'Til we dubbed him *Knight of Policemen,* and christened him *Sir Blue.*

(Ascribed to John Starke QC...as he then was, presented as part of a longer *Ode* at a celebratory function for Frederick Adam, held in 1963)

But as so often happens, the legend was bigger than the man.
Bluey's reputation was tarnished; he became an also-ran.
He got involved in bribery with Detectives Matthews and Jack Ford.
Adam escaped a verdict, but they - a jail record!

Yes, history has not been kind to Detective Adam..(*Blue*).
Were many of those records of guilt actually untrue?
Did John Bryan Kerr 'fess up to the detective?
Or was the process a sham, and thus defective?

We only know that John Kerr did not accept the blame,
For the killing of Beth Williams, or the public shame;
Except in one unsigned handwritten interview,
Made by Detective Fred John Adam...otherwise, *Sir Blue!*

*(*These latter verses *claimed* to have been written by Mr Toad)

CRIMINAL LAWYERS ASSOCIATION
of the Northern Territory (CLANT)

SIXTEENTH BIENNIAL CONFERENCE

JUSTICE ON THE SNIFF OF AN OILY RAG

[Un]Certain [Verbal] Admissions
The trials of John Bryan Kerr
Supreme Court of Victoria
April - September 1950

A play reading presented by the CLANT Players

SATURDAY 24 JUNE – FRIDAY 30 JUNE 2017
PRAMA SANUR BEACH HOTEL
BALI

INTRODUCTION

THE TRIALS OF JOHN BRYAN KERR 1950

INTRODUCTION

This is the twelfth in a series of play readings presented to the CLANT's Bali Conference since 1995 by the CLANT Players. There may not be a thirteenth! As usual, the purpose of the play is to entertain, amuse and expose the uncertainties, inadequacies and injustices of the criminal law.*

The choice of the particular subject follows a suggestion by Justice Lex Lasry of the Victorian Supreme Court (himself a supporter of CLANT, but not Indonesia) He thought that Kerr's trials, the subject of an excellent book by Gideon Haigh (yes, the cricket writer!), would provide plenty of interest for conference delegates. I hope that this treatment of the story justifies that recommendation. I will refer to an acknowledge Gideon's work later in this introduction.

THE SHORT FACTS

The body of Elizabeth Maureen Williams (known as Beth), aged 20, was found *partly-clad* (so it was reported in the media) at Albert Park Beach early on the morning of 28 December 1949. She had been on a date the evening before with John Bryan Kerr. They had dinner at Mario's, attended a party with friends of Kerr's and then been driven home. Depending on what was the true version, they either separated near her home (and she was subsequently assaulted, strangled and murdered by a person

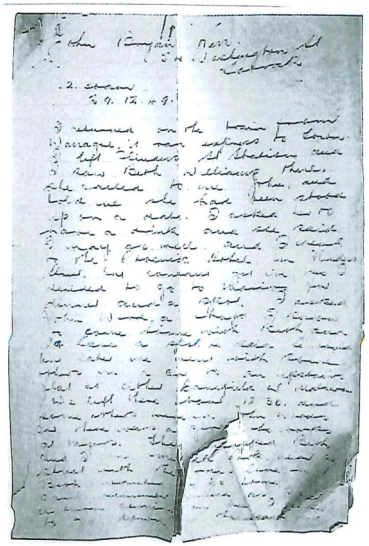
A CITY TRANSFIXED: Queuing for a glimpse of Melbourne's most handsome prisoner, on trial for his life in the Supreme Court, 1950. Young women form the majority.

THE ODE TO BLUEY ADAM

He had brandished high, *Excalibur,* to cleave a path to fame,
Amongst murderers and varlets who have trembled at his name,
And in his courtly jesting he has parried many a blow
(Some have been above the belt, a few a little low).

But when the storm was at its highest, he was not a man to shrink,
As many a lawyer will tell you, who in his armour found no chink.
And so was born a reputation, and with the years it grew,

Detective Bluey Adam with mistress June



John Kerr's 'confession', key document

unknown) or Kerr killed her. Kerr said he did not kill her, and that he denied this to the police investigators. He pleaded not guilty at his three trials, and maintained his innocence until his death many years later.

