



[About this copy](#)

Following the finding of two old fireplaces of huts at StringyBark in 2002, I shared this information with Kelly researcher Marian Matta. She informed me she had transcribed the 'Ned Kelly Seminar Papers 1993' from audio tape Compact Cassettes onto her computer. Marian said one talk given by Ian Jones's spoke in some detail of him and his son Darren, plus a surveyor attempting to locate a hut site on the western bank of the creek as recorded on a 1884 parish map of the area. Ian spoke, if this hut were ever to be found, it would pinpoint the site where the police party had camped in Oct 1878.

I believe Marian's transcript of the 'Ned Kelly Seminar Papers' was issued to 'The Council of Adult Education' (CAE) and was printed for attended audience members only. In 2003, on enquiring for a copy, the CAE said they had no knowledge of this publication. Marian then gave me a photo copy and all old floppy discs on which her texts were recorded. At the time I still had a functional floppy disc drive and was able to re format the content to P.D Format, and paragraph the entire document. As it was not my right to make the papers freely available outside the CAE, I thought it best to only make this PDF version available on request from my Two Huts at SBC webpages. Bill Denheld

INTRODUCTION

The following papers, presented at Beechworth on 13th and 14th November 1993, celebrated the 25th anniversary of the original *Ned Kelly: Man & Myth* symposium and subsequent publication of the papers. But perhaps more significantly, they also celebrated a sea-change in Kelly research. The past quarter century has seen Ned and the Kelly Outbreak recognised as a major theme in the study of Australian social history, not just an embarrassing aberration or a case of idiosyncratic criminal behaviour. It would be safe to say that Ned is no longer viewed as Colin Cave's "bearded, braggart, brawling Irishman; horse-thief, bank robber, bushranger and murderer; the loud-mouthed, law-breaking, swaggering son of an Irish convict" but as a complex and extraordinary man whose ethical standards and moral courage eclipse his relatively minor criminal tendencies.

With the exception of Jane Clark's glorious expedition through Sid Nolan's synthesis of Kelly legend and fact, these papers broadly deal with three aspects; the first is the common experiences of the Kellys, their friends and relations and hundreds of families like them - "very ordinary people who...were living their lives reaching towards very simple and very ordinary things," to quote Ian Jones; the second aspect is the socio-political situation which spawned the Kelly outbreak (although Prof. Weston Bate's paper, *Local, Regional, National & International Strands In The Kelly Drama*, could not be reprinted here); the third is the gunbattle at Stringybark Creek with two meticulous analyses of the evidence.

The papers and the lively discussions which ensued have been edited slightly for smoother reading but I hope they retain the atmosphere of a most enjoyable and stimulating weekend. May there be many more !

The driving force behind the 1993 Ned Kelly: Man & Myth Revisited Symposium was Jill Eastwood from the Council of Adult Education. Sadly, Jill died early the following year - she is greatly missed. The symposium papers are being reproduced with the permission of the CAE and all the speakers involved.

Marian Matta, 1994

Copyright of individual papers remains with their authors.

Ned Kelly: Seminar Papers Nov 1993

Or: Ned Kelly: Man & Myth Revisited Symposium,

comprising the following colour coded talks for easier differentiation.

CONVERSATIONS WITH SILENT PICTURES Keith McMenomy

THE KILLINGS AT STRINGYBARK CREEK: NEW EVIDENCE FROM A SURVIVING WITNESS Ian Jones

THE TRIAL OF NED KELLY: MR BINDON KNOWS NOTHING OF MY CASE. The Chief Justice of Victoria, His Honour John H. Phillips

THE KELLYS & BEECHWORTH REVISITED Ian Jones

NED KELLY: SOCIAL BANDIT OR RURAL CRIMINAL? Dr. John McQuilton

MODERN MYTH: SIDNEY NOLAN'S NED KELLY Jane Clark

CONVERSATIONS WITH SILENT PICTURES

Keith McMenemy

With some exceptions, the slides shown during this lecture appear in Keith McMenemy's book, Ned Kelly: the Authentic Illustrated Story, Currey O'Neil Ross, Melbourne, 1984. The appropriate page numbers are included below.

A few years ago I was lucky enough to get published a pictorial history of Ned. I had been in the audience at the first seminar in 1967 and at that time I was trying to put the finishing touches to the text of it and now I'm correcting all the mistakes I made in the effort. But to go back a little, I used to spend time at the central library in Melbourne, on weekends and evenings, trying to read history, and sometimes I'd wander into the Museum of Applied Science next door which had a glass case with Kelly armour and different artifacts. It was an interesting example of applied science for one thing, and also the most popular exhibit in the whole museum and I was captured by the photographs in that glass case. It seemed to me as a student that they gave us a direct contact, a direct look at the Kellys as they were. It became a hobby. I started collecting photographs and artifacts and that led to documents and so on. Then I began to pester Ian Jones for help and the whole thing got out of hand and eventually I had to write a book.

I think probably too many books have been written about Ned but - as a qualifier - not too many excellent books have been written. In fact some of the best books have been written by people who are delivering talks this weekend, present company excluded. Until recent years, many books were done as commercial journalism; they were rushed out to a budget and were fairly superficial efforts.

