

I am angry, really angry. So angry, in fact, that I am giving my computer a hard time as I punch out these words.

The reason? I have just read *Stolen Innocence* by John Batt (a solicitor and sometime scriptwriter) published by Ebury Press (£14.99). It is the account of an extraordinary miscarriage of justice perpetrated on Sally Clark, the solicitor who tragically lost her two sons and was then convicted of their murders.

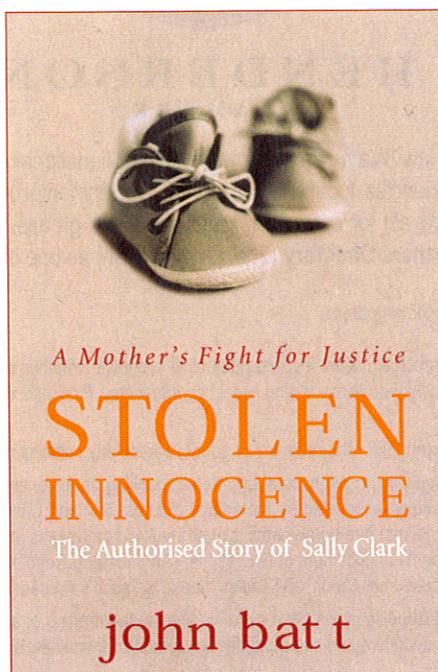
I am not angry with the book. It is well written and has the same unputdownable quality of a good novel. But a novel it is not. What happened to Sally makes you want to spit!

Batt, nearly at retirement, became involved when he offered to help the family by keeping a watching brief at Sally's trial. He had known Sally all her life, and his daughter played with her as a child. He ended up working on her case every waking hour. He was not alone. Others (Mike Mackey, the solicitor who represented Sally at her trial, Sue Stapely, a solicitor who now specialises in public relations, and Sally's husband Steve) went so far beyond the call of duty that they left it a small dot in the horizon. They, with Sally, represent all that is best in the solicitors' profession.

Would that the same could be said about others who seemed to go out of their way to secure a conviction for murder despite flaws in the evidence.

For those who do not know the details, two of Sally's sons died when they were very young. The first death was put down to a lung infection, but when her second son Harry died, a pathologist (not even a paediatric pathologist) thought he saw signs that Harry had been shaken to death. No criticism can be made of the initial decision to investigate. As with many deaths, there were signs that could point to foul play. The Clarks were arrested and their house was searched. They both made full statements to the police and cooperated freely. That was a mistake. The information innocently given (in the absence of legal representation – they had done nothing wrong; why would they need solicitors?) was turned against Sally at her trial to paint her as a career obsessive who did not want children. The first lesson from this is: if you, a solicitor, are arrested for a crime you did not commit, say nothing and call in a crime specialist before you breathe a word. In my view, the police by their actions against Sally forfeited the right to co-operation in these circumstances, and you can say what you like about inferences to be drawn from silence.

Both Sally and Steve believed the police would recognise their innocence and let them get on with grieving for their lost children. But they were mistaken: Sally was charged with two counts of murder. The juggernaut of British 'justice' (for want of a better word), once rolling, was unstoppable. At every stage her solicitors tried to



bring the process to an end, but were thwarted. As the case wore on the evidence became more bizarre, with a leading prosecution expert making fundamental mistakes and the prosecution even changing its case a few days before trial (it decided the children were not shaken but smothered – despite the lack of evidence for either cause of death). By the time the prosecution evidence was concluded at the trial, not one prosecution witness was able to say for certain that either of the boys' deaths was not due to natural causes. But still the case rumbled on, with Sally being forced to give evidence in her defence – at the end of which, her QC (a hardened advocate who mainly did prosecution work) said: "If that wasn't a lady telling the truth I have never seen one."

The unlikely statistic (given in evidence by a paediatrician) that the chances of two cot deaths happening in one family by chance were one in 73 million appears to have been too much for the jury, who then convicted Sally on a majority verdict. She was taken to Bullwood Hall prison, where she suffered physical and verbal abuse.

Her defence team were confident that she would be out on appeal. But they reckoned without the blinkered approach of the Court of Appeal judges who considered her case. When her appeal was turned down, Sally's QC described the judgment as "the most intellectually dishonest appeal judgment I have ever read".

There followed months of frantic activity by Sally's supporters to uncover evidence that she did not kill the babies. Experts were contacted from all over the world, and the hospital notes (located with difficulty) were closely scrutinised. At length it was discovered that the prosecution had failed to disclose key test results.

In the meantime, the Law Society, anxious to

protect the public from a dangerous woman, applied to the Solicitors Disciplinary Tribunal for an order against Sally. Sally was unable to be present, but she recorded a videotape of her submissions. As a result, the Tribunal took the unusual (and brave) step of suspending Sally, but not striking her off. That was not good enough for the Law Society who, protecting our profession to the last, decided to appeal the decision on the ground that it was not harsh enough. I wonder what they thought they would achieve by doing that!

Test results revealed that Harry died from a staphylococcal infection (in other words: natural causes). The prosecution caused Sally to spend many more weeks in prison while they argued against the new evidence, and insisted that they had **not** withheld vital documents. Yet once the appeal started, the prosecution admitted there had been material non-disclosure. The Court of Appeal, in allowing her appeal, held that:

- the two cases should not have been tried together;
- the statistic of 1:73m was not admissible in law and should never have been allowed in evidence, and that it might in itself have been sufficient grounds for a successful appeal;
- there had been a failure to disclose a material document;
- there was to be no retrial.

As Sally said on 29 January 2003, on her release more than three years after her conviction, "There are no winners here. We have all lost out. We simply feel a relief that our nightmare is at an end."

But it was not. An interfering paediatrician had seen Steve on television and had concluded it was he who had killed the children. He maintained that view even when he appeared recently before the GMC on misconduct charges.

The Government has failed to compensate Sally for her years in prison and is arguing about the costs of her appeal (despite the fact that her legal team did not charge anything like the full amount for the work they did).

This is a book that should be read by all solicitors who are concerned about justice. It is not a happy story, but you will almost certainly emerge from it with a huge admiration for the Clarks and those who helped to secure her release. You may also suffer despair that our legal system could have got it so wrong. Sally was vindicated through the sustained efforts of a number of solicitors who would not give up. How many more mothers, I wonder, languish in prison because they have not had such support?

Richard Barr can be contacted by email at richardebarr@hotmail.com. If you would like to read some of his past articles in *SOLICITORS JOURNAL* (including previous pieces about Sally's case) visit his website: www.richardbarr.org