury.

In 1983 he was arrested by police in Kensington Gardens near to the Princess of Wales' home, crouched in the bushes, dressed in pseudo military gear and equipped with a knife and rope. The police arrested him but did not press charges, although they searched his flat. The Royal Protection Group (RPG) did however, list him as a potential threat to the Royal Family. An RPG member also suggested him to the team investigating the Rachel Nickell murder in 1992 as a possible suspect.

In 1985 George was living in a bed and breakfast hotel in Gloucester Road, West London. There he came to know a family by the name of Dobbins. After they moved to a flat in Fulham George called on them unexpectedly dressed in combat gear and a balaclava. Once in the hallway of the flat he produced a handgun and fired a blank shot. He showed the Dobbins' son, David, the blank rounds in his pocket and then left.

A further example of his exhibitionistic and obsessive mentality comes from his medical history. George attended no less than eighteen different surgeries in West London at various times and was known as a "heart sink" patient because he was constantly coming in with imagined ailments.

Doctors who examined George after his arrest diagnosed an impressive array of psychiatric disorders: psychopathic personality, narcissistic personality, histrionic personality, paranoid personality and Asperger's Syndrome (a disorder linked to autism). As a boy he was diagnosed as suffering from attention hyperactivity disorder. George was also diagnosed as having somatisation disorder and concurrent factitious disorder.

Whether psychiatric diagnoses mean anything is debatable. However, the police and courts credit them and therefore should have taken them into account before a prosecution was mounted. The interesting thing about these diagnoses is that they relate to personality traits which could innocently explain every part of George's supposedly suspicious behaviour both before and after the Dando murder. A psychopathic personality is prone to lying and using aliases. A narcissistic personality is one who urgently seeks attention and admiration and has a heightened sense of self-importance. A histrionic personality will imagine they have a well developed relationship with someone they do not know at all in a personal sense. A paranoid personality has obvious ramifications for George's suspicion of the police. Asperger's sufferers have major problems with personal relationships and a tendency to become obsessive. Finally, somatisation disorder and concurrent factitious disorder explained his imagined illnesses.

GUNS AND THE MILITARY

George was undoubtedly fascinated by guns and the military. The police found in his flat camouflage trousers and a jacket,

notes about stunts to raise money for the SAS, books such as *Uniforms of Elite Forces*, *SBS*, the invisible raiders and various other survival and gun related magazines.

However, George appears to have been as unsuccessful in his efforts to achieve a life which regularly included guns and the military as he was with virtually everything else he attempted. He joined the Territorial Army 10th Bn Parachute Regiment in December 1981. He served until the following November but did not complete his basic training, although he attended twenty nine voluntary training days which included basic weapons training. In August 1982 he joined the Kensington and Chelsea Pistol Club as a probationary member. In September his full membership application was refused. He attended the club on eight occasions and concerned himself primarily with pistol shooting. In 1991 he applied unsuccessfully to become a member of the Royal Green jackets and the Field Ambulance Volunteers. That was the extent of his military involvement and weapons training.

When the police searched George's flat for the second time, they found a list of firearms which they showed to George. This prompted him to say "That's from when I was with the TA. I have only handled weapons under supervision." This, if true, meant that George had not handled working firearms since 1982. Try as they might, the police could not prove he had. The best they came up with was the firing of blanks at the Dobbins' home and a recent picture of George taken showing him holding a replica pistol capable of firing only blanks.

THE POLICE CONDUCT OF THE INVESTIGATION

The police did not take George seriously as a suspect until nearly a year after the murder, despite some reports from the public early in the investigation which suggested that he might be worth investigating. The police explanation for the delay was the sheer volume of leads they had to follow up — these ran to several thousands. This could conceivably be the reason, but more probably by the time the police turned their attentions to George they were getting desperate because of their failure to charge anyone and feeling utterly thwarted by the sheer lack of hard evidence to follow up. This view is leant weight by the words of Assistant Commissioner Brian Moore who said at the conclusion of the trial:

It was a strange attack. It was not seen by anybody, the killer was not seen by anyone at the time and very little forensic evidence left behind. There could be no more difficult environment to investigate a case.

