R v Emily Perry

Enlivening and Reframing a High Court Case

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CONTENTS

ABSTRACT

In 1981, fifty-five-year-old Emily Perry stood trial in South Australia for the attempted murder of her husband Ken Perry who almost died from arsenic poisoning. In Emily's past were three other men, who had all died from poisoning. The trial was a media sensation and the *Perry* case went on to become a definitive legal precedent

This thesis is an innovative cross-disciplinary study positioned at the nexus of legal theory and creative writing. It is a work of creative research into the Emily Perry case (*R v Perry [No. 5]* 1981 and *Perry v R* 1982) comprising a creative artefact and an exegesis, in accordance with Rule 6 (a) of the Flinders University HDR Thesis Rules. The artefact tells Emily's story and explores the legal context and background to the *Perry* case and the concept of 'similar fact evidence'. The artefact is styled as a true crime narrative, using familiar fictional techniques and generic conventions but it also provides a vehicle to explain the law for an audience who may not have specialised legal knowledge. As a practising lawyer, I am able to include doctrinal knowledge of the law within the creative work, lending a level of authority and expertise that enhances reader understanding of the criminal justice system. The artefact is the culmination of my research into the *Perry* case, providing an alternative perspective on the events that led to the High Court judgments. Drawing on the experience of writing the artefact and reflecting on the creative process of using archival material, the exegesis is a consideration of the legal and cultural significance of the *Perry* case; a consideration of the contemporary artistic and cultural context of the artefact (which straddles both true crime and life-writing while also exploring the legal reasoning that led to the outcome of the case); and an analysis of the specific ethical issues that have arisen from writing a narrative that blurs the boundaries of true-crime, biography, and legal analysis.

Using the creative methodology of practice-led research, this thesis excavates the intersecting seams of disciplinary knowledge within law and true crime, deliberately and explicitly negotiating the methods and ethics of life writing. I draw conclusions about the specific ethical issues and narrative challenges that also define my unique circumstances: a practising lawyer writing for a popular audience about a complex criminal case. I conclude that the product of the lawyer- writer is not art for art's sake, but as an alternative expression of the disciplinary literacy of law.

DECLARATION

I certify that a professional editor has not been engaged for either Part 1 or Part 2 of this thesis.

I certify that the Flinders Social and Behavioural Research Ethics Committee granted ethics approval for my research on 27 June 2014 (Approval Number 6294).

I certify that this thesis:

1) does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and
2) to the best of my knowledge and belief, does not contain any material previously published or written by another person except where due reference is made below and in the text.

5 February 2021

Previously Published Material from this Thesis

An article including a version of part of the Introduction, a version of part of Chapter Two, a version of part of Chapter Three, and a version of part of the Conclusion has been published in Spencer, Rachel. 2017. "Dignifying the poisoned chalice: the ethical challenges of using archival material in a narrative about death and arsenic" *TEXT Journal of Writing and Writing Courses* Special Issue 45. **A copy is attached as Appendix 1.**

A shorter version of this exegesis has been submitted for publication as a book chapter in *Speculative Biography: Experiments, Opportunities and Provocations* (Donna Lee Brien and Keira Lindsay (eds), to be published by Routledge in 2021). **A pre-publication copy of the book chapter is attached as Appendix 2.**

A version of part of Chapter Two has been published as Spencer, Rachel. 2015. "Crime." In *Law and Popular Culture in Australia*, edited by Melissa De Zwart, Bernadette Richards and Suzanne Le Mire, 81-97. Chatswood: LexisNexis Butterworths. **A copy is attached as Appendix 3.**

An article including a version of several sections of this exegesis has been published as Spencer, Rachel. 2018. "Troubling Narratives of True Crime: Helen Garner's *This House of Grief* and Megan Norris's *On Father's Day." TEXT Journal of Writing and Writing Courses* Special Issue 50. **A copy is attached as Appendix 4.**

An article that includes some elements of the artefact and an overview of aspects of the *Perry* case has been published as Spencer, Rachel. 2014. "Do Members of the Public have a 'Right to Know' about Similar Fact Evidence? The Emily Perry Story and the 'Right to Know' in the Context of a Fair Re-Trial.' Onati Socio-Legal Series [online] 4, no. 4, 740-760. **A copy is attached as Appendix 5.**

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STYLE NOTES

This exegesis refers to a number of officially reported judgments from criminal cases. In this exegesis, in accordance with Australian legal writing conventions, the first reference to a judgment from a case provides the full name (e.g. *R v Perry)*. Subsequent references provide only the name of the accused (e.g. 'in the *Perry* case' or 'in *Perry*'). The full citations of all cases mentioned in the text are listed in the Works Cited section using the Australian legal writing conventions mandated in the Australian Guide to Legal Citation.

In this exegesis, in-text references from judgments are written as in the following example:

Justice Wells in *Sutton*, 1983, 562.

In this example, 'Wells' is the name of the judge, *Sutton* is the name of the case, the date is that of the judgment and the page number is given last.

The usual convention for lawyers citing judges (e.g. Justice Wells in the example above) is to refer to a judge's name with the abbreviated title after the name, for example, 'Wells, J' (Justice Wells) or Gibbs, CJ (Chief Justice Gibbs). However, in this exegesis, I have written, for example, Justice Wells and Chief Justice Gibbs .

The term 'nonfiction' found within the relevant literature is spelt sometimes as 'nonfiction' and sometimes as 'non-fiction'. For the sake of uniformity I have spelt it within this exegesis as 'nonfiction', except within any direct quotations where I have adhered to the alternative spelling if that is how it appears in the quoted text.

I have retained the original American spelling in all quotations from sources from the United States of America.

NOTES ABOUT THE *PERRY* CASE

Criminal cases are identified by a naming convention: *Regina* (or *Rex*, depending on the reigning monarch at the time of the case) *versus* the last name of the accused, usually abbreviated and italicised, such as *R v Perry*.

There are three particular hearings of the *Perry* case to which this exegesis refers:

1) *R v Perry* (Case No. 6 of 1981), the trial in the Supreme Court of South Australia before Justice Cox. This case is not officially reported and references to it in this exegesis are from the trial transcript which is not a public document.

2) *R v Perry [No. 5]* (1981) 28 SASR 417 – the appeal in the Full Court of the Supreme Court of South Australia (three judges). The three judgments are officially reported in the *South Australian State Reports.*

   The Full Court appeal hearing is reported as 'Number 5' because there are four earlier reported judgments of Justice Cox who made rulings on specific legal arguments during the trial, as follows:

   R v Perry [No. 1] (1981) 27 SASR 166 is a judgment about the production of statements made to police officers by Ken Perry.

   R v Perry [No. 2] (1981) 28 SASR 95 is about the admissibility of certain evidence proposed to be led by the Crown, of statements made by Ken Perry to medical practitioners as to his symptoms and state of health.

   R v Perry [No. 3] (1981) 28 SASR 112 is about the admissibility of hospital records.

   R v Perry [No. 4] (1981) 28 SASR 119 is about the admissibility of a report made by an analyst to the Victorian Police Department in 1961.

   This exegesis does not make reference to these four earlier judgments.

3) *Perry v R* (1982) 150 CLR 580, the High Court appeal, officially reported in the *Commonwealth Law Reports*.

INTRODUCTION

The Emily Perry Court Case

This thesis comprises a creative artefact and an exegesis (, in accordance with Rule 6 (a) of the Flinders University HDR Thesis Rules). It is a work of creative practice-led research into the Emily Perry case (*R v Perry* 1981 and *Perry v R* 1982). In 1981 Emily Perry was tried for attempted murder in the Supreme Court of South Australia. She was accused of administering lead arsenate to her husband Ken Perry over a long period of time, and ensuring that he was well insured so that she would benefit financially in the event of his death. Ken Perry did suffer from lead and arsenic poisoning, but he insisted that his wife had done no wrong. Emily Perry pleaded not guilty to the charges.

Ken Perry claimed that he had become ill through his hobby of restoring old player-pianos and orchestrelles. A player piano is a type of upright piano that produces a tune via a roll of hole-punched paper fed through a mechanism that enables notes to be played without the keys being touched. The most popular brand was the Pianola, manufactured from the early 1900s. An orchestrelle is an organ that operates in a similar fashion. Ken was adamant that breathing in dust from the crumbling lead pipes of his old instruments had contributed to his high lead levels and that his own admittedly poor hygiene had made him ill. Insisting that he was happily married, Ken declared that the idea that his wife had attempted to kill him was preposterous.

But the police persisted with their investigation because they had unearthed some suspicious history. Emily Perry had once lived in Melbourne, where she was known as Trudy Haag. In 1961, her husband Albert Haag died from arsenic poisoning. The following year, in 1962, her brother Francis Montgomerie died from arsenic poisoning, also in Melbourne. Soon after these events, Emily moved across the state border to Adelaide, South Australia. In 1969, Jim Duncan, her *de facto* husband died from an overdose of barbiturates. There was evidence that he may also have had symptoms of arsenic poisoning before he died.

At her trial, Emily's lawyers argued that the case against her was thin and that it should be dismissed. They argued that the 'similar fact evidence' relating to the earlier deaths was inadmissible and that the jury should not be permitted to hear it. Justice Cox disagreed and allowed the back-story to be told.

Part true crime, part biography, and part legal analysis, the creative component of this thesis (referred to in this exegesis as 'the artefact') details the sensational events of a trial that captured South Australia's collective imagination and lays bare the fallibility and complexity of the adversarial system as a mechanism for unearthing truth. Poison trickles through this narrative and into Emily's life, into the bodies of four men and into the evidence that was heard by the jury.

At the trial, unconvinced by the Defence arguments, the jury (by majority) found Emily Perry guilty of attempted murder. She appealed against her conviction to the Full Court of the South Australian Supreme Court (*R v Perry* 1981) but she was unsuccessful so she took it further, to the

High Court of Australia (*Perry v R* 1982). The High Court decided that the jury should not have been told about the deaths of the three other men and quashed Emily's conviction, based on the reasoning that some of the similar fact evidence was more prejudicial than it was probative, and so should have been withheld from the jury. The legal context of the use of similar fact evidence is explained in Chapter One.

The phrase 'similar fact evidence' and the words 'prejudicial' and 'probative' became the legal hallmarks of this case. There is no adequate simile for 'probative'. Evidence that is probative helps to prove something. 'Probative value' is defined in the *Oxford Australian Law Dictionary* as 'the extent to which a particular piece of evidence could rationally affect the assessment of the probability of the existence of a fact in issue' (Mann 2017, 702). The 'probative value' of a piece of evidence is the pivotal argument used by lawyers when justifying its admissibility before a jury, and the use of this word in my biographical narrative about this case is an example of the many challenges I have faced as a practising lawyer writing true crime.

The title of the artefact points to the narrative's objective which is to examine how and why *R v Perry* became *Perry v R*. The artefact represents the paradox of telling Emily's life story, which includes the deaths by poisoning of a husband, a brother and subsequent partner, while simultaneously explaining why the High Court ultimately decided that the totality of this story was too prejudicial to be heard by a jury. The artefact asks and answers the question: Why did the High Court make that decision?

A Story Behind the Law

In our hierarchical legal system, judges in the lower courts are bound by decisions from the higher courts (Supreme Courts and the High Court). High Court decisions rank uppermost in the ladder of importance, and law students learn very quickly that these are the judgments with which they need to be most familiar. Law students learn about legal reasoning and how to construct a logical argument, but they rarely delve into the stories behind the judgments other than the 'relevant facts.' They rarely, if ever, read trial transcripts. Legal education has traditionally eschewed the humanity of the subject matter, training law students to keep a professional distance and to apply the law in a logical fashion to a set of facts. I am a practising lawyer and an Associate Professor of Law, and my pedagogical approach to teaching law is based on an empathic, reflective approach (Spencer 2014a; Spencer 2014b; Spencer and Brooks 2019). It is important to remind law students that behind every published appellate judgment is a client telling a story. This thesis as an example of this as well as of my broader aim, to explain the complex details of a significant High Court case to a general audience.

Many years ago, as a junior legal practitioner in a busy law firm, I became fascinated with the way law affects the relationships between people who become entangled within its complex web. Now, the Director of a busy community legal service and a teacher of law, my focus is on encouraging law students to view the law through the lens of their clients, at a human level. This is

the philosophy behind the artefact. As a writer, I have crafted a narrative that I hope will appeal to readers both within and beyond the legal profession. This exegesis investigates the balance within the artefact between explaining the court process to a reader unfamiliar with the rules of the Australian criminal justice system with its emphasis on proof, and the creative desire to produce a page-turning narrative.

After the High Court justices ordered a re-trial that had to exclude the stories from Emily's past, the Crown decided not to re-try her. Within the legal framework that is my usual domain, that was how Emily Perry's narrative was resolved. But while it was the end from a legal perspective, through the eyes of a storyteller, there is more to this narrative. The artefact has involved engaging with the available material in a different disciplinary domain, revealing particular challenges that create new knowledge in the context of the lawyer as a writer. In researching Emily's story, and presenting it as a literary rather than a legal narrative, I encountered a range of challenges that this exegesis will identify. It will also explain the methodology that I used to navigate these challenges. This exegesis unravels how the artefact asks and answers the question 'Why did the High Court make that decision?' and explains how as a lawyer-writer I have created new knowledge by identifying a new approach to true crime writing.

Chapter One explains the legal and cultural significance of the Emily Perry case. It describes how the artefact provides a nonfiction account of the Emily Perry case, explaining a complex area of law, through construction as a biographical narrative. The law that is examined in the case is at the heart of what makes the narrative compelling, but it is also the reason for the shaping of the plot. The police investigation into the source of Ken's arsenic poisoning and the basis of the Prosecution case against Emily are both rooted in the rich ground of 'similar fact evidence'. The artefact explains to the reader why and how the law treats evidence from which, on face value, it is tempting to draw assumptions. Three men in Emily's life died in similar circumstances. Anecdotally, this background makes a good story. In court, the Defence lawyers argued that the similar fact evidence was unfairly prejudicial to Emily who had the right to the presumption of innocence in relation to the charges of attempting to murder Ken. Emily Perry was not on trial for the other three deaths so the use of the similar fact evidence was the source of extensive and complex legal argument. Chapter One concludes with a brief overview of the legal significance of the *Perry* case which was the first in a series of three South Australian Supreme Court cases about similar fact evidence that ended up in the High Court.

Chapter Two explains that the artefact was influenced by the 'nonfiction novel' and 'new journalism' and it provides an overview of true crime as a literary genre. It explains the imprecision of situating the artefact within the true crime genre, given that, from a legal perspective, no crime was committed because Emily's conviction was quashed. Chapter Two also confronts the 'true' element in true crime and suggests that different levels of imaginative speculation exist within the genre. The writer may be present at the trial and able to observe the characters as the narratives unfolds. Or archival documents and the memories of those involved may be the primary sources of

information from which a narrative might be constructed. The level of writerly observation may have a direct effect on the level of writerly speculation within the text. My artefact is an accurate and truthful account of the Emily Perry case and is based on a close textual analysis of archival documents. However, Chapter Two also discusses how I use an autobiographical voice in the manner described by Karen Lamb, and insert 'self-conscious markers of the biographer's presence' (Lamb 2019, 3). This technique draws the reader's attention to cracks in the archival material and allows me, as narrator, an opportunity to explain the legal process as the Perry case progresses. There is a clear distinction between what I know happened, based on officially recorded material, and what I suggest might have happened, using a discourse of possibility. As a writer, this discourse (using words like 'perhaps' and 'maybe' and 'probably') allows for a more interesting text and can provide the reader with an insight into character that is missing from the official legal records, but I also emphasise that there are particular limits faced by a lawyer writing true crime. Chapter Two concludes that the artefact provides an original contribution to knowledge because it uses law as a framework for a true crime story rather than journalism. Chapter Two contends that the lawyer-writer has a unique perspective in crafting a first-person true crime narrative. The narrative choices that I make are not only relevant to the structure of the artefact but they are also relevant to ethical issues which are discussed in detail in Chapter Three.

Chapter Three examines the ethical complexities of writing a nonfiction narrative in this cross-over space between true crime and life-writing. The use of my own subjective point of view as a lawyer-narrator draws on life-writing scholarship. Chapter Three analyses the particular ethical challenges that arise for a lawyer writing a biographical account based on a criminal trial (and subsequent appeals). I consider whether the artefact falls within G. Thomas Couser's definition of 'disencasement', a term he uses to describe the work of Oliver Sacks, who depicts patients with neurological conditions as subjects in his biographical writing. In positioning the creative work as not just true crime but as a form of life writing, Chapter Three explores the ethical complexity of speculating about the subject matter as well as the ethical sensitivities required in using archival material as a primary source of data. By delving into the ethical considerations of writing true crime in this way, this thesis builds upon the work of scholars such as Rosalind Smith who emphasises the claims to truth by true crime writers (Smith 2008), and Donna Lee Brien who argues that speculative biography is a legitimate narrative device (Brien 1999). In considering how true crime, crime fiction, and speculative biography intersect, Chapter Three also advances the principles asserted by G. Thomas Couser, Paul John Eakin and Janet Malcolm, each of whom argue for ethics in relation to biographical life writing.

There is so much to tell in any story. Lawyers and writers know this in different ways. Chapter Four of the exegesis provides an analysis of the methodology employed to obtain the details that have been woven into the creative component of this thesis and discusses how I shaped the abundance of material into a narrative. The lawyer in me wanted to include all of the available details to ensure a comprehensive and accurate account of all the evidence I have and to

explain the complexity of the law. There was tension between this lawyerly approach and the writing methodology that I chose in order to shape the narrative. Chapter Four explains the reasons for the methodological choices that I made to write this story, including adherence to the wording from the trial transcript, the explanations I provide about court procedure and the positioning of myself in the narrative.

The narrative is written for a general audience who will enjoy a good true crime story. It will also attract three other specific but distinct audiences. First, there will be the Adelaide (non-lawyer) reader who either remembers the case and/or who enjoys Adelaide stories. Bernadette Brennan observes that Helen Garner's friends appreciated seeing their lives and their local Melbourne suburbs of Carlton and Fitzroy portrayed in *Monkey Grip* (Garner 1978) – an example of the pleasure that is evoked by 'seeing one's world reflected in a book' (Brennan 2017, 26). It is to that end that I have portrayed Adelaide in the early 1980s so that local readers can identify with that era or appreciate the changes that have since occurred.

There will also be the lawyer reader who remembers (or was involved in) the case. These readers will require me not only to be correct in my interpretation of the legal aspects of the case, but they will also be interested in the portrayal of their profession and some of its eminent members. Finally, there may be the lawyer (or law student) reader who may not remember the case but for whom the legal analysis will be of particular interest.

In this way, the artefact typifies Rosalind Smith's observation of true crime narratives, that they are 'defined by a set of truth claims coupled with the detailed recreation of lived experiences of crimes' and use both history and story, 'as a form of epic memory, connected to community' (Smith 2008, 17). In writing a work that I hope to publish for these multiple audiences, the narrative requires particular qualities. This exegesis clarifies the requirement for a plot structure that is both compelling and truthful, and that to achieve this I have relied on true crime conventions. The narrative also requires an authoritative voice to provide a meaningful interpretation of Emily's journey through the legal process, and for this I draw on life-writing methodology.

The conclusion to this exegesis argues that the lawyer-writer has a unique perspective on true crime writing because the lawyer can tap into specialised knowledge and because the lawyer is attuned to the means by which narratives evolve in court. The lawyer-writer has the advantage of understanding the nuances of the court process but also, paradoxically, may be intellectually shackled to a mindset that favours a ponderous and logical method of communication that is difficult to unlock. My research has demonstrated that the shackles can be loosened to a certain extent and that the restraints imposed by the 'lawyer' identity can still produce a unique kind of true-crime writing that is accessible to enthusiasts of both stories and the law. As a practising lawyer, I am able to include doctrinal knowledge of the law within the creative work, lending a level of authority and expertise that enhances reader understanding of the criminal justice system. The artefact is the culmination of my research into the *Perry* case, providing an alternative perspective on the events that led to the High Court judgments. Using the creative methodology of practice-led

research, this thesis excavates the intersecting seams of disciplinary knowledge within law and true crime, deliberately and explicitly negotiating the methods and ethics of life writing. I conclude that the product of the lawyer-writer is not art for art's sake, but as an alternative expression of the disciplinary literacy of law.

CHAPTER ONE: LEGAL AND CULTURAL SIGNIFICANCE

An Intriguing Story

In the Introduction, I explained that the aim of the artefact is to explain a complex area of law – the legal treatment of similar fact evidence – by using literary techniques. A complementary aim of the artefact is to tell a good story. I chose the Emily Perry case for this thesis for a number of reasons, but a major impetus was my personal recollection of the immense public interest when all of its salacious and sensational details were narrated by journalists at the time of the trial. Adelaide Journalist Frank Pangallo described it as 'one of the most discussed and debated criminal cases to come before the courts' (Pangallo 1986, 12) As Kerry Greenwood observes, '[e]veryone is interested in murder. It is the ultimate sin' (Greenwood 2001, 1).

Anna Haebich supports the idea that 'crime history is a rich field for writers of all persuasions' (Haebich, 2015, 4). For me, Emily and Ken Perry provide fascinating characters and present an intriguing relationship. Ken's absolute loyalty to his wife was described as 'sad' and 'tragic' by the judge who sentenced Emily to a long prison term, but it represents an intriguing strength of character, and raises many questions about why Ken refused to believe that Emily would harm him. Did he privately acknowledge that she had tried to kill him? Were there fierce arguments behind closed doors? Ken had never forgiven his first wife's unfaithfulness. Was he ashamed that he had been conned again? Perhaps he so in love with his 'Emmy' that he was blinded to her faults? Or did he see, and forgive? It was undoubtedly an aspect of the case that gave it such a high media profile. In 1981, the *Perry* case had all the components of a front-page story: intrigue, arsenic poisoning, a murky past, an 'evil wife' archetype and a flamboyant victim who denied that status. The Honourable Christopher Sumner, who was Attorney General for South Australia at the time of the High Court decision, recollected during an interview with me:

> 'I think the issue was of interest to the public because of the nature of it – someone prosecuted for poisoning the husband who they're still living with …it was certainly a public case, it sparked interest… the public were definitely interested in the case, no question about that' (Sumner 2016).

Still today, the name Emily Perry is well remembered, especially in South Australia. Journalist Nigel Hunt describes her trial as 'one of the nation's most sensational' (Hunt 2014). Despite its loss of authority as a legal precedent through subsequent High Court decisions that have refined the rules, the *Perry* case remains part of local folklore in South Australia. When I tell people that I am writing the story of the Emily Perry case, it seems that everyone who was an adult in South Australia in the 1980s not only remembers it but has a personal anecdote to tell about it. Myths and misinformation abound. This thesis is a product of research into South Australian and Australian legal history and it contributes not only to the current surge of public interest in true crime narratives but it also contributes to the primary disciplinary literacies of the scholarship of both life-writing and true crime. Rachel Franks argues that the true crime genre has a 'capacity for

reinvention' which enables true crime 'to maintain a prominent position within the landscape of popular culture' (Franks 2016, 240). The artefact is an example of such reinvention. My original contribution to knowledge is a nonfiction account of a real case, that explains complex law and procedures within the context of crafting an individual biographical story.

The judgments from the Emily Perry case are freely and publicly available, but they are not necessarily readily understood by a reader who has no legal training because they require a specific disciplinary literacy. Vicky Waye observes that '[o]ver-production of judicial reasons can result in lack of clarity and hinder understanding to the point where the law becomes inaccessible except for a small group of elite legal specialists' (Waye 2009, 275). The artefact provides an alternative text through which a reader might understand the Perry case *as a legal case*. The intended audience includes not only fans of true crime and readers of biography but also lawyers and law students who are interested in an interpretation and explanation of the law through a detailed recounting of the story behind the legal case. The artefact translates the *Perry* case from one disciplinary literacy to another.

Two prosecutors, two Defence lawyers, one magistrate, one trial judge, three appeal court judges and four High Court justices grappled with how the legal system should respond to the narrative that came before them. The artefact explores the complexity of applying the law relating to the admissibility in court of stories that the law calls 'similar fact evidence'. The aim of my work is to explain how the courts deal with similar fact evidence using the *Perry* case as an example. It is an attempt to make the law accessible.

A Legal Riddle

'Did she do it?' is not the question either asked or answered by the artefact.

In Helen Garner's *This House of Grief*, the character Louise expostulates that 'Did he do it?' is 'the least interesting question anyone could possibly ask' (Garner 2014, 115). *This House of Grief* narrates the trial of a man accused of murdering his three children by driving his car into a dam (*R v Farquharson* 2009). The focus of Garner's text is less about the ultimate guilty verdicts and more about the agony of grief and the awful potential of human behaviour. The focus of the artefact is on how the *Perry* case came to be before the court and why the rules about the admissibility of similar fact evidence are so difficult to apply.

Like Xanthé Mallett in *Mothers Who Murder*, I have approached my writing from the premise that Emily Perry is innocent, unless she can be proven otherwise. Mallett says at the beginning of her book that she 'will let the evidence speak to me, and then I will reach a determination as to whether I agree that they were guilty after all' (Mallett 2014, 6). I deliberately do not offer my own views about whether or not the jury reached the right decision about whether Emily Perry tried to kill Ken Perry. As Mallett says,

> 'I have … learnt a lot, not only about why people do the things they do, but also that sometimes we will never know. After the time I have taken writing this book I thought that I would be closer to answering that big question of why. I have had to accept that

> regardless of how much time you spend trying to figure out the 'why', you may never get there' (Mallet 2014, 298).

Not having observed the *Perry* trial, my limited window onto the case has been through the official court judgments, the typed transcript of the court hearings and other archival documents including inquest files from the deaths of Emily's husband Albert in 1961 and her brother Frank in 1962. There were many gaps to fill in this archival data. When writing the artefact, my creative impulses have rebounded between my legal training which tells me that I must demonstrate the veracity of every fact, and my role as a storyteller who is aware that speculation and imagination create tension and hold the reader's attention. In this exegesis I argue that using story-telling techniques alongside legal reasoning can make the law more accessible. Through the artefact, I also demonstrate that story-telling can encourage empathy for the people whose humanity is often lost in the rigid application of the law to a set of facts. The ability to apply law to the facts is a key skill learned at law school, but the development of empathy is not a core subject. The necessity for lawyers to develop and employ emotional intelligence in a professional context is beyond the scope of this thesis but the concept of empathy was a major impetus for writing this story.

Through both research into the legal reasoning of this case and crafting a narrative that ventures beyond legal logic, I seek to remind the reader of the humanity of those involved, and to reveal and explain the complexity of the rules regulating the admissibility of similar fact evidence. This subverts the basis upon which the law is usually taught and analysed. It is portrayed through the eyes of a lawyer but with the voice of a writer, creating a plait of tension comprising the evidentiary requirements of the law, the constraints imposed upon the evidence revealed in a court, and a writer's creativity. The narrative is biographical in the sense that, as Karen Lamb suggests that biography should, it 'delivers multiple versions of 'I'' (Lamb 2019, 1). The biographical aspects of the artefact and the ethical issues that arise are discussed in Chapter Three.

Legal Significance of the Emily Perry Case

I chose to write about this case because it is legally significant. Since 1982, the High Court decision in *Perry* has been regularly cited in many subsequent court decisions. The *Perry* case is an important legal precedent in a complex area of law. It is important for a number of reasons which lie at the core of my choice to select it as the subject matter of the artefact.

In the Australian criminal justice system, a network of laws and rules protect the right to a fair trial of a person accused of a criminal offence. The Australian adversarial system, which was transported to Australia from Great Britain with the convicts, relies on the parties, through their lawyers, to decide how the evidence unfolds before a jury. Unlike the European Inquisitorial system, in which the judge decides which witnesses are called, and the order in which they will tell their stories, in the adversarial system such decisions are made by the parties (through their lawyers if they are represented). The stories told by witnesses are tightly regulated by a web of

legislation and common law rules that are ever-evolving. Despite the oath to tell 'the whole truth', witnesses are not permitted to recount everything they know. They are obliged to reveal what they know piecemeal, by answering barristers' questions that are governed by the rules of evidence. Questions eliciting inadmissible evidence are disallowed. Part of the story cannot be told. Evidence about the accused having been involved in similar behaviour or similar circumstances to those currently being tried will usually be disallowed because those stories will tend to be more prejudicial than probative (as explained earlier).

When Detective Sergeant Cook from the Adelaide police homicide team found out that Emily Perry's husband Albert had died of arsenic poisoning twenty years earlier in Melbourne, his suspicions were aroused. But our law has evolved to preserve the presumption of innocence, despite our human tendency to believe in patterns of behaviour. The rules developed by the Australian courts relating to similar fact evidence collectively comprise a complex and important area of law that attempts to inject logic and fairness onto our natural inclination to believe in the old maxim of 'no smoke without fire' once a person is accused (Mallett 2014, 6). These rules are sometimes further distilled into the categories of 'coincidence' evidence and 'propensity' evidence, and they are not uniform around the country. In 1999, Acting Justice Tadgell of the Supreme Court of Victoria noted that similar fact evidence 'has in recent years produced a number of practical problems and it continues to occupy … a ticklish area of the criminal law' (*R v Pearce* 1999, 298). In 2011, Mirko Bagaric noted that 'the law relating to similar fact evidence has become even more muddled, replete with vague concepts and marked by many seemingly result-orientated judgments' (Bagaric 2011, 3). If the parties – usually through their lawyers – disagree about whether the rules are being followed properly the trial judge will adjudicate. Where one or more parties appear in court without legal representation, and do not know the rules, this can create additional layers of difficulty (see, for example, Spencer 2018) but the topic of self-represented litigants extends beyond the scope of this thesis.

Similar fact evidence is one of the main subjects of 'error' in judicial direction in criminal trials in South Australia leading to convictions being overturned (Tilmouth 2015). Judge Sydney Tilmouth's research shows that both lawyers and judges grapple with the nuances of the rules that dictate when evidence of similar facts may be put before a jury, how the jury is able to use such evidence, and what a judge may say to a jury about such evidence. Jonathon Clough has identified that while 'the *principles* (my emphasis) governing the admissibility of such evidence are clear, the search for a rule which will facilitate their consistent application has been the one constant feature of cases in this area' (Clough 1998, 287). A comprehensive analysis of the legal literature in relation to similar fact evidence jurisprudence is beyond the scope of this exegesis. However, the artefact provides a vehicle to explain the law beyond the confines of the elite legal domain that is readily accessible only by those who have specialised knowledge.

The legal rules about similar fact evidence in Australia can be traced back to a case from 1894 called *Makin v Attorney General (NSW).* This was the first case to establish a judicial test for

assessing the admissibility of similar fact evidence and is 'one of the most famous cases in legal history' (Cossins 2013b, 731). John and Sarah Makin were tried in 1893 for the murder of baby Horace Murray whose body was found buried in the back yard of their house in Sydney. Like Emily Perry, the case against them was constructed around similar fact evidence. The baby's mother, eighteen-year-old Amber Murray, had given her baby into the care of the Makins for the sum of 10 shillings per week. The jury heard evidence that on 11 October 1892, two babies' bodies were found buried in the back yard of a house from which the Makins had relocated. Then another twelve babies' bodies were exhumed from different houses where the Makins had lived. The jury also heard evidence from other mothers whose babies had disappeared whilst in the Makins' care. Lawyers for the Makins argued that the similar fact evidence was not relevant to the death of Horace Murray. In the New South Wales Court of Appeal, Justice Windeyer decided that the finding of other bodies, coupled with the evidence of the other mothers, was admissible to show that the Makins carried out baby farming and:

> 'that it was not by a mere accident or coincidence that the [Makins] happened to live in a house in the back yard of which babies happened to be buried… A family might be unfortunate enough to take a house in the backyard of which babies had been buried by a former tenant; but no-one could believe that it was a mere coincidence that a person took three houses in the backyards of which former tenants had secretly buried babies' (R v Makin and Wife, 1893, 22).

The Makins appealed to the Privy Council (this was before the High Court of Australia became the ultimate avenue of appeal in Australia). The Privy Council upheld Justice Windeyer's decision in a contentious judgment – described by Simon Evans as 'baneful' (Evans 1992, 11) – that is still cited today. Annie Cossins concludes that notwithstanding the Privy Council decision, the jury 'returned a verdict that it was not lawfully entitled to make' (Cossins 2013b, 733).

Sarah Makin's death sentence was commuted to life imprisonment but John Makin was hanged on 15 August 1893. On Saturday 19 August 1893, the *Maryborough Chronicle* published a poem that ended with the lines:

> *His name, now fresh in memory,*
> *And stained with guilt and crime,*
> *Will sink into oblivion*
> *In the fleeting years of time.*

Like John and Sarah Makin, Emily Perry's name has disappeared from the newspapers, but her legacy endures through the jurisprudence that has evolved from her case that established an alternative test to the *Makin* test almost a century later.

Cossins, also a lawyer-writer, tells the *Makin* story in her nonfiction book *The Baby Farmers*. The artefact now contributes to Cossins' legal narrative about similar fact evidence by telling the story of the *Perry* case. By combining the legal and the literary, this thesis creates new knowledge, building on the epistemological foundations established by Cossins.

The Law Post-*Perry*

There is another important legal reason for choosing the Emily Perry case as the subject for this thesis. This is not relevant to the issue of life writing or true crime but it is very important from a legal perspective. If Emily Perry were tried now, her life story might have taken a very different turn. South Australia now has legislation that allows what is now called 'discreditable conduct evidence' to be given in court if that evidence:

> 'substantially outweighs any prejudicial effect it may have on the defendant' and 'has strong probative value having regard to the particular issues arising at the trial' if it 'relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue' (Evidence Act SA, sub-sections 34P (2) and (2) (b)).

Amendments that were made to the *Evidence Act SA* in 2011 now ensure a lower standard for the admission of similar fact evidence in courts. But prior to these amendments, the legal landscape was very different. A year after Emily Perry's High Court appeal, the South Australian Supreme Court heard another case (*R v Sutton* 1983) that turned on similar fact evidence. The appeal was dismissed, but the judges of that Court commented on the fact that the High Court's decision in *Perry* gave rise to some difficulties which they suggested that the High Court might clarify in the future. One judge admitted that he was 'unable to comprehend' the principles enunciated by the High Court in *Perry* (Justice Wells in *Sutton* 1983, 562). For a lower court to overtly challenge a High Court decision in such a way was rare and audacious.

The audacity did not go unnoticed. The *Sutton* case went to the High Court whose Chief Justice, in a distinctly tetchy tone, expressed his displeasure at the South Australian Supreme Court's view 'that the principles enunciated by [the High Court] in *Perry v The Queen* were both novel and erroneous' (Chief Justice Gibbs in *Sutton* 532). Chief Justice Gibbs stressed that the rule from the *Makin* case still applied and that *Perry* did not create new law. However, Stephen Odgers argues that 'the orthodox view elucidated by Gibbs CJ' and 'the very strictness of the rule … seems to fly in the face of common sense' and requires 'artificial paths of reasoning' (Odgers 1983, 625).

A decade later, another South Australian case involving similar fact evidence was heard on appeal by the High Court. This was the case of *R v Pfennig*. Pfennig's trial judge was Justice Cox, who was the judge in the *Perry* trial, and the prosecutor was Ann Vanstone who had also prosecuted in the *Perry* case. The 1995 High Court decision in *Pfennig* (subsequently heavily criticised) was that similar fact evidence was inadmissible unless there was no reasonable explanation of that evidence consistent with the innocence of the accused (quite different to the reasoning in *Perry*). While scrutiny of the *Pfennig* decision is not necessary for this thesis, it is relevant to note that the decision in *Pfennig* completed a trilogy of High Court decisions on appeals from South Australian prosecutions that relied on similar fact evidence. The *Perry* case remains important as the originating tier of that trilogy in this complex area of law.

After *Perry*, further High Court judgments about similar fact evidence continued to confound

lawyers and judges. Towards the end of the last century, a number of legal scholars (especially Clough, 1998) attempted to clarify the law. The artefact now breaks new ground by exploring the complexity of the law (as it was in 1981) through storytelling, a manner that is anathema to the traditional legal scholarly discourse of analysis and reasoning with which lawyers are familiar. In this way, my research creates new knowledge and challenges what it means to ‘think like a lawyer’.

CHAPTER TWO: LITERARY CONTEXT

Genre-Blending

In Chapter One I explained why Emily Perry's case was, and remains, legally significant. The artefact tells the story of Emily Perry's trial from a legal perspective. However, a parallel aim of this research is to portray Emily Perry 'outside the legal gaze' (Brien 1999, 134) and to reveal her identity beyond her role as 'the accused'. The artefact does not span Emily's whole life in the traditional 'birth to death' linear format of biography, but focusses on her 1981 trial, weaving in relevant elements of her past. I use my own autobiographical voice as the narrator, to explain why the prosecutors fought so persuasively for certain sections of Emily's past to be brought to the attention of the jury, and why simultaneously the Defence lawyers argued that the evidence about her past should be disallowed. The artefact is therefore styled in the manner of a true crime narrative, drawing on some conventions from the true crime genre, but it is also informed and influenced by life-writing conventions and ethics.

This Chapter provides an overview of true crime as a literary genre in order to situate the artefact within its contemporary artistic and cultural context (in accordance with Rule 6 (b) (ii) of the Flinders University HDR Thesis Rules. It does not provide an analysis of genre theory or an expanded understanding of the genre of true crime. Rather, it outlines the epistemological basis of the artefact as a literary work, and in turn, the ethical questions that arise from drafting a narrative about a real case. Chapter Three then explains that it is from life-writing scholarship that I find answers to these questions.

By narrating Emily's story, I add to the cultural capital that already exists in Australian works of true crime. Rosalind Smith argues that the narration of true crime is central to the formation of Australian national identity and notes that the history of true crime writing in Australia began with bushranging tales such as Michael Howe's *The Last and Worst of the Bushrangers of Van Dieman's Land* in 1818 and later a series of works focussing on Ned Kelly (Smith 2008, 18). Smith suggests that 'true crime narratives...are haunted by a diffuse, unresolved and suppressed set of stories that generate their cultural capital' (Smith 2008, 17). Emily Perry's story was not suppressed (despite her own attempts to do so), but the quashing of her conviction and lack of a re-trial have left much of it unresolved.

The outcome of Emily's trial was a verdict of guilty. The artefact follows the case to the High Court which quashed the conviction. As Emily was never re-tried, the artefact cannot legitimately be referred to as a 'true crime' story because according to the law, no crime was committed. The artefact is a biographical account of a woman *accused* of crimes.

Reflecting on *Romulus, My Father*, the biography that he wrote about his own father, Raimond Gaita reasons that 'the distinctive achievement … of biography [is] to reveal truthfully a person's individuated presence in the world' (Gaita 2011, 111). Gaita believes that this is achieved:

'by trying to be truthful in our characterisation of the meaning of what the biographical

> subjects do and suffer … Then we tell a story that could provide an answer when someone asks, 'Who was this person?' (Gaita 2011, 111)

Relying primarily on archival material to find an answer to the question: 'Who was Emily Perry?' prompted me to consider how I might develop Emily as a character using Gaita's framework. This chapter explains how I have depicted Emily as a character whose life extended beyond the High Court case that bears her name and defines her legal legacy. Emily was a musical theatre enthusiast, a war bride, a neighbour, a sister, a daughter, a mother, an ambitious entrepreneur, a business owner, a dancer and an aspiring politician. At times she was a single mother, in an era when this was exceedingly difficult. I describe how banks would not lend her money and that doctors insisted on her husband's permission to perform surgery to control her fertility. She quite likely was also a woman suffering intense grief after the miscarriage of a baby. This practice-led research into true crime writing as life-writing delves deeper than the actual legal case and depicts Emily Perry as a biographical subject.

The end result is an artefact that straddles both true crime and life-writing while also exploring the legal reasoning that led to the outcome of the case. This chapter outlines the epistemological foundations upon which the artefact is crafted. It explains that it was influenced by the concept of the 'nonfiction novel' but that in its final form, it draws on the conventions of both true crime and life-writing.

There is an abundant existing literature about telling true crime stories from the perspective of a creative writer or a journalist. My original contribution to knowledge in this thesis is a new point of view. There is a gap in the current literature as regards telling true crime stories from the perspective of the lawyer. This chapter contends that the lawyer-writer has a unique perspective in crafting a first-person true crime narrative.

Epistemological foundations and influences

Poison Narratives

When sentencing Emily Perry to fifteen years in prison, Justice Cox remarked that 'society has always, and understandably, viewed with particular abhorrence the actions of the slow poisoner' (*R v Perry*, 1981, trial transcript). The history of poisons and the archetypal woman poisoner is a well-explored area of research (see for example Brien 2012) which this thesis does not explore in detail, but acknowledges as an important tangential element to the epistemological foundations upon which the artefact is built. Kay Saunders contends that 'women are more likely to use poison within the domestic setting to achieve their deadly purpose' (Saunders 2014, 330). She argues that Plato's suggestion that all women were given to secrecy and stealth may have 'identified … a response to the powerlessness of women's familial role, whether in fifth-century BCE or in twentieth century Australia' and that 'her invisibility in the home going about her domestic activities, her sheer ordinariness, often hides a darker reality' (Saunders 2014, 330-31). It was indeed Emily Perry's extreme ordinariness that was striking. She dressed plainly, and nothing in her daily life

marked her as unusual. Emily Perry fits the stereotype of the stealthy female killer who subverts the traditional cultural image of a woman with 'essential goodness and innate nurturing capacity' (Saunders 2014, 330). For this reason it is important to acknowledge that the artefact contributes to a substantial tranche of literature that can be called 'poison narratives'. Both components of this thesis contribute to this literature.

Death by arsenic poisoning has occurred in the pages of both fiction and nonfiction for centuries, and expressions such as 'poisoned chalice' and 'black widow' extend the cliché of the female poisoner. Arsenic ingestion causes particularly unpleasant symptoms but few fictional accounts of murder by arsenic confront the horrible reality of this form of death. For example, the classic film *Arsenic and Old Lace* is presented as a black comedy. A notable exception is Flaubert's iconic *Madame Bovary*, whose protagonist suffers an 'almost sadistically protracted death' which has been described as a 'cruelly detailed agony' (Orr 2004, 105). The artefact depicts some of the agony, the ugliness and the loneliness of death by poison. This is not for the purpose of lurid sensationalism but to remind the reader of the reality behind the blandness of the institutional and archival documents that record the events. I do not seek to 'take the remaining secrets of the famous dead and dump them out in full view of the world' as Janet Malcolm has described the work of biographers (Malcolm 1995, 8-9). Writing true crime involves writing about visceral, often ghastly events. While such writing could be accused of attracting only prurient interest, I am not writing to capitalise on scandal. The artefact is a genuine attempt to tell the story of Emily Perry's case, which although sensational, is also of valid legal interest.

Nineteenth-century sensation novels often had a plot that centred on a murder by poisoning, and real poison trials of that era were also regarded as a source of entertainment (Helfield 1995, 161 and 178). As Judith Allen says, murder by poison is 'the most heinous and premeditated of all' (Allen 1990, 113) but it also invites public fascination. Research now suggests that Lucretia Borgia of the Italian Renaissance family was a pious woman who probably did not poison anyone (Bradford 2005) but her name continues to be associated with the myth of the archetypal woman poisoner. In Chapter One I explained that Emily Perry's name is part of South Australia's folklore, and that many myths exist about her, but in Chapter Three I explain why myth and supposition do not find a place in the artefact.

The accusation of poisoning a husband evokes a particular public response because the traditional role of wife, mother and nurturer is subverted through the administration of poison to the one who ought to be able to trust her the most. Killing a husband was for centuries the crime of 'petit treason', the betrayal of trust of a superior by a subordinate, similar to the murder of a master by a servant. Such murders were regarded as a 'threat to the status quo of society' that 'rested on a framework in which each person had an appointed place' (Plater and Milne 2014, 90). Until 1790 the punishment for petit treason by a woman was to be burnt at the stake. One study found that no woman convicted of petit treason was reprieved despite the common occurrence of pardons for serious offences (Gavigan 1989, 365). Saunders reveals that many women convicted of killing

husbands ‘were ordinary women and girls caught up in desperate situations that seemed insoluble except through violent action’ (Saunders 2014, 333) but it is difficult to see Emily Perry as a desperate woman, unless passive, constrained domesticity was the cause of her anguish. Her defiance of her stereotypical female role is a theme that emerges from the trial transcript and there are many hints at her failure to be a nurturing wife. Various witnesses make reference to her being a ‘career woman’, a poor housekeeper and a lousy cook, refusing to cook meals for her husband Albert if he arrived home late. In the artefact, I muse upon the possibility that she may have longed for some excitement beyond the bourgeois boundaries that defined her. Indeed, it is in the dark shadows of this domestic space that true crime has found popularity.

True Crime as a Literary Genre

The Popularity of True Crime

Research reveals that Australian readers are ‘fascinated with the darker side of life’ (Pepper and Evans 2017) and that there is a high interest in crime news (Resta 2008, 33). Trials have been described as ‘boundary maintaining devices’ which ‘help cement social solidarity by re-defining and proclaiming the norms’ (Friedman 1989, 1594). Crime reporting reinforces the maintenance of these social boundaries and the daily reporting of real crime in our own neighbourhoods plays a large part in popular culture. True crime identity Detective Chief Inspector Gary Jubelin whose own character has been portrayed on television in the *Underbelly* series, says that ‘people are fascinated by true crime because it’s a side of society most don’t see’ (Pepper and Evans 2017). In 1995, Noel Sanders claimed that ‘[w]ithin popular Sydney culture, major crime is a major spectacle; as far as audience fascination and media devotedness is concerned, only sport comes within cooee of it’ (Sanders 1995, 114). In the past two decades, true crime titles have progressed from a ‘general assessment as cheap and nasty’ (Brien 1999, 131), to a level of publication that suggests not only that there is an insatiable market for these works but also that this genre has become accepted as genuine literature that is capable of ‘expos[ing] dark secrets and tensions lying at the very heart of society’ (Haebich 2015, 4).

True crime has been called a cult genre ‘which knowingly takes the crime novel as its prototype and tries it out on real life’ (Seltzer 2008, 19) ‘by following the conventions of popular crime fiction’ (Seltzer 2008, 26).

Research has also revealed that there is insatiable curiosity on the part of the public in being able to see real offenders (Jermyn 2007, 120). Some reality television programs invite the audience to laugh at offenders, much like the mediaeval practice of locking criminals in the stocks. This also occurs in news bulletins where offenders are mocked if their criminal activity goes awry. As well as diluting the fear of crime, this discourse of disapproval or condemnation of criminal behaviour is a recurring element of true crime stories, whether they are the subjects of print and television news stories or extended works of book length journalism (such as Derek Pedley’s *Dead by Friday* where the discourse of disapproval is overt). The artefact does not present Emily Perry

as an object of derision but it does attempt to tap into the public curiosity for stories about crime.

Since commencing my research for this thesis, the rise in popularity of true crime documentaries in podcasts and on television (both subscription and free to air) has been exponential, to the point that any examples cited would not encapsulate the enormity of their proliferation. The 'culture of addiction' (Aoun 2004, 153) attributed to crime fiction also applies to true crime, especially on screen, with 'binge-watching' now as customary a phenomenon as 'trial by media', which has long been problematic. Over a hundred years ago, Frederick Deeming claimed to have been 'tried by the press rather than the law' before he was executed for murder in Melbourne in 1892 (Smith 2012, 63). The OJ Simpson case in the USA is recognised as the first real case that combined information with entertainment by the televising of the court proceedings, turning lawyers into celebrities. This exegesis acknowledges the vast array of true crime titles on screen and in podcast form, but focuses on written texts to situate the artefact within a cultural context.

The Nonfiction Novel

In Cold Blood, Truman Capote's 1966 'nonfiction novel' about the brutal murders of four members of a family, the police investigation, and the subsequent trial and execution of the killers was not just a best seller. Its unique style became the forerunner for a genre of true crime. Franks considers that *In Cold Blood* 'promoted the reading of true crime from a leisure activity to a literary pursuit' (Franks 2016, 248). Capote's text employs the narrative conventions of a novel, including 'dialogue and dramatic scenes rather than historical summaries', and 'narration of actual events [which are] as lively as the presentation of fictional worlds' (Herman et al 2005, 397). In the acknowledgments at the front of his book, Capote claims that ['a]ll the material in this book not derived from my own observation is either taken from official records or is the result of interviews with persons directly concerned' (Capote 2008, np). However, Capote uses omniscient third person narration, deliberately eschewing a subjective point of view in a deliberate attempt to remove himself entirely from the text. In this way he maintains his point of view as a journalist.

The epistemological basis of the artefact is rooted in the concept of the nonfiction novel, but it creates new knowledge by telling a true crime story within the framework of law, with the voice of a lawyer. Like *In Cold Blood*, the artefact includes a series of scenes based on official records and interviews. The artefact also includes dialogue that is sourced directly from police interview records and court transcripts. None of the dialogue is invented, for reasons that I discuss in detail in Chapter Three. However, my storytelling differs from Capote's method in that I use first person narration. I have consciously and purposefully inserted myself into the text because my autobiographical voice explains the law and the legal process as the story develops. In this respect my work includes elements of life-writing, drawing inspiration from the works of other authors who have written true crime using an autobiographical voice, including Helen Garner (*Joe Cinque's Consolation* and *This House of Grief*), Bri Lee (*Eggshell Skull*) and to a limited extent, Gideon Haigh (*Certain Admissions*), who each offer their own perspectives on the stories they are telling.

The use of an autobiographical voice shifts the reader's expectations from a plot-driven narrative to something more, because the reader needs a reason to trust the author. As a lawyer-writer, I offer an explanation of the law as the reason to follow my voice. The artefact offers more than just a good story.

The nonfiction novel became a feature of 'new journalism', an appellation said to have been coined by journalist Tom Wolfe. New journalism became an 'important movement in North American literature of the 1960s and 1970s, blurring the lines between journalism and entertainment with its coverage of 'celebrities, subcultures, political protest and court cases of violent crimes' (Herman et al 2005, 397). It has been described as a 'literature of fact' that 'tends to eliminate the distinction between elite art forms and popular culture' (Herman et al 2005, 397).

Matthew Ricketson notes that 'new journalism' is one of a 'profusion of terms' used to describe 'true stories' but that there are broadly two groups of terms:

> 'The first includes the word 'journalism'…as in literary journalism, narrative journalism, long-form journalism, book-length journalism and reportage. The second group includes the word non-fiction, namely literary non-fiction, creative non-fiction, narrative non-fiction and … the non-fiction novel' (Ricketson 2014, 14).

Ricketson ultimately opts for the term 'true stories' as the preferable descriptor that 'everyday readers … best understand' (Ricketson 2014, 18) and in doing so, he focusses on journalism as the framework for telling such stories. The artefact is a true story but my original contribution to knowledge is a transition of the conventions of the 'literature of fact' from the realm of the journalist to the domain of the lawyer-writer, providing commentary – through first person narration – on the complex legal rules that underpin the story. In providing this commentary as a practising lawyer, I am also conscious of specific professional ethics that I discuss further in Chapter Three. The artefact therefore draws on the conventions of true crime writing, while providing a specific point of view that is informed by my identity and experience as a lawyer. It also draws on the ethics of life-writing, also explored in Chapter Three.

True Crime Writing Conventions

In his 2018 monograph *Toward a Theory of True Crime Narratives*, Ian Punnett advocates for a theory of true crime. Punnett describes true crime as 'written in a non-neutral literary voice that is rich in colour and detail, with an emphasis on geography and ethnography as a frame for the crime, the victims and/or the perpetrators' (Punnett 2018, 95). In this respect, the artefact falls within Punnett's description. However, Punnett's assertion that 'scholarship is overdue on effective criteria to determine when journalism crosses the plastic, yellow-taped line into true crime' (Punnett 2018, 10) reinforces my observation that historically, the point of view in conventional true crime texts is informed by journalism. Punnett emphasises that the focus in true crime is on justice for victims and 'a call for action to prevent crime or bring suspects to justice' (Punnett 2018, 195). He argues that a 'theory of true crime' is needed on the basis that it would be 'a breakthrough device that mass communication and journalism scholars can use to organize the study of true crime texts by their most common, consistent elements' (Punnett 2018, 10). This thesis is telling a true crime

story using a different framework. The artefact explores how a framework of law, and a narrative authority as a lawyer, rather than journalism and the journalist, can provide a novel means of writing true crime. The focus is an explication of the law rather than an emphasis on detection and punishment of the perpetrator.

True crime narratives are characteristically about unsolved murders or murders by or of interesting or unusual characters. However, they are not usually about aspects of doctrinal law. Some writers have used true crime to probe the uncertainties of the criminal justice system. In *Joe Cinque's Consolation* and *This House of Grief* Helen Garner examines the complexity of a criminal trial and the concepts of doubt, rage and grief. Chloe Hooper examines Aboriginal deaths in custody in *The Tall Man* and the complexity of the concept of guilt in *The Arsonist*. In *Eggshell Skull*, Bri Lee narrates her own unique journey as a lawyer and a victim of sexual assault. Lee's book is ground-breaking, because she writes about the practice and procedure of sexual assault trials from her own subjective professional vantage point as a lawyer. Lee also uses her own experience as the victim of sexual assault to build tension in her narrative and to add authority to her voice. Lee's perspective is unusual because she is observer, lawyer, and victim, giving her a unique voice. Another lawyer as participant example is Ken Crispin who wrote *The Chamberlain Case* about Lindy Chamberlain, one of the most famous criminal defendants in Australian history whose conviction for the murder of her baby daughter Azaria was quashed in 1988. Crispin acted for Chamberlain and tells the story from the Defence perspective. Bryan Keon-Cohen's *A Mabo Memoir* (Keon-Cohen 2013) is another example. Keon-Cohen acted for Eddie Mabo in one of the most important legal cases in Australian legal history and his book is a lawyer's view of the case. In the artefact, my voice as narrator straddles the territory between the non-lawyer observer (e.g. Garner and Hooper) and the lawyer as participant (e.g. Lee, Crispin and Keon-Cohen). In this respect, the narrative drive of the artefact is different. I am a lawyer-narrator, who did not participate in the case and I have only 'observed' it through archival records. However, my knowledge of the workings of the legal profession and the court system enable me to write from a distinctive point of view.

The Elusiveness of Truth in True Crime

A large proportion of true crime books are written about trials which end in guilty verdicts or long-awaited acquittals (such as Ken Crispin's *The Chamberlain Case*). Gideon Haigh notes in his true crime work *Certain Admissions* that 'most true crime tales conclude … with the incarceration of the guilty and the moving on of the survivors' (Haigh 2015, 179). True crime texts like *In Cold Blood*, *Joe Cinque's Consolation* and *Black Widow* are further examples that are crafted to produce narrative closure that pivots on a guilty verdict. However, unlike crime fiction, where 'the truth is always there waiting for us' (Rolls 2016, 3), there can be a lack of finality in true crime, highlighting, as noted by Katherine Biber, the fact that the 'criminal justice system relies, for its legitimacy, upon the repeated articulation of positivist binaries: innocent/guilty, normal/deviant, true/false, real/imagined' (Biber 2006, 23). It is important to resist the temptation to accept these binaries as

the only narrative alternatives, because the criminal justice system operates in the context of human fallibility and the impossibility of articulating the whole truth. Witnesses in criminal trials may only provide information in response to a series of carefully crafted questions and, for a vast number of reasons do not have the opportunity to tell everything they know about a given set of circumstances. Anna Haebich argues that the rigid dichotomies suggested by Biber can be avoided by 'compelling works of scholarly crime history written across the boundaries of history and fiction, hovering between fact and poetic imagination' (Haebich 2015, 2). This is where the artefact is placed. It is a scholarly analysis of a criminal trial and subsequent appeals to higher courts, based on the evidence given at the trial and other archival material, but enlivened by my own explanations of the legal process and the voicing of my speculations about the characters. This speculation is described in detail in the next chapter. Aoun argues that '[o]ur constant desire for crime dramas indicates that we don't really want to prevent crime – we just want to punish people (allegedly) unlike ourselves' (Aoun 2004, 153). Despite its focus on death and unpleasantness, the crime story is a conservative genre which does little to challenge the established order, or the way that crime should be dealt with (Turnbull 2002, 75). Research has indicated that the restoration of the status quo in crime fiction is a major factor in reader and viewer satisfaction. 'Formula stories' are narratively satisfying because 'the detective always solves the crime, the hero always determines and carries out true justice and the agent accomplishes his mission or at least preserves himself from the omnipresent threats of the enemy' (Cawelti 1976, 389). Audience satisfaction is derived from 'crimes being committed in the safety of our own homes just so as to have law and order restored by bed time' (Aoun 2004, 153).

It has been argued that the claims of true crime writers to truth and 'its tendency to irresolution' set true crime aside from crime fiction (Smith 2008, 20). Franks notes that unlike crime fiction, 'true crime routinely asserts … claims to truth, attempting to establish itself as accurate and authoritative' (Franks 2016, 242). In crime fiction, crime is depicted as resolvable through the discovery of 'the truth'. Surveys of crime fiction readers have identified that the systematic solving of a crime provides an escape from chaotic multi-tasking lifestyles. There is an appealing orderliness to the format of presenting a problem, the investigation and a solution. Mysteries are solved. Good triumphs over evil. '[T]the world of the crime novel is a coherent and essentially moral universe, where, if bad things happen, they happen for a reason' (Turnbull 2002, 74-75). Sue Turnbull argues that crime fiction satisfies the reader's 'need for closure' that is 'absent from … everyday experience' (Turnbull 2002, 75). Smith notes that true crime is 'marked by an often metafictional acknowledgement of the elusiveness of truth, [because] memory is unreliable, and interpretation unstable' (Smith 2012, 71). My artefact works with Smith's identification of the genre's 'lack of resolution, its emphasis on process rather than closure' (Smith 2012, 71). It is my intention that readers will be 'imperfectly released back into their own world' (Smith 2012, 72), but with a heightened understanding of the law and the criminal justice system.

Readers of Emily Perry's story may expect 'the truth' about what really happened. Did she

really poison all those men? Did she try to kill Ken? Some readers may desire a neat resolution, like a crime novel, with all facts disclosed, and the offender caught, tried, convicted and punished, but the artefact cannot provide such resolution. Instead, it demonstrates the fallibility and complexity of the adversarial system as a method of achieving 'truth'. It is the role of the Prosecution to prove the commission of a crime, and the proof must be so strong that there is no reasonable doubt. This is a very high standard. For the true crime reader, reasonable doubt may not be satisfying because it means 'not guilty' and therefore there is a lack of resolution. The conclusion to the narrative told by the artefact is not in the jury's guilty verdict but instead it is embedded in the reasoning of the High Court justices. But if the accused is not guilty, who did it? How will the victims obtain justice? This is the challenge that I faced with writing a true crime story about Emily Perry, whose conviction was quashed, but it is where my role as a story-teller is enriched by my identity as a lawyer. Using the framework of law, I can explain the legal narrative using my lawyer's voice. The artefact provides an original contribution to true crime because of the unique position of the author.

Some true crime texts are 'truer' than others.

In the traditional 'nonfiction novel', the narrator (usually a journalist) observes the trial process. Contemporary Australian titles in this category include Chloe Hooper's *The Tall Man* and *The Arsonist,* Derek Pedley's *Dead by Friday,* Helen Garner's *Joe Cinque's Consolation* and *This House of Grief*, Megan Norris's *On Father's Day*, Bri Lee's *Eggshell Skull* and Ken Crispin's *The Chamberlain Case*. The narrator is not objective, but is involved in the story (Herman et al 2005, 397) and able to observe the raised eyebrow of Defence counsel or the tears of a witness. Such a narrator can hear the sobs and the cries of anguish, and the occasional titters or snide remarks in the courtroom. The tension in the courtroom as the verdict is awaited is experienced personally. Such texts are authenticated through the writers' own participation in the experiences.

Hilary Bonney uses objective narration in her book *The Society Murders,* about the 2002 murder by Matthew Wales of his wealthy mother Margaret Wales-King and her husband Paul King. Like the *Perry* case, this case attracted sensational media attention – 'more media attention than any other killings in Melbourne's history' (Bonney 2003, 237). Bonney relies on institutional documents, especially police statements, as the basis for her narrative, but although she is an experienced barrister, Bonney does not draw attention to her identity as a lawyer-writer. Her authorial voice is not autobiographical. Bonney's narrative also has two additional distinctive features that distinguish it from my story about Emily Perry. Matthew Wales confessed to murdering his mother and step-father, so there is no ambiguity, and no need for speculation in the narrative about his guilt. Secondly, Wales pleaded guilty, so there is no trial in *The Society Murders*. Bonney focusses on the police investigation, the relationships between family members, the submissions made by lawyers at the guilty plea hearing, and the sentence handed down by the judge.

Writers of true crime texts involving 'cold cases' from long ago are also unable to provide a

personal, contemporaneous account of the trial process. Offenders, victims, lawyers, detectives and judges are long dead. Examples include Annie Cossins' *The Baby Farmers*, about the trials of John and Sarah Makin in 1893 and Anna Haebich's *Murdering Stepmothers*, set in 1909. Carol Baxter's *Black Widow* and Caroline Overington's *Last Woman Hanged: The Terrible True Story of Louisa Collins* are accounts of the 1889 murder trials and hanging of Louisa Collins (*R v Collins* 1888), who like Emily Perry was accused of murdering two husbands with arsenic. Samantha Battams' *The Secret Art of Poisoning* reviews the case of Martha Needle who was accused of the murder of her husband and her two children by arsenic poisoning in 1894. Kate Colquhoun's *Did She Kill Him? A Victorian Tale of Deception, Adultery and Arsenic* tells another comparable story. In *Certain Admissions* Gideon Haigh writes as an objective third person narrator, with a final chapter in the first person. These authors base their stories on trial transcripts, newspaper reports and other archival records in order to piece together the narrative as accurately as possible, but offer speculative suggestions where there are gaps in the records or where the 'truth' is unknown.

The emerging genre of speculative biography includes true crime about historical crimes, where imagined details are knitted into the narrative, creating a seamless patchwork of fact and fiction. Examples are Hannah Kent's *Burial Rites*, about the murder trial and execution of Agnes Magnúsdóttir in Iceland in 1830, and Peter Carey's *True History of the Kelly Gang*. Speculative biography is closely linked to life writing. The authors imagine how life might have been, and present these images to the reader. Brien suggests that this 'hybrid genre' in the true crime context is 'true crime fiction' (Brien 1999, 131). These texts rely on actual historical events as the basis for the narrative, but involve fictive devices to enliven and illustrate the otherwise scant historical facts which are available. Brien asserts that:

> '[t]rue crime fiction can, by suggesting possibility rather than asserting certainty, illustrate the fallibility of authors and our active role in constructing the texts we write – all without distracting from the defining function of criminal history which is to reveal and relate the facts of an actual crime' (Brien 1999, 139).

Speculation or 'panfictionality' (the term used by Herman et al 2005) might be considered necessary to flesh out a narrative if research into the life of the subject 'reveals too many crucial gaps in the historical record to construct a conventional criminal history or biography' (Brien 1999, 133). Brien advocates for the use of fiction in criminal history, not 'merely to create dramatic interest' but 'to include[e] … elements … without which the story is incomplete … especially the unrecorded thoughts, emotions and motivations of the protagonists' (Brien 1999, 133-4). There is a strong argument, as put forward by Anna Haebich, that 'a deep connection exists between the constructedness of archival crime sources, close responsive reading and interpretation of the sources and the writing of rich crime histories that hover somewhere between fiction and non-fiction (Haebich 2015, 14). However, the 'truth' aspect of true crime is of particular importance to me as a lawyer-writer.

True Crime and the Lawyer-Writer

Readers ‘trust nonfiction writers not to manufacture or alter the truth as those writers understand it’ (Brien 2006, 55). Not having observed the *Perry* trial, my only windows onto the experience have been the typed transcripts of the committal hearing and the trial, other archival documents and the memories of some of the lawyers who were involved. I therefore had to decide how to fill in the gaps in the archival data. My background as a lawyer urged me to reject the idea of committing to the page anything of which I was not cognisant from my own knowledge. The legal rules of evidence forbid the introduction into a court of any information that is not provided by the actual person who knows it to be a fact, by virtue of having seen it or heard it or said it. Those deeply ingrained habits developed from legal training create friction when they rustle against the literary devices of creating a compelling narrative. I have clarified at the beginning of the story that I have taken every detail, every conversation, every plot point in the artefact from either the court transcripts or statements given to police, but I have deliberately not identified page numbers or source documents for each detail because accrediting every ‘fact’ with its source would clutter the text.

Evidence is crucial in a courtroom where speculation is specifically disallowed. Lawyers are not permitted to ask a witness what someone else might have been thinking or what might have happened, or what emotion another person was experiencing. For example, a witness is allowed to say that a person cried or had a red face, but they are not allowed to speculate about why the person cried or that the person was probably angry. The witness is only allowed to speak about what they saw or heard or experienced. The ‘first general rule of the law of evidence’ is summarised by Hemming, Kumar and Peden as follows:

> ‘to be admissible evidence must be directly or indirectly relevant to a fact in issue, that is, it must render the existence of that fact more or less probable. An alternative way of expressing the same requirement is to say that evidence must be probative of a fact in issue’ (Hemming et al, extracted in Niemann 2016, 2).

If you are a prosecutor in a criminal trial, you can only put forward a 'story' if you can prove it. You have an obligation to demonstrate the 'truth' of a particular version of events, by producing witnesses who corroborate each other's stories. You are required to prove the authenticity and provenance of every document. A prosecutor seeking a guilty verdict bears the onus of proof to dislodge the presumption of innocence and prove all of the ‘facts in issue’ to secure a conviction. ‘Proof is at the heart of a trial. It is its rationale and also its end game’ (Hunter and Henning 2015, 54). A defendant, however, is obliged to prove nothing. Presumed innocent, the defendant may choose to say nothing, and produce no evidence at all. The defendant's lawyer will challenge the Prosecution evidence through cross-examination, trying to make it look unreliable or endeavouring to reveal elements of doubt.

As a lawyer, to imagine someone’s interior world in the context of a criminal trial is anathema to me because my imagination would not be permitted in a court. The imagined interior

monologue of a person on trial for a criminal offence is precisely the information that a trial seeks to elicit. But as a writer, my imaginative interpretation of the characters is critical to shaping a convincing narrative.

To imagine what 'possibly happened' in relation to true crime can be dangerous territory, especially for the lawyer-writer. The law only recognises that a 'crime' has been committed if all of the elements of the crime are established. The fact of a death does not necessarily mean that murder has been committed. It might have been an accident. Or in the absence of intention, the law calls that manslaughter. The law proscribes different pathways depending on whether there was an intention to kill, whether or not the accused understood the consequences of his/her actions, whether or not the accused could foresee that his/her actions would cause death, whether there was provocation and whether the accused was acting in self-defence. Supposition and guesswork about any of these issues is generally prohibited during a trial without evidence to support such suppositions. It all has to be proved, including the element of intention. It is an essential component of the Prosecution case to prove that the accused intended to commit the crime. To assume the intentions of a person accused of murder, and then to speculate about the thoughts and motivations of that person, based on an assumption of guilt, would be to guess at the very thing that the Prosecution has to prove. As a lawyer-writer, to do this would be completely contrary to the presumption of innocence which is the bedrock of the criminal justice system.

In Emily Perry's case, the Prosecution presented circumstantial evidence to prove that she intended to kill her husband and that he did not ingest arsenic by accident. I have written her story as a way of demonstrating the complexity of the use of evidence and to demonstrate to the reader how difficult the jury's task was. I have used the framework of the law to craft the narrative.

I have deliberately retained the ambiguity and uncertainty surrounding Emily's state of mind, rather than replacing the uncertainty with invented content. I indicate aspects of the archival records that I find troubling, or where there are gaps in the evidence, with very clear directions to the reader about what is recorded as having happened and where my own thoughts begin and end. For example, in a scene about a police interview that I have crafted from a police statement, I have speculated about details, as in this example:

> 'Did her hand shake as she held the pages, forcing her to place them flat on the table to control the tremors? Was she able to concentrate as she read her words that were inked with bitter finality onto the pages? Was nausea rising in her gut? Did she carefully turn each page over as she read them in silence?' (Artefact 61).

This strategy makes the speculation clear, generating narrative tension. I have been inspired by Annie Cossins, also a lawyer-writer, who uses a similar strategy in her nonfiction book *The Baby Farmers*, for example:

> 'Her voice from behind her handkerchief may have trembled but she was still defiant. Right to the end, Sarah considered she was not guilty. Was she deluding herself or

was she really innocent of the charges against her?' (Cossins 2103a, 194)

My determination to neither assume nor conclude Emily's guilt derives from my respect, as a practising lawyer, for the Rule of Law. The cornerstone premise of our criminal justice system is that any person brought to trial for a criminal offence is presumed innocent. It is the role of the Prosecution to prove guilt beyond reasonable doubt – a very high threshold. Emily Perry's conviction was quashed and she was never re-tried, so the presumption of innocence was restored. In my narrative, I respect the presumption of Emily's innocence and I have sought to convince the reader of neither her guilt nor her innocence. My creative solution to achieve this has been to highlight the gaps and retain the ambiguity of her state of mind, rather than plugging the gaps with invented content. For example:

> We will never know what Emily might have chatted about as she drove her husband to the Modbury Hospital. We don't know if she tried to cheer him up, or if they drove in silence. I imagine her as the solicitous wife, driving carefully, saying little, offering the occasional reassuring smile for her husband as he sat, sullenly, and in frustration at his lack of control over an ageing and contaminated body (Artefact 13).

Emily Perry's story is an example of one that 'draws its power from the nonfiction truths it tells' (Brien 2006, 61). This is a case where truth really is stranger than fiction. For this reason, in re-imagining the stages of Emily Perry's life, I have adhered to the facts as I have uncovered them though my archival research and I have considered it important to identify the sections of text where I am ceasing to report verifiable fact and where I have interposed speculation and conjecture. Carefully articulated speculation provides the ontological framework for the artefact. For me, this sates the temptation to invent details for dramatic effect as occurred in nonfiction best-sellers such as James Frey's *A Million Little Pieces* (about that author's own experiences in the criminal justice system) and even Truman Capote's *In Cold Blood* which has recently been 'outed' as containing falsehoods and invention, despite the author's longstanding claims to truth (Cavaliere 2013; Peele 2013; Helliker 2013; Bowie-Sell 2013).

For me, the archival sources 'evoke fragments of meaning and emotionally charged imagining' as described by Anna Haebich, about not just their contents but also the 'gaps and silences' (Haebich 2015, 5). I acknowledge those silences in a way that still 'strive[s] for the highest levels of verifiable accuracy' as Donna Lee Brien advocates (Brien 2006, 55). In re-framing the official record of the *Perry* case, the artefact provides a critique and commentary to both the trial transcript and the subsequent appellate judgments. In this way, it does not 'falsify or pollute the historical record' (Brien 2006, 57). It explains the legal record for a readership beyond the legal profession, while simultaneously injecting a level of supposition but that is clearly based on my knowledge of how trial lawyers interact with others in the courtroom.

Honouring the legal significance of this story, but crafting it in a way that appeals to a diverse audience, has been a challenge. Portraying the complexity of the law in a creative format

meant balancing my imagination with the scant information that I had at my disposal to present believable and readable 'characters'. My work 'draws upon narratives of lived experience' so I was forced to ask myself 'whose voice is allowed to speak in the final text?' (Carey 2008: 2). My challenge, as described by Brien, has been

> 'to create a text with the gripping narrative flow of such crime classics as Truman Capote's In Cold Blood, John Berendt's Midnight in the Garden of Good and Evil, and Margaret Atwood's Alias Grace, but which also clearly defines established fact from supposition' (Brien 1999, 137).

Of course, I could have created the artefact as fiction, perhaps by writing in the first person from the perspective of each deceased man. Donna Lee Brien's account of Mary Dean's experiences of poisoning at the hands of her husband is written in the form of an imagined diary, 'allow[ing] Mary to speculate on her husband's motivation' (Brien 1999b, 136).

However, fictionalising the narrative would have required assumptions about Emily, including whether she was guilty, of the crime for which she was tried (attempted murder) and also in relation to the three other deaths. I might have imagined how and why she poisoned four people, and developed imaginary scenes and characters. I might have speculated about what Emily was thinking and how she may have plotted her crimes. Alternatively, I might have presented Emily as a woman wronged by the justice system, as her husband always insisted. However, the aim of the narrative is not to take sides but to explain the reasoning of the judges who made decisions about whether or not the similar fact evidence was admissible. My narrative choice has been to build the text around the similar fact evidence, using an autobiographical voice as the thread through the narrative to explain the legal aspects of this evidence.

East West Street, a different type of true crime book, was influential in helping me to formulate my style as a lawyer-writer. In *East West Street*, lawyer Phillippe Sands explores the genesis of the International Law crime of genocide – 'the destruction of groups' – and how this is different from crimes against humanity – 'the killing of individuals on a large scale' (Sands 2016, xxiv). Sands' memoir simultaneously uncovers his own family history using a personal autobiographical voice and explains the evolution of a complex aspect of International Law using his autobiographical voice as a legal expert. *East West Street* is about not only the lives of those involved in the Nuremberg trials (both lawyers and offenders) but also members of the author's own family who lived through the Holocaust. As a lawyer-writer, Sands does not invent any details, and he discloses where there are gaps in archival material. Using an autobiographical voice, Sands places himself in his narrative, describing his research as it unfolds, and how the law developed and was applied at Nuremberg, 'the moment in which it was said our modern system of international justice came into being' (Sands 2016, xxiii). Encouraged by Sands' style, I tell Emily's story and explore an aspect of the law of evidence using an autobiographical voice that draws its authority from my own experience as a lawyer.

The archival material that I have drawn upon for the artefact does not provide the minutiae

required to bring life to the characters whose voices I cannot hear and who faces I cannot see. I have no indication of whether a witness looked angry, afraid, defiant, determined, confused or cornered. There is no record of whether members of the jury laughed or smiled or were shocked or saddened, or if they sipped a glass of water while they gave their evidence. These are the subtleties that authors like Truman Capote and Helen Garner are able to rely on to animate their narratives (although Garner often reminds the reader of her presence while Capote is completely absent).

In *Joe Cinque's Consolation*, Garner describes a witness:

> 'He was a New Yorker in his forties with pale hair and eyelashes, tasselled loafers, and a neatly packed little overnight bag that rested against the leg of his chair…It was immediately plain that Dr Byrne was in his element: he spoke with the relaxed and smiling assurance of a pro… Something about him got up my nose' (Garner 2006, 37).

Garner observes and listens to the New York psychologist and adds the details that she observes, but she also includes subtle fictitious additions about him in her narrative. How did she know, for example, that his overnight bag was 'neatly packed'? Presumably she could not see inside it where there may have been two dirty shirts and a leaking tube of toothpaste stuffed next to yesterday's squashed sandwich. In Garner's text the overnight bag is a metaphor for the man himself and the neatness or otherwise of the bag itself matters little. But for me, it raises the question of whether Garner has invented other details. In the *Perry* case, where the conviction was quashed, details remain important. In my role as storyteller, the missing details provide scope for rich embellishment but I have resisted this option because it matters to me as a lawyer that the details are correct. Whereas Garner's point of view is firmly subjective, my narrative only includes details that I have speculated about from a lawyer's perspective, because of the legal framework within which I present it. In Chapter Four I describe how I make it very clear where I am speculating within the narrative.

There is a level of responsibility, not only to readers, but also to the subject matter, in writing a true story from the criminal courts. The true crime genre provides a structural basis upon which to craft a narrative but it is from life-writing scholarship that I find answers to the ethical questions that arise. The next chapter provides an outline of the ethical framework that guided my methodology in writing an artefact that analyses legal history relating to people who are still alive.

CHAPTER THREE: ETHICAL ISSUES

Telling a Story Ethically

I have so far asserted that the artefact is an example of true crime writing with the important qualification that although its subject matter fits relatively snugly within the true crime genre, it is not completely comfortable there, because the guilty verdict was quashed. This raises the question: what is a fair way of writing about a woman brought to trial for attempted murder, who always maintained that she was not guilty? What is the ethically sound way to present this as a story for public consumption? The answers to these questions lie in the scholarship of life-writing.

Life writing 'has become an important umbrella term for considering the array of methods and texts which enable life storytelling' (Cardell and Douglas 2013a, 1). Paul John Eakin describes the genre as including 'the protean forms of contemporary personal narrative' (Eakin 2004, 1). Stephen Wade acknowledges that 'the best crime writing comes from the understanding and re-telling of the human situation at the core of the story … The moral consequences are as important and intriguing as the legal ones' (Wade 2009, 9). My challenge has been to maintain the fascinating reality of a remarkable story, while preserving the dignity and humanity of all the characters. I seek to 'tell a story about [other people's lives] in a way that does not hurt, exploit or misrepresent them, and … in a way that preserves [my] integrity as the writer' (Carey 2008, 1). This chapter reveals and analyses the ethical issues that arise in writing a nonfiction narrative that is both true crime and life-writing, with a focus on Emily Perry as a biographical subject and the lives of her family members who are part of her story.

There are also questions that I must ask myself as a lawyer-writer about an ethical method of writing about members of a profession to which I belong. The subjectivity that I introduce into the narrative by writing from my own point of view as a lawyer lends credibility to my authorial voice, but it also adds an additional ethical dimension. How should I present a narrative that includes my professional colleagues and leaders? How can I write about characters who are now very senior members of a profession which is steeped in hierarchy and in a tradition of deference and respect? How do I preserve my integrity as a lawyer? To answer these questions, I draw on legal professional ethics.

Life-Writing Ethics

In the film *Capote* (based on the book by Gerald Clarke), Truman Capote is depicted as a mendacious, manipulative egotist who is self-absorbed and duplicitous in his quest for a story, which ends up as the best-seller *In Cold Blood*. Capote lies to one of his main characters (coincidentally also called Perry) on several occasions in order to inveigle narrative details from him. Capote's subjects are merely material for his art, graphically exemplified in the scene when the Court orders a stay of execution and Capote laments that 'all I want to do is write the ending

and there's no end in sight'. The filmic depiction of Capote as a selfish liar may be untrue and unfair, but it served as a warning to me that writing the story of Emily Perry must be handled with care, because many of the subjects are still alive and may not take kindly to being depicted in any way other than a true representation of the facts as they unfolded in 1961 and 1981.

Emily Perry's life intersected with the lives of many others. I considered it important to respect the sensitivities of surviving family members, mindful of the need 'to include considerations of harm, benefits, and power dynamics' (Douglas 2015, 272). When writing true crime, the people left behind – parents, children, partners, relatives, witnesses and their families – are those whose sensitivity to the case should be considered. Megan Norris approaches this responsibility with necessary compassion in *On Father's Day*, outlining her reason for telling this story in the dedication of the book, which is to the three boys who died when driven into a dam by their father:

> 'Your mum promised to be the voice you were denied on Father's Day 2005, and I promised her I would be hers. This is her story and yours' (Norris 2013, np).

In crafting a narrative from archival material, I have had the opportunity to provide a framework for readers to visualise the protagonist as a character more rounded than the stereotypical 'black widow' caricature that is perpetuated in popular mythology. Smith notes that in Australia there is 'a tradition of national mythmaking surrounding criminal figures' (Smith 2008, 17) and this is typified in the case of Emily Perry. The aim of the artefact is to 'successfully re-narrate the protagonists' stories in what could be described as fully fleshed, satisfying biographical studies' (Brien and Franks 2016, 2). The creative work will hopefully remind readers that all cases that come before the courts are about real people with stories to tell. Some of those stories are ongoing. I honour all of those stories and respect the humanity of all those whose lives were touched by the life of Emily Perry.