There are two traps in dealing with the Kelly story; one is that it's too easy to overdramatise it and the other is to come down completely on one side or the other, either totally against the Kellys or totally for them. I think the whole thing was far more complicated than that and probably more complicated than I thought at the time I was writing the book.

Over the years people have asked me whether I can say anything new about Ned and in fairness I don't think I did, but what I set out to do was to cut through the rhetoric and the mythologising and present what I felt at that time was the real material. When the book got close to being published the publisher's PR department asked me if there were some dramatic revelations they could put out to drum up some interest in it and I felt that the only thing I could say was what I *hadn't* found about the story. To me that was more dramatic than the actual discoveries. At that time I thought I shouldn't perhaps mention these things but they've all been canvassed before and in this sort of venue they're not really controversial. I found no evidence, for example, to suggest homosexuality in the gang, no evidence to substantiate Ned's marriage and no firm or serious evidence to suggest the Kelly hut was ever used as a brothel. These are all things that have been floated, drummed up at different times to get media attention, and some of them are totally without foundation while others have got some basis.

A more plausible issue is the Declaration of the Republic which unfortunately we still don't have documentary evidence or other material to substantiate. I think a number of Kelly students are fairly convinced that there was a series of meetings where it was formalised and documented but unfortunately the records are still eluding us.

There's a distinct possibility that some of these things may come to light in the future as it's amazing how new material keeps coming to the surface.

I'm still getting photographs and the like to add to the collection, thanks to the help of other historians and so on, and it's just incredible that people who weren't wealthy, who didn't have access to photographers very frequently are so well documented. In one of the bits of literature from the CAE I noticed we were supposed to be addressing our latest research. I'll admit that the photos I've been getting in the last few years are less dramatic, less central to the story but they are still of very important peripheral characters - I haven't included any of those in this presentation.

Getting back to the reason for the Kelly book - I had the belief that I could demystify the subject by returning to the original documentary material and although it wasn't a total failure it had distinct weaknesses because as an avid historian I didn't emphasise enough the overall social framework of the Kelly story. In fairness, I got bogged down in the detail and never got out of it.

But what am I trying to say? My presentation today is about the problems involved in presenting a realistic Kelly account and the difficulty in retrieving Ned Kelly the man. In some respects it's a perverse approach which might be appropriate given my surname and Ned's story. Many people are irritated by doubt and require certainty and closure so I'm unlikely to be emphatic and clear and settled on these issues - I find it very difficult to do that. The more and more I study the thing the more sceptical and doubtful I get about many of the issues. I hope you find it interesting anyway. If I had the time to write another Kelly story I'd have to do it quite differently to the one I did a few years ago because one of the peculiar features of the book was that it didn't have a thesis or a particular statement to make; it was simply a chronological narrative of the events in a very conventional way. What I was trying to say at that time was that here, through the eye of a camera, was a small window revealing actual individuals exactly as they were, and through the documents and letters and so on you could hear them, in their own words, tell one side of the story and through the evidence given in courts and official documents you could read the opposite side of it sworn by pursuers and accusers - you could hear these individuals described by family and friends and enemies in depositions and first-hand accounts. So what I hoped was that if I piled all this up and presented it to the readers they could take out the actual story themselves but in fact you can't really get away with that sort of thing because not only do people have to interpret what you give them but you also have to interpret the documents and material that you get - you can't escape interpretation. Written records and historical bits and pieces don't assemble into order on their own, and facts and documentary evidence of what happened don't necessarily explain why things happened. What you give people is *what* happened but you don't explain *why*. But fortunately there are enough other Kelly books to cover the gaps that I didn't tackle.

What we should aim for is fair judgement of the material. I was seeking that impossible objectivity which we have to aim for but we can never achieve - it's an impossible idea. But all these theoretical problems don't hold up enquiry and nor should they. I think it's important that you look at the subject of intellectual rigour in working with the subject matter because I think the effort in this particular case is to work out why one supposedly disreputable individual has seemed so important to so many Australians. So I've come in a roundabout way to declaring my position on Ned and it isn't a particularly brilliant insight and it isn't even particularly startling but to me Kelly was probably a criminal by choice. That flies against what Weston Bate told you earlier and I'm sure a lot of other people don't agree with me, people who know the subject much better than I do. But that's just the sense and impression I get from it.

But if that was all he was or if that was all he had to rest on he wouldn't justify seminars. He was also one of the most extraordinary characters and obviously the most singular tragic and heroic figure in Australian history. He was at different times the worst possible and the best possible of human beings. My thesis in addressing the conference is that Ned Kelly the man and the myth are probably inseparable and Ned Kelly the man is not clearly accessible or knowable or retrievable in one sense. You can't pin him down to one theme. Actually, Manning Clark explained at the first Kelly seminar in 1967, "There was no such person as Ned Kelly. Indeed, there is no such thing as a human being in some ways. There is only what he thinks of himself at different periods of time and what other people think of him at different periods of time." I think that's a very insightful observation.

The ambiguity and plurality of Kelly is illustrated by juxtaposing contradictory descriptions of him by people who met him and dealt with him. That was done also in the first seminar and I'm going to borrow that little technique to deal with the pictorial material as we go through it.

Photography and particularly portraiture are a fascinating medium of insight. Although they record and fix or freeze what was in front of a lens at a particular time the images don't necessarily capture reality as it corresponds to facts or experience at that time. I've covered the aspect of interpretation but that applies to visual images as much as to documents. The circumstances of the photography, who recorded it, where it was recorded and so on have a great influence on the way things turn out.

