

Gun Alley cont. from p. 23

Throughout *Gun Alley* Morgan confronts Australia with an innocent man who was executed. Ross believed that one day his name would be cleared. He wrote, "...dear ones do not fret too much for me. The day's coming when my innocence will be proved."⁹

Morgan has taken up Ross' fight to declare for the public record that an innocent man was sent to the gallows. Morgan is organizing a Petition of Mercy to get Ross' guilty verdict quashed.¹⁰ Victoria's Attorney-General Rob Hulls has acknowledged the value of Morgan's exhaustive research in the Ross case. Hulls has stated that he is willing to consider any new evidence in order to have Ross' name legally cleared.

Gun Alley is a critical step in opening the eyes of Australian's to a forgotten miscarriage of justice. In the words of Ross's mother, Ross was the "...victim of a foul conspiracy, prompted by motives of revenge, jealousy and cupidity."¹¹ Although it has taken eight decades, Ross' belief that his name would be cleared has a chance to come true thanks to Morgan's unrelenting search for the truth of Alma Tirtschke's murder.

Morgan wrote the book from the eyes of the victim, Ross, the families and the detectives involved. The book is written as a recreation of the murder and the investigation leading to the arrest and execution of Colin Ross. At times there is a lot of information in the book but it becomes interwoven in the story. It will appeal to those who just want a good read, as well as those who are interested in a compelling miscarriages of justice.

Gun Alley can be purchased for \$13 plus \$5 service charge from *Justice:Denied's* Bookshop at, <http://justicedenied.org/books.html>. *Gun Alley* is not available on Amazon.com or Barnesandnoble.com, and only a limited number of copies are available to *Justice:Denied*.

Serena Nicholls was admitted as a Legal Practitioner in the Supreme Court of Queensland, Australia in September 2006. She is currently completing her Master of Laws and lives in Rowdy Creek, Queensland, Australia.

Endnotes:

- 1 Morgan, Kevin (2005) *Gun Alley: Murder, Lies and Failure of Justice*, Simon & Schuster, Australia, p23.
- 2 *Id.* at 259.
- 3 *Id.* at 37.
- 4 *Id.* at 173-175.
- 5 *Id.* at 205.
- 6 *Id.* at 158.
- 7 *Id.* at 227-228.
- 8 The Hanged Man's Shadow, Australian Story, *Australian Broadcasting Corporation*, 13/04/00.
- 9 Morgan, *supra* at 256.
- 10 The Hanged Man's Shadow, *supra*.
- 11 Morgan, *supra* at 314.



George Kelly Exonerated 53 Years After Being Hung By The Neck Until Dead

By Hans Sherrer

The manager of Liverpool's Cameo Cinema and another theater worker were shot to death during an attempted robbery on March 19, 1949. The robbery was botched so badly that in spite of the two murders, no money was stolen.

The crime became the focus of one of the most intense police investigations in English history: over 65,000 people were questioned and the police pursued many leads. There were no serious suspects, however, until the police received a letter by an anonymous writer who offered to name the people involved in exchange for immunity. To prove the authenticity of his information, the letter writer identified the pond where the murder weapon had been thrown. The pond was subsequently dragged without recovery of the gun. In spite of the bogus lead about the murder weapon, the police accepted the immunity deal by placing an ad in a local paper, the *Liverpool Echo*.

The informant was James Northam, a known criminal, who claimed to have planned the robbery. He fingered 27-year-old laborer George Kelly as the robber, and Charles Connolly, 26, as the lookout. They were arrested on September 30, 1949, more than six months after the murders,

Prosecution of Kelly and Connolly

Although two murders were committed, under English law each murder had to be charged and tried separately, so the two men were charged with the manager's murder. No physical evidence tied the men to the crime and the defense argued the testimony of the prosecution's star witness, Northam, was unreliable.

Connolly had a solid alibi defense, corroborated by his wife and numerous witnesses, of being at a dance on the Saturday night the crime occurred.

