

THE SCRIPT

THE TRIAL OF ANDREW MALLARD [NOT]

**The Supreme Court of Western Australia 1995
(including snippets from the police investigation of
1994)**

- and -

**The Corruption and Crime Commission (WA) 2008
(somehow all sitting in tandem)**

The scene is set with the Commissioner (who also acts as the Narrator) and the Supreme Court trial judge both sitting on the Bench. The Commissioner will be dressed formally in civvies (jacket/suit and tie) and the trial judge as if in Court (wig and gown and/or bar jacket).

The seating arrangements outlined below are indicative only and may depend on logistics available – microphones and other props, etc.

The counsel, the prosecutor and the defender, should be dressed formally as in court.

The two (representative) police officers will sit at an early stage with the accused, conducting interviews or talking among themselves. This will be at a table right of stage. The second detective will leave this table when his speaking part concludes and will join other *players* in their allotted seating. He will be replaced by the prosecutor at this table. Effectively, the prosecutor and first detective will sit together...a dramatic touch obviously but meant to represent the collaboration involved. The Undercover Cop will also be seated nearby, until his speaking part concludes. [At the end of the play, his seat will be taken by the Real Baddie. Initially this player will be sitting with other players, wearing a shirt over his prison t-shirt and a colourful bandana. When he moves positions, he will remove his over-shirt and bandana, but will twirl the latter]

When the accused's interview process concludes, he will join the defender who will be seated at a table left of stage.

There will be a number of witnesses and three jury members. They will be seated in the front row(s) of audience seating, on left side of central stage. Precise arrangements will await the day. Additional suggestions for costuming will be offered individually. Bear in mind that the events described took place in the period 1994 – 2008. If your choice of costume includes a hat or cap, please (if you are a male character) remove it before giving evidence.

[The defence counsel can start the performance sitting at the table, left of stage]

The presentation is all in verse, of one kind or another. From time to time, in the script, you will find suggestions [in *italics*] as to hand-movements, pauses, and the like. But, remember, it's all about the words. Please deliver your lines slowly and pronounce the rhymes deliberately and clearly. It becomes pointless otherwise. There are a few occasions in which the second rhyming line in a couplet is delivered by another player. Obviously, some effort is required to follow up quickly in this instance.

[Lapel mikes will be available for First Detective, Undercover Cop and Real Baddie – and, perhaps, The Accused]

Players: Please don't read out the directions!

As I have said in previous presentations, please forgive these specific requests and directions. We don't get the opportunity to rehearse. There will hopefully be a meeting one day - perhaps at lunch or morning tea – for some pre-play hugging, etc.

The cast will be in tableau for the commencement.

The Commissioner/Narrator [Standing at lectern]

Allow me to introduce myself as your Narrator.
I'll endeavour to the tastes of CLANT cater.
(And, incidentally, I don't write this material.
I know the rhyming is sometimes unreal.)

Coincidentally, or concurrently, I'm ex-Judge Dunford,
My task is to ensure you are not all bored.

I was the Acting Commissioner in WA who inquired
Into the behaviour of various parties, as required,
Involved in the prosecution of Mallard, for homicide -
And their degrees of misconduct to decide.

He lived on the streets of Perth, mostly without home.
And now, poor bloke, he's the subject of this poem.
So, Andrew Mark Mallard was his name,
His story a cause celebre became.
Convicted of a murder he didn't commit,
On evidence that was not legit.

If you've read the hand-out introduction,
(in accordance with the playwright's instruction),
You'll know of trial, conviction and appeal,
And 12 years imprisonment...quite surreal!

Finally, a filing of a Nolle by the Crown,
After a High Court prosecution put-down.
And then, my findings of corruption,
Which caused something of an eruption.

But first we'll hear part of the police investigations;
This will prepare you, perhaps, for later sensations.

Before we start the trial, we will provide some detail
Of the investigation and evidence trail.
You will hear two of the investigating team,
The Undercover Cop and the culprit in **their** scheme.