The first and most obvious aspect of photography and realism is the aspect of colour and most of the material we're dealing with in regard to the Kellys is not only monochrome but it's often bleached and faded and degraded in various ways and there's a sense of unreality as you get away from the fidelity of colour and reality as we know it. This *pp.66-67* was taken in the 1960s of what was left of the Kelly house. In fact the oldest part of the building was the last to fall apart. Then we get to photographic material contemporary with the Kellys and while the detail is quite good in a lot of these images there's a sense of unreality, perhaps because of the sepia tonings - and the fading obviously contributes to that - which works towards the mythology more than retrieving fact.

There's one of Ford St, Beechworth *p.77* with the gaol at the end and I think you can get the drift of what I'm trying to say, that while they're realistic and detailed there's a certain unreality about them.

This *p.80* is Dan Kelly's hut on Bullock Creek - an even poorer quality of image that's been copied several times from the original image and there's not a lot of detail left in it. There's a fascinating description of the farm written by a reporter who visited the scene not long after the Stringybark tragedy, which reads in part, "the Kellys must have lived on this spot for many months or they could never have got matters into such an improved state." That description goes on at some length but we'd be here all day if I gave the whole quote. Ned wrote "I came back with the intention of working a still to make money as it was the quickest means to procure money for a new trial for my mother. We had a house, two miles of fencing, twenty acres of ground cleared for the purpose of growing mangel wurrels and barley for the purpose of making whiskey. We were also digging for gold and we had tools and sluice bores and everything requisite for the work and we were making good wages as the creek is very rich."

Until the invention of colour film and prints, hand-tinting with watercolours and dyes was sometimes used in an attempt to overcome the handicap of unreality or distance from realism.

This *p.246* is a much later hand-tinted version of the portrait of Ned you'd all be familiar with, taken in Melbourne Gaol on the day before he was hanged. Technically it's the finest image and the most poignant for other reasons. That's *p.238* the unretouched image. The handtinting is very crude and sort of quaint but it does get us a little closer to reality in some senses. It was reported at the time that at Ned's own request his photo was taken by a departmental operator and copies were to be given to his friends. He was standing in the gaol yard and the photographer, Charles Nettleton, draped a cloth backdrop behind him - it might have been a blanket hanging down behind him to hide the stone wall. It strikes me as extraordinary that for a person who was within not much more than twelve hours of being executed, he doesn't show much hint of emotion. The same day as this photograph was taken his mother, who was in the same gaol, and his sisters and brother had visited him for the last time. Here you have an unusual example of institutional photography. It's institutional only in the sense that it was taken in gaol because I think Nettleton went to some trouble with this particular portrait to make it look like a conventional one whereas most institutional photography was done for the purpose of identification and they were fairly brutal as photography goes.

It's interesting to look at the photographs of Dan *pp.59,72*. Weston Bate was talking about the issue of clothing and people putting on a certain display of affluence on public occasions and I think that applied to photography. When people went along to a photographer it was their chance to record themselves for posterity and even if they had only one suit of clothes or whatever they went to some trouble to give an appearance of achievement and some sense of respectability. The whole photography scene was set up to reinforce that, although not so much in these two, but in most commercial photography they were put in rather opulent sets. They weren't entirely convincing but you can see the ornate Victorian chair and the formal podium that was a standard part of photography at that time. It built up this image of respectability because the photograph was the proletariat version of the painted portrait which was of course only available to the wealthy. In photography everyone was able to have themselves photographed and recorded. As a hint that people weren't in very affluent circumstances, it's quite obvious that Dan's clothes aren't a very good fit. Whether they were passed down to him from his brothers or not I don't know, but apart from the hat cocked on the side in a jaunty way you can see that his trousers are held up with a rope. He didn't even try to conceal that. I'm not making a comment or denigrating him as such. I just find those little things interesting as clues to this mismatch between the formal setting and some of the sitters in these photographs. I know with my own family as with many selectors, children didn't have more than one pair of shoes and they were kept for Sunday. Men obviously had to wear boots for working, however they often only had one or two pairs to their name and maybe only one set of clothing at a time. Clothing that was durable was often passed on from one member of the family to another. I know it sounds terribly melodramatic when you bring this out.

The next fellow is another associate of the Kellys and a local Beechworth larrikin, an amazing fellow called Aaron Sherritt. According to the police he was a flash bush larrikin and in the first picture, *p.59* which is more in keeping with that description, he's wearing high-heeled larrikin boots and spurs and he's got his hatstrap under his nose in the style of the Greta Mob. In the second exposure *p.158* you can see he's wearing a sash round his waist which was a fashionable touch from the goldfields era and often the colour of the sash signified national allegiance, green for the Irish and red for the British. That's *pp.174-175* the bloodstained sash that Ned was wearing at Glenrowan and it was taken from him by Dr Nicholson. It was a treasured possession he had kept since a boy of about eleven when he had saved Richard Shelton from drowning at Avenel. It's now preserved by the Benalla Historical Society.