On the contrary, the investigating police officers from the Homicide Squad…Detectives Adam and Currer… claimed that Kerr confessed during their interview with him late on the night of 28 December, and in the early hours of the following day. A full written statement was made by, and later produced by, Adam. Although Kerr apparently agreed with everything in it, he refused to sign it, said the Detectives. It sounds, this far removed from the events, a classic case of an unsigned record of interview containing admissions alleged to have been acknowledged by the accused as true and correct. This phenomena of the era is discussed in detail by McHugh J in ***R v Kelly*** (2004) 218 CLR 216, paras 91 et seq. (See further discussion below).

So, the stage was set for the normal confrontation between Police and Defence. One in which the defenders are inevitably forced to ask the members of the jury to find that the police officers have wickedly conspired to tell lies about the accused man (called the prisoner from the outset of the proceedings by the judge in the third of Kerr's trials).

In those days, trials were much more expeditious than they have become since. It obviously helped if there was a confession as it was not necessary to investigate and discard alternative hypotheses. There was a committal in February 1950 and the first trial took place in April 1950 before Norman O'Bryan (Senior) J. Adam was allowed to read the statement he claimed that Kerr had made to him. An attempt to tender the document, however, was refused. This was the subject of a ruling by the trial judge ***R v Kerr*** (No. 1) [1951] V.L.R. 211). It might be said that its tender mattered little as the so-called admissions were in evidence in any event.

However, the written word – even if, as in this case, in the policeman's handwriting – does tend to influence a reader's mind. Hence the usual desire for litigators to **get the document in.** The more important outcome, however, was that this jury could not unanimously agree on a verdict. Majority verdicts on capital charges were not then available, either way, in Victoria.

The second trial proceeded in late May 1950 before Justice John Barry. His Associate was Jimmy Edwards, a much-respected man about the courts. Henry Winneke KC (shortly after appointed as Solicitor-General, and later again Chief Justice and, then, Governor) had prosecuted the first trial. He advised the refusal of a Nolle, partly because of the huge public interest, but dropped out of the case to prevent the appearance of a personal vendetta. Counsel for Kerr, during all trials, was Robert (Rob) Monahan KC. He was then the best known and regarded defence lawyer in Victoria, and later a Supreme Court Judge and Knight…as were most of these participants. His Junior was Kevin Anderson, then not a Silk, but later judge and knight, also.

The second trial proceeded along the same lines as the first. There was an incredible public interest. It was suggested that this was partly because the accused was a very good-looking young man together with the salacious nature of the case. The majority of the members of the public present in court were women, according to Jimmy Edwards. Contemporary photos confirm this to be accurate. The galleries were full to overflowing every day, with queues outside the court in the morning. John Barry was a close associate of Rob Monahan from their days in Chambers together. It didn't stop tempers becoming frayed in the trial, however. Frank (*Frosty*) Nelson, another future Supreme Court judge, prosecuted the second and third trials.

Again, the jury was unable to reach a unanimous verdict. Once more, the Crown decided to proceed to another trial. But this time

John Bryan Kerr after he was sentenced to death for the murder of Beth Williams

Newspaper clippings of stories about and by John Bryan Kerr, who became Victoria's No. 1

Spectators in Lonsdale St, at the entrance to court, hoping to see John Bryan Kerr during the murder trial.

John Bryan Kerr's father Donald and mother were involved in a campaign to prove their son's innocence.

they were able to shore up their case with additional evidence. What is more, the acting Chief Justice, Sir Charles Lowe (*Cold Charlie*) decided to take the case. Reading it from this distance, there seems no doubt that his influence in the trial contributed to the unanimous guilty verdict that was obtained in the August-September trial. Interestingly, Gideon Haigh reports that his investigations revealed that in both the first two trials, the majorities in the hung juries were strongly in favour of acquittal!

The additional evidence the Crown called was from a psychiatrist who had treated the accused some years before. His evidence, objected to, was in regard to statements made by the accused in the course of his clinical examination in which he admitted earlier bouts of temper and rage. Barry J had refused to allow the Crown to call this at the second trial, describing it as an unnecessary distraction from the real issue.