[The Commissioner returns to table on stage where he sits with Trial Judge,
using table mike, until final verse of play]

*The action now concentrates on the two investigating police officers, seated
together, with close access to the Accused and to the Undercover Cop. [They sit
together in two chairs on floor of stage, the Accused closest to the detectives.]
The detectives are close together, and talking privately [There is a table mike -
used by Second Detective]*

First Detective [*in discussion with Second Detective*]

What have we got? A robbery gone wrong;
A girl in a car that comes along,
Looks in and sees a strange man in the shop.
Earlier that day Mallard pretended to be a cop,
As part of some silly theft that failed.
He was arrested but, it seems, bailed
A pity, because he probably went out once more
Determined to break the law.
And committed this horrible offence.
The whole situation makes little sense.

[Addresses the Accused; the latter is dressed with a shirt covering his prison t-shirt which will be removed when the trial starts; he also has a cap – to be provided]

Well, Andrew, tell us all about it, if you'd be so good,
We believe that you, the whole scenario, understood.

The Accused

I myself didn't do the deed.
But hopefully, I can give you a lead.
He probably used a weapon like... [*hesitates*]... a wrench,
Which he would have found on the shed bench.

And then he belted her on the head
She'd recognize him if she wasn't dead.
Here's a picture of the tool, [*holds up*] that I think [*pauses slightly*]
Was used -----

Second Detective [*winks at Mallard*]

----- a nod's as good as a wink!

And what happened to this spanner?
[as grand as a Sidchrome in its manner?]

The Accused

He possibly threw it in the River Swan,
To make sure it was absolutely gone.

First Detective

And what did YOU do after killing this person?
Your own position could hardly worsen?

The Accused

Well, apparently some girl passing by in a car,
Saw the killer, and thought *ah! hah!*
What's he doing behind the counter,
Did he the deceased encounter?

Second Detective *[to the First Detective]*

This is really good stuff, he's giving away,
Keep questioning him. Don't let him stray.

First Detective

What happened then, Andy, old mate?
You can tell us. You know there's no tape *[pointing at the empty table]*

The Accused

He washed himself and his clothes in the river's flood,
To get rid of what was lots of blood.

First Detective

Where did this happen, as you allege?

The Accused

Probably in the Swan, down near the bridge.

First Detective

Well, that's enough for now, Andrew –

The Accused [*Quickly, to complete the rhyme*]

I hope my thoughts all turn out to be true,
And help you find this man in time,
Before he commits another horrible crime.

[*Swaps seats with Undercover Cop*]

The Commissioner

This would have been a most prophetic utterance.
Seven weeks later, another murder, with belligerence!
Later you'll hear from that man's ghost.
No admissions – but, you might think - almost!

The Second Detective

What are we going to do with all this?
I can't help feeling there's something we've missed.

First Detective

Well, for starters, his reputation isn't good
In the Mosman Park neighbourhood.
I have no doubt that he's the villain
Or how else can you explain,
His intimate knowledge of events at the scene?
There must have been at least 12 or 13,
Not generally known to the public at large;
I think there's sufficient evidence to charge.
These matters support the reliability of his confessions,
Albeit, there are significant, and regular, digressions.

Second Detective

He talks of the killer in the third person,
Which may tend his reliability to worsen.

This is why we put in the undercover cop,
To put to his vacillation, a stop.

First Detective

[addressing Undercover Cop, who now cosies in]

So, unnamed and secret operative, what can you say,
Of what Mallard told you during each day?

Undercover Cop

Well, I spent three days in cultivation,
Including finding him some accommodation.
We spoke of the murder, at my instigation,
Building on our established relation.

But, he only ever theorised about what had occurred.
I think in the main from things he had heard,
From you two, in your interviews,
Or items he'd read in papers and news.

And most of what he said was completely wrong.
I did my best to string him along.
By the third day, he'd made no admission
[And the following comes from a tape transcription]
So, in the end, I asked him point blank,
Without revealing I was a mountebank:

[here he addresses Mallard directly as if in a private setting]

Let's get it clear, if I'm to be your mate
Did you play a part in that sheila's fate?
You know, the one in Mossie Park?
Don't keep your mate in the dark.

You've answered questions about what occurred.
Is that really just what you had heard?
So how did you know, if it wasn't you?
And somehow all those sordid details you knew?"

The Accused

“No, mate, it wasn’t me; and all that stuff,
I got from the cops – when they tried to be tough.
I just played along with their silly game,
While they tried to put me in the frame.

