



**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***

***BALI***

# THE SHEARER'S TALE

## THE KING v FREDERICK LINCOLN MCDERMOTT

### THE SCRIPT

*[The stage and floor are divided into a number of acting areas. On the stage right is a bench (table) with two chairs. The one in the centre will be for the judicial officer. A chair slightly to the side will be for the narrator; both will use a fixed microphone or mobile microphone. On the floor, stage right, will be a bar table at an angle of approximately 45% to the stage. It will have two chairs; initially they will be for use by the two investigating police officers, to be replaced thereafter by the prosecutor and defence counsel. There will also be a chair in front of the table for people interviewed by the police. This table will also have access to the sound system. On the stage left will be the lectern (as used during the conference) with sound available. This will be used for the witnesses. Below the stage, floor-stage centre, will be a small table and chair for use by the accused during the trial...the dock! A mobile microphone will be available.*

*When the play opens the judge and narrator will be in position and the two police officers sitting at the bar table. The character McDermott will be sitting on the edge of the stage, legs dangling. He will be dressed as for a 1936-47 bushie, with daggy hat. Slightly to **his** right will be the character Geoff McKay. Just behind him, seated on the stage floor, will be Florrie Hampton and behind her (also seated) the characters Holland and Williams. All are dressed for the times and consistent generally with their itinerant lifestyles.*

*When the performance commences, all the characters are **in tableau**. Some movement is required when the dialogue commences in accordance with the stage directions which follow.*

*The counsel are waiting off-stage right and all other witnesses will be seated, in order of appearance, in the front two rows (left) of the audience seating. The personnel involved in the opening scene will need to move unobtrusively into these seats when necessary. The foreman of the jury will be seated in the front row of the audience seating, stage right but in left hand chair]*

**Narrator:** *This is the Shearer's Tale. Fred McDermott was charged with murder in 1946 and found guilty by a New South Wales jury at Bathurst in February 1947. His conviction was later the subject of a Royal Commission, and he was released from imprisonment in January 1952. Fortunately, the sentence of death imposed following his conviction, had been commuted. The story you will hear will include evidence from both the trial and the Commission, somewhat intermingled, and you will be invited to suspend belief from time to time as the story unfolds.*

*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 aliases. Although this was to lead to trouble identifying exactly where he and his mate worked at crucial times, he will at all times in this presentation be known 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.*

*Despite extensive enquiries, police investigations were unsuccessful. What had detectives Allmond and Calman from the CIB in Sydney come up with after two years?*

*[Action shifts to stage floor right, at the table, where Allmond (left) and Calman (right) are discussing progress]*

**Allmond:** *Well, I don't think we have got much. There is no body. There are the tyre tracks which we found at Lavers' store heading north to Forbes. They were very clear at the time because of the dirt road. We have got the description from Essie King, that show-woman, of a vehicle with two suspicious blokes in it, in the district at the time. You know, the one with the birdcage on the side. We have never found that.*

**Calman:** *That's true, but I have never known how significant that was anyway. If it was there at Lavers' place, that is one thing. But in our files there are some other sightings of it. Someone saw that vehicle at Yass, at 8am on the morning of the disappearance. That's a 100 miles away! It couldn't be the same car. I think we can discount it being involved, and the possible ID by Essie King. She calls herself a phrenologist and reads skulls! Sounds a bit iffy to me, anyway!*

**Allmond:** *I think we had better make some further enquiries of those shearer blokes who were drifting around at the time. There was a feller called McKay who was shearing with another bloke, Munro or McDermott, I think. He might be able to put us on to McKay.*

**Narrator:** *The police travelled to Bathurst in late 1938. They found McDermott without any trouble.*

*[Detectives stay seated; address McDermott still sitting on edge of stage]*

**Allmond:** *Are you Fred McDermott?*

**McDermott:** *yep, who wants to know?*

**Allmond:** *I am Detective Inspector Allmond from the Sydney CIB. This is Detective Sergeant Calman. We are enquiring about the disappearance of Harry Lavers down near Grenfell a couple of years back. We are looking for a mate of yours, Geoff McKay. Do you know where he is?*

**McDermott:** *Sure. We were shearing together at the time that Lavers went missing. Geoff is around the place. I'll send him in to see you!*

[McDermott calls McKay over and directs him to the police officers. McKay goes over and sits with them. He talks with them quietly, and there is head-nodding by the police. McKay returns to McDermott; police remain at table, again *in tableau*]

**McDermott:** *What did they want?*

**McKay:** *They just wanted to know where you and me was working when that bloke Lavers disappeared. I told 'em we was up at Forbes shearing. They seemed happy enough.*

**McDermott:** [*shrugs shoulders*] *Fair enough!*

[*McKay leaves scene; Hampton moves to sit next to McDermott on the stage edge. He puts his arm around her*]

**Narrator:** *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 heavy drinkers as were their companions. They lived rough. They argued loudly and often.*

[*At this stage, Holland and Williams move closer, still sitting; all show signs of inebriation, with bottled beer in hands, and perhaps a wine bottle in brown paper? Loud mumbling is heard from all*]

**Hampton:** *You don't really love me, do you?*

**McDermott:** *Cause, I do, luv, except when you say stupid things. Just because I told you that me and Geoff were spoken to by the coppers a few years back about that Lavers bloke, doesn't mean I had anything to do with his disappearance.*

**Hampson:** [*Screeching*] *Yes, it does, I bet you did kill him*

**McDermott:** [*angry, pushing Florrie away*]; *Yeah, sure, me and Mac cut him up and buried him at the sheep yards at Grenfell*

**Narrator:** *For some years there was no action at all on this cold case. Then, on 10 November 1944, George Holland made a statement to the Sydney CIB.*

*[Holland moves off stage and across to take the seat in front of the detectives at their table]*

**Holland:** *I'm George Holland. I've got some information regarding that Lavers murder back in 1936.*

**Calman:** *Yes, what can you tell us, George?*

**Holland:** *In the last couple of years I have been seeing Dorrie Williams. On four different occasions, I have been with her and a bloke called Fred McDermott, and his missus Florrie, and he has gone mad and said, "I know I murdered Lavers, but I was not the main one. Scott hit him in the head, and I helped chop him up and bury him in the sheep yards in Grenfell". I don't know who he meant by Scott...or was it Scotty? I don't know anyone of that name, actually.*

