THE LUNDY MURDERS

On 29 August 2000, Mark Lundy drove from his Palmerston North home to Wellington to sell kitchen sinks and benchtops. Nearly 20 years later, in Wellington’s Supreme Court, his conviction for murdering his wife Christine and seven-year-old daughter Amber that August night was upheld, his last legal hope extinguished. What has happened in between is a chronicle of trying to solve one of this country’s most terrible crimes. But it’s also the story of one of New Zealand’s most troubling and deficient investigations. Mike White explains why Lundy’s conviction should still cause us enormous concern, despite December’s Supreme Court decision, and why the justice system itself needs to be put on trial for its handling of the case.

ANATOMY OF A SCANDAL

20 YEARS OF LIES, COVER-UPS, INCOMPETENCE AND SHONKY SCIENCE
Mark Lundy was in Johnsonville, just north of Wellington city, when a friend rang to tell him police were swarming over his house. For some time on that Wednesday morning, 30 August 2000, Lundy had been trying to contact his 38-year-old wife, Christine, for an address to chase up money owed to them, and left increasingly irritated voicemail messages, seemingly unable to understand why she wasn’t replying.

When he heard what was happening at his home, Lundy raced back at high speed in his Ford Falcon, only to be stopped by police on Palmerston North’s outskirts around 1.15pm, before he could arrive at 30 Karamea Cres, where Christine and their only child, Amber, lay hacked to death inside.

It took police six months to charge Lundy with their murder. Not because he was a last option – the officer who arrested Lundy told him he’d been their prime suspect “from day one”, with all the officers on the case convinced he’d butchered his wife and daughter. The problem was that police had little to suggest Lundy was involved. He’d been in Wellington on the night of the murders, and nobody had seen him driving home to kill his family, then back to Wellington, where the next day he visited clients, who described him as acting cheerfully and entirely normally. But gradually, driven by their conviction, Lundy was guilty, detectives accumulated what they said was evidence proving their theory.

This was their theory: having got into financial trouble with an ambitious Hawke’s Bay vineyard development, Lundy believed the only way out was to kill his wife and collect her life insurance. Amber saw him in the act, so Lundy murdered her as well, bludgeoning the daughter everyone attested he was devoted to with something like a tama-hawk. To give himself an alibi, he conducted the murders while spending the night in Wellington for work – making a breakneck 300km round trip from his Petone motel to carry out the plan.

Police discovered his wife’s insurance had just been increased, Lundy was deemed to be overacting as the grieving victim at Christine and Amber’s funeral, and police claimed he misled them. Without other clear suspects, Lundy’s guilt appeared obvious. And this became a virtual certainty when police stumbled on remarkable new scientific testing that seemed to show two specks of Christine’s brain on the shirt he was wearing on the night of the murders.

All this was what made Lundy guilty in the eyes of nearly everyone, including the jury at his 2002 trial. But over the years, this story has unravelled – earnest evidence later proving to be just fanciful assertions; experts shown to be incompetent, at best; bias infecting the investigation; mad theories seen as fit substitutes for common sense.

In the end, Lundy proved much of this, and got a second trial. That he was reconvicted and sent back to jail is for most to accept that all the mistakes by police and experts and prosecutors ultimately don’t matter – the end justifies whatever means. But for many, the story of Christine and Amber’s murders, and the conviction of Lundy for them, is one of the most bizarre and worrying cases this country has seen. In many ways, it’s a 20-year slur on our criminal justice system – a system that seeks truth and justice.

The Lundy home at 30 Karamea Cres in Palmerston North, where Christine and daughter Amber were found dead on the morning of 30 August 2000, by Christine’s brother. Police charged Mark Lundy with the murders on 23 February 2001.

Police tried to repeat Lundy’s incredible three-hour “killing trip” drive. So did a private investigator – three times. So did North & South – three times. So did other journalists. Nobody got close.

According to police, Lundy’s wild drive from Petone to Palmerston North and back again was done in under three hours, requiring him to average 120km/h, despite much of it being in rush-hour traffic, and much of it passing through built-up areas with traffic lights and speed restrictions. Somehow, he did all this without being noticed by anyone. Lundy was pictured as a skillful daredevil behind the wheel, and police even produced someone who’d been a passenger with him after the murders who attested to his fast for speeding.