Undercover Cop

*[the interlude concludes, and the Undercover Cop faces the Detectives again].
The Accused moves across to sit with the Defender, slightly behind him. He
doesn’t remove overshirt until start of Trial]*

First Detective

Well, thanks for your efforts, but you’ve been a dead loss,
[dismissing him, with a wave of his arm]
You may now return to other duties, of course *[coss]*.

Undercover Cop

[Moves to centre stage, facing the audience, shrugs and hold arms akimbo]

Well, p’raps he’s innocent. I did my best,
To get André to murder to confess.
The Crime boys seem to have tunnel vision.
I’m glad I don’t have to make that decision.

[leaves stage, joins other witnesses]

[Detectives continue discussion]

Second Detective

We still don’t have the weapon, we have found not a thing.

First Detective

We should have some tests done, to simulate the whacking,
And its effect on the body with, say, a spanner;
So that we can demonstrate the manner

In which the blows were inflicted,
And aid us in getting the bloke convicted.

Second Detective

Why don't we discuss this and other plans in private?
[looking suspiciously around the audience]
And present them when we think appropriate?

First Detective

Yes, OK; but I'm also concerned he's a bit of a nutter.
If he pleads insanity, it could be a rebutter.
We will need to overcome that issue as well,
Otherwise as to the verdict who can tell?,
[Second Detective leaves table, sits with other Players, and is replaced by Prosecutor]

The Commissioner

Now, this is not just the repeat of the trial of Mallard,
For there is other evidence to which you may give regard.
I draw this particularly to the jury's attention,
To aid in pre-judgment prevention.
With me, here *[pointing to his companion on the bench]*, is the trial judge;
Whose authority you should not begrudge.
He'll get the **original** trial started without fuss,
And no doubt this will entertain us.

The Trial Judge

I just might mention, before we start,
There's been an application for senior counsel to play a part,
In defending this case, but I see no need.
It's the defender's first murder *[points towards defence table]*, but he seems
up to speed.

Members of the Jury *[Jurors wave to Judge in friendly fashion]* you will hear
from the prosecutor first.

He'll outline the Crown case, unusually using verse.
Now it goes, without saying, for a trial to be fair,
The prosecution must disclose all the evidence that's there.

The Prosecutor

A straightforward, but nasty, case of a robbery gone wrong,
A robber surprised, and an attack headstrong,
The victim battered to death, by a wrench or [*hesitates*] "metal object".
[*Waves hands, without showing conviction*]
The evidence will leave you no choice but to convict.

You will be told that the accused confessed,
To a guilt which I suggest you will find manifest.
Although he recanted from time to time
Apparently without reason or rhyme [*shrugs shoulders at word "rhyme"*]
But given he knew what only the killer could have known,
How can he now his guilt disown?

The killing occurred at Mosman Park.
It was after 5pm, but not yet dark.
The date, 23 May, Nineteen ninety four.
The victim was found, dead on the floor,
In her shop. She made jewellery [*pauses*]
Until her death, through his devilry [*points to accused*]

[*First witness moves into Box on stage*]

The first witness will be someone the murderer has seen,
And been seen by...a schoolgirl aged thirteen.

The Girl

I was being driven home from school by my grandma.
The traffic was stopped near *Flora Metallica*,
Where my mother worked; I knew the shop well.
There was a man in there, and I could tell,
In a place where he shouldn't have been.
He ducked down when he knew he'd been seen.
He had a long face, with a light beard

And wore a gypsy-type scarf, above his ears.
It had a very distinctive orange border –
And mixed colours – I don't know what order.
I've been shown a cap by the police – red, yellow and black.
[cap waved by First Detective]
The man was wearing these colours -perhaps, front to back?

The Defender

You said this man had a scarf over his head?

The Girl

Well, I thought it was a scarf, that's what I said,
But it was a short glance, I must have been wrong.
It was that cap *[points at cap being waved by First Detective in Court]* he was
wearing, all along!

[leaves witness box, to be replaced by older version of herself]

The Commissioner

It appears that defence counsel had little on cross.
Without the material, he was at a complete loss.
You will hear more from the schoolgirl, an older version;
And you will be struck by her evidence's conversion,
In the hands of the Detective Senior Sergeant of Police.
With such changes, its impact increased.
This material was filed later in my investigation,
Ten years after the earlier litigation.