**Allmond:** *Thanks for your help. Do you know where McDermott is now?*

**Holland:** *Oh, around the Griffith district. He's easy to find. I will try to get some more info from him and pass it on. Is that reward still on offer?*

**Calman:** *Possibly, yes, we'll see in due course, eh? [winking and nudging!]*

**Narrator:** *As a result of this new information, on 13 December 1944, the two police officers visited Griffith where McDermott was interviewed at the CIB (incidentally, Calman recommended that Holland should get paid £50 for his "expenses")*

*[McDermott moves from the stage to the interview chair]*

**Allmond:** *Thanks for coming in. We want to ask some questions of you about the disappearance of Harry Lavers and your whereabouts at the time. We have some information from your friend George Holland that you said you and another man had killed Lavers and disposed of his body.*

**McDermott:** *Yes, but this is all because I told Florrie once I had been questioned by the police at Bathurst and after that she told people that I killed him for a drop of petrol.*

**Calman:** *Are you prepared to make a statement about your movements at the time and these other matters?*

**McDermott:** *Yes, I will tell you anything you want to know.*

**Narrator:** *Fred made a full statement consistent with what he had already said. Florrie also made a statement that day.*

*[Fred returns to the stage edge, and Florrie moves over to talk to the police]*

**Hampton:** *I want to make a statement, too. I know nothing of the Lavers' matter. I only ever said these things about Fred being involved in the killing, to get him wild. And it did get him wild. He had told me that he had been questioned about his whereabouts years before and that's what I used to tease him with.*

**Calman:** *And will you now make a written statement confirming what you have just said?*

**Florrie:** *Yep!*

**Narrator:** *And she did, but it didn't help Fred! Police investigations continued. On 8 July 1945 Calman asked McDermott to come in to the Griffiths Police Station so he could take some pictures of him. He willingly agreed. These photographs were the ones used later to assist in the identification of McDermott by Essie King. The police also found a vehicle owned by Jack Preston which, it was to be alleged, was the one used by McDermott (**and McKay, remember**) at the time of the killing. Together with his "confession", these were the most important issues to be debated at trial. There was also the issue of his incorrect version of his whereabouts in September 1936, but in light of what transpired over the next 70 years that now seems to be of no consequence.*

*The police enquiries seemed to have been neglected again for a while... Mr. Allmand appears to have handed over to Mr. Calman altogether.*

*On 10 October 1946, McDermott was in Dubbo and was there interviewed, in a formal record of interview, by Calman. He was formally cautioned, and the interview continued-*

*[Calman and Allmand are still at the table. McDermott once again moves to the chair opposite]*

**Calman:** *Did you say to Florrie in the presence of another person at any time that you were at Grenfell when Lavers was killed, and use the words "I will do you the same as I done the other fellow?"*

**Mc Dermott:** *I suppose I did.*

*Do you know a woman called Doretta Williams?*

*Yes.*

*Are you on good terms with her?*

*Yes.*

*Did she visit you and Florrie at Griffith after tea Sunday night when you were both living at an Italian's place where you were working the garden and Florrie was cooking?*

*Yes, that's right, she came there one night.*

*While she was there, did you and Florrie have a quarrel and did Florrie say to you "you killed Lavers, cut his body up and buried it in some sheep yards"?*

*Yes, she was always saying it to me.*

*Did you then say, "I killed Lavers for two gallons of petrol, we had no money to pay for the petrol so I hit him on the head with the crank handle and we put him in the car, and drove out of Grenfell to the sheep yards and buried him there"?*

*Yes, that's what comes of saying too much. If I had not said that, I wouldn't be in this trouble.*

*Is it true that you said in Holland's presence, that you killed Lavers?*

*Yes, but if Florrie had kept her mouth shut, I wouldn't be here now. Have you seen McKay?*

*Yes.*

*Did he say that I did it?*

*No, he didn't say that. If you were concerned in the murder of Lavers as you have said, will you tell us what you have done with the body?*

*I do not want to say any more now.*

*Are you willing to make a further statement in writing in connection with these matters we have spoken to you about?*

*I would rather not say any more.*

**Calman:** *I am now going to charge you with murder.*

**McDermott:** *Am I the only one being charged?*

**Calman:** *Yes.*

**Narrator:** *McDermott was then charged, committed for trial following proceedings in the Grenfell Police Court in November 1946 and his trial began in the Supreme Court at Bathurst on 17 February 1947 before Justice Herron. Tom Crawford KC prosecuted and Fred Vizzard, the Public Defender, appeared for McDermott. He pleaded "not guilty".*

*[The police officers are now with the other witnesses, the judge is "activated" and counsel are at the bar table. The chair in front is removed. McDermott stands in "the dock". He no longer wears his hat, and possibly now looks a bit tidier...perhaps a jacket?]*

**Crawford KC:** *May it please the Court, I appear to prosecute.*

**Vizzard:** *And I appear for Mr. McDermott, Your Honour.*

**Herron J:** *Yes, thank you, gentlemen. I suppose, Mr Crawford, as senior counsel, you have a junior lurking unseen somewhere? And Mr Vizzard, you can tell McDermott he can be seated. Are you ready to open to the Jury, Mr. Crawford?*

**Crawford:** *Thank you, yes, Your Honour.*

*[Turns to address the Jury]. Mr. Foreman and Gentlemen of the Jury. You have heard the charge of murder read and the accused has pleaded not guilty. The Crown's responsibility (sometimes honoured in the breach unfortunately, as the police don't always tell us everything) is to present **all** the relevant evidence relating to the offence in question. In this case that will lead to a finding by you, beyond reasonable doubt, that the accused is guilty of premeditated murder. The evidence will disclose that Harry Lavers disappeared on the morning of 5 September 1936 from outside his store on the road between Grenfell and Forbes, about 12 miles north of Grenfell at Glenelg. Blood was found on the ground nearby, and other evidence of foul play. Unfortunately, there has been no sign of Mr. Lavers or his body in the 10 years or more since. There will be evidence of two suspicious-looking men being seen in a motor vehicle on that day and the one before. The evidence will be that the accused man was one of those in that vehicle. He has been identified as such. The vehicle left tyre marks that make it readily identifiable. Furthermore he has made admissions, you might almost call them "boasts", of his involvement in the killing. I will not trouble you with formal evidence by*