Police tried to repeat Lundy’s incredible three-hour “killing trip” drive. So did a private investigator – three times. So did North & South – three times. So did other journalists. Nobody got close. It was a ridiculous assertion that underpinned the entire Crown case against Lundy. When this was put to the Court of Appeal in 2002, it airily opined that the drive from Petone was “made with some urgency, but the return drive was undertaken in extremis, which no one could replicate”. One would assume fundamental evidence in a murder trial must be reliable. If it can’t be replicated, doesn’t that suggest it’s probably impossible?

The three-hour trip

This is how the police said Mark Lundy killed his family.

After getting a phone call from Christine and Lundy at 5.30pm while he was in Petone, he drove home at incredible speed to murder them. Phone records prove Lundy was in Petone when he took that first call, and again at 8.29pm. So he had to complete this 300km round trip to Palmerston North in less than three hours.

Police said Lundy parked 500m away from his house; ran home; faked a break-in; killed Christine and Amber around 7pm when they were supposed to be in bed; cleverly manipulated the family computer so it appeared Christine had been using it much later, when he would be back in Wellington; stole a jewellery box to make it look like a burglary gone wrong; disposed of the weapon; bloodied clothes, the jewellery box and jemmy bar used to fake the break-in; ran back to his car; then drove 150km back to Petone. All within three hours. All without being seen.

Here’s a closer look at some of the elements of that theory – a story police insisted was true for nearly 15 years.

The Lundy home at 30 Karamea Cres in Palmerston North, where Christine and daughter Amber were found dead on the morning of 30 August 2000, by Christine’s brother. Police charged Mark Lundy with the murders on 23 February 2001.
Christine having told a friend in a phone call at 6.56pm that her husband would be home the following day.

Grantham stood firm on his theory: “It’s plausible that Lundy convinced his wife that they should have a romantic evening and it’s not uncommon for married couples.”

For many, perhaps most, Grantham’s “plausibility” was nothing more than an absurdity, a floundering attempt to explain a nonsensical scenario.

THE COMPUTER

Another complication to the claims Christine and Amber were killed at 7pm was that the Lundy’s computer showed it was shut down at 10.52pm – a time when Christine and Amber were already dead, and Mark Lundy could prove he was in Petone. However, Maarten Kleintjes, the national manager of the police electronic crime laboratory, raised the scenario that Lundy, who witnesses attested had little computer ability, may have manipulated his home computer in a complicated procedure when he returned home to commit the murders, so it appeared he had been shut down much later. As one defence expert put it, this theory was “so far-fetched and beyond reality it can’t be comprehended”. It was also later proven to be completely false. But it added to the image being manufactured of Lundy – the meticulous murderer.

THE LAPTOP

As well as the home PC, the Lundys had a laptop Christine was believed to have been using that evening. In photos taken in the house after the murders, a laptop bag can be seen sitting on a chair in the office, in front of a desk with a cleared space, likely where it had been sitting. Lundy told police Christine would have been working on the laptop, and, thus, it could indicate when she went to bed, and gave police permission to take both computers. Grantham insists he asked Maarten Kleintjes to clone (make a copy of the computer’s entire hard drive) both the PC and laptop. Kleintjes visited the property three times, and cloned the PC, yet he claims he had already carried out the task of cloning the laptop, never copied it, and rejects that he was asked by Grantham to clone it. But, in notebooks not disclosed by police in the police tampering, the loony scenario also fiasco of incompetence at best. Whatever evidence the laptop contained has never been disclosed, and the laptop later crashed, removing the opportunity to retrieve anything from it.
Mark Lundy said he went to the Petone foreshore (opposite) to read a book after checking into his motel (above) on the afternoon of 28 August. At his first trial, the prosecution insisted this was a lie, and Lundy was actually driving home to murder his family at this time. At his retrial, the prosecution agreed he did drive to the foreshore, but argued this was to give him an excuse to park on the road when he returned to the motel, so he could leave without being noticed the next morning when setting off on his “killing trip”. Lundy said he parked outside the motel because its entrance was blocked by another vehicle when he returned from the waterfront, but later moved his car to outside his motel unit before he went to bed.

The extent of the police and prosecution reimagining of how Lundy committed the murders is unparalleled in New Zealand’s criminal justice history, says his appeal lawyer, Jonathan Eaton QC. If any defence lawyer tried the same thing, “it would be exposed gleefully by the prosecution. But you wouldn’t be so bold as to try doing it – it would be deemed to fail.”

So how did the prosecution get away with it? Eaton says subconscious bias against Lundy permeated everything from the investigation to his trials, and overcame all concerns.