The Girl (slightly older) *another player, but now some 10 years or so older*
[goes into witness box]

The Defender

Let's have another go, shall we, with better luck?
Some original documents have fallen off a truck.
You originally said the man was 6 feet in height.
We know that Andrew is 6 feet 6 inches...as high as a kite.

Turns half to address audience –

And without casting aspersion,
You yourself seem now a shorter version [*Chuckles at his humour; witness pouts*]

[*Continues*]

You drew sketches when you got home, which showed no moustache.
Isn't that right? [*witness pouts again, and flutters eyes*] – am I being too harsh?
You drew the scarf tied tight over his head –
I wonder, witness, whether you may have been misled,
By police evidentiary metastasis
Causing you to change your emphasis?
You first said the colours were orange, blue, silver and cream –
But in the Trial, this changed to red, yellow and black, it would seem.

The Girl (slightly older)

I don't know what happened to my drawings at home
They showed the scarf was polychrome.
The police probably thought them inappropriate
When they didn't show the real culprit.
The same goes for my work on the police identikit,
With no moustache, which we later knew didn't fit.

The Defender

The question remains, why the differences in your final statement,
Height, facial hair, colours and headwear – all showing abatement?
Did the police lean on you to identify this poor has-been [*pointing at Mallard*]?
As the murderer, rather than the man whom you had actually seen?

The Girl (slightly older)

Certainly not, I recognised him [*pointing at Mallard*], when I first saw him in
the preliminary Court.
He looked exactly like I had always thought.
I nodded to the Detectives, without pause or stop,

Confirming this man was the man in the shop.

Incidentally, my statement was not doctored, that's absurder
Than saying that Mallard wasn't the real murderer.
In any event, a girl can change her mind [*tosses her hair and pouts*]
The Police, to a young girl, were exceptionally kind.
I found them courteous, professional and polite.
The alterations made, were to get my story right.

First Detective [*jumps up, uninvited*]

I'm the Senior Sergeant Detective,
My methods are plainly suggestive.
Witness statements I've polished,
Possible defences demolished –
The Crown case is now more effective!

The Defender

We'll ignore that interruption, if your Honour(s) [*points at both players on the bench*] please,
It seems the witness did her best to appease
The detective's efforts to build his case,
With methods which now look quite base.

The Trial Judge

We'll do without comments by both police and practitioner
[But, I note, the detective became an Assistant Commissioner.]
[*holds up hands*]

The Defender

[*to witness*]
You were shown photos by Police, did you see him in those?

The Girl (slightly older)

No, that's why they weren't used in the Trial, I suppose?

The Defender

But why weren't we told that this had occurred?
Before trial, so that we could see if you erred,
When now identifying, at Court, the man accused,
And assisting in having his trial rights abused?

The Prosecutor

I object to the question...it's a matter for me,
As to what the defence is given as to matters of ID.

The Trial Judge

I uphold the objection, and the reasons are plain.

The Commissioner

[quickly following] BUT I allow the question, and will later ask the police to explain.

[The Girl (slightly older) leaves the witness box and is replaced by The Landlady]

The Prosecutor

Here's some more evidence to implicate him,
From the woman who, from the street, took him in.

The Landlady

For a while, Andrew stayed at my Mosman Park flat,
He slept on a mattress, or...*[muses]*... was it a mat?
André, as I called him, was a druggie of sorts.
He supplied me, and himself, by various rorts.

He was unemployed and survived on the street,
By using his wits; He was tall – at least six and a half feet.
He tended (may I say this?) *[looks around]* to talk mostly crap.

He often wore an orange or gold coloured cap.
Which he sometimes wore backwards, but not with panache;
Beardless, sometimes unshaven, but a big moustache.

On 23 May, on the day of the murder, we were home.
The Police collected him, and for a time I was alone.
I went out for a while and came home after three.
André returned before seven...can't remember (**now**) whether cap-free.
[Witness starts to leave witness Box, but Commissioner holds up hand; she moves partially away only]

The Commissioner

Once again, it appears, statements were altered.
The Defender (and prosecutor, it seems) cannot be faulted.
The changes/omissions strengthened the Crown case,
Leaving the Defence only rabbits to chase.

Detective, why was this statement re-arranged?
The result being the Trial evidence was changed?

First Detective

I'm the leading senior sergeant detective,
With statement-taking skills suggestive,
To rid them of irrelevancies,
Hearsay and defence fantasies,
Thus, making the Crown case more effective.

