

**CRIMINAL LAWYERS ASSOCIATION
of the Northern Territory (CLANT)**

EIGHTEENTH BIENNIAL CONFERENCE

***I CAN'T BELIEVE IT'S NOT BALI:
LOCKDOWNS AND LOCKUPS***

*The trial of Andrew Mallard [NOT]
Perth, Western Australia
May 1994 – October 2008*

A play reading presented by the CLANT players

**28 June – 1 July 2022
DARWIN CONVENTION CENTRE
NORTHERN TERRITORY**

INTRODUCTION

THE TRIAL OF ANDREW MALLARD [NOT]

INTRODUCTION

This introduction is based on that included with previous play readings presented to the CLANT Conferences. Previous attendees and aficionados of this segment of the conferences may be forgiven if they do not find it necessary to be reminded of what follows. They might like to skip to the heading ***The Saga of Andrew Mallard*** below. It will, however, be useful to read that part of this introduction as it will help those attending the play reading to understand the setting and dramatic licences taken.

This is the fourteenth in a series of play readings presented to the CLANT Bali Conference by the CLANT Players. *The first was presented at the 5th Conference at the Bali Hyatt in Sanur in 1995. As usual, the purpose of the play is to entertain and amuse, but also to say something about the abuses of and by the criminal law. In writing this year's piece, as ever, it occurred to me that there are certain common threads which have run through the particular plays chosen.

We can exclude two of the presentations from this consideration. In 2007 we presented John Mortimer's ***Dock Brief***. It did expose in a very quirky way, a deficiency in the English Law. While both amusing and entertaining the delegates, a forensic advantage was gained – fictionally – to the accused: no harm was done, but lots of fun! In 2009, we presented a series of vignettes, ***Serving it up in Court***. All were said to be true stories from courts, but they were shamelessly aimed at getting some laughs from the delegates and other members of the audience, and did not disappoint!

In all of the other play readings there were common threads, all pointing to unfair trials of one kind or another. The accused in ***Ned Kelly*** [1997], ***Tuckiar*** [1999] and ***Bentley*** [2003] were each charged with the murder of policemen. In these cases, the judges and jurors seemed to act under particular constraints, often leading to injustice. An acquittal would be most unlikely. In the ***Popish Plot*** trials of 1684 [CLANT, 1995], the allegation was that an assassination attempt against the life of the King was to be made. Roman Catholic priests were involved. They were then an *unprotected class*! The prosecutor Jeffreys [later known as *the hanging judge*] behaved abominably, as did the Chief Justice and the perjured witnesses. They were all looking for

preferment under the political regime at the time. In these four cases, only **Tuckiar** survived his sentence of death [although query whether some *certain steps* were taken against him...he never made it back to his traditional country in Arnhem Land]. Legal representation was poor or non-existent in all these trials.

The **Eureka Trials** [2001] sprang from a government determined to assert itself against the rebelling miners. This is the only one of our series of play reading cases where outright acquittals were obtained at trial. The members of the jury, representing the community, were not prepared to accept an unfair and repressive political system.

Rupert Maxwell Stuart [CLANT, 2005] was an Aboriginal man accused of raping and killing a young girl. Community feeling ran high, as it did in the 1921 case of **Colin Ross** [CLANT, 2013] in Victoria. Ross was charged with a similar offence, although he did not suffer from any racial prejudice. Ross was executed. Stuart was not. Both, however, were prosecuted equally vigorously and their trials demonstrate injustices.

Other presentations included **The Shearer's Tale** [the NSW trial of **McDermott** in 1948]. He was later acquitted posthumously of the murder, 50 years or more after the event. Fortunately, he was not executed and was released early from prison. It was only after the body of his supposed victim was found many years afterwards that his innocence was established. **Lindy Chamberlain's** case was represented for CLANT by the second inquest into the death of Azaria. That, to this chronicler, was a grossly unfair proceeding. Her innocence was not finally confirmed authoritatively until the fourth inquest, held in 2012.

In 2017, the CLANT Playreaders performed the Victorian 1950 trial[s] of **John Bernard Kerr** for murder of a young woman. He was convicted on the basis of alleged confessions made by him to one *Bluey* Adam. These were challenged at the time, but unsuccessfully. Nevertheless, Kerr only served 12 years and had a reasonably long private life thereafter, always protesting his innocence. It was noted in that play's introduction that trials were dealt with much more expeditiously in earlier times. The victim in this matter died on 28 December 1949. By December 1950, there had been a committal, three trials [the first two juries couldn't agree], two visits to the CCA, one to the Privy Council, and a commutation of the death sentence by Cabinet. Things moved swiftly!

[By way of footnote to *Kerr's* case, it's interesting to note that Victoria in 2019 continues to be bothered by apparently dishonest police witnesses and other dodgy practices].

The trial of *Marie Antoinette* was an intriguing one. It was presented at the CLANT Conference in Bali in 2019. As in the 2017 play reading, a new style of presentation was adopted with the words being written in verse - rhyming couplets – and there was musical accompaniment. These were hardly Shakespearean in quality, and were introduced mainly to satisfy the writer's ego, but apparently were enjoyed by the delegates and friends.

The trial itself was conducted in 1793, as part of the excesses of the French Revolution. It demonstrates many of the unfortunate aspects of the earlier trials presented in the play readings – oppressive prosecutors and judicial officers and a public loathing for and fuelled abhorrence of the accused person. Legal representation was inadequate [particularly in the view of the time made available] and witnesses perjured themselves. The trial was a complete travesty and led to the guillotine within 52 hours of its commencement. There was much amusement at the style of presentation – with *hallo!hallo!* French – but there was no denying the poignancy of the play's dénouement.