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by the pathologist and police as full, with identifiable food in them. It was therefore assumed they died not long after eating a sizeable meal, likely the McDon-
dald’s takeaways bought at 5.43pm.

Because stomachs are elastic, “full” is an imprecise term. And it is generally ac-
cepted that trying to estimate time of death based on how much digestion has oc-
urred is similarly imprecise. However, what experts do agree on is that a stom-
ach will be completely empty around six

When Christine’s body was discovered, there were 21 unidentified hairs found entwined in her hands – 10 in her right hand and 11 in her left. Christine’s body showed evidence she had defended herself, raising the possibility she may have come into contact with her killer.

Mystery hairs
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Unknown DNA
Under both Christine and Amber’s fingernails was the DNA of unknown men – not Mark Lundy, who willingly gave DNA samples. These samples had been collected at the time of the murders, but, curiously, weren’t tested until 2014. Moreover, there were more than 50 fi-
bres that didn’t match the clothes Lundy had, also found under their fingernails. So where did they come from? Numer-
ous other fibres were found around the crime scene, including the crucial win-
dow police said was jammied open, yet these were never tested.

Unidentified fingerprints
Despite the bloody crime scene, re-
markably little evidence of the killer’s get-away could be found. However, there were unidentified fingerprints, a palm
print and footprints discovered, which police could never match to anyone they
knew, let alone Lundy. (These had not been revealed by police at Lundy’s first trial.) Somewhat perplexingly, the Court of Appeal and Supreme Court maintained the unidentified prints, the unique male DNA under the finger-
nails of Christine and Amber, and the 21 hairs bizarrely found in Christine’s hands were not “cogent”. Of course, if any of these things had been linked to Lundy, they would have no doubt im-
mediately become “cogent”.

Fuel consumption
A critical element of the case against Lundy was the claim his car had lost petrol in it than it should have when it was
implied – the suggestion being this was because he’d made the extra, secret trip back to Palmerston North for the murders. The police calculations for this were, surprisingly, done using the car manufacturer’s inevitably conserv-
atives fuel consumption figures, and Google Maps to estimate distances. In 2015, when Lundy’s lawyers learnt of the new police claims about his move-
to Wellington around midnight, Lundy asserte

The police case is that Mark Lundy had planned to kill his wife for her insur-
ance money. They found he drove his Lanc-
dy’s car to Palmerston North and stayed there on the night they took it from her after he raced back to Palmerston North and learnt Christine and Amber had been killed. Investigators claimed the
However, everyone else who was shown the bracelet, including friends and family, insisted it was too small for Christine and wasn’t hers. It was shown to have contained mixed DNA on it, but it wasn’t from Christine, Amber or Mark Lundy. 

The theory about the bracelet is almost farcical, but has continued to be used by the Court of Appeal and Supreme Court to buttress their decisions. It is accepted the jewellery box would have been covered in the blood and other material that coated the bedroom where Christine was attacked. Given this, what does Lundy do with it? According to the new police theory, he takes it back to his car as he makes his getaway, risking the blood on it getting everywhere. But intense testing of the car showed no blood, and police said the car’s interior hadn’t been wiped clean.

So perhaps Lundy puts it carefully in a bag, to protect it leaving traces in the car. But if that’s the case, how does a bracelet jump out of the box and out of the bag? And if Lundy is so meticulous, how does he manage to avoid leaving even microscopic evidence of Christine or Amber’s blood in the car, yet supposedly leaves an incredibly distinctive bracelet on the front seat for police to discover?

AMBER’S BLOOD

Minute particles of Amber’s blood were found on Lundy’s shirt, however. These were described as dried blood flakes or dust, rather than direct blood stains. Many experts accepted they could have come from a scalpel on Amber’s ankle that came into contact with Lundy. However, the Supreme Court declared this was “improbable”. Lundy’s supporterargued photos such as those above and on page 53, showing Amber’s exposed leg, prove how dust blood dust could have got on to the shirt. (The polo shirt at the heart of the case is the one Mark Lundy is wearing in the top photo.) Moreover, nobody has ever explained how these traces of Amber’s blood got on Lundy’s shirt if he was wearing coveralls to protect himself, as police claim.

The bracelet had fallen from Christine's jewellery box, which Lundy took from their bedroom to make it seem that a burglar had murdered his wife. Interestingly, no photos taken in the car during its inspection show the bracelet. Despite the car being examined, inventoried and items removed from it in the first few days after the murders, the bracelet was not taken from the car until 18 September, when police returned to the vehicle. However, a police job sheet states the bracelet was shown to a witness to try to identify it eight days earlier. At Lundy’s retrial, the officer in charge of examining the car suggested he may have taken the bracelet from the car, shown it to the witness, then replaced it in the car – something contrary to police procedure. Without being shown it, Lundy suggested it was Christine’s based on the design featuring a figure-eight knot, and may have been left there after a trip to Hamilton several weeks before.