(*Daily Telegraph* 3/7/01)

The police gain the vast majority of their convictions through one of three means: catching the perpetrators in the act, intelligence from underworld informants and the sheer incompetence and lack of self control of many criminals — more criminals are probably caught because they boast about a crime to other criminals who then inform on them than by any other means. Where none of these events occurs, the police inevitably struggle. It is not that they are dim or incompetent. Rather, it is in the nature of things that if a crime is committed by someone who leaves no material evidence, is not connected to the victim, tells no one and is not subject to the attentions of an informant, then the case is next to insoluble. In particular, the police have a pretty poor record when it comes to solving stranger murders, no matter how much effort they put into an investigation. The failure of the Metropolitan Police (the London police force) even to charge someone for the murder of PC Dunn (a few years ago he was shot down — probably by drug dealers — while answering what appeared to be a routine call) or to gain a conviction which would stand the test of an appeal in the case of the especially brutal killing of PC Blakelock dur-

ing the Broadwater Farm riots in 1981, shows how difficult such cases are to solve. In both cases the police force investigating the crimes had the greatest possible incentive to solve the crime, it was the best resourced and largest police force in Britain and had by far the greatest experience in murder investigations, because of the disproportionately large number of British murders which take place in London.

In most investigations the police just put it down to experience if they cannot solve the crime, even if it is a murder. Files may be kept open for a long time, but active investigation either stops altogether or is severely reduced. But where the crime is sensational, especially if it is a murder, there is no question that the police devote more time and effort to a case than they would normally do. Had Jill Dando been an Old Age Pensioner killed in her home by a burglar, her case would have been quietly investigated for a few months and then effectively dropped if no obvious leads remained unexplored. But because she was Jill Dando, media celebrity, the police could not face doing that. Instead they employed a disproportionate number of detect-ives (forty to fifty) for a disproportionate amount of time (more than a year) at a disproportionate cost (around £4 million). That amount of effort in turn creates an ever increasing need in the police mind for a person to be charged and brought to trial.

In fact, any murder trial in which someone is not charged until many months after the event is likely to be suspect. Where the murder victim is a well known and liked celebrity, it is a near certainty that no real evidence exists if the accused is not charged until a year after the killing. The detective in charge of the Dando investigation, Detective Superintendent Hamish Campbell said after the trial that he had no doubt about the rightness of the verdict and then continued tellingly: "The ones [murders] that worry me are unsolved murders: cases that leave people without an answer for losses." (*Sunday Telegraph*, 8/7/01) There is a strong element of the classic policeman's mentality in that statement, both "he wouldn't have been convicted if he was innocent" and "a job well done because a culprit has been found and punished".

Why did the police pick on George when the evidence against him was so weak? His sister, Michelle Diskin put forward a plausible reason after the trial:

My feeling is that Barry looked disposable. They thought he could disappear and no one would notice. They thought it was just him and his elderly mum. They didn't realise he had a large family network.

(*Daily Telegraph* 3/7/01)

THE CROWN PROSECUTION SERVICE

The prosecution was sanctioned by Alison Saunders, then the Assistant Chief Crown Prosecutor for central London with the Crown Prosecution Service. She was interviewed by the *Sunday Telegraph* after the trial (8/7/01).

Ms Saunders insisted that the case passed the "realistic prospect of conviction test" — that a conviction is more likely to succeed than fail.

She admitted however, that

... it was a difficult decision to take because there was no eye witness to the murder and no smoking gun, and we had to consider it very carefully.

Ms Saunders was of course aware of George's criminal record see below. She claimed that she was not influenced by that, but one wonders whether at some level she did not take it, wittingly or unwittingly, into account. There was, of course, also the pressure she must have felt to bring someone to trial

both because of the victim's celebrity and the immense effort devoted to the investigation.

THE EVIDENCE PRESENTED AGAINST GEORGE

Ms Saunders said that she was persuaded to recommend charges by the forensic evidence, statements by witnesses placing him near the murder scene, his efforts to obtain an alibi and George's lies over not knowing where Dando lived or who she was. Let us examine the evidence under those four heads.