The Commissioner

Yes, we've heard all this from you before;
Of witnesses you're a manipulator.
But, this is not *Gilbert & Sullivan*, police detective;
Giving evidence by limerick is not an elective.
This is the second time from couplets you stray.
There will be no more of this rude nonsense, I say.

We will ask the temporary landlady to return to the Box
And perhaps truth and justice will be given some Vox.

[*Witness returns to Box*]

The Defender

In conducting the Defence (from 2008), I've had some luck.
Some undisclosed statements have fallen off the policeman's truck.
I've mentioned this before to the delegates [*looks around audience*], of course.
Repetition, it is hoped, will give it more force.

[*Reads*] "André's hat was hanging above my door inside,
At three o'clock" – [*to witness*] - that's not denied?
Why was this removed from your first statement?
When he returned, you told police, his hat was absent.

That's pretty obvious, witness, it was behind the door?
Why did you give this other untrue version in Court before?
Originally, you said he had a gold velvet hat;
Now it's become an orange/gold cap.

The Trial Judge

Counsel, do you want the witness to answer your points?
Or do you just like the sound of your own voice?

The Defender

[*Very cheekily*] Pshaw!

The Prosecutor

Your Honour, this beggars belief.
That original statement was not in my brief.

The Commissioner

[*to the audience*]
Be that as it may, there are items in that brief,
Which we'll come to, when we turn over the leaf,
Known to the Prosecutor, and which he chose,

Deliberately it seems, not to disclose.

The Jury [*on their feet*]

We are members of the Jury, not mushrooms,
To be kept in the dark and fed manure.
We expect they should kick the collective rears,
Of those responsible for Mallard's 12 years.

The Trial Judge

[*Sternly, to the Jury*] That's enough out of you lot!
[*Pauses, thinks*] It seems our playwright has quite lost the plot.

[*Next witness, the pathologist, proceeds to witness stand*]

The Prosecutor

I'll call the pathologist, to discuss cause of death,
Describing in detail how she breathed her last breath.

The Pathologist

I looked at the body, there were blows to the head,
Perhaps six, up to twelve, from each she had bled.
I conducted an autopsy, back in my room.
It confirmed cause of death, as I presumed.
There was mixed with the wounds, a material of blue
I didn't identify this, despite a review.

It was hard to establish what weapon was used.
The wounds were unusual, bloody and bruised.
I was shown an anode and did a test.
We used a pig's head - it seems to work best.
But the wounds were not similar to what was to be seen.
I was informed that no weapon was found at the scene.

The Defender

Witness, you are experienced in wounds to the head?

I assume you have studied and are widely read?
I'm going to lead with my chin...did you test a wrench?
On the poor dead porker, there on your bench?
To see if you could replicate the harm that was done?
Or did you find, of similarities, there was none?

The Pathologist

[looks to the Prosecutor for guidance]

I'm not sure I could answer that. It's not in my statement.
As the police said, the crown case it didn't augment.

The Defender

Don't worry about what he thinks *[gesturing towards the prosecutor]* –
But I suspect, nods are as good as winks.
Is this another example of non-disclosure?
By the police or prosecution – by which, I'm not sure?
It wasn't a wrench, according to your pig test –
But this evidence disappeared along with the rest,
Capable of exonerating the accused;
Leaving the defence all battered and bruised.

And what about this sketch, produced by this man *[pointing to Mallard]*
Of a Sidchrome spanner, drawn by hand,
Given to the police during his interview,
Did you form an opinion whether it was used?

The Pathologist *[genuinely mystified]*

From where did this drawing come?
I have never seen it before – I'm struck dumb.

The Defender

So, obviously you only received half the brief, too
A bit hard for you to offer a sound view!

The Commissioner

These are other matters which only came to light
Years after the event, following the justice fight.

The Defender

Did you not do another autopsy at about this time?
With similar wounds - does that ring a chime?
We might come back to that connection.
It's odd you didn't realise it, on reflection.
As it also involved blue pigment in the injury
You didn't pick this up, in your mortuary? [*Question left hanging*]

The Pathologist [*shrugs shoulders and scurries away*]

[*Next witness – the Chemist – proceeds to the stand*]

The Commissioner

The perpetrator would have washed in the salt water Swan,
His clothes – so the blood would be gone.
According to the accused, as part of his surmise,
To the Undercover man - or so he advised.
Somewhere near the Stirling Bridge, he said,
Was the location to which the killer had fled.
So the question was raised with a professional chemist.
We'll now hear if he can assist.