In Chapter Two, I explained why as a lawyer-writer I choose only to speculate in a way that is signposted to the reader in order to maintain my authorial 'legal' voice. There was also an ethical dimension to this choice. The artefact recounts a 'cold case' but it is not as 'cold' as those used as subject matter in the trial narratives of Colquhoun, Battams, Overingham, Baxter or Cossins, whose narratives explore trials from a century or longer ago. In my work, both the accused and 'victim' (here I note that Ken Perry denied that he was a 'victim') are deceased but many of the other characters are still alive, rendering the opportunity to indulge in speculation an ethically challenging proposition. The ethical dimensions of inventing details are diluted, but not eliminated, when the characters are deceased. Although it is not legally possible to defame the dead, there is a moral choice involved in how one depicts a character who is no longer able to verify or correct an author's representation. In this respect, true crime narratives share the same ethical dimensions as life-writing.

Emily Perry maintained her innocence until she died at the age of 85, in 2012. when her death sparked a final flurry of media attention. The death notice published in *The Advertiser* read '[a]t peace at last' (Debelle 2012, 36). I gave serious consideration to whether writing this artefact

would disrupt that peace and be inappropriate, given that members of her family are still alive. Six days after her death *The Advertiser* newspaper published an article about the case headlined 'My loving wife was no serial poisoner.' Ken Perry, by now an old man, lodged a complaint with the Australian Press Council on the grounds that the article was 'unfair, unbalanced and showed inadequate regard for the privacy and sensibilities of her family and friends, especially as it was published only a few days after her death.' In demonstrating his right to insist on appropriate adherence to journalism ethics and standards, Ken argued that the *Advertiser* article focussed only on charges which were ultimately rejected by the courts and it did not adequately emphasise the High Court's criticism of the forensic evidence against his wife. He also complained that the article made no mention of her lifetime of contributions to the community. The Press Council, in adjudicating on the complaint, concluded that:

> 'given the extraordinary and highly-publicised nature of Emily Perry's legal battles, it was not inappropriate to focus on them in an article following her death despite the pain that this was likely to cause her husband, family and friends. It was especially important, however, that such an article be fair and balanced' (Press Council of Australia 2012).

The Press Council concluded that the article lacked adequate balance because it focussed on information which tended to raise suspicions about her than on significant exculpatory material which was readily available (Press Council of Australia 2012). The Council upheld the complaint, applying General Principal 1: '*Publications should take reasonable steps to ensure reports are accurate, fair and balanced'* and General Principle 4: '*News and comment should be presented honestly and fairly, and with respect for the privacy and sensibilities of individuals. However, the right to privacy is not to be interpreted as preventing publication of matters of public record or obvious and significant public interest.'* (Press Council of Australia 2012).

The Press Council's ruling raises three important issues. First, it confirms the public interest in the case. Secondly, the subject matter remained highly sensitive while Ken Perry was alive. Thirdly, it reinforces my aim to maintain a balance between the ethical issues of accuracy and fairness and the significant public interest in true crime.

In Chapter Two, I also demonstrated that the lack of resolution is a particular characteristic of many true crime stories. This characteristic necessitates a particular ethical focus. The aim of the artefact is to re-interpret a historic legal case but it is also the story of a family, including four children, whose experience was traumatic. They grew up in the knowledge that their father (step-father to one of them) died a horrible death and they would have been aware from a young age that their mother was suspected of his murder. A teenage son who never knew his own father was left behind in Melbourne and his three sisters were uprooted from everything they knew and deposited in a boarding school in South Australia before living with a bad-tempered tyrant whose alcoholism must have been frightening. The girls took charge of the family cooking and cleaning which included washing the soiled underwear of their new father figure who yelled at their pet cats

and spent most of his time drunk in bed, where they ultimately found him dead. Although the creative artefact is not intended to be that classic life narrative text, the 'representation of a difficult childhood' (Cardell and Douglas 2013b, 39) it does enter that territory, and therefore ethical issues arise in relation to raking up memories that family members might prefer remain submerged in the past.

'Who are the gatekeepers of what it is morally acceptable to write about in life narrative?' (Cardell and Douglas 2013b, 45). Cardell and Douglas raise this question in the context of childhood memoir and sexual abuse but it is equally relevant as a question relating to the experiences of children who are the secondary victims of the death of a parent which may have been murder. Cardell and Douglas note that critics seem to require trauma survivors to narrate 'in a way that satisfies the dominant cultural scripts of the time' (Cardell and Douglas 2013b, 49). Nancy K. Miller's research into Marjane Satrapi's *Persepolis* (Miller 2007) was only tangentially relevant to my research (Miller explores the relationship between the protagonist and her female relatives), but it prompted me to consider researching the relationship between Emily Perry and her adult children and how their extraordinary childhoods shaped their lives and their individual relationships with their mother. This is a topic that could not be avoided if I were to contact them as part of my empirical research. However, I decided not to contact any members of the family because I was aware that the family members would be unlikely to want to speak to me and I had no desire to cause distress or harm. In the artefact, I allude to the difficulty that each child must have experienced when giving evidence at their mother's trial, mindful of the concern expressed by both the former prosecutor and the senior detective who investigated the case. When interviewed, they were both anxious that my project not upset Emily Perry's daughters. I respected that concern. I did have occasion to speak to a journalist who knew one of the daughters and agreed to contact her and invite her to contact me if she wanted to participate in an interview. I heard nothing further and subsequently decided not to attempt to contact family members (discussed further in Chapter Four), mindful of Eakin's observation that relationships between parents and children are 'the focus of moral scrutiny' (Eakin 2004, 74). Delving into this sort of judgmental territory is neither the aim nor the scope of the artefact. In addition, even if family members had consented to be interviewed, the level of consent may have been problematic, especially if I used information or portrayed events in a way that family members may not have liked. As Couser puts it, 'consensual relationships involving trusting cooperation have unique potential for treachery' (Couser 2004, 6).

Nick Enright's fictional play *The Property of the Clan* and film *Blackrock* (inspired by the facts of a real case) generated controversy in the Newcastle community who had welcomed and trusted him, but felt betrayed by work which he insisted was fictional. Brien argues that the 'ongoing problem for Enright-as-author was not how or why he wrote those works. It was, instead, how audiences read, and understood, not only his texts but also his intentions' (Brien 2009, 4). I agree with Brien that 'readers of nonfiction works, such as biography or history, while not naïvely accepting everything the author presents, engage with those works principally because they are

seeking some biographical or historical truth' (Brien 2009, 5).

David Carlin explains that in writing a memoir about his father's mental illness and suicide, and exploring the specific cultural circumstances of the events, he was 'forced to negotiate the ethical dilemmas faced when other people's stories intersect with one's own' (Carlin 2009, 1). Although his now deceased father could not be affected by Carlin's writing or how much is invented, he concludes that 'the central issue … is whether [his] father would be happy with what [he is] doing, whether [he is] doing justice to his memory' (Carlin 2009, 4).

> 'But what about all the other characters in the story who live on? What are the ethical issues I face in writing about living people in a memoir? My argument, to begin with, is that there is no way I can purport to represent them 'objectively', but that on the other hand I have a responsibility to represent them truthfully – that is, not to misrepresent them' (Carlin 2009, 5).

Carlin's ethical stance has been useful for me, recognising that I have a responsibility to represent the characters in my artefact truthfully and not to misrepresent them. Later in this chapter I disclose why this was particularly poignant for me as a lawyer when writing about the lawyers in the case, but for now I will focus on Emily herself. I had the option of inventing aspects of Emily Perry, as David Carlin did in the biography of his father. Carlin refers to his 'imaginative investment in the material' (Carlin 2009, 3) to add detail to the story, such as when his father joined the Navy in 1945. Carlin, unsure of how his father travelled from Western Australia to Melbourne, places him on a train and puts him in uniform to determine the way he will interact with other characters (Carlin 2009, 3-4). Similarly, I have the benefit of my own memories of Adelaide in 1981, though not of the trial itself. This places me in a similar position to Carlin but different from that of, for example, Helen Garner, who sat in court and was able to observe and document the interactions between the participants who became characters in *Joe Cinque's Consolation* and *This House of Grief*. I had no opportunity to observe the demeanour of the witnesses and note the frisson of tension that would have ebbed and flowed through the court room during Emily's trial. I am obliged to imagine the courtroom as it was in 1981, based on the archival material, and personal observations of the courtroom that remained relatively unchanged when I wrote the artefact. I had to imagine how the voices cascaded and descended, how glances were exchanged and what the mood might have been. I was not there to 'read' the room.

Towards an Ethics of True Crime

When I first started this research, my attention centred on the lawyers and the legal complexity of the case, but a post-mortem photograph of Albert Haag (Emily's Melbourne husband) recalibrated my understanding of what I am writing about in telling Emily's story. I describe this in the artefact:

> 'I am looking at an A4 sized black and white photograph of a man's face in extreme close-up … It is simultaneously confronting and compelling and I turn it over. I shouldn't be looking at this. This is private. It's personal. He wouldn't want me

gawking at him in his state of non-existence, in these circumstances over which he had and still has no control. Then I flip it over and stare at it again' (Artefact 24).

I felt that I was violating the most sacred of privacies, and yet I was drawn to this image in a crudely voyeuristic way. Suddenly my research was not merely about a woman accused of attempted murder, but about a man who was unable to tell his own story. I wanted some sort of truth to emanate from that glossy photograph. I was 'looking … for hints, for directions, for inspiration' (Doyle 2013, 2) from this archival material. Witnesses gave evidence at the trial that before he became ill Albert had a deep strong voice and I wanted his 'muffled and buried voice' (Doyle 2013, 2) to speak to me. Then suddenly, I realised that it was not about him speaking to me. I needed to speak for him.

The artefact tells a story of allegation, innuendo and suspicion, layered with parochial folklore. There are a number of individuals who might claim to own this story, or have rights to its telling. Smith identifies the 'methodological problems attached to a genre that relies simultaneously upon a rhetoric of truth claims and the activation of myth, superstition, gossip and story as its narrative strategies' (Smith 2008, 18). Urban myths about Emily Perry in my home town of Adelaide are usually told through sniggers about poisoned sandwiches and polite refusals of cups of tea. As a writer, I see the myth, superstition and gossip as rich pickings for a potential best-seller. But as a lawyer, I seek to reach beyond the gossip and explain the legal context in which the plot unfolds. During the research process for this thesis, many people had stories to tell me of rumours they had heard about Mrs Perry which may have made for salacious reading but I have made a deliberate authorial choice to resist their inclusion.

Thomas Couser poses an important question: 'What are the author's responsibilities to those whose lives are used as 'material'?' (Couser 2004, 34). Couser 'is especially concerned … with the representation of subjects who are vulnerable to misrepresentation or betrayal because of some disadvantageous condition, particularly certain kinds of disability' (Couser 2004, 7). Couser refers to Jeffrey MacDonald who was convicted of the murder of his wife and two daughters. MacDonald invited writer Joe McGinniss to be an official member of the Defence team, to be privy to all solicitor/client confidences, in order to write MacDonald's story. By the end of the trial, McGinniss was convinced of MacDonald's guilt and his book *Fatal Vision* portrays MacDonald as a brutal killer. MacDonald's level of 'vulnerability' as a convicted murderer is arguably significantly less than the vulnerability of other subjects considered by Couser, including those with disabilities or those who are the subjects of euthanasia narratives. I do not consider Emily or Ken Perry to be 'vulnerable subjects', primarily because they are deceased, but also because I have never had any contractual relationship with either of them, and the case is part of the public record. However, I do acknowledge that surviving family members and others whose lives were touched by the case are vulnerable. This thesis contributes to Couser's 'move toward an ethics of auto/biographical representation' (Couser 2004, 7) by suggesting that writing true crime warrants a series of ethical considerations in the same vein as those required for life-writing.

I have found Couser's terms 'encasement' and 'disencasement' helpful in navigating this ethical territory. Couser notes that when doctors hear stories from their patients, 'some flattening of the story is necessary for it to be useful in diagnosis'. Couser uses the term 'encasement' to describe this 'purposeful and presumably benign alienation of patients from their stories' (Couser 2004, 95). In Chapter Four I liken this to the way that witnesses give evidence in court. Couser describes the stories told by Oliver Sacks as 'disencasement'. Sacks' stories in articles, television documentaries and books including *Awakenings* (also made into a film) and *The Man who Mistook His Wife for a Hat* are about his own patients. According to Couser, Sacks 'attempts to convert pathography into biography, patients into people. In doing so, he violates the clinical convention of the effacement of the physician' (Couser 2004, 95). I disagree with Couser that this is a 'violation'. Although Sacks goes beyond the usual professional distance between doctor and patient, in my view this is not a negative quality. I see Sacks' writing as an exercise in empathy, and in that respect, the 'disencasement' of his subjects is not harmful.

In the context of my attempt to be empathetic in my portrayal of a legal case, the artefact can be seen as an example of disencasement. However, there is an important distinction between my work and Sacks' work. Sacks wrote about his own patients. I did not act for Emily Perry, so I owe her no professional duty of loyalty that would have existed had she been my own client. I believe that my research does not transgress the ethical boundaries that (as Couser alleges) Sacks treads somewhat precariously.

While the popular appetite for crime stories seems to be insatiable, it is important to acknowledge that authors in this genre carry a heavy responsibility. Publishers agree that putting the word 'murder' on the cover of a book increases the chances of a sale (Wade 2009, 6) but these stories cannot be written with impunity. Writers of true crime narratives bear a responsibility to respect the ethical dimensions of using real people as 'material'. Writers who use this material for texts that go beyond mainstream media have obligations to be aware of the intense emotional toll that a criminal trial takes on all of the participants and the fact that their use of other people's lives as material is fraught with ethical dilemmas. Cassandra Pybus has acknowledged the need 'to be alert to the moral responsibilities of writing a book which impinges on the lives of strangers who are inevitably touched and pained by the events in [a] narrative, even when the central characters are long since dead and gone' (Pybus 2000, 119). An ethical brake needs to be applied to true crime writing to prevent acceleration into the territory of giving offence and reviving pain for those whose lives have been affected.

In addition, the lawyer-writer of true crime carries a supplementary burden of responsibility towards readers, many of whom are not familiar with court processes and the criminal justice system. I feel obligated as a lawyer to describe court processes accurately and explain what each step means. It is of critical importance not to prejudice a fair trial or any appeal or re-trial when writing true crime (although this was not an obstacle for the writing of the artefact as Emily Perry is deceased). A criminal trial is intense and emotionally draining for everyone involved. Fear, anger,

sorrow, loss, quests for truth and quests for justice all play a part and linger within families and circles of acquaintance long after the last clerk has left the court room and the barristers have moved on to other cases.

It is also crucial to recognise that images of crime, victims, offenders and the criminal justice system presented through fiction have a direct influence on the attitudes of consumers of popular culture, especially if those consumers have little or no direct experience of crime (Rader and Rhineberger-Dunn 2010, 233). When crime is presented as true crime, readers are also likely to accept and believe any information about the court system which is provided, so writers and publishers have a duty to get it right. This duty is magnified for the lawyer-writer.

True Crime through a lawyer's lens: professional ethics

Professional ethics are relevant to my framing of a true crime story within law rather than journalism, as discussed in Chapter Two. Lawyers and journalists abide by different ethical codes. Lawyers have a duty to act in the best interests of the client, in addition to their overriding duties to the court. However, journalism ethics are based on the notion of the public good, and the public's 'right to know'. The scope of this thesis does not extend to a deeper discussion about the professional ethics of lawyers and journalists but I have elsewhere argued that 'the ethical positions of lawyers and journalists are sometimes diametrically opposed because their ethical goals are so different' (Spencer 2012, 110).

In Chapter Two, I explained that I have created the artefact using an autobiographical voice as the thread through the narrative to explain the legal aspects of the similar fact evidence. When telling people that I am writing about the Emily Perry case, the response often includes a recollection of 'that woman who poisoned her husband' but the collective memory appears to be mostly ignorant of the quashing of the conviction. I have considered it an ethical duty to write the artefact in a manner that clarifies her legal status. My technical expertise as a lawyer, combined with my intertextual knowledge of literary and cultural theories provide me with the qualifications to perform this research and create this work. However, being a legal practitioner also means that I have profession-specific ethical responsibilities. The vast body of knowledge that constitutes the topic of legal ethics extends beyond the scope of this thesis, but it is important to note that upon being admitted to legal practice, I swore a public oath that I would:

> 'diligently and honestly perform the duties of a practitioner of this [Supreme] Court [of South Australia] and … faithfully serve and uphold the administration of justice under the Constitution of the Commonwealth of Australia and the laws of this State and the other States and the Territories of Australia' (CAASA 2006).

Inherent in this oath is the acknowledgement that I will uphold the ethical traditions of the legal profession and not bring the profession into disrepute. Australian lawyers operate within an ethical framework that is constructed partly from common law rules that have evolved through the courts from centuries of tradition, partly from rules that are now enshrined in legislation and partly

from Codes of Conduct that prescribe appropriate ethical behaviour. This has influenced how I approach writing the lawyer characters.

The principal lawyer who represented Emily Perry at her trial is deceased. The other three lawyers later took up judicial appointments; one is now retired. At the time of writing, one has just been appointed to the role of Independent Commissioner against Corruption in South Australia, a very senior and prestigious role, representing scrupulous ethics and integrity. Three of the main characters therefore play (or have played) significant senior public roles in the administration of justice and I have been mindful of whether analysing the role of each character in this very high-profile case might be considered disrespectful or unprofessional. As a lawyer I am aware of these three 'characters' as my professional superiors. They are senior and venerable members of the profession, and I owe them respect and deference. But as a writer, I need to see them as rounded characters, to be viewed by the reader as flawed and fallible human beings, open to humour, criticism and blame, even mockery and disdain, like anyone else. If my writing is too guarded, I risk a lack of authenticity and vibrance in the manuscript. And yet the maintenance of my name on the roll of legal practitioners depends upon my adherence to the rules of professional conduct which include upholding duties to be honest and courteous (Law Society of SA 2014, Rule 4.1.2) and not to bring the legal profession into disrepute (Law Society of SA 2014, Rule 5.1.2). I have taken extreme care to maintain my professional integrity as a lawyer while simultaneously writing an authentic account of the characters involved.

I did not act for Emily Perry, so I owe her no professional duty of loyalty that would have existed had she been my client. However, in recounting their personal memories about the Emily Perry case, the lawyers I interviewed are duty-bound not to breach client confidentiality and so have been unable to tell me what their instructions were and what advice they gave. Breaching confidentiality would be professionally unethical and it would have been equally professionally unethical of me to ask a lawyer to breach their duty of confidentiality. In writing about a real case my obligation to be a 'fit and proper person' extends beyond the practice of law (Law Society of SA 2014, Rule 5.1 and *Legal Practitioners Act 1981* (SA) Sections 15, 20AC and 69(b)). Legislation mandates that my conduct must be that of a fit and proper person to hold the position of legal practitioner, even after I step away from my desk and beyond my job as a lawyer (*Legal Practitioners Act 1981* (SA) Sections 297 and 69(b)). The scope of this thesis does not extend to a thorough examination of the ethical framework that underpins the practice of law but professional legal ethics are mentioned here in the interests of acknowledging the wider ethical boundaries of the research conducted for this thesis.

Lawyers owe a fiduciary duty to their clients from which springs a duty of confidentiality (Law Society of SA 2014, Rule 9). Trust lies at the heart of the lawyer-client relationship and clients are entitled to absolute discretion when divulging information to their lawyers. It is a serious breach of legal ethics for a lawyer to divulge information that has been provided in the context of the confidential lawyer-client relationship. The duties of confidentiality and loyalty last beyond the

retainer, and beyond the life of the client. There is no end date on a lawyer's obligation to keep a client's information confidential (Dal Pont 2013, 336). This duty of loyalty is a distinguishing feature of a lawyer's professional ethics.

The lack of a duty of loyalty was at the heart of the controversy in the MacDonald / McGinness case. McGinniss was able to gather material for his book *Fatal Vision* because MacDonald 'made McGinness an actual member of the defense team' (Couser 2004, 1). MacDonald's legal case against McGinness settled out of court but it raised the question of whether there is an ethical duty, even if not a legal one, to be clear about the use to which an interviewee's information will be put, and possibly that an interviewee has a right to approve of their portrayal. Janet Malcolm describes a journalist's betrayal of a consenting subject in order to 'write a story of his own' as 'treachery' (Malcolm 1990, 3). However, I have no contractual duty to represent Emily (or any of the other characters) in any particular way, as was expected of journalist McGinniss when he was engaged to write MacDonald's story.

Couser notes that McGinniss did not breach any professional ethics by publishing his unexpected account of the case after the trial (Couser 2004, 7). Had McGinness been a lawyer, publication of this material would have been a breach of his ethical duty to his client and he would have faced disciplinary proceedings, quite likely resulting in a loss of his right to practise law because it would have been regarded as a fundamental breach of the lawyer-client relationship. McGinness had all the benefit of being privy to confidential information (that MacDonald only divulged because of the protection of lawyer-client privilege) with none of the overarching responsibility. This was at the heart of what MacDonald regarded as a betrayal. Couser 's view is that '[t]he ethical scandal of the book is that it barely acknowledges McGinniss's closeness – physical and emotional – to MacDonald' (Couser 2004, 3). My view is that the ethical scandal originated in the error of allowing McGinniss to be privy to information to which only the Defence lawyers should have had access. The Defence lawyers were bound by professional ethics to maintain MacDonald's confidentiality and to remain loyal to him as a client. There is nothing unethical in a lawyer writing a book about a case, but the duty of loyalty to the client still exists. Ken Crispin, for example, was bound by his duty of loyalty to his client Lindy Chamberlain in writing *The Chamberlain Case*.

A lawyer is part of the criminal justice system, not an external observer. I have a duty to uphold the administration of justice and not to bring the legal profession into disrepute. I carry the responsibility of representing the law, and the legal system. Even cloaked as a 'writer', I cannot evade that responsibility. This may be why there are not many lawyer versions of trials, by contrast to stories by detectives and journalists. It is precarious territory. The next chapter reveals how I developed the artefact as a compelling story (after all, it's about a sensational trial and some exceptionally curious characters) while adhering to the ethical principles that I have outlined in this chapter.

CHAPTER FOUR: CREATIVE METHODOLOGY

A Reflective Analysis

This chapter is a reflective analysis of some aspects of the methodological process involved in structuring the artefact and explains why the lawyer-writer faces specific methodological challenges. It explains my research methodology and identifies the specific creative questions and uncertainties faced by the lawyer-writer. In responding to those questions I contribute important new knowledge to the existing domains of true crime and life-writing. By explaining my methodology, I aim to provide a formula for a lawyer writing an ethical account of a real case that provides narrative satisfaction (in a storyline that captivates the reader's attention) and explains a complex area of law to readers who do not have access to the elite domain of knowledge that is only usually acquired through legal education.

The content of the artefact comes from archival data and interviews with some of the characters. This chapter focusses on my use of those sources. I also read, watched and listened to many true crime stories that brevity forbids me to expand upon. These texts, films and podcasts. provided a valuable source of data which informed structural and stylistic decisions within the text of the artefact, in response to the research questions that arose from the archival documents. I also attended a number of public lectures and presentations given by crime writers. In addition, a range of academic literature provided the epistemological basis of my creative choices, and assisted my interpretation of the data from the archival material and the interviews, especially in relation to the level of speculation about the characters and their motivations (as discussed in Chapters Two and Three).

Data Sources

Archival material and institutional documents

The starting point for my research was the official record of the 1982 High Court case of *Perry v Regina* which is recorded in Volume 150 of the *Commonwealth Law Reports*, readily accessible at no cost in any law library or online. This comprises four separate written judgments that were handed down by the High Court justices who heard the final appeal. These four judgments provide an outline of the facts that were revealed at the trial in the Supreme Court of South Australia. Each judge also provides reasons for why they believe the evidence should or should not have been admitted. The High Court judges were divided in their views about the similar fact evidence and did not unanimously agree that it was all inadmissible. A close analysis of the High Court judgments was therefore required for two separate purposes: the legal reasoning behind the decision to quash the conviction and the story behind the case.

The next step in my research methodology was to working backwards in the judicial process, applying a similar analytical reading to the judgments handed down by the three justices

of the Full Court of the Supreme Court of Supreme Australia. These three justices heard Emily Perry's appeal against her conviction but they unanimously upheld the guilty verdict. It was their decision that was subsequently reversed by the High Court. These judgments are readily accessible in Volume 28 of the 1981 *South Australian State Reports*, also easily obtainable.

These official legal records provide a basic chronology about Emily's relationships, the deaths of three men, the near-death by poisoning of her husband Ken, and an analysis and interpretation of the law by each judge, but not enough narrative detail for a page-turner. I make specific reference to these law reports in the Preface to the artefact, deliberately opening the narrative in the law library of the University of Adelaide where I completed my undergraduate law studies in the 1980s. This provides a sense of time and place that is immediately identifiable to Adelaide readers from the legal profession, especially those who attended law school in that era when it was the only law school in South Australia. The Preface also introduces me as the narrator. Using an autobiographical voice influenced the choices I made in shaping the archival material. My presence in the text makes transparent that the artefact is my personal interpretation of the official record. It is a lawyer's story about Emily Perry.

I knew that I would find the narrative detail that I needed in the transcript of the Supreme Court trial, but this was not as readily accessible. Although criminal cases are heard in open court, trial transcripts are not public documents and they are only available on application, usually only to parties involved in the case and usually for a fee. However, upon application for access to the transcript (and a waiver of the fee), I was granted permission by the Chief Justice of the Supreme Court of South Australia to view the transcript for the purposes of research. The South Australian Police also facilitated the provision of a copy of the transcript of the Committal proceedings in the Magistrates Court (which occurred before the trial). This was provided on a CD from the Office of the Director of Public Prosecutions.

The trial transcript comprises 4,431 typed pages. I spent many hours at the Supreme Court Registry reading it. A close literary analysis provided me with an abundance of information from the 164 witnesses who gave evidence, and from this I was able to document the chronology of events that would form the narrative arc of the artefact. A close consideration of the questions asked of each witness in both examination-in-chief and cross-examination also gave me an insight into both the Prosecution and Defence cases.

Any trial transcript records not only the evidence of witnesses but also the submissions of counsel. From my own personal experience as a lawyer, I am aware that it is common during a trial for lawyers to make submissions about the relevance of a point or whether or not a question to a witness should be allowed. Sometimes these legal arguments are heard in the absence of the jury because if the judge rules that certain evidence is inadmissible, then the jury must not hear anything about it. The arguments on both sides about whether the similar fact evidence was admissible took up a large amount of time (and transcript) before any witnesses were called. This was very important material, but it gave rise to the question of how much of it I should include. I

knew that lawyers reading the artefact would find the legal arguments of particular interest, while other readers may find them tedious. My challenge was to include enough of this material to explain the law and demonstrate my grasp of the legal technicalities, but not so much that it would deter a wider readership.

A similar challenge arose when dealing with the medical evidence. Weeks of the trial were taken up with evidence from doctors, nurses and forensic scientists who analysed Ken Perry's blood and urine samples that produced positive results for the presence of lead and arsenic. The Crown case depended upon this evidence but the Defence argued that it was unreliable because sometimes mistakes were made at various points in the trajectory between the taking of a sample, labelling it, delivering it for analysis, analysing it and recording the results. A major methodological dilemma arose in determining how to condense this material. As a writer, I needed to provide sufficient description to enliven the narrative without eliminating detail that the lawyer in me knew was crucial. The result is a minimalist rendering of everything I found, retaining the information from the transcript that tells the legal story but eliminating much of the detail that encumbers the reader's attention.

Couser's explanation of writing scenes in memoir is useful here. Couser describes summaries as diegetic – a 'retrospective summation of experience' with an 'emphasis … on sifting through the experience for its residual gist' (Couser 2012, 69). This is how I dealt with the voluminous medical and scientific evidence, distilling it down the essential plot points. This was a different process from creating dialogue from the transcript, which Couser describes as mimesis – a 'verbal transcription of events as they unfold, especially [the] dialogue' (Couser 2012, 68).

A court transcript is generated through a process of amanuensis by a rostered succession of stenographers who record the voices in the courtroom. The typed result records only the words. It does not provide a comprehensive account of what transpired during the trial. It illustrates neither the court room nor the people inside and it chronicles people's words but not how they said them. The scant punctuation comprises only full-stops and occasional commas. There are no exclamation marks and no question marks because these would be the stenographer's subjective interpretation of what was said and how it was said. I have found Liz Stanley and Helen Dampier's interpretation of Jean Baudrillard's idea of the simulacrum (Baudrillard 1983) useful here, because the transcript is 'neither un/real nor a mis/representation but rather a replication of the thing itself' (Stanley and Dampier 2006, 40). The transcript purports to replicate the trial but it is 'both a real and an unreal representation of the events that are written about and concerning which the [transcript] claims knowledge' (Stanley and Dampier 2006, 29). Like archival documents that are referred to within life-writing, the transcript functions as a reference within the story. I make clear that I am telling the story by reference to the transcript. For example:

> 'The transcript reveals Claire's recounting of her family history in a seemingly nonchalant manner, but was she fighting back tears?' (Artefact 137).

Writing a trial narrative without the benefit of contemporaneous observation denied me the

subtleties that authors like Capote and Garner were able to rely on to colour their narratives (as discussed in Chapter Two). They were present, watching the lawyers, the witnesses, and the accused. I incorporate this difficulty into the artefact which reveals to the reader the reason for the absence of description that might otherwise have been interesting, for example:

> 'I can read the voices but I can't hear them. I don't know the colour of anyone's eyes, how shiny their shoes were or if they cried in the witness box. I have many thousands of words but I can't tell if the speakers of the words were shouting, whispering, gloating, cajoling, bullying, or imploring' (Artefact 7).

I have made it very clear in the artefact where I have speculated, in the same manner as Gideon Haigh and Katherine Kovacic have each done in their true crime investigative works about the 1930 murder of a Melbourne woman called Mollie Dean (Haigh 2018 and Kovacic 2018). Brien notes that

> 'Haigh and Kovacic … demonstrate how biographers can deal with evidence that is ambiguous, contradictory or patchy. Both authors discuss the evidence they have and where it was found, and then make it very clear when they are stepping in and interpreting that information. Neither exaggerates, lies nor manufactures material to fill in the missing bits of Dean's story. When they speculate on the aspects of the crime, they signal to the reader they are doing so' (Brien 2019).

My manuscript is an interpretation of the transcript that I can offer as a lawyer. I am able to explain why a barrister is objecting to a question asked of a witness, or why the jury may have been sent out while a legal point is argued. My contract with the reader is more than just that they should expect me to tell the truth. I want the reader to trust me to guide them through the trial process and explain what is happening.

I have explained in Chapter two that my legal training steers me towards committing to the page only those facts that I can verify. My deeply ingrained habits of ensuring that I can prove every fact create friction when they rustle against the literary devices of creating a compelling narrative. In order to provide the detail that a page-turning narrative demands, I have drawn on my imagination, but with the important caveat that I explained earlier. If a detail in the text has been imagined rather than identified through research, I notify the reader. For example, when writing about Emily Perry's early life, I have relied on her unsworn statement from the trial. The unsworn statement (now abolished in South Australia by Section 18A of the *Evidence Act 1929* (SA) (as amended)) enabled a person who was on trial to make a statement to the court in defence of a charge, without having to swear to tell the truth and without being subject to cross examination. The jury would place whatever value on it they thought fit. All we know about Emily's family background comes from this unsworn statement that she read out to the court. She was allowed to give her version of the facts, but she did not take the oath to 'tell the truth, the whole truth and nothing but the truth' before she spoke, and she was not subject to cross-examination. Despite its unreliability, Emily Perry's statement is the main key I have to her character, and it tightly masks

her real nature and personality. It is a fifty-nine-page monologue, a set of bland, dispassionate, facts, crafted by her lawyer. It is her version of events, but not her words. She read it aloud, uninterrupted, and then resumed her seat in the dock. She would have rehearsed it, practised the way she held her body, ensuring that her face betrayed no emotion that could be misinterpreted. I have filled in some of the gaps about Emily's youth (when she was first known as Phyllis and later as Trudy) with my own conjecture, but always making a clear distinction between what is documented fact and my own speculation. For example:

> 'We do know that Phyllis Hulse was nineteen when her son [redacted] Hulse was born. [His father] was discharged from the army a few months later, and he agreed to make a go of the marriage for the sake of the child. I imagine teenage passion dissolved in the red-faced, squalling, hungry reality of a new baby' (Artefact 23).

In using Perry's unsworn statement to inform my narrative, I also draw the reader into recognising its unreliability. Here is an example from my manuscript based on Perry's account of her Melbourne marriage to Albert:

> 'a picture emerges of Albert as a troubled figure, dissatisfied with his work, drinking too much, and gambling … But the artist of this portrait was Trudy herself, at a later moment in time when she called herself Emily, daubing over the memories with her own veneer of reminiscence which may have been unreliable. Conceivably this picture was misshapen, contorted, or even twisted into untruth and fabrication' (Artefact 27).

Evidence in the trial transcript gives life to Ken Perry, Jim Duncan, Albert Haag and Frank Montgomerie through the many witnesses who tell their stories. But even though Emily is the source of all the discussion and debate, her personality is elusive. Many of the witnesses speak about her actions and movements but there is very little information about her personality, her voice, or her sense of self which I have had to glean from her actions and reactions as described by others. Published photographs of her are few in number and those that exist reveal a blandness that perhaps she contrived to perfect. To assist my imagination, I have turned to art. When Emily was young, I see her as the woman in the lower right-hand corner of John Brack's 1955 painting *Collins St, 5pm*: poised, self-assured, stylishly dressed, blending with, but attractive enough to stand out a little from the surge of middle-class workers, all walking in the same direction, not seeing each other, silently resigned to their role in the rat race. She controls a smile, perhaps hiding a secret. Later in life, I imagine that Emily blended into the crowd like the woman in the lower left of the painting, unnoticed, undetectable, ordinary.

While a lawyer can only work within the confines of the role of officer of the court, the lawyer-writer has more flexibility in order to reveal doubt or speculation in the narrative. By inhabiting the lawyer-writer role, I give the reader a sense of the limits of the courtroom as a storytelling space, while also maintaining the integrity of the jurisprudential context. My literary aim is to be as true as possible to the actual events and avoid allegations that the work is unreliable

and not to be trusted. The detail I provide adds colour and depth to the archival source material, and also contributes to the authenticity of the reader's experience. Not having been present in court, I am unable to describe the people who were there, including members of the jury, but I provide regular reminders of their presence, such as:

> 'That must have made the jury members sit up just a little bit straighter, and focus on Mr Martin more intently' (Artefact 104).

The first few pages of the transcript list the exhibits that were tendered as evidence during the trial, but there was nothing in the boxes except the transcript itself. The exhibits would have been returned to the lawyers when the case was over. This meant that I was unable to view documents like life insurance policies, photographs, newspaper clippings, and especially exhibit P8 – the disposable cup containing traces of arsenic found under the sink at the Perrys' shop. I had to rely on the transcript for descriptive details about them.

The transcript is not only silent about the personal details of the people involved in the trial, but it also provides no indication of movement within the courtroom. From my own experience as a lawyer, I know that courtrooms are not static; there is movement all the time. Lawyers stand up and sit down, they look around, they pass notes, they chuckle, smirk, and sigh. Clerks usher witnesses in and out, stenographers replace each other regularly and the judge's associate passes documents and exchanges quiet commentary with the judge. The jurors make notes, smile, look bored or fascinated or shocked and often are asked to leave the courtroom. The transcript does not record these movements. However, some 'assumptions about the temporal and spatial circumstances' (Stanley and Dampier 2006, 26) can be made. For example, the trial transcript records that Emily Perry was charged with two counts of attempted murder and a notation on the court file indicates that she pleaded not guilty to both counts. My familiarity with court procedure leads to my informed assumption that the judge's associate would have read the charges aloud and that Mrs Perry would have responded, as is always required. However, I know nothing of the tone of her voice or her facial expression. The judge would have required her voice to be audible but I can only assume that she did not cry or shout or mumble. I have tried to imagine what it would have been like to sit in the dock of an austere courtroom, charged with attempted murder. I have tried to imagine how she would have felt if she had indeed poisoned her husband and equally what it would have felt like to be in that courtroom if she had not done so. My authorial choices in relation to this moment intend to reflect the ambiguity of that situation, because to this day, no-one knows if she did it or not. My intention with the introductory scene when Emily pleads 'Not Guilty' is to demonstrate that I do not know what she was thinking and feeling. I do this by raising questions (for example: 'Was her heart racing?') and using speculative vocabulary such as 'perhaps', and 'may have'. The scene is an interpretation of the transcript using my own experiences as a courtroom lawyer and my imagination.

In order to provide some colour, I have used my own voice as a narrator to show where I have speculated. If I wondered about a detail, rather than invent it, I have shown that I do not know

for sure, and I have mused upon the ambiguity. For example:

> 'The transcript hides the pause that probably ensued, the muteness of a barrister sitting down after losing a point. The silence was broken by Mr Martin who took his place at the lectern (Artefact 102).'

I have relied heavily on the evidence of the witnesses to tell Emily's story, aware that by the time it is heard by a jury, evidence has been told and retold several times. Susannah Ketchum Glas argues that there are important questions to be asked 'about the nature of memory narrative, the role of the authorial voice in 'remembered' and 'received' history, and the function of representation' (Ketchum Glas 2006, 4). In her analysis of Art Spigelman's *Maus* (a graphic memoir about the Holocaust depicting human characters as animals) Ketchum Glas warns against 'the slippage between telling, retelling, and interpreting' which is characteristic of evidence given in a court. Just as Ketchum Glas acknowledges that there are dangers in exploring a Holocaust narrative 'in terms of how memory influences and affects the agency of … survivors' (Ketchum Glas 2006, 4-5), there are limitations on which aspects of their memories the people involved in a long-ago event are permitted to divulge to a jury, especially with regard to conversations that they might have overheard or been party to. To a large extent, witnesses in a trial lose agency over their stories because of the way they are required to tell them.

The artefact attempts to give agency back to the witness testimony by using 'the styles and techniques of fictional discourse … [including] dialogue and dramatic scenes rather than historical summaries' (Herman et al 2005, 397). I have converted information from archival sources into conversations and scenes, especially in the domestic situations described by witnesses, but the content remains accurate and authentic – as spoken by the characters, either in court or to police – because of my commitment to life-writing ethics (explained in Chapter Three).

I have used literary conventions to present dialogue in the artefact, but I have not invented or fictionalised any of it, adhering to Couser's idea of 'an ethics of auto/biographical representation' (Couser 2004, 7). All dialogue is reproduced from either the transcript or from records of police interviews. This was a deliberate choice in order to retain the authenticity of the material. In some instances, I have reproduced exact exchanges between witness and lawyer in court, and also between Emily and the police. The South Australian Courts Administration Authority (CAA) owns copyright in the transcript of the proceedings that took place in the Magistrates Court, the Supreme Court and the Court of Appeal. The scope of this chapter does not extend to a detailed analysis of the law of copyright as it relates to its use, but I acknowledge that reproduction of a substantial part of a literary work without permission may constitute a breach of the CAA's copyright. The use of the transcript for this thesis falls within the 'fair dealing' exemption for the purposes of research, but for the purposes of publication, I have sought permission from the CAA to reproduce excerpts of the artefact in the transcript.

As well as the transcripts from the trial and the committal hearing, I also had access to the files from the Inquests held in Melbourne into the death of Albert Haag (Emily's Melbourne

husband) in 1961 and Francis Montgomerie (her brother) in 1962 (arranged by appointment through an online application to the Victorian Archive Centre). These Inquest files did not contain transcripts of the hearings but they held copies of autopsy reports and police statements, all of which were rich with detail for the narrative. The police statements in particular were very important for me as an objective narrator to be able to identify inconsistencies between what Emily told the police in 1961 and what she said two decades later in her unsworn statement.

Newspapers

In Chapter One I explained that my aim was to frame the artefact within the law rather than journalism. However, journalism was an element of my archival research. Contemporaneous reports from the six-week trial were published regularly in *The News*, original copies of which are readily obtainable at the State Library of South Australia. I searched for copies published on critical dates (available from the transcript) such as when certain witnesses gave evidence, when the verdict was handed down, the day of Emily Perry's sentence and the day that the High Court published its reasons for judgment. Articles from Adelaide's *Advertiser* were less accessible and unavailable in their original format but available on microfiche. During the trial, there were several mentions of an article from *The Truth* newspaper in Victoria in 1961, which was available at the State Library of Victoria on microfiche. The article gives details about the Inquest into the death of Albert Haag in Melbourne. It also provided useful details about what Emily Perry (then known as Trudy Haag) was wearing and the reactions of her then teenage son during the Inquest. The Tea Tree Gully public library has copies of the *North East Leader* which contain candidate profiles and local council election results for the years that Emily stood for office on the Golden Grove Council.

Analysis of newspaper articles assisted with contextualising the narrative, providing an idea of fashion, politics and social norms in Melbourne in the 1950s and 1960s, a period and place of which I have no personal knowledge. I have personal recollections of life in Adelaide in the 1980s but newspapers and magazines triggered additional memories about the political climate, popular culture (such as television programs and personalities), fashion and everyday life. This contextual knowledge was critical in shaping the narrative and in conceptualising the character of Emily Perry who worked in the fashion industry and also ran for political office. Both of these aspects of her life are included in the artefact.

Collectively, these archival documents provided objective knowledge about the case that subsequently evoked clear research questions that arose from gaps in the archival material. Was it appropriate to fictionalise the narrative? Was speculation an option within the artefact? These two questions have been addressed in Chapters One and Two. The next two questions are answered in this chapter: What authorial voice would be used? How would the narrative be structured?

Interviews

The second source of data was from empirical enquiry. I conducted a series of interviews that I conducted with some of the lawyers who were involved in the case. I interviewed the two

Prosecution lawyers, one now a Supreme Court justice, the other a retired Supreme Court Justice, both of whom graciously gave their time to speak to me about the case. Of the two Defence lawyers, one is deceased, although one of his sons agreed to an interview. The other Defence lawyer, now also a Supreme Court judge, declined my interview invitation. One of the two detectives who investigated the case in Adelaide is deceased; the other agreed to an interview after I located him through the Police Association. Approval was obtained from the Flinders University Human Research Ethics Committee to interview all of these 'characters'; a copy of the approval is attached as Appendix 6.

As a lawyer, I have interviewed hundreds of clients over many years and as a law teacher, I have taught hundreds of students how to conduct a legal interview. I have also interviewed many potential employees. However, I discovered that interviewing someone for a story requires a completely different skill-set. As a lawyer, the interview process is designed to elicit a set of facts to which the law can be applied. As an employer, the interview distinguishes which candidates are best suited to a particular role. But for a story-teller, the interview must tease out details that the subject might think inconsequential but that the writer knows will enliven a narrative.

My familiar 'legal interview' model was effective for interviewing the lawyers about the legal narrative. I was able to discuss the law and the application of the law to the facts comfortably. But subsequently listening to the audio-recordings, I realised that enticing the non-legal story out of my characters required a different framework. Attendance at a seminar about interview techniques (Stone 2014) was useful in my preparation and as a lawyer-writer, I developed a hybrid interview technique that reassured my legal profession characters that I had the requisite knowledge to discuss the case at the level with which they were familiar, but also encouraged them to give me more than just an overview of the case. This new technique drew on my existing skills of developing a relationship of trust between lawyer and client and re-framed them for the lawyer-writer/character context so that I could see the characters as people, not just lawyers. I wanted to know how they recalled the case in a personal sense, and what it was like for them to be involved in it. This was particularly challenging because, as discussed in Chapter Three, these 'characters' are very senior members of the profession to which I belong. To be invited into the chambers of a Supreme Court judge to have a private conversation is a privilege and I was very conscious of balancing my needs as a writer with the deference that I owed as a lawyer.

A different type of sensitivity would have been required to interview trial witnesses and family members. Emily Perry was a mother of four children, and a grandmother. All of her children gave evidence at her trial: two for the Prosecution, two for the Defence. In Chapter Three I explained that I decided not to contact any of Emily's children. In any event, I had no contact details for family members and locating them was likely to be difficult and also possibly a source of distress which I had no desire to cause. I decided to focus on the archival material. This decision cemented the direction of my academic enquiry to the limitations of archival material and the appropriateness of speculation beyond it. It also confirmed my decision to re-tell the legal story. I

would only use the legal story – as set out in police statements and told at the trial – but tell it differently. Should I develop the narrative for publication at a later time, I will reconsider contacting family members, and other witnesses who gave evidence, to provide additional insights.

The memories that would have been rich to tap are those of the jurors who sat through the trial and convicted Mrs Perry. They could have told me about the moments of gravitas, the difficulties they encountered with the evidence, any flickers of levity during the trial. But jury deliberations and identities are protected in South Australia by Section 246 of the *Criminal Law Consolidation Act*. Speaking to jurors about a case, even years after a trial, is specifically prohibited, so this was not a possible data source.

Location, location, location

An important element of the life-writing aspect of the artefact is my confidence in writing not only about the legal profession but about Adelaide, where I grew up, was educated and where I am known within the local legal profession. My personal history gives me authority to write about the 'Adelaide' parts of the story, although I choose to focus on the law rather than the *locus*. Adelaide's reputation as the 'murder capital of Australia' (Jones and Harmsen 2017) or as Salmon Rushdie described it, 'an ideal setting for a Stephen King novel or horror film' (Mitchell 2002, 4) has been well traversed, especially by Susan Mitchell who writes about Rushdie's now famous comments published in the British *Tatler* after visiting Adelaide for the first ever Writers' Week in 1984 (Mitchell 2002, 4). Sean Fewster's *City of Evil* perpetuates and exploits this idea. However, although the artefact provides another example of an unusual and notorious criminal case from Adelaide, it does not dwell on Adelaide's criminal dark side in the same way as Mitchell's *All Things Bright and Beautiful*, a true crime story about the gruesome and very troubling 'bodies in the barrels' trials of John Bunting, Robert Wagner and James Vlassakis in 2003. Mitchell points out that despite the fact that South Australia's murder rate is actually lower than elsewhere '[w]hen confronted with these statistics, those who propagate and relish this reputation lower their eyes and say knowingly: "Well it's more the kind of murders that are committed in Adelaide. It's the bizarre, the sick, the twisted, it's the weirdness of them that sets the city apart' (Mitchell 2002, 4).

Half of the story in the artefact takes place in Melbourne, a city which, when I began to write, I had visited many times but where I had never lived. Melbourne did not claim an emotional connection over me in the same way a city does if one has actually resided there. In the early stages of the manuscript, I felt somewhat disingenuous writing about a city to which I did not 'belong'. Then everything changed. In March 2018 I took up a job in Melbourne and began a hybrid life of interstate commuting. I became acquainted with suburbs whose names had previously been sprinkled through my narrative like one might use an unfamiliar spice. Areas of Melbourne that previously had no character or context for me, were now stations on my train line or local walking destinations. I developed an understanding of their proximity to each other and the sense of place within the artefact became easier to develop. The Melbourne part of the story was no longer a

recipe I was unable to taste; it became my everyday regimen, and made it easier to imagine how the Melbourne part of the story unfolded. It also provided me with the ending, which I dictated and recorded on an iPhone as I stood outside the house where Emily once lived.

Narrative Structure

The adversarial system results in a somewhat contrived narrative being told in court. Witnesses may only respond to questions put to them; they are not entitled to talk about any topic they choose. They may be cut off because they are reciting hearsay. They may be warned to speak only about events that they have personally experienced. They may have information that would be considered 'interesting' but which is legally irrelevant and therefore disallowed. The artefact presents an amalgamation of narratives compiled from the court record and other archival sources, as well as from interviews, overlaid with the narrator's voice (mine).

I have explained that as a lawyer-writer, I focus on an explanation of the law, and in particular the use of the evidence, as the framing device for the creative artefact. My role in the narrative is to explain what is happening and why it is happening, especially in the court room. Unlike Garner who readily admits in *This House of Grief* that at one point she 'had lost [her] grip on the technical details of the [legal] argument' (Garner 2014, 211), I place myself in my narrative so I can explain the lawyers' submissions. This was a particular source of angst during the writing process because as a lawyer, I want to put all the legal arguments into the text. Legal discourse is based on a logical progression of one concept to the next, which is sometimes necessarily prolix. As a writer, I know that this material needs to be cut. Summarising the lawyers' arguments and condensing the judges' reasons presented a particular challenge, knowing that the lawyer-reader would want to read the technical legal detail but other readers would require a less convoluted explanation. My presence in the text serves a purpose which is not the same as Garner's subjective presence in *This House of Grief*. My voice is less about subjectivity than authority. The reader does not get to know me as a person but does acquire a sense of me as a lawyer through the authorial voice that I use. Karen Lamb is of the view that '[a] biographer's own life story necessarily plays into the creation of biography' and that '[t]races of the person writing the biography may come to the reader in words and phrases' (Lamb 2019, 2). Some of the vocabulary in the artefact is intentionally 'legal' in order to portray the circumstances authentically. Unlike a legal text however, I use my legal expertise to explain the professional jargon and make it accessible, simultaneously involving, as Lamb suggests, my own life story in the creation of Emily's biography.

A characteristic of a true crime text is the narrator who creates an 'illusion of objectivity' (Smith 2008, 22). Smith contends that '[a] true crime text constructs one of a number of competing versions of a set of events that can claim to be no closer to an objective or a material reality than any other' (Smith 2008, 22). In presenting the narrative from a personal perspective, I demonstrate Smith's concept of the interposition of the 'techniques of truth-telling and the impossibility of telling

the truth [which are] typical of the genre' (Smith 2008, 23). I was able to show where the truth is elusive, such as where the unsworn statement may be unreliable and whether the police statements are accurate. This autobiographical interpretation was part of my conscious authorial choice to write about the research process within the artefact itself in a manner similar to Helen Garner (*Joe Cinque's Consolation*, *This House of Grief*) and Gideon Haigh (*Certain Admissions*). I wanted to show where the record is murky and where it is impossible to know what really happened, but also the aspects of the history that are less controversial, such as names, dates and places. I can also show what might have been stated somewhere, but was disallowed as evidence at the trial. This is where the lawyer-writer can differentiate her work from the journalist-writer.

I chose to structure the plot by placing myself in the story, and reveal my writing process from the beginning. The narrative then segues to Emily pleading not guilty at her Supreme Court trial. I considered it important to place the onset of Ken's illness at the forefront of the narrative. When the police become involved, they discover the history of the three other men who died, and I structure the narrative by alternating scenes from Emily's past in Victoria, with scenes in Adelaide two decades later. I insert snippets of the trial throughout the creative work to highlight inconsistencies between the stories told by Emily and those told by witnesses at different times.

The decision to include only details from documented source material created a structural dilemma. Referring to actual pages of court transcript within the text was an option to demonstrate authenticity, as was footnoting all of my various sources. In *Did She Kill Him? A Victorian Tale of Deception, Adultery and Arsenic*, Kate Colquhoun reconstructs history around the 1889 trial in England of Florence Maybrick. Colquhoun structures her narrative by placing information and quotes from primary sources in italics. This strategy would not have been useful for my artefact because all of my information and quotes are from primary sources. Brien suggests that chapter-based endnotes are an elegant although lengthy solution (Brien 1999, 137). Such notes are used effectively in Keira Lindsay's *The Convict's Daughter* to reveal the fictional elements of the narrative that is inspired by a true story. I have opted for a short explanatory note about my sources at the beginning of the artefact because the entirety of the narrative comes from archival sources which I have intermingled. For example, a scene where Albert Haag (Emily's Melbourne husband) is very ill in bed and asks for a drink has been compiled from the trial evidence of several witnesses and statements to police. Another example is the scene where two constables vacuum up dust samples in Ken's workshop. There is evidence in the transcript from both constables about how and when this occurred. I have combined their evidence into one scene, and then reduced their trial evidence in the narrative to the aspects that were challenged by Defence counsel.

The first draft of the artefact was over 160,000 words. It was rich with detail, providing a full account of all the evidence given at the trial by 164 witnesses, the legal arguments submitted by counsel and the reasons for the various judicial decisions about the interpretation of the law and the rules of evidence. In slashing the content for the second draft, I was mindful of creating narrative tension and only leaving compelling text.

Advice from my supervisors provided me with the key to fine-tuning the next series of cuts. There was not enough about Emily. She was fading into the background and was overshadowed by the men. 'We know more about Ken than we do about Emily,' they said. 'Bring her to the forefront.' This observation was intriguing. Was I doing to Emily what had happened to her throughout her life? How could I bring her to the forefront? I had a mountain of information about Ken because the trial was all about his illness, his body, his blood tests. Emily remained enigmatic and elusive. A further re-write included incorporating the difficulty of 'finding' Emily in the archival material.

Some photographs of Emily Perry were published in various newspapers, providing an idea of her physical presence but I have been otherwise unable to glean much personal information about her. People I interviewed remembered nothing remarkable about her voice or her mannerisms. She was described as 'cold' by one of the Prosecutors, and 'ordinary' by another lawyer who remembered the case. Encouraged by my supervisors to 'tell us more about Emily' I realised that even beyond the grave, Emily is able to detract attention away from herself. Despite being the protagonist, she has been difficult to capture as a character. She seems to have had the ability to move through life without eliciting much awareness. Even at her own trial, far more attention was paid to her husband than to her, and in writing the artefact I found myself focussing on everyone else around her. This was a revelation, and helped me to reframe the artefact by capitalising on how little I actually know about her. Haebich experienced the same difficulty in writing about Martha Rendell, discovering that Martha was 'so elusive in the sources [she] could not unequivocally give voice to her guilt or innocence' but nevertheless, Rendell's 'powerful presence fills the book' (Haebich 2015, 8).

The manuscript now presented as the creative component of this thesis provides a sculpted version of the lawyerly story. It represents a re-framing of the High Court judgments, by narrating the facts of the case in much greater detail than is provided in the *Commonwealth Law Reports* and by considering and evaluating the legal reasoning of each High Court judge. The result is a new way of reading the *Perry* case through a creative, multidisciplinary approach.

CHAPTER FIVE: CONCLUSION

Some of the most interesting stories to which we are drawn come from the criminal courts. I first read Emily Perry's story in its context as a legal precedent about the use of similar fact evidence. I was also aware of her and her husband as a recognisable South Australian couple. When I decided to write a true crime story, I was attracted to the narrative arc of her case that extended beyond an interesting legal question. I chose to write about it because it offered the challenge to me as both a lawyer and a writer to explain a complex aspect of the law of evidence within the context of an extraordinary story.

This exegesis has explained that the *Perry* case is an important criminal law precedent about when and how stories from the past can be used as evidence in court. There have been many subsequent cases that are now cited by lawyers who seek to persuade a judge to either allow similar fact evidence (if they are prosecuting) or declare it inadmissible (if they act for the accused). But despite its loss of authority as a legal precedent through subsequent High Court decisions that have refined the rules, the *Perry* case remains part of local folklore in South Australia.

This thesis creates new knowledge by exploring a difficult area of law through a creative, multidisciplinary approach and by bringing together the disciplinary literacies of narrative storytelling, true crime methodologies, life-writing ethics and legal precedent. It contributes knowledge in relation to the particular limits that are faced by a lawyer writing true crime. It asks the questions: to what degree does the lawyer-writer face limits that are the same personal boundaries faced by any writer, and to what degree are the limits professional? I have explained in this exegesis that in the artefact, I contextualise true crime from a point of view that is somewhat personal, using my own experiences as a lawyer to 'play into the creation of biography' (Lamb 2019, 2). I insert 'self-conscious markers of [my own] presence' (Lamb 2019, 3) into the text, speaking 'directly to the reader' (Lamb 2019, 3).

My research is positioned at the highly original interdisciplinary nexus of legal theory and creative writing, piloting new knowledge in relation to ethics in true crime writing. Using the creative methodology of practice-led research, the thesis makes a highly original contribution to scholarly understanding and professional practice. Interdisciplinarity is not unusual in true crime (Smith 2008, 20-21). In this thesis I have demonstrated that using law as a framework for a true crime narrative presents consequential ethical challenges for the lawyer-writer. I have also explained why and how I draw on life-writing ethics in response to the ethical challenges presented by this form of writing.

The artefact part of the thesis conforms with Ricketson's definition of a 'well-crafted true story' because it 'explores [particular] events in their complexity and people in their full humanity' (Ricketson 2014, 1). Simultaneously, the thesis explores the true crime phenomenon and what underpins it. This not only brings a new understanding to aspects of both criminal law and the law

of evidence for law students but also contributes and connects to wider knowledge generation within society. It provides a critical legal analysis and in this respect it extends beyond the usual boundaries of true crime. The artefact is boundary crossing and interdisciplinary, associated with law, history, and biography. Unlike other works of true crime which rely on guilty verdicts or even confessions upon which to scaffold a narrative, the artefact must contend with the ambiguity that remains after the evidence was given at the trial, and recorded in a transcript, but was later decided by the High Court to have been inadmissible before a jury.

True crime lends itself to speculation about all manner of detail. This thesis has argued that when the first-person narrator of true crime is a lawyer, the writer might strategically use subjective positioning. My creative work negotiates what happens when the lawyer becomes the writer, and explores the ways in which my legal training has an effect on the narrative and stylistic choices I make about narrative detail. I have explained in this exegesis that in writing the narrative, I have adhered to the facts as I have uncovered them though my archival research and identified where I have interposed speculation and conjecture. I have justified why I have done this while being faithful to the facts as disclosed by the archival documents, which I considered to be the ethically appropriate approach.

Lawyers are obliged to uphold the law and the administration of justice. They are confined to the doctrine of precedent, applying old rules to new situations. Creativity is neither required nor encouraged. Stories are told in particular ways. To break away from the conformity that characterises my profession and think creatively about telling a legal story involves risk. There is a risk that the way I tell the story may offend the characters within it, especially the legal characters, many of whom are my professional superiors. There is a risk that re-framing a legal narrative will transgress the rules that the courts have imposed for reasons of justice and fairness. And there is a risk that in making the law accessible, by expressing its principles in a different way, I will dilute its nuances and its carefully contrived directives. The artefact is the product of my management of those risks, that I have accomplished with deference to the Rule of Law, tempered with a writer's persistent interrogative approach. Unfettered by the rules of evidence that curtail stories told in court, yet guided by the same rules in order to claim the integrity of its content, the artefact represents a carefully balanced scrutiny of the *Perry* case by presenting Emily Perry as an individual rather than merely as a set of facts to which the law must be applied.

By writing within the framework of the law, I am orienting myself within a familiar domain. Eakin describes 'our sense of who we are' as 'a kind of orientation in moral space' (Eakin 2004, 60-61). My sense of self as a lawyer assists me 'to answer coherently…about what I think is significant and valuable' (Eakin 2004, 61) about the *Perry* case. As a lawyer I have been able to draw on my specialised knowledge to create an artefact whose purpose goes beyond storytelling, but it relies on storytelling techniques to explain the law. The aim of the artefact is not solely to appeal to readers of true crime. It is more than just a good story. As the product of a lawyer-writer it is an alternative expression of the legal professional domain.

This thesis argues that the lawyer as writer faces specific challenges and has a unique perspective from which to tell a true crime story and is therefore an original contribution to knowledge. I have also argued in this thesis that the lawyer-writer is in a unique ethical position. It is important that true crime authors do not usurp the function of the courts and hold themselves out as arbiters of truth when their work is speculative. I have explained why speculation in true crime might be necessary to increase narrative appeal but I have also demonstrated that caution should be exercised. My practice-led research reveals how speculative insights can provide convincing creative results without disrupting some of the basic tenets of the criminal justice system.

Courts have rules about which stories can and can't be told. The artefact objectively illustrates and make more comprehensible the mechanisms through which the truth is unravelled in a criminal trial. This exegesis has demonstrated and explained the differences between exploring a narrative through the adversarial system and developing that same narrative as a literary work. I have explained in this exegesis how I have reframed the legal narrative for the purposes of the artefact, drawing on the styles of Annie Cossins (in *The Baby Farmers*) and Phillippe Sands (in *East West Street*). I have also demonstrated that the artefact directly contributes to the legal narrative about similar fact evidence that commenced with Cossins' *The Baby Farmers*, creating new knowledge by combining the legal and the literary.

I assert that the artefact is a blend of true crime and life-writing that is specifically crafted by a lawyer-writer, who brings particular skills and knowledge to the task of narration. In a moving essay about a murder trial after the murder of a little boy, Helen Garner reflects that it is not possible 'to contemplate Daniel's story without acknowledging the existence of evil' and that this is 'something that only philosophy, religion or art can handle' (Garner 2000, 35). This thesis has explored Garner's option of handling Emily's story through art, using literary techniques to explain why the law will not reveal her full story in a courtroom. The transference of her story from the disciplinary literacy of law to the disciplinary literacies of true crime and life-writing creates new knowledge because of the ethical dimensions that are traversed in the process.

Storytelling for lawyers is not a new concept. This thesis argues that the skills of storytelling can be used in a way that is different to how 'storytelling in the law' has previously been argued as a tool for persuasive advocacy. The artefact, through storytelling, achieves the purpose of critique of the legal system in the same way that Jason Bainbridge advocates that 'through the art of art of storytelling … legal thriller writers offer another narrative option for the lawyer, to be a critic of the system of which they are a part' (Bainbridge 2016, 11). This thesis does not enter the realm of law and literature in the sense of law *as* literature as articulated by Richard Posner (Posner 2009) but it does argue that the techniques of fictional storytelling can be used to reframe the law. The artefact relocates Emily Perry's story from the High Court judgments – the realm of the elite professional – and positions it in a different format, in the realm of the reader of stories. My contribution to knowledge in this thesis is the verification of the lawyer-writer as uniquely placed to do this.

In this thesis I have demonstrated a broad intertextual knowledge of legal, life-writing and

true crime literatures. The original contribution provided by this thesis fills a gap in the current literature as regards telling true crime stories from the perspective of the lawyer. The thesis contributes to critical commentary on true crime, which has been described as having been 'neglected', despite its popularity (Smith 2008, 20). I have explained that scholars such as Brien and Smith have written about true crime and the ethical implications of writing in this genre, but that the ethical and methodological stance to be taken by the lawyer-writer is a new perspective. I have explained that scholars such as Couser have advocated for ethics in life-writing and that ethics in true crime should be considered in the same way.

I acknowledge that I bring certain biases to my writing. I write with an 'insider' knowledge of the legal profession and the criminal justice system. I write with a technical understanding of the law and a professional bias as regards the role of the lawyers and the court procedures. My view is not from the public gallery. It is from the bar table, the long wooden expanse in the centre of the Australian courtroom where the barristers sit, until they take their turn to stand at the lectern that is anchored in the middle, directly in front of the judge. During a criminal trial in Australia, the lawyers have their backs to the public gallery, and their focus is on the witnesses who sit in the witness box, the jury members who sit to the side, and the judge. The lawyers are at the centre of the action, much like being on a stage. The drama of the courtroom arises from them, and the witnesses whom they examine and cross-examine. A lawyer writing about a case from a transcript is like an actor reading and interpreting a script. An actor knows where the pauses might be, when the audience might laugh, or why one of the characters has stood up or sat down. In a similar way, the lawyer-writer has the capacity to interpret a trial transcript and inject meaning into it based on a subjective interpretation that is informed by lived experience. From the opening scene of the artefact, which clarifies my personal connection to the *Perry* case, through to the final description of me, standing outside Emily Perry's house where she once lived in Moorabbin, Melbourne, this artefact has transformed a legal case into a literary piece that employs the narrative pacing, plot and characterisation of true crime, draws on the ethics of life-writing and also projects a complex area of law beyond the elite domain of legal practice. This exegesis has revealed the tensions implicit in writing true crime when one has professional obligations and biases as a practising lawyer. It has also concluded that working with those tensions can ultimately be fruitful in the creative process.

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APPENDIX 1

A pre-publication copy of the following article is attached as Appendix 1:

Spencer, Rachel. 2017. “Dignifying the poisoned chalice: the ethical challenges of using archival material in a narrative about death and arsenic.” *TEXT Journal of Writing and Writing Courses Special Issue 45*. http://www.textjournal.com.au/speciss/issue45/Spencer.pdf.

University of South Australia and Flinders University

Rachel Spencer

Dignifying the poisoned chalice: Confronting the ethical challenges of using archival material in constructing a narrative about death from arsenic poisoning.

Abstract

In 1981, the trial of Emily Perry in the Supreme Court of South Australia for the attempted murder of her husband by arsenic poisoning was a legal and newspaper sensation. During her trial, strong circumstantial evidence was produced linking her with the deaths by arsenic poisoning of three other men. This paper will explore aspects of the 'true crime' writing process in relation to writing about the real deaths of three men who died as a consequence of a particularly brutal and painful cause and it will also examine why the confrontational aspect of original archival material was important for me to fully appreciate the moral challenge of writing about unsolved murder.

Biographical Note

Rachel Spencer is the Director of Professional and Clinical Programs in the School of Law at the University of South Australia. Rachel has broad experience as a barrister and solicitor. Her academic experience also includes expertise in practical legal training. Rachel teaches and researches in legal ethics; civil procedure; clinical legal education; law, art and literature; lawyers and the media; law and popular culture; life writing; and crime writing. Her publications include training videos, book chapters, one academic text book, newspaper columns and peer-reviewed journal articles. Rachel also writes creative non-fiction and has a particular interest in life writing and true crime. She is a PhD candidate in Creative Writing at Flinders University.

Keywords

Creative writing – true crime – murder – death – arsenic – crime archives – ethics – biography – Emily Perry – presumption of innocence.

The author would like to thank the two anonymous reviewers of this article for their very helpful suggestions.

Introduction: From Dance Partner to Defendant

For decades, the Arthur Murray Dance Studio in Adelaide has enjoyed the reputation of being 'the place to go' to learn how to waltz, foxtrot and tango. Defying the disco trend of the early seventies, a debonair *divorcé* called Ken Perry joined up at Arthur Murray and one evening in 1972 he met the attractive and vivacious Emily Roberts. They were engaged within the year and married on 24 April 1973 (Transcript 1618).

Dancing played a major role in their lives. Ken was a Freemason, and he was permitted to use the Freemason's Hall in the upmarket Adelaide suburb of Walkerville as an occasional venue for their dance club. One weekend, Ken and Emily Perry arranged an excursion for the club to visit a farm in Strathalbyn, a picturesque country town about an hour's drive out of Adelaide. The old farmhouse was a treasure trove of knick-knacks and antiques, including a Pianola brand player piano which captivated the attention of the newly-weds so much that Ken bought one soon afterwards. They kept the Pianola in an old barn at their home in Fairview Park. After a while, it deteriorated and they could not find anyone to fix it, so Ken started reading about restoring Pianolas and repaired it himself. So began a hobby that quickly became his passion. He read as much as he could find about player pianos and orchestrelles and wrote to overseas experts. He spent all of his spare time in his dusty workshop tinkering with the crumbling lead pipes and dusty wooden casings (Transcript 3580).

One morning in July 1976, Ken went to see his doctor about a sensation of pins and needles in his arm (Transcript 149). By October, the sensation had spread to both legs, his buttocks and his feet (Transcript 177). He continued to suffer a range of symptoms over the next couple of years, including stomach aches (Transcript 150-158, 282-286). On the evening of 4 October 1978, Ken and his wife arrived at their local medical Clinic. Ken was in great distress. Emily told the doctor that Ken's week-old cough was much worse today and he was short of breath. His face was white, his chest was crackly and his heart was racing. The doctor took one look at him and sent him to hospital (Transcript 265-66). Tests revealed that Ken was suffering from arsenic and lead poisoning (Transcript 333). He was gravely ill and spent two months in hospital. The police became involved and an extensive investigation began. Ken insisted that his arsenic poisoning came from the corroded lead pipes in the old player pianos. But when detectives discovered that in 1961, Emily Perry had been married to a man called Albert Haag and that Albert Haag had died of arsenic poisoning, the investigation intensified. It did not take long to discover that Emily's brother Francis Montgomery had also died from arsenic poisoning in 1962 and Jim Duncan, her de facto husband before she met Ken, suffered from arsenic poisoning & died from an overdose of barbiturates in 1970 (Transcript 101). In April 1980, Emily Perry was charged with the attempted murder of her husband Ken (Transcript 758).

The trial of Emily Perry in the Supreme Court of South Australia began in March 1981 (Transcript 1). It became one of the most highly publicised criminal hearings in the State. It was an intriguing story that captivated the media in Adelaide and across the country. The trial was one of the longest in South Australia's criminal history at that time. The admissibility of evidence about the three earlier deaths of Haag, Montgomery and Duncan became the subject of protracted legal argument and complex legal

reasoning which is documented throughout the four thousand one hundred and forty one pages of trial transcript, but the jury found Emily Perry guilty and she was sentenced to fifteen years imprisonment (Kernahan 1981 (3), 1).

The arguments about the 'coincidence evidence' surrounding the three earlier deaths were elevated into the South Australian Court of Criminal Appeal where three of the sharpest judicial minds in the State gave their views about how 'similar fact evidence' should be used in a trial, and unanimously opined that it had been correctly used in Perry's trial.[i] Perry appealed to the High Court of Australia. The earlier deaths, argued her lawyers, were circumstantial, irrelevant and purely coincidental. This time four of the most senior judges in the country grappled with these questions and in 1983 the High Court of Australia declared that certain principles regarding similar fact evidence had not been adhered to by the South Australian justices. The High Court decided that the previous deaths should not have been brought to the attention of the jury. The High Court quashed Emily's conviction and ordered a re-trial.[ii] Emily was released from prison. But the Crown did not bring her back to court. The police file has been marked 'not to be opened' for 100 years[iii] and when she died in 2012, Emily took the truth with her. The High Court's decision in *Perry* became a binding, influential and very important reference for courts when deciding on how much 'coincidence information' should be heard by a jury.

True Crime as a Literary Genre through a Lawyer's Lens

Many years ago, as a junior legal practitioner in a busy law firm, I became fascinated with the way law affects the relationships between people who become entangled within its complex web. My interest was drawn less towards the mechanics of legal doctrine and legal argument, and more in the direction of the effect of law upon citizens, and how people are expected to react before the law. In teaching law, my focus is on encouraging law students to view the law through the lens of their clients, at a human level. This is the philosophy behind the writing of *The Emily Perry Stories* which is a work in progress.

The focus of *The Emily Perry Stories* is on how the life narrative of one woman was shaped and coloured during her trial for the attempted murder of her husband. The terrible deaths of her two former partners and her brother were pivotal to the Prosecution case but also the source of legal arguments (and ultimately judicial decisions) that still apply in Australian courts today.

The text that I am writing is situated within the overlapping genres of true crime and life writing. The true crime genre has been said to rely 'simultaneously upon a rhetoric of truth claims and the activation of myth, superstition, gossip and story as its narrative strategies' (Smith, 2008: 18). As a writer, I admit that I see the myth, superstition and gossip as rich pickings for a potential best-seller. As a lawyer, I see my role as exposing the myth, superstition and gossip for what it really is, and allowing a critical analysis of these various narratives to show the reader the different contexts in which these different narratives have been able to flourish. But I also seek to explain the legal context in which these narratives occurred. I propose to situate my work in what Smith has described as 'analyses of the legal system' in which she includes the *Underbelly*

television series, Peter Carey's *True History of the Kelly Gang* and Helen Garner's *Joe Cinque's Consolation* (Smith, 2008: 20). One of my goals is to explain the law as it applies to 'similar fact evidence'.

As a lawyer, I bring certain biases to my writing. I write with an 'insider' knowledge of the legal profession and the criminal justice system. Unlike, for example Helen Garner, Chloe Hooper and Truman Capote, through whose journalist eyes their stories about trials are recounted, I write with a technical understanding of the law and a bias as regards the role of the lawyers and the court procedures. One of my aims for *The Emily Perry Stories* is to present the story of a trial which is fully explained to the reader. Instead of presenting a view from an external, perhaps ostracised onlooker, I write through what I hope to be the eyes of the lawyers involved. My view is not from the public gallery. It is from the bar table where the lawyers sit. I can write as if seeing the story through this lens, not because I was there, but because I am able to explain and imagine how and why the lawyers said what they said and did what they did.

I also have professional ethical obligations to consider. I am a qualified legal practitioner – an officer of the Court. Upon being admitted to practice, I swore a public oath that I would:

> 'diligently and honestly perform the duties of a practitioner of this [Supreme] Court [of South Australia] and will faithfully serve and uphold the administration of justice under the Constitution of the Commonwealth of Australia and the laws of this State and the other States and the Territories of Australia' (Courts Administration Authority Practice Direction).

Inherent in this oath is the acknowledgement that I will respect the legal profession and uphold its ethical traditions and not bring the profession into disrepute. In writing this book, if I somehow bring the profession into disrepute, I could be found guilty of professional misconduct and be struck from the roll of legal practitioners. I have had to be mindful of the issue of whether questioning the adversarial system and analysing the role of each character in this very high profile case (in which many of the legal characters are still playing important roles in the legal profession) might be considered disrespectful or unprofessional. I also have other legal issues to acknowledge. I may not ask the lawyers involved to breach client confidentiality (Law Society of SA, 2013: 9). There is likely to be a great deal of information that would be writer's gold, but will be protected by legal professional privilege, meaning that it stays confidential between lawyer and client, forever, even after the death of the client (Dal Pont, 2013: 336). Breaching confidentiality would be professionally unethical and therefore potentially an act of unprofessional conduct which could jeopardise their practising certificates. I cannot attempt to procure information that would be in breach of any lawyer's duty to a client or duty to the court. Secondly, I cannot be in contempt of court. Had I written this book before or during the trial, I could have been accused of prejudicing the accused's right to a fair trial. But that is no longer a risk because the accused is now deceased (Hunt 2014). Another legal issue relates specifically to the jurors who sat through the trial and found Emily Perry to be guilty. How fascinating it would be to

interview some of them! Alas, I am unable to talk to them even if I could find them. Speaking to jurors about a case is specifically prohibited by law.[iv]

I have been very conscious of conducting this research in an ethical manner, which requires a level of attention and consideration beyond technically ticking the requisite boxes on the ethics application form. It means conducting research that will do no harm. Ethics is said to be 'the study which arises from the human capacity to choose among values' (Preston, 2014: 7). In general, ethics is concerned with what is right, fair, just or good, about what we ought to do. It is the study of values or moral philosophy, the actual values and rules of conduct by which we live. In writing and reading about death and dying, it is easy to become side-tracked by the 'whodunnit' aspect of crime writing and the minutiae of the legal principles involved in a criminal trial. In writing about a series of deaths that perhaps were murders, a whole raft of ethical issues becomes important.

So in conducting archival research into this case, I was looking with a lawyer's eye, searching from a legal perspective for why the case evolved as it did. I was given access to the written transcript of the whole of the trial – over 4000 pages of evidence about Ken's symptoms of arsenic poisoning, and also about the other three men who had died in mysterious circumstances.

The Research Process

The trial record brought to life the transcribed voices of those who spoke about the death of Albert Haag – Perry's second husband – twenty years earlier. Back then, Emily lived a completely different life as Trudy Haag (her first name was Gertrude). Trudy and Albert lived in Moorabbin, an outer suburb of Melbourne, with their three little girls and Trudy's son [redacted] from her first marriage to a war-torn soldier who had deserted her some years earlier. Albert died an agonising death in a hospital corridor on his way to have an x-ray, wracked with the pain of arsenic toxicity which overcame his body in the early hours of an Easter Monday morning. An inquest was held. No charges were laid, but the sensationalist *Truth* newspaper headlined Albert's brother Gustave Haag vowing to find 'my brother's killer' (Wright, 1961).

In May 2015 I caught The Overland train from Adelaide on a quest to read the original Inquest files held at the Victorian Archives Centre in North Melbourne. I was excited to have the opportunity to look at this archival material. Looking at original documents reminds us as writers that we are only witnesses to events, not participants, and we are privileged to be able to encounter the recorded evidence of historical reality. It was during the course of this visit that I became acutely aware of the very human side of the story that I am attempting to write.

When the file of the Inquest into the death of Albert Haag arrived at the counter, I carried its plastic sleeved contents to one of the long brightly lit tables in the public viewing section. Flicking through the pages of typed witness statements and details of forensic investigations, notes of scientific analyses and letters to and from police officers, I was suddenly reminded of the humanity of my subject matter and the fact that 'encountering the archive is often an ambiguous, unsettling and uncertain project'

(Doyle, 2013: 2). Amongst this bundle of officialdom was another official, yet intensely personal document. It was a black and white photograph, professionally developed. It was a photograph that seemed so intensely private that I felt I shouldn't be looking at it – a picture of someone's brother, someone's son, husband, friend, mate, someone's daddy. It was a close up photograph of Albert, dead.

I found this photograph intensely confronting. I quickly turned it over, unable to look at it, because suddenly this narrative was not merely a sensational story about arsenic and murder. It was about a real person, a man who lived an unsensational life, who had, in death, become a headline. It was the first time I had seen a photo of a dead person. This was a real person who had lived and loved, had fathered children, gone out to work each day, celebrated family Christmases, pottered in his vegetable garden. At the time of seeing that photograph, I had managed to live for over half a century without ever looking at death. The photograph brought the true crime narrative back to the reality that death is personal, it is intensely interlinked with life and it unites us all, from time to time, in one of the most intimate of human experiences.

The photograph was unlabelled and undated. It bore no notes on the reverse side. Susan Sontag has argued that using photographs 'to prove that something happened in the world' is problematic and that a photograph is only 'given meaning by its caption' (Sontag, 1971, cited in Biber 2006: 22). In this instance, meaning could only be derived from the context of the photograph and the fact that it was included in an Inquest file about the circumstances of the subject's death.

At Emily Perry's trial twenty years later Albert Haag's brother Gustave was questioned about the colour and length of Albert's hair shortly before he died. The Prosecution case was that Albert Haag had been poisoned by arsenic over a period of time, causing his normally thick, dark, wavy hair to go white. His wife encouraged him to get a crew cut which was not his usual style at all. In order to contradict the suggestion that Albert had been ingesting arsenic for some time, defence counsel showed the deceased's brother the photograph, challenging him that the hair was not in fact white. Sontag was proved correct by his reply:

> 'A dreadful thing about this particular photograph…I was informed by one of the attendants there that – that they had sewed his scalp on back to front after the post mortem. So that could result in the darkness on the front. Instead of being to the rear, it is … on the front' (Transcript: 2451).

'We don't know what we are seeing until we are told what it is' (Biber, 2006: 22).

The confrontational aspect of this original archival material was important for me to fully appreciate the moral challenge of writing about suspected murder. When I first started researching, my attention centred on the lawyers. I thought about the work that they did and what was involved. I originally focussed on the legal complexity of the case. I wanted to present the story as an accurate representation of the series of events that covered a quarter of a century – from Emily's first marriage, then her marriage to Albert Haag, the death of her brother Frank from arsenic poisoning, her next relationship with Jim Duncan (who subsequently died from poisoning), and then her

marriage to Ken Perry. When Ken Perry had arsenic poisoning, and his wife was charged with attempting to murder him, in and out of court, Ken Perry staunchly defended his wife, denying any claim that she had tried to kill him. This created an unusual predicament for the Prosecution. Normally, a victim of attempted murder would be expected to give evidence against the accused, and would assist the prosecutors. Ken refused to co-operate with the police and the Prosecution. It added a curious level of legal complexity as well as narrative tension.

