



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

FIFTEENTH BIENNIAL CONFERENCE

CURING INJUSTICE

The Shearer's Tale: Murder and Injustice in the Australian bush

The trial of Frederick Lincoln McDermott

Supreme Court of New South Wales

February 1947

A play reading presented by the CLANT Players

**SATURDAY 20 JUNE – FRIDAY 26 JUNE 2015
PRAMA SANUR BEACH HOTEL**

THE SHEARER'S TALE

Murder and Injustice in the Australian Bush

The King V Frederick Lincoln McDermott

Supreme Court of New South Wales 1947

INTRODUCTION

This is the eleventh in a series of play readings presented to the CLANT's Biennial Bali Conference by the CLANT Play Readers. As usual, the purpose of the play is to entertain, amuse and expose the injustices of the law.

This year, the case involves the injustice of the conviction for murder of Fred McDermott in New South Wales in 1947 (and the sentence of death which followed), which was partially *cured* in 1952 by the recommendation of a Royal Commissioner. It was finally *cured* by an acquittal ordered by the Court of Criminal Appeal in 2013. Fortunately for Fred, the death sentence was commuted to life imprisonment in July 1947 **[It was not hanging over his head - no pun intended - for ten years or more!]**

Incidentally, this may be contrasted with other cases examined by this Conference in earlier plays. In the cases of ***William Bentley*** (2003) and ***Colin Ross*** (2013), both were found to have had unfair trials. They were each cleared by Courts of Criminal Appeal of the respective murder verdicts many decades after conviction **and execution!** Not to mention the infamous cases of the Popish Plots (considered at CLANT, 1995), where the prisoners were hanged, drawn and quartered within weeks of conviction; the evidence in those cases was solely that of a paid perjured informer, Titus Oates, who was later convicted of that perjury!

The source of this year's presentations, from my perspective was a suggestion from Anne Healey (a regular conference delegate) that I might find the trial of Fred McDermott an interesting topic. And so it has proved for me and I hope, the delegates. The trial, and its history, is the subject of a book by Tom Molomby SC of the NSW Bar, ***The Shearer's Tale, Murder in***

the Australian bush. I will acknowledge Tom and his generous assistance later in these notes.

The original transcript of the trial was not sought by me, but rather I used excerpts from Tom's book; more of that, anon!

THE BACKGROUND

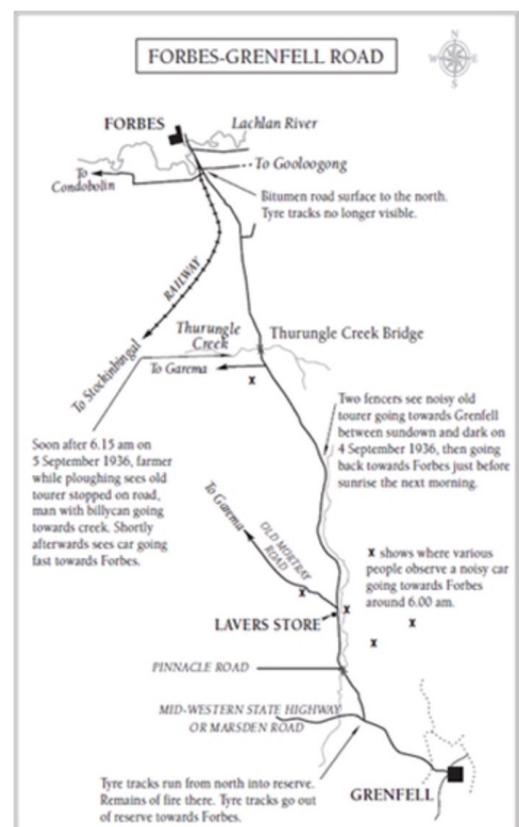
Fred McDermott was a simple man. He was born in 1906 in country New South Wales. By the age of 16, he had gone with the shearers. He came to use the surname Munro, but it was common with many of the shearers to use different names. Although it was to lead to some trouble identifying exactly where he worked at crucial times, he will at all times in this presentation be described as Fred McDermott. By 1932, he was known as a good shearer and had no trouble getting regular work in any shed. He had some minor brushes with the law. He worked in the central west region of NSW. In 1936 he worked and travelled with Geoff McKay, another shearer. They were both heavy drinkers, as were most of their acquaintances. In August and September they were in the Forbes district.

Harry Lavers was running a small general store, with petrol, on the road between Forbes and Grenfell. He also grew wheat. On 5 September 1936, he rose early to feed his horses. He was never seen alive again. It was obvious that he had been severely assaulted at his own petrol pump.