The Chemist

I tested the relevant clothing of the defendant.
And reported in August '94 to the superintendent.
I found results inconsistent with immersion in salt water
Near the Bridge; and I so reported.

The matters of these tests were deleted from my final report
As according to the Police, they provided no support.

[witness stays in Box while following few exchanges take place, showing his disdain of the proceedings]

The Prosecutor

I knew nothing of this. I was never told.
It's like presenting a case blindfold.

First Detective *[Jumps up]*

I'm the leading senior sergeant detective,
With statement-taking skills suggestive -

The Jury *[on their feet, interrupting]*

We are members of the Jury, not mushrooms.
To be kept in the dark and fed manure.

The Trial Judge

[Crankily, to the First Detective and Jury] Enough, enough, listen to what you
have heard.
Don't speculate on what might have been the word[s]

The Defender

But, Your Honour, the Commissioner, may you not,
Enquire from the Prosecutor, if he knew what,
About undisclosed tests which we never saw
And clearly contributed to the accused's loss at law.

The Jury *[rising to their feet – but sitting down quickly, when they see the Judge]*

We are members....

The Trial Judge

[Very angry, this time]

Sit down! Your job is to listen, not to make waves.
[Pause] I blame our writer [Looks and points towards UNOWHO]
for the way you behave.

[Chemist witness quietly returns to seat, shrugging shoulders perhaps]

The Commissioner

Well, Mr Prosecutor, what do you say, to the factual blanks,
And the suggestion you have been less than frank,
With the Defence and the members of the Jury,
Who have continually expressed their fury?

The Trial Judge [*glares at Jury, waves arm*]

Don't you dare...

The Prosecutor

Well, Commissioner, it was my first murder trial
And to the implied allegations of misconduct, you have my denial.
I did not deliberately fail to note the test on the pig's head,
Which found that a wrench was **not** used, as the accused had said.
It's true I opened the case on the basis that the wrench WAS used,
Which was consistent with what **was** said by the accused.

The Defender

Commissioner, please ask him what happened to that report?
It seems its contents have come to naught.

The Commissioner

Well? Do you have a response that matches your duty?
As discussed in the DPP's paper? – [pause] - what a beauty!
[This is a reference to a paper to be delivered by Lloyd Babb QC at the CLANT
Conference]

The Prosecutor

It was on my brief, and read, but **forgot** [*emphasize*] about that one.
I agree it should have been disclosed - but no harm was done.

It wasn't my job, I didn't hold the hose!

If properly instructed, the result who knows?
I did my very best – it was my first murder trial.
I read **most** of the brief – what was on the file.
I did forget the test with the head of the pig.
In any event, it was a bit infra dig.
An unpleasant thing to do on a bench,
When we already knew the weapon was a wrench.
There seemed little point testing the implement.
It was either a wrench – or some other blunt instrument.

The Commissioner

This Inquiry disagrees, as did the High Court.
It was an essential piece of evidence and disclosure ought,
Be revealed to the Defence as making it more unreliable
That the confession was true and the accused thus liable.

The Full High Court, with Justice Gummow,
Said the prosecutor failed to tell and show;
Obvious enough at even primary level.
It's in the detail where you find the devil.
Or not – as it was in this case,
Where evidence disappeared without trace;
Or was in counsel's brief, but forgot,
Because it didn't suit the prosecution plot.

First Detective [*jumps up, without ceremony*]

I **do** hold the hose – and it **is** my job,
To imprison those who kill, maim and rob.
And if, on the way, some naughtiness intervenes,
In the result, the end justifies the means.

The Prosecutor

And I second the motion!
It was always my notion,
That we had the guilty suspect.
My head I can hold erect!

The Commissioner [*Harumph!*]

We will move to another issue, the accused's mental condition
Which also impacts on the reliability of his admission.

[Witness comes forward to stand]

The Psychiatrist

I have prepared this as a summary of sorts,
Of a number of psychiatric reports.
Following examination of Mallard over the years,
Hoping to throw light on what appears
Otherwise to be a hopeless farrago,
About the life and times of our anti-hero.