Neighbours of Mark Lundy and daughter Amber from the Lundys’ photo album. Minute particles of Amber’s blood were found on Lundy’s polo shirt after the murders. These particles of Amber’s blood were found on Lundy’s shirt, however. These were described as dried blood flakes or dust, rather than direct blood stains. Many experts accepted they could have come from a scalpel on Amber’s ankle that came into contact with Lundy. However, the Supreme Court declared this was “improbable”. Lundy’s supporter argued photos such as those above and on page 53, showing Amber’s exposed leg, prove how dust blood dust could have got on to the shirt. (The polo shirt at the heart of the case is the one Mark Lundy is wearing in the top photo.) Moreover, nobody has ever explained how these traces of Amber’s blood got on Lundy’s shirt if he was wearing coveralls to protect himself, as police claim.

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Lundy. (In 2006, Grantham was asked by Lundy’s lawyer to examine the samples.) The New Zealand courts’ complete acceptance of IHC as a valid technique in this case is all the more surprising given current global concern about forensic science. Many previously accepted techniques, such as analysis of bite marks, hair, ballistics, blood staining and even fingerprints, have been called into question in major international reports. Despite widespread calls for caution about even these tests, the courts here have been prepared to admit and rely on something that lacks validated methodology for this forensic purpose, especially a non-forensic scientist in a non-forensic setting.

Miller has always vigorously defended his testing and his laboratory’s standards, telling The New Zealand Herald, “If it was 100% certain that what was on Lundy’s shirt was central nervous system tissue, I would’ve been prepared to admit and rely on something that lacks validated methodology for this forensic purpose.” Miller’s evidence was the vital component of the testing issue strong warnings about the dangers of relying on IHC results in non-forensic settings, even for basic laboratory work. Miller’s technique and IHC’s applicability was questioned by the Privy Council, so Miller conducted further tests prior to Lundy’s retrial, and sent samples to other experts for them to test. All of them – including two defence scientists who examined the samples – agreed the material on Lundy’s shirt was not a forensic sample.

Defence expert Colin Smith, a professor of neuropathology at the University of Texas Southwestern Medical Center for ProPath’s immunohistochemistry division, alleged the samples had been contaminated at ProPath, with Morgan pointing to it not being a forensic laboratory.

However, it is difficult to be entirely confident in the standards at ProPath, the laboratory where Miller is the director of immunohistochemistry. When defence expert and forensic scientist Marielle Vennemann visited ProPath, she was shocked by the lack of cleanliness and contamination protection, saying the differences between it and a forensic laboratory made her hair stand up.

As if to confirm this, when small slices of the shirt samples Miller had prepared in 2001 were tested at ProPath for DNA, no trace of Christine Lundy was found, but instead the DNA of an unknown female was present. ProPath laboratory staff were tested, but none of their DNA matched the unidentified sample. In the end both Miller and Morgan were instructed by the judge not to cut out a shirt sample. For a 2014 pre-trial hearing, despite being instructed by the judge not to discuss his evidence, Miller emailed prosecution lawyers suggesting they ask him about a particular matter in re-examination. In 2016, New Zealand police pressured Miller with the District Commander’s Commendation award, with the acknowledgement: “Dr Miller’s evidence was the vital component in the successful prosecution and conviction of Mark Lundy.”

Miller swatted aside criticisms about his lack of forensic qualification or laboratory experience. The case was a standard forensic test he carried out all the time and in which he was a world leader. But IHC is designed for clinical settings, testing samples from patients that are prepared in strictly controlled laboratory settings. It had never been used for a random sample on a piece of shirt, nor one that had been left for months, wet, dried, wet again, squeezed, dried again, then stored for several more months. (In a previous test prior to Lundy’s retrial, and sent to Grantham’s office, rather than with other scientists.)

In this case Miller was instructed by the judge not to cut out a shirt sample. For a 2014 pre-trial hearing, despite being instructed by the judge not to discuss his evidence, Miller emailed prosecution lawyers suggesting they ask him about a particular matter in re-examination. However, despite this, and despite the concerns about using IHC on such tissue, Smith is completely confident the samples he viewed were brain tissue. Saying he could identify proteins in or on cells, when the cell has started to break down, allowing him to interpret the tissue’s origin.