Kelly's also had an alibi defense. The manager of Liverpool's Spofforth Hotel testified he was there at 9.25 p.m. and the bartender at the Leigh Arms (bar/hotel) — eight blocks away — testified she saw him there at 9.35 p.m. (the bar's clock showed 9:45 p.m., but it was set ten minutes fast.). After arriving at the Leigh Arms, Kelly called two of his brothers. They testified the call was at or shortly after



9:30 p.m. So there was a window of between five and ten minutes when Kelly could have committed the crime, except that the shooting occurred at about 9.35 p.m., when Kelly was already at the Leigh Arms. The Leigh Arms was eight blocks east from the Spofforth Hotel, while the Cameo Cinema was twelve blocks south from the hotel. Kelly's alibi was strengthened by the fact that within a ten-minute period of time he could not have traveled the more than two dozen blocks between the three locations, and also done the things the murderer was known to have done at the crime scene on the second floor of the cinema.

The case against Kelly and Connolly was so insubstantial that their 13-day trial ended in a hung jury.

The men were then retried separately: Connolly first. With the eyes of the nation focused on him, and facing a death sentence if convicted by a jury, he caved under the pressure and minimized his possible sentence by admitting at his trial to participating in the robbery as the lookout. Convicted of robbery and conspiracy to rob the cinema — but not murder — Connolly was sentenced to 10 years in prison.

Although Kelly knew the prosecution's case was bolstered by Connolly's admission, he steadfastly proclaimed his innocence. After what was then the longest criminal trial in English history Kelly was convicted of murder on February 8, 1950. He was sentenced to death.

Kelly's appeal was denied on March 10, and his petition for commutation of his sentence to life in prison was rejected. Seven weeks after his conviction, Kelly was hanged on March 28, 1950.

Rose Heilbron's Defense of Kelly

After his indictment, Rose Heilbron was appointed as Kelly's lead lawyer. Although Heilbron was an experienced criminal lawyer who had acted as co-counsel in several dozen murder trials, Kelly's case was the first time in English history that a woman had represented an accused murderer as lead defense counsel.

At the beginning of the case Kelly was unhappy with Heilbron's appointment, saying, "I want no Judy defending me."¹ However, after his two trials and numerous court appearances, during which it is estimated Heil-

Kelly cont. on page 25

Kelly cont. from page 24

Heilbron spoke 150,000 words on Kelly's behalf, he praised her painstaking and impassioned defense of him. Although Kelly was convicted and executed, Heilbron's peers and the press recognized her tireless efforts on his behalf. London's *Daily Mirror* went so far as to name Heilbron the newspaper's "Woman of the Year" for 1950.²

Exculpatory Evidence Discovered in 1991

In 1991, four decades after Kelly's execution, a person interested in Kelly's case requested to see the Merseyside (Liverpool) police files.³ In those files was exculpatory information concealed by the prosecution from Kelly and Connolly. The files included a statement by a Donald Johnson, confessing to the crime months before Kelly and Connolly were tried. Based on the new evidence, Kelly's family resumed their decades long effort to clear him of the crime.

Ten years later, in February 2001, the new exculpatory evidence convinced the Court of Appeals to begin a review of Kelly's case. In its court filings, the government admitted the authenticity of the documents and offered no rebuttal to the exculpatory information concealed from Kelly and Connolly's lawyers.⁴

In June 2003 a hearing on the appeal was held.

During the hearing, the government's attorney acknowledged that witness statements and other documents that could have destroyed the credibility of the prosecution's witnesses, including Northam and a senior police officer, were concealed by prosecutors from Kelly and Connolly's lawyers. Admitting that the men's trial had been unfair and the evidence against them was tainted, the government did not oppose the quashing of Kelly's conviction. However, it did oppose quashing Connolly's conviction. Although the same exonerating evidence was concealed from both men, the government could not acknowledge Connolly's conviction was erroneous without admitting he had been pressured into falsely confessing his guilt.