*Mr. Lavers' wife and neighbours of his complete disappearance since that time as I doubt there is an issue about that. [Vizzard raises eyebrows]*

*I will now call the evidence, the first witness being a police officer who inspected the scene and collated the evidence.*

*I call Constable Jones*

**Narrator:** *Witnesses will be called without formality, and will give their evidence directly without examination-in-chief necessarily. This witness is a "composite" narrator of facts.*

**Constable Jones:** *I am with the Scientific Bureau of the CIB and inspected the scene outside Lavers' store on 5 September 1936. I am, of course, referring to notes as this all happened a long time ago. I took plaster casts of the obvious tyre tracks outside the store near the petrol pump, which measured 56 inches in width. This was the standard track of many makes of car and the diamond pattern was very common. The tyre marks were fresh and very clear on the dirt road. It appeared a vehicle had travelled south down the road some miles and then returned in a northerly direction, pulling in to the bowser. On leaving the area, it resumed travel on the road proper and its tracks could be followed almost all the way north to Forbes until the bitumen started. There was blood on one of the bowsers, the hose of which was lying on the ground. The metal petrol pump was lying on the ground with blood, skin and hair on it and the keys were hanging in the lock. A small piece of wood, about 15 inches long, which was similar to those commonly used as oil dipsticks, was lying on the ground. My enquiries indicated that a car with a very noisy engine or exhaust was heard by a number of nearby neighbours driving up the road early that morning.*

**Vizzard:** *Constable, the tyre tracks...width and pattern...are common to many, many vehicles?*

**Jones:** *Yes.*

**Vizzard:** *And your observations indicated this was a pretty busy country road with a fair bit of local and passing traffic? And many cars have noisy exhausts?*

**Jones:** *I agree.*

**Crawford:** *I call Essie May King.*

*[Essie King, with some flourish and self-importance, "enters" the witness box]*

**Crawford:** *Now, Mrs King - may I call you that? - to assist the Jury would you tell them your occupation and, as at 1936 at least, where your employment took you and what skills you brought to bear?*

**Essie King:** *Thank you, Mr. Crawford. In 1936, and earlier and later, I was on the country show circuit where I undertook work as a phrenologist. I was known as Madame Cleo, and had quite a good following and reputation, if I may say so myself.*

**Crawford:** *Yes, and what does a phrenologist actually do, then?*

**King:** *Why, we read skulls and observe the character and mental capacities of the persons by the shape of their heads. I am also a psychologist.*

**Crawford:** *I suppose that skill makes you a good judge of character, then?*

**Judge:** *I don't think I will allow that self-serving observation, Mr. Crawford. Phrenology is much discredited nowadays, in any event.*

**Crawford:** *May it please Your Honour! In any event, Mrs King, I understand you were travelling with your husband on the Forbes - Grenfell Road on 4 September 1936. Will you tell the members of the Jury what you saw, please?*

**King:** *Of course, but I don't know what the Judge means about being discredited.*

**Judge:** *Just get on with it, please.*

**King:** *Yes, well...my husband was driving our caravan. We had just been to the Parkes show and we were on the way through Forbes to attend the Wyalong Show. Twice we saw a vehicle with two men in it. First they were at the side of the road and they waved us down to ask for petrol. We refused to help. Later they passed us and we didn't see them again.*

**Crawford:** *Can you describe the vehicle?*

**King:** *Yes; it was a very old model car, with a bluey grey body and very dilapidated. It had a birdcage hanging on the side of it.*

**Crawford:** *Have you seen, since then, one or both of these men?*

**King:** *I have seen one of them.*

**Crawford:** *Where did you next see him?*

**King:** *At the Grenfell lower court.*

**Crawford:** *Can you see him here?*

**King:** *Yes, that is the man in the dock.*

**Judge:** *Questions, Mr. Vizzard?*

**Vizzard:** *Yes, please, Your Honour. [Endeavours to "get at " the witness] Witness, may I call you Mrs Mathieson...that's the name of your actual husband isn't it? But you don't live with him, do you? Or do you prefer Mrs. Garret...that's Charles King's real name. But you are not married to him, are you?*

*[Witness King bristles at this impertinence and exclaims, Harumph!]*

**Crawford:** *[Rises to object] Relevance, Your Honour?*

**Vizzard:** *Well, Your Honour, people come into this Court to give damning evidence of one kind or another and the Jury is entitled to know to whom they are listening.*

**Judge:** *You have made your point.*

**Vizzard:** *This identification, so-called, involved a mere glimpse of this man, over in a second, on a country road **10 years** before you saw him in Court at Grenfell?*

**King :** *Yes, but I actually saw him twice that day, but the police showed me photos about 18 months ago. I identified the man in the car from a photo. That was the same man I then saw last year at the lower court.*

**Vizzard:** *I'm coming to that. You were shown 14 photos, weren't you?*

**King :** *I think so.*

**Vizzard:** *Before I deal with that, I want to take you back to the original description you gave the police in September 1936. You then said, and I paraphrase, "both men were about 5'8", medium build, wearing hats, collars and ties, of smart appearance and looking like urges or tipsters. The driver looked about 35 and the other man 42-45". Is that right?*

**King:** *That sounds correct, but it was over 10 years ago.*

**Vizzard:** *Exactly... 10 years ago! [dramatic pause; looks at Jury] Which man did you identify from the photograph, the driver or the passenger?*

**King:** *I couldn't say.*

**Vizzard:** *In only 4 of the photos were the men standing, and the one you say you identified of Mr McDermott shows him standing, hatless and with his eyes closed, obviously squinting into the sun?*

**King:** *Yes?*

**Vizzard:** *Well, three things, witness: firstly, Fred Mc Dermott can't drive a car, he was only 30 in 1936, and your original description doesn't sound much like a couple of shearers.*