Forensic

The only forensic evidence which supposedly linked George directly to the killing was a minute chemical residue, too small to be seen readily with the human eye, and a single strand of fibre.

The chemical residue was found in the inside pocket of George's coat. The coat itself may have been contaminated by the police because it was not kept properly protected on its journey from George's flat to the forensic laboratory. In between, a policeman took the coat to a police forensics laboratory to photograph it. There it was, quite naturally, taken out of its protective bag to photograph it. The photographic studio had in the months before been used to photograph a gun which was seized at Heathrow and then test-fired in a laboratory before it was brought to the studio. The head of the Dando investigation, Det Supt Hamish Campbell, admitted George's coat should not have gone to the studio before the laboratory.

Bearing in mind the minute size of the particle, is it probable that such a tiny amount would have been transferred to the pocket if George was the killer and had inadvertently placed it there soon after firing the gun? Surely if the residue had come from the careless transfer of residue by George, he would have left more than a single microscopic particle in the pocket? On the other hand, a small amount of residue from the previously photographed gun might well have been picked up in the studio and inadvertently transferred to George's coat.

Most feebly of all, the prosecution could not even prove that the residue came from a gun. All they could say was that its chemical profile suggested this. But under questioning, the Crown's firearms expert witness, Robin Keeley, had to admit that the residue could have come from a firework (no laughter please).

Even if it is allowed that the particle was from a gun, a very big if, the prosecution has another large obstacle to overcome, namely if it came from a gun it could have come from any number of guns. Moreover, bearing in mind George's propensity for using blank firing pistols, why not from that source? The prosecution tried to show that the chemical composition of the residue was inconsistent with a blank round and consistent with that found at the scene of the crime, but as they could not definitely rule out the possibility of a firework as the source of the residue, there has to be a reasonable doubt about such claims.

As for the blue-grey fibre which was found at the crime scene, the dangers of drawing conclusions from such evidence are substantial. First, the fibres may be too small to be able to be matched forensically. Second, most fibres are mass produced so that their use as an identification tool is next to worthless. The fibre in the trial was mass produced. The prosecution said the fibre was "not inconsistent with" a fibre taken from George's clothes. Again, embarrassingly feeble.

The Identification Evidence

It must be remembered that the witnesses were not asked to identify George until approximately a year had passed. That fact alone should cast a severe doubt over any identification.

The two neighbours, Richard Hughes and Geoffrey Uphill-Brown, who saw a man moving away from her house failed to identify George. The man had no apparent disguise or getaway vehicle. Neither identified George as that man.

Three other witnesses gave identification evidence of a sort. Susan Mayes saw a man of "Mediterranean appearance" standing by a car at 7am — Dando was shot at 11.30am. She later identified him as George.

Teresa Normanton also saw a man of "Mediterranean appearance" at about 9.50am. She also identified George but tentatively, saying she was not sure because of the moustache George wore at the identity parade.

Charlotte de Rosnay saw a man from her bedroom window. When shown the video identification parade she recognised George but could not be sure that the man she had seen from the window was George. This evidence is significant because George was not merely a resident in the area but was a familiar figure on the streets where he regularly loitered for hours. de Rosnay's evidence suggests that she knew George by sight because of this habit of his. The other two witnesses may well have known George by sight, not perhaps in a conscious fashion, but simply as an involuntary effect of seeing him frequently as they went about the area.

I might well have headed this section "identification" evidence. As evidence it is laughably inadequate. The two neighbours did not identify George — indeed the identikit picture created from their description did not greatly resemble George. The three people who saw a man earlier are uncertain that it was George. But suppose it was George, what relevance does it have that he was in the street hours earlier? Minutes earlier would be relevant. But hundreds, perhaps thousands, of people must have been in that street in, say, the six hours before the killing. Why pick on one and say that his presence hours before the event is relevant? Not only that but as George made a habit of hanging about in the streets in the area, seeing him would have been unexceptional.

Note also that two of the witnesses describe the person they saw in the hours leading up to the as of "Mediterranean appearance". Two points arise. First, can George be so described? I would say not. He is dark haired but not swarthy, which is what one would normally associate with such a description. Second, why should two witnesses use the same precise description? A bit of a coincidence. Could it be that they met at the police station, either before and after the video ID parade and discussed it among themselves? If so, that would be a breach of the rules governing identification parades.