The focus of a criminal trial, and the focus of true crime stories, is primarily upon the person accused of committing the offence. The finder of fact at a trial (usually a jury but sometimes a judge) must make a decision about whether or not it is beyond reasonable doubt that the accused committed the crime as charged. Details about the cessation of life of a homicide victim tend to be dealt with as clinically as possible during actual hearings. Prosecutors are required not to use scandalous language or to sensationalise any aspect of a criminal trial so as not to unfairly prejudice the jury. When we move from reality to crime writing, the emphasis is on working out who the culprit is and catching the killer. Publishers would generally agree that putting the word 'murder' on the cover of a book increases the chances of a sale (Wade, 2009: 6).

Both Emily and Ken are now deceased. Emily died in 2012 having never been re-tried but never quite being able to escape the stigma and the popular mythology that followed her throughout her life after her trial in 1981. The High Court decision remains an important case on law student reading lists in relation to similar fact evidence. But law students are not encouraged to ponder the ways in which the deaths that they are calling 'similar facts' altered the lives of others. Seeing that photograph of Albert Haag recalibrated something within my understanding of what I am writing about in telling Emily's stories. As I sat there at the Victorian Archives Centre, I turned to the photograph again and looked at it for a longer time. I kept putting it out of sight, then reaching for it again and again. I was simultaneously repelled and attracted; I felt that I was violating the most sacred of privacies, and yet I was drawn to this image in a crudely voyeuristic way. Suddenly my research was not merely about a woman accused of attempted murder but it was about a man who was unable to tell his own story. I wanted to draw something from that photograph. I wanted some sort of truth to emanate from the glossy page. He was a well-built, strong, handsome man. I knew that before he became ill, he had a beautiful head of dark wavy hair and a deep strong voice (Transcript 2470, 2476). I wanted his 'muffled and buried voice' (Doyle, 2013: 2) to speak to me. I was 'looking … for hints, for directions, for inspiration' (Doyle, 2013: 2) from this archival material. Did he suspect that his wife had poisoned him? Or like Ken twenty years later, would he refuse to accept that? Did he really die from eating corn cobs sprayed with weed killer, as his widow suggested to police? Or from breathing in the dust of old lead based paint? I wanted that glossy photograph to give me the answers. And from those selfish desires, those personal needs to get inside the story, came a more profound understanding of what I was doing. It was not about him speaking to me. I needed to speak for him. Given that my work 'draws upon narratives of lived experience' (Carey, 2008: 2), writing about Emily Perry means I must decide either that I must provide a voice for everyone involved in each of the stories that made

up her life, or 'grapple with the issue: whose voice is allowed to speak in the final text? (Carey, 2008: 2).'

Ethical Challenges

Clichéd images of death by arsenic poisoning have populated the pages of both fiction and non-fiction for centuries and expressions such as 'poisoned chalice', 'black widow' and 'Lucretia Borgia' extend the cliché of the female poisoner. Arsenic has been described as 'one of the most ubiquitous of poisons' (Brien 2012: 6). Its ingestion causes particularly unpleasant symptoms including painful abdominal cramps, vomiting, diarrhoea, headache, dizziness and sometimes death.[v] All of these symptoms were suffered by Albert Haag, Jim Duncan, and Ken Perry. (Less is known about the symptoms suffered by Frank Montgomerie.) Urban myths about Emily Perry in my home town of Adelaide are usually told through sniggers about poisoned sandwiches and polite refusals of cups of tea proffered in the church hall. The debilitating symptoms suffered by Emily Perry's alleged victims are rarely mentioned. Very few fictional accounts of murder by arsenic confront the horrible reality of this form of death. For example, the classic film *Arsenic and Old Lace* was presented as a black comedy. A notable exception is Flaubert's iconic *Madame Bovary* whose protagonist suffers a horribly lingering death from ingestion of arsenic. Flaubert punishes his adulteress, taking ten pages to graphically and brutally describe the effect of the poison on Emma's body. In writing about the deaths of three men, and the near death experience of another, my own text must balance the trauma experienced by those who died, the presumption of innocence of my protagonist and a conscious avoidance of clichéd stereotypes about the use of poison.

This ethical consideration compounds the conundrum of true crime writing which is not as neat and compartmentalised as crime fiction. Authors of 'true crime' have long established their work as a genre in its own right. In (white) Australia, true crime texts date back to bushranging tales such as *Michael Howe – The Last and Worst of the Bushrangers of Van Diemen's Land* printed in the colony of Van Diemen's Land in 1818 (Smith, 2008: 18). The daily reporting of real crime in our own neighbourhoods plays a large part in popular culture. Trials have been described as 'boundary maintaining devices' which 'help cement social solidarity by re-defining and proclaiming the norms' (Friedman, 1989: 1594). Crime reporting reinforces the maintenance of these social boundaries. This is partially because the presumption of innocence sits uncomfortably within the detective formula found in crime fiction. Reasonable doubt is not satisfying, but new Australian true crime titles appear with a regularity that suggests not only that there is an insatiable market for these works but also that this genre is accepted as genuine literature, arguably displacing earlier assertions that 'works of True Crime have rarely been able to transcend their general assessment as cheap and nasty' (Brien, 1999: 131). 'Literary and filmic depictions of crime in popular culture often question the value of the criminal justice system and its effectiveness in maintaining our humanity' (Spencer, 2015: 83) especially in the context of crimes against the person, including murder and attempted murder. *The Emily Perry Stories* will be an example of 'a way of explaining and critiquing the way

the law responds to human behaviour at its most challenging and often most primal level' (Spencer, 2015: 83).

Reader satisfaction from true crime is twofold: first, the ability to identify the offender, and secondly drawing comfort from a finding of 'guilty' (with no room for mitigation or explanation for the crime). There is something narratively satisfying about the finality of texts like Truman Capote's *In Cold Blood*, Helen Garner's *Joe Cinque's Consolation* and Carol Baxter's *Black Widow*. Capote famously narrates the guilty verdicts of Perry and Hicks for the Clutter family murders. Joe Cinque did die at the hands of Singh although her culpability for murder was the subject of her trial. Louisa Collins outlived two husbands who died from arsenic poisoning but was hanged. Emily Perry's final chapter was quite different – she lived life as a free woman, maintaining her innocence until she died at the age of 85. But her death sparked a final flurry of media attention. The Adelaide *Advertiser* published an article headlined 'My loving wife was no serial poisoner' (Debelle, 2012). The article gives a brief history of the various court cases and evidence that was given, including that Mrs Perry stood to benefit from life insurance policies on the life of her second husband (Albert Haag), and the suggestion that she had wanted to rid the family of 'a tiresome burden' by murdering her brother, Francis Montgomery. Ken Perry, elderly but defiant, lodged a complaint with the Australian Press Council about this article on the grounds that the article was 'unfair, unbalanced and showed inadequate regard for the privacy and sensibilities of her family and friends, especially as it was published only a few days after her death.' The Council upheld the complaint on the ground of lack of balance 'in circumstances where it was of special importance' (Press Council, 2012). Ken Perry's defiant defence of his wife, even after her death, renders the story difficult to classify as 'true crime' because of the quashed guilty verdict.

Whereas crime fiction 'is understood to restore order, even to restore some kind of fabled, antediluvian peace to the everyday world, and to punish-lawbreaking' (Rolls 2016: 3) Seltzer argues that the true crime genre is a cult genre 'which knowingly takes the crime novel as its prototype and tries it out on real life' (Seltzer, 2008: 19) 'by following the conventions of popular crime fiction' (Seltzer, 2008: 26). It is a 'cult of commiseration' that is 'part of contemporary 'wound culture; it facilitates commiseration via the mass media (Seltzer, 2008: 13). Crime dramas 'dramatise the conflict between good and evil' (Aoun, 153). We want to see Perry as evil because to do so would be neat and conventional. Emily Perry was never re-tried for the attempted murder of her South Australian husband Ken Perry and she was never tried for the murder of her Victorian husband Albert Haag or her brother Frank Montgomerie or her partner Jim Duncan, all three of whom died from poisoning. In strict legal terms, no crime can be said to have ever been committed, at least not by Emily Perry, so the 'true crime' appellation sits uncomfortably in these circumstances. Under our criminal justice system, Perry is entitled to the presumption of innocence. Legally, she is presumed not to have committed any crime. The 'truth' may never be revealed. Unlike crime fiction, where 'the truth is always there waiting for us' (Rolls, 2016: 3) the satisfaction derived from the finality of a guilty verdict or at least the disclosure of the identity of the perpetrator of the crime(s) will not be available for this narrative. This lack of finality will highlight the fact that the 'criminal justice system relies, for its

legitimacy, upon the repeated articulation of positivist binaries: innocent/guilty, normal/deviant, true/false, real/imagined' (Biber, 2006: 23). Writers of true crime stories must be wary of accepting these binaries as the only narrative alternatives because the criminal justice system actually operates in the context of human fallibility and the impossibility of articulating the whole truth. This is particularly poignant in the context of an adversarial trial where witnesses only provide information in response to a series of carefully crafted questions and for a vast number of reasons (a detailed explanation of which the scope of this paper does not allow) do not have the opportunity to tell everything they know about a given set of circumstances. Haebich argues that the rigid dichotomies suggested by Biber 'give way in compelling works of scholarly crime history written across the boundaries of history and fiction, hovering between fact and poetic imagination' (Haebich 2015: 2).

Wade argues that 'the best crime writing comes from the understanding and re-telling of the human situation at the core of the story. Understanding that human dilemma is an integral part of writing that story. The moral consequences are as important and intriguing as the legal ones' (Wade, 2009: 9). My challenge is to write a book which maintains the fascinating reality of a remarkable story, while presenting the narrative with compassion and preserving the dignity and humanity of all of the characters. I seek to 'tell a story about [other people's lives] in a way that does not hurt, exploit or misrepresent them, and … in a way that preserves [my] integrity as the writer' (Carey, 2008: 1).

Conclusion

While works of true crime may use the literary techniques of crime fiction to enhance suspense and enliven characters, an underlying ethical brake needs to be applied to true crime writing to prevent acceleration into the territory of giving offence and reviving pain for those whose lives have been affected. Had Emily Perry lost her High Court case, she would forever have been remembered as the woman who poisoned her husband. The High Court allowed her the benefit of the removal of that label but only to the extent that she is now remembered as 'the woman who was accused of poisoning her husband'. In re-crafting the narrative of the life of Emily Perry, and the lives of Albert Haag, Frank Montgomerie, Jim Duncan, and Ken Perry, I have had the opportunity to relate aspects of their stories that were never recorded in court or in the newspapers. These details help to provide a framework for readers to visualise Emily as a character who was more rounded than the stereotypical 'black widow' caricature that is perpetuated in popular mythology. The aim of the narrative is to 'successfully re-narrates the protagonists' stories in what could be described as fully fleshed, satisfying biographical studies' (Brien, 2016: 2). However, it is also my ethical responsibility as a writer to ensure that the triple tragedies before Emily's marriage to Ken are honoured as such. In addition, the High Court decision and the absence of any further prosecution re-assert Emily Perry's right to the presumption of innocence.

The Emily Perry Stories cannot tell the 'truth' because no-one except Emily knows what really happened to Albert Haag, Frank Montgomerie and Jim Duncan. And only Emily knew what went on inside her marriage to Ken. But my responsibility in

recounting this extraordinary story is to adhere as closely as possible to the authenticity of the history, as I has unfolded to me. The book will hopefully remind readers that all cases that come before the courts are about real people with stories to tell. Some of those stories are ongoing. I honour all of those stories and respect the humanity of all those whose lives were touched by the life of Emily Perry.

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Cases

The Queen v Perry (No 5) (1981) 28 SASR 417

Perry v The Queen (1982) 150 CLR 580

Legislation

Criminal Law Consolidation Act 1935 (SA)

End Notes

[i] *The Queen v Perry (No. 5)* (1981) 28 SASR 417

[ii] *Perry v The Queen* (1982) 150 CLR 580

[iii] Personal conversation between the author and SA Police.

[iv] S 246, *Criminal Law Consolidation Act 1935* (SA).

[v] For a historical overview of arsenic used as a poison, see Brien, Donna Lee, 'The poisoner's cookbook,' in *TEXT Special Issue: Creative Writing as Research II*, October 2012.

APPENDIX 2

A pre-publication copy of the following book chapter is attached as Appendix 2:

"Challenges and Limitations of Creative Speculation: True Crime Biography through a Lawyer's Lens." To be published in *Speculative Biography: Experiments, Opportunities and Provocations* (Donna Lee Brien and Keira Lindsay (eds), to be published by Routledge in 2021.

Challenges and Limitations of Creative Speculation: True Crime Biography through a Lawyer's Lens.

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Introduction

Many readers would have recognised the name in the discreet death notice that appeared in South Australia's *Advertiser*:

> Emily Perry
>
> Died 29 January 2012. At peace at last.

Mrs Perry's death concluded a saga that was far from peaceful. In 1981 she was the subject of a sensational trial in the Supreme Court of South Australia where almost two hundred witnesses gave evidence. She was accused of attempting to murder her husband Ken Perry by administering quantities of lead arsenate to him over a long period of time and ensuring that he was well insured so she would benefit financially in the event of his death. The background story that the Prosecution also told was about a previous husband who died from arsenic poisoning in 1961 in Melbourne, a brother who died from arsenic poisoning in 1962, also in Melbourne, and a de facto husband who died from poisoning in 1969, across the state border in Adelaide, South Australia.

Ken Perry did suffer from both lead and arsenic poisoning, but to the amazement and frustration of both police and prosecutors, he insisted that his wife had done no wrong. The defence lawyers argued that the case against Mrs Perry was so thin that it should be dismissed. They also argued that the evidence relating to the earlier deaths was inadmissible and that the jury should not be permitted to hear it.

The Defence case was that Ken Perry had made himself ill through his hobby of restoring old player pianos and orchestrelles. A player piano is a type of upright piano that produces a tune by a roll of hole-punched paper fed through a mechanism that enables the notes to be played. The most popular brand was the Pianola. An orchestrelle is a player organ that operates in a similar fashion. Ken was adamant that one particular orchestrelle had been especially dusty and corroded and that breathing in the dust from its crumbling lead pipes had contributed to his high lead levels. His vast and unruly moustache had been a repository for dust and his own admittedly poor hygiene had made him ill. Ken and his wife were a happily married couple, according to the Defence lawyers, and Ken himself thought the idea that his wife had attempted to kill him was preposterous. In court, his wife's barrister insisted he not be referred to as the 'victim'.

A jury found Emily Perry guilty of attempted murder and her appeal against the conviction to the South Australian Court of Criminal Appeal was unsuccessful. But in 1982 the High Court of Australia declared that the jury should never have been told about the deaths of the three other men. The High Court's decision to quash Emily's conviction was based on the reasoning that some of the 'similar fact evidence' was more prejudicial than it was probative, and should have been withheld from the jury.

The words 'probative' and 'prejudice' and the phrase 'similar fact evidence' became the hallmarks of this case. There is no adequate simile for 'probative'. Evidence that is probative helps to prove something. The 'probative value' of a piece of evidence is the pivotal argument used by lawyers when justifying its admissibility before a jury, and the use of this word in my biographical narrative about this case is an example of the many challenges I have faced as a practising lawyer writing true crime.

This chapter explores a work in progress case study of practice-led research about the Emily Perry case. It investigates the balancing act between explaining the

court process to a reader unfamiliar with the rules of the Australian criminal justice system with its emphasis on proof, and the creative desire to produce a page-turning narrative.

The High Court ordered a retrial but Emily Perry was never retried. I am now writing her story in a genre-bending narrative that is a hybrid of true crime and biography. In the first and second drafts, I grappled with the tension between my dual roles of lawyer and writer. In the third draft, I have leveraged that tension to find my authorial voice and I feel confident in the point of view that I have adopted.

If I believed that she was guilty of three earlier murders and of the attempted murder for which she was tried, I might have speculated about what she was thinking, why she did it, and how she may have plotted her crimes. This would have generated a fertile basis for the development of her as a character. However, any person brought to trial for a criminal offence is presumed innocent. It is the role of the Prosecution to prove guilt beyond reasonable doubt - a very high threshold. So in my narrative, I maintain that presumption of innocence and I have not invented Emily Perry's thought processes. I have, however, indicated aspects of the evidence that I find troubling. I have done this with very clear directions to my reader about what is recorded as having happened and where my own speculation begins and ends.

Not having observed the Perry trial, my only window onto the case has been through the official court judgments,[1] the typed transcript of the court hearings[2] and some other archival documents including Inquest files from the two Victorian deaths

[1] *The Queen v Perry (No 5)* (1981) 28 SASR 417 available at: < https://www-westlaw-com-au.ezproxy.lib.monash.edu.au/maf/wlau/app/document?&src=search&docguid=I87d6db2ba17711e099ddc9a8daf54a2f&epos=2&snippets=true&fcwh=true&startChunk=1&endChunk=1&nstid=std-anz-highlight&nsds=AUNZ_CASES&isTocNav=true&tocDs=AUNZ_CASES_TOC&context=45&extLink=false&searchFromLinkHome=true&details=most&originates-from-link-before=false> ; *Perry v The Queen* (1982) 150 CLR 580 available at: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1982/75.html>

[2] *R v Perry*, Supreme Court of South Australia, 6/1981, Transcript.

in 1961 and 1962. There were many gaps to fill in this archival data. Some additional information has come from the memories of lawyers who were involved in the case, but I have filled the remaining gaps with carefully articulated speculation. This chapter explores both the opportunities and the limitations presented by the gaps in the archival material and the choices I have made with regard to acknowledging the missing data and the level of speculation I chose to adopt. It also discusses my dual role as lawyer and writer in the speculation process.

Part 1: The Law v A Good Story.

The Perry case is an important criminal law precedent. The 1982 judgments of the four High Court justices[3] together comprise a legal narrative about when and how stories from the past can be used as evidence in court. The Defence lawyers argued from Day One that the evidence about the three earlier deaths should not be heard by the jury because it was overly prejudicial and was irrelevant to the attempted murder charges. The Crown had always argued that the disputed evidence was genuinely and strongly probative that Emily Perry deliberately poisoned Ken Perry. In the end, the High Court agreed with the Defence arguments. There have been many subsequent cases that are now cited by lawyers who seek to persuade a judge to either allow similar fact evidence (if they are prosecuting) or declare it inadmissible (if they act for the accused). But despite its loss of authority as a legal precedent through subsequent High Court decisions that have refined the rules, the Perry case remains part of local folklore in South Australia. I have spent several years researching it and authoring a narrative that straddles the genres of true crime and life writing. As a lawyer and a legal educator, my aim in writing about Emily Perry is to bring a legal case to life and explain complex legal concepts using creative nonfiction. As a writer, I am crafting a kind of biographical narrative that I hope will appeal to readers beyond those in the

[3] Above, n 1, *Perry v The Queen* (1982) 150 CLR 580.

legal profession. My creative impulses bounce between my legal training which tells me that I must demonstrate the veracity of every fact and my role as a storyteller who is aware that speculation and imagination can be used to hold the reader's attention. The result is a hybrid form of creativity that honours my commitment to write what I know is true, but also includes a level of speculation that is identified to the reader and contributes to the readability of the narrative.

If you are a Prosecutor in a court of law, you can only put forward a 'story' if you can prove it. You have an obligation to demonstrate the 'truth' of a particular version of events, by producing witnesses who corroborate each other's stories. You are required to prove the authenticity and provenance of every document. A Prosecutor seeking a guilty verdict bears the onus or proof to dislodge the presumption of innocence. A defendant, however, is obliged to prove nothing. Presumed innocent, the defendant may choose to say nothing, and produce no evidence at all. The defendant's lawyer will challenge the Prosecution evidence through cross-examination, trying to make it look unreliable or endeavouring to reveal elements of doubt.

Speculation is specifically disallowed in a courtroom. Lawyers are not permitted to ask a witness what someone else might have been thinking or what might have happened, or what emotion another person was experiencing. For example, a witness is allowed to say that a person cried or had a red face, but they are not allowed to speculate about why the person cried or that the person was probably angry. The witness is only allowed to speak about what they saw or heard, or how they personally felt. So as a writer, to imagine someone's interior world in the context of a criminal trial feels anathema to me. This has been my greatest challenge but it inspired me to develop a particular level of speculation that has allowed me to explain to a reader how a criminal trial unfolds while simultaneously revealing the aspects of the narrative that have been crafted from my own imagination.

The trial transcript does not provide the minutiae required to bring life to the characters whose voices I cannot hear and who faces I cannot see. It contains many thousands of words, but no indication of whether they were shouted or whispered or spoken in a tenor in between. There are no clues about whether a witness looked angry, afraid, defiant, determined, confused or cornered. There is no record of whether members of the jury laughed or smiled or were shocked or saddened, or felt or displayed any other emotion. Nothing is written about whether any of the witnesses had accents or if they sipped a glass of water while they gave their evidence, or who else was present in court. These are the subtleties that authors like Truman Capote and Helen Garner included in their narratives in order to animate them.

In 1966 Truman Capote famously wrote *In Cold Blood*,[4] a contemporaneous account of the investigation, trial and hanging of Perry Smith and Richard Hickock for the Clutter family murders in Kansas in 1959. In 1997 and 1999, Helen Garner's attendance at the trial of Anu Singh was later published as *Joe Cinque's Consolation*[5] and Garner was also present at the murder trials of Robert Farquharson which are documented in *This House of Grief*.[6] Both Garner and Capote were able to describe their characters and the sequence of events in their narratives from personal observation, enticing their readers through a non-fiction narrative that uses fictional techniques like characterisation and scene setting. But they also use the technique of speculation. For example, in *Joe Cinque's Consolation*, Garner describes a witness thus:

> He was a New Yorker in his forties with pale hair and eyelashes, tasselled loafers, and a neatly packed little overnight bag that rested against the leg of his chair… It was immediately plain that Dr Byrne was in his element: he

[4] Capote, Truman, *In Cold Blood.* Camberwell, Victoria: Penguin, 2008.

[5] Garner, Helen, *Joe Cinque's Consolation.* Sydney: Picador, 2006.

[6] Garner, Helen, *This House of Grief*. Melbourne: Text Publishing, 2014.

> spoke with the relaxed and smiling assurance of a pro. Something about him got up my nose.[7]

Garner observed and listened to the New York psychologist and could add the details she witnessed, but she also included subtle fictitious additions about him in her narrative. How did she know, for example, that his overnight bag was 'neatly packed'? Presumably she could not see inside it, where there may have been two dirty shirts and a leaking tube of toothpaste stuffed next to a squashed sandwich. In Garner's text, the overnight bag is a metaphor for the man himself and so it could be argued that the neatness (or otherwise) of the bag matters little. But for me, this raises the question of what other details Garner might have invented. I have made a choice to be very clear where I am speculating, in the same manner as Gideon Haigh and Katherine Kovacic have each done in their true crime investigative works about the 1930 murder of a Melbourne woman called Mollie Dean.[8] Brien notes that

> 'Haigh and Kovacic … demonstrate how biographers can deal with evidence that is ambiguous, contradictory or patchy. Both authors discuss the evidence they have and where it was found, and then make it very clear when they are stepping in and interpreting that information. Neither exaggerates, lies nor manufactures material to fill in the missing bits of Dean's story. When they speculate on the aspects of the crime, they signal to the reader they are doing so.'[9]

This is the methodology that I have employed.

Readers 'trust nonfiction writers not to manufacture or alter the truth as those writers understand it'[10] and my legal training steers me towards committing to the page only those facts that I can verify. However, I am also aware of the need for

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[7] Above, n 5, 37.

[8] Haigh, Gideon. *A Scandal in Bohemia: The Life and Death of Mollie Dean.* Australia: Penguin, 2018. Kovacic, Katherine. *The Portrait of Mollie Dean.* Australia: Bonnier Echo, 2018.

[9] Brien, Donna Lee. 'Inside the story: humanising a cold case victim – writing the life and brutal death of Mollie Dean', *The Conversation*, 30 May 2019, available at https://theconversation.com/inside-the-story-humanising-a-cold-case-victim-writing-the-life-and-brutal-death-of-mollie-dean-111185

[10] Brien, Donna Lee. 'Creative Practice as Research: A Creative Writing Case Study', *Media International Australia incorporating Culture and Policy*, 118, no. 1 (2006) 53-59, 55.

narrative complexity, so by my third draft I have crafted a story based on my perspective. My manuscript is an interpretation of the transcript that I can offer as a lawyer. I am able to explain why a barrister is objecting to a question asked of a witness, or why the jury may have been sent out while a legal point is argued. I can foreshadow where the evidence will be challenged at a later stage and explain why the High Court judges came to their ultimate decision. My contract with the reader is more than just that they should expect me tell the truth. I want the reader to trust me to guide them through the trial process and explain what is happening.

A temptation exists to fictionalise aspects of a true crime story. However, as Donna Lee Brien asserts about true crime that seeks to stay 'true' to criminal history, 'fiction should not be used merely to create dramatic interest'.[11] Brien explains that:

> 'fictionalisation can be used to write more 'truthful' true crime, by including into the crime narrative elements which are not conventionally substantiated, but without which the story is incomplete … especially the unrecorded thoughts, emotions and motivations of the protagonists'.12

In my manuscript, I have found fictionalisation to be inappropriate. This is because in order to prove a case of murder or attempted murder, the Prosecution has to prove that the defendant intended to kill the victim. Intention is a critical element of the offence. If intention is not proved, then the jury cannot return a verdict of guilty.

The imagined interior monologue of a person on trial for a criminal offence is precisely the information that a trial seeks to elicit. In Emily Perry's case, the Prosecution had to establish that she intended to kill her husband and that he did not ingest arsenic by accident. Speculation in this narrative is therefore a brittle concept. When Emily Perry's conviction was quashed, the presumption of innocence was restored. To imagine Emily's interior monologue would require an assumption of innocence or guilt or suggest critical facts that were never proved by any evidence.

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[11] Brien, Donna Lee. 'True Crime Fiction as Criminal History: Illustrated with selections from the author's manuscript 'The Case of Mary Dean.' *Australian Feminist Law Journal* (13) (1999) 131-139, 133.
[12] Above, 133-4.

Therefore, in every aspect of my narrative-in-progress (including my speculative practice), I have deliberately retained the ambiguity and uncertainty surrounding her state of mind, rather than replacing the uncertainty with invented content. For example, my narrative includes content from a typed police interview. There is no audio or visual recording of it, so I have not been able to include the sort of narrative detail that a reader might expect. I have speculated about these details such as in this example:

> Did she look him in the eye? Did her hand shake as she held the pages, forcing her to lie them flat on the table to control the tremors? Was she able to concentrate as she read her words that were inked with bitter finality onto the pages? Was nausea rising in her gut? Did she carefully turn each page over as she read them in silence?

This strategy makes it clear where the facts lie (there was a police interview, it was typed up, the police gave it to her to read) and where speculation begins (the questions above). As a writer, this generates narrative tension. As a lawyer, this draws a distinction between what we know as fact, and what remains to be proved.

In another section, when Emily drives her husband to hospital, I have made a deliberate authorial choice to include the scene in the narrative, making it clear that I have imagined how it might have transpired:

> We will never know what Ken and Emily chatted about as she drove her husband to the Modbury Hospital. We don't know if she tried to cheer him up, or if they drove in silence. I imagine her as the solicitous wife, driving carefully, saying little, offering the occasional reassuring smile for her husband as he sat, sullenly, and in frustration at his lack of control over an ageing and contaminated body.

This technique satisfies both the lawyer's insistence on 'proof' and the writer's desire for dramatic tension, and narrative detail.

Part 2: Crime Fiction v True Crime

Much has been written about both the 'discourse of [the] literary value'[13] of crime fiction and true crime and the satisfaction that crime fiction provides by 'the return of order through the mechanism of the law'.[14] Crime fiction by its very nature is speculative. Crime writers can invent a protagonist's intentions and motives, and design a narrative arc based on an investigation of a crime that concludes with the unmasking and arrest of the killer whose fate is rarely addressed. True crime is not as neatly packaged as crime fiction which tends to 'derive from an established formula [that is] a particular kind of narrative structure'.[15] True crime does not necessarily return the reader to order, because there may not be enough evidence to secure a conviction, or the offender may never be found. Or the wrong person might be charged. Or there may be a lack of proof of intention to commit a crime – it may have been an accident.

In exploring Emily Perry's story, readers may want 'the truth' about what really happened. Did she really kill three other men? Did she try to kill Ken Perry? There will be readers who desire a neat resolution, like a crime novel, with all facts disclosed, and the offender caught, tried, convicted and punished, but I am unable to provide such resolution. My adherence to the evidence that was given in court, rather than embellishing the narrative with conjecture demonstrates the fallibility and complexity of the adversarial system as a method of pursuing truth. My manuscript is not a novel.

Emily Perry's story 'draws its power from the nonfiction truths it tells'.[16] For this reason, I have adhered to the facts as I have uncovered them though my archival research, and identified where I have interposed speculation and conjecture by using vocabulary like 'probably' and 'I imagine' and verbs in the conditional mode using

[13] Turnbull, Sue. 'Gimme Closure: Crime Fiction Readerships and the Politics of Taste', *English in Aotearoa*, (May 1999): 17-25, 19.

[14] Spencer, Rachel. 'Chapter 6: Crime.' In *Law and Popular Culture in Australia*, edited by Melissa De Zwart, Bernadette Richards and Suzanne Le Mire, 81-96. Chatswood: Lexis Nexis Butterworths, 2015, 87.

[15] Spencer, above, 83.

[16] Brien, above, n 10, 61.

'would', drawing upon the methodology used by Annie Cossins in her non-fiction narrative about Australian 'baby farmers' Sarah and John Makin. They were tried in 1893 for the murder of a baby whose body was found buried in the back yard of their house in Sydney and their case was also about similar fact evidence.[17] Cossins uses vocabulary that shows where details are supposed or imagined, for example:

> Her voice from behind her handkerchief may have trembled but she was still defiant. Right to the end, Sarah considered she was not guilty. Was she deluding herself or was she really innocent of the charges against her?'[18]

There are several examples of this type of limited speculation during the trial scenes in my manuscript, where I combine an explanation of the trial process with the development of the case, such as:

> Gustave Haag knew how the adversarial system worked, that it was important to maintain the same narrative, to recount the same facts, each time the evidence was given. He knew that a detail omitted or a fragment of memory added, could make him look like an unreliable witness. And yet too much repetition, too much sameness could make the evidence appear to be a rehearsed fiction. Being a witness is arduous and thankless. Gustave would have known that he must not lose his temper.

A little later in the same scene:

> I imagine that his cold stare at [the defence lawyer] would have sent a chill through the whole court room. Perhaps [the defence lawyer] looked down at his notes. He probably cleared his throat, shuffled a little, tweaked his jabot. The jury members may have looked awkwardly at each other. Of course, I don't know this. The transcript does not record pauses, or coughs or yawns or tone of voice. But behind the blandness of the typed words, I

[17] Cossins, Annie. *The Baby Farmers*. Crows Nest: Allen and Unwin, 2013.

[18] Cossins, above, 194.

> can sense the yearning of Gustave Haag to say everything that he had kept pent up for twenty years.

In this example I have combined the exact wording from the trial transcript with my interpretation of what was happening and my speculation of what I might have seen if I had been in the court room.

Some additional detail in the manuscript has come from lawyers who were involved in the case, but the main source has been the written transcript of evidence from the trial that took place in 1981. The transcript is over four thousand pages long and sets out every word of every witness, each one recounting a different part of the story that spans Emily Perry's life, the circumstances of the deaths of the three other men and the copious medical evidence about Ken Perry's illness and the investigation into his poisoning. It is from the transcript that I have pieced together the whole narrative. I have also drawn on the judgments from the South Australian Court of Criminal Appeal in 1981[19] and the High Court of Australia in 1982.[20]

Newspaper articles that were published during and after the trial and the subsequent appeals were informed by the trial itself provided no additional material other than some photographs which have been helpful in feeding my imagination when contemplating the main characters. For example:

> There are no photographs of fifty-five-year-old Emily on her first day in court, but as the trial progressed, Adelaide's evening *News* published pictures of her wearing a tailored jacket and skirt, with a blouse demurely buttoned at her neck. Her chestnut hair was sternly trimmed to sit just above her collar, thwarting the wayward curls that would have tumbled across her shoulders had she let them. Her smile for the camera revealed straight, even teeth but thinning lips; she had a delicate nose and unblemished skin. In profile, her chin protruded a little. Only the slightest of tiny crows' feet

[19] *The Queen v Perry (No 5)* (1981) 28 SASR 417
[20] *Perry v The Queen* (1982) 150 CLR 580

> framed her brown eyes, under which dark circles were the only clue to a turbulence beneath her placid countenance.

My deeply ingrained habits of ensuring that I can prove every fact create friction when they rustle against the literary devices of creating a compelling narrative. I was not in the court when Emily Perry was tried and in order to provide the detail that a page-turning narrative demands, I have drawn on my imagination, but with an important caveat. If I have introduced a detail that has been imagined rather than identified through research, I feel that it is appropriate for the reader to be notified. For example, when writing about Emily Perry's early life, I have relied on her unsworn statement from the trial. The unsworn statement (no longer used in South Australia) enabled a person who was on trial to make a statement to the court, without having to swear to tell the truth and without being subject to cross examination. The jury would place whatever value on it they thought fit. All we know about Emily's family background comes from this unsworn statement that she read out to the court. She was allowed to give her version of the facts, but she did not take the oath to 'tell the truth, the whole truth and nothing but the truth' before she spoke, and she was not subject to cross-examination. Despite its unreliability, Emily Perry's statement is the main key I have to her character, and it tightly masks her real nature and personality. It is a fifty-nine-page monologue, a set of bland, dispassionate, facts, crafted by her lawyer. It is her version of events, but not her words. She read it aloud, uninterrupted, and then resumed her seat in the dock. She would have rehearsed it, practised the way she held her body, ensuring that her face betrayed no emotion that could be misinterpreted. I have filled in some of the gaps about Emily's youth (when she was first known as Phyllis and later as Trudy) with my own conjecture, but always making a clear distinction between what is documented fact and my own speculation. For example:

> When she was about six the family moved to busy Carlisle Street in St Kilda where they lived at the rear of a bootmaker's shop. One or two years later they moved to a home behind a florist. When she was eight, her mother had

> a stroke that left her bedridden with paralysis down her left side and her ten-year-old sister ran the house. This is what she told the court. My interpretation of this interesting detail, even with a cloud over its veracity, is that this is a hint about her ability to cope and to be independent, aspects of her personality that later defined her. When I read this detail, I also discern a sub-text of bitterness, the inner child who was plunged into being a grown-up way too early.

And later:

> We do know that Phyllis Hulse was nineteen when her son [redacted] Hulse was born. Kenneth[21] was discharged from the army a few months later, and he agreed to make a go of the marriage for the sake of the child. I imagine teenage passion dissolved in the red-faced, squalling, hungry reality of a new baby.

In using Perry's unsworn statement to inform my narrative, I also draw the reader into recognising its unreliability. Here is an example from my manuscript based on Perry's account of her second marriage:

> A picture emerges of Albert as a troubled figure, dissatisfied with his work, drinking too much, and gambling. Trudy would put bicarbonate of soda in his beer and seal it up again in a bizarre attempt to stop him from drinking. The portrait materialises as a cliché: the middle- aged man with a wife and four children, a suburban battler who perhaps each Friday night pondered what it was all for, and each Monday morning set off for another week of sameness and banality. But the artist who crafted this portrait was Trudy herself, at a later moment in time when she called herself Emily, daubing over the memories with her own veneer of reminiscence which may have been unreliable. Conceivably it was misshapen, contorted, or even twisted into untruth and fabrication. As I attempt to visualise the family, the picture mutates into a series of brushstrokes and then pointillist dots, denying me clarity.

I build upon my unease about aspects of Emily's story as the manuscript progresses. Later in the narrative I come back to the detail about the bicarbonate of soda, as follows:

> I look again at the grainy newspaper photographs of Emily, searching for a clue to her personality. She has been described to me as 'cold', a woman who showed little emotion. There is something about her eyes that look friendly and warm, even kind, but in the pixelated shades of grey I perceive

[21] Emily's first husband's name was Kenneth Hulse. Her third husband (whom she was charged with attempting to murder) was called Kenneth (Ken) Perry.

> something hard, something determined. It looks like anger. I can't shake the image of her from two decades earlier, taking the cap off a bottle of beer and secreting bicarbonate of soda inside, then sealing up the bottle again and waiting.

Creative nonfiction 'is defined by a complete reliance on the foundational truth-telling talents of nonfiction writing. The 'creative' part of the term describes only the literary devices writers may utilise in telling their nonfiction narratives'.[22] In using limited speculation, my literary aim is to be as true as possible to the documentation available about events in order to avoid allegations that the work is unreliable and not to be trusted. This is important to me because, as Brien writes 'readers trust non-fiction writers not to manufacture or alter the truth'.[23] Not having been present in court, I am unable to describe the members of the jury as these are not documented in the historical record at all, but I provide regular reminders of their presence, such as:

> At this point, the jury members probably sat up just a little straighter, and focussed on Mr Martin a little more intently.

And:

> If the jury had been in the court, this might have produced gasps or at least a whisper of surprise.

And

> That must have made the jury members sit up a little bit straighter, and focus on Mr Martin more intently.

I believe that I have to 'strive for the highest levels of verifiable accuracy in [my] work'[24] and that I have no liberty 'to falsify or pollute the historical record'[25] because not only is this case of legal importance but many of the characters (including lawyers and jury members) are still alive. And, so, I inject a level of supposition based

[22] Brien, above, n 10, 57.
[23] Above, 55.
[24] Above, 55.
[25] Above, 57.

on my personal knowledge of how trial lawyers interact with juries generally, for example:

> 'But if, on the other hand,' and here his voice may have lowered a little, perhaps he made deliberate eye contact with the jurors, one by one…

And:

> Mr Martin may have paused here slightly to allow the jury members to absorb this vital and damning information.

And:

> In the jury box, a collective swivelling of heads to the right would have followed Mr Martin's cue to resume his seat.

My own experiences as a lawyer allow me to provide imagined insights into some of the happenings in the courtroom, even though I was not present.

Lee Gutkind is of the view that the 'creative' part of creative nonfiction is 'the unique and subjective focus, concept, and point of view in which the information is presented and defined'.[26] I adhere to this view in my speculation in this story. Guided by the trial transcript in terms of both the evidence given by witnesses and the interaction between the lawyers and the judge, I have guessed at what the lawyers may have been thinking or how they may have spoken. The courtroom does have a high level of drama, but at often at a measured pace. I have synthesised and summarised the reality of the transcript into a series of scenes that appeal to a reader. This has included emphasising moments of movement and curiosity. For example, the transcript shows that at one point during the trial, Defence counsel asked the judge for permission for Ken Perry to be present for the entirety of the proceedings. Justice Cox's response immediately follows. My manuscript includes a mixture of the recorded transcript and my speculation:

> Mr Martin was probably ready to jump to his feet to begin his protest but he did not need to.

[26] Gutkind Lee. 'From the Editor: What's in This Name – And What's Not?' *Creative Nonfiction* 1: 1-2, (1993), 2.

'I am going to deny that application Mr Waye,' said Justice Cox.

In writing a biography about his father, David Carlin decided to invent aspects of him, and fictionalise details of his story. Carlin refers to this as his 'imaginative investment in the material'.[27] Carlin describes an example in which he knows that his father joined the navy and travelled from Western Australia to Melbourne in 1945, but he does not know how he got there. He decides to place him on a train, then realises that the way he interacts with other characters on the train will be largely determined by whether or not he is in uniform, a fact Carlin cannot substantiate. So he invents that detail too and then continues the story to fit in with it. I have resisted inventing such details, choosing instead to show the reader which details are missing. For example, I explain the following from her unsworn statement:

> She opened a 'frock salon', but didn't continue with it. The short life of this business suggests that it was not successful, but her own words do not offer any explanation. Perhaps her 'frock salon' involved a few weeks of selling off her dancing costumes.

At another moment in her life story:

> It was at Myer that she met Albert Haag. Perhaps the handsome soldier caught her eye as he strolled through the store one lunchtime.

By suggesting possibilities to cover the gaps in the archival records, I invite the reader to speculate on what might have happened, and also demonstrate that court trials do not provide all the answers.

Part 3: Conclusion

Some of the most interesting stories to which we are drawn come from the criminal courts. I first read Emily Perry's story in its context as a legal precedent about the use of similar fact evidence. When I decided to write a true crime story, I was attracted to the narrative arc of her case that extended beyond an interesting legal question. I chose

[27] Carlin, David. 'Do you mind if I invent you?': Ethical questions in the writing of creative non-fiction,' *TEXT, Special Issue Number 5*, *The Art of the Real*, April 2009, 1, 3.

to write about it because it offered the challenge to me as both a lawyer and a writer to explain a complex aspect of the law of evidence within the context of an extraordinary story.

I started writing Emily Perry's story with the hope of gaining a better understanding of why her conviction was quashed. That necessitated an understanding of the laws relating to the admissibility of similar fact evidence, as they were at the time of her trial and the subsequent appeals. As my research developed and the manuscript progressed, I had to make decisions about how to make the narrative interesting to the reader and how to fill in the gaps left by the archival material. I also had to anticipate the questions that a reader might have about those gaps and make decisions about how much speculation I might include in the narrative. As a lawyer, my aim in this work is to explain why the evidence about the three earlier deaths was ultimately decided to be inadmissible. As a writer, my approach has been to offer my speculation about the trial from a lawyer's perspective.

The true crime genre lends itself to speculation about all manner of detail. For me, as both a lawyer and a true crime writer, it is important that I have explained the function of the courts and why the case unravelled as it did. I have explained why a level of limited speculation in my work has been necessary to increase narrative appeal but I have also demonstrated where caution should be exercised, especially in relation to writing about Emily Perry's state of mind in relation to the crime for which she stood trial. The quashing of her conviction has never been disrupted and in the eyes of the law, she went to her grave an innocent woman. As a writer, I am less interested in her guilt or innocence than in her place in this extraordinary story. My desire is to revivify that story beyond the dry legal judgments that I read as a law student and reveal both the intricacies of a criminal trial and the enigma of Emily Perry in a single captivating tale. My practice-led research reveals how speculative insights can provide convincing creative results without disrupting some of the basic tenets of the criminal justice system.

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APPENDIX 3

A version of part of Chapter Two of this exegesis has been published as Spencer, Rachel. 2015. "Crime." In *Law and Popular Culture in Australia*, edited by Melissa De Zwart, Bernadette Richards and Suzanne Le Mire, 81-97. Chatswood: LexisNexis Butterworths.

A pre-publication copy is attached as Appendix 3.

Crime

Rachel Spencer

"The law is some tricky shit, isn't it?"

Thelma and Louise

Texts

Janet Evanovich (2007) *Lean, Mean, Thirteen*.

Law and Order SVU, Series 14.

Rolf Boldrewood (1888) *Robbery Under Arms*.

The Advertiser (15 July 2014) *What the jury wasn't told*.

Australian Broadcasting Commission (2014) *Rake*, Series 3.

Introduction

Crime pervades every type of modern popular culture: television programs, crime fiction, true crime, crime movies and 'news' in newspapers, television, radio and social media. Crime makes a lot of money for those who report it, write about it, perform it or fictionalise it. This chapter focuses on four main texts and also makes reference to several others which readers are encouraged to explore.

Historical Background

Criminal law has been the subject of popular culture and literature for centuries. Themis and Dike were both Greek goddesses associated with Justice. Chaucer included a Sergeant of the Law in *The Canterbury Tales*. Dostoyevski, Tolstoy and Dickens used crime as the basis for many stories well before Raymond Chandler, Arthur Conan Doyle, Agatha Christie and Minette Walters, who all found fame and fortune through writing crime stories. Crime is so ubiquitous that the defining line between crime in popular culture and crime in literature is often difficult to distinguish. A 'politics of taste exists in which literature and crime fiction are somehow opposed.'[1] This 'discourse of literary

[1] Turnbull, 1998, p 17

value'[2] has been going on for centuries. Crime fiction developed as a genre as books and magazines became cheaper to produce and distribute.[3]

Descriptors like 'trash', 'fluff' and 'junk' are often used to describe popular cultural representations of crime and criminal law such as crime novels and television shows about crime. However, the question of whether or not depictions of crime are 'trash' or 'literature' is insignificant when examining their place in popular culture.[4] Charles Dickens was 'condemned for being a crowd pleaser'[5] but his popularity as an author has never waned. Dickens' portrayals of criminal law and criminality (e.g. Fagin in *Oliver Twist*, Magwich in *Great Expectations*) were just as exaggerated as modern Hollywood and television productions. Although not a lawyer, Dickens had experience working in a law office and so he had some knowledge of the machinations of criminal law. But today, writers of television and film scripts are generally not legally trained and their ideas about how the law works may come from a variety of sources, some more accurate than others. In turn, consumers of these works who are not lawyers have only their screens and their pages to guide them; popular culture is a heavy influence in relation to lay perceptions of criminal law and no matter 'how trashy, inaccurate and even down-right ridiculous … it always affects those who consume it.'[6]

The Traditional Detective Story

TEXT: Janet Evanovich, *Lean Mean Thirteen*

In order to examine and analyse crime in popular culture, it is necessary to explore the origins of modern crime fiction and recognise that they derive from an established formula. The detective story formula is a particular kind of narrative structure. 'In formula stories, the detective always solves the crime, the hero always determines and carries out true justice and the agent accomplishes his mission or at least preserves himself from the omnipresent threats of the enemy'.[7] Arthur Conan Doyle wrote his first story about the character Sherlock Holmes in 1887. The 'consulting detective' with a knack for forensic investigation techniques evolved as one of the most famous literary characters of all time. Not only the character, but Conan Doyle's detective story formula is still the basis for most fictitious depictions of crime, whether they be in print or on the screen.

American crime writer Raymond Chandler gave the English Holmesian model of the detective story formula a twist, with the creation of Philip Marlowe. Marlowe became known as the classic 'hard boiled' detective, famously brought to life on screen by Humphrey Bogart in *The Big Sleep.*[8] The detective genre was an important aspect of *film noir*, so named because of its dark scenes, dark characters and dark subject matter.[9] Typical *films noirs* portray the (masculine) detective as the

[2] Turnbull, 1999, p 19
[3] Turnbull, 1999, p19
[4] For further discussion about the contradictory discourses, see Turnbull, 1998.
[5] Turnbull, 1998, p 18
[6] Asimow, ABA Journal, 2008, p 49).
[7] Cawelti, 1969, 389-90
[8] 1946)
[9] (Freier, p 112).

'moral centre' of the film[10], who usually has to combat the archetypal *femme fatale*, usually an evil or destructive character whom men simultaneously desire and despise.

The Holmesian detective story format provides the main character with a 'side-kick' (like Dr Watson). Variations of this Holmesian pairing are evident in many crime novels and most television crime dramas, especially those produced in Britain: *Midsomer Murders* and *Death in Paradise* are two examples of the Holmesian model of 'an idiosyncratic male detective and a more normal, less brilliant sidekick.'[11]

Arthur Conan Doyle recognised that a serial format would attract readers, instead of the fashion at the time of either disconnected stories or a serialised novel. He calculated that the 'ideal compromise was a character which carried through, and yet instalments which were each complete in themselves, so that the purchaser was always sure he could relish the whole contents of the magazine'.[12] Doyle developed his character of Holmes as a brand, a technique that has influenced modern fiction, film, radio and especially television. The new genre 'of discrete but interconnected stories' enabled readers to join in at any point in the series'.[13] Janet Evanovich, like many other writers, has followed this model.

The novels of Janet Evanovich exemplify a new direction in crime fiction. *Lean, Mean Thirteen* marks an approximate half-way point in this enormously successful series in which each novel is discrete and can be read in isolation. The characters and their relationships are developed across the series. Evanovich has distorted the traditional detective formula in various ways. The hero, Stephanie Plum, is female. She does not have a Watsonian style side-kick, although the narrative relies on the contributions of her on-and-off lover Joe Morelli (a police officer) and one of her employers Carlos Manoso, aka Ranger (a bounty hunter). Plum is not a detective. She is employed by her cousin Vinnie who operates a bail bonds office. When a Court imposes bail, Vinnie pays the bond amount. If the bailed accused fails to appear in Court, the bail money is forfeited. Stephanie is employed to 'find the skips and drag them back into the system'[14] in order to save Vinnie from having to pay the bond. The crimes that occur throughout the novel include breaking and entering, attempted murder, murder, stalking, car theft, assault, drug trafficking, money laundering, arson, illegal electronic surveillance and grave robbing. Despite the seriousness of these offences, the narration of this criminal activity is flippant and provides a comic element. Stephanie is sometimes described as frightened (for example, 'I was so scared, my nose was running and my eyes were brimming with tears. It was the flamethrower. I'd seen its work. I could still recall the smell of burned flesh. I could see the horrible charred cadavers'[15]) but the details of these crimes are secondary to the action-thriller lens through which the adventures of the protagonist are recounted.

At the end of *Lean Mean Thirteen*, in traditional format, the heroes win and the villains are vanquished. However, justice is not served through the criminal justice system, but by eliminating them from the narrative: the villains die. There is an emphasis on retributive justice. Just as capital

[10] Freier, p 112
[11] Harrington, 2007, p 367
[12] Doyle, 1924, 90
[13] Wiltse, 1998, 105
[14] Evanovich, 3
[15] Evanovich, 362

punishment is portrayed as the appropriate ending to several *Law and Order* episodes (see below), Evanovich suggests that death is really the only appropriate way to deal with the bad guys in her stories. Despite its focus on death and unpleasantness, the crime story is a conservative genre which does little to challenge the way things are, or the way that crime should be dealt with.[16] *Lean Mean Thirteen* offers no modern alternatives (such as restorative justice) as a solution to criminal activity.

One of the norms of our criminal justice system is the right of the State to control how criminal behaviour is controlled and regulated. *Lean Mean Thirteen* demonstrates a departure from this norm. Unlawful vigilante behaviour takes place with little or no police reaction. In one incident, Stephanie Plum breaks into a warehouse, finds a burnt body and 'was about to open the ground-floor door when there was a sound like a giant pilot light igniting.'[17] Her escape from the burning building is but one detail in a complex littered with arson, illegal electronic surveillance, shooting and various episodes of 'bending the law' to get information'[18] – all described on the back of the book as 'punchy, saucy and stacks of fun'.[19]

Crime in the real world is often violent. But research has disclosed that crime readers dislike the depiction of violence.[20] '[t]he representation of violence in a crime novel is acceptable only when this has a structural function in the narrative… When violence moves too far into the realm of the mimetic and is 'too realistically depicted' then the function of escapism is lost'.[21]

> 'The mimetic (real) element in literature confronts us with the world as we know it, while the formulaic (ideal) element reflects the construction of an ideal world without the disorder … of the world of our experience ... the mimetic and the formulaic represent two poles that most literary works lie somewhere between … most formulaic works have at least the surface texture of the real world…'[22]

This explains the popularity, at one of the scale, of the works of Evanovich whose depictions of criminal activity border on slapstick. At the other end of the scale are the works of Agatha Christie and television shows like *Midsomer Murders* where each episode ends with a flippant comment and the signature jaunty tune. Christie deliberately wrote about bloodless deaths and avoided explicit representations of violence. Her novels focus on intrigue and the intellectual quest to determine which of the characters is the murderer. In the words of her hero Hercule Poirot, it is all about exercising 'the little grey cells'.

Unlike the novels of Patricia Cornwell, whose hero Dr Kay Scarpetta conducts autopsies on gruesomely mutilated bodies, *Lean Mean Thirteen* does not dwell on the darkly uncomfortable aspects of murder. Evanovich focusses on the 'need for closure' that is 'absent from … everyday

[16] Turnbull, 2002, 75
[17] Page 193
[18] Page 56
[19] Quote from *The Sunday Times*.
[20] Turnbull, 2002, 78
[21] Turnbull, 2002, 78
[22] Turnbull, 2002, 76-77, citing Cawelti, 1976).

experience'.[23] Readers of crime fiction have identified that the systematic solving of a crime provides an escape from chaotic multi-tasking lifestyles. There is an appealing orderliness to the format of presenting a problem, the investigation and a solution. Mysteries are solved. Good triumphs over evil. Consumers of crime fiction 'expect by the end to 'understand' not only how the crimes were committed but why'.[24] '[T]the world of the crime novel is a coherent and essentially moral universe, where, if bad things happen, they happen for a reason.'[25] Clearly, working with real crime is not so neat and compartmentalised, for offenders, victims, police officers, lawyers or detectives.

The antics of Stephanie Plum take place against the backdrop of real policing, symbolised by the character Joe Morelli, with whom Plum is romantically and sexually involved. In *Lean Mean Thirteen* Plum has contact with Dickie, her estranged ex-husband and is subsequently suspected of murder when he is later missing, presumed dead. Dickie is a lawyer and as the novel progresses, it becomes apparent that his partners are involved in money laundering and drug trafficking. This is a modern interpretation of the 'lawyer as villain' archetype which has been depicted in popular culture, especially films, for the last forty years,[26] reflecting the low public opinion of lawyers which is regularly polled.[27] These are the only lawyers represented in the novel, reinforcing negative stereotypes. Readers of *Lean Mean Thirteen* are unlikely to reject this stereotype. Research indicates that the increasingly negative representation of lawyers in popular culture reflects public opinion.[28] Within the population, very few consumers of popular culture have direct experience of crime, so it is quite likely that attitudes and behaviours may be influenced by the images of crime, victims, offenders and the criminal justice system presented to us through fiction.[29]

Television Fiction

TEXT: *Law and Order*

While the size of the crime sections of bookshops is a fair indicator of the popularity of crime novels, the prevalence of crime on television appears to indicate an apparently insatiable public desire for crime on the screen. The original detective formula has been applied to scores of television series. Crime is depicted in television fiction in two main ways: police dramas and lawyer dramas. Most television crime shows follow the classic detective formula. In 1988, Friedman observed that 'television would shrivel up and die without cops, detectives, crimes, judges, prisons, guns, and trials.'[30] His observation is just as relevant, if not more so, today. Another of Friedman's

[23] Turnbull, 2002
[24] Turnbull, 1993, 178
[25] Turnbull, pages 74-75
[26] See Asimow, M. (2000) 'Bad Lawyers in the Movies,' *Nova Law Review 24*: 531.
[27] See, for example, Readers Digest (2013) *Australia's Most Trusted Professions, 2013* available at <http://www.readersdigest.com.au/most-trusted-professions-2013>
[28] See Asimow, M. (2000) 'Bad Lawyers in the Movies,' *Nova Law Review 24*: 531.
[29] Rader and Rhineberger-Dunn, 2010, 233
[30] Friedman, 1988-9, p 1588

observations is equally as apt: 'popular culture, as reflected in the media, is not, and cannot be taken as, an accurate mirror of the actual state of living law'.[31]

The popularity of detective, crime and mystery television shows in Western popular culture is stronger than ever. In recent years, crime shows like *Law and Order, CSI: Crime Scene Investigation, CSI: Miami; CSI: New York, Without a Trace, Law and Order: SVU, Law and Order: Criminal Intent* and *Cold Case* from producers Dick Wolf and Jerry Bruckheimer have consistently been ranked among the top television shows in the United States.[32] These shows use the devices of detective literary fiction, in particular 'plots about violence and sexuality in a familiar trajectory that generally offers a reassuring final return to order.'[33] They 'follow the mystery formula using clues to expose secrets and solve the crime with a rational solution.'[34] In Australia, crime is extremely popular on television.[35] Crime shows from the USA are especially popular in Australia, hence the choice of *Law and Order* as a selected text for this Chapter. The crime drama *Law and Order* was screened in the United States from 1990 until 2010. It was 'the longest running crime series and the second-longest-running drama series in the history of television'. It advertises its content as having been 'ripped from the headlines'.[36] Its subject matter is regularly frightening, ugly, and sordid. It depicts the most negative aspects of human nature and reminds us of the terrible things that human beings can do to each other. Why would millions of people choose to give up their precious leisure time on a regular basis to be a spectator of unpleasant experiences? The answer to this question possibly lies in the very title of this series. Despite the violence, the fear, the degradation, the depiction of human beings at their most evil, the program regularly provides a return to **order** through the mechanism of the law. The Criminal Law is the vehicle by which society is transported from evil back to good. Law is portrayed as essential for the existence of order. At the end, the killer is convicted and order is restored.

Law and Order takes the traditional *film noir* detective genre and divides the detective's role of sleuth/hero, re-creating it as the twinned characters of State-employed (rather than private) senior detective and District Attorney. Both are in the hard boiled tradition (middle-aged cynical white male). The voice-over at the beginning of every show re-inforces this twinned role:

[31] Friedman, 1988-9, p 1588).
[32] Harrington, 2007, p 366.
[33] Harrington, 2007, p 366-7.
[34] Harrington, 2007, p 367.
[35] Television crime shows at the time of writing this chapter include *Rake, Crownies, Janet King, Silk, New Tricks*, *Miss Fisher's Murder Mysteries*, *Luther*, *Midsomer Murders*, *The Father Brown Mysteries*, *The Tunnel, Broadchurch,Criminal justice, DCI Banks, Death in Paradise, Foyle's War, Inspector George Gently, New Tricks, recipe for Murder, Scott and bailey, The Doctor Blake Mysteries, wghitechapel, Underbelly, CSI Miami, The Good Wife, Inspector Morse, Agatha Christie's Miss Marple* and *Agatha Christie's Poirot.*.

[36] – NBC.com – see www.nbc.com/Law_and_Order/about/ and (see http://www.tv.com/shows/law-order/ and http://en.wikipedia.org/wiki/Law_%26_Order

> *In the criminal justice system the people are represented by two separate yet equally important groups: the police who investigate crime and the District Attorneys who prosecute the offenders. These are their stories.*[37]

The seemingly endless variations of violence that are depicted in this series raise an interesting question. Does *Law and Order* identify a subculture of violence or does it in fact signify the randomness of violence? Either way, it portrays the Law as the vehicle through which wrongdoers can be vanquished.

Audiences might be led to believe that all criminal investigations and trials are run like an episode of *Law and Order*, when an entire investigation, apprehension of the offender, preparation for trial, a trial and usually a conviction occur within the space of one or two episodes. The difficulties associated with the prosecution of crime are often quite realistically portrayed but the timing is not. In some criminal trials, legal argument can take days. Examination of witnesses can be tedious. Lawyers are not always erudite, charming and sophisticated. Even more importantly, they are not always aggressively rude to each other. The adversarial system is perhaps the greatest loser in the portrayal of criminal law on the small screen, in that it is probably the most misrepresented. While ethical issues are often raised, ethics between fellow practitioners is rarely addressed. Defence lawyers in *Law and Order* are portrayed as aggressive, jaded, and obstructive. They are not portrayed as fellow officers of the court. Everything is a contest. The world is depicted as unsafe, aggressive and mean, and the lawyers must be equally, if not more aggressive and mean in order to vanquish the villains. There is a lack of collegiality between fellow officers of the court, symbolised by the way the characters speak to each other. Lawyers and police officers never use names, but call each other 'counsellor' and 'detective'. The role of defence counsel is always a minor one in the script with few lines other than the oft repeated 'We're done here.'

Law students are often surprised to learn that Australian counsel may not intimidate a witness by leaning on the side of the witness box while evidence is given. Counsel in *Law and Order* are regularly depicted cutting off the responses of witnesses who try to explain answers to questions. In reality, opposing counsel would most likely object to this and request that a witness be allowed to fully explain an answer. Alternatively, counsel would be permitted to re-examine on that point. Such procedural misrepresentations create an illusion of high drama, suspense and theatricality that is often lacking in real criminal trials which can be long and often quite tedious. The aim of a criminal trial is to test the Prosecution case beyond reasonable doubt within a fair and balanced forum. It is not to intimidate witnesses or enable individual lawyers to grandstand. Viewers are often reminded of how the adversarial system works. Defence counsel regularly address the jury with comments like, 'You don't have to be convinced. All you have to have is a reasonable doubt.'

'People who have learned their law from TV expect that opening and closing arguments will be short and punchy and based on a strong, media-inspired storyline'.[38] The hero successfully brings about a resolution to the problem (or closure) through the quest for knowledge and justice. In the crime

[37] In the UK version of the series, 'District Attorneys' is replaced with 'Crown Prosecutors'.
[38] Asimow, 2008, 49

story the knowledge that is sought is about the nature of a crime and closure is achieved at the level of the social through some sort of retributive justice.[39]

The more recent series entitled *Law and Order SVU* (Special Victims Unit) is edgier and more violent than the earlier series. The role of the lawyers is significantly absent from the new voice-over introduction:

> *In the criminal justice system sexually based offences are considered especially heinous. In New York City, the dedicated detectives who investigate these vicious felonies are members of an elite squad known as the Special Victims Unit. These are their stories.*

Episode 1 of Series 14 of *Law and Order SVU* opens with the Police Captain, formerly the symbol of justice and lawfulness, being arrested for murder. This is a confronting challenge to viewers who no longer know who to trust. The episode culminates in the Attorney General of the State of New York being arrested for promoting prostitution, solicitation, and accepting bribes. Arrested with him is 'a who's who of city politics: three District Attorneys, the head of the DA's public integrity unit, seven members of NYPD's vice squad, two state senators and two deputy mayors. The existence of corruption at all levels is also a feature of *Rake* (see below). However, in the absence of *Rake's* humorous edge, *Law and Order*'s portrayal of corruption is more sinister. Even the most open-minded viewer is inevitably left wondering how much of this might be based on reality or possibility.

In Episode 2 of Series 14, police officers decide to report and act on corruption when they know that the result will be the loss for a disabled child of access to (laundered) income for necessary treatment.[40] In episode 4, police postpone arresting sex traffickers in order to assist a terrorist investigation.[41] These ethical dilemmas raise important questions for law students …

The presentation of crime in *Law and Order* is quite different to the novels of Janet Evanovich. Here, the emotional impact on victims is emphasised. It is not comic. However, the detective genre formula is maintained in that crime is depicted as finite and resolvable. Audiences are able to find out the 'truth' and enjoy the satisfaction of the resolution. There is an emphasis on the need for 'justice'. The overwhelming sub-text of *Law and Order* is that justice will prevail. Good does triumph over evil each time.

True Crime: News Reporting

TEXTS: Media Reports of Rodney Clavell and *R v Baden-Clay*

The daily reporting of real crime in our own neighbourhoods plays a large part in popular culture. Trials have been described as 'boundary maintaining devices' which 'help cement social solidarity by re-defining and proclaiming the norms.'[42] Crime reporting reinforces the maintenance of these

[39] Turnbull, 2002, 75
[40] ("Above Suspicion", episode 2, disc 1).
[41] ("Acceptable Loss", Episode 4, disc 1).
[42] Friedman, 1989, p1594

social boundaries. This is partially because the presumption of innocence sits uncomfortably within the detective formula. Reasonable doubt is not satisfying.

'Trial by media' has always been a phenomenon but some say that it was the OJ Simpson case[43] in the USA that first 'blur[red] the distinction between information and entertainment.'[44] The televising of OJ Simpson's trial turned lawyers into celebrities. Suddenly 'the agents of law and order' had a role 'in the production of public knowledge about crime' giving media the power to shape public perceptions of crime and criminal law.[45]

I started to write this chapter on a day when a part of the Central Business District of Adelaide was in lock-down because a "dangerous fugitive" had taken three women hostage in a brothel, ironically less than 500 metres from the Supreme Court building. The search for Clavell had been headline news for some days earlier. The Clavell story was a journalist's dream: a city cordoned off, police armed to the teeth and the wanted man was holed up in a brothel. The headlines "violent fugitive", "brothel siege", "on the run" might have come straight from Rolf Boldrewood's *Robbery Under Arms*, one of the first portrayals of criminal law in Australian popular culture. The story of two brothers who follow their father into a life of crime, first through cattle duffing and then bushranging is a moral tale. Richard Marston, the older brother, regrets the life he chose, and identifies the poor choices that he made during his narrative. Strong parallels can be drawn between *Robbery Under Arms* and the Clavell story. On 5 June 2014, *The Advertiser* headlined a story with 'How Clavell turned from God to crime', highlighting Clavell's own poor choices in a life that might have been quite different, just like Richard Marston. 'He was the most wanted man in South Australia — and likely one of the most dangerous — but once upon a time Rodney Ian Clavell's entire life was about God and the law.[46] Boldrewood himself might have styled Clavell's demise – like the Marston brothers, he was located by a woman's tip-off to police. Like Ben Marston, Clavell chose to shoot himself rather than surrendering or facing capture by the police.

The crime novel prototype was also used in the reporting of the trial of Gerard Baden-Clay for the murder of his wife Allison. On 15 July 2014, a Queensland Supreme Court jury handed down a guilty verdict. The case was widely reported around the country, and on the day of the verdict, was not only front page news, but a massive topic of conversation on social media and in supermarket queues. Channel 9 News in Queensland dedicated a full half hour to the story before the regular evening news program. Much was made of the fact that the journalist was reporting 'live', relaying information from the media room next to the court, including victim impact statements. Across the bottom of the screen, viewers were invited to 'join the discussion on Facebook.' The television 'special' included interviews with 'characters' who added substance to the 'story'. Later, *A Current Affair* was also dedicated entirely to this story, beginning by referring to 'this day of justice', perpetuating the myth of resolution.

Another program on rival Channel 7 entitled *Justice for Allison* provided similar footage. 'Just how did police catch a killer?' teased the presenter. 'We go inside the investigation, next.' After a commercial break, there were interviews with detectives who described the search, and repeat

[43]

[44] Check earlier version for reference

[45] Ref???

[46] *The Advertiser* 5 June 2014

coverage of media interest in Allison's disappearance. The producers used the limited material they had to construct a narrative in the fashion of a fictional police story. At the end, the presenter concluded by remarking that these repeated details from several News programs had been 'a fascinating insight'.

The use of fictional narrative techniques in telling true crime stories was pioneered by Truman Capote in 1966 when he wrote an account of the murders of four members of the Clutter family who were killed in their home in an apparently motiveless crime. Capote's *In Cold Blood* shot Capote to fame and fortune, not just because it was a best seller, but because its unique style was the forerunner of the new genre of the true crime novel: not a work of fiction, but written using all the narrative conventions of a novel. True crime has a varied audience. One researcher has found that 'true crime texts are by far the most popular items in the [Minnesota women's] prison library; inmates sign up on waiting lists to read and reread the true crimes collection.[47] Another researcher found that true crime is 'far and away the least popular sub-genre of crime' for regular readers of crime literature.[48] True crime denies the challenge of deciphering the identity of the offender to the reader. True crime also forces the reader to confront the victim. Crime readers often like to keep the victim 'faceless'[49], despite 'enjoying' entertainment that involves violent crime. Similar sentiments could equally apply to television viewers who enjoy the 'gritty realism' and explanations of 'the dark elements of society'.[50]

Research has revealed that there is insatiable curiosity on the part of the public in being able to *see* offenders.[51] Some television programs (eg *America's Dumbest Criminals*) parade people on television and invite the audience to laugh at them, much like the mediaeval practice of locking criminals in the stocks. This also happens regularly in News bulletins where offenders are mocked if their criminal activity goes awry and they are caught. This may dilute the fear of crime. This discourse of disapproval or condemnation of criminal behaviour is a recurring element of true crime stories, whether they are current 'news' or longer works pieced together after the trial has occurred. Retributive justice is regularly portrayed as expected and normative. However, this type of portrayal of criminal behaviour does little to explain its occurrence and potentially adds not only to public fear but also public ignorance in relation to the reality of life for many people charged with criminal offences. Restorative justice is rarely mentioned.

Australian Television Fiction.

Texts: *Rake*, Australian Broadcasting Corporation, Series 3, Episodes 1 and 2.

In 2010, the fictional character Cleaver Greene sauntered onto Australian television screens as the protagonist in *Rake*. Greene is an intelligent but deeply flawed Sydney criminal barrister. He is a philandering, tax-evading cocaine addict who gets beaten up because of his gambling debts, but he

[47] Sweeney, 1998, 146
[48] Turnbull, 1999, p 21
[49] Turnbull, 1999, p 21
[50] Turnbull, 1999, p 22
[51] Jermyn, 2007, p120

is portrayed as immensely likeable. He is not power-hungry or intentionally unkind.[52] His nemesis is David Potter, a caring, upright, law abiding, unlikeable tax lawyer who by Series Three is the Leader of the Opposition in State Parliament. David (aka Harry) should be the hero, but he is not. Greene is mischievous; he is a 'trickster' character who has a disruptive influence on those around him. He is also self-destructive, and hedonistic. Although his personal life in disarray, in the court room, he is (mostly) a hero. 'He uses his wit and wisdom to full effect in his professional capacity, but often only his wit with his personal life.'[53]

Series 3 of *Rake* depicts a criminal justice system that has descended into anarchy. Episode 1 opens with a shot of Greene in a prison yard, wet from the rain, a fresh cut on his face suggestive of a recent beating. The authenticity of the scene is genuine: the old Paramatta jail was used as the set.[54] A range of former colleagues, acquaintances and judges are also inmates after having being found guilty of corruption. One might initially think that this is a consequence of the law having served its purpose by eliminating wrongdoers from positions of power. However, we learn that corruption continues at every level. The former Attorney General, a role usually associated with integrity and trustworthiness, has been imprisoned for corruption but he is a 'close mate of the Justice Minister and therefore untouchable.' The Justice Minister is therefore also tainted with corruption. Sundry other shady characters, formerly part of a criminal underworld, now hold positions of power within the prison. Cleaver once represented these people; now he is one of them. Like the pinwheel firecracker that is the signature opening of the show, Greene's fire has fizzled out completely. Regular viewers would be aware that like the novels of Janet Evanovich, there is a strong comedic element to this program. However, the humour is this series is blacker than a barrister's gown.

The opening shots and voice-over set the scene of a gruesome violent place:

> *Abandon all f***ing hope you who enter here.*

Following the introduction to Greene's new life in prison, we see Greene in a court scene, standing in the dock while awaiting the outcome of an appeal against his conviction. Friends and family are smiling. The judge is saying that there was an egregious miscarriage of justice because he did not receive a fair trial. The court is ordered and calm; the judge is polite and articulate.

> *It is the unanimous finding of this court that the guilty verdict in the case of the Crown against Greene was unsafe. The trial itself was riddled with untrustworthy witnesses, three of whom have been convicted of perjury as a result. We find that His Honour erred in both allowing and disallowing certain crucial pieces of evidence to be put or not put before the jury. Given the totality of these miscarriages and the passage of time we do not find that a fair and transparent trial could be held. The conviction is therefore quashed and the appellant is free to go.*

[52] (page 110).
[53] Peter Duncan, scriptwriter for the series, is quoted in Bar News Winter 2010 (page 115-116)
[54] See http://www.smh.com.au/entertainment/tv-and-radio/sydney-stars-in-abc-legal-hit-rake-20140209-329v4.html)

But it is only a dream. Just as the harmony of his family is a dream, so is the fair and efficient working of the law and the legal system. The dream becomes a nightmare as Greene's nemesis David/Harry shoots him after saying, 'You always manage to slime your way out of things.' In episode 2, this 'dream' court can be compared to the 'reality' of Greene's actual appeal which involves three biased judges (against him). The only reason he wins his appeal is because he manages to communicate in crude and desperate manner that he is aware of 'Barebalm', implying that if the appeal is disallowed, he will expose the judge's involvement in this corrupt scheme. The judge persuades the others to quash the conviction to save himself.

This suggests:

1) that judges are biased
2) that judges do not consider cases on their merits
3) that judges are corrupt
4) that lawyers know that judges are corrupt
5) that lawyers accept that judges are corrupt
6) that lawyers work in a corrupt system
7) that the outcome of trials and appeals can be manipulated

The depiction of the criminal justice system as devoid of justice, fairness and morality is bleak and somewhat alarming. Even though it is clear that the fictitious scenarios are exaggerated for comedic effect, the depiction of not only lawyers as villains but everyone involved in the system subverts the lack of popularity of lawyers into a darker, more sinister perspective.

Corruption is portrayed at every level. The character George, a violent bully eats breakfast with a senior correctional services officer. George reads poetry to the officer who is clearly frightened of him. Kieran, a former judge who has been convicted of perjury and corruption attempts to 'speak to the Chief Justice' about choosing a bench that would be favourable for Greene's appeal. Any judge imprisoned in Australia is likely to be held in protective custody; it most unlikely that a judge would be incarcerated as depicted in this program. Kieran informs Greene, 'Your trial was a bloody travesty. 'I'd have the DPP look into this if he wasn't one of the main culprits.'

One scene depicts the prisoners holding a 'court' where George presides. The language used by the prisoners is identical to that which might be used in a real court, suggesting that anyone can be a lawyer or a judge, making a mockery of the self-regulated legal profession. George opens proceedings, speaking very reasonably and calmly:

> *This is a very serious matter that could affect the cohesion of our community. I'd like to thank my fellow judges for making themselves available at such short notice. The court would also like to send its best wishes for a speedy recovery to Mr Stein QC who somehow lost a f***ing ear last night. Mr Green will appear in his place.*

The 'trial' which ensues is a parody of whole system.

The character Malcolm, convicted of the murder of his father (who murdered his mother) provides an ironically uncomfortable tragi-comic archetype of the institutionalised prisoner who is now frightened to leave. He tries to 'extended his stay' by falsely confessing to the murder of an inmate.

Greene tries to convince him that 'there is happiness out there'.

'I've been in here since I was 18. I've got no life outside,' he tells Greene.

When the 'court' sits again in relation to the murder of an inmate, Greene 'appears' for Malcolm. He 'calls' Griffo as a witness.

Greene: Griffo.

Griffo: Cleaver.

Cleaver: Did you do it mate?

Griffo: Yeah.

Cleaver: Prepared to tell the cops?

Griffo: Yeah.

Greene says what the audience is thinking:

If only the wheels of justice would turn this efficiently in the outside world.

Cleaver Greene is a flawed hero. His character and his role can be compared with a new category of film that is emerging. Described as 'critical crime films', these films 'are dominated by open endings and characters who are neither good nor bad but inscrutable. In these contexts, the world, the self, and truth are volatile, unpredictable, and never fully knowable. Such tendencies in popular culture raise questions about the very possibility of theory'[55] and they 'challenge the very idea of criminological explanation'.[56] An example of this genre is *No Country for Old men* (2007) in which there is no sense to the criminal behaviour depicted on the screen. In the absence of any criminological explanation, the film suggests that the only explanation is the existence of evil. In *Rake*, evil is represented by the corruption which exists at every level. From the Attorney General and the Chief Justice to the prison guards, everyone can be bribed or bought, no-one can be trusted to do the jobs they are entrusted by the public to do. That the 'kangaroo court' inside the prison is as effective as the Court outside is a message laced with deep, troubling cynicism. This sense of helplessness is echoed by the suicide of the Malcolm character.

*'Some lives don't change do they Cleave? Some lives never really get started they're just f***ed up from the beginning. It just goes on and on.'*

This creates further confusion for an audience who has enjoyed a much lighter style of entertainment in the two earlier series of *Rake*. We don't know what to expect from this series now; we don't know is real, what is true, or what we can trust. The criminal justice system is the least trustworthy of all.

[55] Brown and Rafter pages 6-7
[56] Brown and Rafter, 6

Conclusion

Crime in popular culture has taken a dark turn. The law is often portrayed as either powerless or managed by corruption and greed. While there is still a vestige of hope in the power of good over evil, the preponderance of stories about a lack of trust in the criminal justice system says much about our society and the decline in value of the structures that have previously been relied upon to protect us. In the end, we always have to be wary of Friedman's reminder that '[c]op shows aim for entertainment, excitement; they are not documentaries.'[57]

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APPENDIX 4

An article including a version of several sections of this exegesis has been published as Spencer, Rachel. 2018. “Troubling Narratives of True Crime: Helen Garner’s *This House of Grief* and Megan Norris’s *On Father’s Day.” TEXT Journal of Writing and Writing Courses Special Issue 50.*
A pre-publication copy is attached as Appendix 4.

Flinders University and Monash University

Rachel Spencer

Troubling narratives of true crime: Helen Garner's *This House of Grief* and Megan Norris's *On Father's Day*.

Abstract:

The story of three little boys who drowned in a dam on Father's Day in 2005 is sad and shocking. After two long trials, Robert Farquharson was found guilty of the murders of his three sons and imprisoned for 33 years. This paper will examine works by two authors who tell this same story, each in a different way and from different perspectives. Helen Garner and Megan Norris both explore this tragic true crime by presenting two quite different grief narratives. Both are courtroom narratives that simultaneously question and explain the court system, but their respective examinations of grief, despair and fractured lives have resulted in two very different approaches. The article examines the narrative choices made by each author. It suggests that writers of such narratives bear a heavy responsibility towards the characters they portray as well as towards their readers, many of whom are not familiar with court processes and the criminal justice system.

Biographical Note:

Associate Professor Rachel Spencer is the Director of Monash Law Clinics in the Faculty of Law at Monash University. Rachel has broad experience as a barrister, solicitor and legal educator. Her academic experience includes teaching and research in: legal ethics; civil procedure; clinical legal education; practical legal training; law, art and literature; lawyers and the media; law and popular culture; life writing; and crime writing. Her publications include book chapters, peer-reviewed journal articles, an academic text book, newspaper columns and training videos. Rachel also writes creative non-fiction and has a particular interest in life writing and true crime. She is a PhD candidate in creative writing at Flinders University.

Keywords:

True crime – grief narrative – murder – ethics – biography – Farquharson – Garner – Norris

Introduction

School remembers dead brothers (Berry, 2005). **Anguish as town mourns treasured kids** (Cunningham and Butler, 2005). **Tributes for three brothers drowned in dam** (O'Connor and Chandler 2005). These were some of the headlines of the many newspaper reports about a tragic event that the criminal justice system later determined was a premeditated crime. The story of three little boys who drowned in a dam on Sunday 4 September 2005 is sad and shocking. Jai Farquharson, 10, and his brothers Tyler, 7 and Bailey, 2, drowned when the car driven by their father ended up at the bottom of a dam off the Princes Highway at Winchelsea, a little town about 40 km southwest of Geelong in Victoria.

Two established and respected journalist authors, Helen Garner and Megan Norris explore this tragic true crime by presenting two quite different grief narratives. This article examines two works of creative non-fiction by these authors who each recount this same story, but each in a different way and from different perspectives. Both authors write about the first trial as it unfolds and reaches the conclusion of a guilty verdict, and then both follow the decision of the Supreme Court of Victoria which hears the appeal against the conviction. The Supreme Court of Victoria finds that the trial miscarried for several complex legal reasons. The appeal against the conviction is allowed and a re-trial is ordered. The final guilty verdict from the second trial renders the unthinkable real when a jury decides that Robert Farquharson deliberately planned and carried out the most heinous of crimes: filicide.

Garner's approach is through an analysis of the legal process. In *This House of Grief* Garner does not write from the vantage point of having made a decision regarding Farquharson's guilt but instead she takes the reader with her on a personal quest to explore the complexity of this tragedy. Garner explains her understanding of court procedure and sets her narrative within the geographical locality of the Victorian Supreme Court. Garner confines her point of view to her observations of the legal process and the peripheral quotidian rituals of those who come and go from the courtroom. Her recounting of discussions at the coffee cart on the street outside the court are just as poignant as the drama that unfolds from the witness box.

A different attitude is taken by Norris whose view that Farquharson murdered his children is clear from the beginning of *On Father's Day*. Cindy Gambino is the focus of this narrative, from her introduction as a devoted mother, and head of her domestic fiefdom, then grief-stricken and bereaved but supportive of her ex-husband and his story of a terrible accident, and then to a fragile, reclusive figure, addicted to painkillers, but suspecting that 'Jai, Tyler and Bailey were pawns in a heinous payback plan calculated to ruin the rest of her life' (Norris, 2013, 264).