Defence expert Colin Smith, a professor of neuropathology at the University of Texas Southwestern Medical Center for ProPath’s immunohistochemistry division cannot be entirely confident, yet the poor standards of its DNA department explains ‘inconvenient contamination of the same crucia sample, is difficult to avoid. Given concerns about Miller’s objectivity and the standard of his testing, it has baffled some that he was permitted to conduct his tests to replicate the Lundy shirt samples.

In 2015, Miller contacted a friend, Dr Ruth Word, about his need to obtain fresh tissue to carry out new testing. Word, a professor of obstetrics and gynaecology, said she had access to corpses donated to the University of Texas Southwestern Medical Center for medical training and research. She delivered to Miller the brain of an 85-year-old man who had died of a cancerous lung cancer. There was no documentation with it, and nothing to verify when it had been removed and what had occurred to it afterwards.

This was the brain Miller used to smear on shirt fabric, which he later said confirmed IHC testing was reliable on fresh samples. Investigations showed the brain had been given to Miller without permission, and Word’s actions violated both the medical centre’s protocols and state regulations.

Much remains unclear about the origin and the use of what has become known as the “bucket brain”. Miller has refused...)
showed seven of 12 markers proved specifically for Lundy’s case, and the results police contracted a Netherlands laboratory to conduct mRNase testing. The test was designed by the laboratory specifically for Lundy’s case, and the results showed seven of 12 markers proved positive for human brain tissue, and therefore the stain was more likely human.

Lundy’s defence strongly challenged this testing, claiming it was not peer-reviewed, nor proven to be reliable. However, in the High Court, Court of Appeal and Supreme Court, Lundy’s re-trial allowed the evidence to be heard by the jury. Contrast this with every attempt by the defence to introduce their own testing, for things such as fuel consumption and speed of driving, and how it was objected to by the prosecution and barred by the courts. Amateur experiments by police officers were deemed virtual sacrosanct tablets of truth by judges, whereas similar evidence presented by the defence was shunned and labelled tantamount to sorcery. Complicating the issue was that the mRNA science was so complex, jurors had little chance of fully understanding it, with even the judge struggling at times.

In 2018, the Court of Appeal ruled the mRNA evidence should never have been heard because of its unvalidated nature, vindicating what Lundy’s defence team had argued for four years. However, both the Court of Appeal and Supreme Court said this didn’t matter; Lundy got a fair trial, despite this inadmissible evidence taking up nearly a week of his retrial and being the subject of a special handout by the judge. Instead, the appeal courts said there was ample other evidence to convict him on.

As Lundy’s lawyer, Jonathan Eaton, stated after the Supreme Court’s final judgment, Lundy had been a guinea pig for a slew of novel and junk science. “It is frustrating and very disappointing that Mark Lundy has never had the opportunity to have his guilt or innocence determined by a jury who were not exposed to bad science – scientific opinion that a jury should not have heard.”

IS THIS THE END?

It is, however, understandable people will argue Lundy has had a fair shot to prove his innocence and, for the sake of the victim’s families, it must be time for him to give up. That’s unlikely. Already his supporters are preparing an application to the new Criminal Cases Review Commission being established by the government to investigate possible wrongful convictions.

For those who contend being found guilty twice is irrefutable evidence Lundy killed his wife and daughter, it’s worth remembering others, such as Arthur Allan Thomas and Teina Pora, were similarly convicted twice of murders before the cases against them were shown to be wrong. We don’t always get it right. The fact the almost risible scenario the police and prosecution wove was correct at Lundy’s first trial was accepted by a jury should give caution to anyone who believes the new police theory is inviolable.

Levick, whose work on the case overturned Lundy’s original conviction, says the Supreme Court’s decision displayed fundamental misunderstandings of crucial evidence. “I’m still appalled at the ignorance of the people sitting in judgment of this poor bastard sitting in jail. After all these years and years and years, they really have no idea.”

But Levick blames Lundy’s lawyers for much of this, saying they didn’t undermine the IHC testing strongly enough, or from the correct angle. For him, the tests that supposedly show Christine’s brain is on her husband’s shirt are so unreliable, so scientifically unsupported, they should never have been given credibility. Instead, lawyers at Lundy’s retrial suggested it was Christine’s brain on the shirt, but it got there from accidental contamination by police during the investigation – an unpopular argument that was always going to be a stretch for a jury to accept.