There is also the compromising fact that one of the witnesses had "a liaison" with a member of the detective squad working on the case. (*Daily Telegraph* 3/7/01) The jury did not know this, but the fact was brought out in legal argument with the jury absent. Michael Mansfield said:

They continued a relationship when he [the police officer] had been warned not to. It is most unfortunate that a witness of this kind, given her testimony, should have any liaison.

The Alibi Attempts

In the days following the murder, George attempted to establish as alibi for the time of the murder. The alibis involved a day care centre for the disabled and a minicab firm nearby to

the centre which he visited on the day of the murder. He visited them two days after the murder and asked people at both venues to identify when he visited them on the day of the killing and what clothes he was wearing. One of the people at the disability centre testified that George had been there at 11am, half an hour before the murder took place, directly contradicting the prosecution's case that George had lied about the time he visited the centre.

Why did George do this? Well, again the behaviour is consistent with his obsessive need to fantasise. Moreover, George had been interviewed by the police during the Rachel Nickell murder enquiry. It is possible that he was worried, not irrationally in this instance, about being targeted by the police for the Dando murder.

The Lies George Told The Police

When interviewed by the police in 2000, George denied knowing who Miss Dando was or where she lived. These were probably lies.

Before the shooting George told a woman he knew that someone famous lived in Gowan Avenue, a person whom he described as a "very special lady". That is very suggestive of knowing that Miss Dando lived there.

The police accused George of lying about the time of his appearance at the day centre and the minicab office and his movements on the morning of the murder. They were not able to show conclusively that George was lying in either instance. In fact, one of the people at the day centre substantiated George's story about arriving at 11am, half an hour before the killing took place. (Alasdair Palmer, *Sunday Telegraph* 8/7/01).

The police also found two notes in George's handwriting in his flat. These read:

Although I did not know Jill Dando personally, my cousin Freddy Mercury was interviewed by her back in 1986.

I was present with him, so for this reason I feel it's poignant to express together the situation of Jill's death and my coming to Christ. (*Daily Telegraph* 5/5/01)

None of this proves anything. In fact, any evidence about George's lying has little relevance when one remembers his propensity to fantasise. Moreover, the notes were written after the murder, not before. After the murder George had joined in the mourning for Miss Dando with gusto, as indeed he had done after Princess Diana had died, signing a book of condolences and leaving flowers at the spot where she died. I would suggest that George had simply created a new fantasy and woven it together with an existing one about being Freddy Mercury's cousin.

OTHER EVIDENCE

The prosecution presented a mountain of other evidence. What follows is a sample to give the flavour of the generally weak reasoning employed by Pownall, and the ease with which apparently compromising behaviour by George can be explained by his general eccentricity. The prosecution thought these facts of significance:

George had a fascination with guns and the military. Big deal.

George lived at 4 Crookham Road, 500 yards from Jill Dando's home. So what? In fact, if anything that could be an argument against his involvement because it would greatly raise the risk of discovery and only a very reckless personality would have undertaken such a public killing in the area in which he lived.

A woman, Sally Mason, who knew George, gave evidence that George had told her he had been at the killing although he did

not admit to being the killer. "I was there you know." (*Daily Telegraph* 5 May) When Mason asked him directly whether he had been the murderer George refused to answer. Once again, such behaviour is consistent with George's propensity to fantasise.

The prosecution claimed George had a fascination with the BBC, where he once worked as a messenger, and would collect copies of the *Radio Times* and the company's internal magazine. So what?

Approximately 100 rolls of undeveloped films was found in George's flat developed. These contained some 2,500 photographs. These were of 419 women whom the police assumed George had mainly photographed as he followed them about. Interestingly, only two of the photos included Miss Dando and these were taken from the TV. The fact that they were left undeveloped suggests that George's fantasy ended with the taking of the picture. The fact that he had only ever taken photographs of Jill Dando from the Television (and only two of those) suggests that he had no great interest in her and had not followed her.

A List of models was found in his flat. Again one must ask: so what?