*But separately, I want you to look at the police photo of McDermott from which your identification was made*

*[pulls out small photograph from top pocket, slightly crumpled, and hands to witness, **via a convenient court orderly appointed for the purpose**]*

*You will see that picture is very small...its 3.5"x 2.5". You will see that Mr. McDermott is standing, no hat and eyes closed.*

*And you say, that helped you identify a man who was wearing a hat...you are not sure whether he was driving at the time...that you saw for a few seconds, 10 years ago? Is that the picture? Is that what you ask this Jury, Madame Cleo (reader of skulls) to believe?*

**King:** *[Looks at photo; puzzled] I do not think it was that one, no...[pauses, considers some more]; he was not looking in that direction, I don't think.*

**Vizzard:** *So, Witness, may we ignore your identification from this photograph, which you now can't **identify** from just 18 months ago? [sits down happily after a pretty good xxm]*

**Narrator:** *Vizzard sat down happily after that pretty effective xxm, but he had nearly 70 years to get it right and the benefits of Tom Molomby's analysis of that part of the evidence. It is hard to believe now that Essie's ID played the powerful part it must have in McDermott's conviction.*

**Judge:** ***You** might be happy with that performance, Mr Vizzard, but that was most improper and indecorous. You might remember that at the end of the trial the prosecution will have the last speech, **followed by me!***

**Crawford:** *In view of the rudeness demonstrated by my learned friend, I won't call Mr. King, who adds little to Mrs King's positive identification of the accused. I now call Jack Preston [Preston replaces an upset Essie King in the Box]*

**Preston:** *In 1936 I owned an Essex Tourer, it was, I thought a 1924 Model, but I know now it was a 1925 model. By the end of that year it was pretty clapped out. I took the tyres off it, sold them and dumped the car. It was sold for spare parts effectively. It was always very noisy.*

**Crawford:** *Did you sell the tyres and dump the car because you knew it was involved in the Lavers' matter?*

**Preston:** *Certainly not. I told Mr Calman, the police officer, that McDermott and McKay did not have my car at the time and they never used it at the time to my knowledge. I only met Fred through Geoff.*

**Crawford:** *Well, I have Detective Sergeant Calman's report on this issue in my hand [Refers to separate document] and he says: Preston admitted they travelled about with him at different times **and may** have taken the car on some other occasion without his knowledge.*

**Vizzard:** *Your Honour, this is just "trickery" by Calman, and shouldn't be given tacit approval by my learned friend. And are we are now embarking on cross-examination of a crown witness?*

**Judge:** *Mr. Crawford?*

**Crawford:** *I do want to ask where, when and to whom he sold the tyres.*

**Judge:** *I will allow those questions, and we will see how we go. Mr. Preston?*

**Preston:** *I can tell Your Honour that I sold the tyres in Orange at a garage, I think, but it is now over 10 years ago, and that's the best I can do.*

**Crawford:** *Well that's not very helpful.*

**Preston:** *If you had asked me before I came to Court to check this information, or get that Mr Calman to make some of his enquiries, then maybe I could have driven to Orange and found the bloke. But I didn't know I was going to be accused of something here! [witness annoyed!]*

**Crawford:** *I will leave it there, Your Honour. No doubt the Jury will reach its own conclusions on this matter.*

**Narrator:** *And they possibly did! But Mr. Vizzard has something to say about this car.*

**Vizzard:** *Mr Preston, it's clear, you say, that my client was not in that car of yours on 4-5 September 1936. Evidence has been given here of a car driven on those dates on the Forbes-Grenfell Road. The forensic people have told us that the tyre tracks of that vehicle measured 56". You may not know it yet, but in a few years time there will be a Royal Commission into this very case. Will it surprise you to learn that evidence will then be give, and accepted, that the tyre track of a 1925 Essex Tourer, your car, is 54 and seven- eights"? So, it couldn't have been your car?*

**Preston:** *No, I am not surprised, because it **wasn't** my car!*

**Vizzard:** *Finally, Mr. Preston, did your car **ever** get around with a cocky's cage hanging off it?*

**Preston:** *Never to my knowledge, when I owned it.*

**Jury Foreman:** *[Stands up] Your Honour, we have a question of Mr. Preston [Note in hand]*

**Judge:** *Yes, ask your question.*

**Jury Foreman:** *Mr. Preston, you told the Court that you owned a car that made a bit of noise?*

**Preston:** *Yes.*

**Jury Foreman:** *Where was that car on the 4th and 5th of September 1936?*

**Preston:** *It was home in Forbes, at my home, at my sister's residence.*

**Jury Foreman:** *Thank you; and thank you, Your Honour.*

**Crawford:** *The Crown now calls Thomas Kelly.*

**Kelly:** *I ran a garage in Forbes in 1936. The police put out a request for information. At about the time, I particularly remembered seeing a car with a redwood piece of timber used as a dipstick. It was an old grey tourer with a birdcage on it. There was a quarrion in the cage. I offered to draw a picture of the man I saw, the driver of the car, but the police didn't bother to follow me up. They showed me some photos but they didn't help.*

**Narrator:** *The next exchange actually took place at the Royal Commission, but we will treat it as having been at trial as it shows an example of the evidence at trial being seriously misleading.*

**Crawford:** *Mr. Kelly, some pictures were shown to a previous witness to see if she could identify McDermott. Were any of those pictures shown to you in 1936?*

**Kelly:** *I have no idea, but, [witness agitated], Your Honour, am I just to answer questions or say what I know?*

**Judge:** *I think if you answer questions it will be sufficient.*

**Kelly:** *[somewhat deflated, sighs loudly]*

**Vizzard:** *See if I can help, Mr. Kelly; what do you want to tell us about those photographs?*

**Kelly:** *Thanks...Mr Vizzard, is it? It's just this. When I saw McDermott in the dock at Grenfell Court, I was quite satisfied he **was not** the man to whom I sold the petrol in that car. And I remain of that view!*