Levick, who owned a chemical firm, was chosen by the Crown and Miller to prepare tissue for testing (which stops decay) and tested by Miller. Lundy’s shirt, but it got there from accidental contamination by police during the investigation – an unpopular argument that was always going to be a stretch for a jury to accept.

Air-drying samples, even in a clinical setting, is considered a sub-optimal method of preparing tissue for testing because it allows the cells to degrade. Yet here, supposedly, this random set of completely unsuitable factors somehow ended up, after 159 days, still providing a specimen that could be relied on, even
though the slide taken of the same cells by Sutherland after only 58 days has tissue that is too degraded to recognise. For Levick, having a man’s fate decided on this chain of events, combined with a technique never before used in a forensic context or criminal trial, administered by a non-forensic scientist, is an outrage.

Given the jury was presented with evidence saying the stain on Lundy’s shirt was brain tissue, and the DNA from the samples was Christine’s, then Levick understands why it returned a guilty verdict.

“If they didn’t know anything about the science, which I’m sure they didn’t, then, in the end, you’re left with an inescapable question. I’ve got no idea what’s on the shirt, except I’m absolutely certain it hasn’t been proven to be central nervous system or brain by IHC. IHC can’t do that. It just has so many holes and so many loopholes, especially if the cells are degraded, and we had page after page after page showing this, but the courts haven’t referred to any of it or understood any of it. It’s just awful. “They take something never before used anywhere in the world, or since, which has convicted Mark Lundy and says it’s great. And then all the stuff that points away from Mark Lundy, they take no notice of. They still bring up the bullshit about the paint. They still bring up the bullshit about the bracelet.”

Levick’s single-minded approach has seen him fall out with some of Lundy’s lawyers. Four months before Lundy’s retrial, he pulled back from the defence team after disagreements with lead lawyer David Hislop QC, particularly over whether to accept IHC as a credible forensic test and agree there was brain tissue on Lundy’s shirt. It was an unfortunatmove, the defence missing Levick’s encyclopaedic knowledge of the case. And he has justification for claiming some of the defence’s strategies were ill-advised or wrong. Trials are not exercises in finding the truth, but battles to win, with tactics trumping tact, eloquence often outweighing evidence. In the face of Philip Morgan’s insistent and irresistible carping that no man should have his wife’s brain on his shirt, the defence often Bordered to convey a credible rejoinder.

Levick refuses to give up, still convinced Lundy has been wrongfully convicted. “When the day comes that Mark Lundy receives a proper defence, where the evidence is known to be reliable and there’s no bullshit and smoke and mirrors, where things are properly argued, when it appears the judges understand and ask questions and go through things in detail, and at the end of that, Mark Lundy’s found guilty, then I’ll go and lie on the beach and say, ‘Well, that was that then’. But that hasn’t happened yet.”

“When people say he’s had many chances, I say he’s not yet had one proper chance – not one.”

JULIE-ANNE KINCADE QC was one of Lundy’s lawyers at his retrial, and the only one to remain with the case through his subsequent appeals. She has probably spent as much time dealing with Lundy as anyone in the past six years. Kincaide, who took silk in December, accepts some of Levick’s criticisms regarding Lundy’s trial defence, and notes there were differences of opinion among the lawyers about strategy. At the end of the day, calls had to be made, and Hislop was in charge.

She feels the vast changes in the police theory between Lundy’s first and second trials should have been emphasised more, along with how farcical many of the case’s elements were. “The fact is, they didn’t know what happened then, and they don’t know now, and they haven’t investigated it properly. You constantly have this flip-flopping so far as the so-called facts of this case are concerned. And I don’t think it’s all right, myself.”

Kincaide also spares little in her diatribe for the tactics employed by the prosecution, particularly how it only clearly advised Lundy’s lawyers of its new theory and changed time of death shortly before the new trial began – despite a judge having instructed them to hand over all evidence they were relying on months before this.

“To give us two weeks’ notice of it cannot by any reasonable observer be said to be fair. That’s not how trials are conducted – not how trials should be conducted. The whole timing of it was disgraceful, in my opinion.”

(Prosecutor Philip Morgan declined to comment for this story.)

Kincaide says so much money and effort was spent on trying to prove a tiny spot on Lundy’s shirt was from his wife, “yet things one would expect any basic murder inquiry to be looking at right from the outset were never done and weren’t seen as important. If you were unfortunate enough to have lost a loved one in such circumstances and there were hairs on their hands, and it clearly looks as if there’s been a fight and there could be DNA under the fingernails, it’s the first thing you’d like police to look at. But instead, in this case, it seems to be the last thing – they didn’t want to look at it.