WHAT THE PROSECUTION CASE AMOUNTED TO

Precious little, the honest answer has to be. The prosecution showed that George was a rather pathetic, exhibitionistic personality who was obsessed with guns and celebrities (although not with Dando). That places him in the same category as tens of thousands of others. The fact that he lived near to Miss Dando made his involvement less not more likely in view of the public circumstances of the killing. His propensity over a very long time to follow and engage in (since his time in prison) only low grade harassment of women is suggestive not of murderous tendencies but of the reverse, i.e. his fantasies were played out at a level well below that of serious violence.

The limpness of the prosecution's case is most palpable in the frequently absurd reasoning Oliver Pownall put forward. I will give one of the most potent examples of this habit. Referring to the evidence given by the witnesses about the man seen on Gowan Avenue the morning of the killing Mr Pownall came out with this gem:

It is inconceivable that there were two men in Gowan Avenue that morning, both of the same age height and general appearance, both of whom had an interest in Jill Dando and experience in handguns.

(*Daily Telegraph* 5/5/01)

I dare say Mr Pownall is a highly intelligent man, but he should be ashamed of himself for presenting such an obviously ridiculous argument before a court.

GEORGE'S CRIMINAL RECORD

After the trial, much was made of George's criminal past and instances of indecent assault and harassment which did not come to court.

George's criminal record was, if not petty, undramatic and even more importantly, very short and far in the past by the time that Miss Dando was killed. It consisted of convictions for indecent assault in 1982 and an attempted rape in 1983 for which he was sentenced to 30 months imprisonment. He has never been charged with attacking a woman (or a man for that matter) with a weapon or causing serious physical injury.

In 1980 George seriously molested two women, a civil servant and June Zeller, an actress. The latter was attacked by George in 1980 in a lift but he was acquitted of indecent assault on her

in May 1981 at Middlesex Crown Court — at the same hearing which convicted him of indecent assault on the civil servant. George was caught after the civil servant noticed him hanging about near her office some weeks after the attack. (*Daily Telegraph* 3/7/01) This reckless behaviour is consistent with George's tendency to play out his fantasies.

The fact that George never did anything after 1983 which bought him before a court strongly suggests he was not dangerous to the extent of killing someone deliberately. His one brush with prison probably frightened him enough to keep his fantasies within safe limits afterwards. It should be mentioned that when George attempted the rape for which he was convicted, he ended the attempt by apologising to the woman before running off. Not the action of a completely amoral personality.

It has to be said that George is not someone who would be welcomed as a neighbour. Apart from his criminal convictions, he has a long record of what one might describe as low grade harassment of strange women. He talks to them, he follows them, he stares at them. However, none of this behaviour was sufficient in the years between 1984 and 2000 to bring him before a court. Not only that, but Jill Dando had not reported any problem with a stalker to the police. Nor, it seems, because it was not mentioned at the trial, had she mentioned any such problem to her friends, family or fiancée.

The jury were of course, unaware of his criminal record. As a general rule the keeping of a man's criminal record from a jury is to be applauded. Ironically in this case it could conceivably have been to George's advantage if the jury had known because of the length of time which had elapsed since he was last in court.

WHY DID THE JURY CONVICT?

The answer lies I suspect in the frequently displayed behaviour of juries when faced with a case involving a celebrity. It is remarkably difficult to gain a conviction in front of a jury where a celebrity is on trial, often almost regardless of the evidence offered. The jury is reluctant to believe that someone they feel they know and often admire could be guilty or, perhaps even more fundamentally, deserving of punishment even if they are guilty. The same effect in reverse applies to cases where the celebrity is the victim. There the jury feels a desire to convict. The immense media coverage associated with the Dando murder and her widespread popularity with the public doubtless enhanced this natural tendency.

George's counsel, Michael Mansfield QC, recognised the difficulty his client faced when he made his final speech to the jury:

We ask you to be careful about the strength of feelings there may be. It will do no justice to Jill Dando's memory or this case were you to allow those feelings to mould together what otherwise might be a non-existent case because there is in some unconscious way or another a desire to see someone pay.