Helen Garner's Approach

Garner begins her narrative in the fashion of a fairy tale:

> 'Once there was a hard-working bloke who lived in a small Victorian country town with his wife and their three young sons. One day, out of the blue, his wife told him that she was no longer in love with him. She did not want to go on with the marriage. … The sad husband picked up his pillow and went to live with his widowed father, several streets away…
>
> Up to this point you could tell the story as a country-and-western song, a rueful tale of love betrayed, a little bit whiny, a little bit sweet.

> But ten months later, just after dark on a September evening in 2005, while the discarded husband was driving his sons back to their mother from a Father's Day outing, his old white Commodore swerved off the highway, barely five minutes from home, and plunged into a dam. He freed himself from the car and swam to the bank. The car sank to the bottom, and all the children drowned.' (Garner, 2014, 1-2)

Within one further paragraph, Garner sweeps the reader from whiny-sweet banality into horror and tragedy. Garner then reveals how this tale will be told: through her own eyes.

> 'I saw it on the TV news. Night. Low foliage. Water, misty and black. Blurred lights, a chopper. Men in hi-vis and helmets. Something very bad here. Something frightful.
>
> Oh Lord, let this be an accident.' (Garner, 2014, 2)

Garner's ambiguous title 'The story of a murder trial' shows that this event was not regarded by everyone as an accident. I am of the view that the retention of the word 'murder' but the inclusion of the word 'trial', is deliberate for two reasons. The first reason is that the title retains the ambiguity of any criminal trial in its adherence to the presumption of innocence which is the cornerstone of our criminal justice system. Was it an accident, or was it murder? This question is what a criminal trial is required to decide and it forms the thesis of Garner's book. The second reason is that Garner makes clear from her sub-title that this narrative is about the trial process. The focus is not on the guilty verdict, nor on the deaths of the boys. The blurb on the back explains that this book 'describes the theatre of the court – its actors and audience all gathered to bear witness to an elusive truth – in an extraordinary account of the quest for justice.' (Garner, 2014, back of book.)

Truth is shown to be elusive through the theatre of the adversarial system, reliant on lawyers to represent the parties and their respective cases. The adversarial system elicits a narrative which is based on strict rules of evidence which disallow witnesses from voicing their recollections in the witness box unless they are cognisant of the information from their own knowledge or they actually participated in (or were present at) the conversations they recount. The introduction of 'hearsay' evidence is strictly prohibited. Former Chief Justice of the Supreme Court of New South Wales James Spigelman asserts that there are three views about the relationship between truth and the adversarial system. The first view is that 'the adversarial system is not concerned with truth, but with 'procedural truth' or 'legal truth', as distinct from substantive fact.' An alternative view is that 'the adversarial system is the most effective mechanism for the discovery of truth.' And the third view is that 'the adversarial system seeks truth, but that search is qualified when the pursuit of truth conflicts with other values' (Spigelman, 2011, 748). Spigelman's views about the adversarial system are of particular import, given his long and highly distinguished career in the law as a barrister of the highest seniority (Queen's Counsel) and then the highest-ranking judge of one of the most important and influential courts in the country. Spigelman's observations are particularly relevant to this case and to these two narratives.

Garner grapples with this search for truth as she discloses the process through which a jury decides (twice) that Robert Farquharson is guilty of the murder of his three sons. Juries are not required to decide on the truth of what happened, but rather whether there is a reasonable doubt

about the Prosecution's allegations. If there is a reasonable doubt about those allegations, it is a jury's duty to acquit.

However, while this work is 'the story of a murder trial', the main title exposes the essential theme of grief. The placement of the word 'house' in *This House of Grief* is multi-layered. Garner quotes Dezso Kosztolanyi's novel *Kornel Esti* at the beginning: 'this treasury of pain, this house of power and grief'. Garner has spliced off the word 'power' from the quotation and left only 'grief' in her title. Doyle and Burke note that the 'house' in the title refers to the Supreme Court of Victoria (Doyle and Burke, 2015, 129). The term 'house' in *This House of Grief* also denotes 'family', in the way that aristocratic English houses are described. The House of Windsor, for example, encompasses the immediate British royal family and everyone who marries into it, and all of the ancestors and descendants. Garner's title invites us to recognise that the tragedy that befell the three little boys affects not just the man on trial, but everyone connected to him, not only now, but in the past, and also into the future. Grief will overshadow them all. Grief is at the heart of this story – not blame, not punishment, not explanation, not restitution, not revenge, but overwhelming and all-inclusive grief. For example, Garner's first impression of Cindy Gambino when she first arrives at the court is of a 'woman whose loss was beyond imagining, yet who would not lay blame … Her smooth face with its large, heavy-lidded eyes showed no expression, but her skin was the pale greyish-brown of a walnut shell, as if grief had soaked her to the bone…' (Garner, 2014, 28).

The title is also suggestive of the gothic bleakness of Edgar Allan Poe's *The Fall of the House of Usher*. The awful recurring motif of three terrified boys trapped in the smothering darkness of a muddy damn is frighteningly gothic, as is the deeply disturbing taboo of filicide, a concept so terrible that the reader almost wants 'Farquharson to be innocent and the deaths of the children a result of a blackout at the wheel, not a premeditated, ruthless act. Not necessarily because we believe him to be innocent, but because the alternative is just too terrible to contemplate' (Mah, 2014). During the first trial, when Gambino supports her former husband's accident narrative, Garner describes the harrowing scenes in court as 'two broken people grieving together for their lost children, in an abyss of suffering where notions of guilt and innocence have no purchase' (Garner, 2014, 37).

Garner's investigative process including an analysis of the evidence and the information she gleans independently outside of the court are essential elements of her narrative. The scope of this article does not extend to analysing this as a specific and common element of Garner's non-fiction *oeuvre*, but it is acknowledged that Garner's particular style and tone in *This House of Grief* is reminiscent of the similar narrative role that she plays in *Joe Cinque's Consolation* (also about a murder trial) and *The First Stone* (about a sexual assault case). It is through the lens of her own experience that her narratives are projected.

Garner presents her point of view in telling this story, including her impressions of witnesses, her thoughts as the trial progresses, and her own sense of unease about the adversarial system as a means of reaching for the truth. The author also discloses her defiance about her choice to write this story, notwithstanding the fact that '[w]hen I said I wanted to write about the trial, people looked at me in silence, with an expression I could not read' (Garner, 2014, 6).

Within Garner's narrative are two threads. One loose, meandering thread draws together the evidence that the jury is permitted to see and hear. The other thread of self-awareness wraps around the evidence in an ever-tightening knot of speculation that derives from personal

experience and a subjective understanding of the events that are unfolding, like Garner's description of a photograph of Farquharson leaving the court with his sister:

> '… she is hauling Farquharson across the pavement. He trots beside her. She has an impatient, double-fisted hold on his left wrist that yanks his hand like a toddler's across the front of her hips. As the eldest of six children I recognised that hold: it was a bossy big-sister grip.' (Garner, 2014, 19)

From time to time, Garner alerts the reader to the thoughts expressed by Louise, 'a pale, quiet sixteen-year-old with white-blonde hair and braces on her teeth, dressed in jeans and a sky blue hoodie' (Garner, 2014, 7). Garner is a senior journalist, writer, mother and grandmother whose view of the world is necessarily coloured and tarnished by the vast experiences and emotional peaks and troughs that make up a life. Louise, however, with her youth and inexperience, provides a different perspective and voice. Louise speaks impulsively. Her views are not tempered with nuance although Garner is 'grateful for her company, and for her precocious intelligence' (Garner, 2014, 7). Garner makes it clear that she is searching for nuance. Whether Farquharson planned the deaths of his children out of anger at his former wife, or whether the car ended up in seven metres of water through a terrible accident is the question that the jury has to answer. Could a man kill the children he loved? Garner focusses on the admissible evidence but is side-tracked by her own cogitations which in turn raise points of supposition and conjecture for the reader that are not allowed by jury members. A poignant example of this derives from an interaction with her own grandsons when Garner is shocked to recognise that love can turn to rage.

> 'My third grandchild came wandering round the side of the house … I lifted him on to my lap. He was only a few months younger than Bailey Farquharson had been when he drowned… the little boy sat on my knee… relaxed his spine against my chest … spread his right hand like a fan, inserted a delicate thumb into his mouth, and tucked his head under my chin.
>
> And yet only two hours later, when he and his four-year-old brother disobeyed me at bedtime and went crashing and yelling like maniacs down the hall… rage blinded me. I ran after them, grabbed the nearest arm, and yanked its owner round in a curve. Before I could land a blow, I got a grip on myself… In a cold sweat I leaned against the cupboard door and took some trembling breaths.' (Garner, 2014, 113-114)

Garner doubts her opinions and gut feelings sometimes. Louise gives voice to them, providing approval for Garner's views, as if to say, look, this teenager agrees with me; these are more than the scribblings of a jaded, cynical old woman. At first Garner holds her views back, deliberately disallowing assumptions from clouding her view, waiting for the expert witnesses to give their evidence about tyre marks and a condition called cough syncope which the accused says caused him to black out and when he woke up his car was in the dam.

'Coughing fit my arse,' says Louise (Garner, 2014, 26).

Megan Norris's Approach

On Father's Day by Megan Norris is starkly different in focus; both its title and narrative style are deliberately less ambiguous. The front cover makes it clear that this is not about 'elusive truth'. 'Cindy Gambino's Shattering Account of her Children's Revenge Murders' in bold typeface overlaying a bleak photograph of three diminutive white crosses foregrounding an ominous murky dam is unequivocal: this is a book about blame. The cover tells the whole story. The children were the victims of 'revenge murders'. This is not a subtle quest for an elusive truth. This is a 'shattering account'. Norris tells a tale of revenge and suffering.

In the foreword by Dr Deborah Kirkwood, researcher at the Domestic Violence Resource Centre of Victoria, the phrase 'fathers kill their children' is repeated eight times within two pages. The theme of this narrative is forthright and confronting. This is a book about a father who deliberately killed his children. The book is important because there is a lack of understanding about this type of crime and in 'sharing her experience…we can equip ourselves to prevent further deaths' (Norris, 2013, x). This contrasts with Garner's authorial resolve to weigh each piece of evidence and to decide on the credibility of each of the witnesses. The point of view is squarely through the eyes of the author. Norris, on the other hand, opens her story with a third person narrative, from the point of view of Cindy Gambino, the boys' mother.

> 'Jai and Tyler were racing in and out of the bathroom with their hair still wet, flicking each other with towels. It was the day of Tyler's birthday party, and they'd been running on adrenalin from the moment they'd opened their eyes that morning. But their mum was on a mission.
>
> 'Come on, this won't take long,' Cindy promised, ushering them into the lounge, where she'd placed a 2-year-old Bailey in the middle of the blue sofa. The older boys leapt on the cushions either side of their baby brother, giggling and pulling faces, trying to get him to belch out the belly laugh that made everyone else laugh too.' (Norris, 2013, 1)

The opening scene is of domesticity and 'the hint of future happiness' (Norris, 2013, 9). Verbs like 'bounded' (Norris, 2013, 11). 'chatting' (Norris, 2013, 12), 'laughed' (Norris, 2013, 13), and 'giggled' (Norris, 2013, 13) contribute to a portrait of a happy mother and her sons compared to her ex-husband who was '[s]till smarting from his wife's decision' (Norris, 2013, 3), 'still struggling' (Norris, 2013, 5) and 'complaining bitterly around town that he'd come out of the marriage with the 'shit car'' (Norris, 2013, 5). It is a point in time before the terrible events of Father's Day, rendered poignant because the reader recognises that the scene being described is in preparation for the photograph that was reproduced over and over again in newspapers and on television after the boys had died. The photograph is still depicted on the Wikipedia entry for Robert Farquharson (Wikipedia, 2017).

The opening scene is all the more poignant because of the very ordinariness of this suburban family moment. Readers readily identify with the towel flicking, the birthday excitement, and the benign intimacy of a family photograph. The banality and innocence are shattered even before Norris describes the car being hauled out of the dam some thirty pages later.

Like Garner, Norris tells of the marriage breakdown between Cindy and Rob Farquharson by the end of page two, but Norris's account deliberately names all the characters and places Cindy's emotional state at the centre of the story. Norris's tale is not about the theatre of the court but the emotional and psychological impact of a marriage breakdown and a family tragedy.

> '…even on her wedding day, she'd had doubts about her relationship with Rob…By the time Bailey was born, two years into the marriage, Cindy had begun to feel that nothing could plaster over the cracks.'
>
> 'We're going nowhere,' she told her neighbour. 'It's a mortgage, not a marriage. I don't love him – I'm over it.' (Norris, 2013, 2)

Norris includes details that Garner's narrative does not touch. Whether or not these details are infused with speculation is unclear, but Norris's description of past events at which she was not present provides an intimacy that is absent from Garner's narrative, such as the harrowing task of the identification by Cindy Gambino's new partner Stephen Moules of the bodies of the three drowned boys.

> 'Stephen followed, steeling himself for the grim task ahead. But with each step he sensed a growing strength, as if someone had just answered his silent prayers … telling him he was strong enough to do this… Tyler's body was lying in the gap between the seats. His lower legs and feet were on the centre console, his upper body resting face down, across the back seat. Stephen crouched to see the boy's face more clearly. He said a prayer. 'God will look after you now,' he whispered.' (Norris, 2013, 47)

The language and syntax in *On Father's Day* is simpler, less 'literary' than in *This House of Grief*. Norris tells her story through the minutiae of the characters' lives. Her style has been described as 'conversational, as if you were sitting at the kitchen table with a cuppa' listening to the story' (Bozorth-Baines, nd).

Norris's narrative follows Gambino's life across the seven years of the trial process, including two pregnancies and the births of two babies which are not mentioned at all by Garner. Garner takes her reader on a quest for the origins of evil, musing on the question of why some people succumb to evil and others do not. Norris asserts unambiguously that Farquharson is evil, providing a powerful account of the effect of his criminality on the lives of those who were close to him. Norris's linear narrative takes us from shopping for gifts, taking photos, carrying out mundane everyday tasks, to waving goodbye for the day, and then to the terrible unfolding of the events that led to the deaths of the three boys. Norris openly sides with Cindy Gambino in contrast to Garner's deliberate reservation of judgment. This is clearest in the contrasting ways that these authors describe how Cindy's supporters wore her favourite colour purple to court. Norris recounts Cindy's 'request for … everyone who attends court to wear something purple' and that the Prosecutor's wife 'handed each member of the prosecution team a purple ribbon with three knots in honour of three little lost lives.' (Norris, 2013, 221). Garner describes her realisation that Cindy 'had run a purple rinse through her long brown hair … she was not the only person in the room wearing purple…I whipped off my faded lavender cardigan and stuffed it into my bag' (Garner, 2014, 221).

Norris takes us inside Cindy Gambino's thoughts, sharing her initial anguish and grief and her acceptance of her ex-husband's explanation of a coughing fit and an accident. Then, Norris describes the torture of a mother coming to terms with the monstrous understanding that he deliberately killed their children as an act of revenge for the marriage break-up. From the first page, Norris's premise is that Farquharson is guilty. This authorial approach contrasts sharply with that of Garner whose reason for writing the book is encapsulated through Louise who,

recounting how she told friends that she has been watching the trial, says, '[t]he only thing they wanted to know was, "Well? Did he do it?" The least interesting question anyone could possibly ask.' Whether or not Louise actually exists and whether she did in fact accompany Garner to court is less important than Louise's view on this question which is Garner's point. Garner wrote a book about the capacity of the criminal justice system to deal with the unpredictability of human behaviour. Norris wrote a book about domestic violence and its emotional impact.

Trial narratives as 'troubled' narratives

The Farquharson case was widely publicised and it is likely that readers of both books will be familiar with the facts and know what happens at the end. *The Age* newspaper described the 'window cleaner from Winchelsea' as 'one of the most gossiped about men in Australia' (Petrie, 2010) After two long trials, Robert Farquharson was found guilty of the murders of his three sons and imprisoned for 33 years.

These two books tell the wider public what the juries heard, but also what they did not hear: hearsay, supposition, subjective interpretation, and gut instinct. This is why such stories cannot be published while the matter is *sub judice* (before the court. To do so would potentially pervert the course of justice and be a contempt of court. The publication of prejudicial material has the potential to 'poison the fountain of justice before it begins to flow' (Wills J, *R v Parke*, 1903, 438). But after it is all over, these trial narratives are ripe for the telling.

Neither the law nor the courts are above criticism and authors who focus on crime and criminal justice provide essential commentary on the effectiveness of these essential elements of our society. Both of these works are not only grief narratives, but they are also crime and courtroom narratives. Authors of texts about real criminal cases – writers of 'true crime' – are obliged to make narrative choices. True crime writers carry a responsibility to consider the ethical ramifications of their choice of subject matter. They also have a duty to their readers to produce well-informed commentary.

Trial narratives can be classified as 'troubled' life narratives. Criminal trials represent the human response to what can be the darkest of human behaviour. A murder trial is the ultimate societal response to the very basest of criminal activity. The scope of this article does not permit an analysis of why books about murder are so popular and why 'crime pervades every type of modern popular culture: television programs, crime fiction, true crime, crime movies, 'news' in newspapers, television, radio and social media' (Spencer, 2015, 81). However, it is important to acknowledge that Robert Farquharson is now in prison. Some would argue that this man deserves to be publicised as a murderer of children. This is the prevailing tone of Norris's book. However, true crime writers must respect the ethical dimensions of using real people as 'material'. First is the obligation not to prejudice a fair trial, any appeal or any re-trial. Farquharson was re-tried, so neither of these books could have been published before the case had concluded and all avenues for appeal exhausted. Any jury member reading either of these books would have been in breach of their duties as jurors not to be influenced by external commentary. Both Garner and Norris respected this duty.

The ethics of true crime writing are complex and beyond the scope of this paper but it must be acknowledged that an 'ethical brake needs to be applied to true crime writing to prevent

acceleration into the territory of giving offence and reviving pain for those whose lives have been affected' (Spencer, 2017). In addition, 'true crime' writers carry a supplementary burden of responsibility towards their readers, many of whom are not familiar with court processes and the criminal justice system. Writers of trial narratives have an obligation to explain their subject matter, describe court processes accurately and explain what each step means. Readers who are not familiar with the procedural complexities of criminal trials may read these books to learn about court procedures, and are entitled to expect that descriptions and explanations are accurate, so writers and publishers have a duty to get it right.

Garner acknowledges this duty. She outlines her relationship with the justice system very early on in her story, when she describes the first day of Farquharson's first trial in the Supreme Court of Victoria on 20 August 2007:

> 'As a freelance journalist and curious citizen, I had spent many days, solitary and absorbed, in the courtrooms of that nineteenth-century pile in central Melbourne, with its dome and its paved inner yards and its handsome facade along William and Lonsdale Streets. I knew my way around it and how to conduct myself in its formal spaces, but I could never approach its street entrance without a surge of adrenalin and a secret feeling of awe.' (Garner, 2014, 6)

Garner reminds the reader that she is not a novice; she knows her way around, she knows what she is doing. Garner has the confidence of one familiar with the milieu but with the advantage of independence. She owes no allegiance to any newspaper or media organisation. She points out that she has spent 'many days' at the court, but her time here has been 'solitary'. She has developed her familiarity with court procedures by herself. For example, cross-examination is an integral aspect of a criminal trial that enables each party to challenge the evidence of the other within the confines of strict rules. Garner's interpretation of the process is cynical:

> 'The whole point of it is to make the witness's story look shaky, to pepper the jury with doubt. So you get a grip on her basic observations, and you chop away and chop away, and squeeze and shout and pull her here and push her there, you cast aspersions on her memory and her good faith and her intelligence till you make her hesitate or stumble. She starts to feel self-conscious, then she gets an urge to add things and buttress and emphasise and maybe embroider, because she knows what she saw and she wants to be believed; but she's not allowed to tell it her way. You're in charge. All she can do is answer your questions.' (Garner, 2014, 244)

Garner also acknowledges her limitations. For example, during the legal argument before the Court of Appeal, she admits that she 'lost [her] grip on the technical details' (Garner, 2014, 210-211). Norris's commentary of the legal process is more descriptive than analytical. Norris approaches the Appeal by providing three pages of explanation of the gist of the arguments and then reverts to her main subject, showing how the appeal outcome affects Cindy Gambino.

> 'What am I going to do now?' she wailed…Her fleeting Christmas joy had evaporated. There would now be a whole new trial where she'd have to relive her nightmare again.' (Norris, 2013, 258)

Writers like Garner and Norris hold up a mirror to the legal profession and the criminal justice system. One of Garner's concerns is the fallibility and reliability of juries. She is worried about the 'mystery beyond reckoning' that is Farquharson's guilt or innocence (Garner, 2014, 156). Garner ponders whether, after listening to so much evidence, did the jury members

> 'feel this thickening of the brain, this blunting and blurring of mental capacity? … What if I were one of those tired, frightened jurors…? Was anybody going to explain the meaning of the words 'beyond reasonable doubt'? And if they did, would I still have the nous to grasp it? Or had those five gruelling weeks stripped me of every vestige of native wit?' (Garner, 2014, 156-157).

Unlike the lawyers who represent their respective clients, Garner 'wanted to think like a juror, to wait for all the evidence, to hold myself in a state where I could still be persuaded by argument' (Garner, 2014, 92). Her descriptions of lawyers, witnesses and other characters who come and go, both inside and outside the court, reflect her desire to keep an open mind. Louise, the alternative voice to Garner's impartiality, often chimes in with unabashed candour. For example, Garner describes the Prosecutor, Jeremy Rapke QC, as

> 'a lean, contained-looking man, with a clipped grey beard and a mouth that cut across his face on a severe slant, like that of someone who spent his days listening to bullshit.' (Garner, 2014, 7)
>
> 'Wow,' hissed Louise. 'He looks like a falcon.' (Garner, 2014, 7)

Garner's success as a writer – and especially as a true crime writer – places her in a position that commands respect for her expertise from the reader but also obliges her to inform and explain the correct role of the players in her narrative. Garner grapples with

> 'some atavistic force in me … trying to sabotage my intellect, to block its access to calculations that might demonstrate Farquharson's innocence' (Garner, 2014, 156).

What Garner fails to explain here is that Farquharson is not required to demonstrate his innocence. He is presumed innocent until the prosecution proves otherwise. It is incumbent upon the prosecution to prove his guilt, otherwise the presumption of innocence is not dislodged. In seeking a demonstration of innocence, Garner misleads her readers and misrepresents the purpose of a criminal trial. She also distorts the basis upon which our criminal justice system rests. True crime writers have a duty to their readers and a duty to those people who become characters in their narrative to portray these concepts accurately. Failure to do so is irresponsible.

Norris, in contrast, focusses less on the trial and more on the family, a narrative choice that demands less by way of explanation of court procedure. Garner has explicitly declared that her book is about the trial. Norris's book is about Cindy.

The two contrasting approaches are echoed in their closing paragraphs. Garner's focus is on grief:

> If there is any doubt that Robert Farquharson drove into the dam on purpose, it is a doubt no more substantial than a cigarette paper shivering in the wind… (Garner, 2014, 299).

> …I imagine the possessive rage of their families: 'You never knew them…How dare you talk about your "grief"?
>
> But no other word will do. Every stranger grieves for them…The children's fate is our legitimate concern. They are ours to mourn. They belong to all of us now (Garner, 2014, 300).

Norris's closing words focus on crime and domestic violence:

> 'Cindy's story does not have a happy ending. It has been painful for her to share, and for me to write (Norris, 2013, 382).
>
> We both hope that her story might generate some insight into these crimes… (Norris, 2013, 383)
>
> …these warning signs are difficult to respond to…will anyone really see it in the next vengeful father?' (Norris, 2013, 384)

Norris taps deeply into the complex issue of domestic violence that is not addressed in this article, except to say that this subject imposes an additional responsibility on those who write such stories which are disturbing to read, but important to tell. Equally to be considered are the people left behind – the parents, children, partners, relatives, witnesses and their families. Norris approaches this responsibility with necessary sensitivity, outlining her reason for telling this story in the dedication of the book which is to Jai, Tyler and Bailey, the three boys who died:

> Your mum promised to be the voice you were denied on Father's Day 2005, and I promised her I would be hers. This is her story and yours. (Norris, 2013, np)

Conclusion

True crime narratives describe some of the most troubling of times for those involved. When the trial is over, everyone who was involved remains affected by it. Both Garner and Norris recognise that the troubled times that led to the courtroom continue well after the jury is discharged and they have written works that can described as grief narratives, notwithstanding the very different approaches that each has taken.. All authors of true crime must be mindful not only of the impact of their work upon the characters who populate their narratives but also that the information about the criminal justice system imparted to readers is correct. This can be an onerous task for an author who is not legally trained. An ethical true crime narrative is a well-informed and well-researched narrative. It is incumbent upon writers to ensure that they have the capacity to explain legal processes or to inform their readers of their limitations in that regard.

The Farquharson murder trials provide material which illuminates the terrible scourge of domestic violence (highlighted by Norris) as well as the extreme difficulties faced by the criminal justice system in dealing with these cases. Fear, anger, sorrow, loss, quests for truth and quests for justice all play a part and linger within families and circles of acquaintance long after the last clerk has left the court room and the barristers have moved on to other cases.

Writers who use this type of material have obligations to be aware of the intense emotional toll that a criminal trial takes on all of the participants and the fact that their use of other people's lives as material is fraught with ethical dilemmas. The narrative choices that are made in this

realm are moral choices, not just in relation to the people involved in the trials, but also with regard to the information about the criminal justice system that is conveyed to readers of the true crime genre. Explaining criminal law and criminal procedure is a mighty undertaking, and it is important that it be done accurately. Garner treads this moral tightrope with linguistic skill and the mastery of an experienced journalist who is familiar with courts and their procedures, but has some difficulties in the correct portrayal of how the law works. Norris relies on the intimacy she develops with Cindy Gambino to portray the emotional and psychological toll of the criminal justice procedure. Both texts show that the troubled nature of true crime narratives engender a range of ethical choices that must be made during the writing process, whichever approach is taken to the material that is available.

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APPENDIX 5

Spencer, Rachel. 2014. “Do Members of the Public have a ‘Right to Know’ about Similar Fact Evidence? The Emily Perry Story and the ‘Right to Know’ in the Context of a Fair Re-Trial.” Onati Socio-Legal Series [online] 4, no. 4, 740-760. http://opo.iisj.net/index.php/osls/article/view/324/470.

A pre-publication copy is attached as Appendix 5.

Do members of the public have a 'right to know' about similar fact evidence? The Emily Perry story and the 'right to know' in the context of a fair re-trial.

Rachel Spencer

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Abstract

Emily Perry had a full and successful life as a businesswoman, mother of four children, political candidate, and entrepreneur. In South Australia in 1981 an intriguing criminal trial took shape around Emily Perry and her husband Ken, a pianola restorer with a penchant for flamboyant moustaches. The highly publicised news that Emily Perry had been charged with two counts of attempting to murder her husband with arsenic was enlivened by Prosecution allegations that Perry had previously murdered a former husband, a de facto partner and a brother. A jury found her guilty of attempted murder and Emily Perry was sentenced to fifteen years imprisonment. In and out of court, before, during and after the trial, Ken Perry staunchly defended his wife, denying any claim that she had tried to harm or kill him. An appeal to the South Australian Court of Criminal Appeal on the basis that the previous deaths should not have been brought to the attention of the jury was unsuccessful but Emily Perry's case went all the way to the High Court of Australia, where her conviction was quashed. Emily Perry was never re-tried.

This article examines the dichotomy of an accused's right to a fair trial (and the rules of evidence that flow from that right) and the public's so-called 'right to know' about a person charged with a serious offence. It posits the *Perry* case as an example of the opposing perspectives of lawyers and journalists, and explores the different narratives to which the case gave rise. The Emily Perry story had several scripts: the sixty day trial that the jury heard and observed, the shorter defence version that would have suppressed all details about the earlier deaths, the narrative that was pieced together and published by journalists during and after the trial, and a hybrid version suggested by the High Court. The history of the earlier deaths – the similar fact evidence – contributed to the guilty verdict. But it is also why the conviction was quashed by the High Court. The paper questions whether a fair re-trial for Emily Perry would ever have been possible after the vast media attention that it received.

Keywords: similar fact evidence, right to a fair trial, open justice, Emily Perry case, narrative, media.

***

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two anonymous reviewers of this article prior to publication. I am indebted to them for providing two fresh perspectives; my work has been enlivened and enriched by their helpful and insightful advice.

***

Introduction

Murder has long been a subject of fascination. The intentional killing of another person has been the subject of literature for as long as we have told stories. If the size of the "Crime Fiction" section of my local bookshops is an indication of the popularity of this genre, it would appear that crime fiction has never been so popular. And when murder is fact rather than fiction, all forms of media can't get enough. Journalists provide 'coverage' of the event, the accused, the street where it happened, the neighbours, the relatives, anyone with a connection to the tragedy. And now, traditional purveyors of news (newspapers, television and radio) no longer have a monopoly over what is made public and have been forced to intersect with new media, especially on-line 'social' media.

Stories from the courts, especially the criminal courts, are considered to be newsworthy (Resta, 2008, 33 and Patel, 2007, 213). Open any newspaper, watch any nightly television news programme, and there will be at least one story from the courts. Crime news is good for business: it is good for journalists and others in the business of disseminating news as a product for sale, and it is good for the business of the criminal lawyer. But let's not also forget that crime – especially murder – is a tragedy. It is a natural human instinct to be interested in tragedy that befalls others. Stories about murder, however tragic or horrific, are like magnets to the part of our humanity that seeks out a good story. Analysis of an alleged murderer provides intrigue. What is known about the person charged? What does the accused look like? Where does the accused live? Did he do it? Why did he or she do it? How did he do it?

When a crime is committed, two opposing forces come into play: the right of the accused to a fair trial, and the right of the public to know what is going on. Police investigators might also argue that the public's right to know is also linked with the possibility that members of the public may be able to assist with solving the crime – identifying the offender, for example, or providing information that may help to piece together the truth of what happened. However, in many instances, police investigators might deliberately withhold information from journalists, so that its publication does not in any way jeopardise the investigation, or perhaps even more critically, so that publication of information does not jeopardise the obtaining of a conviction. Media comment prior to a trial by jury has the potential to corrupt potential jurors against the accused; '[i]t is possible very effectually to poison the fountain of justice before it begins to flow' (Wills, J, *R v Parke* [1903] 2 KB 432, 438). This may also dissuade the accused from exercising the right to trial by jury for that very reason (*Director of Public Prosecutions v Francis* [2006] SASC 211). If prejudicial comment has been made, counsel for the accused may argue that the jury should be discharged. The trial judge has a vast discretion in relation to how the matter will proceed. For example, the jurors may be examined to determine whether they have indeed been tainted or influenced by the published material, or the jurors may be ordered to disregard any publicity. In Australia, in the *Hinch* case, a radio journalist broadcast the prior convictions of the accused Michael Glennon shortly before Glennon's trial. Deane J, from the High Court of Australia said that jurors are expected to be true to their oaths,

even after sensationalised and prejudicial media reporting. It is then a matter for the trial judge to decide whether the publication has had a 'real and definite tendency' 'as a matter of practical reality' to 'preclude or prejudice the fair and effective administration of justice' (*Hinch*, Chesterman, 1999, 71). This is particularly important in the context of current information dissemination practice, whereby anyone with access to a keyboard and the internet can notify the world at large about absolutely anything.

In any Western democracy there are two fundamental but competing principles of justice: the principle of open justice and the right to a fair trial. The struggle to reconcile these two principles creates tensions between those who are officers of the court and facilitators of a fair system of justice (lawyers) and those who provide members of the public with a link to what is happening in the courts (journalists). The ethical frameworks within which lawyers and journalists work have been explored by this author, especially in the context of court reporting (Spencer, 2012). The contest between lawyers and journalists is rooted in the struggle for dominance between the right of access to information and the right to a fair trial' (Sellars, 2008, 199). This struggle is at the heart of the view that '[o]ne of the shibboleths of journalism is that journalists and lawyers are natural enemies' (Littlemore, 1996, 145).

My view is that the ethical framework within which journalists work is at odds with the ethics of lawyers. The fundamental difference between lawyers and journalists lies in the journalist's lack of a client. In lacking a fiduciary duty to a client, the lens through which a journalist views court reporting is never going to match in focus with the view of the lawyer, whose duties to both an individual client and the court itself will inevitably clash with a journalist whose aim is to disseminate information, as quickly as possible, to a faceless public.

The English word 'profession' comes from the Latin *professionum*, which means making a public declaration. It came to mean making a public vow or oath upon entering a learned occupation (Ross, 2010, 57). Before being admitted to the legal profession, a lawyer must swear (or affirm) an oath to the Court, for example in South Australia: 'that [I] will diligently and honestly perform the duties of a practitioner of this Court and will faithfully serve and uphold the administration of justice'. The public promise to fulfil those duties—to act in the best interests of the client, to facilitate the interests of justice, to avoid conflicts of interest, to perform duties without fear or favour to any person or group, is what binds the lawyer to the client, and it is the source of the fundamental difference between lawyers and journalists. It is the very source of the conflict between the court and the cover story, because journalists and media proprietors make no such oath to anyone.

The relationship with clients is fundamental to the notion of a profession. Unlike lawyers, journalists have no clients. There is no relationship with a specific person like the relationship between a doctor and a patient or lawyer and a client. Any 'greater good' performed by a journalist is performed on behalf of 'the public', an 'ill defined audience' (Campbell, 1999, 127). As a consequence of this lack of a client, the journalist has no particular person to whom any duty is owed when reporting a story. When reporting from the court, the journalist's primary function is to gather information, process it, and present a timely story that is pleasing to the editor, and likely to be of interest to the target audience. This is in stark contrast to the role of the lawyer, who must act in the best interests of the client and facilitate the administration of justice. Of course, there are many very good journalists who regard their role as a vocation. Those journalists will

always seek to do more than provide 'ínfo-tainment'. But they are reliant upon publishers and producers who also have the same ideals.

The Principle of Open Justice v The Right to a Fair Trial

The principle of open justice is said to be 'a fundamental tenet of the common law' (*Scott v Scott* [1913] AC 417; endorsed by the Australian High Court in *Dickason v Dickason* (1913) 17 CLR 50, 51). Justice is expected to be administered in 'open court'. One of the most commonly quoted legal aphorisms is from the judgment of Lord Hewart in *R v Sussex Justices, ex parte McCarthy*: 'It is not merely of some importance but it is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done.' (*R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256, 259). Essentially, the principle of open justice enables the workings of the judiciary to be transparent. Members of the public are entitled to know what happens in the courts in order to 'maintain confidence in the integrity of the administration of justice' (Rolph et al, 2010, 401). Very few members of the public have the time or the inclination to observe court proceedings, and so rely on media reports for information. However, media reports now extend beyond newspaper columns and nightly news programs. Court reporting is much more immediate these days with online reports jostling for recognition beside social media commentary.

The principle of open justice includes a general entitlement to publish a report of open court proceedings. It does not include an entitlement to publish any information about the accused that the public might find 'interesting'. The concept of "public interest" is vastly different to the concept of "of interest to the public". The details of a particular case might indeed be "of interest" to a public keen for salacious gossip, but whether releasing those details is "in the public interest" is a question of degree, and often a question of ethics. "Open court" proceedings have long been recognised as those courts to which members of the public have a right of access (*McPherson v McPherson* [1936] AC 177). Most courts are 'open', although some proceedings are held privately, or 'in camera'. In such cases, members of the public, including the media, are not permitted to attend, and publication of what occurs in such a hearing could constitute contempt of court. From time to time, a court may order that no reports may be made. These orders, called 'suppression orders' in Australia and 'protective orders' in the US are usually made in relation to criminal proceedings. Indeed, members of the public are only alerted to the incidence of criminal activity through the lens of the media. This can create a 'disentangled reality' (Grabosky, P and Wilson, 1989) which has the power to shape public attitudes (Chibnall, 1977, 226). A court will only make a suppression order when it is considered necessary for the administration of justice. Nevertheless, the expression 'gag orders', given to them by the media (Hengstler, 2008, 176), makes clear the view of many journalists that they are contradictory to the principle of open justice.

A similarity between journalists and lawyers (particularly trial advocates) is that both rely on the ancient art of story-telling as the basis of their work. A journalist aims to create and publish a story that will appeal to a specific audience. The lawyer's role (especially the criminal lawyer) is also to tell a story: to a judicial officer or to a jury (or both). In a criminal trial, the prosecution story will be based around the accused as the protagonist who has committed a crime against the victim. The defence story will

be an attempt to either cast the accused in a lesser role, or to cast doubt upon the narrative that is proposed by the prosecution. For all types of story-telling, what is required is a thorough investigation, an abiding sense of scepticism and an overarching understanding that the 'whole truth' is not always the story that will be told.

The role of the story – or narrative – is at the heart of an accused's right to not only a fair trial, but also a fair re-trial.

How much of the 'whole story' will get told to the court? The rules of evidence restrict what any witness might say. The prohibition against hearsay, the fact that certain evidence may be more prejudicial then probative, or inadmissibility for a range of other reasons may result in narrative detail being excluded from the evidence that is presented to the court. The story ultimately consumed by members of the public is diluted, refined or homogenised according to the journalist's filter through which the words of the story are processed. In addition, journalists may print or otherwise publish additional chapters of the narrative that may not be part of the narrative unfolding in court. This may happen before the matter even reaches the court. For example, when a person is arrested for a crime, a journalist's post-arrest narrative of the crime might contain detail that will ultimately be forbidden to be told in court. How much of that extra, perhaps sensational, perhaps untested detail will get told to the public outside of the court room? And what if the people in the court room – especially the jurors – have access to the story that is being told on the outside? 'Freedom of the press' as it used to be called is a somewhat outdated phrase now, given the rise of social media and other forms of reporting of information. Although newspapers are no longer the major source of 'news', in the United States, the right to 'freedom of the press' was the First Amendment made to the Constitution of the United States of America on 15 December 1791: 'Congress shall make no law … abridging the freedom of speech, or of the press'. In contrast, the Australian Constitution makes no reference to freedom of speech or freedom of the press, and Australia has no Bill of Rights. In 1997, the High Court of Australia in *Lange v Australian Broadcasting Corporation* specifically contrasted the Australian position with the US position, stating that '[u]nlike the First Amendment ... which has been interpreted to confer private rights, [the Australian] Constitution contains no express right of freedom of communication or expression' (*Lange*, 1997, 567).

Narrative freedom in Australia derives from the United Nations Universal Declaration of Human Rights, in whose drafting and adoption Australia played a major role in 1948. Article 19 of that Declaration states: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

Any discussion about the right to free speech must be balanced with an accused's right to a fair trial. In the United States, the right to a fair trial is guaranteed by the Sixth Amendment to the Constitution. Once again, the Australian Constitution makes no reference to the right to a fair trial and absent any Bill of Rights, Australians must rely on the international position. The right to a fair trial is expressed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Chen 1997). The United States Constitution does not express any preference for which right might veto the other (Phillipson, 2008, 16) but Anglo-

Australian courts have expressed a clear view that the right to a fair trial should take priority (*Hinch v Attorney-General (Vic)* (1987) 164 CLR 15, 27).

Ethics in journalism are based upon the utilitarian notions explored by John Stuart Mill in his 1859 publication of *On Liberty*. During the twentieth century, the rise of social responsibility theory led to a focus on journalistic responsibility rather than libertarianism which essentially encompassed service to society and 'the greater good'. It became generally accepted that the press should be subject to moral and ethical restrictions. However, social responsibility theory in fact releases individual journalists from responsibility. Journalists are equally responsible to the public, their sources, their editors, their proprietors and perhaps also themselves. There are no safeguards against conflicts of interest under social responsibility theory. Unlike the lawyer who has specific responsibilities and fiduciary duties to each individual client, and who must not be in a position of conflict of interest, the journalist is free to open the door to conflicts of interest with no one to close it (Spencer, 2012). Reputable journalists would argue that they take great care to either avoid or declare personal conflicts of interest but they actually operate within an environment of such conflict. This is because most journalists are employed by large corporations (Richards, 2005, 67) and they know that shareholders are regarded by senior management and Board members as a higher priority than either the readers (or viewers or listeners) or the sources and certainly higher than the subjects of the stories that they publish. This inevitably clashes with the journalist's first loyalty which has long been recognised as to 'the citizens' (Kovach and Rosensteil, 2007). Indeed, Kovach and Rosensteil argue that journalists 'have a social obligation that can actually override their employers' immediate interests at times, and yet this obligation is the source of their employers' financial success' (Kovach and Rosensteil, 2007). The question of whether or not the principle of open justice might clash with the imperative of a fair trial is an example of what Tim Dare describes as the 'decision-making procedures that are the focus of the actual accommodations between competing conceptions of the good in our community' that are 'enormously complex' (Dare, 2004, 27).

Journalists argue that the public *needs* to know about matters of societal interest. Whether or not a matter is indeed of 'interest' and therefore 'newsworthy' has until very recently, been determined by newspaper editors and news directors. 'The ethical dimension of the journalistic process commences at the point of deciding what to report and then extends into decisions about how the information will be presented, and to whom' (Richards, 2005, x). This results in narrative emphasis being altered according to its newsworthiness. When a crime has been committed, the journalist will want to publish as much information as possible about the crime and any person who may be suspected of committing the crime, arguing that this is necessary in order for the whole truth to eventually emerge, and so that the public will be accurately informed. The cynic might argue the old adage that journalists will "not let the truth get in the way of a good story". The lawyer, on the other hand, acting in the best interests of the client (the accused), will argue that the client has the right to silence, the right to a fair hearing (including the benefits of the rules of evidence), and the right to hear all allegations before commenting or pleading.

Truth telling is said to be fundamental to journalism. But what is 'truth'? Truth is such a nebulous concept that journalism texts have developed the idea of 'journalistic truth'. Journalistic truth is acknowledged to encompass four specific criteria: accuracy, completeness, fairness and objectivity. Together, these criteria are said to comprise 'rational acceptability' (Richards, 2005, x). A narrative based on rational acceptability has the potential to be quite different from one that is based on the rules of evidence,

excludes hearsay, and aimed towards a finding of a narrative that is beyond reasonable doubt.

The Australian Journalists' Association Code of Ethics requires Australian journalists to '[r]eport and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts'. Australian journalists are specifically prohibited from 'suppress[ing] relevant available facts, or giv[ing] distorting emphasis' and they must '[d]o [their] utmost to give a fair opportunity for reply'. This creates a clash: the journalist is ethically obliged *not* to suppress relevant available facts. In an attempt to be as accurate as possible, a journalist may consider it necessary to publish everything possible about an accused person, perhaps what could be described as 'the whole truth'. However, the law stands in the way of the journalist telling the whole truth because there are certain categories of information which, if published, give rise to a charge of contempt of court. Narrative detail that might influence a jury could prejudice the accused's right to a fair trial, so is not allowed; publication of such information would constitute a contempt of court. For example, disclosure of an accused person's prior criminal convictions would be complying with the journalists' ethical obligation regarding 'completeness' but would be contrary to 'one of the most deeply rooted and jealously guarded principles of our criminal law' (*Maxwell v Director of Public Prosecutions* [1935] AC 309 (HL), 317). The courts have said that 'the public interest in free discussion and in alerting the community to risk does not warrant a desertion of the public interest in securing a fair trial' (*Hinch*, cited in Chesterman, 1999, 71).

An Example: The Perry Case

In South Australia in 1981, 55 year old Emily Phyllis Gertrude Perry, was tried for the attempted murder of her (third) husband, Kenneth Warwick Henry Perry, aged 50. It was alleged that Mrs Perry had administered small quantities of poison in Mr Perry's food and drink, over a long period of time, intending to kill him. The Crown produced detailed medical evidence throughout the trial of high lead and arsenic levels in samples taken from Mr Perry. The Crown also led evidence that Mr Perry was fit and healthy prior to his marriage in 1973. By the end of 1975, several insurance policies had been taken out on Mr Perry's life. The local evening tabloid newspaper reported the Crown argument that Mrs Perry would have been in "a remarkably good position if Mr Perry had died" (*The News* 29 July 1981, 6). In fact, if Mr Perry had died his wife would have received a total of AUD$118,920 in insurance payouts for death from illness. This would have been worth approximately AUD$417,000 in 2013 (Reserve Bank of Australia Inflation Calculator, 2013). Evidence was given that Mr Perry "started to slow up" in his health in 1976. A forensic pathologist was reported to have told the jury how the symptoms of lead and arsenic poisoning could develop slowly, almost unnoticed at first. Another specialist witness was reported to have described it as a "sneaky onset". Journalists also reported the evidence that in early 1977, Mr Perry wrote a letter to his employers, saying he had not been well during the previous 12 months. The Crown argued that it was not a coincidence that Mr Perry's health became progressively poorer after the insurance was taken out (The News, 29 July 1981, 7).

This in itself is an interesting story. But the prosecution case involved a deeper, wider plot. An important component of the Prosecution case was a narrative about the deaths of three other men from poisoning. These three other men had also been closely associated with the accused Mrs Perry. The Crown presented evidence that one man was a previous husband named Albert Haag. Albert, Emily's second

husband (her first marriage to Kenneth Hulse ended in divorce in the early 1950s) died from arsenic poisoning in 1961. An inquest was held. No charges were laid. Another was her brother, Francis Montgomery, who died from arsenic poisoning in 1962. Perry was the last to see him alive and the first to find him dead. Evidence was given at the trial that he was a violent alcoholic. The Crown case was that the motive for his murder was to rid the family of a tiresome burden. The third was a man named Jim Duncan (also known as John Alfred Jamieson) with whom Mrs Perry had lived in a de facto relationship in the late 1960s. He died from an overdose of barbiturates in March 1970, but it was alleged that he had suffered from arsenic poisoning for a significant period before his death.

Evidence was led at the trial, and reported by journalists, that during 1978 and 1979, Ken Perry, Emily's third husband, suffered from arsenic and lead poisoning. While he was in hospital, Emily was arrested and charged with attempted murder. In 1981, although Mrs Perry was on trial only for the attempted murder of Ken Perry, the Crown argued that Mrs Perry had had an opportunity to kill all three of the other men as well as Mr Perry. In two of the three other cases, Mrs Perry had instigated or arranged life insurance on the man's life in her favour. Following the insurance, each man suffered an illness for which there was no certain diagnosis, but in each case, there were symptoms consistent with arsenic and / or lead poisoning. And in each case there was death or very serious illness.

"Is this just a tragic coincidence?" the Prosecutor is reported to have asked the jury.

So, we have a compelling narrative. But the most fascinating and intriguing aspect of this case was the fact that Ken Perry, the husband who suffered from arsenic poisoning and who was the alleged victim in this trial, denied that his wife had ever attempted to harm him or kill him. Mr Perry refused to give evidence against his wife and gave evidence in her favour. In and out of court, Ken Perry staunchly defended his wife. This was unique in South Australian legal history. The Prosecution was unable to give the "victim" the expected role in the attempted murder narrative because he refused to accept it.

Mrs Perry categorically denied having anything to do with the three deaths. The defence claimed that Mr Perry received his lead and arsenic poisoning from an orchestrelle (a musical organ designed to imitate the effect of an orchestra – a bit like an early version of a modern electronic keyboard) which had contained lead arsenate. He told the court that for years he had followed a hobby of restoring player pianos or pianolas. At any one time he would have had up to 30 pianolas on his premises. About half to three-quarters of those contained lead piping. Mr Perry told the court that while working on the pianos there would have been lead tubing and lead powder on a bench and on the floor. He said while working he also continually wiped his moustache with his hands. The defence suggested that Mr Perry could have inhaled the lead arsenate from his dirty working environment. He rarely washed his hands while working because the nearest hand basin was many yards away from his workshop. The defence also argued that arsenic was used in the pianolas to deter rats and mice.

164 witnesses gave evidence in a trial that lasted for sixty days; over 4000 pages of recorded transcript are now archived in the Supreme Court of South Australia Registry. The writer has had the opportunity to read the transcript and the excerpts quoted in this article are from the file held at the Supreme Court of South Australia.

At the beginning of the trial, in the absence of the jury, counsel for the accused applied for an order suppressing the publication of any evidence relating to the deaths of Haag, Montgomerie and Duncan or any reference to those topics made either by the Prosecutor in his opening (at that stage not yet commenced) or by the Judge already in dealing with evidentiary matters. The Trial Judge, Cox, J., reserved his decision on the application but initially made a holding suppression order pursuant to the *Evidence Act (SA)*. Counsel for the accused also asked the judge to give a short direction to the jury as to how they could use the similar fact evidence. In the absence of the jury, His Honour said:

> 'I am sympathetic to the application and my present intention would be to do something about it but it may not be straight after the opening. I will be anticipating what I will say at the end of the day and I don't want to go wrong so I will take an opportunity at an early stage of the trial to re-enforce anything which the Prosecutor may say, or to say something if he doesn't touch on the topic at all, to the jury about the proper use or the improper use that may be made of the similar fact evidence.'

The Crown opened the case for the Prosecution soon after that. In the very early part of the Crown's opening address to the jury, the Crown Prosecutor said:

> 'I would like, at this stage, to make very, very clear indeed the way in which this evidence can properly be used because it is important in the interests of the administration of justice that evidence such as this be used properly...I am mentioning matters of law so what I say is completely subject to His Honour's directions to you.
>
> The accused, in this trial, is not on trial for the three deaths that I have mentioned. She is on trial for the attempted murder of her present husband. The evidence of the other three deaths is led in order to assist you in determining whether or not it was the accused who administered the poison to Mr Perry and if so, what her intention was. It would be improper of obviously unfair to say, 'Well, look, we've heard all this evidence and this woman's the type who goes around poisoning people therefore she must have poisoned Mr Perry.' That would be an improper and unfair use of this evidence...But what is proper and what you will be asked to do is firstly to examine the facts that you find to be proved with regard to each of those three previous deaths and with regard to the circumstances surrounding the poisoning of Mr Perry, for example...what sort of poison was used on each of these four occasions, three previous deaths and now Mr Perry? What sort of poison? What sort of opportunity did the accused have on each of these occasions? Was there any benefit to come to her from the deaths of these people, any insurance? Are there any similarities between them? What sort of explanations have been put forward with regard to each? Then it would be proper, once you have gone through that exercise, to look at the total picture that is presented...if you then conclude that...there are reasonable explanations, it's just a series of unfortunate tragedies that have happened to this woman, they are all coincidences...then the evidence of the three previous deaths would be of no assistance to you whatsoever...But if, on the other hand, you concluded that there were some basic similarities, that the accused was the only person – and this is the Crown case - ... who had the opportunity of administering poison to all four of these people, and if you judge when you look at the total picture according to your common sense and knowledge of human experience, that repetition of poisonings does not happen to people closely associated with one person in the ordinary experience of a lifetime, these repetitions do not happen by accident, you

> would then be entitled to infer well, it was not an accident and the evidence points to the fact that accused administered the poison to Mr Perry.'

These carefully chosen remarks were reported by the local press in a truncated version that diluted the emphasis that the Prosecutor had placed on the way that the jury could use the similar fact evidence:

> Crown Prosecutor, Mr Brian Martin, has told the jury that Mrs Perry is not on trial over the deaths of the three men. It would be improper to suggest that she was the sort of woman who went around poisoning people. The evidence relating to the deaths of the three men would be given simply to help the jury to determine if it was in fact Mrs Perry who administered poison to her husband.
>
> (The News, 19 June, 1981, 14.)

Later that morning, after a break during the Prosecution's opening, the trial judge said this:

> 'I'm influenced in my decision by the large part which ... similar fact evidence will play in the trial, so that to suppress any publication of it would be to suppress a great deal of the evidence in a hearing which in this jurisdiction, I suppose, above all others, ought in principle to be public unless there is a sound reason to rule otherwise… That, of course, is not just an idiosyncratic view of mine; it's the principle which is enshrined in the Evidence Act itself. I have decided that it would not be appropriate to make a wholesale suppression order of the kind sought.'
>
> (Transcript, 108)

The judge revoked the earlier holding order with respect to the similar fact evidence and the prosecution's opening about it, but he made a fresh order suppressing publication of the fact that an application had been made to suppress the publication of similar fact evidence. So journalists were able to publish the similar fact evidence, but could not tell the public that the defence had tried to stop it from being published. This order was made in the absence of the jury. The writer has obtained permission from the Supreme Court of South Australia to publish this fact in this article.

An examination of the local newspapers from the time of the trial has revealed that journalists reported regularly on the case. Notwithstanding the journalism ideal of getting the facts right and getting the right facts, the headlines published during the course of the trial make the journalists' narrative very clear: **Doctor tells of man's high lead level** (*The News***,** 16 April 1981), **Husband defends his wife** (*The News***,** 1 July 1981), **POISON CASE Husband not a victim: Defence** (*The News***,** 13 July 1981), **Wife 'well off if he died'** (*The News***,** 15 July 1981), **'Ex-husband was insured for $22,000'** (*The News***,** 16 July 1981), **Poison case wife guilty** (*The News***,** 24 July 1981), and finally: **15 YEARS FOR POISON CASE WIFE** (*The News***,** 28 July 1981).

There were no headlines about a mother who worked tirelessly to provide for her children, no headlines about orchestrelles with lead pipes and no headlines about the intense cross-examination in relation to the forensic pathology evidence. There was a pattern to the way the matter was reported in the local daily tabloid newspaper, *The News*. For example, the following, or a variation of it, was repeated in almost every *News* report as either the first or second paragraph:

> Emily Phillis Gertrude Perry, 55, of Grenfell Road, Fairview Park has denied two charges of attempting to murder her husband Kenneth Warwick Henry Perry, 51, at Fairview Park and elsewhere between July 1978 and December 1979.

During the trial, when actual evidence was about to be led about the three prior deaths, the trial judge gave detailed directions to the jury about how to use the similar fact evidence. He said:

> 'I understand that the Crown is now about to embark upon a body of evidence that goes beyond the events of 1978 and 1979 and is designed to prove that the accused...murdered three people by poisoning in 1961, 1962 and 1970. The Crown says that this evidence will be relevant to the questions which are before you – that is, whether the accused attempted to murder Mr Perry by poisoning in 1978 and 1979. This makes it advisable for me to give you some guidance at this stage as to the way the evidence we are about to hear with respect to the deaths of men named Haag, Montgomerie and Duncan may properly be used in your consideration of the two charges upon which the accused is being tried – that is provided that the Crown's allegations with respect to those deaths are proved to your satisfaction and provided that you are willing to draw from it the inferences which the Crown invites you to draw...It is also necessary that I warn you against using the evidence in the wrong way.
> As a general rule, the only evidence that the Crown may lead in proof of a charge that it brings against an accused person is evidence that is directly concerned with the allegations made in the charge...I am not making any comment about the weight of the evidence ... [a]t this stage... However, there are exceptions to most general rules, and the Crown's allegations in this case raise one of them. Sometimes there may be such a striking similarity between two different events or sets of circumstances, with both of which an accused person is in some important way connected, that it will be proper to have regard to what happened on the first occasion when assessing that person's degree of involvement in the second. It will not be so, of course, if both events are quite commonplace and could readily be explained by coincidence or in some other exculpatory way. There needs to be such a close similarity between the two events, or such a clear underlying unity between them, as to make coincidence a very unlikely explanation for what happened. Bear in mind that it is not enough if it simply raises or deepens a suspicion of guilt. It must make any other conclusion than guilt – mere coincidence for instance – an affront to one's common sense.'

The judge then provided examples of how this principle might work in practice.

> 'Suppose the case of a man who is charged with setting fire to his shop with the intention of defrauding the insurance company. The police can prove that the shop was over-insured, and that the man had the opportunity of setting fire to it, but that would hardly be enough to arouse more than a suspicion. After all, it might well have been an accident. However, if there were also evidence to show that the shop proprietor had on two previous occasions been the owner of a house

> that had been over-insured and had caught fire, with the result that on each occasion he got a windfall from the insurance company then that might very well turn a suspicion that the fire in the shop was lit deliberately into a certainty. A man is most unlikely to have three beneficial fires like that by accident...Lawyers call this kind of evidence "similar fact" evidence – evidence of facts or circumstances so remarkably similar to those directly in issue at the trial, or indicating such a clear pattern of behaviour, that they have a strong probative force in the determination of one or more of the issues before the jury.
>
> The Crown ... seeks to rely on this similar facts principle ... The witnesses whom the Crown is now about to call will give evidence relating to the deaths of the three men I have mentioned – Haag, Montgomerie and Duncan. The case for the Crown, as I understand it, is that the accused poisoned those three men, and that the facts and circumstances are so remarkably similar in their essential features to those in Mr Perry's case ... that you may properly take them into account in determining whether Mr Perry's poisoning was intentional or accidental and, if it was intentional, whether the accused was the poisoner. The Crown says that by reasoning from the similar fact evidence...you will be entitled to conclude that the accused deliberately poisoned Mr. Perry with the intention of killing him. In putting it in that fashion, I have explained the only way in which you properly may have regard to any evidence of alleged similar actions on the part of the accused in the past. Any other use of the evidence – for instance, that the accused is a person likely from her criminal conduct or character, as possibly disclosed by that similar fact evidence, to have committed the offences for which she is now being tried – would be quite wrong. You will see then, that the similar fact evidence must be regarded with the greatest care. If you are satisfied at the end of the trial that the Crown has made good its allegations with respect to it – that is has demonstrated the kind of similarity or pattern of behaviour to which I have referred – then you would be entitled to use that evidence, should you see fit, in your consideration of the questions whether the accused administered poison to Mr. Perry and did so with the necessary criminal intent. In other words you could find, if you were so disposed, that pure coincidence could not be a reasonable explanation of the four incidents and that a consideration of them together points inevitably to the guilt of the accused with respect to the charges laid against her in this Court. But that is the only way in which that evidence might properly be used.
> (Transcript, undated, 1)

Cox J addressed the similar fact issue again at length later in summing up. Fourteen pages of transcript record his painstaking explanations, including:

> 'The Crown says that you have here a striking course or pattern of events and relationships, with the accused as the connecting link, from which only the most sinister conclusion can be drawn. First, a husband of the accused dies from arsenical poisoning, then a brother, and then a man who for practical purposes was her next husband dies of poisoning (not arsenic this time, but barbiturates), and finally another husband is gravely ill from, it would appear, chronic lead and arsenic poisoning. Nor, says the Crown, is it just a matter of

> the deaths. There is also, in three of the four cases, a history of medical symptoms extending over a lengthy period for which, it is said, no satisfactory natural cause was found, and in addition clear evidence that the accused stood to gain financially from any death that might result in those three cases. In those respects the death of Montgomerie, as you know, stands differently.
>
> Can you discern in these occurrences such a striking pattern of circumstances, such an underlying unity, as to assist you to a decision in Mr. Perry's case as to whether the accused administered poison to him, and did so with an intention of murdering him? The question will not arise of course unless you are first satisfied that Mr. Perry was in fact poisoned but you are not sure whether his poisoning was a matter of accident or design. It is then that you may look at the whole body of evidence to see whether it discloses such a remarkable pattern or series of common features as to satisfy you that Mr. Perry's poisoning was not caused by accident but was brought about deliberately by the accused. I remind you again, that you are not trying the accused with respect to the poisoning of Haag or Montgomerie or Duncan. Their deaths are relevant only in so far as they may throw light upon the poisoning of Mr. Perry. Again, you could find the kind of objective pattern for which the Crown contends, and still decline to draw the adverse inferences from it which would be essential if you were to find the accused guilty. In that event the explanation in Mr. Perry's case, as for that matter you may think in the case of all the men, is simply coincidence.'

His Honour also said:

> 'Ladies and gentlemen, I am sure that you have already given this aspect of the case much consideration. Obviously you will have to weigh the issues here very carefully. It certainly is a most remarkable thing that one woman should have three successive husbands, legal or *de facto*, struck down by poison, two of them fatally and the third to a very grave degree, even if the events did cover a good few years. And on top of that a brother dies of poisoning as well. If the accused is not guilty of these charges, then the explanation must lie, at least so far as her common relationship is concerned, in the long arm of coincidence. It is a matter, perhaps, of how long you think the arm of coincidence is.'

The jury found Mrs Perry guilty of attempted murder and she was sent to prison for fifteen years. After Perry was sent to prison, and before the High Court appeal, a large double page spread was published in *The News* under the headline **TRAGIC TRUST SHOWN BY A HUSBAND** (*The News***,** 29 July 1981). The article reported on a large amount of the evidence that was presented at the trial, including how the couple met, and the history of the three earlier deaths. It is well established that journalists are allowed to report court proceedings as long as the report is fair and accurate (*R v The Evening News, ex parte Hobbs* [1925] 2 KB 158, 167–8). The newspaper articles published after the verdict and sentence were reports of the evidence given at trial. The newspaper did not report anything that was not told in open court. But it did report facts that were subsequently held by the High Court to be inadmissible. Another double page spread appeared in the same newspaper on the same date under the headline: **The Perry poison case: The trial where the accused was defended by the victim** (*The News***,** 29 July 1981).

Perry appealed to the South Australian Court of Criminal Appeal. The appellant's argument (and the first ground of appeal) was primarily that evidence relating to the

deaths of Mr Haag, Mr Montgomerie and Mr Duncan should not have been admitted because that evidence was inadmissible at law.

Alternatively, Mrs Perry's counsel argued that the trial judge should have exercised his discretion and excluded the evidence because its prejudicial nature outweighed its probative value. In the further alternative, the appellant argued that the jury should have been discharged after the whole of the evidence in relation to Montgomerie's death was given, upon the ground that a mis-trial had occurred, or that the trial Judge should have directed the jury to ignore the evidence in relation to the death of Montgomerie and also the evidence in relation to the death of Duncan (*The Queen v Perry [No. 5]* (1981) 28 SASR 417, 418-9) Mrs Perry's counsel also argued that the trial judge 'should have directed the jury that they had to be satisfied that the appellant was responsible for the three prior deaths before the deaths could be used as an aid to determine whether [Mrs Perry] was guilty of the charges in the indictment' (*The Queen v Perry [No. 5]* (1981) 28 SASR 417, 432)

The Court of Criminal Appeal had to 'look at the Crown case in relation to all the deaths and the illness suffered by Mr. Perry in order to decide whether the evidence of the deaths was legally admissible and, if it was, whether there was any error in the exercise of the discretion' (*The Queen v Perry [No. 5]* (1981) 28 SASR 422).

The hearing of the appeal commenced on 21 September 1981 and lasted for five days. Judgment was delivered on 20 October 1981 by King CJ, White J and Mitchell J. All three Appeal Court judges gave separate judgments concerning the admissibility in a criminal trial of evidence of other criminal conduct by an accused person. The then South Australian Chief Justice, King CJ, referred to the principles laid down in the 1894 judgment of the Privy Council in *Makin v. Attorney-General for New South Wales* (1894 AC 57, 65):

> 'It is undoubtedly not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to shew the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.'

King CJ expressed the clear opinion that:

> 'the evidence as to the earlier incidents is genuinely and indeed strongly probative of the allegation that the appellant deliberately administered poison to her husband with the intention of killing him and that its probative force is quite independent of any tendency which it possesses to show that the appellant is a person disposed to murder and to murder by poisoning. The evidence was therefore rightly admitted."
> (*The Queen v Perry [No.5]* (1981) 28 SASR 417, 412)

Mitchell J's view (with which White J agreed) was that

> '... the evidence tendered by the Crown relating to the deaths of Haag, Montgomerie and Duncan was legally admissible ... to show the high degree of improbability attending the hypothesis that the arsenic poisoning from which Mr. Perry suffered was occasioned by accident, in the light of the facts that the appellant had a close connection with three other men who died of poison, two of them from arsenic poison, and that she had benefited from insurance policies negotiated by her on the lives of two of them and stood to benefit from insurance policies on Mr. Perry's life. Certainly the death of Duncan was not from arsenic but it was from poisoning, and there was evidence from the Crown from which the jury could infer, if it chose, that he had suffered from chronic arsenic poisoning before his death. The appellant benefited from insurances taken out on his life, which insurances she arranged. She did not benefit financially from Montgomerie's death but his death certainly removed someone who may have been regarded as a burden on the appellant's family. His death was from arsenic poisoning and she had the opportunity to cause him to take arsenic...
>
> I do not find that the learned trial Judge made any error in the exercise of his discretion. Of course the evidence was prejudicial, as most relevant evidence tendered by the Crown is. It was, however, of sufficient relevance in my view to make that relevance outweigh the questions of prejudice to which the learned Judge had to give consideration.'
>
> (*The Queen v Perry [No.5]* (1981) 28 SASR 417, 433)

The Court of Criminal appeal upheld the decision of the Supreme Court and dismissed the appeal. Mrs Perry subsequently appealed to the High Court of Australia whose Chief Justice described it as a 'difficult case' *Perry v R* ((1982) 150 CLR 580). One of the five judges died before providing reasons for judgment. The remaining four judges agreed that the evidence relating to the death of the de facto husband Jim Duncan from barbiturate poisoning was inadmissible. Three judges (Gibbs CJ, Wilson and Brennan JJ) held that the evidence relating to the death of Albert Haag, the second husband, was admissible. Gibbs CJ and Murphy J held that the evidence concerning the brother's death was not admissible; Wilson J and Brennan J decided that this evidence was admissible. One judge (Murphy, J) said that all of the evidence relating to all three prior deaths was inadmissible. A table summarising the judges' decisions in relation to evidence concerning the prior deaths is set out on the next page.

Judge	Evidence relating to Albert Otto Haag (2nd husband[1]). Died of arsenic poisoning in 1961.	Evidence relating to Montgomerie (brother). Died of arsenic poisoning in 1962.	Evidence relating to John Alfred Jameison / Jim Duncan (de facto). Died of overdose of barbiturates in 1970.
	Motive: life insurance	Motive: rid family of burden	Motive: life insurance
	Defence: accident / corn sprayed with weed killer / suicide.	Defence: suicide	Defence: bad health, suicide; some symptoms contra-indicative of poisoning.
	Perry had knowledge of poisons, had bought weed killer, opportunity to administer poison, domestic trouble, false statements re knowledge of insurance policies and state of relationship.	No bottle found, Perry cleaned up and threw away bottles.	Arsenic poisoning for considerable period before death. Symptoms consistent with ingestion of lead arsenate.
Gibbs CJ	Admissible	Inadmissible	Inadmissible
Murphy J	Inadmissible	Inadmissible	Inadmissible
Wilson J	Admissible	Admissible	Inadmissible
Brennan	Admissible	Admissible	Inadmissible
Aickin	Died before reasons for judgment	Died before reasons for judgment.	Died before reasons for judgment

Table 1: High Court Judges' Decisions regarding similar fact evidence in *Perry v R* (1982) 150 CLR 580.

Emily's conviction was quashed by the High Court. She was released from prison and a re-trial was ordered. But the prosecution never re-tried her. She died in 2012.

One of the High Court judges, Murphy, J, noted that '[i]n Mrs Perry's case there is a very great temptation in weighing the evidence and more particularly in deciding admissibility, to ignore the presumption of innocence and to replace it with a presumption of guilt. The allegation that a number of the accused's relatives died or suffered from arsenic poisoning immediately conjures up a highly suspicious prejudicial atmosphere in which the presumption of innocence tends to be replaced with a presumption of guilt' (*Perry v R* (1982) 150 CLR580, 594. Murphy J found that the evidence in relation to Duncan's death 'was not fit to be taken into consideration' (*Perry v R*, 595), that '[t]here was ample evidence providing a rational explanation of [Haag's death] consistent with Mrs Perry's innocence'(*Perry v R*, 598) and 'not a scrap of evidence to sustain a conclusion that the accused poisoned [Montgomerie]' (*Perry v R*, 598). His judgment provides a very different narrative to the one put forward by the prosecution and subsequently by the media.

This case provides a particularly interesting example of the dichotomy of an accused's right to a fair trial and the rules of evidence that flow from that right, and the public's alleged 'right to know' about the history of a person charged with a serious offence. The Emily Perry story is an example of the opposing perspectives of lawyers and journalists. The reasoning is somewhat circular – the story was fascinating because of the past history. The past history is also why she was found guilty. But it is also why

[1] Emily's first marriage was to Kenneth Hulse. They divorced in the early 1950s.

the conviction was overturned. It is also the probable reason behind why she was never re-tried.

Could it have been possible for Emily Perry to obtain a fair trial after the narrative about the three earlier deaths had been given such vast media attention? Possibly not. It is certainly likely that Mrs Perry's counsel would have argued strongly that any jury would have been tainted by the extensive coverage of the similar fact evidence that was published both during and after the trial. Given that this case occurred before the advent of digital media and the instant national and international publication that is now possible through the Internet, it might have been argued by the Prosecution that a jury composed of citizens from other states might not have been tainted by publication of the similar fact evidence. But could the Crown have obtained a conviction for attempted murder against Mrs Perry without the evidence of the earlier deaths? It would certainly have been much more difficult to obtain a verdict of guilty if the only evidence led by the Crown was in relation to the illness of Mr Perry. Following the High Court's decision, evidence in relation to Haag's death would arguably have been admissible, given that three judges decided that it was admissible. Only Murphy, J found the evidence in relation to Haag to be inadmissible (*Perry v R*, 600). Cost would no doubt also have been a significant factor, although without the evidence relating to deaths of Montgomerie (the brother) and Duncan (the *de facto* partner) a re-trial would have been much shorter than the original sixty day trial where 164 witnesses gave evidence.

Today, courts are forced to consider very seriously the possibility of jury members finding out information from the Internet and through social media. This is a vast area of research which will not be addressed in this article other than to note that the Perry case took place within an entirely different social and judicial context. The trial would most likely have been conducted quite differently if it had happened today. On-line journalism and tweets from court rooms were not even in the realms of science fiction in 1981 but they are now very much a part of the modern interpretation of open justice, even though South Australia has yet to embrace cameras in court rooms. However, some things have not changed.

A jury is required to make a decision based on information provided within the framework of the adversarial system. This includes the rules of evidence. Journalists, on the other hand, create stories out of what happens in court. Journalists 'look at the human story rather than get bogged down in the legal minutiae.' (Fife-Yeomans, 1995, 40). In addition, the 'boundaries between journalism and literature [have become] increasingly blurred' (Richards,2005, 25) as 'many of the techniques of fiction writing have become standard techniques in journalism … [especially] in the 1960s and 1970s with the rise of New Journalism (note the upper case): "The idea was to give the full objective description, plus something that readers had always had to go to novels and short stories for: namely, the subjective or emotional life of characters"' (Wolfe and Johnson, 1975, 25).

The appreciation of story-telling is an important part of what it means to be human. It follows that the right to a fair trial will always struggle for supremacy before a voyeuristic public with an insatiable appetite for a good story. The interesting twist in the *Perry* case is that the jury members were allowed to hear stories of previous deaths but were given specific directions as to how they might use those 'stories'

when deciding on the guilt of the accused. The stories were repeated on television, on radio and in newspapers. Details of all of the earlier deaths provided a thrilling 'whodunnit' at a time of global conservatism: Malcolm Fraser was Prime Minister of Australia, Ronald Reagan had just survived an assassination attempt and Thatcherism was taking hold in the UK where Lady Diana Spencer was about to be married to Prince Charles. A local murder scandal – especially where the victim had not only survived but refused to hear a bad word said about his wife who was blamed for trying to kill him – provided the classic hallmarks of entertainment. Who would not be interested in such a story? But the Perry case provides an example of a story that members of the public do not in fact have a right to know about because of its prejudicial nature. If Emily Perry had been re-tried, jury members in the new trial who became aware of the stories of the deaths of Haag, Duncan and Montgomerie would have highly likely been influenced by this information because it would certainly have 'raised a suspicion that the accused may have been guilty of the similar misconduct alleged or the crime charged' as pointed out by Gibbs, CJ in his High Court judgment. Four High Court judges differed in their views as to whether the evidence relating to the death of Albert hag was admissible. This fact in itself provides a warning to journalists about whether similar facts or propensity evidence can or should be published, even *after* a trial, in case of a successful appeal where a re-trial is ordered. If a suppression order had been in place in the trial of Emily Perry in relation to this evidence, none of the similar fact evidence would have been published, because to do so would have been in contempt of court (even if individual journalists believed that the public had a 'right to know'). But once the whole story about the three earlier deaths had been published, the chances of finding jury members for a re-trial was next to impossible. Telling a new jury to disregard anything they had seen or heard about the case would have been naively optimistic. Of this, the Prosecution was no doubt all too aware.

The question that now remains is whether there is a way to avoid or to mitigate the potential damage that flows from publication of similar fact evidence. Suppression orders provide one avenue. Perhaps the courts should consider disallowing the publication of similar fact evidence until any appeal period has expired. This is arguably contrary to the principle of open justice and the right to report matters which are litigated in open court. This is an important issue that extends beyond the scope of this article but is ripe for exploration.

Once the media had published its own narrative of the Emily Perry story, could the justice system really ever deal with it? Would it have been possible to find an untainted, unbiased jury for a re-trial? Which narrative would the prosecution have presented at a re-trial? Now we will never know. Only Emily Perry knew the real truth, and she has taken her own narrative to the grave.

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R v Emily Perry:
A True Story of Poison and Pianolas

By

Rachel Spencer

Thesis
Part 2: Artefact
Submitted to Flinders University
for the degree of

Doctor of Philosophy

College of Humanities, Arts and Social Sciences

28 June 2021

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DECLARATION

I certify that the artefact component of this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

5 February 2021

ACKNOWLEDGEMENTS

This is a true story. It has been collated from a variety of archival sources, including the transcript of the committal hearing against Emily Perry in the South Australian Magistrates' Court in 1980, the trial of Emily Perry in the Supreme Court of South Australia in 1981, statements provided to the Victoria Police for the Inquest into the death of Albert Haag in 1961, statements provided to the Victoria Police for the Inquest into the death of Frank Montgomerie in 1962, and a selection of newspaper reports. Any doubt about the veracity of the information provided by the persons interviewed or examined remains for the reader to decide.

All quotes from the Supreme Court trial are verbatim, except punctuation has been added in some instances.

Aspects of the story have also been compiled from the officially reported judgments handed down in the South Australian Court of Criminal Appeal and in the High Court of Australia. All quotations from these judgments are also verbatim; some punctuation has been added.

During the trial in the Supreme Court of South Australia, His Honour Justice Cox made orders suppressing the names and addresses of some witnesses, in order to prevent undue prejudice or undue hardship to them. The names of witnesses whose names were suppressed have been changed.

GLOSSARY OF KEY CHARACTERS

Emily Phyllis Gertrude Perry, also known as Phyllis Montgomerie, Phyllis Hulse, Trudy Haag and Emily Roberts.

Kenneth Hulse:	Emily's first husband
Albert Haag:	Emily's second husband
Francis (Frank) Montgomerie	Emily's brother
Jim Duncan, also known as John Jamieson:	Emily's de facto partner
Kenneth (Ken) Perry:	Emily's third and final husband
Detective Inspector Matthews	Victoria Police, Head of the homicide squad
Detective Senior Constable Aubrey Conn (later Deputy Commissioner):	Victoria Police
Detective Ritchie:	Victoria Police
Detective Sergeant Jack Ford	Victoria Police
Detective Sergeant Bill Cook:	SA Police
Detective Senior Constable David Florance:	SA Police
Brian Martin:	Senior Prosecution counsel
Ann Vanstone:	Junior Prosecution counsel
Peter Waye:	Senior Defence counsel
David Peek:	Junior Defence counsel
Dr Colin Manock	SA Head of Forensic Pathology
Justice Brian Cox:	Trial judge

PREFACE

There is a school of thought that suggests that between any two people in the world there is a maximum of six degrees of separation. And there is a local joke in Adelaide, South Australia, that between any two of its citizens there are only two such degrees. The other thing about Adelaide is that it suffers from an inferiority complex that its Eastern state neighbours like to prod. I am writing this during the COVID-19 Global Pandemic and the border between the neighbouring states of South Australia and Victoria has been closed. During a media conference, the Premier of Victoria, Daniel Andrews, quipped 'Who wants to go to South Australia?' His question, intended to be rhetorical, revived a long-held rivalry between two states whose inhabitants regard each other with suspicion, not least because the reputation that Adelaide now holds is that of the 'weird crime capital' of Australia. And when you get two degrees of separation between people in the weird crime capital, there are definitely stories to be told.

I have a good Adelaide story to tell.

The story starts in 1981 when I began studying a double Law / Arts degree at the University of Adelaide. Unlike much of the University's heritage-listed environment, the two buildings where I spent most of my time didn't look scholarly at all. If you walked past the colonnaded Art Gallery on North Terrace, past Elder Hall and the historic Mitchell Building, then past Bonython Hall where we sat our exams, you were confronted with the Law Building, a 1960s cubic monolith that appeared to have pebbles stuck all over it. It faced an immense concrete wasteland and a cement vat, the size of half an Olympic swimming pool, that was permanently half-full of stagnant water and was optimistically known as the Law School Pond. To the right of Bonython Hall and down a flight of stairs (yet more concrete) beyond the pond, was the Napier Building, my arts degree refuge. When I wasn't in there reading nineteenth century French novels, or practising my irregular verbs in the language lab, I was next door in the pebble covered law building, reading cases. The Law Building is now two stories higher than it was in 1981, and the ground floor has been reconfigured and refurbished beyond recognition. They don't use a Roneo machine any more to generate reading lists, but the building is still covered in pebbles.

For two of the three decades that I have been a practising lawyer, I have also been a legal academic. Reading lists are now published online and students reproduce them with crisp efficiency on modern printers that accept currency from swiped student cards instead of twenty cent coins. Multi-national conglomerates have cornered the market on legal information databases and judgments are accessible by a few clicks on a laptop. Twenty-first century law students don't have to search the aisles of a law library to find cases any more but they still learn about law by reading judgments, not by reading the narrative that led to those final judgments. They seldom find out about people's lives behind the judges' decisions. The purpose of a judgment is not to examine the life of the person whose name is lent to the case reference, the person who once sat nervously fidgeting in the lawyer's waiting room, who anxiously waited for advice, who cried or became angry, who spent

nervous weeks, months and years in and out of court, before that final judgment was delivered. The humanity and fallibility and frailty of clients become lost in a legal vortex where emotion is stripped from the flesh of the process, leaving only a skeleton of rational thought and logical reasoning.

When I was a law student, we searched the library shelves for High Court cases in the buckram covered Commonwealth Law Reports, the date and volume number in gold against black, the prestigious title in gold against scarlet. Or the Australian Law Reports with their ruby covers and gold lettering. Victorian Law Reports have always been dark green. And the South Australian State Reports are in oat-coloured volumes with a bold stripe the colour of blood, their title embossed in gold on the spine. Beyond the library stacks, students huddled and hunched at scratched brown laminated desks, three on each side. Sometimes, a whisper would go around. It often started in the smoking room, where the male students practised effortless nonchalance in their moleskins and polo shirts and girls giggled through teeth perfected by the best orthodontic attention that money could buy. To sit in the smoking room meant that you had been accepted into the cool group of Adelaide Establishment types who all knew each other from private school dancing classes back in year nine. Everyone knew that it was impossible to stay for very long in the smoking room because even the stench of privilege was overpowered by the acrid pong of stale cigarettes, but it was there in the perpetual blue haze that all the gossip was generated.

‘The Perrys are here!’

It would start as a low hiss from an excited law student, the lack of breath probably caused by Dunhill Extra Mild rather than any genuine attempt at discretion.

‘What?’

‘The Perrys are here!’

‘Who?’

‘You know, that poison case.’

‘What?’

And slowly the chain of hoarse whispers would echo around the library, around and over the case books and statutes that lay strewn across the desks, and soon everyone knew that the man with the big moustache was upstairs with his wife – the wife who was said to have tried to poison him.