That *p.60* is Steve Hart in a very poor quality photograph. The only surviving copy that I know is from an old newspaper article so there's not much detail - again he's got the high-heeled larrikin boots and spurs but he looks pretty well scrubbed up there in his Sunday best. I think it was taken by Bray of Beechworth. Here's *p.81* a technically better image of him taken by Barnes at Wangaratta before July 1877. He was in Beechworth Gaol between then and the following June which as you know was only a few months before the Stringybark affair. Barnes, the Wangaratta photographer, wrote to a friend in December 1878, "I have a negative of Steve Hart who is now with the Kelly Gang. It is a a full-length Carte de Visite taken in shirtsleeves and is a true likeness, taken about twelve months since." Steve's only known outstanding attribute at the time of joining the gang was his horsemanship and it was a fair chance that his presence at Stringybark was purely coincidental and accidental. Ian might correct me on that.

This young lady in her elaborate finery is Kate Kelly *pp.68,239*. She declined the attentions of Aaron Sherritt whom we just saw, and also of Constable Fitzpatrick, if we can believe the mythology or some versions of events. She was Ned's younger sister. The first photo is again a poor copy; they were taken, I think, about 1880-81 but I don't know where. She's wearing the same hat in a photograph I'll show you a little later. She made a remark to reporters in 1880 which gives you an indication that, while there are times when we tend to feel it was a remarkable and marvellous adventure - a giant horse opera with them riding around the country and so on - it was an incredible tragedy to the family themselves. Kate said at the time that "the way the whole family had been harrassed for years made her wish she had never been born." And tragedy followed her afterwards. She moved to New South Wales, married and had a family but died tragically at Forbes in middle age.

To get back to the point of institutional photography in contrast to commercial photography, I'll show you two photos of Jimmy Quinn, Ned's uncle and one of the many incredibly wild characters in the whole family clan. The first *p.37* was taken in 1879 possibly in Beechworth and the second I don't have a date for but Jimmy was in and out of gaol so often it could have been taken anywhere between the 1860s and the 1890s. But the point I wanted to make about institutional photography was that the second was taken in a gaol for identification, for recording of his appearance and for distribution to police stations for future apprehension, I suppose. There's a tendency in prison photography to brutalise the subject - not that the photographer had the intention - but the mere circumstances of the recording where the hair's cropped, their beard's taken off and they're in rough prison clothes, tend to brutalise. There are exceptions, however, that don't follow that rule. Here are some more to elaborate on that point. The first *p.47* is a remarkably young Jim Kelly, the second eldest Kelly son. It was taken, I think, in 1873 when he was 14. He's very similar in appearance to his brother Ned whereas Dan didn't bear a great resemblance, judging from the few photographs we've got. At this time when the photograph was taken for his first offence, Jim had been sent to prison for five years after helping another lad sell stolen livestock at Greta and this and a number of other photographs we've got remind us how young these boys were when they were sent to adult prisons. In *p.57 upper* it's anyone's guess how much older he is there than in the first one. And here *p.57l* is perhaps the best of the three in some ways - I think it reveals him as a fairly good-looking youth at that time but he was obviously reluctant to be photographed. He doesn't look too keen on the exercise. He had more reason than his brothers, in my mind, to resent sometimes overzealous police attention. He spent most of his youth in gaols or "away at college" as he used to put it later in life, which was quite a telling comment.

Here's *pp.56,114,116* another one of the Kelly friends and clan, Wild Wright, who deserves a book on his own but no-one's got round to it yet. I assume they're all official gaol portraits or identification pictures, but the one on *p.56* was obviously at a time when he was on remand or something. He's got a beard and long hair which they weren't allowed to keep for long in prison.

To get to the subject of our seminar, I'll just work my way through a series of variations on some early prison portraits of Ned which illustrate another influence of appearance and that is obvious manipulation. Although photography is almost universally trusted it has been subjected to manipulation virtually since the beginning of its history. This first one *p.92* is a very degenerated copy, having been copied two or three times from the original and in each copying you lose some of the detail so it becomes almost surreal. The original image is on *p.55* - there are easy comparisons, the collar and the shoulderline and so on, but someone has put a beard on him with a pen.

Apparently at the time of the Stringybark shootings the police didn't have any contemporary photos of him and they tried to bring one up to date in line with the descriptions. We're not sure exactly when the original was taken but according to one prison sheet it was taken in June 1873. A bit earlier than that, Superintendent Hare, whom you're probably familiar with, described Ned as a youth like this as "a flash ill-looking young blackguard" but his colleague, Superintendent Nicolson, at the time that Ned was in gaol at Kyneton on remand for having helped Power, was so impressed with Ned that he offered to get him away from his family surroundings and place him in a job on a cattle station. He wanted to get him away from the district and give him a fresh start but Ned declined and went back, knowing he was going to face the wrath of his relatives because of the suspicion that he may have implicated Power and brought about his capture. Not that you can construe this simply as Ned choosing a lawless life but it was one of at least two occasions when he seems to have turned away from opportunities of respectable change or respectable direction. Maybe it was accidental or the repeated copying or the crude artistry, but I feel the overall effect of the touched-up version is to make Ned look far more sinister than he was although the original reinforces what I said about the brutalising effect of institutional photography. With the shaved head, a stubble (which is interesting) and the prison clothes the general impression you get is fairly hard and ruthless. On *p.47 upper right* there's another version which was published many years later by Chomley in his history where they've pasted Ned's head down onto someone else's shoulders to put him in a suit and tie. *Lower centre* is another fairly interesting one which appeared around 1880 and I think it can be attributed fairly certainly to a photographer called Madeley. In this case someone with a lot more care has drawn on a beard in some detail and again they've taken the head off and put it on another pair of shoulders. They didn't do too good a job of it because the trace lines are visible on the background. There was a notation with it that it was the only genuine portrait which was a bit of a stretch of the truth. Another really interesting one which I still find hard to explain was used in a number of editions of Kenneally's history and I think it's a tracing of the Nettleton portrait. Someone's worked over it completely and almost turned it into an art work. It's basically the same composition and makeup as the Nettleton portrait but bears very little resemblance. It's not even a careful tracing. I'd say it's 100% artwork.