The accused was examined by Dr O'Dea in mid-94,
Twice in Graylands Hospital – for use at law.
He had bipolar mood disorder which needed care -
And treatment; but he was a mug lair.
He had a rich fantasy life and was grandiose
He set out to impress – he loved to boast.
He had impaired judgment, made far-fetched claims,
His behaviour was odd - all part of a game.

O'Dea wasn't called at trial as the judge refused,
To allow his evidence to be used.
But it might well have made clear
What appeared to be quite queer.

A confession of sorts but mostly third hand.
So, then the jury would understand.
He was out his depth and his insistence on innocence,
Was the truth, and not more of his nonsense.

[Pauses]

The Commissioner

Please continue –

The Psychiatrist

Dr Patchett opined that the reliability of admissions
Was suspect because of psychiatric conditions.
This was in 2003 – and O’Dea agreed,
But there was nowhere for this to lead,
At the time, as the WA Full Court had the same kind of vision
That permeated the minds of the police on a mission.

Dr Barclay, a forensic expert, produced a report,
For the later Cold Case Review which gave support,
To the notion that Mallard was no killer at all
His criminal record was all thefts as far as I recall.
He was a confidence trickster, a *flim-flam* man,
He survived on the streets using sleight of hand.

As an aside, the police officers had got it -
A jury with this information would have acquit.

The Jury [*on their feet*]

We **WERE** the jury...

The Trial Judge [*quickly and sternly*]

Sit down!

The Commissioner

I would call the real killer to confess to the killing.
We'll never know whether he would have been willing.
There was DNA which put him at the scene;
And the two murders were similarly obscene.
With blunt instrument battering to both victims.
The circumstances in both, particularly grim.
He was in gaol for killing his de facto wife.
But, when identified by Media, he took his own life.

After the High Court decision, Andrew wanted to shout:-

Mallard [*and he did, in our play*]

I'm innocent, I didn't do it, I'm out! [*Puts previous overshirt back on*]

The Commissioner

I have just told you of another inmate,
Probably eating each day from a similar plate,
Who had some knowledge of this particular crime,
In prison with Andrew during this whole time.

He was convicted of beating a woman to death,
An intimate with whom he had shared breath.
He'd used a blunt instrument - but not a wrench [*holds up hands*]
He 'fessed up to killing **that** poor wench.

The real Baddie [his Ghost]

[*Moves forward to seat on stage, removing overshirt and bandana, which he twirls*]

It's hard enough to do porridge,
But to 'fess up takes a lot of courage,
Particularly when Mallard's done a load of time,
When I was the one who committed the crime.

So, when the coppers came for an interview,

[Which was at least 10 years overdue],
I wasn't going to say it was me,
But my identity was blown by the ABC.
It left me little choice in the matter.
I was exposed to all the world as a ratter.
The very next day I was found dead in my cell;
My life in prison would otherwise have been hell

The Commissioner

Even so, after Andrew was eventually released,
The people of Perth were none too pleased.
He felt uncomfortable in public – a lonely soul.
It was hard to fit back into society's mould.

But with significant government compensation,
He decided to leave an unforgiving OZ nation.
He settled in England, pursued his degree,
And had a reasonably happy 12 years free.
He travelled regularly to the US...[*pause*]...LA,
Where he visited his American fiancée [*Stretch out the vowels, here*]
Alas, it would be necessary the truth to bend,
To provide this story with a happy end.

In April, two o one nine [*2019...pronounce the numbers*], on Sunset
Boulevard,
A hit- and -run driver killed Andrew Mallard.
Aged just 56; fate had been unkind;
A legal legacy on disclosure left behind.

The Trial Judge

Why am I reading this *bit*? I don't know why!
It's not my job! But I got no reply. [*Looks – points? – to author*]

In the script, the author had left some blanks.
Rusty offered to fill them; he said, "no thanks".
RG penned a limerick, his skills are well-known.
But very rudely, the author inserted his own.

“The High Court decided in Mallard,
The DPP’s disclosure was marred.
Material was suppressed,
The defence not addressed,
Prosecution was unfair and too hard”

The Commissioner [*Has moved to lectern*]

There it is, dear CLANTers, delegates and friends -
An awful story...which justice was too slow to mend.
And we say goodbye to Andrew Mark Mallard;
This final injustice – trial by ballad.