The jury in the third trial asked the judge a question during the course of their deliberations. This was delivered to the judge in writing, and privately. The judge responded the same way without informing counsel. The question, asked a few moments before returning their verdict, was –

> *Is it permissible for a decision of guilty with a strong recommendation to mercy on the ground that he was not wholly responsible for his actions at the time?*

The Judge sent back an answer, handwritten by him on the same piece of paper on which the question was posed, saying simply *Yes.*

The jury returned to court soon after (I note they had been deliberating for 6 hours from near 4pm that afternoon), with a verdict of guilty, with the strong recommendation for mercy. The

judge then asked the foreman for the basis of that recommendation, to which the foreman replied;

> *We just feel that he was not wholly responsible for his action at the time*.

The judge then retrieved the note and placed it on the court file, telling counsel for the first time of the exchange.

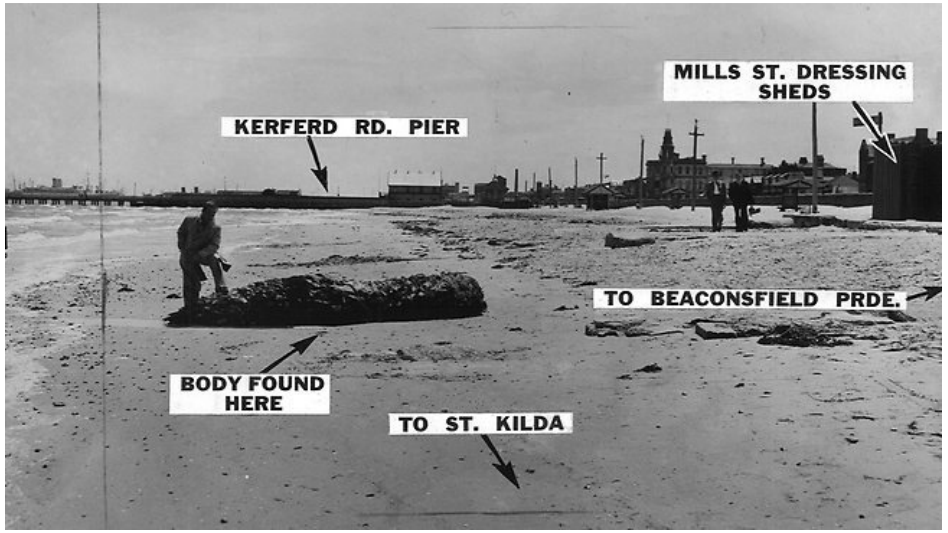
Then followed the imposition of the mandatory sentence of death, there being no other sentence open to the judge at that time.

Both the issue of the non-disclosure of the question and answer were part of grounds of appeal that then went to the Court of Criminal Appeal. Although the argument was dealt with deferentially by the Court, there is nothing in it to trouble my readers. The more substantial argument was as to the admission of the evidence of Dr Henry Stephens, which had not been called at the committal or at either earlier trial. Clearly this was very powerful evidence in the case, where part of what the police alleged they were told by Kerr was that he sometimes suffered from Neurasthenia. The court held that this evidence was admissible as it might corroborate the police version of the accused's statement to them.

There was considerable criticism by the appellant of the judge's summing-up and the unfair treatment of the defence case, as against that of the Crown, but it received the normal short shrift by the Court of Criminal Appeal.

The other substantial argument was the manner in which the trial judge, during his summing up, had dealt with the admissibility of the accused's statement. I will leave the detail of that for the reader to consider by reference to the court's decision as reported, but can't help commenting that it seems the court took an unnecessarily limited and sophistic approach in allowing the

Homicide squad detectives searching the beach at Albert Park where the body of Elizabeth Maureen Williams was found.



Elizabeth Maureen Williams crime scene

The case of the handsome radio announcer John Bryan Kerr and the three murder trials gripped Victoria in the 50s. Picture

Murder victim Elizabeth Maureen Williams, a 20-year-old typist, was found dead on the beach at Albert Park.

judge's comments to stand. (See ***R v Kerr*** (No.2) [1951] V.L.R. 239, and particularly at 248-9 per Gavan Duffy J; the other judges of the CCA were O'Bryan J…who had been the judge at the first trial…and Dean J).