I do distinctly remember this, but when I try to work out exactly when it was, my memory will not yield any further detail to help me pinpoint the month or the year. If I had to give evidence about it in a court, I could not say if this happened only once, or more than once, although my recollection is that that it occurred several times. In trying to recall events that are now mere slivers of a reality that I once lived, I am reminded that memory is not only fickle, but it is an implausible and limited tool for the task of unearthing the truth.

Our criminal justice system relies on memories in order to make decisions about the truth of what happened in the past. Citizens accused of criminal offences have their futures determined based on stories told in court. Lawyers call these stories evidence. Juries have to decide whether there is any doubt about this evidence. And there are rules about which stories are allowed to be told. Without memory, the criminal justice system could not function. Without memory, there are no stories and there is no evidence, but anyone who has ever been involved in the criminal justice system knows that the vagaries of memory can make or break a trial. In the South Australian case of the Crown against Emily Perry, memories were critical because the case before the court reached back across decades and across geographical borders.

When I tell people in Adelaide that I am writing a book about Emily Perry, nearly everyone has a story to share about South Australia's 'black widow', yet the collective memory is hazy. Was she convicted? Did she go to prison? Although her name is associated with the most evil of crimes, she is always mentioned as a curiosity, even as a bit of a joke. As a lawyer I know that Emily Perry's story has significance as a legal precedent. But there was undoubtedly more to this woman than what was written about her by judges. And what about her husband who suffered so much, yet supported, defended and appeared to love her?

Regina versus Emily Perry, once the sensational subject of media attention, is now mostly a memory, dryly reported in a few typed pages of leather-bound text. I am aware that the rule of law is founded upon the bedrock of reason. The criminal justice system has reason as its framework and the presumption of innocence at its core. But legal 'problems' originate not through reason but through emotions and imperfections, through the elements of our humanity that are sometimes the least attractive. I started hunting for traces of humanity beyond the judgments recorded in the South Australian State Reports and the Commonwealth Law Reports. I had only ever seen Emily Perry's case through a lawyer's lens. I wanted to find out what it would be like to tell her story with a different focus. I was about to embark upon a writing journey that required me to shed decades of 'thinking like a lawyer' and think about the law in a new way that felt exhilarating and rebellious.

PART 1
FINDING THE COLOURS

CHAPTER ONE

Supreme Court of South Australia

Tuesday 7 April, 1981

'Emily Phyllis Gertrude Perry you are charged with a first count of attempted murder contrary to section 18 of the *Criminal Law Consolidation Act*. On the first count you are charged that between about the first of July 1978 and about the thirtieth of November 1978 at Fairview Park, Norwood and other places, you did attempt to murder Kenneth Warwick Henry Perry. How do you plead?'

There are no photographs of fifty-five-year-old Emily on her first day in court, but as the trial progressed, Adelaide's evening *News* published pictures of her wearing a tailored jacket and skirt, with a blouse demurely buttoned at her neck. Her chestnut hair was sternly trimmed to sit just above her collar, thwarting the wayward curls that would have tumbled across her shoulders had she let them. Her smile for the camera revealed straight, even teeth but thinning lips; she had a delicate nose and unblemished skin. In profile, her chin protruded a little. Only the slightest of tiny crows' feet framed her brown eyes, under which dark circles were the only clue to a turbulence beneath her placid countenance. I expect that she was not smiling as she announced her plea.

'Emily Phyllis Gertrude Perry you are charged with a second count of attempted murder contrary to section 18 of the *Criminal Law Consolidation Act*. On the second count you are charged that between about the first of February 1979 and about the thirty-first of October 1979 at Fairview Park, Norwood and other places, you did attempt to murder Kenneth Warwick Henry Perry. How do you plead?'

She had answered to many names in her life. Born Emily Phyllis Gertrude Montgomerie, she became Phyllis Gertrude Hulse. Then Trudy Haag. Later, she became Emily Roberts. After that she was known as Mrs Duncan. Then Em Perry. Was her heart racing? Perhaps her anxiety was well hidden or maybe long suppressed. Or was she enjoying the theatre of it all? The four bewigged counsel, three men and one woman, all wearing black suits and flowing black gowns, leaning back on garnet leather chairs behind the bar table, were all there because of her. She was centre stage of the twenty four eyes from the jury box opposite her. I imagine Justice Cox, robed in crimson, his face framed by a long horsehair wig, taking in Courtroom 3 from his dais with a practised and cautious gaze that settled on the accused.

'Not guilty.'

***

Registry, Supreme Court of South Australia

Adelaide, 2013

I am sitting at a badly lit desk on the lower-ground level of the Sir Samuel Way Building. This is where the Registry of the Supreme Court of South Australia is located, the hub of the Court's administrative action. Some Supreme Court hearings are now held in this building as well as the in older Georgian structure across the road on the corner of Gouger Street. The Sir Samuel Way Building is as grand and imposing as one might expect a court to be, anchored with a magnificent double staircase and lidded by an enormous dome but its lofty architecture was originally designed not for the deliverance of justice but for the purpose of commerce. It was once the Moore's Department Store. At the time of Emily Perry's trial, this building was a gutted shell waiting for an architectural transformation. Emily was tried over the road in one of the older Supreme Court buildings.

'Ticket Number D08 please proceed to Counter 2.'

The artificial voice punctures the stillness. A steady progression of law clerks who know what they are doing and just as many unrepresented litigants who do not, wait their turn to be served, clutching numbered tickets as if about to ask for slices of ham at a supermarket deli counter. On the table in front of me is the first instalment of the transcript of Emily Perry's trial. I unfasten the two bows of pink grosgrain ribbon that secure a bundle of pages from Archive Transcript GRS 3391/4/D in Box Number 139 and contemplate who might have tied them. I turn over a couple of pages and a confetti of yellowing reinforcement rings tumbles onto the desk. I haven't seen those since I was in primary school. I wonder who once licked them, and adhered them to these snippets of history.

There are several pages of lists of witnesses. One hundred and fifty-three for the Prosecution, thirteen for the Defence. The magnitude of my task begins to unravel. More reinforcement rings fall off as I pick up the next couple of pages and scan some of the judge's opening comments.

…the burden rests on the Crown fairly and squarely to prove the guilt of the accused beyond reasonable doubt. In the context of this case it really means this: The Crown must prove firstly that a poison – in this case arsenic and lead – was ingested by Mr Perry. In other words he received these poisons into his system. Secondly the Crown must prove that –

'Ticket number S4, please proceed to Counter 1.'

- he received it into his system because the accused wilfully administered it to him … The third matter the Crown must prove is that at the time the accused administered the poison she was trying to kill him, that it was an attempt to kill.

As each page steers towards another, I become more cognisant of the formidable amount of time and energy that was devoted to this sixty-day trial – thousands of hours of human endeavour reduced to four archive boxes of typed pages, tied together with pink ribbon.

I can read the voices but I can't hear them. I don't know the colour of anyone's eyes, how

shiny their shoes were or if they cried in the witness box. I have many thousands of words but I can't tell if the speakers of the words were shouting, whispering, gloating, cajoling, bullying, or imploring. I have no indication of whether a witness looked angry, afraid, defiant, worried, determined, confused or cornered. There is no record of whether members of the jury laughed or cried, or took notes or feel asleep. Nothing is written about the timbre or volume of the voices or if witnesses sipped a glass of water while they gave their evidence. I don't know if the judge looked fascinated, impatient or bored. I have no record of how Emily reacted to what was being said about her, and certainly no indication of what she was thinking. I only have the black and white words on the 4000-odd pages. I need to find the colours.

***

Adelaide

2014

‘This trial had a lot of colour,’ says Brian Martin, sitting in a chair opposite me. ‘The colour was provided by Ken.’

The former Crown Prosecutor who led the case against Emily Perry, now retired Judge of the Supreme Courts of both South Australia and the Northern Territory, is reminiscing with me about the trial. He genially agreed to speak to me about the Perry case, offering to meet me at my own office. I was searching for Emily. What was she like? What did he remember about her? He recalled that she spoke in low, quite tones.

‘She was very rehearsed. She was upright, calm; she had a good speaking voice actually. She spruiked for Harris Scarfe at one stage. She was obviously a very intelligent woman.’

Brian Martin remembered more about Ken who was loud and showy and spoke in an indignant tone. He recalled that Ken was always making comments during the trial.

‘He’d walk into the court, and he’d be sitting in the back and he’d make some comments, sort of speaking to the air generally, but obviously aimed at me in particular. We were sitting in Court Number Three at one stage. I walked in and I was feeling a bit tired and I must have sat down with a sigh or something.

‘“Oh, you poor dear, working hard?” he would say, that type of thing. He would talk aloud, maybe to Emily, making general comments about the case, those sorts of comments, not actually directed at but obviously intended for my ears. He provided that sort of colour.’

CHAPTER TWO

Adelaide

1972 – 1977

The Arthur Murray Dance Studio has been in the two-storey red-brick building opposite the Adelaide Central Market in Grote Street for as long as I can remember. It has always been the place to go to learn how to waltz, foxtrot and tango. In the days before online dating, it was also a place for lonely people to meet. When Ken Perry asked Emily to dance one evening in 1972, she was immediately attracted to the handsome Englishman who had twinkly eyes, a full head of glossy dark hair and a perfectly clipped moustache. And he was a great dancer.

After emigrating to Australia, Ken's antipodean dream of a life in the sunshine was shattered when his wife slept with another man. But his refusal to forgive his first wife's treachery dissipated into insignificance when Emily became his regular dance partner. After they were married in 1973, Emily and Ken started their own weekly dancing club in the Freemasons' Hall in the upmarket Adelaide suburb of Walkerville, donating the profits to charity. Sometimes they arranged club outings. One weekend, they organised a visit to a farm in Strathalbyn, a picturesque country town about an hour's drive south-east of Adelaide. The old farmhouse was a treasure trove of knick-knacks, antiques, and a Pianola brand player piano that was to change the course of their lives.

A player piano looks much like an ordinary piano but it produces a tune by a roll of hole-punched paper fed through a mechanism that enables the notes to be played. The most popular brand was the Pianola. Ken was fascinated by the Pianola at Strathalbyn and decided to buy one, revelling in the magic of inserting the paper roll into the slot and watching the keys move up and down as if played by invisible hands. When the Pianola started to deteriorate, Ken was unable to find anyone to fix it, so he read as much as he could find about restoring player pianos and exchanged letters with overseas experts. So began a hobby that became his passion.

In July 1973, Emily moved with Ken to Sydney, where he worked on the design of submarine communications equipment at the Watson's Bay naval base. In his spare time, he wrote to other Pianola enthusiasts around the world and scoured second-hand shops for books about how to restore them. Emily returned to Adelaide the following year, a few months before Ken's contract finished. By the time Ken came home he had a vast knowledge of Pianolas and he bought several over the next few years.

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18 April 1976 was Easter Sunday. Ken answered a knock at the door to a man called Don Lewis, a lecturer in motor mechanics who had come to buy one of the player pianos. Don soon became a friend and regular visitor, and their animated discussions led to the establishment of the Pianola and Mechanical Musical Instrument Society of South Australia. Twenty-seven inaugural members met at

the first meeting at Ken and Emily's home. Ken was elected president, Emily was the secretary and treasurer and Don was the vice-president. The society met regularly and eventually grew to fifty members. However, as Ken's obsession grew, he paid less attention to his health. He stopped riding his bike to work and started to put on weight. He started to become very unwell.

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On 12 July 1976 Emily drove her husband to the local St Agnes Clinic. Ken had pins and needles and a loss of sensation down the inner side of his left arm. A month later he had an ear infection, then a sore throat. By October he had numbness in the soles of his feet, extending up one side of each leg. X-rays and anti-inflammatory tablets were no help. His GP, thinking it was some sort of nerve inflammation, or peripheral neuritis, referred him an orthopaedic surgeon. By the time Ken saw Dr Bauze on 23 November 1976 he had a numb feeling in the soles of both feet, in both big toes, in his left leg and buttocks, and he was unable to feel toilet paper when he used it. When he urinated he could feel nothing. Dr Bauze concluded that there must be something wrong with Ken's spinal cord and referred him to Dr Fewings, a neurologist.

Between Ken and Emily, life was not what it used to be. The relationship that began on the dance-floor with the sparkle of sequins, had faded like costume jewellery whose lustre is impossible to salvage. Every day Ken would finish work at EMI in Salisbury at about twenty minutes to five and ride home on his bike. Within half an hour he would be in the dusty barn that he called his 'workshop' at the back of their block in Fairview Park. He would break to cook dinner, but his culinary flair was seasoned with anger and hostility, yelling at Emily if she got in his way in the kitchen. After the meal, he returned alone to the workshop, often until after midnight. He had about thirty instruments, all in different stages of repair, and he would work on one, then tinker with the crumbling lead pipes and dusty wooden casings of another. Ken neglected his appearance, especially his moustache which he allowed to sprout from a precision-trimmed Clark Gable strip into a wild Jimmy Edwards mess that overhung his lips and cascaded down his face.

After reading the trial transcript, I know more about Ken's moustache than I know about Emily. I know that Ken was seriously injured in a motorbike accident in England in 1954 and that a team of surgeons took eight hours to fix up his badly damaged face. After he recovered, he grew a moustache to disguise his disfigured mouth. The damage to the inside of his lip put an end to his trombone playing and remained sensitive to heat. He always waited for his coffee to cool before drinking it. The archival legal material holds a mirror up to Ken during this period: Ken in his workshop, Ken visiting doctors, Ken adding four, sometimes five teaspoons of sugar in his milky Nescafe. But despite being under the main spotlight during the trial, Emily somehow disappears from the stage during most of the evidence. Pages of transcript record Ken's work history, his medical history and his debilitating symptoms. But of Emily, we know very little.

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Hidden in some details from one of Ken's doctors is a brief reference to Emily's attempt at a political career. This strikes me as very distinct from the portrait of the 'ordinary' woman that is the only description of her that several people have given me. Emily emerges not as 'ordinary' but as an ambitious, creative go-getter. She had already tried to create a sub-division of a large parcel of land but was thwarted at a number of levels. Undeterred, politics became her new venture. She was the Secretary of the Tea Tree Gully Ratepayers' Association, and of the Tea Tree Gully Auxiliary of the Crippled Children's Association. She also represented the Tea Tree Gully Council on the South Australian Council for the Aged.

In 1976 Emily was elected to the Tea Tree Gully Council as the member for the new Steventon Ward, an amalgamation of the Tea Tree Gully and Golden Grove wards. She was the first and only woman on the council, and was quoted in the local *North East Leader* as wanting to 'see more women taking an interest in council matters'. In her candidate photograph, Emily is beaming at the camera; she looks sharply intelligent and younger than the 'grandmother of two' description in her candidate profile. She looks youthful, energetic and capable, like someone who was fun to be around. But also someone not to be underestimated.

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Dr Fewings, a neurologist, examined Ken on 6 December 1976 but could find no neurophysiological evidence of peripheral nerve dysfunction. By the beginning of February 1977, Ken had been feeling unwell for about six months and was becoming depressed. Difficulty sleeping left him tired and unable to concentrate at work. He and Emily argued a lot, although Emily countered Ken's fiery temper with a passivity that frustrated her daughters. Ken's grumpiness and irritability became wearing to live with.

On 28 May 1977 Emily went with Ken and their friend Don Lewis to visit Don's aunt who had an old organ that had fallen into disrepair. Cora and Les Redden lived at Cudlee Creek in a house surrounded by apple orchards. The rubbish-strewn back verandah had not benefited from a broom in years. Three abandoned stoves cast shadows over jars of preserves, some on their sides, some burst open, perhaps yesterday, perhaps months ago. When Cora Redden opened her front door, she revealed a filthy museum of assorted trash and treasure, with so much clutter inside that it was difficult to walk. Emily and Ken had to tread carefully to get to the dining room, where a tall player organ stood against the wall, opposite a fireplace. It had been there for forty years. When it was first delivered, Les had had to remove the front door frame to get it inside the house. The instrument stood dilapidated and silent, a mere ghost of the jolly memories of Cora playing it for her six children, now grown up and long gone from the house.

'I don't know what's inside, Mr Perry,' said Mrs Redden. 'I don't know what it's like. The rats

might have got into it.'

'I'll buy it, even if it doesn't work,' said Ken. 'I can fix it up.'

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Ken loved that organ. He tenderly blew off the years of accumulated dust, gently removed each component, and set them out on his bench until only the frame and the strings remained. He cleaned out the inside section, including a large lump of plaster that was stuck between the two layers of wire mesh and had started to crumble. Then Ken whirred and sucked and prodded with the nozzle of a vacuum cleaner into every corner, every lip and ledge. When the first layer of muck was gone, he used a small brush to loosen further seams of dirt, teasing them off to reveal the naked wood beneath. He also used a small compressor with a hose and a nozzle. Anyone who has ever restored a piece of furniture or tinkered with a car engine can visualise Ken losing track of time as he concentrated on his project, chuckling with delight as inch by inch, he transformed the grimy wreck into the marvellous instrument he knew it once had been. I imagine him every so often pausing, straightening up and admiring his progress, adding five teaspoons of sugar into a milky Nescafe that he left until it was tepid. When it was safe to put to his lips, he would slurp it with satisfaction as he contemplated his next move, sucking contentedly on his untamed, coffee-soaked moustache.

But he became irritable when he was around other people, including at work where he had rows with his section head. He told Emily that he felt giddy and had terrible headaches. His speech became slurred. He started to take regular sick leave and eventually he applied for three months leave without pay. He knew he should lose some weight and he started to exercise again, encouraged by the doctors. Every time he felt unwell, Emily arranged an appointment through her daughter [redacted] who worked at the St Agnes surgery but the doctors still couldn't find anything out of the ordinary and in August 1977 he was referred to Dr Fewings again.

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CHAPTER THREE

Adelaide

1977 – 1978

Emily made her presence known on the Tea Tree Gully Council. Within a year she had attracted the attention of the Liberal party who pre-selected her as a candidate for the House of Assembly in the electoral district of Newland. But her hopes were short-lived. Polling day on Saturday 17 September 1977 (which was unusually only for the lower house of Parliament) delivered Don Dunstan and the Labor party a fourth term and Emily was roundly defeated by Labor's John Klunder. A few days later, on 20 September, Emily had to stifle her disappointment and drive Ken to see Dr Fewings again.

Ken still had numbness in the soles of his feet and his anal region. He told Dr Fewings of his dizziness, excessive fatigue and difficultly speaking as well as extreme thirst and partial loss of vision. Tests excluded diabetes. Dr Fewings thought that Ken may have been having transient ischaemic attacks – episodes of deprivation of blood supply to the brain, and he suggested exercise for Ken's overall wellbeing.

Over the next six months, Emily watched her husband get sicker and sicker with pain in his lower abdomen and urinary urgency and frequency. A kidney stone was removed, but Ken still suffered stomach trouble, vomiting, and a red throat, pain in his chest and an ache in his neck which hurt him to breathe. He became a regular patient at the St Agnes surgery and saw several of the GPs there for a persistent sore throat and enlarged lymph glands in his neck. By the end of August 1978 his haemoglobin level had dropped and there were unusual changes in the red blood cells, indicating some interference with the normal manufacture and destruction of red cells in the body. The report noted *unusually coarse stippled cells*. Dr Gill from the St Agnes Surgery was not an expert in this area, but he knew that stippling was a symptom of lead toxicity.

In August Ken had a painful bone marrow biopsy. He spent his birthday in hospital with a persistent cough and shortness of breath. Two days later, Emily took him back to the GP with severe stomach pain.

'I've got your lead serum results back,' said the GP, Dr Hart, to Ken. 'I'm not surprised you've got a stomach ache. You've got lead toxicity. It's causing abdominal colic. We need to get you to hospital.'

We will never know what Emily might have chatted about as she drove her husband to the Modbury Hospital. We don't know if she tried to cheer him up, or if they drove in silence. I imagine her as the solicitous wife, driving carefully, offering the occasional reassuring smile for her husband as he sat, sullenly, and in frustration at his lack of control over an ageing and contaminated body. His life had been consumed by illness. His self-esteem and sense of purpose had been shattered. Now the diversion that was providing satisfaction and a sense of meaning to his days was being

threatened too. Within two years he had transformed from an active man who enjoyed his job and was passionate about music, dancing and the creative thrill that he got from restoring antique musical instruments, to a bloated phantom of his former self, in unexplained pain and depleted of energy.

Modbury Hospital was Adelaide's newest public hospital in the north-east of Adelaide, having opened in 1973. By the time he was admitted to the Emergency ward at half past one that afternoon, Ken's abdominal pain was excruciating. During the afternoon the abdominal cramps and nausea subsided and a later intramuscular injection of Metoclopromide settled him for the night. They kept Ken in hospital for a week for intravenous calcium disodium edetate (EDTA) treatment which facilitated the excretion of lead through his kidneys. By 5 September Ken's bowel function, sensory condition and his reflexes had returned to normal. He still wasn't feeling perfectly well and he still had pins and needles in his fingertips but he was discharged on 7 September with EDTA tablets to take at home. He took another week off work. Over the next few days, it would have been Emily who drove him back and forth to the hospital with bottles of his urine for analysis.

On the evening of 4 October 1978, Emily brought her husband back to the St Agnes Clinic. For two days he had had pain in his chest that intensified with every short, difficult breath. He had a throbbing headache on the left side and itchy lesions on his skin. Dr Hart took one look at a white-faced Ken who could hardly breathe.

'Call an ambulance,' he instructed his counter staff.

Ken's heart was racing. Dr Hart gave him oxygen, took a cardiograph and called the Modbury Hospital to arrange an immediate admission.

'We won't wait for the ambulance,' said Emily. 'I'll drive him. It will be quicker.'

By the time Ken was admitted to the Emergency Department he was acutely distressed, pale and clammy. His pulse was weak and thready, his breathing very fast and shallow. A chest x-ray revealed pulmonary oedema – fluid in the air spaces in the lung – and left ventricular failure. Ken's heart was not pumping hard enough to keep up with its work. He was admitted to a ward just after midnight, with extreme thirst, and pain in his head and his chest.

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Lying prostrate in hospital after a near death experience, Ken's emotional barometer would not have been stable. Did he feel gratitude that he still had a grip on life? Anger that death had called for him? Sadness because of the profound loss of his identity? He was experiencing less pain, but still perilously ill. Over the next couple of days, amidst blood and urine tests, another chest x-ray, a haemoglobin test and a biochemical blood screen, Ken started to feel better again. By 17 October 1978 he was well enough to go home.

And Emily? What was it like for her to watch her attractive tango partner deteriorate into a bloated, angry invalid? No more balls, no more dressing up. Her role had transformed from glamorous partner into carer; she watched her handsome and healthy husband become sicker and

disempowered. After a week at home, Emily took Ken back to Dr Hart. Ken felt weak, with pins and needles in his hands and such sensitive feet that a light touch or a cool object caused pain. The next day he was back in hospital and for the next three days he continued to deteriorate.

'My feet are numb and they hurt,' Ken told the rounds doctor. 'It feels like frost bite. I can't walk properly. I feel like all my limbs are getting weaker. The lower left leg is the worst. I can't hold a knife and fork properly. When my eyes are closed, I can't keep my balance. I keep dropping things. It's like the middle fingers work first, and the rest take a while to catch up.'

Daytime television and conversations with other patients would have been Ken's only distractions from tests, discussions with doctors and EDTA treatment. Emily rang the hospital asking if Ken could have some leave on Saturday 11 November. Ken would have been very happy to go back to his workshop, but he had to avoid contact with lead. Dr Hart had warned him that he would have to change the way he worked on the Pianolas and to stop blowing on the pipes to test the notes. Emily took him back to the ward on Sunday evening.

Two days later, Ken was unable to move about the ward. He had no sensation at all below both knees and elbows. It was the same in the buttock area. He had no triceps reflex, no knee reflex, no ankle reflex, and no plantar reflex. The only reflex response was in his left bicep. Another two days of EDTA treatment left him feeling unwell but able to walk again using an aluminium frame. As I read the trial transcript, I can sense the desperation on the part of the doctors who could not work out what was wrong with Ken, and a profound consciousness of how debilitating and degrading this illness was for the patient who just wanted to go home.

On 22 November 1978 more urine test results came back. The doctors finally had a diagnosis. Ken had arsenic poisoning.

CHAPTER FOUR

Adelaide

1978 – 1979

Every human body contains a tiny amount of the element arsenic, which is quickly absorbed and then eliminated in the urine. But Ken's urine contained 91 micromoles of arsenic per litre of urine, about 1100 times the amount considered to be normal. He was launched into a vortex of urine saves, blood testing and hourly observations. Relief came on the morning of 26 November 1978 when Ken was given a dose of tablets for the afternoon and a day pass to go home until just before tea-time. Then day after dull day passed until Emily picked him up for another day of leave on 4 December. He was still in hospital on 8 December, able to limp without the frame but prolonged standing caused pain in the soles of his feet. His right hand was weak. Throughout December Ken saved his urine and his blood was taken regularly.

Emily took him home for the day on 10 December, and picked him up when he was finally discharged on 22 December. He left hospital in a wheelchair, hardly able to walk, but he was slowly improving. He had to collect his urine every day for testing and he was booked in for a serum lead test on 4 January 1979. The dexterity in his fingers slowly returned, as did his mobility, but he would have been unable to prepare any Christmas meals. He needed Emily to help him get dressed. Was he up to playing carols on one of the Pianolas? Maybe they had a quiet Christmas without visitors, with Emily preparing him sugary coffees and bland food.

In the early hours of 29 December Ken rushed to the bathroom with diarrhoea. Later that morning, Emily sat with him at the St Agnes Surgery as Dr Hart checked the sound of his bowel. Normal. He had no fever. Perhaps it was the EDTA giving him diarrhoea? Dr Hart prescribed Lomotil tablets, then broached the subject of Ken's exposure to arsenic. He thought that maybe his musical instruments were to blame and suggested that it would be good to collect scrapings from the new orchestrelle for analysis.

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On 15 February 1979 Dr Coughlin from the Modbury Hospital wrote to Dr Hart at the St Agnes Surgery advising that Ken had reduced reflexes in his upper limbs, and no reflexes at all in his lower limbs. He was making slow progress, unable to return to work, but able to dress himself and mow the lawns. That same day, a very ill Don Dunstan resigned as the Premier of South Australia, and Deputy Premier Des Corcoran took control. Don Dunstan is sometimes only flippantly remembered as the man who wore pink shorts and safari suits into Parliament, but his contribution to South Australia was more than sartorial style. Dunstan had spearheaded the reinvigoration of the state as

a flourishing centre of the arts and it was in this cultural climate that Emily and Ken decided to open a music shop. In March they signed a lease for the ground floor of 39 Kensington Road, Norwood.

It was probably Emily's idea. 'The Olde Music Shoppe' generated an income and provided an opportunity for Ken to continue his restoration work. Emily had retail experience and she would have enjoyed blending her expertise behind a counter with her fondness for music. They sold sheet music and player piano rolls, perhaps from tunes that I now know she used to sing years ago when she was in the chorus line with the JC Williamson Theatre Company. Ken slowly started to feel better, making cups of sugary coffee in the back kitchen, and enjoying the ambience that they established in their creative hub. He chatted to customers, and worked from time to time at a makeshift bench he fashioned from two steel cabinets and an old door as he tried to regain the use of his hands.

Ken would come and go between Norwood and their home at Fairview Park, where he spent every evening working on his player pianos. He was especially excited by his new orchestrelle that had increased his collection to thirty-one instruments, now worth a total of about $35,000. He was slowly piecing the orchestrelle back together, putting the bellows and the regulators and the pressure control devices back in the right order. Sometimes he got two or three pieces right and then realised that he had missed a part, so he would have to take them all out again. There was a lot of trial and error with no manual or instructions to follow, and his hands were clumsy so it took even longer, but the concentration took his mind off his health worries.

His health improved from January to March and he took another course of oral EDTA from 18 to 28 January. But by 10 May 1979 his dexterity had only marginally improved and he was having difficulty standing for very long. He was back in the Modbury Hospital on 19 May with high arsenic and lead levels again and they put him back on EDTA treatment. By 26 May he was well enough to go home again but Dr Coughlin was very troubled. While Ken retreated to the serenity of his dusty workshop, Dr Coughlin dialled the telephone number for Dr Colin Manock, South Australia's Head of Forensic Pathology.

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Dr Colin Manock had been in charge of forensic pathology in South Australia since 1968. He came to the job from Leeds University where he had been a lecturer in forensic medicine. Along with thousands of other Brits in the 1960s, he was no doubt lured to Australia like Ken Perry himself (and my own parents), by the promise of a better life in the sunshine. It was a shrewd professional decision. He was only thirty-one and had finished his medical degree just six years earlier. He had no formal qualifications in histopathology when he arrived but he had performed about 1800 post mortem examinations.

Dr Manock was reputed to have flung himself into his work, working closely with police and developing a reputation for being 'the police forensic pathologist' because of his enthusiasm in

helping to fight crime. He was admitted to the College of Pathologists in 1971, bypassing the usual five additional years of training and exams because of his seniority. But when a new Forensic Science Centre was built, his job was advertised. Dr Manock sued the IMVS and after a six-year court battle, he kept his position. He was only just emerging from the brouhaha over his job, when he and Detective Sergeant Bill Cook from the South Australia Police Major Crime Squad drove to the Modbury Hospital on a chilly June day in 1979 to meet Dr Coughlin.

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Goolwa

2013

Bill Cook is saying goodbye to his neighbour as I pull up outside his modest house in Goolwa, a sleepy town near the mouth of the River Murray, about 100 kilometres south of Adelaide. The eighty-three-year-old former detective sergeant welcomes me into his dining room, makes me an instant coffee and offers me a Tim Tam.

'I only opened them the other day,' he calls out from the kitchen.

Bill tells me that in 1979 he had recently returned from a stint at Port Augusta and had been working in Major Crime for about two and half years.

'In those days,' he reminisces, 'the administrative sergeant of the major crime squad didn't do any investigation. He just dished out work, you know, as it came in, and kept the files and kept everybody's roster and all that stuff. I was a sergeant then, so they gave it to me. I was the poor dope who ended up with it. I went out and saw Coughlin and that's where it all started.'

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Adelaide

1979

When Sergeant Bill Cook from CIB, Major Crime Squad drove out to Modbury Hospital in mid-1979 to talk to Dr Manock and Dr Coughlin about a patient called Ken Perry, he had no idea that he was about to dive into a story that was twenty years deep and that the resultant ripples would expand into an ocean of intrigue. In a subsequent letter to Dr Coughlin dated 3 July 1979, Dr Manock set out his view that Ken Perry had been ingesting arsenic long before he developed symptoms. Dr Manock believed that Ken had heavy metal poisoning, most likely lead arsenate, as far back as 1 October 1976, when Ken first saw a GP at the St Agnes Clinic. Dr Manock concluded that this was a case of malicious poisoning. Ken Perry's prolonged and mysterious illness was no longer a mere medical riddle. It was the subject of a major crime investigation.

Sergeant Cook's investigation took him over the border to Victoria. He discovered that the well-spoken, smartly dressed wife of the man with the wild moustache, had once lived in Melbourne and had been married to a Victorian police officer who died from arsenic poisoning. A year later, Emily's brother who lived two suburbs away in Melbourne suffered the same fate. Ten years after that, and three years before her marriage to Ken, a de facto husband in Adelaide had died of barbiturate poisoning.

PART 2
BROAD BRUSHSTROKES

CHAPTER FIVE

Melbourne

1926 – 1945

Emily Phyllis Gertrude Montgomerie was born in suburban Melbourne on 23 March 1926, the youngest child of Louisa Mary Costello and Richard John Montgomerie. The blended family of five siblings called her Phyllis. I have been able to establish that Emily's parents each had at least one child from a previous relationship and I am guessing that as a child, she bore her father's last name, although I have been unable to verify this. Ancestry.com has been unable to unravel the connections. All we know about Emily's family background comes from a statement that she read out to the court during her trial. It was an unsworn statement, meaning that she was allowed to give her version of the facts, but she did not take the oath to 'tell the truth, the whole truth and nothing but the truth' before she spoke, and she was not subject to cross-examination.

Cross-examination is the means by which the evidence of every witness is tested in court. If a person's evidence withstands the rigours of a good cross-examiner, the jury can feel comfortable relying on it. Historically, a criminal defendant was not allowed to give evidence, but that is no longer the case in South Australia and it is the defendant's choice whether or not to step into the witness box. The onus of proof lies with the Prosecution who must prove the case against the defendant. At the time of Emily's trial, a defendant was permitted to read out an unsworn statement even though it was completely unreliable as evidence. Unsworn statements were eventually abolished in South Australia in 1985.

Despite its unreliability, Emily Perry's unsworn statement is the only key I have to her character, and it tightly masks her real nature and personality. It is a fifty-nine-page monologue, a set of bland, dispassionate, facts, crafted by a lawyer who knew the importance of keeping a jury on-side. It is her version of events, but not her words. She read it aloud, uninterrupted, and then resumed her seat in the dock. She would have rehearsed it, practised the way she held her body, ensuring that her face betrayed no emotion that could be misinterpreted. When I ask people about Emily Perry, what she looked like and sounded like, the word that I hear the most is 'ordinary'. She blended into the background of her own story, chameleon-like, not drawing attention to herself.

Emily, known as Phyllis, spent her early childhood living in or near shops. When she was about six the family moved to busy Carlisle Street in St Kilda, a beachside suburb of Melbourne, where they lived at the rear of a bootmaker's shop. One or two years later they moved to a home behind a florist. When Phyllis was eight, a stroke left her mother bedridden with paralysis down her left side and her ten-year-old sister ran the house. This is what she told the court. My interpretation of this interesting detail, even with a cloud over its veracity, is that this is a hint about her ability to cope and to be independent, aspects of her personality that later defined her. When I read this detail,

I discern a sub-text of bitterness, the inner child who was plunged into being a grown-up way too early.

Phyllis followed a typical path for a middle-class girl, enrolling at a business college where she learnt bookkeeping, typing, shorthand and office management. There are no diaries, no recorded recollections of her teenage years, nothing to suggest that “Phyllis” lived anything other than an ordinary middle class, suburban life. Ordinary, that is, except that it was wartime. Her three brothers joined the army and Phyllis became a clerk in a firm in Swanston Street on a salary of ten shillings per week.

In the summer of 1942, the pretty sixteen-year-old was holidaying with her parents when she met seventeen-year-old Kenneth Hulse. Kenneth courted Phyllis for months until he turned eighteen, when he too answered the call for patriots to join the army. While he was posted in the Middle East, Phyllis took on a succession of clerical jobs including with Ansett Airways whose fleet had been commissioned by the United States army. She and Kenneth stayed in touch through their letters and married in 1944 when Kenneth came back to Melbourne for three months’ leave. Kenneth was posted to Queensland, and then to New South Wales. In August 1944, Phyllis travelled to Wagga Wagga where she found a job working in a hotel, and spent weekends with Kenneth. When Kenneth went away again with the army six weeks later, he was unaware that Phyllis was pregnant. He re-kindled a romance with a former girlfriend and wrote to Phyllis telling her that their marriage was a mistake. Meanwhile, Phyllis’s mother wrote to Kenneth and told him that his wife was pregnant. Given their history of letter writing before their marriage, it is curious that Phyllis did not write to her husband herself. In fact, why didn’t she tell him before he left? Quite possibly the attraction to her man in uniform had waned. Perhaps she regretted the pregnancy. They were both very young. It is quite probable that Phyllis’s mother was anxious about the prospect of her young daughter being left a single mother. Phyllis (when she was known as Emily) told the jury at her trial that the two letters crossed in transit. Whether she wanted to create dramatic tension or whether her narrative was actually correct, we don’t know because this was part of her unsworn statement, so no questions were asked to untangle the truth.

We do know that Phyllis Hulse was nineteen when her son [redacted] Hulse was born. Kenneth Hulse was discharged from the army a few months later, and he agreed to make a go of the marriage for the sake of the child. I imagine that teenage passion dissolved in the red-faced, squalling, hungry reality of a new baby. One day, Kenneth announced that he was going to Sydney to look for work, and that he would send for Phyllis and little [redacted] when he was established in a job. Phyllis never saw him again.

CHAPTER SIX

Victorian Archives Centre, North Melbourne

12 April 2016

The Victorian Archives Centre, with it glaring fluorescent lights hung over long brown laminated tables is not a comfortable place to linger. Other members of the public sit, like me, on hard plastic chairs and thumb through similar brown cardboard folders of memories condensed to bureaucratic notes. Some are probably searching family histories, others might be learning about who built their house, or delving into the records of public buildings. I am looking at an A4 sized black and white photograph of a man's face in extreme close-up. The forehead is broad, the skin smooth across his cheekbones. His dark eyebrows are thick but the individual hairs are fine and smooth and his skin has a youthful silkiness. The edge of the picture reveals enough of his strong neck to suggest the physique of a rugby player but he has symmetrical features that in different circumstances you would see in an advertisement for a luxury scent or a sports car.

The eyelids of the man in this photograph are closed, not in slumber, but in death. I imagine that the eyes beneath these thickly lashed lids would have twinkled after a few beers at the local pub and they would have held the gaze of young Phyllis Hulse whose soldier husband had abandoned her. This photograph has been taken from above, with professional precision. Detached. Disengaged. It is simultaneously confronting and compelling and I turn it over. I shouldn't be looking at this. This is private. It's personal. He wouldn't want me gawking at him in his state of non-existence, in these circumstances over which he had and still has no control. Then I flip it over and stare at it again. It's not true that dead people look like they are asleep. The eyebrows are slightly raised as if death has taken him by surprise, like he got off at the wrong train station and doesn't want to let it show, but he's not sure how to get back to where he was supposed to be going.

Sergeant Cook would have looked at this photograph in 1979, from this same brown cardboard folder, and he would have read the same typewritten information:

On the 13th day of March 1961 at the Alfred Hospital, Melbourne, the said Albert Otto Haag died from the effects of a poison, to wit, Arsenic. From the evidence adduced I am unable to determine when where or how such poison was administered.

This was Albert Haag, Emily Perry's second husband. I remain sitting on the hard chair for two hours, piecing together his story from the brown folder.

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Melbourne

1945 – 1953

She was abandoned, with a baby to care for, but Phyllis Hulse did not settle for domestic drudgery. Only just out of her teens, perhaps she longed for the travel and adventure that the army had offered her brothers during the war. An escape of sorts seemed possible when Phyllis obtained a place in the chorus line for the theatrical agency J.C. Williamson Ltd, a successful company whose founding director expanded the business into a vast entertainment empire touring stars like Sarah Bernhardt and Nellie Melba around Australia and New Zealand. Phyllis left little [redacted] in the care of his grandmother in Melbourne, and sang and danced her way into a new life. When she spoke in Court about this phase of her life, she omitted specifics about where she went and what she actually did. She provided similar scant detail about her circumstances a few years later, when, as inexplicably as she joined the theatre, she rejected greasepaint and applause, returning to Melbourne to start her first business venture. She opened a 'frock salon', but didn't continue with it. The short life of this business suggests that it was not successful but her own words do not offer any explanation. Perhaps her 'frock salon' involved a few weeks of selling off her dancing costumes. Speculation offers many possibilities. We know nothing of whether she missed her son, whether she came back to visit him or brought him presents from her travels. She went to Queensland for a brief period to promote a theatre show, then returned to Melbourne shortly afterwards. Her rupture with J.C. Williamson Ltd is unexplained, left hanging in history like the many question marks that punctuate the chronicle of her life.

Back in Melbourne, she found a job at the National Gallery and about eighteen months later, in 1951, Phyllis started working at the Myer Emporium as a fashion model. She completed a modelling course after the war and was by several accounts, quite a head-turner. Her intelligence and business acumen did not escape the notice of her employers and she was soon promoted to Assistant Fashion Co-ordinator on the Myer executive staff. She became a fashion buyer and then progressed up the executive ladder to the role of fashion coordinator. Instead of modelling in the fashion parades, she now organised them.

It was at Myer that she met Albert Haag. Perhaps the handsome soldier caught her eye as he strolled through the store one lunchtime. Albert was tall with sculpted muscles, thick dark hair and sensuous lips. He was from a large close family of thirteen children and had recently returned to Australia after a posting with the Australian army in New Guinea. His father was German. With Al, as he was known to his family, Phyllis was known by her second name of Gertrude, which she shortened to Trudy. Many years later she told a journalist that this was because three sons in the family married women called Phyllis. She changed her name to avoid confusion.

The good-looking corporal and the pretty model would have made a striking couple, although Trudy later recalled that their relationship was not idyllic. Al gambled too much and his drinking was

often the cause of arguments. Al would either arrive drunk for dates or not turn up at all, she told the court in 1981. They broke up several times. Trudy had changed her name to Emily by the time she recounted this history of their relationship and she may have discarded the truth along with her name. Or the truth may have been diluted or discoloured by the capricious brush strokes of memory. Trudy (when she was “Emily”) did reveal to the court that she had not yet told Al that she was already married, only revealing this when he proposed to her. To me, this lack of candour reveals an inkling of a dishonest streak. The disclosure must have been a shock, but Albert was smitten.

Albert went back to New Guinea with the army and in his letters he urged Trudy to obtain a divorce from Kenneth Hulse. We don’t know if Trudy told Albert about her son but life was difficult for a single parent. Being a *divorcée* carried with it a significant stigma which for many women led to social ostracism and poverty. When Albert returned from New Guinea and joined three of his brothers in the Victorian police force, the security of marriage to a good-looking man with a steady job would have been an easy decision. Despite their estrangement, Trudy must have located Kenneth Hulse because she filed for divorce against him on the grounds of adultery. Emily Phyllis Gertrude Hulse married Albert Otto Haag on 17 January 1953. They rented a house in Booran Road, Glenhuntly, not far from the Caulfield racecourse.

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Moorabbin, Melbourne

1956 – 1960

Their first daughter [redacted] was born in January 1955 and in mid-1956 they moved to Lot 121 Rowans Road Moorabbin, the third house from the corner of Narooma Street. It's now number 148. Rowans Road, like all the roads in the area, was unsealed. They had no telephone, no washing machine and few conveniences. One cold day in the winter of 1956, a heavily pregnant Trudy helped Albert to erect a pre-fabricated wooden garage. It had double outward opening doors that were kept closed to stop them banging in the gusty breeze that swept up through Moorabbin from Port Phillip Bay. There was little kept in the garage apart from the car, a Singer 'tourer' with a soft-top.

Daughter [redacted] was born in October 1956 and a third daughter, [redacted], joined the family in November 1957. Albert drove Trudy and the new baby home from the hospital in a new white Holden. It was around this time that shadows started to gather over the domestic bliss at Rowans Road. In September 1958, Albert had an accident in the Holden and was unable to claim insurance to pay for the repairs because he had been drinking. A fissure opened in the relationship, and slowly, the erosion that gains momentum with the everyday grievances of a suburban marriage gave way to a chasm between Trudy and Al, replacing love and desire with resentment and bitterness. They had no car for several months. Trudy's recollection, recorded in the trial transcript, of going in a taxi to Christmas dinner at Al's mother's house vibrates with annoyance.

From the unsworn statement, a picture emerges of Al as a troubled figure, dissatisfied with his work, drinking too much, and gambling. Trudy would put bicarbonate of soda in his beer and seal it up again in a bizarre attempt to stop him from drinking. The portrait becomes a cliché: the middle-aged man with a wife and four children, a suburban battler who perhaps each Friday night pondered what it was all for, and each Monday morning set off for another week of sameness and banality. But the artist of this portrait was Trudy herself, at a later moment in time when she called herself Emily, daubing over the memories with her own veneer of reminiscence which may have been unreliable. Conceivably this picture was misshapen, contorted, or even twisted into untruth and fabrication. As I attempt to visualise the family, the picture mutates into a series of broad brushstrokes denying me any close-up clarity. Her unsworn statement was read out and recorded but her words remain like a preliminary sketch, not coloured in, or given any perspective.

While the record paints Al Haag as a dark and tragic figure, 'Trudy' stands in the foreground of her own memory as active and entrepreneurial. She led a group of local women who established a playgroup for children in the church hall. Then she formed a committee to organise and build a community kindergarten. She was happily busy, but not in their house. Trudy was by no means a traditional housekeeper and Al was unhappy that their home was always dirty and untidy. They never seemed to have any money and Al worked at the Caulfield racecourse as a cleaner on race weekends to make ends meet. Trudy did not like 'racing people' and never went with Albert to the

races, where he knew jockeys, trainers and others involved in the industry. They began to have arguments.

Just before Christmas in 1960, Albert found out that Trudy had bought a car without his knowledge and this had landed her in deep financial trouble. The argument that followed was bitter and intense. Albert confided in his friend Ken Norris, telling him that if he could have been sure of a court order to keep the children he would have ended the marriage. Like many 1960s marriages, the Haags endured through economic necessity and a lack of better options rather than because of genuine adherence to their marriage vows. In that respect, Trudy and Albert were a typical suburban couple, like butcher Jack Padey and his wife who had lived across the road with their three children at number 129, or Dorothy and Geoff Roberts at number 150 next door.

Al kept to himself and did not mix with the neighbours much but Trudy and Dorothy, both at home with children during the day, became friends. The Roberts' front door was on the side of their house opposite Al and Trudy's back door. For a couple of years there was no fence between their houses and Trudy and Dorothy would come and go between each other's kitchens. During one of their chats over coffee, Trudy told Dorothy that Al was studying poisons for his CIB exams.

'I'm helping Al with his exams,' said Trudy. 'We sit up in bed and I test him. I ask him questions.'

CHAPTER SEVEN

Moorabbin, Melbourne

1960

Norman Furness was from the Colonial Mutual Life Insurance Company. Early in June 1960, Mr Furness knocked at the door of Lot 121 Rowans Road Moorabbin. He was responding to a call from Trudy who had asked for a representative to come to her house when her husband Albert was not at home. Trudy told Mr Furness that a friend had just lost her husband and was now in poor financial circumstances.

'Having three children myself, I don't want to be left in the same situation,' said Trudy.

I can imagine Norman nodding gravely, barely able to contain his excitement. This policy was going to sell itself.

'I receive a child endowment,' Trudy was saying. 'I want to use it to pay for an endowment policy on my husband's life. He is not particularly insurance minded.'

'I will leave this illustration of benefits for you Mrs Haag,' said Mr Furness, 'so you can discuss it with your husband.'

About a week later, Mr Furness again called at the house. While Trudy was telling Mr Furness that the policy he had illustrated would suit her needs admirably, Albert came into the room. Mr Furness introduced himself.

'Look, I'm not terribly interested,' said Albert, and walked out again.

Undeterred, Mr Furness filled out a proposal form. Trudy completed the personal statement about Albert's health and said that she would talk to her husband and get him to sign it. Mr Furness returned for a third occasion on 22 June. Trudy told Mr Furness that her husband was not home but he had signed the proposal. Mr Furness completed the document by signing in the 'witness' section next to Albert's signature. Underneath Mr Furness's signature was printed:

> 'I hereby certify that the person referred to above as the life to be assured has appeared before me and I am of the opinion that his health and habits are such as to justify the directors of the society in accepting the proposal at the rate for a first class life.'

Trudy wrote out a cheque for the first quarter's premium, eleven pounds, seven shillings and seven pence. Mr Furness slid the paperwork into his briefcase, left the house and went back to his office to submit the proposal, which Colonial Mutual subsequently accepted. Mr Furness realised later that he had overcharged for the policy and sent a refund cheque of ten shillings and sixpence

dated 29 July 1960. An ‘endorsement of payee’ slip, signed *A.O. Haag*, arrived back at his office a little while later.

Norman probably had a spring in his step that night as he calculated his bonus.

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One Saturday, when Al was on his way out to go to the races, Trudy demanded that he stay at home and help with the children. She was six and half months pregnant and ill with a fibroid growth on one ovary. Three-year-old [redacted] had suspected nephritis. Trudy had lost patience with Al’s calculations scribbled on form guides involving odds, past wins, barrier draws and track conditions. Al spent hours working on his ‘system’ but only produced losses. They never had enough money but Al blamed Trudy for spending too much. A furious argument culminated in Al pushing her out of the way. Trudy fell against a bedpost and a large mirror against the wall toppled over and fell onto her. Al slammed the door and went to the races. When he arrived home later that night, Trudy feigned sleep. At about two o’clock she awoke with pains that were instantly recognisable to a woman who had already borne four children. She woke him up and told him he had to get the doctor.

By the time Albert returned from telephoning the doctor from a box in muddy Bruthen Street, parallel to Rowans Road, their tiny dead son had slipped from her body and Trudy lay in a pool of blood.

‘Doctor Champion says to go and see him in the morning,’ he said.

‘Go back to the phone,’ she gasped, ‘and tell – the doctor - that he has, he has to come now. Tell him, that the baby has come. That it’s dead.’

Albert arrived back again fifteen minutes later. The doctor had told him that he had to bury the baby in the back yard. Trudy’s memory of that terrible night ends here. Perhaps she fainted from loss of blood. Perhaps she was so exhausted she just fell asleep. Or perhaps she forced herself to obliterate the terrible memory of expelling from her body a life that never knew what it was to live. This account was never tested in court, being yet another part of her unsworn statement, so no questions were asked. Cross-examination would have revealed inconsistencies and the unreliability of memory. But Trudy did lose the baby and it was late enough in her pregnancy for the dispelled foetus to be recognisable as a boy. According to Trudy, Albert never spoke to that doctor again and forbade her from seeing him. He buried the foetus in the garden, then sat in the vegetable patch in an old cane chair for hours at a time, drinking steadily, not speaking to anyone. It was the first and only time that [redacted] saw his step-father cry.

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Trudy was advised to have a tubal ligation at the same time as the removal of her ovarian fibroids. Her doctor told her that her husband's permission was required. This was a legal fiction, although it was common policy at the time for doctors to require this. Albert gave his 'permission', but it profoundly saddened him. No-one asked Trudy if it saddened her. At her trial two decades later, she spoke of Albert's sorrow at never being able to have the son he wanted, even though his stepson [redacted] adored and idolised him. [redacted] wanted to be a policeman too but Al's attitude towards the twelve-year old had become harsh and critical.

Albert had always been in good physical shape but now his health began to fail. During 1959 he had started to complain of indigestion after meals. Trudy gave him bicarbonate of soda for it and told Albert's sister Patricia that she thought he might have an ulcer. His family noticed that his normally thick, dark hair was thinning, and the strands of grey were increasing. In November 1960, he developed pains in his back, indigestion after meals, and bouts of vomiting. He told his friend Ken Norris that he had liver and sinus trouble as well as hepatitis. Later, he told his friend that he had been diagnosed as having an enlarged liver. On Christmas Day 1960, when Albert arrived at his mother's house on Brighton Road with Trudy and the children, about half of the Haag family was already in the lounge room. The children's cousins were looking at the Christmas tree, Patricia was sitting in a large arm chair and Trudy sat on the sofa knitting, as she often did at Haag family gatherings. Albert stood with his elbow resting on the mantelpiece. Albert's sister Mary, walking in from the kitchen, was the first to mention what everyone else had been politely avoiding.

'Al, what have you done to your hair? Was it for a bet?' she giggled.

Albert's dark waves had been diminished to a short spiky style that was noticeably greyer. He had never had a crew cut before, not even when he was in the army in New Guinea. Albert laughed off his sister's surprise.

'No, no. It was falling out anyway and going grey so Trudy suggested I get a crew cut. Anyhow, it's much cooler.'

At about one o'clock they all sat down to Christmas lunch. Albert, as the eldest brother there, sat at the head of the table All eyes turned to Al when he put his knife and fork down, pushed his plate away, and moved his chair back, putting his hand on his stomach.

'Aren't you going to finish it?' asked his mother.

'No, sorry Mum, I've got indigestion,' Al replied.

At her look of incredulity, he added, 'I've been having indigestion lately.'

'Well, are you going to have some pudding?'

'No, not yet. Maybe later.'

Trudy turned to her mother in law. 'You know Mum, I think Al must have an ulcer,' she said. 'He hasn't been eating his meals. He can't finish his meals.'

Did unease slice through the family Christmas like a carving knife through the turkey that Albert had been unable to finish? Al loved Christmas lunch. Something was very wrong.

Adelaide

1981

'Well for him not to eat his Christmas dinner was most unusual because he always looked forward to that. We all love Mum's Christmas dinner.'

[Albert Haag's sister Pat, Committal Hearing]

Melbourne

Summer 1960 – 1961

On 28 December 1960, Albert was admitted to the Victoria Police Hospital on the corner of St Kilda Road and Southbank Boulevard where he stayed for five days with the suspected symptoms of hepatitis. Al's brothers and sisters visited him, each noticing that he was losing more of his even greyer hair. When he got home he was much thinner, and still had headaches and indigestion pains. Trudy mixed him up bicarbonate of soda in water, sometimes with lemon juice. Sometimes he managed a tomato juice or some sarsaparilla cordial. He had no desire for alcohol and no longer had to worry about Trudy putting bicarbonate of soda in his beer. Ten days later he was re-admitted to hospital for four days.

One hot January day, Albert's sister Mary, her husband Umberto, and another Haag brother Peter, visited Al at home. Al was lying on the couch in the lounge room in his pyjamas and dressing gown. He sat up, saying that he had a bad headache and he felt sick. He asked for a drink, and Mary went to the kitchen. Trudy was in there.

'Al would like a cool drink,' said Mary, walking towards the fridge.

'I have his drink here all ready,' said Trudy, who produced a small bottle, about the size of a small soft drink bottle. 'It's vitamised fruits. You go back in the lounge and I'll bring it in.'

Trudy followed Mary into the lounge, carrying the glass.

'Here's your drink,' said Trudy.

Albert took a sip of the smooth, thick mixture and put it down beside him. Mary picked it up and had a sip and put it down again.

'This is bitter,' she said, turning to Trudy.

'Well that's the vitamised fruits and the grapefruit,' retorted Trudy.

Trudy picked up the glass and handed it to Albert. She waited while he drank it and handed it back to her. Then she took the glass out to the kitchen.

'I've got those pains again,' said Albert. 'I don't feel well. I think I'll go and lie down.'

'I think we'd better go, if you're not well,' said Mary.

'Yes, perhaps you should go,' said Trudy.

Albert stood up to say goodbye, but dizziness overcame him.

'I'm sorry, I feel so weak. I can't even stand up.'

Mary and Umberto helped him up but Trudy intervened and with her arm around him, shepherded her husband into the bedroom. Moments later she was back.

'I think really it's best if you go,' she told her sister-in-law.

Mary and her husband went home, anxious about Albert who until recently had always been so strong and vibrant. The next day, the telephone rang at their house. Albert had been taken to the Police Hospital again.

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Gustave Haag was the sergeant in charge of the police station in Bendigo. He hardly ever went to Melbourne but in January 1961 he and his wife drove down for a holiday. On Sunday 22 January they visited Albert at home. Trudy opened the door.

'How's Albert today?' asked Gustave.

'He's asleep. Don't disturb him.'

Gustave paid no heed to his sister-in-law and made straight for the bedroom, probably planning to give his brother a friendly shove and to rib him about staying in bed. Albert was asleep on the bed in his pyjamas. Gustave was shocked at his brother's haggard appearance. His hair was almost white. Gustave approached the bed and reached out to touch him.

'Albert. Al? It's me Gustave.'

Albert did not stir. Gustave and his wife left, but alarmed at his brother's condition, Gustave returned the next day to take Albert back to the Police Hospital. The Victorian police surgeon ordered x-rays and then they drove to an ear, nose and throat specialist in Collins Street. Albert was emotional and upset, his eyes wild with pain. On Saturday 29 January, Gustave visited his brother again, and was relieved to see that Albert, wearing pyjamas, was calm and relaxed, chatting to Ken Norris and his wife who had also called in. Albert's eyes no longer looked wild and frantic, and the two brothers sat outside in the January sunshine chatting in convivial fraternity.

CHAPTER EIGHT

Moorabbin, Melbourne

Friday, 10 March 1961

Albert returned to work on light duties, then resumed full duties on 6 March 1961. On Thursday 9 March, Albert arrived home from work late in the evening. He had been to see Ken Norris who was happy to see his friend looking well again. Albert had been off the booze for two months and he declined Ken's offer of a beer, choosing tomato juice instead.

'No, I've only got a month before I can go back to beer,' said Albert. 'I'll let my hair down then.'

When he got home after visiting Ken, Albert went to bed. He had the next day off work and he was going to spend the weekend painting the outside of the house. The Haag family, knowing that Al was struggling financially, had offered to contribute towards the price of the paint, and to come over for a working bee across the long weekend.

The only version of the events that occurred on Friday 10 March 1961 come from Trudy as she told it to police officers and twenty years later, as Emily Perry, in court. No-one knows whether it is all true or partially fabricated. On Friday morning Trudy was up first at seven o'clock and she prepared breakfast in bed for Al. His current regime was a glass of Andrew's liver salts, Weetbix or cornflakes with some sort of fruit and white tea or coffee with toast. Albert was up and dressed by nine, and he asked Trudy to keep little [redacted] out of the way because he wanted to sand the weatherboards on the house and paint the bare patches with red lead, ready for painting on Sunday when everyone was coming to help.

Sixteen-year-old [redacted] (now called [redacted]) went to work. Six-year-old [redacted] went to school. Trudy went shopping with [redacted] who needed new shoes, hoping to be back when [redacted] arrived home from kindergarten. Trudy always bought clothes and shoes for the family at Myer's (as it was always called in those days) where she had an executive account entitling her to staff discount on purchases. Also on her shopping list were items for her husband. He had asked her to buy a copy of *The Sporting Globe*, the early edition of *The Truth* and some things for the garden including Arzeen weed killer and some 'powder in a box'.

'I don't know the name of it,' said Albert 'but it's some sort of arsenic. Tell the man in the shop that I want it for grubs in the corn. It's the same as they use for apples. It will have a label on it showing an apple with a grub in it.'

There is now a Myer store in the Southland Shopping Centre which is only five minutes from Rowans Road, but this centre did not open until 1968. Trudy might have gone to Myer's in the city or perhaps at the Chadstone Shopping Centre which was built in 1960 by the Myer Emporium on twelve hectares of land that up until then had been paddocks for cattle. These days, 'Chaddy' is a

giant monolith of shiny surfaces and luxury goods, about a fifteen-minute drive from Rowans Road. In 1961, it was a modest shopping centre, but an architectural landmark even then because it was the first suburban inside 'mall' in Melbourne, with a range of shops under one roof.

Trudy made her way to the counter of the hardware and gardening section and asked for Arzeen. The sales assistant placed a brown bottle on the counter. It had a parchment coloured label with the words *Arzeen weedkiller. A highly concentrated soluble arsenic preparation* typed across it. The 'powder' that Trudy asked for was lead arsenate. The sales assistant, as required by law, recorded the details of Trudy's purchase in the Poisons Book:

Day of sale: 10 March 1961

Name of purchaser: Mrs Haag, P.

Place of abode: Lot 121 Rowans Road, Moorabbin

Occupation: Home duties

Quantity and name of poison: 8 oz Arzeen + ¼ lb arsenate of lead.

Purpose for which it is required: paths, caterpillars on vines

Trudy signed in the book: P Haag. She arrived home with [redacted] in the stroller at about 12.45 p.m. Four-year-old [redacted], who had been at Kindergarten, was walking towards the front door as they approached. This seems unusual today, but in 1960, a child walking home alone after kindergarten was quite normal, especially if home was only a few blocks away and there were no major roads to cross. Trudy took the shopping out of the back of the stroller, lifted [redacted] out, and took the child and the parcels into the bedroom.

'Did you get the weed killer?' called Albert, who was making sandwiches in the kitchen.

'Yes,' replied Trudy, as she unloaded everything onto the bed.

She put the paper bag containing the Arzeen and the arsenate of lead on Albert's shelf in the wardrobe and then went into the kitchen. Trudy and the girls ate their sandwiches while Albert's electric sander whirred and buzzed on the outside walls for about an hour. During the afternoon Albert came into the kitchen and said that he had sore eyes from the dust. Trudy found an eye bath and some boracic acid – a commonly used treatment for sore eyes – to bathe them. Trudy thought he looked tired.

'Maybe you should lie down with your eyes closed for a while,' she suggested.

Albert went into the lounge and lay on the couch for a while before going outside again. The sound of banging replaced the droning of the sander. At half past three, [redacted] came home from school. Trudy was helping [redacted] change out of her school uniform when Albert called out to her to give him a hand. While the children played in the cubby house, Trudy painted the newly sanded low wall sections with pink paint. Albert painted the higher parts. They worked together outside all afternoon until [redacted] arrived home from work at about a quarter to six, asking for an early tea because he was going out.

Trudy boiled corn cobs in a pan. Albert insisted that the fresh corn from his garden had a better flavour, but she didn't cook the home-grown corn for the children because of the grubs. She

later told the police that she cooked some cobs from the garden, and some from the shop, all in the same pot, but if she wanted to give her children the shop-bought corn, how would she have known the difference? The police never picked up on this minor inconsistency that to my mind is glaringly troubling. Meanwhile, Albert apparently came into the kitchen and asked Trudy for the weedkiller she had bought.

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I went into the front bedroom, got the Arzeen and the other tin and handed them to Albert, who then went outside.

I don't know about this for sure, but either just before Albert came in and got the stuff or just after, [redacted] *had been out and offered to help. I remember* [redacted] *coming back inside and he told me that he had offered to help his father but Albert had finished for that night and if* [redacted] *helped him on Saturday and Sunday, he could go to the Moomba on the Monday.*

[Emily Perry (as Trudy Haag), Statement to Victoria Police, 1961]

I told him that the things were in a paper bag, on his shelf in the wardrobe. Albert went to the bedroom to retrieve the bag, then walked wordlessly through the kitchen and outside.

[Emily Perry, Unsworn Statement, Supreme Court of South Australia, 1981]

[redacted] *went out after tea. A short time later, Albert came back inside the house.*

'Where are the kids?' he asked. 'Keep them inside. I'm going to mix up a spray.'

I opened the kitchen drawer, took out a pair of old rubber gloves, and handed them to him.

He threw them on the ground. Later on I noticed that he was wearing the gloves.

[Emily Perry (as Trudy Haag), Statement to Victoria Police, 1961]

He, as if having second thoughts, snatched them out of my hand. Initially when the police asked me if I had seen him mixing up the weed killer I said I had. To be absolutely specific about it in fact he had told me he was going to mix it up and I saw him going out to do that and I knew he was using it. I didn't actually see him physically mixing it.

[Emily Perry, Unsworn Statement, Supreme Court of South Australia, 1981]

Albert asked Trudy for the fly spray, a long metal tube with a nozzle on the end. He took it outside. Trudy usually used it for flies in the house. When she realised that he was going to put weedkiller in it, she went outside and asked for it back.

'The thing's no damn good anyway,' he grumbled, and she took it back inside. Then Albert asked her for a tin and she gave him one which she recalled had a hole in one end and an "A" on the side.

'You should use a bucket,' she suggested.

'Mind your own business,' snapped Albert.

Trudy went inside again. Albert wandered in and out of the house, bringing in vegetables from the garden: a pumpkin, a marrow, and corn cobs. He eventually came inside, had a shower, and put on his pyjamas and dressing gown. Trudy served Albert veal cutlets and corn on a tray in the lounge at about 8 o'clock. [redacted] sat with her dad and they watched television together. But they did not see the end of whatever they were watching because after he had eaten, Albert's stomach started hurting. The six-year-old most likely sat on the sofa in silence while her daddy went into the kitchen to mix up some bicarbonate of soda with water. When he brought it back into the lounge, she probably snuggled up to him, perhaps giggling as he burped after drinking it. A bit later, he made himself another bicarb mixture, this time with lemon juice. He might have given his little girl a kiss as he told her that he was not feeling well, and then went to bed.

'Daddy's a bit tired,' said Trudy. 'He only started back at work a few days ago.'

Albert sweated through a restless night. The next day, Saturday 11 March 1961, was Moomba Race Day. Albert's head was pounding, his skin was clammy, he felt sick and he daren't go too far away from the toilet. Going to the races was out of the question, a situation that must have increased his misery. Albert had never missed the Moomba race meeting.

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I think Albert had breakfast in bed. I can't remember what he had, but it would be much the same as he had on the previous morning.

[Emily Perry (as Trudy Haag), Statement to Victoria Police, 1961.

Albert had his usual breakfast in bed and got up about 9.30 am.
[Emily Perry, Unsworn statement, Supreme Court of South Australia, 1981)

CHAPTER NINE

Saturday, 11 March 1961

Moorabbin, Melbourne

Trudy bustled about, getting the children up, dressed, breakfasted and ready to go shopping.

'Can you drive us to Chadstone?' she asked Al.

Albert meekly attempted an explanation that he didn't feel very well but eventually he agreed to take her. At Chadstone, Trudy left Albert in the car while she and the girls shopped. They called in at Ken Norris's house on the way home. Albert wanted to ask Ken to help with the paint preparation, but no-one was home. They arrived back at Rowans Road at about half past twelve. [redacted] helped to unload the car while Albert went straight to the toilet.

Trudy prepared lunch but Albert had no appetite and he went to bed. At about two o'clock he went outside and painted with [redacted] for a while, but at about half past three he lay down in the front bedroom again. [redacted], tired of painting and seeing his stepfather's abandonment of the job as an opportunity to escape, went to visit a friend to make arrangements for going to the Moomba Festival on Monday. Trudy let the girls join Albert on the bed but three bouncing bundles were no doubt too much for his already delicate stomach. He got up again and went out to the garage. Between five and six o'clock Trudy could see him in the vegetable garden.

A little later, he came back in and went back to bed.

'I should call the doctor for you,' said Trudy.

'No, I'd rather wait 'til tomorrow,' said Albert listlessly. 'Let's wait and see how I am tomorrow.'

Evening became night, and Albert slept fitfully, causing Trudy to wake each time he went to the bathroom, sweating, eyes streaming, hands clammy, the reek of his own vomit rising up to him from the toilet bowl.

She lay by his side as he told her that his head was throbbing and he had a pain like indigestion which sliced through to his back.

On the morning of Sunday 12 March 1961, Albert stayed in bed. He had nothing to eat but asked for water all the time. I gave him water, bicarbonate of soda and water and sometimes lemon juice.

[Emily Perry (as Trudy Haag), Statement to Victoria Police, 1961]

Albert woke up early on Sunday morning. He felt better. He squeezed some lemons to make a drink … for himself and for me. This was unusual, as was the fact that he squeezed the lemons himself.

[Emily Perry, Unsworn statement, Supreme Court of South Australia, 1981)

Two of Albert's brothers-in-law arrived at about half past eight on Sunday morning, ready to paint. Albert put on a brave face and told them he would get dressed and join them outside and a few minutes later he was up a ladder. But by mid-morning he was feeling sick again and he went inside to lie down. The others had a cup of tea and then went back to their painting but were united in awkwardness and distress as the sounds of agonised retching ricocheted from the bathroom and through the very walls that they were painting. The anticipated afternoon of pleasurable family unity had metamorphosed into the discomfort of helplessness and anxiety. When lunch time came, instead of a lively discussion about the progress of their handiwork, the conversation amongst the siblings and in-laws would have been hushed and apprehensive as Albert's suffering failed to abate. Trudy eventually called a doctor, who arrived later in the afternoon to give Albert an injection to stop the vomiting. He wrote out two prescriptions, for some tablets and some powder which Trudy had filled at a chemist in nearby South Road. But neither the injection nor the tablets gave Albert any relief. Night fell, bringing only dehydration, exhaustion and relentless pain in his back and his bowels, radiating across and through him in waves of hell.

CHAPTER TEN

Moorabbin, Melbourne

Monday 13 March 1961

The Moomba Festival on the Monday of the March long weekend was a relatively new addition to Melbourne's cultural calendar in 1961, having begun in 1955. [redacted] was keen to join in the festivities and he headed for the city to watch the parade down Swanston Street. Albert was in no condition to either celebrate or paint. John and Umberto arrived again at eight o'clock. His sister Pat and her husband came soon after, at about half past eight. Pat's brothers-in-law had told her how poorly he had been the day before.

'Al's still in bed,' Trudy told them when they arrived.

Al's plan had been to have the weatherboard walls stripped by now, but he hadn't managed to get it done. Pat donned rubber gloves and got herself ready to finish what Albert and [redacted] had started on Friday and Saturday. About half an hour later, Albert came into the kitchen wearing his dressing gown. Looking pale and drained, he leaned against the refrigerator, one arm up the side of the fridge, the other in his pocket, barely able to stand. Trudy was already in the kitchen. Pat was working on the wall by the kitchen door.

'Sorry I can't help you,' he said.

'But you looked so well on Friday,' said Pat. 'What happened?'

'I don't know. It came on suddenly after tea on Friday night with these shocking pains.'

Albert's hand moved from his pocket to his upper abdomen, indicating where it hurt.

'I've been vomiting. I feel so weak. We could do all this another time if you like, when I feel better and I can help.'

'You go back to bed and get well. We'll carry on,' said his sister.

At about half past ten, Trudy announced that she was going to ring the doctor. Ever the pragmatist, she was concerned that Al would need a certificate to have time off work the following week. Then at about eleven o'clock Trudy came and stood by the door where Pat was working.

'Al won't take his medicine,' she said. 'Will you go in to him and see if you can get him to take it?'

Pat was worried. She put her sponge down.

'If he doesn't take it, how can he expect to get better?' she frowned.

'Well he won't take it, so will you go and have a word with him and see if he will?'

'Yes, of course.'

Pat went into the bedroom. Albert was lying on the bed with his hands behind his head, staring out of the window. He was very pale.

'Al?'

‘I feel so week, so tired.’

‘You should take your medicine.’

‘I don’t understand it because I’ve been feeling so well,’ said Albert.

‘Why don’t you get some sleep?’

‘I can’t sleep.’

He turned away from her.

‘I’ll go. Try to sleep.’

‘Pat, ask her to get me a glass of Glucodin.’

‘Alright Albie.’

Pat turned to leave the room. The door had been left slightly ajar and as she pushed it further open, Trudy emerged from behind.

‘What did he say?’ asked Trudy.

‘Didn’t you hear him?’ said Pat crossly, simultaneously annoyed and curious at her sister-in-law’s clumsy attempt to hide her eavesdropping. ‘He wants a glass of Glucodin.’

‘Fine. I’ll get it.’

Trudy scurried off to the kitchen and Pat walked outside to tell the others that Albert was still unwell. The family continued with their scrubbing, scraping and painting. At about midday Trudy called everyone into the kitchen for lunch. After they had all eaten, Doctor McCallum, a local doctor, arrived and Trudy took him into the bedroom where Albert was. A few minutes later, Albert rushed out of the bedroom and into the bathroom where he vomited violently and loudly for about a minute. In between Albert’s gasps, Dr McCallum asked him what treatment he had previously had at the police hospital and suggested that he might have an ulcer but Albert would have been incapable of responding, if he even heard what the doctor was asking him.

‘What do you think it could be?’ Trudy intervened. ‘He hasn’t eaten all weekend. Do you think it could be the lead paint he’s been sanding? There’ve been flakes of paint everywhere – in his hair, in his eyebrows. And the medicine isn’t doing any good – he keeps bringing it up.’

‘Your husband is very ill,’ said Dr McCallum. ‘He will have to go to hospital.’

‘No, he won’t go,’ said Trudy.

‘He needs to have tests, insisted the doctor. ‘A barium meal and other tests. He has to go to hospital for that.’

’Can’t you do them here, the tests?’

‘No, I don’t have the equipment here,’ replied Dr McCallum. ‘He has to go to the hospital.’

‘Al won’t go. He’s had enough of hospitals. He hates hospitals. I will nurse him.’

‘Trudy, if the doctor says he has to go to hospital, he’ll have to go,’ said Pat.

‘No. Al is not going to hospital. He’s had enough of hospitals.’

‘Well I can’t do any more,’ said Dr McCallum, opening his bag and taking out his prescription pad. He scribbled on one of the sheets, tore it off and handed it to Trudy. Then he left. Trudy rang the St Kilda Road Police station and told them that Albert was sick and wouldn’t be at work for a

week. She promised to post the certificate. Pat went outside again to join her husband and brothers-in-law on the other side of the house. They were painting around the bedroom window, which was open.

'The doctor's just been,' she told them.

Patricia and her husband looked at each other in alarm as the sound of vomiting came from the bedroom. After every few brush strokes there was a desperate, agonising heave.

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It was so often it was unbelievable. I hadn't heard him vomit before but well, it was so bad that I just couldn't go on with the painting...

[Albert Haag's sister Pat, Committal Hearing, 1981]

Pat went inside to say goodbye to Al. As she reached out her hand to open the bedroom door, Trudy's hand got to the knob first.

'No, don't go in,' said Trudy. 'It will only embarrass him. He wouldn't want to be seen like this.'

'I just want to say good bye to Al.'

Trudy's hand remained on the door handle, a wife's defiance against her sister-in-law.

'I'll see you later Al,' called Pat through the closed door.

There was no reply.

After Pat and her husband left, Umberto and John, the other two brothers-in-law, stayed at the house until about five o'clock. Then they too packed up and went home. Shortly afterwards, Trudy's sister Janet (not her real name) and her husband, out for a drive, called in to visit. Trudy met them at the door.

'Al's in bed,' said Trudy. 'He's been ill all day. He's been vomiting.'

'Should we call the doctor?' asked Janet.

'The doctor's already been,' said Trudy. 'He came while Al's family were here.'

At about eight o'clock that evening, Albert asked Trudy to ring the doctor again. His head was hurting terribly. No matter how he lay or sat, no position was comfortable.

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I didn't know whether to get the doctor or not when he asked me to ring, so I waited for a while, but after 9 p.m. he got worse and seemed to be delirious and his appearance frightened me, so I ran to ring the doctor.

[Emily Perry, Unsworn statement, Supreme Court of South Australia, 1981]

Dr McCallum arrived back at the Haag house about ten o'clock. This time there was no discussion. He ordered Albert straight to hospital. The shrill ambulance siren punctured the composure of the warm holiday Monday evening and frightened little [redacted]. Peeping around the door of the bedroom, the perplexed three year old saw her daddy lying on the bed. Barely as tall as the top of the mattress, [redacted] did not dare to step beyond the end of the bed where she focussed her gaze on his feet, perhaps too alarmed to look more than once at his face which was contorted in pain. Looking up, she concentrated on the cane bedhead, to avoid the frightening reality that she was far too young to understand. Her father was dying.

Trudy sat in the back of the ambulance with Albert as it sped towards the Alfred Hospital. Dr Geoffrey Conron was the medical registrar on duty, one of two doctors in charge of the Casualty Department that night. He had already received a call from Dr McCallum advising him to expect Constable Haag. Albert arrived in the men's area of Casualty soon after eleven o'clock. With his knees up to his chest, gasping, his face contorted, Dr Conron could see that Albert was critically ill.

'He gets very depressed and won't eat,' Trudy told the registrar.

'I can't eat anything. I haven't eaten for three days,' gasped Albert, writhing in pain. He would have felt as if a knife were twisting inside him. His face was yellow, his pulse raced. His head was a maelstrom of dizziness.

'He can't keep anything down but he has drunk some water,' Trudy said.

Dr Conron looked from one to the other making notes, compiling a history from both of them: *similar episodes of pain in December 1960 and February 1961. Systolic blood pressure 60. Diastolic pressure unrecordable.'* Doctors usually only see such a low blood pressure reading when the patient is in shock. Conron knew that a racing pulse of 120 and yellow skin were symptoms of acute pancreatitis, but he was not completely sure if that was the cause. It could also be a perforated ulcer in an organ in the abdomen. This would show up in an abdominal x-ray, so Dr Conron sent Albert urgently to radiology.

'He's been vomiting for three days,' Trudy told Dr Conron when he found her in the waiting area. 'A day after the vomiting started he developed some abdominal pain. His condition improved a bit but the pains seemed to get more intense two days ago.'

'Did he do anything in the days before he got sick that might have brought it on?' asked the doctor, who had probably been hoping for a quiet night.

'Two days before all the pain and vomiting began, Albert had been sanding down the house with the electric sander. There was a lot of paint dust in the atmosphere,' Trudy recounted to the doctor, who scribbled all the information into his notes.

'Did the paint contain lead?' the doctor asked.

'Yes,' replied Trudy. 'Albert was covered in it. Do you think he could have lead poisoning?'

'It's possible.'

Conron listened while Trudy told him that on two previous occasions, December 1960 and February 1961, Albert had been admitted to the police hospital in Melbourne, each time with

abdominal pain and vomiting.

'I think it might be pancreatitis,' said Conron.

Albert was now in the care of a hospital orderly who was probably equally baffled and alarmed by Albert's incoherent cries. Was he trying to alert the hospital staff to what he thought – even maybe knew – his symptoms were? He was in desperate pain and he kept asking for the doctor, tears of fear in his eyes as he tried to sit up. Suddenly a spasm of pain pitched him back against a window, causing Trudy to scream which in turn made a nurse come running. Orders for a stretcher were shouted and Albert was rushed to the x-ray room, only to be left in the corridor outside.

It was nearly midnight. A tearful Trudy found a payphone and rang her sister Janet.

'The doctors don't think they can save him,' she told her sister.

Albert's abdominal x-rays were never taken. He had been in hospital an hour, a short time in hospital notes, but for him it must have been an agonising eternity. Trudy was back in the waiting room and no-one has ever provided any details about Albert's final moments. Was he alone on the trolley in the corridor? Did an orderly or a nurse provide some solace? One can only wonder what his last thoughts were as the torture in his belly exploded into final black oblivion.

CHAPTER ELEVEN

Moorabbin, Melbourne

Tuesday, 14 March 1961

At formica tables in kitchens up and down Rowans Road, shock at the news of Albert's death would have rasped against middle class respectability like the sound of chrome chair legs on vinyl floors. Dorothy from next-door saw her coffee companion out in the front garden.

'Is there anything I can do?' she asked Trudy.

'Well to be honest, I really could do with having the house cleaned up a bit because relations will probably be coming back after the funeral.'

It is easy to imagine a 1960s 'Desperate Housewives of Melbourne' scenario with women casually coming out of their front doors that morning, on pretexts of checking the letterbox or collecting their children's toys. One by one they probably pretended to notice by chance that others were gathering on Trudy's front lawn. One offered condolences and scrubbed the kitchen floor; another cleaned the children's bedroom. Neighbours came and went during the day, just as they had some time ago when Jack down the road died. Behind their cleaning cloths, did they whisper to each other that Trudy only seemed worried about what she was going to wear to the funeral? She showed no traditional signs of grief. Dorothy was puzzled by her neighbour's frivolous concerns. Maybe trivial thoughts were the balm that soothed Trudy's sorrow. Or was she trying to mask a darker truth? Trudy was directing the tidying up when four of Albert's sisters arrived, sobbing, at about ten o'clock. The three Haag children were waiting for a taxi to take them to a babysitter. There is no mention in any of the records of anyone comforting them.

'It's terrible,' wept Pat. 'I can't understand it.'

'Yes, it was sudden,' said a dry-eyed Trudy, offering no further conversation until an elderly gentleman arrived from Moorabbin police station. He stepped up to the women and took off his hat.

'Oh, Mrs Haag,' he said. 'I got a message to say your husband was dead. But, but – obviously I'm wrong.'

'No, that's right. Al died,' said Trudy.

The man, clasping his hat, looked from Trudy's retreating figure to Pat. Confusion clouded his face. This was not the grieving widow he had expected

'I'm amazed,' was all he could say, wiping his hat with his handkerchief. 'I thought it must have been her father, but...'

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Moorabbin, Melbourne

Wednesday 15 March 1961

If the neighbours were peeping from behind curtains the day before, they likely flung both lace and pretence aside at about half past three, when a car drew into the kerb outside the Haag house in Rowans Road. Three men got out and strode towards the house. One was Inspector Matthews, head of the homicide squad. The other two were Detective Ritchie and Detective Senior Constable Conn. Trudy answered the knock at the front door.