**Crawford:** *Why didn't you bring this matter up at Grenfell when you were asked to give evidence?*

**Kelly:** *I was not asked. I asked the Judge over there [gestures towards Judge, who looks suitably chastised] a moment ago, whether I should answer questions or just talk on and I was told to answer questions and that's what I did at Grenfell.*

**Crawford:** *Have you any interest in this case, any axe to grind? No desire to see McDermott absolved here?*

**Kelly:** *No, but I would like to see him out of this if he didn't do the job. That's for you lot to decide, I suppose.*

**Crawford:** *I call Doretta Williams.*

**Williams:** *[enters the witness box, shy and hesitant and softly speaking; short answers]*

*I am known as Dorrie or Dora. I have been friends with Florrie Hampton and her bloke, Fred, for a year or so. We worked together in the fruit-picking season and shared the camp at Griffith.*

**Crawford:** *Tell us what you know about the killing of Harry Lavers?*

**Williams:** *Nothing!*

**Crawford:** *Tell us what you heard about it around the campfire?*

**Williams:** *I remember once that Florrie got really jealous and drunk and said that Fred was nothing but a murderer and had killed that Lavers bloke for seven gallons of petrol.*

**Crawford:** *And what did McDermott say?*

**Williams:** *He said, "Yes, of course, I killed Lavers for seven gallons of petrol".*

**Crawford:** *And anything else?*

**Williams:** *There was something about taking the body out to Grenfell, cutting it up and burying it in the sheep yards.*

**Crawford:** *When was this conversation?*

**Williams:** *It was a fair dinkum quarrel, yelling and screaming. It wasn't a conversation!*

**Crawford:** *But when, please, witness when?*

**Williams:** *It only happened once; it was about two years ago. It was before I met George Holland.*

*[Crawford raises an eyebrow at this answer, shrugs and sits down with a disappointed air]*

**Vizzard:** *So we can safely assume George Holland didn't hear this quarrel?*

**Williams:** *No, he wasn't there.*

**Vizzard:** *Maybe you or Florrie told him about it later?*

**Williams:** *I dunno, maybe, but he wasn't there that time.*

**Vizzard:** *Was there much drinking that night?*

**Williams:** *There always was around that camp. Florrie was a bad drunk, jealous and nasty. She would often accuse people of things they hadn't done. That night she hit Fred on the head with a bottle when she started that argument. He would only reply when she stirred him up.*



**Vizzard:** *And you didn't believe what he said?*

**Williams:** *[Shrugs!] I dunno!*

**Crawford:** *I call George Holland. The Jury will recall, if they have been paying attention, that this man came in to the CIB in Sydney in December 1944 and gave "certain information" to them. I will ask him to repeat that story to you.*

*[Holland makes his way into the box; pretty confident and a bit cheeky]*

**Holland:** *I remember a time at Griffith when I was with Dorrie Williams, and Fred McDermott and Florrie Hampton were in the same camp. It was about 3 years ago. We were all there together. Florrie abused me about a matter involving a horse...she had a nasty tone to her at times, when she was drinking...and Fred told her to shut up. She didn't. She said to him, "You are only a damned murderer. You killed that Lavers bloke". He said, "I did not. I am not the main one, anyway. Scotty hit him first and I hit him with a handle". She said, "You cut him up, put him in a truck and buried him at Grenfell sheep yards". They continued to argue all night. Her accusation made me think maybe there was something in it, which is why I reported the matter in Sydney when I was up there at the hospital.*

**Crawford:** *Is that all you can say?*

**Holland:** *What do you want me to say?*

**Vizzard:** *I'm listening carefully to this.*

**Crawford:** *Well, how many times was this kind of thing said and what did McDermott reply...you said 4 times in your statement?*

**Vizzard:** *I'll let this go for a minute, Your Honour.*

**Holland:** *No, in my statement I meant there were four occasions when I was with Dorry, and Florrie and Fred, at the campfire. I only heard about Lavers the once, when everyone had had a few! I don't remember McDermott replying about the sheep yards. I think he was fed up with Florrie, got up and went to bed! The police twisted that statement I made.*

*[Crawford sits down, disappointed, throws hands up and Holland's statement with it]*

**Vizzard:** *Thanks, Mr. Holland. Do you know that Dorrie has just given evidence and said that you weren't there when this quarrel took place? Perhaps you weren't there at all? She told you about it, maybe?*

**Holland:** *I can't help what Dorrie says. I was there and heard what I said.*

**Vizzard:** *But you agree everyone was drunk, and I suggest words said in that condition can't be taken seriously?*

**Holland:** *I have heard that argument before. But I have had some experience in life and drinking and it tells me that words uttered drunkenly usually have some origin in truth.*

**Vizzard:** *In any event, you heard Florrie's drunken accusation on one occasion only, and I suggest Mr. McDermott's response was sarcastic and not meant to be taken seriously?*

**Holland:** *I took it seriously enough to report it to the Police.*

**Vizzard:** *And got paid £50 for your trouble?*

**Holland:** *Actually, I got a "ton".*

**Judge:** *[Like Bullingham J in Rumpole: quizzical] A ton? What may I ask is "a ton"?*

**Vizzard:** *It's slang, Your Honour, a ton is a a hundred quid, four "ponies".*

**Holland:** *That's right, Judge, Mr. Vizzard's been around the tracks.*

**Judge:** *Yes, thank you both, gentlemen.*

**Vizzard:** *While we seem to be **ad idem**, Mr. Holland, just tell me this again. I suggest you never heard Fred McDermott say anything about killing Harry Travers?*

**Holland:** *You, and that bloke **Adam**, can suggest what you like, but I did.*

**Crawford:** *I call Detective Inspector Frank Allmond*

**Allmond:** *I was the Officer-in-Charge of the investigation into the disappearance and suspected death of Harry Lavers on 5 September 1936 at Glenelg. Detective Sergeant Dan Calman eventually took over the brief under my direction. I was present during an initial interview with him.*

**Crawford:** *Yes, thank you. What can you tell us about the investigation?*

**Allmond:** *Nothing!*

**Crawford:** *Nothing?*

**Allmond:** *Nothing!*

**Crawford:** *Do you remember seeing a Mr and Mrs King in 1936, when they gave information about a car with a birdcage?*