Kerr's family retained Gregory Gowans KC (subsequently, another judge and knight) to represent him at the Privy Council in London. At that time, it was not necessary to first apply to the High Court. On 7 December 1950, leave to appeal was refused. The Crown was not called upon.

All appeal avenues then being closed to him, Kerr had to rely upon the prerogative of mercy. On 18 December 1950 Cabinet decided to commute his sentence of death to one of 20 years, with normal remissions. Kerr was released in May 1962 at the age of 36. He had been 24 at the time of the 1950 trials. He served 12 years. He took on a different identity, married and had children. It was not an entirely happy life, thereafter, it seems. He died in 2001, aged 76. He protested his innocence throughout his life.

CERTAIN ADMISSIONS AND THE POLICE

The relationship between the legal profession and the police in the fifties and sixties in Victoria was quite different to what might now be expected. For instance, when a grand dinner was held in his honour in 1962, Federick John Adam (known everywhere as *Bluey* Adam) had a epic poem specially written for him. The author was John Starke QC, another of the barristers later to become a judge and knight. As Gideon Haigh says, this was evocative of a cosiness between the police and the legal profession that would now be thought untoward.

This relationship seems to have affected the manner in which the courts dealt with the evidence of police officers during this era. It seems, in retrospect, that judges and juries were reluctant to

ascribe bad intentions or untruthfulness to policemen giving evidence. This is discussed in ***R v Kelly*** by McHugh J in the passage referred to earlier. It is set out fully below as it encapsulates much of that which this play reading seeks to demonstrate. The concepts will be foreign to many of the younger delegates at this conference who have grown up with taped and videoed records of interviews which, in the main, remove the evils of unsigned confessions and verbals. (See, for example in the Northern Territory, section 142 of the ***Police Administration Act***).

> In the second half of the 20th Century, another form of confessional evidence became widespread: the unsigned typewritten record of interview where the accused allegedly confessed freely and in great detail to a police officer but refused to sign the typed record of the interview. If the officer claimed that the accused had adopted the *typewritten document* recording the interview, the document was admissible as evidence against the accused. In ***Driscoll v The Queen***, Gibbs J said:
>
> > *"[I]f the accused has acknowledged or adopted the document as such – eg, by agreeing that it was a correct account of the interview – it is admissible. …If part only of the document has been acknowledged, only that part is admissible."*
>
> The document was not admissible merely because, when read to the accused, he or she acknowledged its contents as true. The accused had to adopt or acknowledge the document itself as correct before it was admissible in evidence.
>
> In ***Dawson v The Queen***, Dixon CJ had said of the document recording the interview in that case that it was admissible because the accused acknowledged its

Foreman of [3] Juries……**Brittany White**

Cheer Squad……....**Jenny Blokland**
Veronnica Finn
Renee Kershaw
Tess Kelly
John Philip

Vocalist & Occasional Music……**Martin Fisher, David Dalrymple & Russell Goldflam**

IT Support & Electronics……**Michael Vailas**

Production Staff

Producer……**Mr Toad**

Director……**Mr Toad**

Scriptwriter……..**Mr Toad**

Casting……**Mr Toad**

Stage Manager……....**Mr Toad**

Musical Director……..**Mr Toad** (assisted by **Martin Fisher)**

Best Boy…(assistant to Mr Toad)……**Rex Wild**

[With apologies to Toad of Toad Hall from ***Wind in the Willows*** by Kenneth Grahame]

CLANT PLAYERS 2017

IN ORDER OF APPEARANCE

Narrator…….. **Russell Goldflam**
[Jim Edwards, Associate to Sir John Barry]

Mother of Defendant, Rose Kerr**…… Elizabeth Morris**

Kerr's Psychiatrist, Dr Henry Stephens**…… Jo Byrne**

Victim, Elizabeth Maureen Williams**……..…. Naomi Loudon**

Detective Federick John [Bluey] Adam**……... Tom Berkley**

Detective Cyril Currer**……..……... Mark Hunter**

Inspector Hugh Donnelly**……. Paul Usher**

Defendant John Francis Kerr**……..…… Paddy Coleridge**

Judge[s] of the Victorian Supreme Court,
O'Bryan, Barry & Lowe**……..…..Tom Pauling**