'Are you the widow of Senior Constable Albert Haag?' asked Inspector Matthews.

'Yes.'

Trudy invited them into the kitchen. Inspector Matthews dispensed with small talk.

'Do you know the cause of your husband's death?' he asked.

'The doctor at the hospital said it was pancreatitis,' replied Trudy.

'The cause of death is arsenical poisoning.'

'Are you sure?'

'Quite sure,' was the clipped response. 'Is there any arsenic in the house?'

'Yes, I bought some weed killer at Myer's last Friday,' replied Trudy. 'It's in the garage. Albert has been using it. There's only a little bit left.'

The three detectives followed Trudy as she walked from the kitchen to the garage. She pointed to a platform about seven feet from the ground.

'There it is,' said Trudy.

On the wooden rafter sat the bottle of Arzeen and a small tin. Detective Ritchie grabbed an old chair to stand on and reached up for the bottle, which held a small amount of fluid and the tin, and which was about half-full of powdery arsenate of lead.

'I bought them both at Myer's last Friday,' repeated Trudy. 'Al asked me to get them for him.'

'When did your husband use these poisons?' asked Matthews.

'Last Friday. He used them to spray the grubs in the corn cobs and also to spray the vine.'

'Did you see him use it?'

'Yes. He mixed it up in a bucket and then he sprayed with my fly spray.'

'Can you suggest any way your husband would have been poisoned with arsenic?'

'Yes. I saw him eating about four or five corn cobs. He was eating them like apples, just after he sprayed.'

The detectives did not ask her whether she commented on this to her husband. Nor did they ask if he had done this before. They asked about her husband's health prior to last Friday night and whether there had been any domestic trouble between them. Trudy told them that they were happy.

'What is your financial situation?' asked Inspector Matthews.

'I've got no idea.'

‘What about insurance?’

‘I don’t really know but he did cash a policy last year to get the deposit for the car and I don’t think there is any other insurance.’

I am reading this conversation from the official typed police record. It is in the folder of documents at the Victorian Archive Centre. I slide the photograph of Albert out again, and stare at it for a long time, willing him to speak to me. I think about Albert’s vegetable garden, his space of solace, that must have been lush with the results of his bending and planting and watering. Rows of corn might have cast shadows over spreading pumpkin stalks. Or was the garden already withering that day when the detectives first spoke to Trudy? Had the rot already set in to the carefully tended plot?

Matthews and Ritchie, ill attired for gardening, stripped all the cobs from the corn plants. They tore off pumpkin leaves and scooped up samples of soil. Stepping back inside the garage they found a one-gallon oil drum, a biscuit tin and a bottle of petrol. All of this they took, with some additional leaves from a bush growing against the side of the fence, some thistle leaves, and the tubular fly sprayer from the kitchen. The following day, Detective Ritchie returned with Detective Conn and Mr Wilson, a medico-legal chemist, who took more samples and articles from the garage and the garden.

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While Trudy was answering police questions, Gustave Haag was at the Coroner’s Court identifying his deceased brother’s body after the post-mortem examination. The last time Gustave had seen Albert was when they sat in the garden at Rowans Road on a warm sunny afternoon back in January. Now his brother would never laugh in the sun again. His beloved vegetable garden would go to seed. He would never see his daughters grow up and he would never again join his brothers and sisters around the table on Christmas Day. How incomprehensible it is to look upon the face of somebody who will never smile again. How unfathomable to contemplate that that there will be no more conversations, no more warmth in a hug or a handshake. How striking is the moment when a soulless body reminds us of the brittleness and fragility of our hold upon life, and that our very existence is but momentary, unpredictable and ephemeral.

As Al lay cold upon the slab, Gustave silently prayed that he might rest in peace, but vowed that he would not rest until he had found who was to blame.

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The funeral was held later that week. To be perfectly honest I am not sure whether it was Thursday or Friday.
Did you see her cry at the funeral?
No, not once.
[Albert's sister Pat, Supreme Court of South Australia, 1981]

What was your sister's condition at the funeral?
Very upset, very distraught but she wasn't showing her emotions then, she had a lot of them under control because the Haags had been very hostile to her in the meantime.
[Emily's sister (name suppressed), Supreme Court of South Australia, 1981]

CHAPTER TWELVE

Melbourne

Thursday, 21 March 1961

The lift reached the ground floor and the doors opened. Trudy had been to the office of the Public Trustee to enquire about money to pay for registration of the car. As a police officer, Albert may have had his will prepared by the public trustee and it is possible that the Public Trustee was named as executor to administer his estate.

Two detectives took Trudy by surprise and stepped inside the lift, one on each side, then ushered her to a car which was parked out the front of the building. Inside the car was another detective. Their voices added to the muddle in her head which was probably full of financial terminology and calculations regarding all the bills she had to pay. The detectives wanted to inspect the house at Moorabbin.

They took her to collect the key from her mother's house in Caulfield, then to Moorabbin, where they combed the house, picking up items and putting them aside to take away. They collected a jar of bicarbonate of soda, a large tin of Andrew's liver salts, a small tin of Andrew's liver salts, a saucepan, the pyjamas and singlet that Albert wore in the hospital, and a pair of trousers and two shirts that Albert was wearing on the Friday of the fateful long weekend. From the bathroom they took some tablets and medicines. Moving outside, they took some burned corn leaves from the incinerator.

Trudy agreed to go with them to police headquarters in Russell Street, where they ushered her into a room about five feet square and told her that there would be an inquest and that they were helping the coroner with his enquiries.

'When we first visited your home on the Wednesday following your husband's death,' said Detective Conn, 'you went straight from your kitchen to the place in the garage where the poison was in a high safe place, not obvious to anyone, not knowing where it had previously been placed.'

'Yes, I did,' replied Trudy.

'Well that is not consistent with what you have told me today about your knowledge of your husband's handling of the poison.'

'You are trying to make it look bad for me,' she said. 'I didn't do it and you won't make me say that I did.'

'Did you have any reason to handle the poison between the time you handed it to your husband on the Friday before his death, and the Wednesday afternoon when we called at your home?'

'No.'

'Well, how did you know where it was in the garage?'

'I just knew it would be there.'

‘But how did you know?’

‘If you keep talking to me like this, I won’t say any more.’

But Conn was nowhere near finished. He placed a typed document on the table in front of her. It was the insurance proposal on Albert’s life that had been processed in June 1959. The signatures had been compared with other signatures of her husband. There was no doubt the signatures on the proposal form were forgeries.

‘Are you insinuating that I forged the signature?’ she asked.

‘I’m saying that you did,’ retorted Conn. ‘I also know that you paid all of the premiums on this policy by cheque, signed by yourself and drawn on the State Savings Bank, Moorabbin. Here are two of your cheques. Have a look at them.’

‘I suppose you will say that I poisoned my husband for money.’

‘You also forged your husband’s signature on a refund cheque from the Colonial Mutual when you were reimbursed for an overpayment for the first premium,’ Conn persisted.

A copy of the refund cheque lay on the table in front of her.

‘Alright,’ said Trudy. ‘I signed his name on the proposal form and the refund cheque. What does that prove?’

‘Why did you forge your husband’s signature on the insurance proposal form?’

‘I thought the insurance was necessary and my husband would not have anything to do with it, so I signed the proposal myself.’

‘Why did you forge his name when you endorsed the refund cheque made out to him?’

‘I had to cash the cheque and I couldn’t get him to sign it or he would have found out about the insurance.’

Conn and Ritchie came into the room one at a time, asking questions and making handwritten notes. When one came into the room, the other would leave, while a woman police officer sat to the side, saying nothing. Trudy could hear a typewriter down the corridor keeping up a steady tap, tap, clunk, ding, tap, tap, tap, a dull, monotonous echo of her words with the soul stamped out of them.

Trudy told the police that she did not approve of her husband drinking and on one occasion she took a bottle of beer from the refrigerator, put bicarbonate of soda in it and sealed it up again, thinking it would taste awful and it might help him to stop drinking. This detail really disturbs me. To covertly but deliberately put a substance into her husband’s drink, even if it was a benign product, shows an alarming deviousness, a duplicity that suggests either an acute lack of harmony within the marriage, or a disquieting readiness to be deceitful. Or both. Trudy appears to have dismissed the episode as being unimportant because since December, Albert didn’t want to drink anyway, so she had no need to be underhand with his beer again.

Trudy recounted that her husband became ill soon after the meal on the Friday night, but she remembered Albert saying that he felt a bit queer before he ate.

‘And you prepared the meal for him?’

‘Yes, but I object to the insinuation.’

‘What is your objection?’

‘You are calling me a murderess.’

The questions kept coming. Conn accused Trudy of giving an account that was not consistent with what she told Inspector Matthews at her home on the Wednesday after Albert’s death. She had told the Inspector that she saw her husband mix up the poison in a bucket and that she saw him use it in the fly spray, but now she was saying that she did not know what he did with the poison.

‘Perhaps I was mixed up when I spoke to Inspector Matthews,’ said Trudy

‘Were you mixed up when you told Inspector Matthews that you saw your husband eating five corn cobs like apples just after he had sprayed, because today you only mentioned seeing your husband eat one corn cob and you don’t know what he sprayed.’

‘I must have been.’

‘You told Inspector Matthews that you saw your husband spray all the corn cobs with the fly spray.’

‘I don’t know why I said that.’

Trudy agreed that Albert wasn’t happy about her debts. He found out about the car Trudy bought on time-payment without telling him. She didn’t like his drinking and she had accused him of being interested in other women. There had been arguments about [redacted] who had gone to stay with his grandmother. Trudy admitted that before September, Albert threatened to leave but that they had talked it over and decided to give it another go.

‘Do you remember telling Inspector Matthews that you had not had any domestic trouble and that you and your husband were very happy together.’

‘Yes.’

‘Well, that was a lie.’

‘Yes, it was.’

Conn had also found out that Albert had a large insurance cover with the Prudential Insurance Company and another with the Colonial Mutual Life.’

‘I thought the one with the Prudential had lapsed.’

‘What about the Colonial Mutual Life?’

‘That slipped my mind.’

‘You are the one who actually did the business when the policy with the Colonial Mutual Life was taken out.’

‘Yes.’

‘And you have paid all the premiums yourself.’

‘Yes.’

‘It would be difficult for it to slip your mind.’

‘Yes.’

‘Do you remember telling Inspector Matthews that you didn’t know what your financial situation was and that you didn’t think there was any insurance cover?’

‘Yes.’

‘Well that was a lie too.’

‘I suppose so. I suppose all that does make it look bad for me.’

‘It looks as if you had a motive, an opportunity to poison your husband.’

‘I suppose it does. But I didn’t do it.’

Trudy was adamant that Albert had not committed suicide, insisting that it must have been an accident. She dismissed the suggestion that [redacted] or the girls might have had an opportunity to poison him.

‘My mother doesn’t know where I am and she will be worried. I want to call her,’ said Trudy.

She asked to ring her brother too. Her requests were denied.

They waved documents in front of her, telling her that they were statements from four of Albert’s sisters and two brothers. They asked her to sign her statement that had been typed up on several sheets of foolscap paper.

Did her hand shake as she held the pages, forcing her to place them flat on the table to control the tremors? Was she able to concentrate as she read her words that were inked with bitter finality onto the pages? Was nausea rising in her gut? Did she carefully turn each page over as she read them in silence?

‘Not at the moment,’ said Trudy defiantly. ‘But I may sign it later.’

A pause. Was this the confused reaction of a bereaved woman who had been held in a police interview room all day with no food and no respite from endless questions and allegations? Or was it the measured response of an intelligent woman who was aware that signing a statement locked her into a version of events that she would later be unable to contradict if she remembered something new?

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At about two o’clock Detective Ritchie announced that sixteen old [redacted] had been arrested. He had been picked up from his work at the State Electricity Commission at Richmond. While Conn questioned Trudy, his colleague was with the son in a separate room. Quite suddenly, close to four o’clock, Conn came into the room and asked her to sign a confession. He waved a different document at her, not the narrative statement that he had shown her earlier. It was one page. She refused. That continued for some time until Ritchie came back in the room.

[redacted] had confessed to Albert’s murder, he told them. He had signed a confession.

The likelihood that the police statement faithfully recorded the exact words of everyone in the tiny police interview room on 21 March 1961 is slim. It is difficult to imagine a Russell Street detective maintaining such formal language for the entirety of an interview that lasted for many hours. It is also impossible to know whether voices were raised or tears were shed, but this is not difficult to imagine. It is far more likely that Conn and Ritchie used the language of anger and exasperation, and that

Trudy vacillated between defiance and fear.

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They kept on and on for hours. Detective Ritchie was extremely hostile. He would bang the table. He was extremely rude and aggressive. I believe that Detective Ritchie was mainly questioning me in this fashion during the afternoon because I can remember him coming into the room early in the afternoon and telling me my son [redacted] *had been picked up and arrested. After that Detective Ritchie was coming in and going out all the time. It was made quite clear to me that they were questioning my son at the same time as me. He was obviously in another room nearby although I couldn't see or hear him.*

Later that afternoon Detective Ritchie came back into the room. He said that [redacted] *had confessed that he had killed Al. I then said words to the effect 'Give me that confession. I will sign it now. I will do it to save* [redacted]*.'*

I would have signed my life away to save my son. They knew very well they could pressure me that way. But they didn't show me that piece of paper again. When they let me go I met [redacted] *and we went home together. He told me they had put pressure on him in the same way but he had never signed any confession. All during this interview I was frantic for a number of reasons. Mainly because of what they had told me about my son, but also because I was extremely concerned for my mother because I knew she would be anxious not knowing where I was. I asked to make a phone call several times and the police just flatly refused. The words that have been read out to you are not the words that were used. When I told them something they would interpret it in the way they wanted it. They would read it back in different words with a different meaning. They twisted everything I said. They were trying to make it sound bad for me. They were just trying to put pressure on me, to break me down. They were quite successful in this. By the end of the interview I was extremely distressed and upset.*

[Emily Perry, Unsworn Statement, Supreme Court of South Australia, 1981]

CHAPTER THIRTEEN

Moorabbin, Melbourne

25 April 1961

Anzac Day fell on a Tuesday in 1961. Ken Norris had been looking forward to a caravan trip with Albert Haag and their families. When Ken woke up that morning, he likely mourned the loss of his week away from the city as much as he grieved for the passing of his friend. Over at the Haag house, the curtains were drawn and all was silent. Trudy was staying with her mother in Caulfield. At about half past eight she was organising the girls for school and crèche and getting ready for work. The façade of regularity was toppled by the wrecking-ball of Detective Conn and Sergeant Ford on her doorstep.

She was prepared this time. She had found a solicitor, Mr Gaylard, with the help of the Police Legacy Movement. His advice was to answer no more questions. Trudy asked if she could first take the girls to school and on the way, she called Mr Gaylard, probably from the public telephone in Bruthren Street. Gaylard's advice was clear: not to answer any questions, not to sign anything and not to go to Russell Street. He was going to the Anzac Day march.

When she got back to the house, Gaylard rang and confirmed to Detective Conn that he had advised his client not to answer any questions. Conn hung up, and told Trudy that he was going to ask her some questions and she could choose whether or not to answer them. Trudy had to make a quick decision. She did not want to be questioned in front of her mother. Reluctantly, Trudy agreed.

At Russell Street station, the detectives quizzed Trudy about finances. She was heavily in debt at a number of city shops, including Foy's, a large department store. Her account there was structured so that any debt was cancelled in the event of her husband's death. Albert Haag's estate consisted of a Ford Prefect, a joint interest in the house and the Prudential insurance policy that paid two thousand pounds in the event of his death and then twelve pounds per week for fifteen years. Trudy first got the idea of life insurance from a two-page advertisement in a Reader's Digest magazine and Albert took out the policy. So why did she take out a further large policy with Colonial Mutual in the same month? Wasn't Albert's life reasonably well covered by the Prudential policy?

'I wanted security,' Trudy told them. 'I was anxious to protect my children and myself.'

Hadn't she told Colonial Mutual that her husband was 'not insurance minded' and that he was against taking out a policy.

'Yes, I did say that,' admitted Trudy.

She also admitted that she told the insurance representatives that she intended to pay the premiums from her child endowment and she wanted them to call at her home while her husband was at work. She conceded that when Mr Furness went to their home on the second occasion, Albert was there but he said that he would not have anything to do with insurance.

‘Mr Furness left the proposal form with you and when he called at your home on 22 June 1960, the proposal form had been completed and allegedly signed by your husband,’ said Conn.

‘What do you mean by allegedly?’

Conn handed her a copy of the insurance proposal.

‘These signatures have been carefully compared with other known genuine signatures of your husband. There is no doubt the signatures on this proposal form are forgeries.’

‘Are you insinuating that I forged the signature?’ Trudy challenged.

‘I am saying that you did,’ replied Conn flatly. ‘And I also know that you paid all the premiums on this policy by cheque, signed by yourself and drawn on the State Savings Bank, Moorabbin. Here are two of your cheques. Have a look at them.’

‘I suppose you will say I poisoned my husband for money.’

Conn handed her a copy of a cheque.

‘You also forged your husband’s signature on a refund cheque from Colonial Mutual when you were reimbursed for an overpayment on the first premium,’

‘Alright,’ replied Trudy. ‘I signed his name on the proposal form and the refund cheque. What does that prove?’

Her defiance, noted word for word in the police statement, was met with more questions. Why did she forge the signatures on the proposal form and the refund cheque? What was the purpose of taking out a second large policy so soon after her husband had arranged the Prudential cover? She wanted security, she insisted. She thought the insurance was necessary so she signed it herself. She had to cash the cheque and if she had asked him to sign it, he would have found out about the insurance. She seemed unperturbed by her deceit, even less by the illegality of her actions.

Mr Gaylard arrived at Russell Street soon after this, having come from the Anzac Day march, although Conn did not make any note of his entrance into the interview room. Conn asked Trudy if she would now sign the statement that she had made on 21 March.

‘I won’t sign anything and I demand to leave here,’ replied Trudy.

Conn wrote down her reply. If he said anything more, he did not record it. Trudy walked out of the police station with her solicitor, no doubt suppressing an urge to run.

The lack of notation about Mr Gaylard’s arrival raises questions about the accuracy of this record and of all the statements recorded by the police in this case. What else might have been left out? What other details were ignored or minimised? Any why did she answer the questions anyway, given that she had been so determined not to? Perhaps, if she had administered arsenic to her husband, she had now convinced herself that she hadn’t. Or she may have believed that she had covered her tracks so expertly that the police would never get enough evidence to charge her. Perhaps she was answering the questions though sheer arrogance. Either the pillow talk with her own husband about poisons had enabled her to commit the perfect murder, be rid of a man she no longer loved and pay off her debts. Or the alternative scenario was that she was a genuinely grieving widow, mourning her husband, and in her fragile and confused state, was now being unfairly framed.

Yes, they had a few arguments, but what married couples don't? And maybe she didn't cry at the funeral, but perhaps she sobbed privately, maintaining her poise in pubic. She had been deserted once before – it is entirely conceivable that she was worried that if she were to be a single mother again that she would not be able to support her family on her own. But it is the ease with which she stepped so lightly through puddles of deception that I find unsettling. It is one thing to run up an account behind a husband's back. Forging his signature on a life insurance policy demonstrates a greater level of guile that is not readily explained by a nod to 'security'.

CHAPTER FOURTEEN

Melbourne

1961

During the Easter break in early April 1961, Trudy's sister Janet and her husband took a rare break. Trudy minded their milk bar, which was open seven days a week, while they were away. The holiday was cut short after a telephone call from their mother: one of Albert's brothers had grabbed Trudy around the throat. He only let go when Trudy's mother hit him over the head with a teapot.

Siblings are strongest in adversity, especially against a common foe. Albert's brothers and sisters did not hide their suspicions about their brother's death. Trudy might have hoped that life after Albert would proceed quietly now that it was clear that the police would lay no charges, but the Haags were not going to accept that their brother had died by accident. The potency of their collective wrath became apparent one morning when Trudy arrived for work at Myer.

I picture her wearing a dark suit, the skirt just on the knee, her neat waist emphasised by tightly fastened buttons on the double-breasted jacket. Albert used to complain about her spending but working in fashion required the latest looks. Her navy or perhaps black court shoes with kitten heels might have been teamed with dark stockings, a new look. She most certainly would have worn a hat – perhaps a Jacquie Kennedy pillbox; gloves and stockings, no matter what the season. Her hair would have been fashionably but conservatively coiffed, and unlikely to have been coloured. Hair dye was for prostitutes and barmaids. When she arrived, smiling and on time, was she looking forward to organising a fashion parade, or meeting with the window display designers to showcase the newest day dresses and sportswear? When she was called into the manager's office, perhaps she walked jauntily, confident of a promotion or a commendation for her hard work.

But the manager, no doubt male, suited, would not have been smiling. There had been accusations, and a telephone call, most likely from the Haag family. She was no longer wanted on staff. Myer must have given her a good reference because she soon found other work but calls to her new employers continued, and she was dismissed again. Her enterprising solicitor, Mr Gaylard, suggested she change her name. Although she would always be Phyllis to her brothers and sisters, she now called herself Emily Roberts, a combination of her own first name and at her sister Janet's suggestion, her grandmother's last name. Emily wore her new name like a new coat, stepping away from her existence as Trudy Haag and into a new identity.

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Melbourne City Coroner's Court

24 August 1961

On 24 August 1961, the Inquest into the death of Albert Otto Haag was the only hearing listed for the day and it began promptly at ten o'clock. Detective Inspector Matthews sat at the bar table, asking questions of each witness. Also seated was a barrister who appeared for Trudy Haag. *The Truth* newspaper reported that Trudy sat behind him wearing an elegant black suit, a white lace-trimmed blouse and black net gloves.

The Inquest heard evidence from Senior Detective Conn who read from his notes and from the typed statement that had been prepared from the interviews with Mrs Trudy Haag on 15 March and 25 April 1961.

Trudy sat in silence.

The blandness of the tone and the lack of any emotional nuance in the statements engenders colossal doubt about the authenticity of the police statements that were laid before the Coroner and unchallenged. But the police had good reasons to demand answers. There was no arsenic in the corn cobs collected from the garden, a fact which negated Trudy's story about Albert spraying them. But there was arsenic in the corn from Albert's vomit collected from the back yard, so it looked as if arsenic reached Albert through the corn cooked by his wife for dinner.

The Coroner listened as Senior Detective Conn testified that Mrs Haag had acknowledged her debts at various city stores, the insurance policies on Albert's life with the Prudential Insurance Company and the Colonial Mutual Life Assurance Society, and the forged signatures on both the proposal form and the refund cheque. Trudy gave no hint of her feelings throughout Detective Conn's evidence, although *The Truth* reported that at times she closed her eyes, most probably when Conn told the coroner, 'I have not been able to get sufficient evidence to arrest Mrs Haag. Had I had the evidence, I would not have hesitated.'

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More than twenty witnesses gave evidence, keeping the court clerk busy adding the answers to Inspector Matthews' cross examination questions by hand onto the pre-typed deposition pages. Each witness signed their statement, which the clerk then stamped with a facsimile of Coroner Harry Pascoe's signature.

Dr Conron spoke about Albert's emergency arrival at the hospital, and that Mrs Haag broke down and wept when he told her that Albert had died. Trudy's eyes closed at this point, noted by a shrewd reporter from *The Truth*, eager for personal minutiae to print in an article that appeared a few days later.

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Douglas Wilson, the medico-legal chemist had found arsenic in Albert's hair and toe-nails. He had found sodium arsenate in an eight ounce bottle labelled 'Arzeen' and a canister labelled 'Hortico Lead Arsenate' was almost full. A one-gallon oil tin containing a watery liquid mixed with oil contained sodium arsenite and also contained some lead in solution. Wilson had also tested the fly spray. It contained a concentrated alkaline solution of arsenic and also some lead.

He found lead and arsenic on weeds and in soil, in vomited corn grains on the ground near the toilet, on a pair of rubber gloves and on Albert's pyjamas and singlet that he had worn in the Alfred Hospital but all that could be concluded from these findings was that Arzeen, a common weed killer, had been sprayed around the garden. The same tests would probably have yielded similar results on half of the back yards of suburban Melbourne. Using poison to eradicate weeds and other unwanted plants was standard gardening practice in the 1960s and its availability on hardware shop shelves demonstrated its popularity.

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Trudy sat in silence for six hours, aware that behind her a collective force was united in grief and unhidden hostility: her late husband's mother, his brother Gustave, five of his sisters and their husbands. Beside her was [redacted], who clung to a transistor radio like a life raft. Confusion and anxiety must have threatened to crush him. Never having known his own father, he had always wanted to be a policeman like his stepdad and uncles but he had never been able to solidify the relationship he yearned for with Albert. [redacted] idolised him, but the pedestal he placed Albert on simply made him unreachable. Kenneth Norris told the Inquest that Albert had trouble handling his stepson. About three weeks before he died, Albert had chastised the boy who had gone to stay with his grandmother. This had caused another argument between Albert and Trudy.

Mr Norris told the Inquest that he and 'Bert' helped in each other's gardens. He swore that Bert had never used any kind of weed killer although Bert had recently asked him about grubs in his sweet corn and he advised him to use Derris Dust before the corn cobs formed. Ken spoke of his friend being unhappy at home and disappointed with the way his wife handled the children and the house. Albert Haag was always broke because his wife was extravagant. She was a dirty housekeeper and Bert missed out on dinner if he arrived home after seven o'clock, so he often had a meal at the Norris house. She hated drink and she hated Bert's friends, who sometimes kept him late, having a drink. Norris had advised his own wife to keep away from her.

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One of Albert's sisters, Dorothy Nicholls, recounted a conversation at another sister's house on Sunday 4 June 1961. Trudy had asked them, 'What are you prepared to do about the children?'

‘What do you mean by that?’ Albert’s sisters had asked.

Dorothy told the Inquest that Trudy had said ‘I want you to understand that it won’t be for a little while, it will be for always. They mean business against me. Believe me they are not fooling. They will do what they said they will do and I know they are going to arrest me after the Inquest. It will be twenty years at least. I want you to know Albert did not commit suicide, he was afraid to die and he did not want to die. I know what happened and it was an accident. They are trying to say there was another woman. I am in so far now by telling so many lies that I cannot retract them.’

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It was all over by four o’clock. Mr Pascoe asked Trudy to stand up.

‘Having heard the evidence, do you wish to make any statement or to give sworn evidence?’ asked Mr Pascoe, reading from the script that was mandated in the situation of a ‘person implicated’.

‘You are not obliged to say anything or give sworn evidence unless you desire to do so; you have nothing to hope from any promise or favour, and nothing to fear from any threat which may have been held out to you, to induce you to make any admission or confession; but whatever you say, or if you give sworn evidence, it will be taken down in writing, and may be given in evidence.’

The silent collective glare of the Haag family behind her would have felt like a dagger of ice, as Trudy gave her rehearsed reply.

‘I have been advised not to give any evidence.’

Mr Pascoe recorded an open finding, concluding that Albert Otto Haag died from arsenic poisoning but not from suicide and not by accident. The coroner was unable to conclude how, when or by whom the arsenic had been administered but he expressed the hope that solutions would be forthcoming to the questions left unanswered.

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‘WE WILL FIND MY BROTHER’S KILLER’ avowed Gustave Haag through the headline of Melbourne’s *The Truth* Newspaper on 2 September 1961, in font so large that it took up half the front page. A wedding photograph of ‘Mrs Otto Haag’, described in the text as ‘a central figure’ appeared next to the headline.

‘I do not believe the death of my brother Albert Haag was accidental. I intend to take every step necessary to solve the mystery,’ Gustave Haag told the reporter. ‘My family feels satisfied with the coroner’s finding. We intend to take this matter further, to take it every step to settle it. We hope we can find all the people concerned with the last few months of my brother’s life and show how, when, and where this poison was given. In this way a solution may be found.’

CHAPTER FIFTEEN

Melbourne

1962

In the early months of 1962, as the heat of the Melbourne summer made way for a milder autumn, Emily and the other Montgomerie siblings spent their Sundays painting and gardening at their mother's house in Caulfield. Emily collected her mother from Hawthorn Road and then drove her to her brother Frank's house in Canterbury. Presumably this was to enable the elderly Mrs Montgomerie to avoid the paint fumes and allow her children to bustle around the house with paintbrushes and ladders without disturbing her.

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Emily and Frank had been close since their childhood days together at Brighton Primary School and she felt protective of her him. Frank had been a sickly child. He suffered rheumatic fever as a boy and grew into a gentle and sensitive teenager, totally unsuited for the soldier's life that he chose. He experienced terrible and traumatic events on the island of Ambon and later at the Prisoner of War camp at Cowra, where the famous breakout occurred. Over thirty hectares of farming land to the west of Sydney was cordoned off to detain about four thousand Korean, Japanese and Italian prisoners of war. In the early hours of 5 August 1944, a thousand Japanese soldiers who were imprisoned in the camp used blankets and coats to hurl themselves at the barbed wire fences. 231 prisoners died. 350 crawled and climbed over their dead and wounded comrades to freedom, only to be recaptured within a week. The sight of men being crushed and torn on the barbed wire and pelted with machine gun bullets while buildings burned would have traumatised the most hardened of soldiers. For the gentle Frank Montgomerie, it was an experience from which he never fully recovered. His experiences of being bayoneted in the Cowra break-out affected him so badly that he was hospitalised for war neurosis, but in 1944, psychiatric medicine was ill equipped to help and heal former soldiers. He stayed in New South Wales after the war, then married at the age of twenty-one. He and his wife moved to Melbourne and lived for a time in a large house with his sister Janet and her husband.

It is no wonder that the lack of post-war services for war veterans and the failure of the medical profession to properly diagnose and treat post-traumatic stress disorder, that Frank resorted to alcohol to dull his pain. He was admitted several times to military hospitals, including Callan Park, a psychiatric hospital. His memories of struggling desperately while being strapped to a table by his head, across his arms, shoulders and legs must have re-surfaced at all sorts of unexpected moments later in his life. Alcoholism led to financial stress and the breakdown of his marriage. When his wife

took their five children back to New South Wales he tried to kill himself by taking rat poison. Now, when the going got tough, Frank turned to the bottle. He had a series of girlfriends, but they all left him because of his erratic behaviour and drunkenness. He was often unemployed. On one occasion, after being called to help, one of his brothers found Frank naked and drunk on the beach at Sandringham.

Bruce Gyngell's now immortalised words 'Good evening and welcome to television' on 16 September 1956 started not only a revolution in popular culture, but a whole new industry that provided employment for unskilled workers like Frank who became a television and radio repairman with Webb's Radio. He was also a keen photographer and enjoyed developing his own prints. He probably felt safe in the monochrome environment of the dark room, watching images come to life as the photographic chemicals transformed sheets of paper into stories and impressions that were singularly beautiful and evocative. He probably painted the windows black, and had trays of acetic acid and fixer lined up on a bench, with string tacked to the walls overhead from which the wet prints were hung with clothes pegs. I imagine him in his makeshift laboratory, its calm meditative quality doing more good than any of the drugs he took or the brandy he drank to dull the terrors that raged inside his head.

In the spring of 1958 Frank met Marjorie Walker. By 1960, Marjorie and her twelve-year-old daughter Gail and her fifteen-year-old son Paul had moved in. In August the following year, the four of them moved to Canterbury where they rented a house in Wattle Valley Road. But it was not a happy home. Sometimes Frank would go on a bender and be drunk and depressed for days. Marge kept threatening to leave him. Sometimes she did leave and Frank would drink until the image of Marge was blurred in his mind like an over-exposed photograph. And then he would purge himself of her and of the booze and he would heave and heave until there was no more to throw up. But the pain of life would wrench his insides and he kept heaving until he vomited blood. And when she came back and he was calm again, he would beg her not to go.

'Please don't leave me,' he would implore. 'If you leave me I'll die. I can't live without you.'

And she would stay.

In October 1961 Frank started his own business but it collapsed and by New Year, Marge had already decided to leave him. Perhaps they shared some happy moments when they took off on a holiday in January 1962 but when they came back from their break, Marge got a job and announced that as soon as she had paid all the bills, she was leaving him. Frank slipped into another depression but in March 1962, he found out that Canberra TV in Camberwell needed technicians so he joined them and started to feel better again.

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On Sunday 1 April 1962, Emily took their mother to Frank's house a bit before lunch time, then returned to Caulfield. Frank helped with the painting. One sister was trying to pull out a creeper that

had taken over the back fence but several wet winters followed by searing summers had cemented the roots into the ground and it wouldn't come out. She decided that she needed chemical assistance and planned to buy some weed killer to get rid of it the following weekend. This sister's name was suppressed during Emily's trial. I'll call her Karen.

On the morning of Friday 6 April 1962, Marjorie was dressing to go out.

'I'm going to see an estate agent,' she told Frank. 'I'm going to try to find a flat. For me and the children.'

This time, Frank didn't argue with her. The inevitable was happening. When Marge came home again that night, and told him that she had found a flat, she was relieved that he seemed to accept it

'So you really are leaving me?'

'Yes.'

But that night in bed, when he tried to kiss her and she repeated that yes, it really was over, a surge of proprietal anger took hold of him, and he held her down and tried to prize her legs apart and when she struggled and her entreaties to leave her alone turned to screams, he planted his hands around her throat. All of the rage and sadness within him bore down upon her. But as her windpipe was within seconds of being crushed, either her anger was the greater or his demented fury abated, and Marge got away from him. She bolted from the bedroom and locked Frank inside.

Time stood still as he banged and crashed against the door. Marge's son Paul woke up and they crouched together as Frank hammered and shouted and cried. His pleas wore her down and she unlocked the door but the sight of Paul incensed him anew and he threw punches at the terrified teenager until he suddenly seemed to come to his senses.

'I'm sorry. I'm sorry. I'm sorry,' he sobbed over and over until Marge left him in the corridor and took Paul back to bed. Frank dressed and sat in the silent darkness until morning when Marge awakened and announced that she was taking the children to collect the keys to their new flat. Marge came back at about two o'clock. The house was quiet; the usual sounds of a radio or television that normally greeted her as she walked in were noticeably absent. Then she saw him, slumped across the telephone table in the hall, completely and catatonically drunk.

The telephone rang. It was Janet. I have read various accounts of this telephone call and it seems to have gone something like this:

'Is Frank there?' Janet asked. 'I just wondered if he has finished mending my wireless.'

'Yes, he's here,' replied Marge, 'but he can't come to the phone. He's drunk. He can't speak.'

'What? But, he hasn't been drunk for a long time,' said Janet. In my imaginary reconstruction the surprise in her voice was spinning into anxiety. 'What's made him start drinking again?'

'I told him I'm leaving him,' said Marge.

'I'll come over,' said Janet.

By the time Janet arrived at Frank's at about 4.15 p.m. Marge and her two children were packed and ready to leave. Frank was asleep in bed. Janet stayed for about half an hour. When she

came back at about nine o'clock, Marge and the children had gone and Frank was asleep. An opened bottle of wine, three quarters full, sat on the kitchen sink. Janet stayed until about eleven o'clock, then left.

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The following morning was Sunday. Karen drove to her mother's house, stopping on the way to buy weed killer at a florist's shop on Toorak Road in Hartwell. When she arrived Emily was already there, ready to drive their mother to Frank's. Despite a hangover that must have threatened to blow his head apart, he had rejected an offer to stay with Janet, saying that he wanted to stay and sort things out. With Marge gone, he was thinking about renting out some the rooms of the house. Karen busied herself with the weed killer, spraying the creeper between the slats of the fence.

Janet rang Frank again at about half past four. He sounded a bit dejected, but she didn't think he was drinking. She invited him again to stay with her, and he again refused the offer. At the end of the day when they were all packing up to go home, Karen stretched up to put the almost empty weed-killer bottle on a shelf in the pantry but couldn't quite reach. She asked Emily (called Phyllis amongst her siblings), who was slightly taller, to put it on a high shelf for her, safely out of reach of their mother. At about six o'clock they all left. Emily went to pick up her children and then collected her mother at about half past seven. Mrs Montgomerie was worried about Frank and urged him to go home with her but he said no. Then Frank suggested that his mum could stay there with him, but Mrs Montgomerie wanted to go home. Emily drove her mother home and left Frank at Canterbury. Later that evening Janet rang Frank to see if he was alright. He had changed his mind about staying at home and wanted to stay with her or their mother. In a curious simultaneous change of mind, Janet persuaded him to stay at home. Why? This was an incongruous twist. Later, no-one asked Janet why she changed her mind. Had Frank stayed that night with his sister Janet or his mother, the course of history for this family would have changed.

The next morning Emily dialled Frank's number but there was no answer. She rang him at work but was told that he had not shown up. She dialled his home number again. It rang out. She rang Janet at about a quarter to one.

'Have you heard from Frank today?'

'No,' said Janet.

'I've tried to phone him. There's no answer. Can you go and see if he is alright?'

'No, I can't today,' replied Janet, who had a shop to run. 'Can you go?'

A distressed Emily rang Janet back a short time later, asking her to come at once. When Janet arrived in a taxi, Emily was outside. An ambulance was parked by the kerb.

'I think he's dead,' said Emily.

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Constable [redacted] Rumbold from the Chatham Police Station arrived at Frank's house at about quarter past two. He was greeted at the door by Emily and her sister Janet. Emily gave her name as Mrs Phyllis Hulse, a name she had not used in almost a decade. The constable misspelt *Mrs Halse* in his notebook and followed the women into the front bedroom. Frank lay on his back in the bed, under the bedclothes. Rumbold made notes of Frank's shirt and pullover, of the small cabinet beside the bed, two half empty bottles of tablets, two empty wine bottles, a photograph of a woman and a pot containing liquid that appeared to be vomitus. On the bedside table was a note:

Frank, Marge has left. She said she couldn't take any more. If you want anything, ring me. Janet.

The women identified the deceased as their brother Francis William Montgomerie. They told the constable that Frank had suffered from an alcoholic problem that had undermined his health to a state of physical collapse, but he'd recently appeared to have made a complete recovery. Rumbold noted all this down. Had the ladies thrown anything out? Yes, they had cleaned up a bit before he arrived. Phyllis (Emily) had found the body that day at half past one. She was the last to haven seen Frank alive, at half past seven the evening before.

PC Rumbold collected two wine bottles, two partially empty bottles of tablets in the bedside cabinet, a bowl on the floor beside the cabinet containing a brown liquid, and two empty wine bottles. The two sisters had removed an empty brandy flask that a search of the premises failed to locate. Back at the station, PC Rumbold typed up the Report of Death Form for the coroner, misspelling Frank's last name as *Montgomery*. Under 'Cause of Death' he inserted: *Possibly poisoning. Name of poison not known.*

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On 10 April 1962 Dr James McNamara, senior government pathologist, commenced an autopsy on the body of Francis William Montgomerie: Case Number 735 of 1962.

Found dead in bed were the only notes he received about the middle-aged man. The Form 83 stated *suspected arsenical poisoning*.

Frank Montgomerie's trachea was congested. There was pulmonary oedema (fluid in the lungs) which was not uncommon in any case of death from cardiac or respiratory failure. The cardio vascular system appeared normal. With the deftness and precision for which his profession is renowned, Dr McNamara removed the liver and the stomach, placed them in separate glass jars, and handwrote labels for them. Next was some blood, also placed in a jar, a slightly smaller one, and also labelled. The jars, set neatly on a tray, were whisked away by mortuary staff for analysis by the chemistry section upstairs.

Later that day, tests by Llyn Kreutzer Turner, Deputy Medico-Legal Chemist for Victoria revealed a lethal concentration of arsenious oxide in Frank's stomach and liver. This was not a

chronic condition. This had been one large dose of arsenic that had interfered with the part of the nervous system that controlled the heartbeat. Like flicking a switch, it had made his heart stop. A bottle labelled *Penfolds Sweet Sherry* contained a teaspoonful of a dark liquid that proved to be a mixture of wine and an alkaline form of arsenic. But Frank had not downed weed killer in a drunken stupor. A blood test showed zero alcohol.

Turner also analysed a small flask of whisky, a box containing liquids, and a box containing photographic chemicals and equipment, all from Frank's home. He did not detect any arsenic in these items.

Frank was laid to rest in Box Hill Cemetery on 11 April 1962. About a week later, at the request of the landlord, Emily and her siblings cleared out all of Frank's possessions, put them in boxes and took them away. Did she miss her sweet but troublesome brother? In all of the transcripts and other documentation about this story, no-one has recorded how Emily reacted. Telling PC Rumbold that her name was Phyllis Hulse was a deliberately deceptive act. She would have been well aware that the name 'Trudy Haag' would have alerted police to Albert's death from arsenic poisoning. But if she really had just found Frank dead in bed, she would have had no idea that arsenic was involved, so why the need for subterfuge? She hadn't called herself Phyllis Hulse for a decade, and she had already started to call herself Emily Roberts so why did she not offer that new name? She may have been confused and distressed, but was her distress because her favourite brother had died? Or was it because she had a lot to hide? The lack of police interest in Frank's death is also intriguing. Detective Conn had been very strong in his belief that that she had murdered Albert – surely he would have been interested that her brother had now also died in the same way?

An Inquest into the cause and circumstances of Frank's death was held six months later. The Coroner heard evidence that Frank had not been in good health since the war, and that he had been treated for depression. Detective Sergeant Jack Ford testified that he had found nothing to suggest that any person, other than Frank himself, was responsible for his death. Coroner Pascoe found that Francis Montgomerie had died from arsenic poisoning and that it was wilfully self-administered.

PART 3
A NEW CANVAS

CHAPTER SIXTEEN

Adelaide

1963 – 1968

Emily Roberts started a new job as a sales representative for the Innoxa Cosmetic Company. Once again, anonymous calls made sure her managers knew her real name, and of rumours she was a murderess. To her enormous relief, Innoxa ignored the calls and kept her on. But by 1964 Emily decided that she had to change more than her name. Life as a single mother in the 1960s was not easy. Landlords frowned upon women without husbands, as did banks. Innoxa granted her an interstate transfer and In September 1964 Emily moved to Adelaide. Careful to save money, she organised a house swap with the owners of 21 Marsha Drive, Banksia Park, about twenty kilometres to the north-east of Adelaide. It was mutually convenient; neither of them paid rent to the other. One can only speculate what the Rowans Road neighbours told the new residents at Lot 121.

Emily's daughters stayed in Victoria, 115 kilometres north-west of Melbourne at the Holy Cross boarding convent at Daylesford, a pretty rural setting now famous for its luxury spa culture. [redacted], now eighteen, moved in once again with his maternal grandmother. Every weekend, Emily drove eight-hours to see her girls. until one weekend, she announced that they were moving to South Australia too. It must have been a confusing and anxious time. [redacted] was eight, [redacted] was nine and [redacted] was ten. They had already suffered considerable trauma in their short lives and probably had to endure schoolyard taunts and torments about their mother, especially after the inquest into their father's death. A reprieve from the whispered, perhaps even blatant accusations and assumptions would have been welcome, but the price was high. Emily did not bring them over the border to live with her. She enrolled them in a convent school at Riverton, a dusty country town on the Gilbert River, about an hour's drive north of Adelaide. The sisters moved from hostile but familiar surroundings, from streets and shops and faces that were affirming and comforting, to new sights and sounds. When the class roll was called, they had to remember their new name. Steeling themselves to face a new cohort of unfriendly faces, of wondering who would welcome them at their table in the convent dining room, and which nuns might be kind, would have sealed new layers of resilience around their fractured hearts. Emily collected them each Friday evening in the company car, a Morris 1100.

The Morris, not designed for heavy mileage, was often in need of repairs. Emily would call into the local Caltex service station on the way home from the weekly shop each Saturday with the girls. The ignition system sometimes failed and Emily would need help to get it started. Emily was an attractive woman, no doubt lonely, living alone and on the road a lot for her work. She caught the eye of the service station manager; thirty-nine-year-old Jim Duncan was a rugged outdoor type who liked a drink and was happiest when he got away from the city, fossicking for gems in the Flinders

Ranges. He had short dark hair that he slicked back with Brylcream. I expect that he had a mechanic's black fingernails. I picture him as small and wiry, with muscular arms and legs but a belly that had softened from lack of exercise. He had a bad back after a fall from a horse. Like Emily, Jim Duncan was dodging the past. His real name was John Alfred Jameson and he had abandoned his wife Mary and their son in Sydney.

After the end-of-year school concert on a warm November afternoon in 1967, the sense of excitement in the dry mid-North air, in anticipation of the long summer holidays, was augmented for the three Roberts sisters. They were greeted by Emily and Jim, both wearing new gold wedding bands, playing the parts of newly married bride and groom for the benefit of the girls. Emily, carrying a blue bridal bouquet, had assiduously scripted their announcement to the girls that they just got married. Perhaps they rehearsed it in the car on the way there.

Why the pretence? Middle class society in the so-called swinging sixties was still a long way from accepting the idea of a man and woman living together without being married. It would have been an embarrassment, and a source of shame, at the Convent. A girl whose mother lived in sin was certainly not Head Prefect material. The girls knew that Jim had been married before but they presumed that he was now divorced and had no reason not to believe the story about the marriage. They had no idea that Jim had a wife and child in New South Wales.

When the owners of the house at Marsha Drive wanted to sell, Emily sold her house in Melbourne. She bought a house at 8 Frank Street in the adjacent suburb of Vista, about eighteen kilometres north of Adelaide. The girls started at yet another new school, this time at St Pious X School about nine kilometres away in Windsor Gardens. They could come home after school every day now.

In the early days, Jim was handy around the house and liked to work on carpentry projects. He had friends in the local Tea Tree Gully area, especially through the gem and mineral club where he was an avid member and at one time the president. This was where he met his best friend Reg Harvey, a geology lecturer at Flinders University. Jim missed his own son and treated Reg's son Gus like his own. Jim was seemingly very fond of children and wanted to be part of a family.

It's easy to imagine Emily's three little girls with shining eyes and toothy smiles, listening to Jim explaining the intricacies of rock formations, the differences between quartz and crystal, and how to fossick for minerals. They would have been very excited when they were allowed to go with him to a slide evening at the gem club. After this, they all joined up as members and meetings at the gem club became a regular part of the family's social life. Family holidays and outings were rare but they went on camping trips together to dig for fossils. It was a reasonably happy time in their lives, until the Caltex lease expired and Jim lost his job.

Emily knew from the start that Jim was a regular and heavy drinker. Now he spent hours at the pub and always carried a hip flask full of brandy or whisky which he added liberally to his coffee. He suffered from sporadic bouts of diarrhoea and vomiting. He never had any money and seemed incapable of holding down a job for any length of time. It is unsurprising that a good-looking single

woman would be attracted to a strong man who was good with his hands, but pragmatism was most likely an important factor in the relationship. Banks would not lend money to a woman unless there was a man to guarantee the loan. Despite Emily being the one with a reliable income, a man was required to sign as a guarantor for the purchase of their house property at Vista and Jim fulfilled that role. Emily was an astute financial planner and she made sure the house was in her name.

Jim took his role as man of the house very seriously but he was not always the loving father figure that the girls might have hoped for. He was a disciplinarian, often angry, and extremely strict. He would make the girls kneel down so he could measure the length of their skirts with a ruler. If it didn't pass inspection, they were not allowed to go out. He used to punish the girls for all sorts of things by taking away privileges like watching television or staying up late, or he would fine them. [redacted], the youngest, was often a target for his anger. He would smack her on the back of the head for trivial misdemeanours and he fined her to such an extent that she never had any pocket money. But he liked that she was a bit of a tomboy and she was his favourite. He taught her how to roll cigarettes with one hand from his tin of Four Square tobacco.

Jim would have been happier living in the bush, and he seriously thought about it after he lost his job at the service station, but he decided to stay with Emily. On the Easter weekend in 1968, Jim and his friend Reg drove 600 kilometres north of Adelaide to Andamooka in the Flinders Ranges, for a fossicking expedition, no doubt hopeful of finding some opals. Reg took his son Gus, and Jim took [redacted]. It was unusually hot for Easter that year; all of Margaret's carefully packed Easter eggs melted. [redacted] befriended another [redacted], the daughter of Mr and Mrs Brown, also friends of Jim. When the time came to pack the tents away and load up the cars for the long drive back to Adelaide, the two Margarets asked if they could travel back home in the same car. Jim agreed, and [redacted] was allowed to go with the Browns. On the way back to Adelaide, Jim's car veered off the road and rolled several times, throwing Jim from the car but trapping Reg inside. Jim, badly injured, managed to drag Reg out of the mangled wreck but Reg died in his arms before the ambulance arrived.

Emily had to drive for four hours to collect Jim from the Port Augusta Hospital. Jim was seriously injured and emotionally wrecked. He confided to Emily that the accident was his fault because he was drunk. Maybe [redacted] or the Browns had known this, prompting Margaret's request to go in another car. Or perhaps [redacted] Roberts was particularly prescient.

The car accident aggravated Jim's back injury but the iron corset which had been prescribed for him years ago hung unused in the garage. Alcohol dulled Jim's pain, but triggered nightmares of being back on that dusty road with Reg in his arms. He would wake in the middle of the night, sweaty and tormented. Then he kept the light on until daybreak calmed the night-time demons. When a sleep-deprived Emily got up for work, Jim stayed in bed, wearing just a singlet and underpants, drinking and smoking. Or he would mope around the house, or visit the Repatriation Hospital with [redacted] at his side. Worsening Dupuytren's contracture of the fourth and fifth fingers on his right hand made his fingers frustratingly difficult to move. He couldn't make his own rollies any more so

[redacted] would roll half a dozen for him in the car on the way, neatly storing them in the tin. The pain in his back grew worse, and one knee troubled him as well. Custom-made high-heeled RM Williams boots helped, but St Agnes Brandy helped more. Or Black and White Scotch Whisky out of a flask with coffee, which he liked black with slices of lemon and two teaspoons of sugar.

[redacted], [redacted] and [redacted] did the household clothes washing. They could not fail to notice that Jim's underpants were often stained. He was embarrassed by these episodes of diarrhoea which he had suffered on and off since his army days. An operation for haemorrhoids in 1944 and again in 1957 had failed to resolve his uncontrolled bowel motions. Emily listened to his declarations that he thought he had bowel cancer. He sought further treatment for this trouble in early 1968 and that year he had another haemorrhoid operation. He continued to be assailed with occurrences of vomiting. When the girls came home from school he always smelt of tobacco and alcohol and he often had an open bottle of spirits next to the bed. Emily's pleas for Jim to stop drinking were to no avail and she started asking him to leave until her requests turned into demands for him to get out of the house. Jim begged her to let him stay and made empty promises to ease up on his drinking.

At the beginning of 1968, Emily found a job as a secretarial assistant for Fraser Agencies and Wholesalers at 122 Gilbert Street in the city. James and Joyce Pennington were the owners and managers of the thriving home improvements and interior decoration business that specialised in curtain installations. They were pleased with Emily who dealt efficiently with suppliers and the day to day running of the business. A few months after starting, James Pennington mentioned to Emily that they were looking for someone who could install curtain tracks.

'I know someone who might be suitable,' said Emily.

'Does he have any experience installing curtain tracks?' asked Mr Pennington.

'No, I don't think so. But he is a very good carpenter and joiner. He'd be ideal.'

'How do you know him?'

'He's my lodger. His name's Jim.'

Another casual lie.

No doubt Emily bustled Jim off to the interview, hoping that he would get out of the house and start contributing to the family finances. Her plan succeeded and Jim was hired as a curtain installer but the blend of work and home life was a disaster. Jim and Emily started to argue at work, easily audible from one end to the other of the small office and warehouse. Jim sometimes came to work drunk. He frequently swore; the words 'bitch' and 'bastard' rolled off his tongue. He became very unreliable. Customers started ringing up to complain that Jim had arrived either late or drunk or both. Emily would have to placate angry and disappointed callers and confront Jim when he came back to the office. Sometimes there were calls complaining that he had not turned up at all. The business started to lose customers.

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It soon became obvious at work that Jim was more than Emily's lodger. Jim would complain, in colourful language that caused several raised eyebrows on numerous occasions, that Emily hardly ever cooked and when she did, she produced lousy food. She would confront him in turn with his own domestic deficiencies. Mrs Pennington already knew that 'Mrs Roberts' was not all that met the eye because once when she visited her in hospital she was surprised to see the name 'Emily Haag' above the bed. In an interview for *New Idea* magazine many years later, Emily insisted that Jim was her lodger, although he 'got into the habit of sleeping on top of my bed.'

One morning Jim arrived at work shortly after Emily, agitated and shouting. The whole warehouse could hear him swearing and yelling.

'She's tossed me out of the house!' Jim yelled to anyone who might be listening. 'The bitch is bloody well trying to poison me!'

Nervous laughter echoed around the office. No-one said anything

CHAPTER SEVENTEEN

Adelaide

1968 – 1973

One of her Emily's previous jobs had been as a life insurance agent and she believed it to be a good way of saving money. She worked full time and paid most of their living expenses but she kept her finances separate from Jim's and over the years, Emily lent Jim considerable sums of money. A shrewd financier, she kept records of the loans. Anxious to safeguard her money, Emily approached Mr Fed Daldry about a policy on Jim's life.

Fred Daldry was a friend of Fraser Agencies' owner James Pennington. Daldry worked for Prudential Life Assurance Company and he visited Fraser Agencies from time to time. Mr Daldry advised Emily that because she and Jim were not married she did not have the necessary pecuniary interest in Jim as the life assured. Emily paid the premiums for a policy on Jim's life that was owned by Jim, with Emily named as the beneficiary. The policy was later assigned to her. Emily also arranged a sickness and accident insurance policy for Jim, and an additional policy on Jim's life with Legal and General Insurance Company naming her as the beneficiary.

One day in April 1968, Jim did not turn up to work and Emily told the Penningtons that he was sick. James Pennington had heard a rumour that Jim was actually working for a kitchen manufacturing business, so he rang them and was informed that Jim had been working there. Jim had not been sick on the days he had claimed. James Pennington was tired of Jim's unreliability and the increasingly frequent domestic arguments at work. This was the last straw. Mr Pennington told Emily that Jim need not show up again. He was also extremely disappointed that Emily, his confidante, had covered up for Jim. He felt that his trust had been betrayed. Emily was given a week's notice as well.

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Things could not have been much worse for Emily now. Jim was declared bankrupt and was refused a war pension. He gradually lost touch with all his friends and alienated Emily's daughters, although he was less grumpy when Emily was out. Gus Harvey blamed Jim for his father Reg's death and refused to have anything further to do with Jim, which broke Jim's heart. The final incident which marked the turning point in his desperation and desolation was when his dog Tiny, his constant companion for the last eighteen years, became increasingly ill and paralysed with painful arthritis. Jim dealt with it the only way he could manage, alone, with his rifle.

The death of Tiny, so soon after the death of Reg and his abandonment by Gus, led to more drinking. Jim spent most of his time in bed, and told anyone who would listen that his entire life was

over. A doctor at the Repatriation Hospital prescribed barbiturate tablets. Despite the warning on the label, Jim often took them with alcohol, partly to relieve pain, partly to enjoy the oblivion that the combination induced. Emily tried to get him to see a psychiatrist but he refused. Jim's local GP became used to Jim turning up drunk for appointments. His life became a cycle of being in bed and being at the pub.

Emily, ever resourceful, found more work and Jim found a job as a bus driver for a private company, so he spent days at a time away from home. But in October 1968 he was convicted for drink driving and he lost his licence for two years. By the end of 1968, Jim was suffering loss of bowel control and pains in his lower abdomen. On one occasion he was so drunk that he lost control of his bowels and badly soiled his clothes. Emily asked [redacted] to help shower him. Jim continued to suffer from diarrhoea, incontinence, vomiting and abdominal pain through 1969 and 1970.

On 23 January 1970, Jim Duncan arrived at the Outpatients Department of the Repatriation Hospital on Daws Road having been unable to control explosive bowel motions for the last three weeks. The doctor found no physical abnormalities in Jim's abdomen, rectum and anal region and 'excellent muscle tone in the sphincter, which would be more than adequate to control his motion.' A week later, on 4 February 1970, Emily took Jim to see the same doctor.

'He's been having these terrible attacks, he gets so distressed. He keeps crying and weeping,' Emily told the doctor. 'It's very upsetting for all of us, for the family.'

Jim was admitted to the Repatriation Hospital on 8 February, for an examination to look for the cause of Jim's diarrhoea. No abnormalities were found and chronic alcoholism was found not to have affected his liver. After four days in hospital, Jim was discharged and referred to a psychiatrist. On 18 March 1970, Jim was very unwell and the GP visited him at home, noting 'He is getting weaker every day.'

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On the morning of Saturday 21 March 1970, Emily sent fifteen-year-old [redacted] to wake her sister [redacted]. [redacted], twelve, was already awake and wondering why [redacted] and her mother were talking in low voices. She also realised that they had all slept in and was immediately on the alert. Jim never let them sleep in.

'Margaret, wake up. Jim – I think Jim's dead,' said [redacted], now in the bedroom.

[redacted] sat up and saw from Claire's face that this was not a joke. Emily watched as the two girls crept in to see Jim half propped up in bed. His face was the colour of concrete; green mucus was in his nose and white paste dripped down the side of his mouth. His arm was bent at the elbow; a cigarette had burnt down to where he still held it in his stiffened fingers.

An empty barbiturate bottle lay on the floor.

Outside the bedroom, Emily began to cry in uncontrolled hysteria. [redacted] steered her into the lounge.

'Wake him up! Wake him up!' Emily wailed.

The doctor's wife answered the phone when it rang at their home just after seven o'clock. She took the details of the name and address. It may have been Emily who called, distressed and incoherent. Or maybe it was [redacted], calm, but disbelieving, wanting to be anywhere but in that moment. Emily opened the door when Dr Gilmore arrived just after half past seven and showed him into the bedroom. He recognised his patient in the double bed. Presumably he checked for vital signs, then shook his head. Perhaps he covered Jim's face with a sheet, watched by three frightened girls huddled together under the shelter of the door frame. He told a completely overwrought Emily that Jim was dead, and gave her some tablets to sedate her.

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It must have occurred to me at the time he was dead but I would not believe this. I asked my daughters to wake him up. They all told me he was dead. But I could not believe this had happened again. I know it sounds bad for me…It was just so unfair. I was horrified.

[Emily Perry, Unsworn statement, Supreme Court of South Australia, 1981]

On 22 March 1970 Dr Colin Manock conducted a routine autopsy on the body of John Alfred Jamieson. He noted that on the left side of the face, a trickle of fluid had travelled from the mouth, leaving a bluish stain, dotted with white granules. There was no natural disease to account for his death, no internal injury, no abnormality in any organs. The cardio-vascular system and the respiratory system appeared normal but there was fluid in the lung tissue and the blood vessels were distended with blood. In the oesophagus he found one and a half ounces of a pale green gelatinous substance which had dissolved and then reset. It was consistent with the smooth covering of the type of a capsule you could buy in blister-packs at the chemist. A subsequent report provided by Dr Kevin Heinrich at the Department of Chemistry indicated the presence of the barbiturate sleeping tablet amylobarbitone in Jim's blood, urine, liver and stomach. Manock's report concluded that the cause of death was poisoning by barbiturate.

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Jim was forty-five. He had often said that when he died he wanted his body to be cremated and his ashes scattered at Andamooka. It would have been appropriate for a man who had been so troubled in life to have been granted his final wish to be left in peace in the bush he loved so much. But two of Jim's sisters came to the funeral and took his ashes back to Sydney, a place where he never felt comfortable, and had never belonged.

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When Emily did not show up for work on the Monday after Jim died, her new employers dismissed her. She needed a job.

The Tea Tree Gully branch of the National Bank had just closed down and the large building was available for rent. Emily wasted no time in seizing the opportunity for a business venture. She negotiated a supply of cakes and pastries from a nearby bakery and on Saturday mornings, customers were three-deep at the counter of Emily's new cake shop which soon expanded to incorporate a tea room. [redacted] helped to run it, sometimes with friends from school. When [redacted] got married, she and her husband [redacted] worked there on Sundays.

Emily had received enough money from Jim's life insurance to buy a new house. She sold the house in Vista and bought a home about a ten-minute drive away along Hancock Road at Surrey Downs. Emily was an attractive woman in the prime of her life, running a successful business, but I imagine that she wondered from time to time what life might have been like if she had stayed in show business, enjoying the bright lights and the glamour of the stage. She had her three daughters but she must have missed her siblings and her son, and the streets and shops and theatres of Melbourne. It must have been a yearning for a bit more adventure, that enticed her to sign up at Arthur Murray Dance Studio.

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It didn't take long for Emily to catch the eye of Ken Perry, who had acquired some free dancing lessons in a book of tickets bought from a service club that also included cinema vouchers, half-price meals and cheap dry cleaning. The attraction was mutual. Ken was lean and fit from bike riding and judo, and was as deft with a hammer and screwdriver as he was with pots and pans. He had a good job at EMI designing communications systems and on weekends he liked rifle shooting and collecting records. Like Emily, he was lonely and he was delighted to discover that this very attractive woman with great legs shared his interest in music, dancing and singing.

One Saturday, Emily invited Ken and some of their friends from the Arthur Murray group to a barbecue on a vacant block she owned at Fairview Park. Ken stayed behind after a campfire singalong to help with the cleaning up. He asked Emily if she would accompany him to the Freemason's Lodge Ball. So began a romantic succession of grand balls and dressing up. One evening, after driving Emily home after a ball, he made it clear that he wanted to be more than her dancing partner. She hesitated before replying.

'There is something you should know about me,' said Emily.

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Emily told Ken about her life in Melbourne, and about the deaths of her husband Albert and her brother Frank. She didn't tell Ken about Jim though. It wasn't until some time later, when they were looking through family photo albums that Emily had to explain who Jim Duncan was.

Ken was undeterred and they were married within a year. Just before their wedding in 1973, Ken received an anonymous call that ended with him roaring into the phone, 'Go to hell because I already know!'

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PART 4
PATTERNS

CHAPTER EIGHTEEN

Adelaide

1979

May of 1979 was almost at an end and the year edged towards a chilly Adelaide winter. The days became shorter and the lure of the workshop pulled stronger for Ken who, once again out of hospital, had just bought another Pianola.

On 29 May, Emily arrived for an appointment at the St Agnes Clinic. She wanted her own blood and urine tested for lead and arsenic. The results that came back on 15 June 1979 revealed nothing untoward about her lead levels, but her arsenic was slightly elevated. When Emily suggested that the new Pianola might be the source of their raised arsenic levels, Dr Hart said they should get the instrument tested. A couple of weeks later, Emily returned to the St Agnes Clinic holding a brown paper bag.

'We've taken some samples,' she announced to Dr Hart. 'Some vacuumings, from the new Pianola.'

Dr Hart contacted Detective Senior Constable David Florance who collected Emily's bag of dust on 4 July 1979. He delivered it that same day to Dr Lokan, the government analyst at the Department of Chemistry. The 120-centimetre ball of fluff which he tipped out of the bag onto a piece of fresh snowy paper represented a new level of intrigue in the police investigation. Lokan used a large flat spatula to lift the mixture so he could spread it out to take a homogenous representative sample. As he did so, the ball split in half. In the middle was a smaller ball of white powder weighing about 100 milligrams. An analysis of a meticulously collected portion exposed its contents as one-part arsenic to three parts lead. A solid ball of lead arsenate.

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On the morning of Tuesday 17 July, 1979, the usually unhurried offices of the South Australian Department of Chemistry in Divett Place vibrated with an uncommon energy. Detective Sergeant Cook and Detective Florance from the Major Crime Squad, Constable Lynne Murley and Constable Ian Congdon from Police Technical Services, and two scientific officers from the Department of Health, assembled for a briefing about Ken Perry. Then the investigation team piled into a police car and made their way east across town to pay a visit to Mr and Mrs Perry at their shop on Kensington Road. The scientists followed close behind, across to Wakefield Street, around the Brittania roundabout and up Kensington Road to the Olde Music Box at number 39, the last in a strip of six ground level shops, each with an upper storey flat.

Detective Sergeant Cook did the talking.

‘Good morning. Mrs Emily Perry?’

The last time she had been confronted like this was twenty years ago, 750 kilometres away, when she was newly widowed and had answered to the name of Mrs Trudy Haag. History was repeating itself.

‘I’m Detective Sergeant Cook. This is Constable Congdon and this is Constable Murley.’

Did her heart start to race?

‘Also with me are Mr Lokan from the Department of Chemistry and Mr Grygorcewicz from the Department of Public Health,’ said Cook. ‘We‘re here for the purpose of trying to establish the source of your husband’s arsenic and lead levels.’

‘You’ll want to go to the workshop,’ said Emily, gesturing towards the back of the shop.

Emily never asked about a search warrant, although Sergeant Cook did have one in his pocket. Constable Congdon and Constable Murley went into the workshop, followed by Dr Lokan and Dr Grygorcewicz. The detectives asked questions and wrote down Emily’s responses about Ken’s poor health in late 1978, and their decision to open the shop in early 1979. Emily didn’t know if lead or arsenic were used in the old Pianolas but she said that Dr Hart had suggested that the glue they used might contain arsenic as a drying agent.

While the detectives were questioning Emily, Constable Ian Congdon vacuumed up dust samples from the kitchen window, the kitchen floor, and a player piano that stood at the northern end of the kitchen wall. In Ken’s workroom he took samples from the workbench, from different sections of the floor, and from a set of shelves on the western wall. He also emptied out the contents of an early model Electrolux vacuum cleaner that he found in the workroom, and the contents of another upright vacuum cleaner. Then Emily stood quietly as he gently plucked individual hairs from her head and placed them into plastic bags.

Constable Murley checked inside the cupboards in the kitchen at the back of the shop. In the cupboard under the sink, amongst the bottles of Palmolive dishwashing liquid and Pine-O-Clean, she found a small blue cup. It was the kind of disposable cup you might take to a picnic. It had a thin layer of white residue stuck to the sides and the base, like a paste, as if someone had used it and not washed it out properly. Murley carefully scraped some of the residue from the inside and placed it into a plastic bag. She also bagged up a round filter cartridge from a respirator mask that was on the kitchen table. By a quarter past twelve Florance had no more questions and he proffered his handwritten notes for Emily to read and sign but she declined, saying that her solicitor had told her not to sign anything unless he read it first.

So she had been expecting the police to call.

After the door of the shop closed behind them, the investigation team drove to Mr and Mrs Perry’s home at 16 Buckley Crescent, Fairview Park, where for the first time they came face to face with the man at the centre of their investigation. Constable Congdon nozzled up more samples of dust from the house and then from Ken’s workshop in a galvanised iron shed to the right of the house. Behind the house was a barn where Ken stored Pianola rolls and more player pianos.

Congdon vacuumed in there as well, and then plucked a number of hairs, not only from Ken's head but also from his moustache. I'm wondering if Ken meekly inclined his head or if he sighed impatiently as the constable extricated three tough bristles from Ken's luxuriant moustache with a practised precision that would have made Ken's eyes swim. Then they took Ken in the car with them to the new house at Grenfell Road where Congdon swept up more dust. The next day, Senior Constable Congdon loaded a police car with the labelled and numbered bags of dust and delivered them to the Department of Chemistry.

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Dr Lokan had worked for Government Analysis as a professional scientist since 1967. His field was forensic chemistry, which involved examining biological fluids and samples for drugs and poisons. Most of the samples that Constable Congdon delivered to him tested negative for arsenic. However, Sample Number 22, containing the vacuumings from the floor under Ken's workbench, tested positive for both arsenic and lead. Sample Number 23 from the Phoenix vacuum cleaner located in the workroom, also tested positive for arsenic.

Sample Number 8 was the scraping of white solid from the blue cup that Constable Murley had found in the cupboard under the sink. Dr Lokan performed two separate analyses on this sample and returned identical answers on each. Positive for both lead and arsenic. He weighed a portion of the sample and calculated that the amount of arsenic and the amount of lead and the ratio of arsenic to lead in the sample was 0.32 – about one-part arsenic to three parts lead. Constable Murley had found lead arsenate in that little picnic cup.

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Chief Inspector John Goulding was an analytical chemist with the Commonwealth Police Force (later known as the Australian Federal Police). He worked at the Australian Atomic Energy Commission Research Establishment in Lucas Heights in New South Wales. He specialised in neutron activation forensic analysis. On 20 July 1979, three plastic bags arrived on his desk. Bag 1 had hair from the head of Kenneth Perry, bag 2 contained long, thick moustache hair and in bag 3 was hair from Emily Perry, all collected by Senior Constable Congdon on 17 July 1979.

Dr Goulding cut each hair into about twenty half-centimetre sections then used a reactor to make the samples radio-active. This caused the trace materials within the hairs to emit high energy gamma rays. Each chemical element has its own particular gamma ray and acts like a tiny radio transmitter when it is radio-active. The chemical element arsenic is deposited in hair at root level, so it is possible to calculate the time of ingestion by analysing sections of a single hair using a technique called neutron activation analysis. If there is no further ingestion, arsenic at the root level is carried out towards the tip. With a gamma ray spectrometer Goulding could detect and count the gamma

rays in each sample, and calculate how much arsenic was present. Looking along the length of each hair he could determine the history of toxic metal ingestion by calculating approximate dates of ingestion. He was able to see if ingestion was some time ago, if it tested positive at the tip, or more recently if it tested positive down near the root. If arsenic was found in the first half centimetre nearest to the root, this showed that arsenic ingestion took place very shortly before the hair was plucked.

Goulding found the presence of arsenic at various stages in Ken's hair. He prepared a chart showing the levels, showing a pattern of administration at particular times. Goulding's analysis of Ken's hair revealed high levels of arsenic in November 1978 and May 1979, matching the tests on Ken's blood and urine. Tests on the hair samples taken from Emily revealed no significant concentration of arsenic at all.

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Dr Lokan wanted another sample from the cup from under the sink at the shop so on the morning of 10 August 1979**,** Detectives Florance and Cook, and Constable Murley went to The Olde Music Shoppe again. The cup that had tested positive for arsenic was still in the cupboard under the kitchen sink. Constable Murley bagged it, and labelled it. Then she divided the benchtops and the western half of the workshop into sections with imaginary lines and vacuumed in those areas. The vacuum cleaner had a section in the nozzle in front of the tube with a filter paper over a grate section; everything sucked up went through the filter and was trapped on the filter paper so it didn't get into the machine. After each section Murley took out the filter paper and put the entire contents including the filter paper into a container for analysis. Then she brushed out the nozzle with a fine paint brush to get rid of any clinging debris, put a new filter paper on, and vacuumed the next section. Later that day she swept up further samples at Buckley Crescent. On 13 August 1979, Constable Murley gave all these new samples to Mr Lokan for testing.

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Ken Perry became increasingly hostile as the police investigation continued. He was convinced that corroded lead pipes inside his Pianolas were the source of his lead poisoning and that arsenic had perhaps come from the varnish on the wooden casings. The technical officers tested the sandpaper that Ken used in the workshop, as well as forty samples from insecticides, powders, and foodstuffs found in all of the premises. But they all tested negative for arsenic. Results for the vaccuumings and sweepings revealed lead in Ken's working area in the shop, and in various parts of both houses, but medical experts said that this small amount of lead could not explain how Mr Perry came to have such high lead levels. And there was no arsenic in the vacuumings.

If Ken really had been ingesting arsenic from the old Pianolas, was this a problem for professional restorers? Detective Sergeant Cook and his team tracked down eight professional

Pianola experts and had them tested for lead and arsenic. Some had been restoring instruments for many years and none of them wore respiratory protection but their lead level results were not much higher than any average person. All of them had average levels of arsenic in their urine.

Some of the forensic results from the shop did not make sense, especially the positive arsenic result obtained from the west side of the shop premises. The police expected to find it spread all over the premises – as the lead was – not just in one confined space. So just over three weeks later, the west side was tested again. The floor was divided into sections, as were the bench tops. Arsenic was found on only one half of the bench top, and only on the section of floor immediately under that bench top. All other sections were negative. This finding, in conjunction with the dust sample that Emily Perry had given to Dr Hart on 4 July that had contained a concentrated ball of lead arsenate powder, was highly suspicious. This wasn't a step towards discovering a source at all. This was looking like fabricated evidence. Perhaps a cleverly crafted ruse by someone who had been through this experience before.

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Emily's political aspirations may have been dampened by her election loss back in 1977 but when an election was called for 15 September 1979, Emily decided to try again. But not for the Liberals this time. Des Corcoran was hoping to lead the Labor Party into a second term of government against David Tonkin, leader of the Liberal Party, but Emily decided to stand as an Independent candidate in the Legislative Council for the seat of Tea Tree Gully. In the official election photograph of her she smiles directly at the camera, brimming with poise and confidence, a theatrical mask hiding her domestic reality. At home, Ken was extremely sick again. His arsenic and lead levels were down but he was still very unwell. He told Emily that pain in his fingers made writing impossible and he was unable to stand for very long or even drive because of the pain in his feet. His balance was abnormal and his vibration sense was still absent below both knees. He walked with splayed legs. In between door-knocking and letterboxing electoral leaflets, Emily drove her husband to the Modbury Hospital Outpatients every six to eight weeks to see Dr Coughlin. Two days before the election, he was sent to hospital again with diarrhoea and shortness of breath.

On the morning of 15 September 1979 Ken's arsenic levels were high but he told the doctors that he was feeling much better. Against hospital advice, Ken discharged himself and went home at six o'clock, keen to watch the televised election count with Emily. By Sunday morning, 16 September 1979, as Ken collected another prescription for EDTA, Emily shared 5,671 votes with two other Independent candidates, but the tally was not high enough. There would be no new career for her at Parliament House. A very different future awaited.

CHAPTER NINETEEN

Adelaide

1980

On 17 April, 1980, Emily was busy behind the counter at The Olde Music Shoppe when Detectives Florance and Cook came through the door. Florance's notes do not record whether they stayed in the showroom or went to the privacy of the back kitchen, but within a matter of minutes, Cook told Emily Perry that he was arresting her for attempted murder. Emily may have said nothing as she dialled her solicitor's number and handed the telephone to Cook who confirmed the arrest. Cool and poised, Emily returned to her counter to serve a customer. That's what she told the court in her statement. I find this detail astonishing. Was she not taking this seriously? Was she in denial? Or was she just being dignified and professional? Or was she demonstrating the detached coldness of a sociopath?

Back at police headquarters, her solicitor arrived and Detective Florance again took notes. Emily listened to the caution that she was not obliged to answer questions.

'Has your solicitor advised you of your rights in these circumstances?' asked Cook.

'Yes,' she replied.

'Do you wish to answer questions?'

'I will answer one question,' replied Emily, who was much more cool-headed and wary than she had been back in Melbourne after Albert died.

'Mrs Perry,' said Sergeant Cook, 'it has been ascertained that fluid from your husband Ken Perry has, since August 1978 to 1979 been analysed on twenty-four separate occasions and found to contain lead ranging from a high of 4.36 to a low of 1.74 micromoles per litre. Fluids from your husband have also been analysed on fourteen separate occasions from November 1978 to October 1979 when arsenic was located with a high of 91 to a low of 0.80. These readings are in excess of normal and some are in fact toxic. Can you offer any explanation how your husband came to receive these high arsenic and lead levels?

'If that is so I am in no way responsible,' said Mrs Perry, mechanically repeating the line that she had probably rehearsed, perhaps glancing quickly at her solicitor for reassurance.

'I believe that you do not wish to answer any further questions. Is that correct?' said the equally mechanical Sergeant Cook.

'That's correct,' confirmed Emily. Her solicitor would have made sure that she knew how to respond, to maintain her right to silence.

'It is my intention to charge you with, between the first day of July 1978 and the 31st day of December 1979 at Fairview Park, Norwood and other places, attempting to murder Kenneth Warwick Henry Perry,' said Sergeant Cook.

‘Do you wish to read through what we have typed here today?’ asked Cook.

‘No thank you,’ said a tight-lipped Emily.

I wonder if she went straight home to face her husband, or if she went back to the shop and chatted to customers for the rest of the afternoon. I imagine the latter, giving herself time to plan how she would tell Ken. By the end of the day, Emily may have driven home in indignant outrage, and fallen sobbing in her husband’s arms as he stroked her hair and assured her that he knew she would never harm him, that the police charges were preposterous, and that he would stand by her to fight the charges. Or she may have thought about doing that and changed her mind, and rung him from the shop, leaving him to think about it all afternoon until by the time she got home, he needed her to soothe his own fury.

I look again at the grainy newspaper photographs of Emily, searching for a clue to her personality. She has been described to me as ‘cold’, a woman who showed little emotion. There is something about her eyes that look friendly and warm, even kind, but in the pixelated shades of grey I perceive something hard, something determined. It looks like anger. I can’t shake the image of her from two decades earlier, taking the cap off a bottle of beer and secreting bicarbonate of soda inside, then sealing up the bottle again and waiting.

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In South Australia, the case against an accused charged with a serious criminal offence is first presented to a magistrate who decides if there is enough evidence to provide a reasonable prospect of securing a conviction. If the magistrate decides that there is a *prima facie* case, the magistrate will commit the accused for trial before a jury. The Committal Hearing against Emily Phyllis Gertrude Perry began on Monday 11 August 1980 in the Adelaide Magistrates’ Court before His Honour Mr Christopher Cocks.

Doctors, nurses, courier drivers, life insurance agents, brothers, sisters, ex-wives, neighbours, everyone involved in the lives and deaths of Albert Haag, Frank Montgomerie and Jim Duncan gave evidence for the Crown. Then more doctors and nurses gave evidence about Ken Perry’ s illnesses and his hospital visits. There were police officers and piano tuners and pianola restorers, scientists and surgeons. Over a thousand pages of transcript record the evidence of one hundred and nine witnesses who supported the Crown case that Emily Perry had attempted to murder her husband.

The defence lawyers argued that there was no case to answer and that all of the evidence relating to the deaths of Albert Haag, Frank Montgomerie and Jim Duncan was inadmissible, and that the case against his client relating to Ken Perry’s illness was so thin that it should be dismissed. Ken Perry had made himself ill through his hobby of restoring old musical instruments. He and his wife were a happily married couple and Ken himself thought the idea that his wife had attempted to kill him was preposterous. Ken was adamant that the orchestrelle he bought from Cora Redden had

been especially dusty and corroded and that breathing in the dust from its crumbling lead pipes had contributed to his high lead levels. His own vast and unruly moustache had been a repository for dust and his own admittedly poor hygiene had made him ill. The house at Cudlee Creek was filthy, with rubbish strewn from one end to the other and Les Redden put down Ratsak to exterminate rats and mice. That's how he had been poisoned.

The magistrate disagreed. He committed Emily for trial in the Supreme Court of South Australia.

CHAPTER TWENTY

1981

Supreme Court of South Australia

The path along King William Street from the Office of the Crown Prosecutor in the unassuming SGIC Building to Supreme Court Room 2 was short and well-worn. On the morning of Tuesday 7 April 1981, it took less than five minutes to turn right, cross Gouger Street and then up the steps and through the doors of the imposing façade of the Supreme Court building. Across the road, the bronze statue of Queen Victoria overlooked the Square that bore her name to remind the good citizens of Adelaide, that Australia was still shaded pink on the world map. Around the corner along King William Street, gracious elm trees lined the wide footpath. their viridian leaves would have just been starting to lose their glossiness as the harshness of Adelaide's arid summer acceded to the gentler light and milder weather of autumn. The weather forecast for that day was a fine twenty-six degrees. A red tram on its way to Glenelg may have rattled past, its wooden seats clanging as the conductor pulled them all to face in the direction of the sea.