Here are two more examples of minor deliberate entrepreneurial deception in photography. This one *p.111* is Captain Standish who was in charge of the police effort in chasing the Kellys for over eighteen months or two years and it supposedly shows his camp in the ranges which didn't exist. It was actually contrived by a photographer and set up in the police paddock in Benalla and it's not even a very good effort.

You can see they've cut down a few saplings and plonked them in the background. They have got hold of a dog and put him next to a tent which isn't adequately put up and there's a lot of smoke coming out of a pretty amateurish campfire. I'm amazed that Standish allowed it to be taken. This next one *p.89* is, on initial viewing, a very poignant scene. It's supposed to show the discovery of Sergeant Kennedy's body but it's almost certainly a reconstruction. The body lies at about the right spot with head towards the tree and as you can see it's quite likely the tree where he was discovered - there's a bullet hole in the face of the tree - but the scene has definitely been reconstructed. The fellow's wearing hobnail boots for a start which is not really likely to have been Kennedy's choice and if we compare it with the scene on *p.83* you can see that the same three men are present in that photograph. Ian would be able to tell us about when these photographs were likely to have been taken. I think it was shortly after the whole event but the photographer certainly wasn't with the search party that discovered the body.

Now for two photos of Ned from 1874. On *p.56* is a very well known one of Ned taken in August 1874. The one on *p.47* was, according to his gaol record, supposedly taken in prison at the beginning of 1874 but again we're not absolutely positive. The boxing portrait was discovered by Ian Jones some years ago and is probably the most amazing photograph in some respects. The inscription reads "Ned Kelley August 8th 1874, fought Wild Wright 20 and won" which would have been a fairly amazing event. With the bare knuckle fighting involved, it must have been a brutal occasion. If that photograph was taken in early 1874 there seems to be an amazing difference in his appearance and the length of his beard over six months but that's where the records aren't always accurate.

Now the one on *p.57* is again a very poor copy from a newspaper reproduction. As near as we can judge this one was taken somewhere between 1875-6 at a time when he had a respectable job as a sawmill foreman in the Greta district. We'd dearly like to get hold of the original image if it's stored away anywhere. For several reasons which seem fairly trivial to me but more significant to Ian, Ned left that job to take up horse stealing as a fulltime enterprise. It was obviously better paid but the risks were a lot greater; it's a curious thing but that's another occasion when he seems to have walked away from a respectable direction and taken up crime. That's a fairly lame foundation for basing my view of him being a criminal by choice.

Here are a couple of contrasting descriptions of Ned from a little later on. "To say that Ned Kelly had no courage would be a reflection on the citizens whom he bailed up in fifties and hundreds and the police whom he defied so long, yet a close acquaintance with him gives you a feeling of contempt for his inordinate vanity and renders it difficult to find in him a hero of romance." That's a quote from Constable McIntyre. Another quote, "There was a great deal of personality about Ned Kelly and he knew how to control men and circumstances. He seemed to consider everything and knew exactly what to do for the best. He would have made a magnificent general and would have done much better as a soldier than a bushranger." The second quote is from Mrs Scott, the wife of the bank manager at Euroa.

This next photo *p.238* is the mate to the one taken in Melbourne Gaol the day before his execution. You can see what looks like the backdrop bundled up in the bottom left corner. Ned's wearing good behaviour light irons suspended from his belt to hold the chains off the ground and behind his feet you can see the base of the stand which was used in that period to clamp or to hold the head steady for long exposures so that people didn't blur the image.

Again it was taken within hours of his death and is quite amazing. I'm sort of convinced that it looks as though he's winking at the cameraman but it might have been just a fluke that it happened that way because of the long exposure. He did have a lazy left eye, I believe.

Photographs like this add greatly to the mythical dimensions of the Kelly story and there is no shortage of elements that add to that but as much as they might clear up our notions of what he looked like at different times they can confuse it as well.

The next *p.246* is a little bit macabre but it is appropriate because the story was macabre and the outcome of these events was fairly horrific for the many people involved. That's literally an impression of Ned taken after his hanging. It's rather gruesome but it gives us a very good idea of what he looked like underneath all the whiskers and long hair. He died with his eyes open, apparently, and there's only the rope mark disturbing the peaceful expression on his face.

It's interesting to speculate out of all the images I've shown you of Ned which you think is the most realistic. It's probably an unreasonable question because what we do is take all of them into account and average them out and reach a conclusion based on all of them. We don't take one as the ultimate image but if you ask which is Ned Kelly the man and which is Ned Kelly the myth - were they different people at different times - it gets back to that quote of Manning Clark's that people are different people at different times.