Prosecutor Henry Winneke KC
& Frank Nelson**…….…… Jonathon Hunyor**

Defender Rob Monahan KC**……..…. Tom Percy**

Coroner's Surgeon Dr Keith Bowden**…… Ambrith Abayasekara**

Flatmate…Patricia Street**……..…… Kate Fuller**

Party Host**…**Edward Penno**……Anne Healey**

Party Girl…Barbara Robertson**……..Sophie Parsons**

Sailor/Date…James Stevens**……..…..Marty Aust**

correctness after reading it aloud. Subsequently, in New South Wales – and no doubt in other States – it became a common practice for a police officer to allege that, although the accused refused to sign the record of interview, he or she had acknowledged the accuracy of the document after reading it – in some cases aloud. Unsigned records of interview were a feature of, and the principal – sometimes the only – evidence, in many cases concerned with "heavy crimes, such as gangland killings, armed hold-ups, safe-breaking and drug-related offences, for example, where the accused was a professional criminal. No one has ever satisfactorily explained what psychological mechanism would induce a person, particularly a hardened, professional criminal – often with years of experience of the criminal courts – to refuse to sign the record of interview after sitting on the other side of a desk for an hour or more slowly and freely confessing in great detail to the offence. It may be true, as Lawton LJ once said:

> *"It is a matter of human experience, which has long been recognised, that wrongdoers who are about to be revealed for what they are, often find relief from their inner tensions by talking about what they have done. In our judgment and experience this is a common explanation for oral admissions made at or about the time of arrest and later retracted."*

However, this statement does not explain why the accused should refuse to sign the record of interview after having freely confessed to police officers in the knowledge that his or her answers to questions would be recorded – usually slowly – on a typewriter and would be used as

evidence against him or her. In any event, it is highly unlikely that hardened, professional criminals would seek relief by way of confession from inner tensions generated by the knowledge that they "are about to be revealed for what they are".

There are good grounds for supposing that over the years many of these "records of interview" tendered in evidence have been fabricated. This is so even though an objective fact or facts often seemed to point to them being an accurate record of a real interview. Frequently, the details of the offence were interwoven with or linked to some fact or facts, unconnected with the offence, that the accused admitted was true and which the police officer claimed had not been known to him until the accused confessed. Further, the answers seemed to catch the jargon, idiom and speech patterns of the accused. Sometimes, as the Wood Royal Commission found, the recorded answers did not directly inculpate the accused but were cunningly constructed to prejudice the jury against that person. Many records of interview, if they were fabricated, were works of art, worthy of an award-winning scriptwriter.

The dangers of admitting unsigned records of interview into evidence were convincingly pointed out by Gibbs J in this Court in ***Driscoll v The Queen***. His Honour said:

> *"In **Reg v Ragen,** McClemens J suggested that it would be more satisfactory to put before the jury the contemporaneous record itself than to allow a witness to give oral evidence which he had probably learnt by heart after studying the record. The answer to this suggestion is that as a general rule such a record, if unsigned, will add nothing to the weight of the testimony of the police officers who*

DARWIN NT
June 2017

*For a full list of the play readings presented at the conferences from, and including, 1995 see the CLANT Website. The relevant introductions are published together with, in many cases, the script and the name of players.

Gideon's research went well beyond the trials and the legal issues. He paints a very vivid picture of Melbourne in 1950 and beyond, and the way in which this matter involved and intrigued the public. He traces Kerr's behaviour and reputation both in jail and during the second half of his life. It is a fascinating, and unresolved, story. He deals with some cold case developments. It is apparent that he ultimately was not able to reach a conclusion himself about Kerr's guilt or innocence; nor will the delegates to this Conference, on the material available.

Trish Smith of the Office of the Director of Public Prosecutions has once again, with the consent of her Director, assisted with the typing and production of this introduction and the preparation of the script.

As I usually do, I now thank the President and Committee of CLANT for this further opportunity to get my name on the programme and maintain my association with my former colleagues.

Finally, I thank and congratulate the players who, in most cases, have volunteered their services. Without their interest in participation, there would be no presentation. Some of the players are the usual suspects; others are new. I hope they represent the various jurisdictions present at the conference. They are listed separately below, together with other credits. I do need to particularly mention here, however, Martin Fisher who has orchestrated the musical interruptions to the play, and written some original music to some fairly banal lyrics. I will not spare your enjoyment by mentioning other players at this time.