It is true that the jury deliberated for thirty-two hours spread over five days before coming to a verdict and it could be argued that this means that the jury were not swayed by Miss Dando's celebrity. In fact, the time involved means little because it was a 10-1 majority verdict — one of the twelve jurors had been excused from jury service during the trial. The most probable explanation for the time taken to come to the verdict is that a small group, perhaps as few as two, did not want to bring in a guilty verdict and it took time to persuade enough of this group to vote for conviction by a majority verdict. It is also a fact that long, high profile trials with a mass of evidence

rarely bring rapid verdicts, probably because the jurors feel that they should spend a decent time considering the verdict simply because the effort in bringing the prosecution is vast.

Are the jury to be blamed? No, because juries are human. Nor should it be safely assumed that a judge or panel of judges would necessarily be immune to the pull of celebrity or without prejudice. One only has to remember the summing up in the Archer/*Daily Star* libel trial in which the judge drooled over the "fragrant" Mary Archer to be cured of that belief. The real culprits are the police for devoting such an inordinate amount of time and money to the investigation and the Crown Prosecution Service (CPS) for agreeing to the prosecution and encouraging the police in their investigation. One of the tests the CPS use for determining whether a prosecution should go ahead is that there is a good chance of a conviction. That judgement should be made on the evidence not on the likely response of the jury to celebrity involvement.

WHO ELSE MIGHT HAVE KILLED JILL DANDO

Various rumours circulated after the killing. Could it have been an underworld figure whom Crimewatch had damaged or angered? Was it a revenge attack by Serbs following Miss Dando's appearance on a programme dealing with the Nato attack on a Serb television station during the Kosovan war? Either was more plausible than the idea that the shambling, fantasising disorganised personality that is Barry George could have acted so out of character as accomplish what was in effect the perfect murder — single shot to the head, no witnesses, no weapon, no conclusive forensic evidence.

Because no claim of responsibility was made by a political group, I suspect it was an underworld killing not a political one. The fact that a re-commissioned gun or modified blanks pistol was used would also support this idea because such guns are widely used by criminals in Britain.

In his closing speech, George's counsel, Michael Mansfield QC, pressed the Serb line hard. This was probably a mistake because it was taking the jury into James Bond territory. In fact Mansfield would have done better not to suggest other assailants and simply rest his case on the inadequacy of the prosecution case.

THE LESSONS TO BE LEARNED

What can be done to stop such cases being brought to court? We need a new approach to the value of evidence. Despite cases such Rosemary West, it might be best to outlaw prosecutions based purely on circumstantial evidence or, if that is thought too extreme, only allow them where the circumstantial evidence is of a nature as to directly link the defendant to the crime, as was the case in Rosemary West. The feeble suppositions and the subsequent chains of reasoning based on the suppositions which appeared in George's trial should not be admitted as evidence.

British courts need to realise that identification evidence of strangers is next to worthless (every academic study on stranger identification has shown this) and that forensic evidence is far from being cast iron. The latter may be scientifically dubious. In that case the jury may well be misled. It may be scientifically debatable — which means juries are asked to choose between conflicting experts without any rational means of doing so. It may be beyond the ability of a non-expert to evaluate (which includes judges and counsel as well as juries).

There is a good case for banning forensic evidence which is too complicated for the non-specialist to understand. The jury also needs to be made aware of the limitations of even the

most familiar forensic evidence. Even fingerprinting is by no means the cast iron certainty it is normally credited with being. An American historian of science, Simon Cole, has just published *Suspect Identities: A History Of Fingerprinting and Criminal Identification* (Harvard University Press) which demolishes their infallibility and attacks the science which underlies fingerprint evidence.

There is also the question of both unwitting contamination and the deliberate planting of evidence. For example, suppose I wish to implicate someone innocent in a crime. I drop something, say one of the person's hairs, at the crime scene. The DNA identifies the hair as that person. Perhaps it is unlikely that by itself the hair might lead to a conviction. But what if the innocent person cannot provide an alibi? Suppose it is a crime of violence, what if the innocent person has been heard to say they would kill the person? It is just too easy for a circumstantial frame to be built up where a piece of supposedly hard forensic evidence exists.

