

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

FOURTEENTH BIENNIAL CONFERENCE

VICTIMS OF THE SYSTEM

***The Murder in Gun Alley; The Wrongful
Conviction of Colin Ross***

A play reading presented by the CLANT Players

SATURDAY 22 JUNE – FRIDAY 28 JUNE 2013

BALI HYATT HOTEL

SANUR BEACH

BALI

THE TRIAL OF COLIN CAMPBELL ROSS 1922

INTRODUCTION

This is the tenth in a series of play readings presented to the CLANTS' Biennial Bali Conference by the CLANT Play Readers. As usual, the purpose of the play is to entertain, amuse and expose the often – found quirks and injustices of the law.

This year's choice may not exactly amuse, however.

Its origin, from my perspective, was a suggestion from Tom Percy QC (a regular attendee at the conference) that I might find the trial of Colin Ross in Victoria in 1922 a useful topic. This trial was the subject of a book by Kevin Morgan entitled *GUN ALLEY: MURDER, LIES AND FAILURE OF JUSTICE*. I will acknowledge its author later in this introduction.

In the meantime, it may be noted that the original trial's transcript was not available but rather, the press reports that were made at the time and which are included in Kevin's book. On the other hand, he did have available the transcript of the Coroner's Inquest. The play reading is based on the book's reporting of those transcripts and of the press reports. In 1922, Court reports in the press were far more comprehensive than nowadays and, in any event, this was a trial of immense public interest.

The first edition of Kevin's book was published in 2005. A submission based on the material contained in it was made to the Victorian government for a petition of mercy. It was prepared for and signed by representatives of each family; that is, the family of the convicted murderer Ross and his alleged deceased victim, Nell Alma Tirtschke, and this was submitted to the Attorney-General for Victoria in October 2005. I should mention that the petition was partly drafted with the assistance of Ian Hill QC of the Victorian Bar and Solicitor Tony Hargreaves. A year later the Attorney-General Hulls referred the matter to the Victorian Chief Justice requesting an opinion from the Courts Trial Division on the merits of the petition. A year or so later, on 20 December 2007, three judges then of the Trial Division of the Court (Teague, Cummins and Coldrey JJ) provided a written opinion to the Attorney-General that there had been a miscarriage of justice in this case. The judges effectively recommended that Ross be granted a posthumous pardon. This was duly granted, in a ceremonial fashion, on 27 May 2008 which was more than 86 years after Ross was hanged.

It might be noted that the finding of the judges, in their Opinion, was that there had been a miscarriage of justice such that Ross would have been entitled (in 1922) to have a new trial. The opinion was not, in itself, a finding that he was in fact innocent. Nevertheless it was a wonderful triumph for those who had urged the further investigation and for Kevin Morgan himself who was mainly responsible for that result.

THE FACTS

[This portion of the Introduction is taken from (with some amendments by this writer) a *Multitude of Counsellors (a history of the Bar of Victoria)* by Sir Arthur Dean. it is there listed as a *notable trial of the Twenties* (pg 196)]

In the early morning of 31 December 1921 the nude body of a twelve year old girl was found lying in Gun Alley, a lane off Little Collins Street, Melbourne, in the vicinity of the Eastern Arcade. She had been sexually assaulted and strangled. The crime aroused intense public indignation; the police were active; the government offered a reward of £1,000.00 for information leading to a conviction and the newspaper *The Herald* added £250.00. This was indicative of the enormous amount of interest in the case and pressure for a conclusion. Ross who conducted a wine saloon in the Arcade was arrested and charged with the murder. He was presented for trial on Monday 20 February 1922, before Justice Schutt and an all-male jury. The Crown Prosecutor, Hugh Macindoe, prosecuted and the accused was represented by George Maxwell and T.C. Brennan. It was a difficult case for Maxwell because he had at that time very little sight, went completely blind soon after, and the Crown case was a very strong one with the *public satisfied of Ross' guilt*. [my emphasis]

The trial lasted a week. The main evidence for the Crown was of admissions said to have been made by Ross that, if true, clearly established his guilt. Two of these witnesses were prostitutes and the third was a man of many convictions named Harding. His evidence was that Ross admitted intercourse with the girl, and said that he left her lying on a couch, that he endeavoured to quieten her and must have strangled her in his attempt to subdue her cries, but with no intention of harming her or killing her. This was a classic jail yard confession. Schutt did not leave to the jury a case of manslaughter based on such evidence, and this failure to leave such a case was a principal ground relied upon in the subsequent appeals. Neither the Crown nor the defence asked that a case of manslaughter be left for the jury. It was difficult for the defence to set up a case of manslaughter based on the evidence of Harding seeing that the defence was an alibi and therefore a denial of the truth of what was said by Harding.