**Allmond:** *No!*

**Crawford:** *[Exasperated] Are you able to give any useful evidence, and if not why is this so, Inspector?*

**Allmond:** *I have now retired from the police force and my mind has become a complete blank on most questions relating to this case.*

*[A forlorn-looking Allmond is replaced by a far more confident Calman; both wear detective- type hats, but removed in giving evidence, of course]*

**Crawford:** *[Somewhat frustrated] I will call Detective Sergeant Dan Calman, whom I hope, has a better recollection of events than his senior officer.*

**Calman:** *I believe so, as I stayed through this case from 1936 until this trial in 1947 (and if there is to be a Royal Commission into this matter in 4-5 years time...which is rumoured on the grapevine...I will there for that as well!)*

**Crawford:** *It's been suggested, or will be, that pressure was brought to bear on McDermott to admit he made admissions or confessions to Florrie Hampton. What do you say?*

**Calman:** *Certainly not; both Inspector Allmond and I conducted the interviews properly. I know the Rules!*

**Narrator:** *This was an important issue at the trial. McDermott denied in his statement in the dock that he had ever said anything about killing Lavers to Florrie, or anyone else, not even sarcastically. The admissibility of his police interview on the topic was unsuccessfully challenged at the trial, the CCA and before the High Court (references omitted here!). It becomes irrelevant, really, to the **justice** or **injustice** of the whole process, however, because Fred was to admit in his sworn evidence before the Royal Commission, that he had told porkies in his unsworn on this issue. We will not pursue the matter here.*

**Calman:** *We originally interviewed both McDermott and McKay in 1938 as to their whereabouts. We had a description of a vehicle from the earliest time but it was never located, until bits were found in 1945. It was thought to be involved in Lavers disappearance. We had tyre marks and a wooden dipstick at the scene. We had descriptions of two men that we thought, after some photo identification, matched McDermott and the other man. Lavers clearly disappeared and his blood was apparent at the scene. He was never seen again. In 1944 we got certain information about McDermott and we interviewed him as to assertions he made to others. He made some telling admissions, and we charged him.*

**Jury Foreman:** *We have a question for Detective Calman, Your Honour.*

**Judge:** *[Sighs; looks at watch very obviously] Yes, alright, let's get on with it then.*

**Jury Foreman:** *Detective, why hasn't Geoff McKay also been charged with this murder?*

**Judge:** *[Interrupts, to help Calman] Ah, Mr. Calman, I suppose you have a very good reason for not charging McKay with the offence?*

**Calman:** *Yes, Your Honour.*

**Judge:** *And was that reason **necessarily** that he was not guilty?*

**Calman:** *No, Your Honour.*

**Judge:** *[To Jury...somewhat patronisingly] Does that satisfy, you gentlemen?*

**Jury Foreman** *[looks to the juror on his right; speaks sotto voce] That tells us nothing!*

**Judge:** *[Sharply] Pardon?*

**Jury Foreman:** *Thank you, Your Honour.*

**Vizzard:** *We are told by the Narrator that we are not to trouble you, Detective, with questions of the pressure you brought to bear on my client to admit he was involved in Lavers' disappearance, so I won't go through the normal "good cop/ bad cop" scenario in questioning you. However, since 1947, we have come into possession of the original police investigation files...they will be produced in the future, you see, to the Royal Commission...I have them here now. I couldn't ask Mr. Allmond about them, as...*

**Judge:** *No, he had no recollection whatever about any part of this case; his mind seems to have been purged of all material.*

**Vizzard:** *Yes, precisely, Your Honour. Now, Mr. Calman, let's assume that there was a vehicle travelling along the Forbes-Grenfell Road on 4 September 1936 with a birdcage on it. It's by no means apparent that car was the one pulled up outside Lavers' store on the following morning, of course. But you and Mr. Allmond (he of the clear mind) had in any event discounted this car's involvement in this matter.*

**Calman:** *Had we?*

**Vizzard:** *OK, we will do it the slow way.*

**Judge:** *[Sighs, not for the first time] Must we?*

**Vizzard:** *Apparently, Your Honour. I read from your own report, Mr. Calman: This refers to a report from Constable McLaughlin at Yass, which reads: "I beg to report on the morning of the 5th instant, at 8 o'clock, a car, which is no doubt identical with the one referred to in Const. Grogan's report [which had been seen in Boorowa at 9.30am on Sunday 6 September, with two men, and a birdcage and an noisy engine **by the policeman's wife**] was seen in Yass."*

*You thought this was important?*

**Calman:** *Did I?*

**Vizzard:** *Yes, apparently. Your own comment on this was in the form of a question directed to Constable McLaughlin. You asked: "Does the constable mean 8am or 8pm?" (sarcastically, I would have thought his report that it was "8 o'clock in the morning" would have anticipated that enquiry), but you continued, "If the car was seen at 8 am on the 5th instant in Yass, it could not be concerned in the disappearance of Lavers. You will realise the importance of this, is there any possibility of a mistake?" That was your question?*

**Calman:** *Yes?*

**Vizzard:** *And Constable McLaughlin's reply was "no, it **was** 8 am on that day, it **was** a positive sighting, there was no doubt it was the same vehicle..." And that, Mr. Calman was the end of your search for and interest in that vehicle?*

**Calman:** *I don't remember all the detail. You have the files there apparently.*

**Vizzard:** *A convenient blank in your memory, Mr. Calman? Like Mr. Allmond?*

**Judge:** *Mr. Vizzard, please! [plaintive request]*

**Vizzard:** *Sorry, Your Honour, but this brief is better than I originally thought.*

**Judge:** *Then please do justice to it, and with a little more courtesy.*

**Vizzard:** *The fact is Mr. Calman, that you didn't go looking for Madame Cleo until July 1945, that was 8 months **after** that statement you got from Holland, which we now know was greatly exaggerated. You didn't believe this vehicle had anything to do with this matter, and you were right. **It didn't!***