The players are listed below.

REX WILD

give oral evidence as to what was said in the course of the interrogation, and will in itself be of little evidential value. The fact that a police officer has sworn that the accused adopted the record makes it legally admissible, but it is for the jury to decide whether they are satisfied that the accused did adopt it and if they are not so satisfied they may not use it in reaching their decision. The fact that the record had been prepared would in most cases be of no assistance to the jury in deciding whether the accused person had adopted it. The mere existence of a record is no safeguard against perjury. If the police officers are prepared to give false testimony as to what the accused said, it may be expected that they will not shrink from compiling a false document as well. The danger is that a jury may erroneously regard the written record as in some way strengthening or corroborating the oral testimony. Moreover the record, if admitted, will be taken into the jury room when the jury retire to consider their verdict, and by its very availability may have an influence upon their deliberations which is out of all proportion to its real weight. For these reasons, it would appear to me that in all cases in which an unsigned record of interview is tendered the judge should give the most careful consideration to the question whether it is desirable in the interests of justice that it should be excluded.

Notwithstanding repeated claims by accused that unsigned records of interview had been invented, for a long period – at least until the 1970s – judges and juries appeared to find it difficult to accept that serving police officers would fabricate these unsigned records of interviews. They appeared to find it even more difficult to

accept that senior police officers – often an inspector or higher rank – would falsely testify that, when called in aat the end of the interview, the accused confirmed that he had said what was recorded but refused to sign the interview. However, a series of Commissions and Inquiries in Australia and England established that "the fabrication of evidence by police officers – particularly of confessional evidence – does occur". Commissioner Fitzgerald, for example found that falsifying evidence was a routine feature of "police culture". He said:

> *Ás part of that culture, many police are routinely involved in misconduct, in rejecting the applicability of the law to police, in improperly influencing the outcome of court proceedings, and in lying under oath as well as breaching their oath to enforce the law. …Such verballing involves a rejection of fundamental standards."*

The shadow of Bluey Adam looms large over the Kerr case. In this play reading, his persona will be enlarged for dramatic purposes. It is not without significance that in the early sixties, Adam was one of the detectives identified in the ***Kaye Inquiry*** as obtaining bribes from the abortion doctors in Melbourne. He was charged but escaped conviction, unlike some of his brethren. A police culture of falsifying confessions, as discussed in Kelly's case, was revealed in the subsequent ***Beach Inquiry***. Whole passages of confessions, or particular phrases, were found to be common to statements made by different and unrelated interviewees.

> *A man's been an animal. You've got me dead to rights, Guv. It's all true there in the statement you have just read to me (or, I have read to myself), but I never sign anything. My lawyer told me not to.*

It is plain that the Certain Admissions alleged to have been made by Kerr were the most devastating evidence against him in what was otherwise a circumstantial case. The evidence of Adam, Currer and other police officers as to the circumstances of making of the alleged admissions were therefore crucial.

THE PLAY READING AND ACKNOWLEDGMENTS

The delegates should be prepared for some unusual touches in this play reading. The character Bluey Adam was larger than life in real life! His personality will flavour the production. There will be occasional musical interruptions to the proceedings with impromptu [but, orchestrated] bursts of acclamation for Bluey. Hindsight will be, as you would expect, a great guide to interpreting and understanding the events of over 60 years ago.

I have already mentioned, and I now thank, Lex Lasry for recommending the Kerr trials as the subject for this year's play reading. I am very grateful to Gideon Haigh, the author of Certain Admissions, A Beach, a body & a lifetime of secrets [Penguin Group Australia, 2015]. He has allowed me to reproduce elements and research from his book without charge. The permission is, of course, limited to its distribution within the CLANT Bali conference of 2017. I recommend this excellent book to delegates, not only for its examination of the legal aspects of the case, but for its obvious human interest. However, it will be obvious that this dramatized (?) depiction of these three trials (although based on the facts researched and presented by the book's author) owes a lot to the imagination of Mr Toad, the play scriptwriter (see the credits which follow).