Police investigations were unsuccessful. There were sightings of a particular vehicle, containing two men, which was thought to be suspicious, and descriptions of the occupants were provided. Extensive searches were made for Lavers. No actual suspect was found or interviewed.

McDermott and McKay continued living in the region generally, not always together. In late 1938 (two years later), police approached Fred in Bathurst and asked if he knew where McKay was. McDermott directed them to McKay, whom they questioned about his whereabouts at the time of Lavers' disappearance. McDermott himself was not interviewed.

In 1940, McDermott met a woman Florrie Hampton, who was separated from her



husband. She was part Maori. They lived together throughout the forties. He continued shearing and in the picking season they would travel to the Riverina. They were both very heavy drinkers as were their companions. They *lived rough*. They argued loudly and often. Florrie had been told by Fred that he and McKay had been questioned by the police about the disappearance of Lavers. Florrie took to using this as a barb during their drunken arguments.

You killed him, she would say. *Yes*, he would reply sarcastically, *and I cut him up and buried him at the sheep yards at Grenfell*

George Holland and/or his friend Doretta Williams, were sometimes present at these drunken arguments. Holland went to the police at Sydney's CIB in November 1944 and made a statement repeating McDermott's *admissions* in respect of Lavers.

On 13 December 1944, McDermott was interviewed by Detectives Allmond and Calman at Griffiths. He was then asked about his movements in August 1936. He made a full statement to the police. He denied any involvement with Lavers' disappearance and explained the source of Florrie's *drunken accusations*. The police went off to make some more enquiries.

Police enquiries proceeded in a



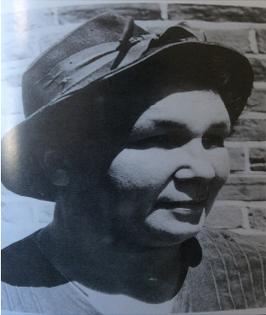
desultory fashion. Sometime in 1945 they took some pictures of McDermott and these were shown to a witness, Essie May King [seen here] who had seen the suspicious vehicle some **NINE** years earlier. She identified

McDermott [from the photo on the far left: the actual size of the original was 90x65mm]

By 10 December 1946, the police were ready to conduct their formal interview and they then charged McDermott with the murder. He admitted the *admissions* to Florrie but explained the circumstances in which those arose.

The Crown case at trial relied primarily on four matters:

1. The identification of the car whose tyre tracks were found at Lavers' store, being an Essex Tourer, about a 1924 model, belonging to Jack Parker. There was evidence that McDermott used the car with McKay. It was alleged they killed Lavers while using the car.
2. Evidence identifying McDermott using the car at the relevant time.
3. The so-called confessions.
4. Statements made by McDermott, when interviewed by the police 10 years after the events, of his whereabouts on 4-5 September 1936.



The trial before Justice Herron proceeded at Bathurst in February 1947. McDermott was represented by Fred Vizzard, the Public Defender, who then had one year's experience as a barrister. The prosecutor was Tom Crawford KC. The jury found McDermott guilty of murder and he was sentenced to death. This sentence was commuted in July 1947 to life imprisonment.

[Florrie Hampton]

An appeal to the Court of Criminal Appeal, divided into two parts, was unsuccessful, the High Court refusing leave from the second one: ***R v McDermott*** (No 1) (1947) 47 SR (NSW) 379; ***R v McDermott*** (No 2) (1947) 47 SR (NSW) 407; ***R v McDermott*** [1948] HCA 23; (1948) 76 CLR 501.

The first part of the CCA appeal included *fresh evidence* from McKay, who hadn't been called at the trial. The second part dealt with the admissibility of the police interview. This was the issue that went to the High Court, where the English *judges' rules* were discussed and disregarded.

On 14 August 1951, a Royal Commission was established to inquire into the conviction. On 9 January 1952, the Royal Commission found there was a strong probability that the jury was misled by incorrect evidence on a matter of importance and recommended that McDermott be released from further imprisonment. He was released on 11 January 1952. He died in 1977. He was granted £500 to assist *in re-establishing himself in the community*, but not as *compensation*. Justice Kinsella, the Commissioner, did not accept that there had been any injustice!

The most important set of evidence was that which clearly showed that the vehicle that made the tracks at Lavers' store was **not** Jack Parker's vehicle and therefore **not** the one identified with McDermott in it.