*[Vizzard sits down happily]*

**Crawford:** *I formally close the Crown case.*

**Narrator:** *The defence called one or two witnesses but not the two that either they or the Crown should have produced. We will return to that later. In the meantime, we will listen to Fred's heartfelt plea at the end of his unsworn statement. He had blamed Florrie for his predicament in the Court and said it had all started as a joke around the campfire. He concluded:*

**McDermott:** *I swear before God I had nothing at all to do with it...this is an awful thing to face and an awful charge; I swear before God since I have been in gaol for six months I have never missed saying my prayers and I never did this gentlemen of the jury. Nothing could be worse than to do this to me, to bring me before this charge, and I swear before God I never did it. I don't know anything about it.*

**Narrator:** *There were then final addresses. The Defence at the time had to go first. The speech that the Defence **could** have made, with the material present in **this** version, was not made. With no reflection on Mr. Vizzard, the actual speech was apparently, at this distance, not a powerful one.*

**Vizzard:** *Gentlemen, these are some of the points you need to consider. Are you certain Harry Lavers is dead? There is no body. The descriptions by witnesses were not very good either of the vehicle or the men in it. Nobody but Mrs. King claimed to identify the accused, and she did it 9 years after the original quick sighting of two men in a car. You wouldn't give much credit to Holland, the police informer, or his girlfriend Williams. Florrie was clearly - on the evidence - an irresponsible drunk, notwithstanding that she has been here every day in this case supporting Fred McDermott, who she has put in the dock by her behaviour. She is obviously ashamed by it. If Fred McDermott*

*had really been involved, he would not have stayed around the district. He would not have gone to the police station to be photographed.*

*[Pauses...looks around Court; picks out particularly the Narrator and the scriptwriter]*

*Look, Mr. Foreman and Gentlemen, I am not prepared to leave it there, despite what our Narrator says, or what this script says [holds up "his brief"]. The fact is Fred is here because a show-woman purported to identify him from this tiny picture [holds up photo] nine years after seeing a man with a hat on the side of the road, and then in an overtaking vehicle, just for a few seconds each time. No one has ever said which man was driving so who was she identifying? This was in a vehicle, she says, which we **now** know, and the police **always knew** [Detectives Calman and Allmond over there, who remember nothing of this, it seems] could not have been at the scene at the time. It was in Yass, 100 miles away, that morning, just after Harry Lavers disappeared. We know it wasn't Jack Preston's vehicle at the petrol pump. The tyres were the wrong size! But we only find that out years later! Listen shortly to how the Crown in its final address uses and abuses the friendship between Parker, McDermott and McKay to taint them all. And where is Florrie's evidence in all this? The one whose behaviour and reckless use of the English language, puts Fred McDermott in this dreadful jeopardy, fighting for his life here. Why doesn't the Prosecution have the courage to call her to tell her story? Eh? Because they know she is totally unreliable. They wanted to force us to call her so they could tear her to shreds. Without hearing her, poor woman, you know you couldn't rely on her. And what about Geoff McKay, Gentlemen? You won't have been put off by the Judge's explanation as to why he isn't here.*

*[Judge pouts and glowers at Vizzard]*

*If Fred is guilty, so is Geoff. Why is he not, at least, a witness here? You will hear more of this later. Gentlemen, there is no body! The Crown case is that Fred McDermott claimed to bury Lavers' decimated body at Grenfell sheep yards. When? There is no evidence of **the suspect** vehicle driving south after the morning's events. Have the police ever looked there for the body? No, because it was 8 or 10 years after his disappearance that we had **that** version. You can take it from me, Gentlemen, that Harry Lavers' body will be found one day - not in some sheep yards - it may be another 60 years, or even 70 after his disappearance. And when it is, Fred McDermott's innocence will be even plainer then, than it should be here to you today.*

*May it please Your Honour, Mr Narrator, Mr Director, Ladies & Gentlemen [Nods/ bows to each].*

**Crawford:** *I get to go last which is a very privileged position. It enables me to make arguments that the defence can't answer, and which in this case according to Mr Tom Molomby, of my own Bar, who has the cheek to criticise me posthumously, are **splendidly illogical**.*

*I prefer to deal with the case presented before you, Gentlemen, in February 1947, rather than some pie-in-the-sky version of the facts that Mr. Vizzard, with the assistance of an imaginative transcript, seeks to foist upon you.*

*Here is the first of my illogical arguments, which I ask you to treat seriously. McDermott in his unsworn statement said in explaining where he was on the day of the murder, he couldn't remember his exact movements on 5 September. But Gentlemen, how could anyone put out of his mind the dreadful things that happened on that day?*

*And how could anyone have described so vividly the way in which Lavers' body was disposed of, unless they were there to see it happen?*

*And the Crown was prepared to test Mrs King's photo identification of McDermott by thereafter placing him in a line-up. He deprived himself of that opportunity by declining. She was not given the chance of saying whether he matched the photograph she had identified!*

*Moving on to other matters, I suggest you couldn't trust the witness Preston. He was a friend of McKay's. He had disposed of the car tyres because they were the tell-tale marks of identification of the vehicle. His abandonment of the car was suspicious, too.*

*Assume, Gentlemen, that McDermott was on the Forbes-Grenfell Road, that day. What was he doing there? Up to no good, I suggest! When that vehicle was seen by the Kings in their caravan, you may assume the occupants were considering robbing the Kings. They looked suspicious, the Kings said.*

*Harry Lavers has disappeared...never to be seen again. McDermott is guilty of his murder.*

**Judge:** *It now falls to me to direct you as to the law and relevant evidence. You must accept the law as I say it is, but it is for you to accept and view the facts as you find them. In doing so, however, the facts that you must consider are those that emerge from the trial before you **this past week**, and not that which some people here today would wish those facts to be.*

*It is normal for the judge to make some comment on the facts. The most singularly important fact and issue, it seems to me, is the Crown allegation that on the 4th and fifth of September 1936 the accused and another man were using the car of Preston. If the Crown cannot show that beyond a reasonable doubt, then the rest of its case (which includes the identification by the Kings of that car and McDermott being associated with it) falls to the ground.*

**Narrator:** *Thus His Honour stated the nub of the case. The jury had to accept it was Preston's car on the Forbes Road on the relevant dates. We absolutely*