The Supreme Court was built in 1869, of Tea Tree Gully sandstone. Today it is guarded by an army of security officers and entry requires submitting to the same electronic surveillance as is required to board an aeroplane. But in 1981, one might have expected to be entering an art gallery or a club rather than one of Her Majesty's courtrooms. The doors to the smaller courtrooms that faced King William Street were painted the same shade of green as the door to the Adelaide Club on the other side of the city, where men from wealthy Establishment families still play make-believe in a nineteenth century fantasy of chandeliers, cigars and misogyny. In 1981, many of its members were lawyers and judges. The legal profession was overwhelmingly dominated by men in senior roles. In 1981, only one woman, Roma Mitchell, had been appointed as a Supreme Court judge. The Crown Solicitor, the Crown Prosecutor, the Chief Justice and the Chief Magistrate were all men. Partners in large law firms were overwhelmingly male. The Director of the Legal Services Commission was a man, as was the President of the Law Society, the Registrar of the Supreme Court and the President of the South Australian Bar Association. Into this safe harbour of male privilege and exclusivity strode Brian Martin, comfortable in his role representing Her Majesty Queen Elizabeth II. By his side was Ann Vanstone, a brilliant new recruit in the Crown Prosecutor's Office, ready to blaze her way through the male-dominated milieu.

The late nights, the endless photocopying of documents, phone calls to witnesses, preparatory notes, meticulous preparation, the melange of excitement and anxiety on the morning of a new trial, was distilled into three lines of tiny print in the cause list printed in *The Advertiser* newspaper that morning:

Court 2 (Criminal) before Mr Justice Cox at
10.30 am – Reg. v Perry, E.P.G. (for trial)

The trial of Queen Elizabeth II against Emily Phyllis Gertrude Perry commenced at 10.50

a.m., when the tipstaff's voice hushed the mutterings and whispers that echoed around the grand and intimidating chamber of Courtroom 2, with its lofty ceiling and walls lined with portraits of stern-faced judges, all male, in their ermine-edged ceremonial robes. A few years later, I would stand before a row of judges in this courtroom and swear that I would 'diligently and honestly perform the duties of a practitioner of this Court and to faithfully serve and uphold the administration of justice.'

'Silence. All stand.'

Justice Brian Cox entered the court from the side door that was level with the judge's bench. He walked the few short steps to the high-backed wooden chair that was centred and ready for him, paused, then bowed his head, a symbol of respect and greeting to the lawyers at the bar table. I wasn't there, but I know that they would have

reciprocated the customary gesture, acknowledging their role as officers of the court, bound by a code of ethics and the oath to uphold the administration of justice. A lawyer's duties to the Court underpin everything that takes place there and regulate the behaviour and demeanour of those who are admitted to the profession. The solemnity and significance of a Supreme Court trial would have been lost on no-one present as the judge's associate read out the indictment. Mr Martin did not oppose Mr Waye's application for bail for Mrs Perry. She was unlikely to re-offend or abscond. Her daughter [redacted] provided the surety.

'Yes, Mr Martin,' invited Justice Cox.

The commencement of a criminal trial is simple and intimidating in equal measure. Brian Martin stood up. His robe amplified the rather majestic appearance that earned him the nickname of 'the Black Prince' amongst his peers. Underneath the black gown and the well-cut suit was the body of an athlete. Brian played ruckman for the Sturt football club where he was a local hero in the SANFL amateur league. His eyes twinkled with both the fun of the game and the flair of the strategist. He may have been used to exchanging sweaty clashes with other guernseyed footballers, but his rounded vowels and clipped turn of phrase confirmed him as one Adelaide's cultured elite.

'Your Honour, I seek the usual order as to witnesses,' said Mr Martin.

'Anyone in the Court room who will be giving evidence in this trial must leave the court room now,' intoned Justice Cox.

During a trial, it is the jury's job to be the finder of fact. The jury decides whether or not witnesses are telling the truth and which version of events is beyond reasonable doubt. Although witnesses are required to 'tell the truth, the whole truth and nothing but the truth', not all of them do. The adversarial system is designed to test what witnesses say through examination in chief and then by cross-examination. During cross-examination, opposing counsel will ask questions to double check that the person is certain about what they have said. They are asked to confirm the evidence of other witnesses. One witness might say that a certain event happened in the morning. Another may be certain that it happened in the afternoon. Sometimes, these specific details are very important in working out the truth. If a barrister can demonstrate that a witness is lying or uncertain about certain details, counsel has the right to suggest to the jury that the witness is unreliable and

that there is doubt about their evidence. Witnesses must arrive in the witness box not having heard anything else that has been said by other witnesses, unable to tailor their own evidence to match someone else's.

Justice Cox's associate Mr Bardy read out the long list of witness names. If a jury member knew, or thought they knew any of the witnesses, that jury member was required to say so. Four male members of the jury panel and one woman were excused. A further three were challenged by the Defence; one more was challenged by the Crown. The number was whittled down as both sides picked and chose those they considered or suspected might be biased or unlikely to weigh all the evidence as carefully as they should. Then the remaining members were formally empanelled. Reflecting the social demographics of Adelaide in 1981, they nearly all had names suggesting a white British heritage, with one Hellenic exception. In 1981, Adelaide was a white sliced bread society. Pizzas and pasta were considered somewhat exotic. No-one except Vietnamese migrants had heard of bok choy. The SBS television station did not exist. Church-going on Sundays was common, and the average juror's knowledge of the criminal justice system came from the popular Australian television dramas *Cop Shop, Matlock, Division 4, Homicide* and *Prisoner.*

The freshly empanelled jury members had less than five minutes to settle into the oxblood leather chairs when they were dismissed 'until further notice'. When the last jury member had filed out of the court room, Emily's lawyer Peter Waye stood up. Often referred to as 'a rough diamond', he had more than ten years' seniority over Brian Martin. He liked a drink and in his younger years, the reputation of any girl who went out with him was said to have immediately plummeted. Nicknamed Bugsy by the police because of his protruding front teeth, Peter Waye had none of Mr Martin's polish but he was smart as a whip. The word 'cunning' is still used when his peers are asked about him. In the criminal underworld, he was the lawyer you wanted if you were charged with a serious offence. His advocacy skills before a jury were legendary.

'This case is unique,' began Mr Waye in his peculiar voice that had a slight lisp. 'The alleged victim who is not being called by the Crown, says, "I was not poisoned by the defendant." I have done a lot of reading and in all my reading this hasn't happened before. He says, "My wife didn't poison me."'

Mr Waye asked Justice Cox for permission for Ken Perry to be present for the entirety of the proceedings. Mr Martin was probably ready to jump to his feet to begin his protest but he did not need to.

'I am going to deny that application Mr Waye,' said Justice Cox.

'Mr Perry is a defence witness,' Mr Waye began again. 'My first application concerns a request by Mr Perry for a copy of his record of interview.'

Mr Waye explained that Ken Perry gave two statements to police, one at the end of 1979 and one at the beginning of 1980, but his memory had now deteriorated from ill health. But in the Crown's view, Mr Perry had acted improperly and had been party to the fabrication of evidence in an attempt to assist the accused. The Crown was not calling Mr Perry as a witness and Mr Martin argued that

the defence had no right to the statements.

'We will not be calling the husband Your Honour,' confirmed Mr Martin. 'We do not accept him as a witness of truth.'

If the jury had been in the court, this might have produced gasps or at least a whisper of surprise. Mr Martin was determined not to let Ken see what he had said back in 1979 and 1980. Being able to do that would have enabled him to tailor his evidence especially in relation to his symptoms and working conditions. If Ken gave evidence that was contrary to the police statements, Mr Martin could cross-examine him on his previous inconsistent statements. This would have raised doubts in the jury members' minds about his credibility.

'In our submission,' concluded Mr Martin, 'they have no right to it. There is every chance that Mr Perry has worked out where the high levels of arsenic were, and is prepared to fabricate a session of working in order to coincide with these particular high levels – he is making every effort to explain the matter from an environmental point of view. When the high levels of arsenic and lead corresponded, what is the relationship between them, going up and down, that sort of thing, was not available to Mr Perry at the time he was interviewed by police. It is important that the Crown be entitled to withhold this material in order to test the veracity of what Mr Perry says.'

Justice Cox acknowledged that as the alleged victim, Mr Perry was able to give material evidence. However, he was faced with the issue that the Crown did not accept him a truthful witness and therefore the Crown was justified in the stand it had taken. But any smile of Mr Martin was allowed to rest only momentarily on his lips.

'However, there are exceptions to most general rules,' Justice Cox was saying. 'In my opinion the present case is one of them. The real danger, as it seems to me, is that there is important evidence in those police statements which Mr Perry may simply have forgotten now and which might, therefore, never come to light if he cannot refresh his memory by seeing the statements for himself. Taking into account the state of Mr Perry's health, the length of the interviews and the lapse of time since the police questioned him, I consider that the accused has shown that this case is exceptional, and that the two interview records should be made available to Mr Perry now.'

Peter Waye had just kicked a goal. He maintained his momentum and launched into his most important argument, that all of the evidence about Albert Haag, Frank Montgomerie and Jim Duncan should be given in a *voir dire* hearing in the absence of the jury so that the judge could make a ruling on its admissibility before allowing the jury to hear it. He submitted that all of the similar fact evidence was inadmissible and required an application by the Crown to have it admitted. He also argued that the Crown should have to make out a case independently of the similar fact evidence, before being allowed to introduce it. He cited precedent cases. His submissions went on all morning.

Mr Martin remained seated and silent. Perhaps he leaned back in his chair, arms folded across his chest as he listened, unfolding them to make occasional notes. Justice Cox was very wary of the Defence strategy given that the depositions from the Committal Hearing made it clear what the evidence was going to be. Both counsel and the associate were probably relieved when Justice

Cox finally adjourned for lunch which the stenographer noted at 1.20 p.m. Steven Bardy, the judge's Associate, noted the more precise time of 1.22 p.m., probably counting every minute on account of a rumbling stomach. An hour later, Mr Waye was ready with a new application. His junior counsel, David Peek, was unavailable for a while.

'Until Mr Peek arrives, may the defendant sit behind me?' he asked. 'There is a mass of evidence that she is more aware of than I. If I have to look up a piece of evidence then she can do it, she knows better than I where it is.'

The accused was normally required to sit in the dock. Was this a genuine need for assistance? Or a tactical manoeuvre to keep the pressure on the Prosecution?

'I would be loath to depart from the usual rule,' said the umpire.

'This is only during the argument,' persisted Mr Waye. 'As soon as Mr Peek arrives then she can go back.'

'I don't think so. I don't think that some people should be treated differently to others. I think I would rather put up with the delay caused by you looking something up,' said Justice Cox.

Mr Waye would not take no for an answer and submitted that in a recent case an accused was allowed to sit behind him.

'I don't think so.'

The transcript hides the pause that probably ensued, the muteness of a barrister sitting down after losing a point. The silence was broken by Mr Martin who took his place at the lectern. The Defence might have kicked a goal, but the game was far from over.

CHAPTER TWENTY-ONE

1981

Supreme Court of South Australia

The lawyers argued for hours in the absence of the jury. Mr Martin submitted that the similarities between the previous deaths and Ken Perry's near death were so great that they were admissible because collectively they were relevant to proving Emily's guilt, even though they had occurred so far apart. There had been three previous deaths, all by poisoning and all known to the accused. Emily not only had the opportunity to administer poison in all the cases, but she was also knowledgeable about poisons and she was the only common person in all cases. What's more, there was the common thread of the insurance policies. Mr Martin held firmly to his argument that the similar fact evidence was relevant and admissible if it showed that the accused was guilty of the crime charged. The judge had a discretion to exclude it if the probative value was outweighed by the prejudicial value. The words 'probative' and 'prejudice' were to become familiar to everyone in the court across the next few weeks. The Crown emphasised the strong probative value of the evidence that the Defence sought to exclude.

The Crown case was that the accused insured Perry knowing that he would be debilitated. There were also policies for death by illness or accident including one for a fixed term expiring on 15 November 1978. The Crown linked this policy to the fact that Mr Perry was admitted to hospital critically ill in October 1978, shortly before the policy expired. The other critical evidence was to be from Dr Colin Manock who would say that Jim Duncan had displayed symptoms of chronic poisoning over a period of time, as did Albert Haag, in the same way as Ken Perry's pattern of arsenic ingestion.

'It would be an affront to common sense to exclude this evidence,' concluded Mr Martin.'

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'You do not pull up a weak case by its bootstrings by using prejudicial evidence,' Mr Waye declared, arguing that the Crown should make out a case independently of the similar fact evidence before it could be introduced. He submitted that the death of each of the three other men could be explained by a means other than murder. Jim Duncan, he suggested, was in a barbiturate cloud and overdosed by accident. The fact that Emily had a life insurance policy on him was not sinister. It was the same with Ken Perry, a commonplace thing. With her brother Frank Montgomerie, there was one sudden ingestion causing death, and the evidence pointed to the likelihood of suicide, especially as he had tried to poison himself eight to ten years earlier. And there was evidence of extremely heavy drinking at the relevant time of Frank Montgomerie's death. His death proved nothing in the charge against Mrs Perry. As for Albert Haag, Emily was not the only person in the Haag household to have motive

and opportunity to kill him. Indeed, her son [redacted] confessed to the murder when questioned by police. Mr Waye's point was that there was no underlying unity between the past deaths and there was an explanation for any coincidence.

The Prosecution asserted that all the precedent cases pointed to the notion that the earlier deaths were relevant and the jury should hear about them. The Defence argued that all the precedent cases pointed to the notion that the earlier deaths were irrelevant and quite different, each could be explained by other causes and therefore the jury should not hear about them. Everyone in the courtroom must have been relieved when the judge said they would adjourn.

If the judge allowed the similar fact evidence, the odds would be stacked against Emily. If he did not, the Crown's case was considerably weakened. Justice Cox made a decision the next morning.

'I am satisfied that the evidence is relevant and admissible and that there is no good reason why I should exclude it, either as a matter of law or in the exercise of my discretion,' he ruled.

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There was another week of legal arguments in the absence of the jury about various other aspects of the evidence, but on the morning of Tuesday 14 April Mr Martin finally opened the case for the Crown.

'The burden rests on the Crown fairly and squarely to prove the guilt of the accused beyond reasonable doubt,' he said. 'The Crown must prove firstly that poison – in this case arsenic and lead – was ingested by Mr Perry into his system. Secondly, the Crown must prove that he received it into his system because the accused wilfully administered it to him. And the third matter the Crown must prove is that at the time the accused administered the poison she was trying to kill him. When you are considering the question of whether the accused administered the poison and if so with what intention, the Crown will lead evidence of the deaths of three other people over the last twenty years, people who were closely associated with the accused, all of whom died by poisoning.

That must have made the jury members sit up a little bit straighter, and focus on Mr Martin more intently.

'Going back twenty years to 1961,' Mr Martin continued, 'the accused was married to a Mr Haag, a police officer. Mr Haag died in March 1961 as a result of arsenic poisoning. And there was a collection of life insurance by the accused upon his death.'

He undoubtedly had their full attention now. Mr Martin told them about Emily's brother Frank Montgomerie who also died of arsenic poisoning and then about Jim Duncan, also known as Mr Jamieson, who lived with the accused in a de facto relationship and died of barbiturate poisoning in March 1970. The accused collected life insurance payouts after his death too. Like any good story teller, Mr Martin only gave them this tiny introduction, pointing out that he would 'come back to those matters in just a little more detail in due course.'

The court reporters knew that all of this was headline material. But Mr Waye asked Justice Cox to order that the similar fact evidence be suppressed from publication. Justice Cox declined to make the order but in a twist that would have frustrated all of the court reporters, he ordered a suppression of the very fact that Emily's lawyer had applied for a suppression order. The media were gagged from announcing that Emily had tried to stop the similar fact evidence from being reported.

'The accused is not on trial for the three deaths that I have mentioned,' continued Mr Martin to the jury. 'The evidence of the other three deaths is led in order to assist you in determining whether or not it was the accused who administered the poison to Mr Perry and if so, what her intention was.'

If the Crown could prove that she administered the poison, the obvious inference to be drawn was that it could only have been done with an intention to kill. They would be asked to examine the facts with regard to each of those three previous deaths and with regard to the circumstances surrounding the poisoning of Mr Perry. What sort of poison was used on each of those three previous deaths and now Mr Perry? What sort of opportunity did Emily have on each of those occasions? Was there any benefit to come to her from those deaths? Are there any similarities between them?

'Then it would be proper,' urged the Prosecutor, 'once you have gone through that exercise, to look at the total picture – all the evidence, not each little piece individually – and then if you conclude that there are reasonable explanations, it's just a series of unfortunate tragedies that have happened to this woman, they are all coincidences, then the evidence of the three previous deaths would be of no assistance to you whatsoever.'

'But if, on the other hand,' and here his voice may have lowered a little, perhaps he made deliberate eye contact with the jurors, one by one, 'if you concluded that there were some basic similarities, that the accused was the only person who had the opportunity of administering poison to all four of these people, and if you judge when you look at the total picture according to your common sense and knowledge of human experience that repetition of poisonings does not happen to one person in the ordinary experience of a lifetime, you would be entitled to infer that it was not an accident, and that the evidence points the fact that the accused administered the poison to Mr Perry.'

Mr Martin went on to explain the detail of the Crown case. The jury were to hear details of the ghastly symptoms of lead arsenate ingestion: pain, constipation, destruction of nerve cells and motor function, nausea, vomiting, diarrhoea, pins and needles, numbness. Mr Martin described the pattern of Ken going into hospital, recovering, going home, and again deteriorating. Then he outlined the insurance policies on the life of Mr Perry, and the fact that Mrs Perry would have been paid substantial amounts of money if he died. The jury would hear that there was an attempt to fabricate evidence at the shop premises; a bag of vacuumings presented by Emily and her husband to their GP Dr Hart out of the blue might have been 'prepared' and a cup found under the kitchen sink contained arsenic and lead mixed with sugar.

Mr Martin told the jury that they would be able to consider what the accused told the police after the death of her previous husband Albert Haag and that she had denied the idea of suicide.

There were marriage difficulties and debts and life insurance policies, and the forging of her husband's signature. He turned to the death of her brother Frank Montgomerie who died of arsenic poisoning thirteen months after Albert Haag. Then he described the circumstances surrounding the third death, of the de facto Jim Duncan, who died of barbiturate poisoning after a gradual deterioration of his health. In this case also, Emily benefited from life insurance policies.

Mr Martin repeated the warning that the jury had to use all of the material in conjunction with the rest of the evidence in deciding whether or not the Crown had proved that it was the accused who administered poison to Mr Perry and if she did whether she did so with an intent to kill him. And then the procession of witnesses began. The same radiologists, neurologists, general practitioners, surgeons, registrars and interns who had given evidence at the Committal Hearing in the Magistrates' Court now gave evidence one by one, about Ken Perry's symptoms, his treatment, and their involvement in the chain of events. Detective Senior Constable David Florance told the court that Mr Perry had not been at all co-operative with police. Their investigation had been confounded by Mr Perry being abusive and 'anti-police in general' towards himself and Sergeant Cook.

CHAPTER TWENTY-TWO

1981

Supreme Court of South Australia

Kenneth Taylor told the court that he had restored hundreds of player pianos over a career spanning thirty-five years. Player pianos look like ordinary pianos, he explained, but with a mechanism in the centre front where the rolls can be operated, either by foot or by an electric motor. The motorised instruments were developed in the 1920s; the foot-operated models originated from the early 1900s or perhaps a bit earlier. He explained that 'Pianola' was a brand name used by the Aeolian company, but many people used the term 'Pianola' in the same way as they say they are going to Hoover their floors when they are going to vacuum. He explained how the instruments worked, with the pedals acting like bellows for each of the notes and a pneumatic operated by a valve, in turn activated by opening a hole on the tracker bar. Those holes open when the punchings in the paper roll coincide with them. Once the valve is opened, the pressure drains the air from the pneumatic which snaps shut and that plays the note on the piano. Pumping the foot pedal creates pressure that makes it all work.

He explained that a player piano has a wooden frame with wooden columns and a sound board at the back. Any restoration job would require removal of the front, the top, the keyboard and the action, including the hammers which hit the notes. The sides, called 'cheeks', don't usually have to be removed. Once dismantled for restoration, all that remains are the case ends, the floor which the pedals are attached to, the key bed, the iron frame, the stringing and the sound board. Mr Martin then leapt to the point.

'Assuming you have done that and the instrument is dusty or dirty, are there any areas that are inaccessible to say, a vacuum cleaner?' he asked.

'Yes, particularly in places like behind the stringing where the suction of a vacuum cleaner just isn't anywhere near powerful enough to be able to remove dust which has adhered to the bridges,' said Mr Taylor.

'How do you go about removing that dust?'

'Having first removed as much loose dust as you can with the vacuum cleaner, then it is a matter of using an air compressor to blow. That's the only way you can do it.'

This is what he had been doing for thirty-five years, with filthy, dusty pianos, never wearing any sort of mask for respiratory protection. Yes, over the years he had found powders under the keys, in the action, in the key bed, on the notes, all over the place. He would suck as much out as he could with a vacuum cleaner and then blow out what was left with a blower. This always made a lot of dust that would fly everywhere. He worked in a brick building with four rooms, each with windows but no special ventilation. Oh yes, he had worked in worse conditions in the past.

‘I once worked for a big firm and the workshop there simply was a big tin shed with an asphalt floor.’

‘With any ventilation at all?’

‘Only when the wind blew.’

Mr Taylor was asked about the tubing which was made of lead up to the tracker bar which held the roll. At that point it was always rubber because the joint had to be flexible around the little hole that represents middle C in the paper but became C sharp when the tracker bar moved.

‘Have you noticed,’ asked Mr Martin, ‘on occasions when dealing with the lead tubing, any corrosion and dust apparently arising from corrosion of the lead?’

‘Yes, many times.’

‘And does any of that dust fly around if you cut them out, or pull them out of the tubing?’

‘Yes. It spills everywhere.’

‘How do you go about cleaning up that sort of dust?’

‘Just vacuum it up.’

‘How would you go about checking that the tubes are clear and operating properly?’

‘Well your first test would be to block off the entire bar and pump the mechanism. If there’s any leaks in the tubing it will show up and a note will play for that leaky tube. If you want to find exactly where the leak is, you have to test that single tube which I generally do by blowing in it with my mouth.’

The jury listened to how he would unhook one end and attach a piece of plastic tubing to the bar end where the rubber tubing had been and then blow in it. He would repair all the bits and pieces and put them back together again. Sometimes he had to repair the casings as well. Finally, the whole instrument needed a polish. For the last three years or so he had done more of that sort of work himself instead of contracting it out, because good polishers were hard to find. Most instruments were coated in lacquer so to work on them he had to dismantle everything, then apply paint stripper to soften the varnish and then scrape it off with a paint scraper, scrub it with steel wool and methylated spirits to neutralise the paint remover and then get off any small traces that were left. He used to wear gloves but he stopped wearing them a long time ago. Then he had to do any case repair, using a wood filler and allowing it to dry, finishing with a brush to apply a shellac liquid. When he had a firm foundation he would sand it down and hand finish it with a rubber.

‘Now, you told the ladies and gentlemen earlier that to your knowledge you have never suffered any ill health as a result of this work. For example, have you ever suffered from skin rashes?’ asked Mr Martin.

‘No.’

‘Bouts of dizziness?’

‘Not that I can think of.’

‘Bouts of diarrhoea?’

‘No, only what might be associated with ordinary disease, twenty-four-hour wog or something

like that.'

'Vomiting?'

'No, no vomiting.'

Mr Martin asked him about the urine samples he provided for police on 3 September 1979. Tests for arsenic were negative. He had never suffered from arsenic or lead poisoning.

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Seven more piano repairers gave evidence, with almost two centuries of collective experience between them. The Prosecution elicited evidence from them all about cleaning dirty instruments by pulling all the panels out, brushing and vacuuming and then using a compressor to get rid of the dust that was hard to reach. They never wore any respiratory protection and rarely wore gloves. One tuner wore gloves for re-pinning and stringing pianos. He had rather sweaty palms, he explained, and they tended to make rust start on new piano wire. As each piano restorer was sworn in, the jury collectively prepared themselves for another round of evidence about corroded lead tubing in old Pianolas, white powder, lots of dust and the occasional mouse. No gloves, no respiratory protection and no illness, a visit from a police officer and a request to fill a urine bottle over a twenty four hour period.

The Prosecution used each of them to rebut Ken Perry's theory. They all spoke of lead tubing that corroded into a whitish powder that was difficult to remove. The police had taken samples of dirt and dust from all of their workshops and from their vacuum cleaners and they all provided urine samples. The piano tuners worked on exactly the same type of player piano as Ken Perry, in the same dirty dusty conditions, with no respiratory protection and never suffered any ill health. It was looking increasingly unlikely that Ken Perry's lead arsenate poisoning was from his hobby.

But in cross-examination, David Peek, Mr Waye's junior, attempted to unsettle this seemingly incontrovertible evidence. While Peter Waye had a flair for facts and dealing with people, David Peek had patience and attention to detail. Mr Peek drew out stories of mice, moths and silverfish in the backs of these old instruments. Vermin ate the felt, creating a mess if left in there.

One piano repairer spoke of white powder that he vacuumed out of instruments from time to time. He thought it was alum but he agreed it may have been something else – a tiny hint of doubt. Another readily agreed that if an instrument had been left for many, many years it would be prudent to take 'some sort of precaution'. The unspoken innuendo hung in the air like a whiff of weed killer.

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'You take it outside because a lot of dust flies around when you do the actual blowing?' suggested Mr Peek to Melville Nieass, a piano restorer with forty-three years' experience.

'That is so.'

‘That of course would cause quite a bit of mess if you did it inside.’

‘Yes.’

‘Also I suppose you want to avoid as much as possible, breathing it in.’

‘That is so.’

A neat point scored for the defence. A good cross-examiner knows that if you take it one question too far, you can undo what you have achieved. But like the keen fisherman he was, Mr Peek threw his line out again.

‘In relation to the lead tubing I think that basically your policy is not to worry about trying to repair the corroded lead tubing, but pull it out and replace the whole thing.’

‘That is correct.’

‘On a commercial basis it is just not worth the time,’ continued Mr Peek, reeling it in.

‘Yes.’

And feeling the bite, Mr Peek jerked the line quickly.

‘If you were doing it for a hobby it might be a different thing, you might be prepared to do that sort of thing.’

But he had pulled too hard. The fish got away.

‘No I shouldn’t think so,’ said Mr Nieass.

Peek cast out again very quickly.

‘It all depends on how much time you are prepared to devote to a task?’

‘Usually. May I explain?’

Peek had a nibble. He let the line drift for a moment. Mr Nieass continued.

‘The lead tubing goes into a wood base and it is usually just at the wood the corrosion starts, and there you have nothing to put the tubing back on to. You drill it out to the size of the tube and push it back in and put a bit of glue on it.’

‘You would observe different degrees of corrosion from instrument to instrument?’

‘Yes.’

‘As far as you are concerned on a commercial basis the quickest means is to replace the lot.’

‘Yes.’

And Peek bagged his catch. He had managed to show that this witness was different to Ken Perry who had plenty of time to devote to his hobby and therefore would have spent longer tinkering with lead pipes than a commercial operator. Combined with the fact that Ken always worked indoors and was therefore likely to breathe in a lot of dust, the score between Prosecution and Defence was now about even.

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Eighty-five-year-old Raymond Sanders cheerfully recounted that he always advised people to use camphor in pianos to deter moths which do great damage that is very often unseen, until you open

up a piano and take the keys out. He advocated deterring insects before they got into the piano rather than using insecticides inside the instruments. As for deterring mice, which got in through the pedals, his advice was simple.

'Keep a cat.'

While the jury members might have had a quiet smile to themselves about the logic of keeping a cat, they were now well aware that mice could get inside Pianolas, and so to set poison to allay any damage was quite understandable – especially in the absence of a cat.

Ken attributed his illness to the orchestrelle that he bought from Cora Redden, who had not yet given evidence. Another expert agreed with Mr Peek that someone restoring an orchestrelle as a labour of love might not progress in the logical fashion of a professional. He might not thoroughly clean the base of the organ first. Sometimes it was hard to get new modern tubing to fit properly and you had to get your head right down into the organ, and if there were any dust or loose material down there, there was quite some chance you would be breathing it in. He also agreed that mice and rats could get in through any holes in the fly wire screen around the pedal section of an orchestrelle.

'It is all very well to say, for example, the best idea is to get a cat to stop them getting in,' said Mr Peek, 'but once they are in, you have to do something to kill them, otherwise they are going to do horrendous damage.'

'That is right, yes.'

Another fish on the hook and in the bag for Mr Peek. All he had to do now was show that Mr Perry was a music lover who loved his orchestrelle so much that he mucked about with it for hours on end and threw rat poison around to stop rodents causing damage. And from that, Mr Perry might have breathed in toxic amounts of poison. It mattered little that seven other professionals had not fallen ill from similar restoration work. Mr Peek had successfully suggested that an amateur might go about things less professionally, and expose himself to greater danger.

CHAPTER TWENTY-THREE

1981

Supreme Court of South Australia

The Crown case was built upon the results of Ken's blood and urine tests that showed high levels of arsenic and lead. But Emily's lawyers did not accept the results at face value and insisted that the Crown prove their accuracy. The Crown was obliged to prove that the results were not only calculated correctly but also that they actually belonged to Ken Perry. What if they had tested someone else's blood by mistake? What if one of the lab technicians had made a mistake?

Dr Robert Siew was responsible for the day to day running of the IMVS biochemistry laboratory at the Modbury Hospital. He described how the nursing sisters who were employed to take blood samples (known as 'blood sisters') went to the ward each morning to collect the doctors' written request forms. The blood sister found the patient, took the blood, labelled the specimen and took it and the form to a trolley, before moving to the next patient. After the rounds, the nursing sisters took the specimens to the lab. Details of the specimens were entered into a book.

A similar procedure occurred at Outpatients. Specimens to be transported to the IMVS and other institutions were also entered into the book and were set aside for a courier to collect them. Those to be analysed at Modbury were taken to the respective sections of the lab at Modbury and analysed there. A sticker was placed on each request form, to write the test results on. Then each sample was taken with the request form to the haematology lab where it was given a specimen number, then spun off. The resulting serum – the clear fraction on top of the cell - was analysed by a scientific officer who wrote the results on the request form as well as in the work-book, then sent a report to the 'computer girl' for data processing. The computer generated a printed copy which was then checked against the results written in the book, by a staff member but not necessarily by the person who did the test. No-one was assigned to a particular job; the checking work was shared by all the staff. After it had been checked, a computer print-out was given to the receptionist who dispatched it to the appropriate ward in the hospital. If it was a private patient, the request and the results were sent to the doctor who requested the test.

Dr Siew also explained the similar procedures that were in place for collection of urine specimens. He spoke of labelling and dating and delivery of containers, of request forms matching names on containers and specimen details being entered into a book, and of specimens kept in a plastic bag in the fridge, awaiting the courier. His evidence was mind-numbing in its tedium but there was a reassurance in its banality that there was nothing to argue about, nothing objectionable. Prosecutor Mr Martin was setting up a scene that had no secrets. The test results were obtained through a rigorous process that was carried out in a reliable process by experienced operators.

But under cross-examination Dr Siew admitted that sometimes mistakes were made.

Sometimes a decimal point was misplaced. This opened another door of doubt and the Defence team got ready to jam it wide open. Mr Waye objected to the results from biochemistry and haematology tests between 11 November 1978 and 14 September 1979, the critical dates that related to the charges. Defence counsel insisted on proof that the results were correct and definitely from Mr Perry and would not allow any of the records to be admitted as evidence without calling the author of each individual worksheet.

Dr Siew was grilled relentlessly about the practices and procedures of his office and then about the size of the containers used for urine specimens. Mr Peek found two errors in transposing the numbers from the record book to the worksheet and then criticised Dr Siew for not knowing what the letters RBS stood for in the name of the detergent that was used to wash the re-usable containers.

'You are the man who is in charge of purity of samples?' pressed Mr Peek.

'I have twenty-seven people under me and I cannot be looking at these fiddly sort of things,' Dr Siew retorted, deep frustration emerging from the lines in the transcript. I imagine him glaring at his cross-examiner, but then quickly composing himself.

'If you want me to find out I will go back and get it and supply you with the name.'

'The fact of the matter is you cannot tell the jury the constituents of the detergents that are supplied,' observed Mr Peek dryly.

Dr Siew would not have been expected to know the constituent ingredients of detergents used by his staff to wash bottles. Nor did it really matter how big the bottles were. But this was a case about details. The Defence's best chance was to show that the blood test results were unreliable and the best way to sow the seeds of doubt about the unreliability of all of this medical evidence was to make the man in charge look unreliable. If the leader was running a department that allowed errors to occur, then the details that his department was supplying were possibly unreliable. If Dr Siew could make a mistake about the size of the bottles or the contents of the detergent, perhaps he and his staff made mistakes about other details as well.

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Emily's Defence team had the right to make the Prosecution prove every point, adding weeks of dreary evidence to the trial. Page after page of transcript reveal a series of nurses identifying their handwriting in hospital case notes, confirming urine tests, glucose tolerance tests, notes about Ken's diet, calcium edetate, request forms, lead checks, arsenic assays, bowel movements. Day leave and weekend leave. The minutiae of a nurse's day, every day, summarised and dehumanised, reduced to a monotone of quantities and numerals and annotations, stripped of care and compassion. The jury heard nothing of their long shifts and late nights, of tiny gestures to make Ken Perry's lingering illness a little more bearable. Nothing about how they might have listened to his fears or calmed him when he was anxious. No mention of the care they took when injecting him with Metoclopromide to

ease the agonising stomach cramps. One after another they read out their handwritten notes, for hours that led into days.

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After the nurses, IMVS employees, secretaries, courier drivers and scientists entered the witness box and answered questions about their role in the chain of evidence. Each witness confirmed a specific link in the chain, about the date of a test, how it was taken, the books that the details were written in, which trolley it was left on, whether it was put in a fridge, how it got delivered to another building, who picked it up, how it was cross-referenced back to a request form, how it was recorded in a reception book, how the results were delivered. Nervous lab technicians gave evidence about blood lead results and how they calculated them. Scientific vocabulary like formulae, analysis, atomic weight, colorimetric method, standard curve, reference checks, deviation, conversion factor, milligrams and micromoles reverberated around the courtroom. There were questions about when numbers were written, who wrote them. They read out results, dates, and numbers of micromoles, with tedious similarity. Mr Peek persisted with his attacks on the errors, reminding the jury that anyone could make a mistake, so the figures were unreliable.

Mr Peek's cross-examination established that request forms were not attached with rubber bands to the blood sample containers. Sometimes a request form bore a date prior to when the patient actually brought in a urine specimen and the receptionists had to rely on the word of the patient for the actual collection date. Receptionists explained crossings out and missing request forms and incorrect or altered dates. Sometimes a patient's age was incorrectly recorded. Sometimes there was an incorrect recording of whether Mr Perry was in the ward as distinct from outpatients. The Defence tactic was to demonstrate that all this paperwork might be illusory, that there was doubt about the veracity of the records. There was a possibility that the test results in the name of Kenneth Perry were not conclusive for the dates that the Prosecution was trying to prove.

'For all you know, anyone, anywhere or any time could have put that stamp on there to reconcile this document for some purpose or other,' challenged Mr Peek in relation to one request form.

'I don't know if it happened or not,' said the receptionist, whose integrity and efficiency were under the spotlight. 'It is a long time ago. I have been stamping these forms six years. If I had known they were going to go through court, I would have been a lot more careful.'

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Finally the jury heard from Mr Lokan, senior scientific officer from the Chemistry Division of the Office of the Government Analyst. Mr Martin took him through the results from all of the vacuuming samples, the urine samples from the piano tuners and the scrapings from their instruments and the

contents of their vacuum cleaners. He was taken through forms, certificates, samples, signatures, dates, times, handwriting, forms, stapled together, not stapled together, referring doctors, on it went. When it was time for Mr Peek to cross-examine, he launched straight into attacking the maths, challenging Lokan about the calculation of the ratio of arsenic to lead in the sample Lokan had analysed from the plastic cup found in the kitchen at the shop. But Lokan held his ground until, after several hours, he was finally released, back to the safety and sanity of his laboratory.

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Witnesses came and went from the witness box like fair-goers on a ferris wheel, climbing on board for a ride that was never predictable. There was evidence about Ken's sick leave and receipt of sickness benefits and several insurance brokers spoke of life insurance policies on Ken's life.

The state manager for Occidental Life Insurance Company Limited, testified that he had handled a number of insurance matters for Mr and Mrs Perry.

'I believe that Mrs Perry could be described as a business woman who had perhaps a little better than average knowledge of insurance matters,' he said.

CHAPTER TWENTY-FOUR

1981

Supreme Court of South Australia

Mrs Dianne Swanton was sworn in as a 'housewife' despite having been a business owner and interior design consultant. She and her husband Colin once ran an interior decorating business at 39 Kensington Road, Norwood. They used the front showroom for fabrics, furniture and floor coverings, the second room for wallpaper and the kitchen out the back for cooking and food preparation. It was clear that these were neat, tidy tenants who had a huge clean up when they first moved in, and then left the place spotless when they moved out January 1979, just before Emily and Ken moved in. They had about twenty blue disposable plastic cups at the shop, all identical, but they did not leave any in the premises when they moved out. They kept them on the sink and they were all the same colour. Neither of them had seen a green cup like MFI P8 on the premises.

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A tenant from the upstairs flat told the court that she moved out about two weeks after the Perrys moved into the shop downstairs. She used to keep a few laundry products in one of the downstairs kitchen cupboards but no food or crockery. She never used disposable plastic cups and did not remember ever seeing any on the premises. She had never had any trouble with rats and mice. Shortly after moving in she sprayed all the weeds in the back yard using a weed killer from Hodges garden supplies and she used Lane's Dipel spray to keep the grubs off her orchids and Defender for the snails. Any poison in the shop had not come from her.

Another tenant who rented the upstairs flat from March 1979 until January 1980 testified that he never used the downstairs kitchen but Mr and Mrs Perry drank coffee there occasionally. He never had rats or mice; he kept plants in his flat which he fertilised with Schultz Fish Emulsion. He did not use any insecticides and never had any arsenic or any substance containing arsenic or lead. And he had never used plastic cups on the premises.

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Mrs Redden was 77 years old and a little hard of hearing. She had lived with her husband Les on their apple orchard at Prairie Road, Cudlee Creek for 55 years, and she had never been to Adelaide. She had bought a player organ over thirty years ago and it had stood against the wall in the dining room, unmoved, except for shifting it a couple of inches occasionally to clean behind it. She told the court that she had never put any powders inside it. When the organ was moved out of the house, there was a big hole in the floor underneath where it had been. Rats had eaten a ragged circle in the

wood, leaving a mess. They covered it with a large armchair.

Rats and mice came from nearby Prairie Creek to eat the apples, including those on a tree near the verandah. She put Ratsak in the fireplace, but never inside or around the organ. She agreed that rats might have got inside the organ before Mr Perry bought it, but that he was still happy to buy it and fix it up. There was no rat poison or any form of toxic substance actually inside it. She had never put any powders inside the organ. A few more questions and answers established that a packet of Kix powder for the ants was kept just inside the front door, on the shelf. Mrs Redden only ever put Kix on the front door step, to keep ants out. It was never spread around the house.

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Les Redden was eighty-two and had lived at Prairie Road near Cudlee Creek all his life. He told the court about white ant treatment on the house over forty years ago. He didn't know which chemical was used in the white ant treatment but he had been told it had a twenty-year guarantee. He kept a packet of Ratsak in the house on and off, with a hole cut in the top so the rats 'could go in and help themselves'. He kept no other poisons in the house.

'Do you use arsenate of lead in the orchard these days?' asked Mr Martin.

'I used to use it many years ago,' replied Les.

'About how many years since you have used it?'

'I don't know exactly. Around about thirty years I should think, since we used it.'

'What was that for? Codlin moth?' asked Brian Martin who was in familiar territory here. His family were fruit growers from the same area.

'Yes.'

'What do you use now?'

'Gesaprim at the present time. And malathion.'

'Did you ever store arsenate of lead in your house?'

'No, never.'

'Where do you keep the sprays you use throughout the orchard?'

'The majority of is kept over where my son lives. There's some down on the old farm where I used to live but none in the house.'

'Do you have a cool store?'

'Yes, I've got two. One is about half a mile away from the house, the other one only half that distance.'

'Do you ever keep any sprays in and around the cool stores?'

'Not in the cool store, not ever, not with the fruit.'

As for the organ, Les said that his wife had bought it many years after the white ant treatment. It had to be taken to pieces to get it through the doorway because it was so tall. Once it was up against the dining room wall, it was never moved until it was taken away. He never put any powders

or poisons inside. In fact he never touched it. Les knew that his wife had recently sold it but he had nothing to do with the sale and hadn't seen the man who bought it.

Mr Waye quizzed Les Redden about the white ants that came back after the twenty year treatment guarantee ran out. He had used a chemical called Dieldren. It was liquid, not powder.

'You buy it in drums?' checked Mr Waye.

'In drums,' nodded Les.

'And spray it?'

'Just spray a bit where the ants are.'

'With a hand pump?'

'Yes.'

Les Redden had nothing to hide and no axe to grind. His no nonsense approach cut through the court jargon and legal complexities. There was no reason to disbelieve anything he said. If Ken Perry had got arsenic poisoning from one of his instruments, it had nothing to do with the Reddens.

CHAPTER TWENTY-FIVE

1981

Supreme Court of South Australia

Dr Czeslaw Grygorewicz was a scientific officer with the South Australian Health Commission. He gave evidence about visiting Mr Perry in hospital and checking the lead levels in his home and workshop with his colleague Dr Le Leu.

'Having looked at Mr Perry with his big Jimmy Edwards moustache, I immediately concluded that a respiratory protection which we would recommend in industry normally to protect people would have been inadequate,' he testified.

'Why was that?' asked Mr Martin.

'Because of the possibility of leakage and therefore the respirator wouldn't function efficiently and wouldn't achieve the desired protection.'

'That moustache could easily get fine particles of lead or any other heavy metal when he was working in that particular environment?' cross-examined Mr Waye.

'Possibly, yes,' agreed Dr Grygorcewicz.

'If he sucked his moustache,' continued Mr Waye, 'he would be ingesting it by the mouth.'

'Yes.'

Dr Grygorewicz readily agreed that if lead corrodes into powder form, it can be inhaled by the nose or the mouth if disturbed. Toxic solids are most dangerous when dispersed in the air as dust or smoke because toxic dust remains suspended in the air if there is activity. Lead is much more dangerous to the human body when inhaled than if the same amount is ingested because the rate of absorption through the lungs is much higher than through the gut.

'It is not only lead,' segued Mr Waye, 'but any heavy metal in dust or powder form can be inhaled once it gets in to the air if it is disturbed?'

'Yes.'

'And that includes lead arsenate?'

'That would include lead arsenate.'

Dr Grygorewicz confirmed that once a heavy metal is in the air, you can inhale it. If particles are inhaled they might lodge in the throat and be cleared and digested by saliva but the very finest particles will lodge in the farthest part of the lungs. Ken's lead toxicity could have come from airborne dust. The jury had to balance this with the evidence from the Pianola workers who had never suffered any ill health from their work.

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Dr Leon Alfred Le Leu recalled his visit to the Perry house with Dr Grygorewicz to conduct a lead investigation. His details about the visit, including the copious amounts of dust covering the shed floor and very little in the way of ventilation, matched the evidence given by Dr Grygorcewicz. It was certainly possible that Mr Perry had high lead levels because of the inhalation of dust in his workshop.

But why were his arsenic levels so high? Could the arsenic have come from a pesticide? Les and Cora Redden had used Ratsak to get rid of rats and mice although neither of them had put Ratsak inside the organ itself. But even if they had, Dr Le Leu told the court that that the active constituent of Ratsak is warfarin, an anti-coagulant that causes the rat to lose its ability to clot its blood properly, causing death by bleeding. Arsenic has never been used in Ratsak.

'There has been no rodenticide registered in South Australia which contains arsenic,' asserted Dr Le Leu.

Mr Martin may have paused here slightly to allow the jury members to absorb this vital and damning information. No matter how much Ratsak might have been thrown around the Redden house, it had not given Ken Perry arsenic poisoning.

'Do you know of a spray used for white ant called Dieldrin?'

'Yes.'

'And that is what?'

'That is a chlorinated hydrocarbon in the same family as DDT.'

'Are there any arsenic or lead in that substance?' Mr Martin asked confidently, knowing the answer before it was uttered.

'Nope, none at all.'

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Chief Inspector John Goulding's evidence was a chemistry lecture. Goulding was the analytical chemist who had examined samples of Emily's head hair and hairs from Ken's head and moustache. He explained that arsenic, when ingested, is transported around the body in the blood stream. Once a toxic substance is ingested into the body, the body removes the majority of it through the kidneys but there is some that grows into the hair follicle and into the roots of the hair. If a single hair is plucked within the growth phase, arsenic can be detected by neutron activation analysis along the length of the hair. Goulding's calculations from the analysis of Ken's head and moustache hairs showed a pattern of arsenic ingestion, suggesting an acute ingestion of arsenic in November 1978 and again in May 1979. The results from Emily's head hair plucked on 17 July 1979 showed no abnormal concentrations of arsenic at all.

Goulding came across as intelligent, professional and independent. He knew his job and knew how and why he did what he did. His evidence was incontrovertible. In November 1978 and May 1979, Ken had ingested large doses of arsenic.

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Constable Lynne Murley is described in the court transcript as a ‘woman police constable’. She worked in the technical services division. Her job was to sort through the debris at crime scenes, disclosing and untangling the secrets of the past from what at first glance appeared to be quotidian banality. Mr Martin took Constable Murley through the samples that she had taken from The Olde Music Shoppe, including Sample number 8 from the plastic drinking cup, and a series of samples from 16 Buckley Crescent, ranging from glucose powder to cleaners and laundry powders, then bicarbonate of soda and a selection of sugars and powders from the kitchen. Her evidence demonstrated that the police followed strict procedures. Everything was labelled, numbered, and kept in order. She was able to account for how she had obtained each sample, where it went and what happened to it. But the Defence wanted the jury to believe that this was a mere façade of efficiency and transparency. Why wasn’t the filter cartridge submitted to Mr Lokan for analysis with the other samples? How did she find out that the cup scrapings were positive for arsenic? What about the results of the tests on the filter cartridge?

‘Did anyone in your presence or indeed yourself ever tell Mr Kenneth Perry that the test on this filter cartridge had proved positive for arsenic?’ asked Mr Peek.

‘Not in my presence, no.’

‘Was Mrs Perry under suspicion as at the 10th of August 1979?’

‘As far as I am concerned I had an open mind. I went there to ascertain if there was any source for arsenic, not as to who might be at the end of it,’ said Constable Murley.

Mr Peek pressed her to admit that she had been at a meeting the day before with Detectives Cook and Florance from the major crime squad. Mr Peek was endeavouring to show that this witness was biased and had carried out her investigation actually looking for evidence to pin the blame on Emily Perry. Peek cross examined her for a further ninety minutes, querying her failure to take photographs, her failure to tell either Emily or her husband that she had taken the cup, her failure to tell Mr Perry that she had found traces of arsenic on the cup, her failure to warn Mr Perry that the cup may have presented a danger to his health, her failure to test for fingerprints.

Mr Peek made her describe the contents of the cup again and the state of the powder inside it. He asked her to recount where exactly in the cupboard she found it, to tell and re-tell how she received the report from Mr Lokan. She could not recall whether it was handed to her or whether it came through the mail. She could not recall if she had received the written report or just found out over the telephone about the positive arsenic result from the cup before she went back to the shop on 10 August. She could not remember how long it was between receiving the information and going to collect the cup. He cross examined her about every detail to do with finding the cup and criticised her for not informing Mr Perry when she got several positive readings from the workroom.

Constable Murley explained that Technical Services Division officers do not speak to or convey information to any civilians in connection with cases. Her job was to collect samples and

convey them for analysis, not to pay attention to whether the samples might implicate any particular person. She sampled the cup because it had residue in it. If she had seen any other cup with residue, she would have sampled that too. And she had not taken fingerprints because at that stage there had been no actual crime, and they weren't trying to find the identity of somebody that wasn't supposed to be there. She had handled the cup so her fingerprints would have been all over it anyway.

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In his evidence-in-chief, Senior Constable First Grade Ian Congdon gave a long list of the vacuuming samples that he took from the shop, from the Perry house and from the Redden house at Cudlee Creek. He described how he plucked hairs from the heads of both Mr and Mrs Perry for analysis.

Mr Waye started his cross-examination by attacking his qualifications.

'You said you had a forensic science technician's certificate. Now that is just a science technician's certificate without the word forensic isn't it?'

'Yes.'

'So it is not you have a forensic science technician's certificate as you told us.'

'It is a science technician's certificate with a forensic option.'

'You haven't got a forensic science technician's certificate as you suggest, have you? There is no such thing.'

'No, there is nothing termed forensic science technician's certificate, no such thing,' agreed Mr Congdon.

'In the future it would be better not to say so,' intoned Justice Cox.

'Yes, it has never been pointed out in this manner before,' said the Constable.

This was a small but important point won by Mr Waye. A jury might not question the evidence of a police officer who had simply vacuumed up some dust and saved the specimens in labelled bags. It would be difficult to cast any doubt on what he did at all. But if this witness made errors in description as fundamental as describing his expertise, what other embellishments or omissions might his evidence in chief have contained?

Congdon agreed that when he started his investigations, Mrs Perry was under suspicion. He did not tell her that the little bags of dust that he was collecting might end up being used against her in court. Mr Waye made him go through the numbers of all of his vacuumings again, and where they all came from. He was questioned about the colour of biro used, what time they wrote the numbers. He was asked why the plastic cup was not fingerprinted. Mr Waye criticised the fact that Congdon had never given Mrs Perry a sample of any of the vacuumings that he took, and didn't give her a list of what they took from the shop. He questioned Congdon's recollection of the model and colour of Mr Perry's vacuum cleaner. Where was the vacuum cleaner? Was it lying on the ground? Did he make notes? Which corner was it in? Could he be mistaken? The cartridge in the face mask – was

that lying loose? In the Magistrates' Court he had said it was lying loose, but then said he was unclear, he couldn't remember if it was in the mask or not; now he said it was in the face mask and he removed it. Now he was positive that he definitely replaced the cartridge in the mask. But he made no notes of this at all. Now, nine months later, he was certain.

'You have a memory which improves as time goes on, have you?' grilled Mr Waye.

He never gave samples to Mr Perry for his own use, to analyse if he wished. He never asked Mr Perry where he had been using his Electrolux vacuum cleaner. He never asked Mr Perry what he used the sandpaper for. He never made a note of which part of Mr Perry's head the hairs came from. Back to the cup, he didn't remember seeing it on 17 July. Mrs Murley took it on 17 July didn't she? Not 10 August? Was he in the kitchen? Did he open the cupboard? Yes, he had seen a plastic cup in the kitchen, in a cupboard under the sink. Did he vacuum inside any instruments at the shop? At Buckley Crescent on 17 July he recalled seeing an object covered with a green tarpaulin. It could have been an organ or a Pianola, but he had no idea. He didn't count the number of instruments but it was the largest collection of those types of instruments he had ever seen. He didn't enter the cartridge in the property book because exhibits were not entered in the property book. It wasn't his property, he didn't tell Mr Perry he had taken it, he never told him that he taken the cartridge from the mask at the shop. Why wasn't it analysed until 6 August 1980, after Mrs Perry had been arrested, only a few days before the committal proceedings which began on 11 August? On the grid the cartridge was number 25, then crossed out, then 25 re-inserted in his handwriting. Why did that happen? Then round in circles again about when he got the filter cartridge, when he gave it to Lokan, when it came back to his section and returned to Lokan again for an analysis which gave a positive result for arsenic. They had a camera, why didn't they take any photographs? And then there were no more questions.

CHAPTER TWENTY-SIX

1981

Supreme Court of South Australia

'Ladies and gentlemen, I want to say something to you before we go any further with the case.'

In the jury box, a collective swivelling of heads to the right would have followed Mr Martin's cue to resume his seat. They were finally about to hear the evidence about the deaths of Haag, Montgomerie and Duncan, and Justice Cox wanted to give them some guidance about it. Any vestiges of boredom from the medical and insurance evidence would have now been shaken off. After weeks of tedium, the journalists would have been practically snapping their pencils in half with the mounting tension that was silencing the courtroom. But Cox made them wait. They had to listen to a lecture first.

'As a general rule,' began the judge, 'the only evidence that the Crown may lead in proof of a charge that it brings against an accused person is evidence that is directly concerned with the allegations in the charge. There are exceptions to most general rules, and the Crown's allegations in this case raise one of them. Sometimes there may be such a striking similarity between two different events or sets of circumstances, with both of which an accused person is in some important way connected, that it will be proper to have regard to what happened on the first occasion when assessing that person's degree of involvement in the second. It will not be so of course, if both events are quite commonplace and could readily be explained by coincidence or in some other exculpatory way. There needs to be such a close similarity between the two events, or such a clear underlying unity between them, as to make coincidence a very unlikely explanation for what has happened. Bear in mind that it is not enough if it simply raises or deepens a suspicion of guilt. It must make any other conclusion than guilt – mere coincidence, for instance – an affront to one's common sense.'

What would the jury have made of this 'guidance'? Perhaps their blank faces prompted Justice Cox to give them an example, of a man charged with setting fire to his shop in order to defraud an insurance company. The police can prove that the shop was over-insured and the man had the opportunity to set fire to it. But that would only be enough to arouse suspicion. If on two previous occasions he had owned a house that had been over-insured and had caught fire, with the result on each occasion that he was paid out in insurance, a possible suspicion might become something more because three beneficial fires are unlikely to be accidental.

He gave another example, of a man and his wife who had agreed, for payment of money, to look after a baby. The baby's body was found buried in the back yard of their house and it was not possible to detect how the baby died. They were charged with the murder of the baby. If the Crown could prove that the man and his wife had been given other infants to look after on similar terms, and that those infants had afterwards disappeared, and that the bodies of those infants were also

found buried in the back yard, the evidence of the other deaths would be admitted. Justice Cox was referring to the case of John and Sarah Makin, the sensational 'Baby Farmers' case which unravelled in 1893 in New South Wales. Although it was decided almost a hundred years earlier, it was (and still is) a landmark case in relation to the use of similar fact evidence.

'In such a case,' explained Justice Cox, 'the jury would be entitled to think that the possibility of natural or accidental death in the particular case before them could, as a matter of common sense, be ruled out. The evidence of the other deaths would tend to prove the circumstances in which the particular child had died – that it had been murdered.'

The jurors may not have fully comprehended the subtleties of the 'proper way to take into account' the deaths of the three other men whose roles in the narrative were emerging, ghost-like, in the courtroom. The medical evidence was starting to look less complicated in comparison to these convoluted legal semantics.

'The case for the Crown, as I understand it,' said Justice Cox, 'is that the accused poisoned those three men, and that the facts and circumstances are so remarkably similar in their essential features that you may properly take them into account in determining whether Mr Perry's poisoning was intentional or accidental, and if it was intentional, whether the accused was the poisoner. The Crown says that you will be entitled to conclude that the accused deliberately poisoned Mr Perry with the intention of killing him. But any other use of the evidence would be quite wrong. For instance, it would be wrong to conclude from the evidence that the accused is a person *likely* to have committed the offence for which she is now being charged. You could find that pure coincidence could not be a reasonable explanation for the four incidents, and that a consideration of them together points inevitably to the guilt of the accused with respect to the charges laid against her in this Court. But that is the only way in which that evidence might properly be used.'

Justice Cox exhorted them to keep an open mind until they had heard all of the evidence from both the Crown and the Defence.

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Gustave Haag had waited twenty years for his day in court. The retired Sergeant in Charge of the Bendigo police station was in his seventies now, and I imagine the weight of being the eldest of the long-bereaved siblings was a heavy burden. He had been almost twenty years older than his brother Albert, whose photo he now identified, finally providing a face to this spectre from the past. The jury were not just dealing with 'similar fact evidence'. They were confronting the tragedy of a real family. Years can dilute the memory of a loved one, until the memory becomes a cloudy distillation of shapes and sounds with the absence of a voice and the vanishing of the way the person could make you feel. A photograph can jolt you back into the presence of that person. Seeing the photo of his brother again could not have been without emotion for Gustave, but he had to stay focussed.

Miss Vanstone, Mr Martin's junior, eased Mr Haag back into the past, asking him questions

about the 1950s, when he only saw his younger brother once or twice a year. He recounted his visit to Albert and Trudy's house on Sunday 22 January 1961 when Albert was lying on the bed in his pyjamas.

'I spoke to him and he didn't move,' remembered Gustave. 'I touched his forehead which was clammy and cold. He still didn't move. He was in a very deep sleep. He looked dreadful.'

Gustave told the jury how the next day he drove Albert, visibly upset and in apparent great pain, to the Police Hospital and then to the specialist in Collins Street. Albert asked the specialist if he had a brain tumour. Gustave recalled his brother's dreadful fixed stare, his face lined, his hair almost white, but a couple of days later he had brightened up and looked much better and calmer.

'I went out with him to his vegetable garden ad we sat there and we had a conversation for about an hour. Shortly after, my wife and I went home. That was the last time I saw him alive.'

There was probably a lot more that Gustave wanted to say but Miss Vanstone had few further questions. Mr Waye was on his feet, showing Gustave the photograph of Albert taken at the mortuary.

'You said his hair was practically white, almost white,' challenged Mr Waye.

'A dreadful thing about this particular photograph,' said Gustave, groping for words. 'I was informed by one of the attendants there that – that they had sewed his scalp on back to front after the post-mortem. So that could result in the darkness on the front. Instead of being to the rear, it is … on the front.' I can imagine his voice trailing away.

Mr Waye did not make any allowances for fraternal feelings.

'I suggest to you that in 1961 it was fashionable for men's hair to be cut short,' said Mr Waye.

'I don't know about that,' was the ambiguous reply. Perhaps he disagreed. Perhaps he was not interested in fashion.

'I suggest to you in 1961 it was police regulation for hair to be no longer than about an inch,' persisted Mr Waye.

'No, that was not so, not an inch.'

'Looking at a photograph of your late brother wearing a policeman's cap, it appears that his hair was short then at the sides doesn't it?'

'His hair was not short then,' said Gustave flatly.

'Not even at the sides?'

'Slightly.'

'I suggest that photograph shows as far as we can see the sides of his hair, it was cut short.

'No, not short. He has a luxuriant growth of hair.'

Gustave Haag must have wondered how this had turned into a discussion about the length of his brother's hair. He wanted to tell the jury that his brother had been in fine health, that he was a good looking man, and all of a sudden he had become frail and sick. The jury might have sensed his frustration at not being able to work out how his little brother had progressed within a matter of months from happy and healthy, to perilously ill, and then he was gone. He may have wanted to say

that he missed him, that he wished he could have watched him grow older, that he wished his brother could have seen his stepson and daughters grow up. Gustave himself probably wanted to rail against not knowing his nephew and nieces, that his family had been shattered by the loss of their brother. Only a few metres away from the woman whom he suspected as being the cause of his brother's death, and the collapse of his family, his short time in courtroom 3 must have felt frustratingly and helplessly fruitless. Juries are only allowed to hear desiccated versions of what were once raw personal experiences. Gustave would have recounted his story countless times before, to the Victorian police, to the Victorian coroner, to journalists, to the South Australian police, to the Crown Prosecutor, once, twice, thrice and beyond, each time feeling a little bit more removed, each time forced to dilute the intensity of the anguish he must have felt when he identified his brother's body on that awful night in March 1961. Now, far from home, under the glare of his former sister-in-law, and the relentless blistering offensive from Defence counsel, his words must have felt like cardboard in his mouth.

Mr Waye was taking him back to 22 January 1961, the day Gustave and his wife called in to see Albert and he was asleep in bed.

'You found him to be cold and clammy?'

'That's right, his forehead.'

'When you were asked about this in the Magistrates' Court you didn't mention touching him or that he felt cold and clammy.'

'No I didn't'

'Did that escape your memory then?'

'Obviously.'

'That is something you made up,' said Mr Waye.

'No, not at all.'

'That is something you didn't say at the Coroner's Inquisition or in the Magistrates' Court but you remember it twenty years after.'

Gustave Haag knew how the adversarial system worked, that it was important to maintain the same narrative, to recount the same facts, each time the evidence was given. He knew that a detail omitted or a fragment of memory added, could make him look like an unreliable witness. And yet too much repetition, too much sameness could make the evidence appear to be a rehearsed fiction. Being a witness is arduous and thankless. Gustave would have known that he must not lose his temper.

'There are many things I did not say in the Magistrates' Court,' Gustave replied. I imagine that his cold stare at Peter Waye would have sent a chill through the whole court room. Perhaps Mr Waye looked down at his notes. He probably cleared his throat, shuffled a little, tweaked his jabot. The jury members may have looked awkwardly at each other. Of course, I don't know this. The transcript does not record pauses, or coughs or yawns or tone of voice. But behind the blandness of the typed words, I can sense the yearning of Gustave Haag to say everything that he had kept pent

up for twenty years. However, his stoicism prevailed and he continued to provide short, unemotional answers, repeating the story of the visit to Mr Freeman, the ear, nose and throat specialist and the episode of the chat with his brother in the veggie garden.

'Do you recall that prior to your brother's death his wife lost a child?'

'Yes.'

Gustave understood that it was an aborted boy child. Waye put it to him that it was a miscarriage.

'I am only going on what my brother told me.'

He was positive that his brother had said it was an abortion. Albert showed Gustave where he had buried the remains of the child in the garden and he was very upset about it. In the Magistrates' Court, Gustave had said that he didn't know whether his brother had said miscarriage or abortion. He couldn't remember.

'I don't remember saying 'I can't remember.''

Waye persisted with this, quizzing him about signing his evidence as a correct record. He gave Gustave the page of transcript from the lower court to read. He read out the question that had been put to him at the Committal Hearing: "I think you said that you did not understand it was a miscarriage." Answer: "I didn't know whether it – well I don't know whether he said it was a miscarriage or an abortion. I can't remember."'

'But you use only the word abortion today, don't you?'

'Yes, and I used it there, in the lower court, and I know that he told me it was an abortion.'

Waye accused him of colouring his evidence to try to destroy his sister-in-law, which he denied. But if these men had done some medical homework they would have learned that when a woman has a miscarriage and her body does not dispel the foetus, the terminology used is a 'missed abortion'. If the foetus is spontaneously expelled, the medical term for that is an 'abortion', distinct from an elective abortion.

When Mr Waye had finished with him, Miss Vanstone asked Gustave a few more questions about the length of his brother's hair, showing him another photograph. And then it was over, an anguished narrative stifled by procedural formality.

CHAPTER TWENTY-SEVEN

1981

Supreme Court of South Australia

Pauses are not usually indicated in a trial transcript. It is impossible to tell if questions are fired back in rapid succession following answers or if there is a hesitation between each line. But when Albert Haag's sister Mary was asked to recall Christmas Day in 1960, when Al's usually good appetite failed him because of pain and indigestion, the stenographer inserted four dots within Mary's answer.

'I am sorry …. It brings it all back.'

Four dots. The silence must have been long enough for everyone in the court room to feel unsettled, to be reminded that this case was about more than blood test results and the order in which documents were stamped. It was about the shattering of a family and the irreparable trauma inflicted by the unexplained death of a brother, father, uncle, and son. And a husband.

'Don't let it upset you Mrs De Giusti,' said Justice Cox.

Don't let it upset you because the jury will be unduly influenced and prejudiced by the emotion. Don't let it upset you because it will impair my ability to be an impartial judge. Don't let it upset you because we really need the facts from you and no-one wants this to hurt more than it already does. Don't let it upset you because the court room relies on formality, poker faces and facts. It relies on carefully measured argument, temperate advocacy and a stiff upper lip.

'I was asking you about Christmas Day 1960,' continued Miss Vanstone. 'I asked you whether you recall your sister-in-law Trudy saying anything about Albert's state of health.'

Mary composed herself and described the scene. They were in the lounge room of her mother's big old house at about ten-thirty in the morning. Albert was standing in front of the fireplace with his hands behind his back. The children were there too, and Mary. Her mother was in the kitchen. Trudy was on the couch and said that Albert had an ulcer and he was getting indigestion. This was the most he had eaten for a week or so. There was a conversation about Albert's hair, his crew cut.

Mr Waye interrupted and an argument ensued between the lawyers about whether this conversation was in Emily's presence. The jury were asked to leave. If Emily had not heard the conversation that Mary was about to describe, it would be disallowed because it would be hearsay. Albert, deceased, was not able to verify it.

'Could you tell us exactly what happened from the time you came into the lounge room and would you also explain the respective positions of yourself, the accused and your brother Albert,' asked Miss Vanstone.

'When I walked up to the lounge room to see Albert and Trudy, as I walked in, I kissed them hello, and Alb was standing from about here to where the second man is,' she said, pointing to a

spot in the courtroom. ‘Trudy was on the couch and Alb was still standing, directly opposite in front of the fireplace. I was standing and I kissed him and I saw his hair and I was very surprised when I saw his beautiful hair cut off like that. I said, “Did you have it done for a bet?” And he just laughed and rubbed his hand across his head and said, “No it was falling out and Trudy said it was a good idea to have it cut in a crew cut to give it a chance to thicken up again.”’

How far was she standing from Trudy? Was Trudy behind her? Who was closer to Albert? Was she within reaching distance? Which way was she facing? Could she see them both? Mary drew a sketch of the room, showing the couch, T for Trudy, the fireplace, an A for Albert. She was not sure now whether the children were still in the room, but she was sure that there were others in the room. Did Albert give any other reaction to her comment about his hair?

‘He said, “At least it is easy to manage and it is not hot.”’

Was there any music playing in the room (no), was there any noise other than conversation (no), did she ask him in a normal voice (yes) and did he reply in a normal voice (yes). His normal voice was very deep and strong. Trudy was knitting, had her head down, she didn’t react. Justice Cox decided that because Trudy gave no response, there was no basis to conclude that she heard what was said. So, this evidence was disallowed.

Then Mr Waye asked for an order that Gustave Haag be excluded from the court while his siblings gave evidence. He was concerned that Gustave was going to tell them all what they each said, preparing them all for their turn. Mr Waye had seen Gustave speaking to one of the witnesses during the adjournment.

‘That is his sister,’ remarked Mr Martin.

‘All witnesses have been told by the detective and in fact by me in this particular case that they are not to discuss the evidence or the case,’ said Justice Cox.

‘Perhaps they have, I accept that,’ said Mr Waye, ‘but that does not obviate the danger of course.’

‘The danger is there with every witness on all sides in a case. I am not going to make a special case of this,’ said Justice Cox.

But Mr Waye persisted, arguing that Gustave Haag was an experienced policeman who knew the set-up. He shouldn’t be there to hear the witnesses give evidence and the cross examination. Justice Cox asked for Gustave Haag to be brought back into the courtroom and told him that it had been put to him that he spoke with one of his sisters a few minutes ago.

‘Did you speak about the case?’

‘No, Sir.’

‘Or about any evidence?’

‘No, Sir.’

‘You know of course, better than most, that you must not do that.’

‘Definitely.’

Justice Cox told him that he had been asked to make a special order that he not be in court

while members of his family gave evidence.

'I don't mind, Sir,' said Gustave. 'I do not want to jeopardise the trial. I will leave the court, Sir,' said Gustave.

'It is up to you.'

Gustave left the court. The jury came back. Mary De Giusti continued to answer questions about her deceased brother's hair. They all had good heads of hair in the family. His was very, very thick – a beautiful head of curly, wavy hair, very black. He usually wore it combed back with short back and sides, but on Christmas Day he had a crew cut, about half an inch short all over his head. He had been going just slightly grey at the temples, but on Christmas Day, it had grey right through it.

The Crown led this evidence about his hair as proof that Albert was being slowly poisoned, well before the fateful long weekend in March. Mary recalled the hot January day in early 1961 when she and her husband and their daughter visited Al and he was lying on the couch in the lounge room in his pyjamas, complaining of terrible pains in his head and chest. He was dizzy and nauseous and had a glazed look in his eyes. These too, were symptoms of arsenic poisoning. She told the court about Trudy bringing in a glass of vitamised fruits that tasted thick and bitter and then telling them that they should all leave. Then she recalled a subsequent visit in either late January or early February with her husband and another brother Peter who had to support Albert out to the car. They took Albert to the police hospital and he was admitted straight away. Mary never saw him again.

Peter Waye cross examined Mary about her late brother's grey hair and was about to show her the photo of Albert from the mortuary.

'I wonder whether it is really necessary,' interrupted Mr Martin.

'I do too,' agreed Justice Cox.

Mr Waye moved on from the subject of grey hair to the topic of Albert's other jobs as a cleaner at the Caulfield racecourse and a gatekeeper at Flemington on Saturday afternoons. He tried unsuccessfully to get Mary to admit that Albert was a heavy gambler and then challenged her evidence about his dizziness, which she had not mentioned during the Magistrates' Court Committal Hearing. Next he was quizzing her about the untidy sitting room.

'It was the whole house that was untidy,' Mary said, admitting that there were three small children and a teenage boy who lived there. Her own mother had brought them up to be clean and tidy.

'In those days children were seen and not heard, and thirteen of us.'

CHAPTER TWENTY-EIGHT

1981

Supreme Court of South Australia

Jack Padey still lived at 129 Rowans Road, Moorabbin. About a year before Albert Haag died, he remembered seeing Mrs Haag getting into the driver's side of a small dark green car parked in Bruthren Street. He saw this three or four times after tea, at about seven o'clock in the evening. He doubted that it was Mr Haag's car. He had never seen Bert in a car.

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Dorothy Roberts gave evidence about the chats she used to share with her neighbour Trudy Haag, including about Trudy helping Albert with his exam about poisons. She talked about scrubbing Trudy's kitchen floor after Albert died.

'She was distressed but – not what I would call grief – but agitated.'

'Can you describe what she was doing which leads you to say that or anything she said?' asked Miss Vanstone.

'She was concerned with what she was going to wear to the funeral,' replied Mrs Roberts.

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Albert's sister Patricia Kelsall spoke of their family canasta games at Moorabbin every couple of months and of the night in 1960 when Al collected up a pile of books saying that they were for a course about poisons, and there was a general murmur of interest. Albert's family knew that he was going for a promotion and that he had to pass exams.

'As a matter of fact, Trudy is studying them with me,' said Albert.

'Yes,' she recalled Trudy saying, 'I love it, it's fascinating. In fact I even sit up and read them when Al goes to bed. I test him on his knowledge. When I ask him questions, I can tell him when he is right and wrong.'

Patricia was also asked about Christmas in 1960.

'The children were looking at the Christmas tree, she recalled. 'Trudy was sitting on the lounge. I was sitting in a big chair and Al was standing as he usually did with his elbow on the mantle-piece. Mary came in and said, "Oh Al, what have you done to your hair? You must have done that for a bet," and he just laughed, put his hand up on his head and rubbed it back and forth and said, "Oh well, it was falling out anyhow and Trudy suggested I get a crew cut. It's cooler anyhow."'

And then she spoke of Albert at the head of the table unable to finish his meal, and Trudy

saying she thought he had an ulcer. Albert momentarily came to life for the jury in two more photographs, one taken at another brother's twenty first birthday in November 1953 and another one snapped at Claire's Christening, in early 1955. Both showed Albert with thick dark hair, quite long, combed back. And then Mrs Kelsall was asked about the Monday of the long weekend in March 1961, Albert in his dressing gown looking washed-out, and later in the day when they could all hear him vomiting. She had told this story so many times, to police, to lawyers, and at the Committal Hearing, but now a jury was listening to her and the questions kept coming as she told them about the last day she saw her brother alive. And in the early hours of Tuesday morning she found out that he had died, but Trudy was quite calm, giving directions to the neighbours.

'You would never know that anything tragic had happened. She just came up, and we were weeping and saying how terrible and couldn't understand it and well – she just said "Yes, it was sudden."'

'And did you see the accused cry at the funeral?'

'No.'

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Deputy Commissioner Conn came to the witness box clasping the typewritten notes of the conversation he and Inspector Matthews had with Emily (then Mrs Haag) the day after Albert died. He read them out verbatim. The weed killer from Myer, the fly spray, the corn cobs – all of this was now before the jury. He had the notes from the long interview at Russell Street on 21 March 1961 too, and he read out the entire twenty-one pages. And finally there was the record of the conversations on 25 April 1961. Conn provided no nuance, no opinion, no commentary on the circumstances. The jury were shown the signature of 'P Haag' in the poisons book from the Myer store, the Prudential Life Insurance proposal form, three cheques, and two pages from the Reader's Digest with the heading '*It couldn't happen to me'*. Mr Waye cross-examined every detail of the circumstances of the statements, and about [redacted] being questioned.

'Did either you or Ritchie in your presence, tell [redacted] that his mother had confessed to murder?' asked Mr Waye.

'No,' replied Deputy Commissioner Conn.

'Nothing like that was said?'

'No – well she never ever did.'

'And I suggest that either you or Ritchie told the accused that [redacted] had confessed to murdering his step-father.'

'No.'

'Do you deny that?'

'Yes I do.'

'I would suggest that having said that, she said words to the effect, "If that's the position I'll

admit that I murdered him. I'll sign a confession."'

'No. There was nothing like that happened.'

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Fifteen more witnesses gave evidence in relation to Albert Haag's death, including the government pathologist who performed the post-mortem examination. Justice Cox read out Albert's will in which he left everything to his wife. Life insurance salespeople spoke of several insurance policies on Albert Haag's life. Norman Furness from CML Insurance described his visits to the Haag house, Mr Haag's lack of interest, Mrs Haag saying that she would talk to her husband and get him to sign the proposal form. He accepted the signature on the proposal as Mr Haag's because he was a policeman.

Doctors from the Police Hospital gave evidence of their various attendances on Albert Haag, as did the ear nose and throat specialist who confirmed that he saw Mr Haag in January 1961 for an upper respiratory tract infection and that Albert complained of a tingling sensation in his spine and a feeling of 'water in the head'. Then Dr McCallum testified about seeing Albert at home several times across the long weekend in March 1961. When he was called back after ten o'clock on the final night, Mr Haag was obviously seriously ill.

'His condition had changed quite markedly,' Dr McCallum recalled. 'He was restless, moving around in the bed. He was clammy, sweaty, and he had bluish discolouration of the lips and he was quite obviously at this stage *in extremis*, a marked change from the morning.'

CHAPTER TWENTY-NINE

1981

Supreme Court of South Australia

Another thirty witnesses spoke about Jim Duncan and Francis Montgomerie. More life insurance sales representatives, doctors, police officers, neighbours, even Jim Duncan's first wife Mary and Frank Montgomerie's fist wife were called. Over two months had passed since the trial had begun.

Joyce Pennington told the court that the lady she knew as Mrs Roberts was employed at Fraser Agencies for about eighteen months from about 1968 and that her ability in her duties was first class. Mrs Pennington described how they also employed Mr Duncan, and that his frequent disagreements with Mrs Roberts soon made their relationship quite obvious. She recalled one occasion when Mr Duncan came in upset and yelling.

'I can't exactly say word for word but – something to tune of "Oh she's b-well trying to poison me."'

'When you say b-well,' clarified Mr Martin gently, 'you mean bloody well?'

'Yes, I do.'

'Do you have any recollection whether Mrs Roberts said anything?' asked Mr Martin.

'I am not exactly sure that much was said at this time. The argument was between them.'

'Did he say before that, "She's told me to get out of the house" or "She's tossed me out of the house?"' asked Mr Waye in cross-examination.

Mrs Pennington agreed it could have been something like that.

'And afterwards everybody laughed didn't they? It was laughed off as a joke?'

'Yes, possibly,' Mrs Pennington agreed.

Her husband James Pennington confirmed employing Emily in January 1968 and then Jim a couple of months later. Emily and Jim had arguments at work, frequent enough to be noticeable, especially because a raised voice could be heard from one end of the warehouse to the other. One day Jim was shouting, in an unpleasant tone, loud enough to be heard throughout the premises, "The bitch is trying to poison me."

'It was quite loud,' said James Pennington, 'and made one's eyebrows twitch a little because it was quite an unusual remark.'

Mr Pennington knew Jim had a drinking problem. In May 1969 he was tipped off that Jim was working for a kitchen manufacturer, and on one occasion driving a bus, while he was supposed to be working for Fraser Agencies. He was failing to keep appointments with clients. James wasn't too worried about the bus incident but he thought that Emily was covering for him in relation to the kitchen-cupboard-making job. He sacked them both.

'Mrs Roberts was my confidante. I was entitled to know what was going on. A lot of trust is

involved,' he said. 'Emily was aware that Jim was in effect not doing his work correctly and was involved with this furniture manufacturer or kitchen manufacturer, or whatever. Emily should have told me. I lost my confidence in her.'

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Emily's youngest daughter [redacted] remembered hearing the siren when the ambulance arrived at Rowans Road at Moorabbin. She was three years old then. She was only twelve when Jim died.

'I went into the bedroom and saw him in bed. He was half propped up and he was all stiff and a green colour and his arm was bent at the elbow and he had a cigarette butt that had burnt down still in his fingers and he had all green mucus in his nose and white paste dripping down the side of his mouth.'

[redacted] was given no time to confront whatever emotion these memories may have stirred. She was asked about the family's move to Laurel Avenue in Surrey Downs, how she helped in her mother's cake shop at Tea Tree Gully, and the first time she met Ken Perry at the Arthur Murray Dance Studio Christmas party. One of the dance teachers sent [redacted] to ask Mr Perry for some decorations. One can imagine a young teenager, a little shy, a little self-conscious, but excited by the Christmas atmosphere, politely approaching this man she didn't know.

'Go away little girl,' said Ken.

She spoke of Ken in the early days. He was well-dressed, well-spoken and well-groomed, with a neatly trimmed moustache, although [redacted] wasn't keen on his psychedelic shirts. He was active in a lot of hobbies and he rode a pushbike to work. [redacted] boarded at Mercedes College when Ken and her mother first married but she moved home to Buckley Crescent for her last year of school when they came back from Sydney. Ken did not take as much care with his appearance then, nor with his hygiene. His movements were slower. He kept trying to lose weight but he just put more on. He dropped all his hobbies except his Pianolas. His temper was worse. From 1976 through to 1978, Ken and Emily fought more and more. [redacted] did not get on terribly well with Ken.

'We didn't agree on many points. I wouldn't go out of my way to talk to Ken because there would usually be an argument or a disagreement.'

'Isn't it a fact that your mother isn't a very good cook?' asked Mr Waye.

'That's right.'

'She's not domesticated, is she?'

'No, she's a career woman.'

'And in fact, not only is your mother not terribly keen on cooking but she's not too keen on actual housework. Is that a fact?'

'That's right.'

[redacted] acknowledged that Ken did most of the cooking, reminding the jury that it was unlikely that Emily would have had the opportunity to put poison in her husband's food. But might

this also have been an indirect boost for the Prosecution idea of Emily as a black widow, unnatural and unnurturing? What did the jury make of Emily's lack of 'domestication'? [redacted] also revealed that their kitchen was not a scene of domestic harmony. She portrayed a vivid image of Ken throwing pots and pans and shouting 'Get out of the kitchen!' if Emily offered to help.

[redacted] described Emily as extremely intelligent, very attractive and popular with lots of people. When they first got married, she and Ken were like teenage newlyweds, extremely affectionate, but after their return from Sydney, their ardour had substantially cooled. He yelled at her more. Emily used to try to calm him down but in Margaret's view she wouldn't stand up for herself.