Here are a couple of images that give different impressions of the Kelly family without Ned and his brothers, this time in depictions of the home at the Eleven Mile creek near Greta. This one *pp.68-69* gives an impression of impoverished poverty which seems to equate with that famous or infamous description of Superintendent Nicolson's which described them as living in poverty and squalor. In fact I think he was talking about the older hut whereas this was their house - they had a hut until about 1877 which was closer to the road and not nearly as well finished as the house which survived until the early 1960s. Whether it's deliberate manipulation or not, and I don't know if you can determine it, one impression seems to say to me "poverty and squalor"; the other taken on a different occasion, I believe, gives you an entirely different impression. (*This photo is included in the publication The Last Outlaw, Melbourne 1980, and in Ian Jones' Ned Kelly - A Short Life, Lothian, Melbourne 1995*) It was discovered by Ian Jones and was taken to commemorate the return home of Mrs Kelly, or King as she was, from prison and according to Ian's information it shows from left, Alice King, Kate Kelly, who's sitting in the chair, possibly Grace Kelly looking a little young for her age, with Faith the Kelly cattle dog, Mrs Kelly, Jack King her son and Ellen King feeding a pet lamb from a bottle. The gentleman on the right in the amazing hat is the Rev. Gould from Benalla who apparently was only present by fluke. Unfortunately the image has got dots and spots which particularly interfere with a reading of Mrs Kelly but you can see that Kate seems to be wearing the same hat and the dress looks similar to the one in the previous photographs. The impression is one of family solidarity and a certain amount of respectability although obviously they're not living in great circumstances. They've planted a fruit tree in the middle foreground between the two photographs being taken.

Now we come to another dimension in the visual side of the Kelly story and that's engravings. I started off trying to leave out all the engravings because I felt they were too far from being accurate but in fact some of them are quite eloquent drawings and yet that's a matter of interpretation too.

This one *p.47 upper centre* is drawn from the earlier prison portrait showing him cleanshaven and they've simply added a beard to that. That's *p.217* a rather excellent engraving based on a drawing by Julian Ashton showing Ned in the dock. The reason that these engravings vary so greatly is that they depended on the talent and the ability of the craftsmen involved, not only the artist who did the original drawing but also the engraver and the technicians who worked on the blocks made to print the image. They had to be made in reverse, of course, and it's very difficult to maintain accuracy when you're working back to front. It's amazing that they were so accurate given those limitations.

There's an interesting little reminiscence by Ashton regarding the engraving of Ned. Ashton wrote later, "I was sent to sketch Kelly during his trial. After a little while I noticed his eyes fixed on me. It was a cold day and he was wearing an overcoat. He took it off and put it over his head. His action caused a stir in court and counsel for the defence spoke to him. Turning to the judge, counsel complained that someone was sketching the prisoner and he objected to it. I had a good outline of him by that time so I left the court."

A reporter showed Ned this sketch *p.215* while he was in the Beechworth Gaol awaiting one of the hearings and Ned "had been much gratified by the sight of a newspaper. He intently studied the picture which had appeared in the Sketcher and said, It is a mere fancy sketch of a bushman and in no way like me." Of course he was right - the head was borrowed from that fabricated portrait with the false beard and the body they've taken from imagination. Apart from being proportionally way out of kilter, it's an interesting, charming, primitive drawing but it's not anything like Ned.

If we look at this engraving *p.136* which shows Tom Lloyd and Maggie Skillion, drawn while they were sitting in court waiting for one of Ned's trial appearances, my impression is that they've got a furtive, sinister look about them but when you compare that with a photograph said to be of Margaret Skillion, you get a different impression. She looks nowhere near the furtive, suspicious character the newspaper engraving implies. If you look at this portrait of Tom Lloyd Jnr *p.82*, the same thing applies. While he looks very serious there he certainly doesn't look the furtive type to me. We are fairly convinced he was the unofficial fifth member of the gang and in some ways, along with Joe Byrne one of the closest trusted friends of Ned.

It occurred to me the other night as I was loading up these slides that I haven't included any material on Joe Byrne which would be appropriate seeing we're in Beechworth. Again this is very macabre, *pp.204-205*. As you know he was strung up outside the Benalla cells after the Glenrowan event like a captured trophy for photographers and reporters and so on.

I think the lesson from all of this is similar for writer and reader. We can be too ready to accept what we're told or shown, because it suits our thesis or particular analysis, because it fills a gap in a story or because we occasionally slip into carelessness. I've discarded more than a quarter of the photographs that I accumulated over the years, mainly because they weren't contemporary with the Kelly period and yet I made some terrible booboos. I included a photograph purported to be of Jim Kelly and his mother and I'm sure the gentleman who gave it to me was convinced it was genuine and accurate, as I was - I wanted to believe it was. I'm still fairly certain that it might be James Kelly but it isn't Mrs Kelly. That's one of those cases where you just slip into these errors. I also reproduced a photograph of the Wangaratta court as it was rebuilt about fifteen years after the Kelly period but it's easy to make these silly errors.

Fortunately with a bit of luck there might be a revised edition in the future when I can correct some of these things.