*know that was wrong, but the jury didn't. They were sent out at 3.15pm and were out all night. In the morning they asked for some evidence to be re-read which seemed to be inconsequential. They retired again, and came back with a guilty verdict before lunch.*

**Judge:** *You have been found guilty of murder by the jury, McDermott. Is there anything you wish to say before I pass the only sentence known to the law?*

**McDermott:** *I am not guilty of the terrible charge; before God, I am not guilty!*

**Narrator:** *We will spare our Judge from the awful task of pronouncing the inevitable death sentence.*

*[Florrie burst into loud sobbing and wailing and left the Court; McDermott is left, slumped into his table, face in his hands. The other players are in tableau for a moment or so]*

**Narrator:** *Appeals were lodged. We will only look at one issue here. An application was made to the CCA to call fresh evidence. It was to be from Geoffrey McKay!*

*For convenience, the same counsel will appear and our judge will represent the Chief Justice Sir Frederick Jordan, and the other members of the Court.*

**Vizzard:** *May it please the Court, the prisoner wishes to call fresh evidence from a Mr Geoffrey McKay to the following effect*

*[McKay goes into the Box]*

**McKay:** *I was a shearer with Fred McDermott. I have heard he has been tried and convicted of murder. I was with him in early September 1936. We were shearing together. We were nowhere near Grenfell or Lavers' place on 4 September. I knew Jack Preston. I introduced Fred to him after that date. We were never on the Forbes-Grenfell Road in that car, with or without Preston. I know Fred well. He didn't, and we didn't, have anything to do with Lavers' disappearance. I know Fred couldn't drive. On those few occasions we were in any car together, I had to drive.*

**Vizzard:** *Why didn't you come forward earlier?*

**McKay:** *I didn't think for a moment he would be convicted. My ex-wife was chasing me for maintenance and I didn't want to be caught up with the law.*

**Crawford:** *This is all lies, McKay, isn't it? You originally told police you had never heard of McDermott. You are the sort of man who avoids his responsibilities, you have told us?*

**McKay:** *I am telling the truth. If you are right then I am guilty of murder, too, but I have come forward to clear Fred's name, and I have put myself in jeopardy to do so.*

**Crawford:** *Prrpsh! [or similar]*

**Judge:** *We won't trouble you further, Mr Crawford. We are not impressed with this witness, nor his background. We don't see how any jury would accept such a man as a man of truth. The application will be dismissed!*

**Narrator:** *Fast Forward to 1951-1952. The Royal Commission finds that the evidence about Preston's car was wrong. It was **not** his car on the Forbes-Grenfell Road on those days. As the trial judge had said, without proof that it was Preston's car, the Crown case failed. But the Crown accepted that conclusion with bad grace at the Commission, and fought the result despite clear evidence about the identity of the car. The Commissioner, Justice Kinsella, however, was not generous in his findings. We will ask our trial Judge to assume his role.*

**Commissioner:** *I do not accept Mr. Shand's submissions that the fresh evidence affirmatively proved McDermott's innocence. But, in view of my findings that the evidence in respect of the car at the trial may have led to the jury being misled, I recommend that McDermott be released from further imprisonment. I further recommend he be given the sum of £500, not as compensation - as I am not satisfied there was any injustice in this matter - but " in order to assist him to establish himself again in civilian life and to give him a full opportunity of becoming a useful citizen".*

**Narrator:** *You might think it was a fairly modest sum after 5 years in gaol, and a patronising manner of describing its purpose. Fred was released in early 1952 and struggled with becoming a "useful citizen". He died in 1977 of leukaemia aged 71.*

*[pause]*

*But the story doesn't finish there. Let's hear from the **surprise** composite witness!*

*[New witness enters the box]*

**Donlon:** *My name is Denise Donlon. I am a forensic and biological anthropologist. I hold a PhD in that discipline. I read from a statement made by a Mr. Ted Markham:*

*I own a farm property near Glenelg and Grenfell. On 11 November 2004, while driving at the back of my property, approximately 6 kms east of the site of the original Lavers' store, I found a skull in grass near the track. I called the police and other bones were found 120 metres up a steep hill in a cave. There were remnants of clothing. The cave is up a steep incline that could not be traversed by a vehicle. The site is many miles away from the Grenfell sheep yards.*

*I attended the inquest held into the finding of the bones when the Deputy Coroner found that the bones and clothing remnants were those of Harry Lavers. There was matching DNA, the clothing identified as that of the deceased and there were skull resemblances to photos of the deceased. There was no doubt as to the identity. I conducted tests on the skull and skeleton of the body. There was no indication that the bones had been cut up or any sign of injury consistent with what I understand were Mr. McDermott's alleged admissions.*

**Narrator:** *So, we are back to Court again. This time a referral to the CCA by the Attorney General with both sides agreeing there had been a miscarriage of justice. Tom Molomby SC, author of **The Shearer's Tale** appeared with Anne Healey for Fred McDermott [Dec'd]. I will ask our composite judge/commissioner to announce, as Chief Justice Bathurst, the findings of the Court*

**Judge:** *(I paraphrase here); Part of the foundation for the original finding of guilt in this matter was destroyed at the Royal Commission in the evidence about Preston's car, including the evidence of Mr Kelly and the sighting of the car at Yass. I won't repeat that. It did call into question the identification by Essie King that effectively fell with it. The last remaining piece, that which supported Mr. McDermott's confession of the means of disposing of the body, disappears with the actual finding of the body, its whereabouts and its state. In all these circumstances, it is my opinion- with which my brethren agree- that had this evidence all been available at trial, the only possible verdict would have been one of acquittal. In those circumstances there was a significant miscarriage of justice. The order will be that the conviction of Frederick McDermott for murder be set aside, and in lieu thereof a verdict of acquittal be entered.*

**Narrator:** *You might think this was a successful outcome. I suppose it was for the family of Fred McDermott, but not for the man himself. We thank Tom Molomby SC for allowing us to use his book, his research and his insight so*

we could present **The Shearer's Tale** to you. We leave him with the last word [s], from his book, delivered by trial counsel for Fred McDermott.

**Vizzard:** 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!

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