Convictions Quashed in June 2003

The Court of Appeal quashed Kelly's conviction on June 9, 2003. On the same day the Court also quashed Connolly's conviction. The Court didn't take the case or their decision lightly: the decision was more than

22,000 words in length. In announcing the decision to quash the men's convictions, Lord Justice Rix said:

The prosecution itself did not regard its case as strong. A minute in the DPP file dated 13 October 1949, just before the committal proceedings, says "It is not a strong case." A letter dated 14 October to the DPP from the prosecuting solicitor says: "You will probably agree that the evidence is not very strong."⁵

If these appeals had happened timeously, fresh trials might have been held. If the Crown would have proceeded with them in the light of the new material, these matters could have been subjected to the scrutiny of a new jury. As it is, that cannot happen. However, having considered that there was in these cases a breakdown in the due administration of justice and a failure to ensure a fair trial, we consider that the consequence was a miscarriage of justice, which must be deeply regretted."⁶

Proving once again that the wheels of "justice" turn slowly, over 28 months passed from the time the Court's review of the case began on February 9, 2001, to its decision, and twelve years passed from when the new evidence came to light to when the two men were officially cleared.



Liverpool's Cameo Cinema (1949)

During and after the hearing the government's attorney tried to deflect attention away from suggestions of a conspiracy theory related to concealment of the exculpatory evidence, even though it is known that a number of police personnel and prosecutors knew Kelly and Connolly were innocent before their first trial commenced. All of those people did in fact participate in a conspiracy of silence as the men were wrongly convicted, sentenced, and while Connolly spent a decade in prison and Kelly went to the gallows. To their everlasting shame any surviving conspirators remain silent to this day.

Aftermath of the Men's Exoneration

Kelly was buried at Liverpool's Walton Jail where he was executed. His exoneration enabled his daughter Catherine to have him reburied with other family members.

Rex Makin, a Liverpool lawyer who had been peripherally involved in the George Kelly saga for over 50 years, represented Catherine. When Kelly's appeal was accepted in 2001 by

the Court of Appeals he said, "I was a very young solicitor, making a living by the sweat of my tongue, Frank and Joe, George's brothers, came to see me not long before Kelly was to be hanged to complain about the injustice being done to their brother. I could do nothing about it, and their faces haunt me to this day."⁷ He described Kelly's trial as a "farce" and the case against him as a "fit-up" – but without the evidence concealed by the prosecutors and police neither Heilbron, he, nor anyone else could do anything to stop Kelly's execution.⁸

Released in 1960 after ten years in prison, Connolly lived for 37 more years protesting his innocence, and that he had been pressured into confessing to a crime he didn't commit. Connolly also lived everyday until his death in 1997 knowing that for refusing to do what he had done, George Kelly walked to the gallows in March 1950 and was hung by the neck until dead.

Eddie Connolly said after the quashing of his brother Charles' conviction, "A lot of doubters at the time have been proven wrong today. We've known all along that they were innocent."⁹

The quashing of Kelly and Connolly's convictions was also a belated vindication for the effort of Kelly's lawyer, Heilbron, to win his acquittal, and then to try and have his death sentence commuted. Heilbron went on to become one of England's most successful criminal defense lawyers. After having been appointed in 1956 as England's first female Recorder (part-time judge), in 1972 Heilbron became the second woman in England's history appointed as a full-time judge. When the 91-year-old Heilbron died in December 2005, her obituary in British newspapers mentioned that her representation of Kelly was a milestone for women in England's legal history.

George Kelly's family wouldn't let the case die, and the appeal of his conviction was driven by their desire to clear his name. Thanks to them England's judicial system finally acknowledged it erred by convicting him of a murder he didn't commit – even if it was 53 years too late to save his life.

Endnotes and Sources:

1 Rose Heilbron – Obituary, *Daily Telegraph* (London UK), December 10, 2005.

2 *Id.*

3 Man Hanged 53 Years Ago Was Innocent, Owen Bowcott, *The Guardian* (London UK), June 11, 2003

4 *Id.*

5 *Kelly & Connolly v. Regina*, [2002] EWCA Crim 2957, ¶100

6 *Id.* At ¶130

7 Court To Look Into 1950 Hanging, David Ward, *The Guardian* (London UK), February 9, 2001

8 *Id.*

9 Man Hanged 53 Years Ago Was Innocent, *supra*.