But the point of the slide show is to demonstrate that all source material, visual as well as verbal, requires questioning and cross-checking and interrogation and a lot of care. The provenance of some of these images is a little tenuous and we've got only comparison with other documentary evidence and very little else to substantiate them but seminars like this are extremely valuable in stimulating debate. People will stand up and tell me that some of these mightn't be correct or authentic and in that process we gradually narrow it down and we add to the factual evidence of the Kelly story because I think the myth can take care of itself.

I'll just rattle through the conclusions I had. I don't think you should apply balance sheets to human beings to reach a view of what people were like because we're all a mixture of contradictions but then to contradict what I've just said I've listed a few points in my mind for and against Ned. On the positive side of it, I think there's irrefutable evidence of police harrassment - I don't think there's any doubt of it at this stage. The Kellys were drawn into a land war as Weston Bate and John McQuilton have detailed. There were undoubtedly unscrupulous squatters (although I don't think they all were) who resisted closer settlement and encroachment on their leases and had all sorts of techniques for getting round it and stalling it, such as impounding stock, taking down fences and other forms of discouragement, and they also enlisted some unscrupulous police to help them in those efforts to harrass poor selectors. Some, like the Kellys, Lloyds and Quinns, undoubtedly retaliated by stealing unbranded livestock. I don't think there's any doubt about that at all. The police were employed to support property and land holding and official title and the rest of the establishment interests, and some police were corrupt. I don't think the whole system was corrupt as such except that powerful interests were involved. It wasn't just that selectors who couldn't do it honestly or easily resorted to cattle-stealing as a way out. Another issue was that Fitzpatrick, a key figure in the whole chain of events, was an acknowledged liar and was later sacked from the police force. His story was, I think, quite implausible. To state that Ned Kelly would shoot at him in a small room packed with his own family is just pretty ludicrous. Another point is that the police were extraordinarily well armed at Stringybark Creek, far more heavily armed than they needed to be to apprehend the Kellys and I think that tends to confirm Ned's belief in summary execution which had been the result of Midnight's shooting only weeks before that event. I think you've got to realise the close proximity of those two occasions to appreciate his claim that he was in fear of his life. The other thing is that Ned didn't vary or contradict his version of Stringybark on so many occasions that have been documented - I think Ian will explain later that McIntyre certainly perjured himself, as far as we can judge, on several important details. Another issue is Kelly's behaviour at Glenrowan in returning to the hotel in a hopeless bid to rejoin his mates. He must have known that it was a one-way trip but it was heroic. I don't think there's any way round that. His demeanour at the trial and up until his execution, experiencing the most terrifying pressure that a human being is put under, was admirable in contrast to several of the policemen like Steele and Hare. There seemed to be an obvious bias by authorities like Magistrate Foster in complementing McIntyre on his evidence, and the more famous issue of Judge Barry's points of view, a fact which I think more qualified people than me might comment on.

But then on the negative side, there are troubling features in Ned's story. There are indications, as I mentioned, that he turned away from an honest life on a couple of occasions that aren't adequately explained or justified although I admit we don't really have enough information to come to a conclusion on that.

Another issue is that it seems fairly clear than Ned lied about his not being present at the Fitzpatrick incident. His own mother and Joe Ryan, his cousin, contradicted his story. I feel sure that Ned was present at the Kelly hut when Fitzpatrick was sort of thrown through the door - I don't believe that Fitzpatrick was shot. Another issue is the indications that he and the others were preparing for violent confrontation after the Fitzpatrick incident. There are descriptions of Dan's farm which describe trees surrounding the whole area that had been riddled with bullets where they had been doing target practice for a considerable amount of time. There's also at least one mention by Michael Woodyard who was a neighbour who worked for the Kellys for a while - admittedly he's not an impartial witness. He claimed that the Kellys were planning an uprising or an outbreak or whatever some time before Stringybark. There are disturbing inconsistencies in Ned's defending his actions which you could put down to bombast or his incredibly colourful language but you find in his letters he'll claim regret which seems to prove convincing but then several lines later in the letter he'll be threatening bloodthirsty slaughter towards the police pursuing them. That's a worrying aspect.

In summary, I think Ned probably did display vanity or arrogance as Hare and McIntyre and Nicolson and other police indicated but on the other hand he had an excuse to because he lived up to most of his estimations of his own ability - he wasn't a phoney, he did live up to his extraordinary claims. As a layman I think his action at Stringybark Creek was self-defence or manslaughter but I'll admit that I'm a sympathiser so it would be interesting to hear other points of view on that. I think the whole event at Stringybark was deplorable but as with the Fitzpatrick episode both sides were to blame. His plan to derail a train at Glenrowan was diabolical but you have to see that in the context of the fact that he thought it was a war. He didn't see it, I think, as breaking the law or possibly taking many people's lives. It was war to him and that was expected.

He failed to get justice in his lifetime, his violent methods were inappropriate and he was possibly politically naive, but because of his actions he was partly vindicated after his death. I think this process of vindication is still going on. In 1881 as you know the Royal Commission demoted a lot of police and sacked others. Also in John Phillips' excellent book "The Trial Of Ned Kelly" as well as the previous seminar on Ned it's been revealed that he wasn't given a fair trial at the time in the sense of fair play as we know it.

After all of that I'd drink to Ned, but I think it's important to remember that not all the police were corrupt and some of them were honest people trying to do a difficult job. As someone said a bit earlier, they left widows and orphan children behind and that fact should also be remembered in this exercise of studying Ned.