On the second day it became necessary to adjourn the hearing for an hour owing to the inability of the jury to hear the witnesses because of a heavy thunderstorm, in which 140 points of rain fell in the hour. The accused set up an alibi, gave evidence himself and called witnesses to support it. Ross said that the case was a *frame up* by the police, but Maxwell refused to adopt this line. In the

course of a powerful address Maxwell made a very vigorous attack on the Crown witnesses whom he described as a *quintet of disreputables*. On Saturday 25 February after some hours' deliberations the jury returned a verdict of guilty and Ross was sentenced to death. An appeal to the Full Court, consisting of Irving CJ, Cussen and Schutt JJ was dismissed. The strongest part of the appeal, appears, at this distance, to have been the additional evidence the defence had gathered since conviction and sought to introduce on a retrial.

It seems strange today to find the trial judge sitting on the appeal but at that time he was able to do so. An application to the High Court for leave to appeal was dismissed, Isaacs J dissenting. In his opinion the trial judge should himself have left to the jury the case of manslaughter based on Harding's evidence, although contrary to the evidence of Ross himself.

Ross was accordingly executed. The case was for long the subject of controversy. Many people felt uneasy that Ross had been convicted on the evidence of worthless witnesses, and in an atmosphere in which the public were demanding a conviction.

OBSERVATIONS

Colin Campbell Eadie Ross was hanged for murder at the Melbourne gaol on 24 April 1922. He was aged 29. He had been convicted of the murder of 12-year-old Nell Alma Tirtschke [known as Alma] in Melbourne on 30 December 1921. The execution was 115 days after her death. The timetable shows the whole process was efficient and ruthless. The law was operating at its worse. When preparing for his execution, Ross told the priest

*I am ready now to face the highest Court of Appeal,
where there is no law – but justice*

Ross was arrested on 12 January 1922. An inquest was announced on 19 January by Coroner Dr Cole, commenced on 25 January and concluded on the following day. Ross was represented at the inquest, and as the solicitor at the trial, by Naphtali (Nat) Sonenberg, a famous and flamboyant solicitor advocate of that era. There was no brief of evidence available and it seemed to develop during the inquest (and again at trial). Sydney John Harding, a prisoner, gave evidence on the second day of the inquest of admissions Ross had made on 23 January. So, two days before the inquest and despite precise instructions given by Sonenberg not to talk to anybody in the gaol, Ross (who was not an unintelligent man) allegedly did so. This was scarcely believable!

The Coroner's finding was that Ross was guilty of murder and he was committed for trial on 15 February 1922. There was no control of the press and the Coroner's finding was widely publicised.

In fact the trial commenced on 20 February 1922 so Ross had *plenty of time* to prepare his defence. The jury was sent out after 5pm on Friday 24 February and after 4 hours deliberation were locked up for the night. They needed another hour in the morning before unanimously finding him guilty.

An appeal was lodged very promptly and on 7 March the Crown applied for a speedy hearing of that appeal. Despite protests by T.C. Brennan of Counsel on behalf of Ross, the Chief Justice decided that the matter was of such importance that it needed to be dealt with urgently. The appeal was then heard between 15 – 20 March 1922. Despite further evidence being called on behalf of the prisoner at the appeal, the appeal was dismissed. [1922] V.L.R. 329