Because of this we should insist that such forensic evidence is corroborated or substantiated by at least one other piece of evidence. That would require a change in English law which allows that single piece of evidence — including a confession — is enough to gain a conviction.

The other worrying aspect of the case is the incontinent use in it of police resources. This mirrors that in other recent investigations such as the murder of Stephen Lawrence and the investigation into the death of Ricky Reel, or, to take an earlier crime, the murder of Rachel Nickell. As the police have strictly limited resources, there should come a point in any investigation where a decision is made that enough is enough, that sufficient time, money and manpower have been devoted to the case to make any chance of gaining a conviction thought further effort extremely unlikely.

DOES GEORGE HAVE GROUNDS FOR APPEAL?

George has a better chance of an appeal now than he would have had even a few years ago. The new appeals regime is more open to examining the actual evidence presented to the jury than old appeals regime was. Nonetheless, unless he can introduce new evidence, to mount a successful appeal he must be able to show that there was a mistake in law or that the prosecution evidence introduced was flawed. What the Appeal Court cannot do, unless they create a precedent in a criminal trial, is overturn the verdict of the jury simply because they think the verdict was perverse. I say create a precedent in a criminal trial, because last year the Appeal Court overturned a jury verdict in a libel case, that involving the footballer Bruce Grobbelar and the News of the World, because they judged it to be perverse. However, Grobbelar is now taking that case to the Lords so the right of the Appeal Court to make such a decision is undecided.

The summing up was not obviously at fault. The judge heavily emphasised the circumstantial nature of the evidence and the possible dangers that could arise from a prosecution case based purely on circumstantial evidence. The judge was also sympathetic to George's decision not to give evidence, commenting that he thought it was reasonable because George was manifestly not competent, mentally and physically, to withstand the rigours of cross-examination. Thus, George's failure to give evidence should not have been a black mark against him when the jury came to consider the verdict.

Where the judge may have been at fault is in allowing evidence from those who had not absolutely identified George at identity parades to be admitted and in keeping from the jury the liaison between a witness and a police officer working on the case.

There is also the question of whether evidence such as the forensic results of tests on the residue in George's pocket should have been admitted when the residue could not be certainly identified as from a gun and because it could not be definitely shown to be compatible in composition to the residue on Miss Dando.

I hope George's appeal succeeds, but I would not bet the farm on it.

CONCLUSION

The depressing truth is that George has been found guilty without a single piece of direct evidence being offered against him, while the circumstantial evidence on which he was convicted was weak in the extreme. No one can feel safe if this conviction is allowed to stand.

Personally I doubt whether he was the killer, not least because it is improbable that such a disorganised personality could have successfully planned the act, carried out the act and covered up the material evidence afterwards.

This trial and conviction is the latest nail in the coffin of English justice. Apart from the various miscarriages involving Irish bombings, we have had cases such as that of Stephen Cisko (who was convicted of murder on a confession obtained under dubious circumstances and who spent nearly 20 years in prison before DNA evidence proved his innocence — tragically he died shortly after his release from prison) and lately that of Michael Stone, who was convicted of the murder of Lin and Megan Russell solely on the testimony of two cell-mates that he had confessed to them. One of the witnesses against Stone has since admitted that he lied under oath to obtain favourable treatment by the prison authorities and parole board. It is noteworthy that Stone, like George, was a disturbed, disorganised individual with a criminal record, who seemed to be someone who would not be able to muster much support if he was convicted on inadequate evidence.

If the public are not to lose all faith in English justice something must be done soon to prevent such inadequate prosecutions being mounted.

The most depressing thing of all is that English justice for all its faults is probably as fair a system of justice as any in the world and arguably the fairest. It has an ancient unbroken tradition, formal equality before the law, *habeas corpus*, *sub judice*, well established principles of due process, widespread use of the jury, substantial provision for legal aid and above all the presumption of innocence. The whole is underpinned by the potent concept of natural justice.

These legal goods stand on the platform of an immensely strong strain of personal freedom in English history which has produced a general principle utterly at odds with continental systems of law, namely the idea that an Englishman may do anything legally which is not forbidden by law.

But, alas, structure is no safeguard against human bias and error. God help anyone who comes before a court anywhere in the world. That's the honest and depressing truth.