The Saga of Andrew Mallard

Mrs Pamela Lawrence was murdered in her shop in Mosman Park, Perth on 23 May 1994. She had been struck many times on the head with what is sometimes called *a blunt instrument*. Andrew Mallard was charged with her murder on 17 July 1994. Mallard was then an unemployed person living off his wits and aged 31. Following a trial before Justice Murray and jury in November 1995, Mallard was convicted and sentenced to life imprisonment, with a non-parole period of 20 years. An appeal to the Court of Criminal Appeal in June 1996 was dismissed. An application for Special Leave to Appeal to the High Court was dismissed in October 1997.

Investigations were carried out by the Ombudsman, the Police Royal Commission (2002) and an investigative journalist (Colleen Egan), leading to a further appeal, by way of a Petition for Clemency, to the Court of Criminal Appeal in 2003. This was also dismissed, but an appeal to the High Court was successful in 2005. The High Court held that Mallard had not received a fair trial as there was material available at the time which was not disclosed by the

prosecution. It ordered a new trial (*Mallard v The Queen* [2005] HCA 682, 224 CLR 125). The Court specifically referred to matters of non-disclosure. Kirby J said, at [58]:

Of particular concern are the items in which evidentiary material, consistent with innocence and presenting difficulties for the prosecutor's hypothesis of guilt, were actually suppressed or removed from the material supplied to the Defence.

The DPP resolved not to proceed with a new trial. It was now 11 years after the murder, and the law in respect of the recording of confessions had changed. Moreover, there was now a more likely offender. Simon Rochford was a prisoner, serving a sentence for the murder of his girlfriend, also in 1995, 7 weeks after the Lawrence murder. She had been bludgeoned to death in similar fashion. As a result of an ABC investigation, Rochford was identified as the likely offender on ABC News on 18 May 2006. He was found dead in his cell the next day. He had not admitted guilt prior to his death. A partial palm print - identified as his – had been recently found by a Cold Case review of the Lawrence murder. It appears this forensic means of identification had only recently become available.

In the meantime, the DPP had filed a limited Notice of Discontinuance on 20 February 2006. Mallard was immediately released, having spent 11 years 8 months in prison.

On 31 July 2007 public hearings began into “...alleged misconduct by public officers in connection with the investigation of the murder of Mrs Pamela Lawrence, the prosecution and appeals of Mr Andrew Mallard, and other related matters”. The inquiry was conducted on behalf of the Western Australian Corruption and Crime Commission by Acting Commissioner John Dunford.

It is not intended in this introduction to delve closely into the misconduct and non-disclosure by the police and prosecutor which led to the High Court's criticisms and the findings of the Commissioner. They were significant. It is hoped that the presentation contained, in a dramatic way, in the play reading will sufficiently identify some of those issues. Those interested, might like to pursue their own enquiries from the writings now publicly available.

It will be appreciated that the content of the play reading is not taken directly from the Trial or Commission transcript – for one thing, neither body allowed witnesses to speak in verse! Some dramatic licence has been taken therefore, but it is hoped it carries the flavour of the evidence and material available. The witnesses, lawyers and police officers will not be identified by name. The writer has used substantial dramatic licence in writing the play and it is, perhaps, not entirely fair to saddle the protagonists with his imaginative take on what they actually said and thought. Nevertheless, the presentation is certainly consistent with what the High Court and the Commission thought about the behaviour of the police and the inadequacies of the prosecution.

After his release, Mallard was paid \$3.25M in compensation, and left Australia in 2006 to live in England. Life in Western Australia was untenable as he felt he was still regarded as a murderer. He had graduated with a degree in Fine Arts, and studied for his Masters. Thereafter, he visited his fiancé in Los Angeles in the United States regularly. Sadly, on 18 April 2019, he was killed there in a hit-and-run street accident. He was aged 56.

The Play Reading and Acknowledgments

Once again, the play reading will be presented in verse. It is hoped that this will not distract from the serious issues considered. It is doubtful whether there will be, unfortunately, any musical accompaniment this time. Our man has only recently returned from China!

I have leaned heavily on the Report of the Inquiry by Acting Commissioner John Dunford which was presented in October 2008. The Commissioner was then a retired judge of the Supreme Court of New South Wales, and conducted the Inquiry because of the local senior legal identities potentially involved.

I have also referred to, and been assisted by, the analysis contained in the book, ***Murderer No More***, written by investigative journalist Colleen Egan. Her work was recognised by the award of the Walkley Prize in 2007. Those interested in more information than that contained in the obviously truncated version in the play reading, might refer to either or both the Inquiry's Report and Ms Egan's book. The Commissioner specifically acknowledged the efforts of Ms Egan and John Quigley [a frequent attendee of these conferences] in securing justice and vindication for Andrew Mallard.

My friend Trish Smith, of the NT Office of the Director of Public Prosecutions [with the Director's approval], has once again reduced this Introduction and the play reading script to manageable documents. She has prepared copies of the Introduction which will have been distributed to delegates and their friends at the Conference. I am grateful to her.

As I usually do, I now thank the President and the Committee of CLANT for this further opportunity to participate in the affairs of the Conference, maintaining my association and friendship with my former colleagues. Might I particularly also include a further personal note. This is the first conference I will be attending without my wife and best friend, Lyn. Others will probably speak of her and the remarkable organisation of 13 conferences from 1995 to 2019 and her general contribution to the affairs of CLANT – she was a Life Member too. My personal loss will be obvious to you all.

Finally, I thank the players who have, *mostly*, volunteered their services. I expect they will enjoy this particular performance as much as any that have preceded it. Their names, without any honorifics, are listed somewhere amongst these papers. Thank you, in anticipation, also to the Delegates and their family and friends for participating in the proceedings!

REX WILD
Darwin
13 August 2021

*The plays are listed on the CLANT website. The original introductions are there available, together in many cases with the play reading script.