An appeal to the High Court followed and a special leave application was heard in Sydney from 29-31 March 1922. The decision was reserved until 5 April 1922 when it was dismissed, with Isaacs J dissenting on the manslaughter question (1922) 30 CLR 246. Tom Brennan was the junior counsel at trial but was a senior junior at the Bar. He appeared at both appeals. He was subsequently appointed QC in 1928, shortly after George Maxwell who was appointed in 1926. Maxwell was then aged 67. He was described by R.G. Menzies, a contemporary, as *the greatest criminal advocate (he) ever heard. His power was his address to the jury which was quite hypnotic*. There were some criticisms of his skill in cross-examination even at that time, however, and he had virtually lost his sight by the time the Ross trial commenced. It is clear from contemporaneous documents, nevertheless, that he had a wonderful turn of phrase in addressing juries. He is described in *a Multitude of Counsellors* as having a *deep, rich, resonate and powerful voice, (with a) pleasingly Scottish accent*. But it was to avail Ross nothing in this particular case.

THE PLAY READING

The delegates should be prepared for some unusual touches in this play reading. There will be some flashbacks and flash forwards. The Narrator will be assisted by some ethereal spirits and may be thought herself to enter into the contest at the trial.

Acknowledgements

I have already mentioned, and I now thank, Tom Percy for his referral to me of Kevin Morgan's book. His reward is a part in the production.

I owe a great debt, obviously, to Kevin Morgan. He has given me licence to adapt the transcript contained in his book for the purpose of presenting the play reading and without fee! I now formally note, (and I will again on the play reading script itself) that the portions used as transcript come from ***Gun Alley by Kevin Morgan – Published by Hardie Grant Books, 2012*** (I should issue notice that I have not faithfully followed the transcript at all but have interposed my own interpretation of it from time to time, and with significant resort to dramatic licence)

More particularly, I wish to thank Kevin for generously providing me with his knowledge and insight into this whole Ross story. We spent some hours together in Melbourne earlier this year. We said farewell at the spot on which Colin Ross's body was first buried in the Old Melbourne Gaol in 1922. Kevin should also be thanked by the legal, and broader, community for exposing through his dogged and precise research yet another legal disaster. He also provided some editing.

Those who remember the 2003 CLANT play *A Matter of Profound Regret – William Bentley's Birth Right to a Fair Trial (R v Bentley & Craig)* will see the similarities; a man being posthumously acquitted nearly 50 years after an unfair trial.

The second edition of Kevin's book was published in 2012 by Hardie Grant Books of 1/685 Church Street Richmond in Victoria (03-8520-6444). Those interested in learning more of the events leading to the death of Colin Ross, and the subsequent investigation by Kevin Morgan, will enjoy the book.

Trish Smith of the Office of the Director of Public Prosecutions (NT) typed this introduction and the manuscript for me. She has now done this six times and I continue to be in her debt for her cheerful and prompt assistance.

I also thank the President and Committee of CLANT for this opportunity to get my name on its conference programme once more and to participate in the conference doings.

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 them are *the usual suspects*; others are new. I hope they represent the broad panorama of delegates at this conference. They are listed below.

REX WILD

DARWIN N

June 2013

THE PLAYERS

Justice Schutt ...Trial Judge:	Austin Asche
Hugh Macindoe...Prosecutor:	John Prior
George Maxwell...Counsel for Defence:	Russell Goldflam
Thomas Brennan ...Junior C for Defence:	Jonathon Hunyor
Colin Ross...The accused:	David Baldry
Colin Ross ...(The deceased accused):	Tom Percy
Alma Tirtschke ...(The deceased victim):	Jenny Blokland
Mollison... Government Pathologist: :	Rod Higgins
Blanche Edmonds...Witness:	Anne Healey
May Young...Witness:	Carolene Gwynn
Francis Upton...Witness:	Martin Fisher
Ivy Matthews...Witness:	Beth Wild
Olive Maddox...Witness:	Peggy Dwyer
Sydney Harding...Prisoner/Witness:	Dean Mildren
Frederick Piggott...Police Officer:	Tom Berkley
Charles Price...Govt. Scientist:	Mark Thomas
James Robertson...[Live] Hair Expert:	Grant Algie
Gladys Wain...Witness for Defence:	Belinda Lonsdale
Foreman of Jury:	A CLANT delegate TBA
Narrator/Court Orderly:	Elizabeth Morris