“The problem with Mark Lundy’s case is that right at the outset, police decided it was him and the inquiries were conducted accordingly. Even at the second trial, in my opinion, the inquiries were conducted in the same manner.”

She points to a criminal profile of the likely murderer police are understood to have conducted but refused to release to Lundy’s defence, and questions why it was done if it wasn’t used in evidence.

“What’s the point – or what have they got to hide?”

(Police would not be interviewed for this story and refused to answer questions on this and other issues.)

Kincaide admits she was devastated at the guilty verdict at Lundy’s retrial, and remains convinced he is innocent. “It’s definitely a miscarriage of justice, there’s no question of that.”

The reason so few people seem to share her view comes down to prejudice, she says, much of it based on the
infamous footage of Lundy at Christine and Amber’s funeral, where his ejected grief seemed rehearsed. “And it was played nearly every night during the trial, as if it had some message in it. There's no message in it – it's meaningless, it's not evidence!" It's true that media constantly reach for these emotive images. The day after the Supreme Court's decision in December, The Dominion Post's front page carried a large photo of Lundy – at the funeral, an event nearly 20 years before. Kincade points to the fact that Lundy had no history of violence before his conviction and, in all his time in prison, has never had any misdemeanours, despite his high profile and the inevitable attention this brings. “If you want to look at demeanour, look at that. He’s just not the person who could have carried out such a callously brutal crime.”

She stresses there are a number of alternative suspects, and even within the defence team, there were differing views as to who the real perpetrator was. “But we’re not the police – we don’t have the resources to investigate it.” In this respect, Kincade isn’t sure they’ll ever be able to prove Lundy has been wrongly convicted.

Despite feeling angry at what has happened, and exhausted from making the case for six years’ efforts, Kincade says she’s reluctant to give up. “I don’t know if I can give anything else, and maybe it would be better with fresh eyes. But if Mark wants me on board, of course I would be – I’d always be happy to represent him.”

**MARK LUNDY SPEAKS**

I was Kincade who was on the phone with Lundy in prison when the Supreme Court's judgment was delivered on 20 December, and it was left to her to break the news to him.

For several days afterwards, Lundy retreated, not wanting to speak to his supporters. But on Christmas Eve, he wrote a letter from his cell at Tongariro Prison, outlining how he was left feeling, its lines of capital letters are neat, but suffused with bitterness, and resignation born of nearly two decades of battle and disappointment.

The Supreme Court's decision wasn't unexpected to him – his hearing had appeared, to many, very limited and less, it's not evidence.” There’s no message in it – it’s meaning-

The case is quite extraordinary in that it should turn on two tiny specks on a shirt Mark Lundy handed over to the police that he had not noticed or expected evidence linking him to the scene was ever found.”

Despite countering so many of the Crown’s experts and expert claims, it was entirely possible the personal sympathy towards him, says Eaton. From the time of the funeral, there was such widespread public sentiment that it created pressures generally that con- sciously or subconsciously inspired everybody to push hard to make sure we got him convicted.”

Eaton says there's nothing wrong with police striving to solve a case, particularly on the surface, but not in the sense of this. "But what's unparalleled in this case is the boundaries keeping pushed so hard for Mark, with flawed science and erroneous conclusions, some of which are, in the context of this case, of which there are not many, in this circumstantial case.”

In the lengthy letter, Lundy, who won’t get a shot at parole until mid-2022 at the earliest, outlines many of the inconsistencies in that Crown case: the unidentified fingerprints, palm print, shoe prints, DNA, hairs, the contentious fuel consumption evidence; the unexplained animal DNA on his shirt; the back door of the Lundy house that his neighbour saw open at 11pm on a winter night (when Lundy was in Wellington), despite Christine being very security conscious and the door being rarely used; the fact the killer would have been coated in blood but nothing could be found on him or his vehicle or motel room, apart from the rare controversials specks on his polo shirt. “I have met a good number of prisoner- ers who deny their offending, and just accept to make their ‘life easier’,” con- cludes Lundy. “The term, 'in denial' has many connotations in prison that follow you around. I am not ‘in denial’. I am not guilty! I did not kill Christine and Amber! I could never hurt my girls!" Somewhere out there is a man with a particular Y-STR DNA profile... A guy who left fingerprints and a palm print in our house, who has a wry smile on his face this Christmas. The Supreme Court just gave him a very special present.”