'Ken was always aggressive and yelling and fairly unbearable,' said [redacted]. 'I think they were affectionate when people came around but when people weren't there Ken used to yell and carry on quite a bit. I used to ask her why she put up with it. She just said he had funny ways and he used to just miss her if she wasn't beside him all the time. That's why he used to yell for her and get grumpy. Ken was jealous of us. I just think Ken just didn't like us. Me in particular.'

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Did Emily look down, pretend to fiddle with a button as [redacted] walked right in front of her mother to reach the witness box? Or did her glare lance directly into her oldest daughter? [redacted] was a Prosecution witness but she had provided the surety for her mother's bail. The invidious burden of stepping into the witness box must have been harrowing. Mr Martin led her gently through her evidence about her childhood in Melbourne, going to boarding school at Riverton with her sisters and their change of surname. Her mother had explained that the Haag family were trying to get custody of them and were harassing her. The transcript betrays no emotion about her mother's feigned marriage to Jim, other than a comment that she asked where the marriage licence was, a strange question for a twelve-year-old to have asked. Perhaps this was an indication of a lack of trust? Her mother told her that it was in the bank vault. [redacted] and Jim got on quite well at the beginning, but not so well after he moved in when she seemed to be continually in trouble. They were all a lot happier and her mother was more relaxed when Jim went away.

The transcript reveals Claire's recounting of her family history in a seemingly nonchalant manner, but was she fighting back tears? No-one asked her how horrible it was. No-one asked her how it made her feel to have to wash the shitty underpants of the drunkard who made all their lives miserable. No-one acknowledged that she was being forced to relive a trauma that no teenager should have to experience.

It was Emily who asked [redacted] to wake Jim up because she was unable to wake him.

'He was obviously dead. No colouring in his skin. I think his mouth was open and rigor mortis had set in.'

'Had you ever seen a dead body prior to that day?'

'No, I hadn't.'

Instead of meeting a girlfriend for a chat and a laugh and a saunter through town on a Saturday morning, [redacted] had to deal with a dead body, and calm her sisters as well as her mother. She probably wanted to rush out of the house and get on the first bus that drove past and leave it all behind her. If these thoughts came to her now, the jury would not have known, as she answered more questions, about her own marriage in September 1972 and then Emily's marriage about six months later to a fit, active Ken Perry who was a nice, fairly obliging sort of person who became a volatile and emotional man, suffering from distressing bouts of abdominal colic since the middle of 1978. His hair used to be neat and his moustache was neatly trimmed, without the long sideboards that connected to his moustache today.

'Now it's a completely unruly growth of facial hair,' she declared, in an unusually vehement comment. 'It started turning into a Jimmy Edwards moustache about three, maybe four years ago.'

CHAPTER THIRTY

1981

Supreme Court of South Australia

The final witness for the Prosecution was Dr Colin Manock, who explained that lead is retained within the bones but arsenic is rapidly excreted through the kidneys and is lost in the urine. He explained the difference between sodium arsenite and lead arsenate.

If swallowed, sodium arsenite would be dissolved by gastric juices and then disassociated into ions of sodium and arsenious acid. It would cause irritation of the mouth, the throat and the stomach, and nausea and vomiting within ten to thirty minutes. Taken with food, the irritant action would be slower than if taken with a drink. Vomiting would eliminate some of the poison from the body but some arsenic would attach to the stomach lining. If the poison progressed into the small intestine, the irritant effect would cause fluid to be lost from the bloodstream into the bowel cavity. This could be so profound as to cause a fall in blood pressure and death from shock. If the person survived long enough for the arsenic to irritate the length of the bowel, diarrhoea would occur within about six hours, depending on what might already be in the bowel.

If a person swallowed lead arsenate, the symptoms would be similar but to a lesser degree, because lead arsenate is relatively insoluble and so it is less of an irritant to the stomach and bowel, and less likely to produce a sore throat. A sore throat would be more likely after vomiting. The solubility of a small dose of lead arsenate is such that the majority would be lost from vomiting or passing straight through the body. With lead arsenate, the amount of poison ingested does not affect the severity of the symptoms and most of it gets lost in the bowel motions. Only a small proportion gets into the bloodstream. The bigger the dose, the longer the vomiting and diarrhoea will last because there is more to get rid of. The irritant is primarily the arsenic although the lead also produces irritation.

Manock answered questions about lead passing through the intestine and reacting with hydrogen sulphide producing black lead sulphide that discolours the faeces. He talked about ingestion of lead producing constipation or diarrhoea that is fluid or stained with blood or pieces of mucous; even the lining of the intestine itself may be lost. Chronic lead poisoning can cause colic in the colon, weeks or even months after ingestion. He confirmed that arsenic poisoning would cause a griping pain in the stomach and also a sensation of burning.

‘Is there a difference between a griping pain in the acute phases of arsenic poisoning and a pain caused in the colon in the chronic stage of lead poisoning?’ asked Mr Martin.

‘Yes,’ answered Dr Manock. ‘The acute pain from the irritation of arsenic is usually felt just below the breast bone where you normally feel indigestion pains, whereas the colic of chronic lead poisoning is felt lower down. It’s the kind of pain that makes you want to double over and pressure

may in fact relieve it. If you push on the part that hurts, that may make the pain go away.'

If the amount of lead or arsenic into the bloodstream is small, it will be excreted in the urine without any ill effect but more than half a milligram of each a day would accumulate. Arsenic attaches to soft tissue like muscle, liver, kidney and spleen. Over a period of time, regular ingestions of arsenic would cause pigmentation and thickening of the skin, skin cancer, loss of sensation in hands and feet, headaches, loss of appetite because the liver is unable to process foods, loss of weight and loss of hair. After arsenic poisoning, hair that regrows is often white.

'So if a person had dark hair and lost some from arsenic poisoning, then when the hair started to grow back, it would look grey,' said Dr Manock. 'If there was a total loss of hair, then it would look white.'

Destruction of kidney tissue by arsenic can cause high blood pressure and an increase in weight because of high fluid retention and loss of protein in the blood can cause anaemia. A general feeling of ill health can result. A change in personality can also occur because of changes to the brain, making the person very grumpy, moody and irritable. Arsenic can produce failure of the left ventricle of the heart, having a direct depressant action on the heart muscle, making it less efficient. Anaemia makes the heart work harder to pump sufficient oxygen to the tissues. As for arsenic in urine, the amount will be highest soon after ingestion and will then reduce if there is no more ingestion.

The questions moved on to lead. Once there is more lead than the kidneys can process, lead is circulated in the blood and deposited in the bones. Then there are symptoms like abdominal colic, occasional loss of vision caused by damage to the artery to the retina, very pale skin and irritability. Dr Manock explained that chelating agents (like EDTA) work by converting lead in the blood into a form that can be processed by the kidneys. The drop in blood lead level stimulates lead to come out of bone and into the blood. Treatment by a chelating agent will not cause a rise in blood lead level; it will remain the same or fall slightly, but the amount of lead excreted in the urine will increase dramatically. The chelating agent will also raise the excretion rate of arsenic, causing a raised urine arsenic level but not a raised blood arsenic level.

Mr Martin took Dr Manock through the effects of lead on the motor nerves, including wasting of the muscles and the impact on sensory peripheral neuropathy and proprioception in the early stages of chronic arsenic poisoning. This manifests in pins and needles or decreased sensation in the hands, feet and buttocks, most likely to occur if ingestion is continuous over a period of time. Dr Manock explained that chronic lead poisoning could also result in a line of black or dark blue lead sulphate between the teeth and the gum if the person had poor oral hygiene. A high blood level could also lead to lead encephalopathy – erratic and irrational behaviour.

In a case of chronic arsenic poisoning, the early signs might be peripheral neuropathy – vague pins and needles in the hands, feet and buttocks, an appearance of clumsiness, the patient might not feel quite as agile as normal. Proprioception could also be affected.

'That's the knowledge of the position of one's limbs. Close the eyes, and touch the tip of your

nose. Most people can do it without any difficulty,' explained Dr Manock.

The symptoms may fluctuate from day to day. The patient might have congestion of the mucosa of the mouth, nose and eyes causing redness and a runny nose. There was variation between individuals.

Dr Manock had examined Ken Perry's hospital case notes of his admissions in 1978 and 1979. He had studied all the nurses' notes, observations, medication charts, blood and urine test schedules. He had seen the charts prepared by Dr Goulding who analysed the hair, the charts prepared by Mr Lokan and copies of the transcripts of evidence given so far by the doctors during this trial and at the preliminary hearing. Having considered all of the evidence, it was Dr Manock's view that Ken Perry had ingested lead and arsenic prior to 1978, for some time before the symptoms developed. Dr Manock concluded that Ken's symptoms in October 1976 were the early onset of sensory neuropathy due to the ingestion of lead arsenate

'A neuropathy of that type may follow a single dose of something just under the lethal dose,' said Dr Manock. 'That would be of the order of two grains. But it is much more likely to have been caused by repeated ingestions of much smaller quantities taking into account the slow development of the symptoms over two years.'

Dr Manock was of the view that in the early part of the period Ken Perry's symptoms were due to arsenic poisoning. As the symptoms developed, it was his view that they were referrable to both lead and arsenic. The findings of loss of sensation in the elbow in 1976, and the dizziness, diarrhoea and vomiting reported in 1975 were consistent with ingestion of arsenic; and the findings from an x-ray in 1971 of small fragments of metallic density in the abdomen could have been lead arsenate. The jury heard that Ken's transient blurring of vision noted by neurologist Dr Fewings was classically associated with lead poisoning, that light-headedness may occur with lead or arsenic, and intermittent excessive thirst was a symptom of arsenic poisoning. The staggering gait and peripheral neuropathy found in October 1978, which could not be explained by lead intoxication, was due to arsenic ingestion. The persistence of a sore throat treated in 1978 could also have been due to a toxic phenomenon.

He explained that one large amount of arsenic would be lost from the body through vomiting but regular small quantities were more likely to be absorbed. A tiny pinch of lead arsenate added to food or drink would cause discomfort but not vomiting so it would stay in the stomach. You could not poison yourself by taking a spoonful of lead arsenate because it is not soluble enough to enter the circulation and be distributed around the body and it is so irritant you would vomit it out. The major shock on the body would be the loss of fluid into the bowel which would probably not be enough to cause death. But the same dose of sodium arsenite would kill very rapidly by fluid loss because it is more soluble. When there are small ingestions of lead arsenate, most of it passes through the body, but a miniscule amount is absorbed each time.

The progression of Ken's symptoms from 1976 through to the hospital admissions could not have been caused by the ingestion of arsenic alone, nor from lead alone. The blurring of vision is

not characteristic of arsenic, nor is sensory neuropathy characteristic of lead. If lead arsenate is taken you would expect to see first the more soluble arsenic causing the symptoms to begin with. Then the lead builds up within the body before it starts producing symptoms.

'This is precisely what we have seen,' said Dr Manock.

'If the lead arsenate was being administered over a period leading to October 1976 and continued from time to time through 1976, 1977 and 1978 to lead to these conditions, would it be required for example, to have a teaspoon put into coffee or food each day or do you only need a small pinch each day?' asked Mr Martin.

'A very small quantity administered regularly is much more likely to be absorbed than a large amount because that would induce vomiting. If a tiny pinch of lead arsenate is added to food or drink then the person may feel discomfort but is not likely to vomit it, so that remains in the stomach. There is more chance of that arsenic being absorbed if you give a quarter of a teaspoon.'

'So could a condition such as Mr Perry had, develop by simply a pinch every few days being dropped into whatever the substance might be, the food or the drink?'

'Yes.'

'Could it be mixed with sugar or food without any taste?'

'There would be no taste. Lead arsenate has no taste at all.'

Mr Perry was receiving EDTA treatment in hospital from 2 to 6 September 1978. When he was discharged on 7 September he was given an oral course of EDTA for fourteen days that lasted until 22 September. Dr Manock said that this could account for the high reading of urine lead in mid-September. Mr Perry was re-admitted to hospital on 5 October. His blood lead level was 2.70 on 12 October. He had pneumonia but recovered and was discharged again on the 17th then re-admitted on 24 October when his blood lead level had risen to 4.36. He had no further EDTA until 10 November. Dr Manock said that the rise in blood lead could not be associated to the EDTA treatment that ceased on 22 September. In the absence of a severe infection, the blood lead could only rise to that degree by further ingestion.

The first arsenic reading was 91 micromoles per litre obtained from a sample taken on 14 November. Mr Perry had received EDTA treatment intravenously on 10 and 11 November. If over a period of time he had ingested arsenic and some had become stored in the tissues, EDTA treatment could not cause such a high level of arsenic unless the arsenic was ingested quite recently after the EDTA treatment. EDTA treatment may cause an exceptionally high urine lead reading because it comes from the lead that has been stored in the bones. Arsenic is stored in the tissues, but not sufficient to account for such a high reading after EDTA treatment had started. The EDTA treatment in September would have promoted the loss of arsenic from the system. Only a further ingestion of arsenic could result in a reading of 91 micromoles per litre in November. Then, assuming ingestion of a substantial quantity of arsenic, the high level would remain in the urine for two or three days. Dr Manock's evidence proved the Crown theory that each time Mr Perry went home, his arsenic levels were topped up.

‘I would like to turn now to the post-mortem examination that you conducted on the body of the late John Alfred Jamieson,’ said Mr Martin.

This was a critical part of the evidence. When he conducted the autopsy, there was nothing to suggest that Dr Manock should look for prior signs of lead or arsenic poisoning. After confirmation from the analyst, he determined the cause of death to be poisoning by barbiturate. He had subsequently read the clinical notes for Mr Jamieson from the Repatriation Hospital, including reference to nausea and vomiting that were ascribed at the time to an irritable colon. He had analysed the notes about Jim’s blood pressure, temperature, respiratory rate, loss of bowel control, poor appetite, dizzy spells and poor co-ordination. Dr Manock believed that the colic pain was suggestive of chronic lead poisoning and that the general debility and looseness of the bowels combined with vomiting was suggestive of the signs of irritant poisoning such as lead arsenate. He had given this evidence at the Committal Hearing. When proofed by the Crown before the trial, Dr Manock said it was his opinion that it was highly likely that Jim Duncan had suffered from arsenic poisoning. But when he came to give evidence, he didn’t use those words. He told the court that Jim Duncan’s pre-existing symptoms over a long period were ‘consistent with’ arsenic poisoning. This undermined the basis on which Justice Cox had let the evidence in. The Crown needed more than ‘consistent with’. This was now a significant problem for the Crown case because Dr Manock had diluted the relevance of the whole of the evidence about Jim Duncan.

In relation to Frank Montgomerie, Manock explained that he died from an alkaline form of arsenic, meaning a sodium salt of arsenic which is soluble in water or wine or spirits. This could have been sodium arsenite or sodium arsenate but not lead arsenate. The minimum fatal dose is about two grains, about 120 milligrams, which could be dissolved in about three fluid ounces of wine or spirits. It would be virtually tasteless, perhaps a bit salty. An outpouring of fluid into Frank’s intestine resulted in a loss of blood volume, circulatory failure and death from shock.

Then Dr Manock addressed Albert Haag’s symptoms. That he died from arsenic poisoning was undisputed but Manock was of the view that his symptoms indicated ingestion of arsenic over a period of time, and that Albert had not died from one accidental ingestion. The high blood pressure, pain in his back, the indigestion, the swollen liver, the staring gaze, all could be attributed to heavy metal poisoning. If Albert Haag had ingested a single dose of arsenic on the Saturday before his death, Manock would have expected a more even distribution throughout the gastro-intestinal tract. The quantities found suggested an ingestion shortly before death, perhaps as long as six hours, possibly less. The fact that he was vomiting almost continuously on the Monday was consistent with ingestion that day. His pattern of feeling a bit unwell on Friday night and again on Saturday morning, worse at midday on Saturday then a bit better again, then vomiting on Saturday night, Sunday unwell and vomiting, and again on Monday, was consistent with more than one ingestion if the arsenic had been soluble sodium arsenite, such as Arzeen. If it had been lead arsenate, the symptoms of vomiting on the Sunday and Monday were possible but unlikely.

Mr Waye’s cross-examination was ruthless and relentless. He painted Manock as a biased

witness, challenging Dr Manock's expertise and his knowledge of Mr Perry's symptoms. He focussed on the fact that Dr Manock had never examined Ken Perry, and never spoken to him about his symptoms or his work environment. He had never spoken to either Dr LeLeu or Dr Grygorcewicz. He never visited Ken's home or the shop or his Pianola restoration work environment. His opinions were based solely on his interpretation of Ken's hospital case notes and what he had read in text books and articles. When he first discussed the matter with Dr Coughlin at the Modbury Hospital he was of the view that the explanations offered in the case notes were inadequate to explain the levels of lead and arsenic. He had immediately suggested that the police should make enquiries into the possibility of malicious administration, without first seeing Ken in his work environment.

Mr Perry had a broken septum for twenty years following an accident, yet Manock had testified that congestion of the sinuses was consistent with arsenic poisoning. Mr Waye challenged him about constipation and diarrhoea, about faeces and bowel content. About weight loss and appetite suppressants and the fact that depleted energy and headaches could be consistent with many more conditions than arsenic poisoning. Dr Manock agreed that irritability and headaches could come about from chronic lead poisoning and also that occasional interference with vision, due to the retina being affected was also a symptom of chronic lead poisoning. Similarly, rhinitis could occur in many ways other than through poisoning. And if Mr Perry had suffered chronic arsenic poisoning for a period of three or four years as Dr Manock suggested, then why had he not lost his hair or gone prematurely grey? Manock countered that loss of hair *may* occur. The jury, by this stage, would have been quite overwhelmed.

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On Thursday 25 June 1981, 86 days after the trial began, Mr Martin announced that the case for the Crown was complete. Mr Waye immediately made submissions that the Defence had no case to answer and that the charges should be dismissed because the Prosecution had not proved their case. Further, he argued that the evidence about the death of Emily's brother Frank Montgomerie had failed the test for admissibility of similar fact evidence in relation to the offences charged. There had been a mis-trial he submitted, and the jury should be discharged.

But any hopes that Emily may have had that the trial would come to a crashing halt were short-lived. Justice Cox ruled that the evidence with respect to Montgomerie was properly admitted, so Mr Waye played his last card, asking Justice Cox to inform the jury of their right to bring a verdict of not guilty at any time after the close of the Crown's case. But Justice Cox was of the view that this was not an appropriate case to do so.

CHAPTER THIRTY-ONE

1981

Supreme Court of South Australia

\Emily was the first Defence witness but she did not swear to tell the truth. She read out the statement that her lawyer Peter Waye had drafted for her.

'He was good at those,' David Waye told me with a fond smile when we sat at his Parkside kitchen table one morning in 2017, when I asked him about his father.

'Ladies and gentlemen,' Emily began, 'I think it is necessary to tell you something about my life and I will start at the beginning. 'I remember when I was about three or four years old, we lived at the Methodist Ladies' College in Glenhuntly where my mother and father were the caretakers.'

The members of the jury probably all grew up in Adelaide and not may not have twigged that Methodist Ladies' College has always been in Kew, a fashionable and prestigious inner-city suburb of Melbourne. MLC is not in Glenhuntly. This trivial inaccuracy intrigues me. But the Crown lawyers were not allowed to tease out the details of her unsworn statement or to challenge any inconsistencies. Emily read it out, and no questions were asked.

'She was very rehearsed,' recalled Brian Martin, recalling that at one stage they adjourned. 'She actually missed the point she had got to and she repeated some of what she had said the day before with exactly the same intonations.'

Although juries are not supposed to draw any adverse inferences if the accused chooses not to give evidence, the suspicion that a defendant has something to hide if they do not get in the witness box would be difficult to suppress, even if it is subconscious. The jury would have known that Emily's unsworn statement was at best unreliable and at worst completely untrue. The right to give an unsworn statement was abolished in South Australia in 1985. We will never know how many factual inaccuracies, even lies, were included in Emily Perry's statement to the court in 1981, but she used this device to tell her story. It took all afternoon.

'Ladies and gentlemen, I had nothing to do with Ken's illnesses,' she concluded at 4.13 p.m. 'I have never given him poison to try and kill him. I am not guilty.'

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'He was a big man and I was a skinny runt,' [redacted] '[redacted]' Halse told the court of his step-father Albert Haag. 'He wanted a son to bring up his own. I wasn't his son. He wanted a son of his own very, very badly.'

[redacted] Halse's childhood memories were of his grandmother's house where he lived until his mother married Albert, and then of them always being broke. He had memories of an outside toilet

full of maggots and of buying bread, eating the centre out a loaf and then having to spend his own pocket money to buy another one. At the beginning of a new school term his classmates would be in new uniforms but his old jumper was patched to cover all the holes.

It was Robert's job to buy the *Sporting Globe* for Al each Saturday. If Al wasn't at work, he was at the track, or working on his system, accumulating neat stacks of racing forms in the bedroom.

[redacted] revealed part of the mystery of the early Morris car for which he paid five quid when he was only fifteen. He kept it down past the phone box.

'It was a dirty colour. They were all a dirty green or a dirty black. I repainted it blue,' recalled [redacted].

'Did you tell Al Haag you had it?'

'No, obviously not.'

'Was he an easy person to talk to?'

'To me, no. He was a very 'he-man'. Very reserved, very silent.'

'Did your mother ever drive your car?' asked Justice Cox.

'I don't think either my father or my mother knew I had the car at that stage,' said [redacted].

By the time Al died, [redacted] was working as a junior clerk at the State Electricity Commission at Richmond. One day two police officers came to his work and asked him to go with them to Russell Street.

'There were two detectives there, one being a very nice approach and one being very nasty and alternating and asking questions,' recalled [redacted].

'As the questioning progressed, were any matters put to you about Al Haag being poisoned?'

'Yes. They asked all the questions they wanted to ask, then they were initiating I had poisoned him. Then they came in and said to me "Stop telling lies, your mother has confessed, tell the truth" and they started on the whole thing again, back through the questions again.'

'They suggested you had poisoned him.'

'Yes.'

'I take it you denied that.'

'Obviously, yes.'

'What did you say when they told you your mother had confessed?'

'I don't remember the words. I would have said "Garbage, didn't happen, couldn't happen." Then they re-started.'

[redacted] remembered his Uncle Frank. When he lived with his grandmother as a child, Frank lived there as well, on and off. He was an alcoholic. People would bring him home after finding him in the gutter somewhere. He would sober up and go out again. After his mother moved to South Australia, [redacted] visited her every six months. When he first met Jim Duncan, he would have a beer with him and his mates at the local pub, but on a visit about three months before Jim died, Jim had changed.

'He walked around the house in his underpants,' said [redacted]. 'That surprised me because

the kids were young. That wasn't right. Didn't like that much.'

'You've met Ken Perry on your visits to South Australia,' asked Mr Waye.

'Yes.'

'Have you seen any arguments or heard any arguments between Ken Perry and his wife?'

'Normal type things that I'd have with my wife, yes.'

'How did they seem to get on together?'

'Very, very well. They seemed to me a very happily married couple.'

'When you visited Ken and your mother, you had meals there?'

'Yes, Ken's a great cook,' said [redacted].

'Mr Halse, at the risk of appearing inquisitive,' asked Mr Martin who stood up to cross-examine, 'what is the normal type of argument that you have with your wife?'

'Where's me bloody tea?' offered [redacted] by way of example.

'Do you mean that Mr Perry on occasions would get cross?' asked Mr Martin.

'No. I mean that Mr Perry on occasions would have words with my mother on occasions, exactly the same as I would with my wife.'

'On those occasions have you heard him raise his voice?'

'If you mean saying "Bloody woman" and raising your voice when you say that, but apart from that, no, not major rows,' said [redacted].

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[redacted] Roberts, middle daughter of Emily Perry and Albert Haag, was four when her father died and twenty-four when she gave evidence in defence of her mother, to whom she remained close. I can only speculate on the rift that this must have caused between her and her two sisters who had given evidence for the Prosecution. [redacted] spoke of going with Emily to collect Jim Duncan from hospital after the accident when Reg Harvey died and how after that Jim became a very heavy drinker, especially after the death of his dog. At times he lay motionless in bed, paralytic and incoherent. He lived in his underpants and he always had whisky or brandy in the bedroom. [redacted] had to change his sheets and help him shower when he soiled the bed.

'He used to break down and cry. He couldn't accept the fact that his best friend had died and he had lived,' said [redacted]. 'I used to hear him calling out in the night. He used to wake up screaming, "I will never get it out of my mind, I will never be free of this."'

She remembered the red sticker on his bottle of tablets that said *Caution, do not take with alcohol*. [redacted] saw him take those tablets when he was drunk on several occasions. She tried to take them away because he did not realise how many he was taking but he would get aggressive and so she gave them back. On one occasion she went into the bedroom to get a book. She was wearing the identical green school uniform that all three sisters wore.

'Is that you [redacted]?' asked Jim.

‘I said yes, because I knew if I answered no he would shout at me and get me out of the room. Jim said, “Good, don’t let [redacted] in here.”’

She had a habit of getting on the wrong side of him and on one occasion he grabbed a rifle and said, “I’m going to shoot you, you bitch.”

‘Who was the bitch?’ asked Mr Waye.

‘Me. [redacted] and I took off out the house and he chased us down the street. He was very drunk. He only had his underpants on.’

The week before his death, Jim didn’t know what day it was. He was incapable of conversation. He didn’t sleep to avoid nightmares.

‘Do you recall when he actually died?’

‘Yes, I do. [redacted] and I were asleep and [redacted] came in to the bedroom and said “Mum can’t wake Jim.” So, [redacted] and I went into the bedroom and he was just lying there. He had his mouth open and his eyes closed. He was flat on the bed and very stiff. I said, “He is dead” because he was a revolting grey colour.’

‘Did he have a cigarette between his fingers?’

‘No. he didn’t.’

‘Was he propped up with pillows behind him?’

‘No. he was flat on the bed. The pillow had fallen off the bed and was at the side of the bed.’

‘Did the doctor come afterwards?’

‘Yes.’

‘What was your mother’s condition at that time?’

‘When the doctor told her Jim was dead she went completely hysterical which upset me very much. I was more upset about Mum being hysterical than I was about Jim’s actual death. Mum took it very badly.’

[redacted] spoke about going with her mother to Arthur Murray’s and meeting Ken Perry, and hearing shouting into the phone “Go to hell because I already know!” when he received an anonymous call. She remembered discussing Jim Duncan’s death, but her uncle Frank was never mentioned. She thought that her mother and Ken were very happy although Ken was a volatile person who would raise his voice in anger at times, especially if he was cooking and someone went in the kitchen. Her mother never cooked. Ken served elaborate meals in large dishes so everyone could help themselves. In about 1977 both she and Ken put on a lot of weight. Their attempts at dieting were unsuccessful so [redacted] was prescribed Duramine M30 appetite suppressant tablets. They worked for her, so Ken took the tablets as well, but one of the side effects of the tablets was a change in mood. They both became irritable, restless and hyperactive.

CHAPTER THIRTY-TWO

1981

Supreme Court of South Australia

When Ken Perry swore the oath upon his arrival at the witness box, he wrote his address on a piece of paper instead of stating it aloud. It was a dramatic flourish that would have piqued the interest of the jury and thwarted the plans of any journalists who wanted to headline the home of this curious couple. Ken had made no secret of his view that this was a ridiculous mistake and he was no doubt keen to voice his opinion that it was his wife, to whom he fondly referred as 'Emmy', who had been the real victim in this awful saga.

Ken described a childhood dominated by illness, including asthma. He chronicled his love of motor bikes and the accidents that had left him severely injured. At Mr Peek's request, Ken stood in front of the jury box to hold aloft his voluminous moustache and exhibit the scar tissue on the inside of his lower lip. Ken lurched around the courtroom with the aid of a walking stick, baring his yellowing teeth and the fleshy concave of his mouth to Mr Martin, Miss Vanstone and His Honour, before rearranging his aching body back within the rigid wooden confines of the witness box. His theatrical moment over, Mr Waye led him though his first marriage, his migration to Australia, his employment and his free dancing lessons at Arthur Murray's where he met Emily.

'I think it is fair to say we both took to each other, I would say pretty well from our first meeting,' Ken told the court, filling in details about dancing with Emily at the Wonderland Ballroom and other ballrooms with the Arthur Murray group.

'I said something – I can't remember the exact words – but it was something to the effect, I would like her to be my permanent partner,' recalled Ken. 'She, I think, realised what I meant because she said, "There is something you should know about me" and she proceeded to tell me about the death of Al, her first husband. It was quite a long conversation. She told me about the way the family had carried on ever since and also the way that it was reported in the Melbourne papers and also the hoo-ha that occurred about the time of her brother's death.'

'We realised that there were certain risks attached to our marriage because of this problem. We had discussed the possibility that if anything happened to me because of this continuing vendetta with the Haag family that they might cause trouble. In fact, I had a phone call. I don't know who it was from.'

Ken's pleasure in recounting how he built up his knowledge of player pianos sparkles through the long paragraphs of his evidence. The pride in his voice is embedded into the pages which record his meeting with the proprietor of the Master Touch Company in Sydney who showed him around the factory and introduced him to locals who shared their knowledge of restoration. After initially returning to Adelaide, he was required to go back to Sydney. This time he went alone, and so began

the onset of stomach problems which he attributed to too much beer and too many pies, and fish and chips.

'We were a team of men, most of them away from wives and the expense allowance was reasonably liberal,' he admitted. 'My particular problem was that I had a kidney condition.'

Whenever he had a gastric upset he tended to become dehydrated, which exacerbated the kidney problem. A stay in Randwick Hospital on a high fluid diet culminated in the passing of a kidney stone, following which he returned to Adelaide. This was when his player piano hobby progressed to obsession.

'It became, I suppose you would say I became, an enthusiast,' Ken told the court, happy to speak more about his favourite subject. 'By this time, I was corresponding with people all over the world. I had acquired just about every book that was written on the subject. I also proceeded to acquire as many of the various types of instrument as I could.'

Ken answered more questions about his collection and the process involved in restoring old instruments. Once again the jury heard about valves, plastic tubing, glue, drills, dust, compressors, vacuum cleaners and corroded lead pipes.

'The lead tubing, which was generally used in the American player pianos, was a fairly pure form of lead and as such it was subject to corrosion, especially where it joined the woodwork,' explained Ken. 'It turns firstly into an oxide and in combination with carbon dioxide in the atmosphere, and moisture, basically forms lead carbonate, and this material is the decomposition product of the lead. It generally swells up and if you aren't careful it splits the wood.'

This is why the lead had to be removed and replaced with plastic tubing. If the lead got into the pouches that operate the valves, the pouches had to be removed as well to get rid of the lead behind them. This was an extremely long job. A professional restorer would more likely turn it into a straight piano because the cost of restoring it is not worth the effort. The machines that Ken liked were generally older and in a far worse condition. Restorers would leave lead in there if they could, or cut it about an inch above where it enters the valve chest and stick rubber tubing over that. Ken cleaned it all out thoroughly and redrilled it using a high-speed drill that generated a lot of dust. It was impossible to get a vacuum cleaner into all the nooks and crannies, especially behind the strings and under the leather pouches, so to remove the fine white dust he used an air compressor and then vacuumed up afterwards. All this he did inside his shed, taking no precautions for the dust.

'At times I was virtually tramping around in corroded lead tubing on the floor. The bench would be covered with lead powder,' he admitted.

And then there was his moustache and his habit of continually brushing it with his hands.

'Recently I have tried to break myself of this habit because I am rather loath to take it off,' he said. 'But I may have to one day make the choice of either having it off or not wiping it or making sure that when I do wipe it, I haven't got anything on my hands.'

'What would you have had on your hands at the time, do you think?' asked Mr Peek.

'Just about everything I was playing with, from the debris of years to new materials.'

‘What were your hygiene habits like in those days Mr Perry?’

‘If you mean, did I wash my hands frequently? I didn’t, unless I went back to the house. Most of the time it would consist, I suppose, of wiping my hands on my overalls or grabbing hold of a rag. There was no basin in the workshop at Buckley Crescent. And at Grenfell Road, there were no washing facilities there at all.’

Over four decades later, these words from the transcript bounce off the page into my writerly reality of the COVID-19 pandemic. Ken’s lack of hygiene strikes a cognitively dissonant chord in 2020, when supermarket shelves are devoid of toiletries and reminders about handwashing have become ubiquitous as the world succumbs to a contagious uncontrollable disease. This pre-Internet, pre-mobile phone, pre-Coronavirus trial recedes even further into an untouchable past.

Emily made coffee from time to time, but Mr Perry generally made his own instant coffee and definitely liked to put his own sugar in. At the shop, Ken used to make coffee for himself, for Emily and for customers. The coffee and sugar were kept on shelves to the right of the sink. He was asked if he ever on any occasion noticed any sort of residue, either on top of the coffee or at the bottom of the cup.

‘No, that’s for certain, because I have given this considerable thought, as you can imagine, over the past couple of years.’

‘You’re quite sure about that?’

‘I am absolutely adamant on that, yes.’

Mr Perry described having a blood test when he was unwell with a flu infection, that wouldn’t clear up. This was the blood test that revealed stippled cells. Then a bone marrow test confirmed lead intoxication and he was advised to stop working on his instruments.

‘I had about as much chance of taking that advice as Jack Brabham had when he was told to give up motor racing when he crashed,’ said Ken.

He recalled the advice from the Health Department to use a respirator but that his moustache would cause problems.

‘I would have to sort of tuck it in,’ he said.

When he first came out of hospital Ken kept clear of the player pianos and concentrated on his orchestrelle, which did not have lead piping. But when he first started working on it, it was one of the dirtiest machines he had ever seen. It smelled of rat urine and when he removed the front he saw a large white pile of what looked like lime, covered in dust.

‘It looked as if the rats had been scrabbling away or burrowing at the centre of it and there were sort of granules all the way around this heap where it had sort of been dug away’ Ken said. ‘There were bits of shredded up newspaper and walnut shells. Some of the walnut shells were all hollowed out where they had been nibbled away, but even they had some of this white substance in them. A large lump of this whitish material, a mass I suppose of ten or twelve inches long, slightly oval in shape, sat on top of the wire mesh on the bottom of the cabinet.’

Ken took the inside works out and then dismantled it into its major components. The bottom

framework was then clear enough for him to do a bit of cleaning up. He removed all the newspaper shreddings, the leaves, the rat excreta, the walnut shells and a lot of white powder, using the nozzle of the vacuum cleaner to break up the mass.

'Some of the walnuts started to block the hose so I finished up with a dustpan and broom getting rid of most of the odd bits and pieces. I didn't at that stage make a very definite attempt to clean it because that was a later job.'

'Am I right in thinking that some at least, of this whitish substance, remained during all of the time that you were subsequently working on the orchestrelle?' asked Mr Peek.

'Yes, some had remained on the floor, some had remained on the top of the pump set and there was quite a bit of the stuff scattered all along the top of the thing as well. That was on top of the key bed and along the sort of back behind all the controls. There were also bits on the floor of the workshop.'

The jury heard again about Ken's hospital admissions, the first on 30 August 1978, his tests and EDTA treatment. Within a few hours of his first dose of EDTA he felt a tingling in his right hand. The next day he felt tingles in his other hand that continued four days later when he was discharged. He started working on the small tubes on the orchestrelle, this time wearing a respirator mask whenever the job was particularly dusty.

'I wasn't only concerned about the possibility of lead dust,' he told the court. 'There are quite a few jobs that you can virtually taste the stuff for days afterwards. Like when you're sanding down shellac off a piano, or when you're cleaning up base strings with either a wire brush or steel wool, you know, you can taste the dust.'

It was shortly before Christmas 1978 that he was told about tests revealing the presence of arsenic. He decided to find out what the powder inside his instruments was.

'I thought the best way to find out would be to take the contents of the vacuum cleaner that I had used prior to going into hospital, so I took them into Dr Hart and asked him could he get them analysed.'

'Did you hear anything from Dr Hart as to the result?'

'No, we didn't hear anything.'

'Did you draw any conclusion in your own mind from the fact you hadn't heard anything as to the analysis of those vacuumings?'

'Yes, I formed the opinion we had struck a blank. Subsequently when my wife was charged with attempting to murder me, we redoubled our efforts to try and find the source. I could only come to one conclusion because of the time period over which this had taken place, the only instrument that I had worked on consistently throughout the entire time period was in fact the orchestrelle so irrespective of the results of the vacuumings that I had taken, I came to the conclusion it had to be the orchestrelle.'

'There has been a deal of talk about a green plastic cup. Looking at exhibit P8 did you ever see that cup at the shop at Kensington Road?' asked Mr Peek.

‘Not that I can recall at all,’ said Mr Perry. In fact, I can very safely say that we never had a cup of that colour. All our cups were either colourless or whitish.’

‘We have heard evidence that it was found in a cupboard under the sink at the shop. Did you from time to time have occasion to go to that cupboard?’

‘I did, yes. We kept things like the washing up liquid in there and I think there was a tin of Vim or Ajax or something of that nature. I generally did the washing up because Em would be out in the shop.’

‘Mr Perry, I would like to ask you only one further question,’ said Mr Peek. ‘With the knowledge you had at the time that you married Mrs Perry did you subsequently see with your eyes, hear with your ears, taste with your mouth, observe anything, give you the opinion that Mrs Perry might be trying to poison you?’

‘I can most certainly say I have not. If I had I wouldn’t be here and I would certainly have done something about it at the time. Our whole relationship has been such that there can’t be any shadow of doubt.’

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‘You of course were very upset that your wife was charged in April 1980. Is that correct?’ cross-examined Mr Martin.

‘Naturally I was,’ responded Ken.

‘Is it fair to say that you regard the police behaviour in this matter as, overall, improper?’

‘Completely improper.’

‘And in fact, your whole attitude to this case, am I right in suggesting, was typified by the photos that appeared in *The News* last night and *The Advertiser* this morning?’

Although he had made a show of not disclosing his address to an open court, Ken had posed for photographers with Emily at lunch-time the day before. The published photograph shows Ken, his mouth completely hidden underneath a moustache that extends into curly frizz beyond the lapels of his jacket, but his eyes crinkled in a jovial smile. Emily, in profile, wearing a tailored wool jacket and a high-necked white blouse, gazes at him adoringly. Her left hand, adorned with what appears to be a large solitaire diamond on her ring finger, is placed gently on his chest.

‘If you expected me to go around with a newspaper over my head – as I know a lot of guilty people do – no. I think that this whole thing should be given the fullest airing in the media and I hope after this case it will also be the subject of a parliamentary enquiry. In fact, I am preparing a dossier to that end,’ declared Ken.

‘In fact, Mr Perry, you had problems with police in this matter, is that correct?’ asked Mr Martin. The police haven’t behaved in the manner you believe they should have.’

‘I think you are fully aware they haven’t behaved as they should have in this matter and I think a lot of their instructions have come from your department because most of their investigation

in fact has been conducted after my wife's arrest in order to justify it and not before,' expostulated Ken.

'And as far as you are concerned, you had problems with the Modbury Hospital in the sense that they didn't treat you properly,'

'That is quite correct, yes.'

'You had problems with Lensworth Finance because Lensworth Finance didn't do the right things as far as the mortgages were concerned.'

'We have had a lot of problems as a result of this case, yes.'

'You had problems with the State Planning Authority when you were trying to subdivide. You had disagreements with the Tea Tree Gully Council and the house builder.'

'Yes. If you are inferring that whenever I meet with a problem I don't just go away and hide like most people, I face up to it. If I see something wrong in society, I write letters, yes. I make a nuisance of myself. It's the way I am. But it is certainly not a reason for my wife trying to knock me off. It would be more of a reason why one of these people would try.'

Ken described his marriage with Emily as happy and he denied fighting with his wife. He denied that after he returned from Sydney he and Emily used to fight more, that he was aggressive and yelling. On the contrary, he recalled that the children complained that they were embarrassing because they were too affectionate.

'In fact, I intend to stay happily married to her despite your efforts to the contrary. We have always shared everything. We have a common love of music. Our personal life is no problems whatsoever. I don't think we even row very often and certainly have no serious rows.'

He showed affection to Emily at all times, not just when people came around – but the affection did not extend to the girls. He agreed that he never got on with [redacted].

'No, she was a pain in the neck,' he told the court. 'She was rather a spoilt child.'

Ken had prepared charts relating to his treatment and symptoms and lined up the arsenic and lead levels against the hospital case notes and the evidence of the doctors from the Committal Hearing which he did not attend. In Ken's view, all of the evidence had been hidden from him. Now he intended to sue the Modbury Hospital who were to blame for his condition that worsened with every admission. He was ready to lay formal complaints against the police. He doubted the competence of the chemistry department that found a level of 135 micromoles of arsenic per litre of urine from a sample taken in September 1979.

'My medical records are being shuffled around to suit a set of fictitious symptoms,' exploded Ken at one point. 'When we are talking about pins and needles, we are talking about pins and needles which I had in my elbow when I dislocated my shoulder. The time when I woke up one morning, there were no pins and needles, it was a very definite numbness and that numbness was confined largely to the anal region, so let's get that straight. You are deliberately trying to change the symptoms I had and this is what has happened from the beginning of this case so that they fit the symptoms of arsenical poisoning. I am not going to put up with this. My symptoms at that time were

numbness and were totally different to any symptoms which I had at a later date. I have stated this consistently and I reiterate it here. All this throwing around of these odd dates and mucking up all these symptoms is purely for your own benefit.'

'Is it incorrect to say that when you first saw your GP Dr Czechowicz about the numbness that you told him that you had pins-and-needles-type-feelings in both legs?' pressed Mr Martin.

'No, this is where the confusion is occurring.'

'Did you tell him – '

'There was a numbness,' interrupted Mr Perry.

'Mr Perry, don't make a speech,' said Justice Cox. You are asked a simple question. It is quite clear, you are asked whether you told him about pins and needles in both legs. The answer to that is either yes or no or I don't know.'

'No, I don't' said Ken.

Ken said that the pins and needles in his arms and legs started after the very first EDTA treatment and that he was poisoned from a barium enema. He insisted that he was not suffering from arsenic poisoning and that no-one actually told him he had high levels of arsenic in his blood.

'They said that they had found arsenic but not what the levels were,' said Ken. I never knew what the levels were. In the first instance they weren't even sure whether it was arsenic. There was some question as to whether in fact it was antimony and we had some thoughts of where the antimony could have come from because this is also used in players. But as far as I was concerned I was suffering from lead poisoning, and was told to keep well away from player pianos which I promptly proceeded to do by working on the organ because I knew the organ contained no lead.'

He had been wearing paper masks but Emily had bought him a respirator mask because she insisted he should take better precautions. He used the respirator whenever it wasn't inconvenient.

Ken was convinced that it was the EDTA that was making him unwell so between May and September he did not take any more. He was of the view that if arsenic was in his system, EDTA modified the levels. He wrote a letter to the Medical Administrator of the Modbury Hospital detailing his views that his urine arsenic reading of 137 micromoles per litre was caused by his EDTA treatment that started on 16 September. He was of the view that evidence had been suppressed. He had confronted the Commissioner of Police, saying his contempt for law and order was a disgrace to his Office and that members of the police had perjured themselves and planted evidence.

'I am not a medical expert,' said Mr Perry. 'It could be that I am wrong in quite a bit of this. But I am willing to bet that I am right for at least fifty percent of it.'

'In September 1979 you were convinced that EDTA was causing your arsenic levels,' questioned Mr Martin, 'but now in court you say that your high level of arsenic was caused by working on the organ.'

'No, it's a combination of both,' replied Ken. 'Obviously I had to have arsenic in my system before the EDTA could have any effect on it.'

Ken told the court that, desperate to work out why his levels were so high, he collected the

vacuumings from the vacuum cleaner that he used in the workshop and took them to Dr Hart in June 1979. According to Ken, the police concealed the positive results for lead and arsenic.

'I wasn't told that at any time, so these police allowed me to go on working on an instrument which I now know was full of poison. They were hoping that I was going to drop dead. At the very least if they really thought that my wife was guilty of a crime, they were in fact conspiring to compound a felony.'

Ken agreed that the police were given permission to take vacuumings for the health department. But this subject triggered another outburst.

'They were not given permission to take anything else. They were not given permission to steal anything and they were not given permission to take any samples. They certainly weren't given permission to go rifling through our food cupboards grabbing everything in sight. Nor were they given permission to steal a filter from a respirator cartridge which they knew darn well was an item for personal protection. They did not tell us a darn thing. They did not give us any receipts, they did not show us a search warrant and they did not represent themselves as acting for the Police Department.'

If there had been any uncertainty doubt about Ken's attitude towards the police investigation and the attempted murder charges against his wife, there was no doubt now. His rage blisters from the transcript which records that he was so incensed at the police behaviour that he was suing one of the officers. His loyalty to Emily was unflinching.

CHAPTER THIRTY-THREE

1981

Supreme Court of South Australia

The long weeks of listening to evidence came to an end on 23 July 1981 and the Crown and the Defence lawyers now addressed the jury directly. Good advocacy is about persuasion, and this was Peter Waye's particular expertise. He had a reputation for being brilliant with juries, but once again I have to speculate on what he might have said because neither the Defence address to the jury, nor the Prosecution address were transcribed. The Prosecution would have attempted to convince the jury of Emily's guilt, by summing up all the evidence and arguing that the case against her had been proved beyond reasonable doubt. Peter Waye would have encouraged them to find that the case was riddled with doubt.

Justice Cox's summing up of all the evidence was transcribed – in a hundred and forty-seven pages that he would have vocalised to a silent courtroom.

'The Crown says that you have here a striking course or pattern of events and relationships, with the accused as the connecting link, from which only the most sinister conclusion can be drawn,' began Justice Cox. 'First, a husband of the accused dies from arsenical poisoning, then a brother, and then a man who for practical purposes was her next husband dies of poisoning (not arsenic this time, but barbiturates), and finally another husband is gravely ill from, it would appear, chronic lead and arsenic poisoning. There is also, in three of the four cases, a history of medical symptoms extending over a lengthy period for which, it is said, no satisfactory natural cause was found, and in addition clear evidence that the accused stood to gain financially from any death that might result in those three cases. In those respects, the death of Montgomerie, as you know, stands differently.'

Justice Cox instructed the jury that they first had to consider if Mr Perry was in fact poisoned. If they did decide that he was poisoned, then they had to decide whether that was by accident or design. Then they were entitled to ask themselves if they could discern such a striking pattern of circumstances in the previous occurrences, such an underlying unity, as to assist them to decide in Mr Perry's case as to whether Emily administered poison to him, and did so with an intention of murdering him.

'It is then that you may look at the whole body of evidence,' said Justice Cox, 'to see whether it discloses such a remarkable pattern or series of common features as to satisfy you that Mr Perry's poisoning was not caused by accident but was brought about deliberately by the accused.'

He reminded them again that Mrs Perry was not on trial with respect to the poisoning of Albert Haag or Frank Montgomerie or Jim Duncan, whose deaths were relevant only in so far as they may have thrown light upon the poisoning of Mr Perry. Or they might agree that there was a pattern, but decline to draw any adverse inferences from it.

‘Ladies and gentlemen, I am sure that you have already given this aspect of the case much consideration. Obviously, you will have to weigh the issues here very carefully. It certainly is a most remarkable thing that one woman should have three successive husbands, legal or *de facto,* struck down by poison, two of them fatally and the third to a very grave degree, even if the events did cover a good few years. And on top of that a brother dies of poisoning as well. If the accused is not guilty of these charges, then the explanation must lie, at least so far as her common relationship is concerned, in the long arm of coincidence. It is a matter, perhaps, of how long you think the arm of coincidence is.’

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The jury was sent out to deliberate at half past ten on the morning of 23 July. As the hands of the clock in the court room ticked towards seven o’clock that evening, the jury members filed back into their seats. There were only eleven of them now, one having been discharged with no reason recorded. The jury foreman stood, faced the bench, and asked for a break.

‘You can’t separate,’ reminded the judge. ‘You have to stay within observation of the sheriff and his officers and you have to stay under the same roof tonight because all your deliberations have to be under the same roof. Accommodation will be provided for you. You are free, of course, at your hotel, to discuss the case amongst yourselves but you might feel it better to take the night off. You have had a strenuous day. Don’t discuss it with anyone else at all. Be excessively scrupulous in not talking to anyone else.’

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By morning, the jury had still not reached a verdict. Justice Cox asked them to resume their deliberations, advising them that a majority verdict of ten would be acceptable. Just after lunch, the jury came back, having deliberated for almost twenty-eight hours. Ten out of the eleven jurors had reached a verdict.

‘Do you think you are likely to agree unanimously if you continue to deliberate?’ asked Justice Cox.

‘It would be a complete waste of time,’ was the Foreman’s blunt reply.

The typed record of the verdict in the transcript gives no hint of the stillness and the silence that must have enveloped the courtroom at that moment. I imagine Brian Martin, fingers steepled, his eyes towards the jury, and a tense Ann Vanstone beside him. I picture Peter Waye, perhaps locking eyes with his client as she stood up to hear her fate. Journalists, eyes darting from the dock to the jury box, unaware that they held their breath. And Justice Cox, ramrod straight, inviting the foreman to pronounce the verdict upon the first count, and then the second count, and the foreman’s two swift replies, the verdict on each count of attempted murder, shattering the silence.

‘Guilty.’

And then the court would have been a maelstrom of movement and noise, of gasps from the

public gallery, of reporters rushing to leave the courtroom. [redacted] burst into tears and reached for Ken's hand as he collapsed back against the bench in the middle of the court, but then leapt up from his seat as quickly as his arsenic-damaged body would allow, loudly declaring Emily to be innocent, and protesting that the verdict was completely unfair. In a dramatic finale, Ken reached out his arms to his wife and clasped her in a tearful embrace before two guards led her away to her first night in prison. The lawyers quietly packed up their papers and made their way out the back door of the court to avoid the corduroy-clad journalists waiting on King William Street, eager to file further copy before the day's deadline.

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POISON CASE WIFE GUILTY screamed the front page headline of *The News* on the evening of 24 July 1981. Half of page three was taken up with a photo of a distressed Ken Perry surrounded by reporters as he hobbled from the court, alone, leaning heavily on a walking stick.

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A few days later, on Tuesday 28 July 1981, Emily Perry stood weeping in the dock, awaiting the announcement of her sentence.

'Emily Phyllis Gertrude Perry, you have been convicted following the verdict of a jury, of two counts of attempted murder,' began Justice Cox. 'You married your present husband, Kenneth Warwick Henry Perry in 1973, and you have lived with him continuously ever since. There was nothing in the marriage to suggest any violence or ill-treatment or the kind of deep-seated disaffection which one might expect to precede a deliberate attempt to murder. To all outward appearances, you were living a normal married life.'

It was the kind of introduction that precedes a 'but' or a 'however'.

'I am satisfied,' he continued, 'as the jury must have been, that over a long period prior to your husband's first admission to Modbury Hospital in October 1978 – probably for at least two years, and possibly for much longer – you administered small quantities of poison to him in his food and drink with the intention of killing him. You persisted in your poisoning of him between his visits to hospital in 1978 and 1979. It is plain that the insurance monies played a large part in your motive or motives for this appalling crime.'

Ken's belief in his wife's innocence had not convinced Justice Cox. How must that have felt, to have his faith in their shared devotion stripped bare, his certainty that the verdict was unfair, brushed aside? Was Ken looking at Emily as Justice Cox described his firm belief in her innocence as bizarre? There are no clues in the transcript about Emily' s reaction as Justice Cox described Ken's love and trust for her as a sad tragedy.

'Society has always, and understandably, viewed with particular abhorrence the actions of

the slow poisoner,' declared Justice Cox. 'It is not easy to understand the mentality and outlook of a person who can carry on an apparently normal life with someone else, while insidiously administering a slow poison to him over a long period of time and watching him decline physically day by day as the result of it, as he proceeds towards his intended death. What I heard and saw at the trial, including your own evidence on a *voir dire* satisfy me that you are intelligent and efficient and resourceful. We see a good number of people in this court who have committed serious crimes of violence, sometimes quite brutally, but this kind of long-term, systematic callousness on a grand scale is fortunately uncommon.'

Justice Cox may have looked up from his notes here, turning his attention to Emily as she stood in the dock. Ken now faced life in the knowledge that a jury had decided that his wife had committed the worst kind of betrayal, but Emily had to prepare for life in a prison cell. Fear must have crept into her thoughts. How long would she get? Would Ken abandon her? Would she lose contact with her daughters? Her son?

'There must be a moral dimension altogether missing in the person who is capable of such behaviour as this, and that, in its own way, is sad and provokes one's sympathy,' Justice Cox was saying. 'However, I am also satisfied from the evidence that you are a dangerous woman, and the matter of society's protection for your murderous behaviour is a factor that I must take into account.'

Justice Cox's final ruling, after a long and difficult case, was decisive.

'The sentence of the Court is that you be imprisoned with hard labour for fifteen years on each count, the sentences to be served concurrently'.

Ken, sitting in the front row, began to sob.

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'As God is my witness, my wife is completely innocent. I know from our courtship, our whole married life, that she is innocent,' declared Ken outside the court. 'She has been locked away and I have been locked out. The same prison walls that are holding her in, are holding me out.'

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PART 5
A YELLOW RIBBON

CHAPTER THIRTY-FOUR

1981

Supreme Court of South Australia – Court of Criminal Appeal

While journalists were collating column content for double page spreads under the headlines *Fitting into a Pattern of Death* and *Tragic Trust Shown by a Husband*, Mr Waye and Mr Peek were preparing Emily's appeal documents. They were going to argue before the Full Court of the South Australian Supreme Court (sitting as the Court of Criminal Appeal) that the trial judge had been wrong in allowing the jury to hear the similar fact evidence. A 'Full Court' usually means three judges, who must come to a majority decision.

The appeal hearing began on 21 September 1981. Brian Martin and Ann Vanstone again represented the Crown and argued that the circumstances surrounding the deaths of Mr Haag, Mr Montgomerie and Mr Duncan tended to prove an objective pattern of common features that were enough to satisfy the jury that Ken Perry's poisoning did not occur by accident. Peter Waye again argued on Emily's behalf that even if on its face the evidence was admissible, the trial judge should have exercised his discretion and excluded it, because its prejudicial nature outweighed its probative value. The evidence relating to the deaths of Frank Montgomerie and Jim Duncan was particularly prejudicial and the trial Judge should have directed the jury to ignore it. Finally, as a concluding alternative ground of appeal, Defence counsel asked the Full Court justices to find that the trial judge should have directed the jury that they had to be satisfied that the appellant was responsible for the three prior deaths before the deaths could be used as an aid to determine whether Emily was guilty of the charges in the indictment. This was in direct counter-attack to the Prosecution's 'objective pattern' argument.

The legal arguments were nuanced and complex, a repetition of those from the start of the trial, although this time sharper, more succinct. Both sides had armed themselves with precedents and had crafted their submissions into what they each hoped were cogent and convincing. The appeal hearing went for five days. On the bench were Chief Justice Len King, Justice Roma Mitchell and Justice Michael White, a formidable powerhouse of legal intellect. Three of the keenest legal minds in South Australia now had to determine who was right.

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On the morning of 20 October 1981, journalists and cameramen clustered on the footpath outside the Supreme Court as the bewigged and robed lawyers funnelled inside, shiny ravens preceding the shuffling sparrow of Ken Perry. When the three Full Court Justices entered the courtroom, the

collective anticipation would have been palpable.

Chief Justice Len King's reputation was equally balanced between eminent jurist and compassionate activist. I remember his sharp, raspy voice welcoming me and my cohort of graduates at my own Supreme Court admission ceremony in 1989, and the clarity with which he outlined what it meant to join the legal profession. Chief Justice King had carefully considered the legal precedents relating to similar fact evidence. He cited the principles set out in the tragic Baby Farmers case of 1894 when John and Sarah Makin were charged with the murder of one-month-old Horace Murray and another 'Baby D' after the bodies of twelve babies were found buried in the backyards of houses where the Makins had lived.

'It is … not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person *likely* from his criminal conduct or character to have committed the offence for which he is being tried,' the Chief Justice cited from the *Makin* case.

This principle meant that the Prosecution was not allowed to lead evidence to show that Emily was *likely* to have attempted to murder Ken Perry. You can't find someone guilty of a crime because they are likely to have done it.

The second principle from the *Makin* case that was critical, despite its turgid phrasing was:

'On the other hand, the mere fact that the evidence adduced tends to shew the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.'

In lay terms, that means that the evidence about the three earlier deaths was admissible if it was relevant to an issue before the jury. Chief Justice King expressed the unambiguous opinion that the disputed evidence was genuinely and strongly probative that Emily Perry deliberately poisoned her husband. The 'probative value' of evidence is the pivotal argument used by lawyers when justifying its admissibility. Justice Cox, in Chief Justice King's view, had been right to allow the evidence because it satisfied the 'relevance' criterion for admissibility. This was not the same as using the evidence to show that Mrs Perry had a tendency to poison people. Proof of repetition was admissible to destroy or reduce any Defence argument that Ken's ingestion of poison was an accident.

'It is relevant,' said the Chief Justice, 'if it possesses genuine probative force other than by way of disposition'.

'The probative force of the evidence admitted in the present case is not difficult to appreciate,' said Chief Justice King, who summarised his view of the case in a paragraph of judicial poetry:

'For a person to experience the death or near death, through poisoning by suicide or accident, of somebody with whom he or she was in a close relationship and for whom he or she was in some

sense caring in the matter of the provision of food, drink or medicine, would be to undergo an unusual and most unfortunate experience in life. To experience such a calamity twice would be remarkable. To experience it three times would be so striking a departure from the ordinary course of human affairs as to incline a reasonable person to treat a claim to have had that experience as incredible. To experience the calamity four times might be thought to be so in conflict with human experience and so beyond the reach of coincidence as to compel a reasonable person to reject the claim to have experienced four such calamities. Indeed, the experience of four such poisonings in those circumstances would point strongly in the direction of the person who was the only factor common to each of them, being the agent by which they occurred.'

'The appeal should be dismissed,' concluded Chief Justice King.

One out of three. A majority Bench decision was required but the Chief Justice's views were of a bellwether ilk. Justice Roma Mitchell was next, the first woman to be appointed to the Supreme Court Bench. Her signature as Chancellor of the University of Adelaide is on my law degree parchment. Justice Mitchell summarised the evidence and plucked out the salient parts of the trial like a cat grooming its fur. She teased out facts as if they were burrs, eliminated uncertainty with the deftness of a rough tongue and polished her final result with panther-like sleekness. The disputed evidence in her view was admissible to show that the hypothesis of arsenic poisoning by accident was highly improbable in the light of various other facts: Emily's close connection with three other men who died of poison, two of them from arsenic, and the benefit she gained from life insurance policies. Should the trial judge have exercised his discretion, as the Defence had urged, to withhold the disputed evidence from the jury because it was prejudicial?

'Of course the evidence was prejudicial,' observed Justice Mitchell tartly, 'as most relevant evidence tendered by the Crown is. It was, however, of sufficient relevance to make that relevance outweigh the questions of prejudice to which the learned Judge had to give consideration.'

Two out of three had swung the decision against Emily. Justice White's views now mattered less because the appeal had already failed. Michael White, a good friend of the Chief Justice whom he met in the RAAF during World War II, was known as a scholarly and philosophical judge. He had been a member of the firm where I first practised law and was later involved in the establishment and development of the new law school at Flinders University where I worked for a decade. Justice White completed the hat trick and agreed that Justice Cox's directions to the jury had correctly reflected the law.

The front page headline – 'POISON CASE' – in *The News* that evening took up more space than the copy. Emily Perry's notoriety was such that the trial was a local soap opera in which the press highlighted the role of Ken Perry as the tragic victim. On page two, Ken looks away from the camera in a close-up photograph that reveals exhaustion and sadness. Dark rings form despondent crescents under his eyes and his famously preposterous moustache completes the portrait of a sad clown. Had he worn a mask all this time? Had he wondered, even once, that his beloved Emmy was as dangerous as Justice Cox believed? Had her tender hands been doing the devil's work behind

his back? Or had he suspected her perfidy all along, and played the Joker to outwit her? Could it be that he refused to acknowledge publicly that the woman who shared his bed had made a mockery of him? Ken's choice to defend his wife has been considered unusual and unexpected by some, by others delusional. Bill Cook still believes that Ken's attitude was a product of his own arrogance. The retired detective believes that Ken was too proud to admit that he had been duped. Local gossip suggested that brain damage caused by the poisoning had addled his brain. But Ken defiantly told the waiting media that he was absolutely convinced of his wife's innocence and that they would take their appeal to the High Court.

'We will find the money somehow,' he declared.

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Emily applied for legal aid to fund her High Court appeal. A new law graduate working as a clerk at the Legal Aid Office was sent to the Northfield Women's Prison to help Emily complete the application form. A distressed Emily met the nervous clerk in a private room, sobbing as she dictated her details and declared that she was financially ruined. After Emily had signed the application form, the clerk, eager to leave the oppressive prison visitors' room, gathered up the papers and told a still sobbing Emily that a response would be forthcoming. As soon as she was alone again, Emily's tears abruptly ceased and her lips parted in a broad grin. Emily didn't realise that the astonished clerk could still see her through a one-way mirror.

CHAPTER THIRTY-FIVE

April 1982

High Court of Australia, Canberra

The lawyers flew to Canberra on 27 April 1982, the day before the High Court hearing. Accompanying the Crown duo was Graham Prior QC, the Crown Solicitor, whose role was to argue that special leave should not be given, but the High Court were already interested in it. Not only did they grant special leave, they granted the appeal. They would publish their reasons later.

'Tie a yellow ribbon round the old oak tree, if you still want me,' Emily had requested of Ken while she was still in prison. The refrain from the famous song that in happier times they had sung with friends around the Pianola, became the next day's front-page headline of *The Advertiser* which published a photograph of a beaming Ken and Emily under a large tree in their front garden, around which Ken had tied a giant yellow ribbon.

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On 16 December 1982 the High Court published its reasons, cementing the case of *Perry v R* as a significant precedent in Australian's legal history. Ken and Emily were at the Woodville Gardens Helping Hand Centre Christmas party when they heard of the announcement. *The News* captured Ken, wearing a white dress shirt with bowtie, cufflinks and a boater hat, cheerfully posing for the cameras as he grasps Emily's hand. Emily, in a gingham dress with girlishly puffy sleeves gazes into the lens, her wide mouth mid-song, once again the chorus girl, in a rendition of 'Let us be sweethearts again.'

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In yet another curious twist to this narrative, Justice Keith Aickin was injured in a car accident and died from a heart attack before providing written reasons for his decision. The four remaining justices each provided separate judgments. Harry 'Bill' Gibbs had been the Chief Justice of the High Court of Australia for less than two years, but he had been a member of the High Court Bench since 1970. He was a legal conservative with a reputation for being formal but unpretentious with a broad Ipswich accent and a reputation for decency. Chief Justice Gibbs accepted that there was clear evidence that Ken Perry became seriously ill as result of poisoning by lead and arsenic. He also acknowledged that Emily had the opportunity to administer the poison to him and that she would have benefited from a number of insurance policies if he had died.

'The fact that an accused has, in the past, committed crimes in a particular, unusual, manner

may be relevant to show that this was the person who committed the crime in question,' said the Chief Justice of the High Court. 'In some cases the frequency with which a particular set of circumstances has occurred may, having regard to ordinary human experience, make it unreasonable to suppose that they have occurred other than by design. In cases of the last two kinds it may be important to consider whether there is a "striking similarity" between the similar facts sought to be proved and the facts in issue.'

So, on a charge of attempted murder by poisoning, the Crown was not allowed to lead evidence that the accused had poisoned other persons, if that evidence showed only that the accused was a person who has a tendency to poison others. But where a number of poisonings have occurred, and the victims were all associated with the accused person, the evidence of the other poisonings may be admissible to support the inference that the accused was responsible for the death in issue.

'It would be contrary to ordinary experience that a series of poisonings, caused by accident or suicide, would occur by coincidence in the circle of persons with whom the accused was associated,' explained the Chief Justice. 'However, it is not enough that the evidence merely raises a suspicion. It must have a strong degree of probative force.'

The evidence relating to Jim Duncan was problematic. The Crown had to rely on the other instances of poisoning to provide a basis for an inference that Duncan had arsenic poisoning. In other words, it was necessary to assume Mrs Perry's guilt in order to render admissible the evidence regarding the death of Duncan. This was objectionable. As for Montgomerie, he clearly died from arsenical poisoning and Mrs Perry had an opportunity to administer arsenic to him. But she did not live with him and many others had both opportunity and motive to put arsenic in his wine. Or he may have poisoned himself. But Chief Justice Gibbs did not acknowledge that at his autopsy, a sample of Frank's blood was found to contain no alcohol, so the idea of him downing some weed killer in a drunken stupor was not possible. If he poisoned himself, how?

Chief Justice Gibbs was adamant that the evidence about Frank Montgomerie did no more than raise a suspicion that Emily poisoned him. There was no striking similarity between the death of Montgomerie and the poisoning of Ken Perry. Chief Justice Gibbs declared that the entirety of evidence about both Jim Duncan and Frank Montgomerie was inadmissible. The evidence about Mr Haag, however, was different because there was a clear connection between Emily and the death of Constable Haag by arsenical poisoning. She had a motive to kill him and a motive to kill Ken Perry. Gibbs saw a striking similarity between the two cases and found the Haag evidence admissible.

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Justice Lionel Murphy had been Attorney General for Australia in Gough Whitlam's Labor Government and was an unashamed radical and reformist, known for his judicial activism and civil libertarianism but also for being a humanitarian and egalitarian. He had a reputation as a dissenter

on the High Court bench. He was chary of the use of similar fact evidence, and found it an extremely dangerous method of determining criminal guilt.

'For centuries it was regularly used in England, other parts of Europe and the American colonies,' he said, 'to convict millions of persons of the impossible crime of witchcraft.'

Justice Murphy was particularly concerned that in Emily Perry's case the presumption of innocence had been replaced with a presumption of guilt. It was dangerous to assume that if a person is associated with poisonings of four close relatives, it is so remarkable that it is unlikely to be innocent. He explained this with mathematics.

'Common assumptions about improbability of sequences are often wrong,' he said. 'A suggested sequence, series or pattern of events is often incorrectly regarded as so extremely improbable as to be incredible. However, sequences and combinations are constantly occurring. In random tossing the occurrence of a run of ten consecutive heads or tails is generally regarded as highly improbable. But this will occur on the average once in every 512 tosses. If one randomly tosses a coin 257 times, more likely than not there will be a sequence of ten heads or tails. Although it is extremely improbable that any particular ticket will win a large lottery, it is certain that one will.'

In relation to Jim Duncan, Murphy found that there was powerful evidence which 'overwhelmingly discredited the notion of arsenic poisoning.' As for Montgomerie, 'there was not a scrap of evidence to sustain a conclusion that the accused poisoned him' and 'there was ample evidence providing a rational explanation of Albert Haag's arsenic poisoning consistent with Mrs. Perry's innocence.' But what was this 'ample evidence?' Murphy appears to have accepted the possibility that Albert Haag ate arsenic-laced corn cobs, a narrative aired only by Emily (as Trudy Haag) to the police and in fact disproved by the tests that showed that there was no arsenic in the corn cobs collected from the garden. Justice Murphy's indignation bubbles up from his written judgment when he addresses the scientific evidence.

'The evidence particularly in relation to Duncan, but also of the other alleged poisonings including that of Mr Perry, reveals an appalling departure from acceptable standards of forensic science in the investigation of this case and in the evidence presented on behalf of the prosecution,' he wrote, in an extraordinarily personal attack aimed squarely at Dr Colin Manock whom he accused of being partisan and lacking in independence. 'If the expert assistance available to the Prosecution in this case is typical, then the interests of justice demand an improvement in investigation and interpretation of data and presentation to the court by witnesses who are substantially and not merely nominally experts in the subject which calls for expertise.'

The admission of the evidence about Haag, Montgomerie and Duncan was a miscarriage of justice and should have been excluded, concluded Justice Murphy, adding that had the High Court been asked for an acquittal he would have granted one. None of the other justices were as stridently critical of the Prosecution case but all four agreed that the evidence relating to the death of Jim Duncan was inadmissible.

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When High Court Justice Ronald Wilson was a former Crown Prosecutor in Western Australia, he was known as the ‘Avenging Angel’. He was now of the view that there was evidence touching the death of Constable Haag ‘which if accepted by the jury would have supported a conclusion that the applicant was implicated in his demise’. He pointed out that the only objection made with respect to the evidence about Haag was that its probative force had diminished with the time lapse of almost twenty years, but he held to the view that the evidence exhibited strong probative value. The evidence regarding Montgomerie was more ‘borderline’, but Justice Wilson was struck by the ‘extraordinary coincidence’ of Montgomerie’s death in circumstances where she could have placed the poison in the wine and was the last person to be with him prior to his death.

‘There is also the evidence of the applicant telling the police officer that her name was Hulse, instead of the name Haag which she had continued to use after the constable's death,’ stated Justice Wilson. ‘She told him this at a time when a person who was innocent of any involvement in the death could not have known of its cause.’

Wilson decided that the evidence about both Haag and Montgomerie was admissible. However, the evidence about Duncan ‘fell into a different category’ because there was no cogent evidence that Duncan suffered from arsenical poisoning and Dr Manock’s evidence about Duncan’s symptoms was equivocal.

‘The limited number of comparable symptoms, coupled with their mundane character, militate against a confident conclusion that Duncan must also have been suffering from slow poisoning. There could have been other causes for the symptoms he displayed,’ decided Justice Wilson. ‘If his body had been interred instead of cremated, it may have been possible to have established by later examination of the remains that arsenic was present. If that were so, the probative force of the evidence of his illness, suffered at a time when he was being cared for by the applicant, would be very strong indeed. There could then have been no doubt of its admissibility. Without it, the evidence possesses a speculative character. It therefore should not have been admitted.’

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Justice Gerard Brennan, a man of strong Catholic faith, was renowned for living by the principles of egalitarianism, tolerance and respect for conscience. He spoke and wrote in reasoned, measured tones. He described the earlier deaths as a ‘concatenation of arsenical poisonings of members of Mrs Perry's family’ which ‘might provide the Crown with a legitimate foundation for seeking a finding that the ingestion of arsenic by Mr Perry was the last case in a series of deliberate poisonings rather than the last of a number of disconnected accidents.’ Like Justice Wilson, he found that the evidence with respect to Duncan was materially dissimilar from the Haag and Montgomerie evidence because his symptoms might have had other causes.

‘There was no evidence upon which the jury could have been satisfied that Duncan's symptoms were caused by ingesting arsenic,’ wrote Justice Brennan in his judgment. ‘As the evidence relating to Duncan falls short of establishing that his was another case of arsenical poisoning, that evidence was not probative of a fact in issue and it ought to have been excluded as irrelevant. As it was admitted and treated as probative of guilt, the trial miscarried.’

Brennan then reasoned that the exclusion of the Duncan evidence reduced the probative force of the other circumstantial evidence. The Montgomerie evidence in isolation had less probative force than the Haag evidence, but he was of the view that these two sections of evidence should not be regarded separately because their probative force lay in the fact that in both cases, death was caused by arsenic and that the jury would be entitled to infer that Mrs Perry had an opportunity of administering the arsenic ingested, just as she had in the case of Mr Perry.

‘It is the occurrence of three arsenical poisonings in Mrs Perry's family which gives probative force to the challenged evidence. Its cogency and weight will be a matter for the jury at the end of the trial, but in my view the evidence relating to Haag and Montgomerie is of sufficient force to warrant its admission. The wrongful admission of the evidence relating to Duncan is the sole ground which I would assign for the order made by this Court granting special leave to appeal, allowing the appeal against conviction in each case and ordering a new trial.’

However, given that the High Court was evenly split in its views about the admissibility of the evidence relating to Montgomerie, in any retrial, Justice Brennan warned that it would not be right for the Crown to press for the admission of the Montgomerie evidence. Without that evidence, the Haag evidence in isolation would be greatly weakened, especially as all the evidence was ‘consistent with Haag ingesting arsenic accidentally’ – but Justice Brennan was wrong here. There was no evidence of Albert Haag ingesting arsenic accidentally except on the word of his accused widow who came up with the unlikely scenario that he sprayed corn cobs with arsenic and then ate them. Justice Brennan concluded that it would be up to any new trial judge to consider whether the evidence relating to Haag should be admitted.

The final collective decision of the High Court was that Emily’s conviction should be quashed and there should be a re-trial.

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Assembling a jury for a re-trial would have been close to impossible. The information that had been declared inadmissible had already been disseminated by the tabloid presses, making Emily Perry a household name. Jokes about arsenic laden tea and black widows proliferated on the streets of Adelaide, and telling a new jury to disregard anything they had seen or heard about the case would have been naively optimistic. Of this, the Prosecution was no doubt all too aware. Politically, the case was a potential embarrassment. A sixty-day trial, followed by two appeals would have dented the Crown Prosecutor’s budget substantially and to re-try her after such a scathing defeat in the High

Court would have been very difficult. Peter Waye's argument had always been that the Crown case was weak without the historical background. Three of the High Court Justices – Gibbs, Wilson and Brennan – agreed that the evidence relating to the death of Albert Haag was admissible. But there was real difficulty in leading the Haag evidence without the Montgomerie and Duncan evidence, especially because Haag's death was so long ago. To run a trial without the similar fact evidence, with an unco-operative victim, no independent witnesses and intense media interest, would have been neither expedient nor appropriate for the model litigant that the Crown is required to be.

'I certainly recall having a discussion with Brian [Martin] and putting my view, which was that it wasn't really in the public interest to proceed with this matter further,' Chris Sumner tells me on a chilly Adelaide day in May, 2016 as the former Attorney General for South Australia chats to me about his recollections of the case.

'The similar fact evidence had been excluded, you had a victim who didn't think that he was a victim, plus I had in the back of my mind that this has got the potential to hold the system up to a bit of ridicule,' Mr Sumner recalled. 'And I think that's a legitimate factor for someone in my position exercising decision making powers at the time should take into account.'

'It's hotly debatable what public interest means,' Mr Sumner added. 'Because it's not just that the public is interested in it, but does the public interest demand that this lady be put on trial again? I thought there was a pretty strong case to say the public interest was not served. It would have been in my mind at the time and I just thought, look, another several months of a trial of this kind, with the husband continuing to have his position and the media interest in it, I don't know whether I would have put it at that time in these terms, but reflecting on it, I would. I think it did have the potential to become a bit of a farce. And the other thing is that there's got to be a reasonable chance of a conviction. The prosecutors can't advise to lay charges unless they think there is a reasonable prospect of conviction. I certainly didn't think it was in the public interest to proceed.'

The Crown entered a *nolle prosequi* in the Supreme Court of South Australia, formal notice that the Crown would not be prosecuting the matter any further. Emily was neither guilty nor acquitted. The case was officially closed.

But Emily was not in the clear yet. In November 1984 the Victorian police finally charged her with the murder of Albert Haag and her very public arrest in Rundle Mall, Adelaide's premier shopping precinct, made headlines once again. Emily fought, but lost, another long legal battle to extradite her across the border to face a trial in Victoria.

The charges were dropped just before the trial was due to begin.

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CHAPTER THIRTY-SIX

2019

Rowans Road, Moorabbin, Melbourne

I have moved to Melbourne for a job.

I just parked my car near the corner of Narooma Street and Rowans Road in the south-eastern Melbourne suburb of Moorabbin. It's a quiet suburban area, not far from Bentleigh where I am renting an apartment

I am standing outside number 148 Rowans Road. This is the house where Trudy and Albert Haag lived, third from the corner. It's the house from where Albert was taken in an ambulance all those years ago. It has a low red brick wall that might have been there in the sixties. There is an old tree out the front. I'm not quite sure what it is. Melaleuca or something like that? The roots are coming through the earth. Perhaps Albert Haag planted it. There is a scrap of lawn, and a wooden fence on the right-hand side as I face the house. On the left is a low wooden fence. It's white weatherboard and looks like it has been recently painted which of course is what happened the weekend when Albert became so sick and died.

Halfway down the driveway there is a little gate. I can see a shed down the back which is quite likely to be the shed that Albert built way back in the late fifties. It's the shed where Detective Ritchie climbed up on a chair to reach down the bottle of Arzeen from the rafter. Beyond that, I can just see the tip of a hills hoist. The front window looks like it might be a bedroom; under the hem of a lace curtain I can see ornaments and paraphernalia piled up half a metre above the top of a cupboard. This might have been the room from which the sound of Albert's awful and repeated vomiting turned a family working bee into a nightmare. I think it's the room where Albert's brothers and sisters and his frightened daughters last saw him alive.

It's not a very big house. There's a red brick chimney on the left side, and then beyond the little gate there's an awning over a window. There is a back door with a fly screen which would be where Trudy would have chatted to Dorothy from next door. Here am I, decades later, reconstructing the story of an ordinary suburban family who unwittingly became part of Australia's legal history. I feel weird taking photos of someone's house. I can hear voices inside.

The house next door is number 150. It has a low white iron fence and a patch of unkempt garden out the front. I can see that the front door is on the side of the house, opposite the back door of the Haag house, with a few stone steps, just like neighbour Dorothy Roberts described in her evidence. It's a white weatherboard house with a grey tiled roof and a television aerial at the back. There's a little pink bike with trainer wheels lying on the patch of dry grass that a spray of water might encourage into a lawn. On the right, down the centre of the long driveway, there is another strip of grass that summons a memory of me learning to ride a bike on a similar driveway at the house where

I grew up in Adelaide.

I imagine back in the late fifties, early sixties, it would have been a very quiet street. It was unsealed back then. Over the road is where Jack Padey used to live at number 129, almost directly across from the Haags. There's a new fence here but this house still has its old weatherboard walls also recently refreshed with new paint. The house next-door-but-one to the Haags was the home of Ramona Ostle, one of the neighbours who helped clean up before the funeral.

I have spent nearly eight years trying to find Emily, and to work out who she was. The chorus girl whose name became a headline, the title of her own piece of theatre, remains an enigma. I think she enjoyed the spotlight, the music, the dancing, the ballgowns, the spruiking, the photos in the newspapers, an interview at one stage on *Sixty Minutes*. As I walk up Narooma Street, I can see Bruthren Street up on the right. It's a nice little street. Some of the letterboxes look very old. If only they could talk about what happened here that night when Albert Haag came running down to the phone box to ring the doctor because his wife was miscarrying their baby son. About the mysterious car was parked near the phone box. The knowledge of what really happened, the memories of the past, have been shed like the leaves from these trees. I'm willing the very ground in which they are planted, the silent houses and the air around me to offer up their secrets, to whisper to me their knowledge of the past.

But they don't.

EPILOGUE

Adelaide

2012 – 2014

A simple death notice was printed in Adelaide's *Advertiser*.

Emily Perry. Died on 29 January 2012.

At peace at last.

A few days after her death, *The Advertiser* published an article headlined 'My loving wife was no serial poisoner', once again reviving details of the infamous case. Even after she died, Ken continued to champion his wife and complained to the Australian Press Council that the article was 'unfair, unbalanced and showed inadequate regard for the privacy and sensibilities of her family and friends.'

The Press Council upheld Ken's complaint. It expressed the view that 'given the extraordinary and highly-publicised nature of Emily Perry's legal battles, it was not inappropriate to focus on them in an article following her death despite the pain that this was likely to cause her husband, family and friends. It was especially important, however, that such an article be fair and balanced.' The Council concluded that the article lacked adequate balance because it focussed on 'information and allegations which tended to raise suspicions about her', rather than on 'significant exculpatory material' and it failed to note the withdrawal of the charge against her of the murder of Albert Haag.

Ken died in 2014.

NOTES

Details about the events depicted in this book have been compiled from:

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