On 11 November 2004 a farmer found a human skull on his property east of Lavers' store's location and 12 miles north of Grenfell. Other human remains were found up a steep hill on the farmer's property. All were identified as

those of Lavers, and confirmed by the Coroner as such. The location of the body was not consistent with any version of the Crown's case at trial, nor with McDermott's supposed confession. *It was not buried in the Grenfell sheep yards!*

The case was then referred to the Court of Criminal Appeal by the Attorney General, pursuant to s 77(1)(b) of the **Crimes (Appeal & Review) Act 2001**, with both sides agreeing that there had been a miscarriage of justice. The hearing took place on 28 November 2012, with a decision *instanter*, and the formal judgment on 6 May 2013. Bathurst CJ, with whom Hall J and Button J agreed, ordered that the conviction be set aside and a verdict of acquittal entered (**McDermott** [2013] NSWCCA 102)

As Tom Molomby says in the final paragraph of his book,

The result, again as in so many other cases, was not only that an innocent man was prosecuted and convicted, but that the guilty man (or men) went free.

THE PLAY READING

The delegates can expect some unusual touches in this play reading, based on a more imaginative approach by the writer to the narrative. Some of the lighter moments might come from the script itself. Others will be as a result of the determination of the Readers to stamp their personalities on the production. I look forward to their interpretations of *the words* and the Director's *instructions*!

You will know already from this introduction that as well as a trial, there was also a very significant Royal Commission. The *evidence* presented in this representation of the trial, will overlap with that *not given* then, but presented before the Commission. There may be some criticism of police and prosecutorial methods in the processes. I hope I do not offend too greatly. You will assume, in this context, a great degree of dramatic licence by the writer, and a sense of humour and balance will be required.

Nevertheless, the topic is a serious one and again shows that justice can go badly awry unless constant vigilance is undertaken.

Acknowledgements

I have already mentioned, and I now thank, Anne Healey for her referral to me of Tom Molomby's book and the case itself. Anne also introduced me to Tom and has helped greatly in preparing this play reading for production. Her editing and other input has been invaluable. Her reward is a very good part, which she chose!

I owe a great debt to Tom Molomby. He has given me licence to use the transcript contained in the book, for the limited purposes of the play reading [and without fee!] The photographs and map(s) in this document come from the book. I should confirm that I have not faithfully followed the trial and commission transcript but have interposed my own slant on it from time to time...in fact, continually! The purpose is, of course, to make it *work* for you as an audience.

Tom's book was largely written, he has told me, in the seventies, although not finally published until September 2004. It is not now possible, it seems, to find a hard copy of that edition published by ABC Books. Tom lent me, through the introduction of Anne Healey, his only spare copy. I have it here with me as I write these notes.

An incredible coincidence occurred shortly after the book's publication...the finding of the body of Harry Laver referred to earlier! Tom's friends suggested that he engineered this find to gain publicity for the book!

In any event, Tom published a second edition of ***The Shearer's Tale***, and this is available electronically (but not in hard copy, I think; *Harper Collins*, March 2013). I have it, of course! It is an excellent story, well-written and entertaining. I recommend it. This edition adds the finale to the story.

Tom, with Anne Healey as his junior, represented (*pro bono*) Fred McDermott's *interests* at the subsequent referral to the Court of Criminal Appeal where he was posthumously acquitted.

Trish Smith of the Office of the Director of Public Prosecutions (NT) helped with the production of this introduction. She also assisted with preparing copies of it, and the play reading script itself, for distribution to the delegates and players. This is now the seventh time Trish has provided this assistance, in her normal cheerful and efficient manner. I also thank her Director, Jack Karczewski QC, for allowing the Office to contribute to the conference in this way.

I also thank the President and Committee of CLANT for this further opportunity to make some contribution to this wonderful conference. I do note the programming of the play reading gets later each year. Perhaps we are in danger of disappearing altogether?

Finally, I thank and congratulate as always the players who in most cases are volunteers. I am continually surprised and delighted with the individualism they bring to their roles, which makes the performance doubly enjoyable for me. I *expect* no less this year!

The players are listed below.

REX WILD
DARWIN NT
June 2015

CLANT PLAYERS 2015
IN ORDER OF APPEARANCE

Narrator	Russell Goldflam
Detective Dan Calman	Tom Berkley
Inspector Frank Allmond	Graham Hiley
Fred McDermott	Jonathon Hunyor
Geoff Mackay	Paul Usher
Florrie Hampson	Michelle Swift
Doretta Williams	Peggy Dwyer
George Holland	Marty Aust
Justice Herron and ors	Jenny Blokland
Prosecutor/Tom Crawford	Grant Algie
Defender/Fred Vizzard	Tom Percy
Constable Jones	Felicity Graham
Essie King	Anne Healey
Jack Preston	Stephen Apps
Jury Foreman	Rod Higgins
Thomas Kelly	Ambrith Abayasekara
Denise Donlon	Jo Byrne
Court Officer	Beth Wild