**MARK LUNDY GETS A FAIR TRIAL?**

Mark Lundy’s appeal lawyer, Jonathan Eaton, says Lundy’s case was, “an unparalleled test for a New Zealand criminal justice system. The case is quite extraordinary in that it should turn on two tiny specks on a shirt Mark Lundy handed over to the police that he had not noticed or expected evidence linking him to the scene was ever found.”

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I’m desperate, so that’s what I’ll use and see if I can get it before the court.” Eaton points to the prosecution’s belat- ed claims the mtiDNA evidence wasn’t that crucial and Lundy was obviously guilty anyway. “But why did they push so hard to have that evidence admitted? Because they thought they needed it. Why were they prepared to put in evidence that was ultimately proved to be unreliable? Be- cause there were significant pressures to secure a conviction here.” Eaton is also clear that, despite so much of the first case against Lundy being ex- posed as completely wrong, Lundy al- ways remained the police’s sole target. “I don’t think anybody on the prose- cution side would say that after the Privy Council decision they had doubts and were therefore conducting a new investigation that was open-minded to make sure they had the right person. No, it was, ‘Let’s now find the evidence that fills in any voids in the case.’ “Is it wrong? Yeah, it is wrong. And you’d like to think that when there’s been acknowledged failing in the pro- cess and somebody’s trial has been un- fair and miscarried, and when there are serious doubts around a key issue of the time of death, you’d go back to the drawing board and say, ‘Listen, we real- ly need to start afresh on this.’ But the reality is, when it happens so many years after the event and someone has already been in jail for so many years, the consequences of acknowledging you might have got it wrong all the way through and somebody innocent has been languishing in jail are so intoler- a ble, that’s very difficult. And it’s very rare for the prosecution and police to be able to carry out the investigation with an open mind. They tend to hunker down and push the same line that’s been pushed from the start!” That said, Eaton, who has previously been a prosecutor, can understand why police continued to pursue Lundy so hard, given the evidence they had from experts about the brain tissue. However, he believes one day something will arise that shows IHC is unreliable for use as a forensic tool.

“It’s the outstanding issue in this case that’s never been scrutinised at a level that, personally, I’d be comfortable with. I still have a deep sense of unease about the entire process that’s given rise to Mark Lundy’s conviction.”

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**Mark Lundy: Genius Murderer or Bumbling Idiot?**

“Believe he’d taken a long time to plan this crime and he believed he’d committed the perfect crime.” Detective Sergeant Ross Grantham, officer in charge of the investigation into Christine and Amber’s murders.

**GENIUS:** Uses protective clothing and even shoe covers, and disposes of them so well nobody’s ever found them.

**IDIOT:** Gets wife’s brain on his shirt when removing coveralls, keeps the shirt and tells the police that’s what he was wearing the previous night.

**GENIUS:** Steals the jewellery box from the bed to make it look like a burglary gone wrong.

**IDIOT:** Leaves a bracelet from the bed on the front seat of his car.

**GENIUS:** Uses a weapon that has never been found or definitely identified.

**IDIOT:** Uses one of his own tools, which leaves tell-tale paint fragments on the victims and could be noticed missing.

**GENIUS:** Sneaks home in the dead of night to commit the murders, so as not to be seen.

**GENIUS:** Assumes that in a four- to five-hour period absolutely nobody will see him or his car, and there will be no cameras capturing his 300-mile journey.

**IDIOT:** Does the one thing certain to call all his relationship into question – hires a prostitute.

**GENIUS:** Plants to dig himself out of debt by murdering his wife and collecting her life insurance, which has just been increased.

**IDIOT:** Kills her before the new insurance policy has been finalised.

**GENIUS:** Consistently maintains his innocence for nearly 20 years.

**IDIOT:** Tells someone he’s never met before, a criminal in jail, that he did murder his wife and daughter.

**GENIUS:** Gets wife’s brain on his shirt when removing coveralls, keeps the shirt and tells the police that’s what he was wearing the previous night.

**GENIUS:** Steals the jewellery box from the bed to make it look like a burglary gone wrong.

**IDIOT:** Leaves a bracelet from the bed on the front seat of his car.

**GENIUS:** Uses a weapon that has never been found or definitely identified.

**IDIOT:** Uses one of his own tools, which leaves tell-tale paint fragments on the victims and could be noticed missing by anyone who knew him.

**GENIUS:** Sneaks home in the dead of night to commit the murders, so as not to be seen.