Laurie Moore: The troop from New South Wales didn't honestly believe we could contribute anything because we weren't from Kelly Country but to our surprise we find we might be able to make a couple of comments that might shed light on what you were saying earlier. First of all, being from NSW, I suppose we're obliged to mention Edgar Penzig and Jack Bradshaw. The art of Ned, the picture you showed that looks more like art than a photograph, turned up in Kenneally's book which was first published in 1929. Steven Williams has made a collection of most of Jack Bradshaw's works that he can find. Jack Bradshaw was of course the last of the true bushrangers and knew all of the bushrangers and always wrote the exact and literal history of the bushrangers and anybody who said otherwise was wrong and anybody who wrote about bushrangers was also wrong.

Among other things, he knew that it wasn't Ned who betrayed Harry Power because he (Bradshaw) was working on the property on the King River at the time that the police party came along and what's more he yarded the horses that the police used. The point of this is, that particular story was added on to the back of a book he had published in, we think, Jerilderie in 1911 and it just happened to have that very picture.

Keith McMenomy: I think the earliest that I've found is *Stead's Review* published sometime earlier than Kenneally's first edition.

Laurie Moore: The point there was that strange things happen and it appeared that Jack Bradshaw came down through the Kelly country in, I think, about 1911 and he approached some members of the family and certainly spoke to James. Then in the second edition of the book after his return to Sydney in 1912 he published a photograph of James Kelly as well. So it's rather interesting that people like Jack whom serious historians probably disregard - he is from New South Wales! - actually did come around and make serious efforts to gather information.

Brian McDonald: Those two little pamphlets that Laurie was just mentioning about Ned Kelly, which were produced by Jack Bradshaw, were created from about thirty individual pamphlets that Bradshaw put out. They were all compiled into true histories but we've only been able to find two, the first and second edition, both of which are in private collections. But getting back to your brilliant knowledge of images of Ned Kelly, I wanted to hear your thoughts on the photograph that recently came to light down in Tasmania, supposedly of Ned Kelly. My own theory is that it was probably one of the stage actors.

Keith McMenomy: I'd be more interested if they bore some sort of resemblance. It's quite possible that they were actors. I can't quite remember the circumstances of their being reproduced. Was it on the market?

Brian McDonald: Yes, it was going to auction.

Keith McMenomy: I'm sure it bumped up the price by several thousand. I would love for it to have been a genuine image but it didn't bear any resemblance.

Ian Jones: I think it's possibly a case of the photograph being taken and someone saying "Oh, you look like Ned Kelly." and then it goes on from there.

From the audience: First of all, I'd like to say that I worked in the Institute of Anatomy and there was a lot of work done in the MacKenzie Foundation on the death masks of criminals, and Ned being our most famous one, he was among them. That was very interesting work. Secondly, I was with the National Trust in New South Wales for some twentythree years, doing houses and so forth. In the Kelly house that you showed the woodwork is rather large for the trees. Were they adzed or cut with a crosscut saw in a pit?

Keith McMenomy: They were adzed.

Cont.: With their newfound wealth, they may have imported the glass for the windows because glass was easy to pack in a box for that sized frame. You'll notice that one window on the left has only the bottom part glazed. In that era if you didn't have glass or you couldn't get glass easily you added fat to paper which made it opaque and it looked as though the top part of that window was made of that.

Keith McMenomy: I don't know whether we're sure that they didn't have glass in it because there is a curtain across it. Those window frames, as you know, were available at any hardware shop so people made up the frames.

Cont.: Anthony Horden used to have a catalogue company, as did Campbells of ACT fame. Also the bondwork on the Benalla barracks - it would be historically important to know where the bricks came from that are in the bond and the craftsmen who did that building because it's unusual bond. The bond was two bricks inwards, one brick lengthwards and then there was a line of long bricks then the usual ones where they put the slate in to create a dampcourse and they followed that consistently up so that whoever did that building was a craftsman.

Keith McMenomy: It was quite an interesting building. It was a pity it was pulled down but there you go. You've got a better eye for detail than I have. I'll have a better look at that one next time.

Question: Could I ask you, that photograph of Ned Kelly when he was a foreman at the sawmill - I just wonder whether you think that was taken by Bray of Beechworth because the particular piece of furniture looks like a Bray prop. He had that podium and I've got members of my own family posed at that same podium, but he also had that more ornate one. If you look closely at them there are two podiums which are similar and then there's an ornate table. Is there a Joe Byrne photograph near the ornate table?

Keith McMenomy: There's one of Paddy Byrne. I think he probably had a whole range of them because if you look at the Aaron Sherritt portraits and the one of Dan and several others they are almost identical. I think you're probably right about the photo of Ned. It's just a guess, by the way, that it was taken when he was a foreman.

Weston Bate: Keith, I did call him a criminal but I said he was a minor criminal until the persecution.

Jill Eastwood: Might I just say that when we were looking at the house I was reminded of the property at Bontharambo outside Wangaratta where they used to have the original hut which was very similar in outside appearance to the Kelly hut but inside, that hut was divided and they had a grand piano at one end. So you can't tell from the outside of the standard of living inside or the quality of the life.

From the audience: There's a house here in Beechworth that still has hessian walls - it's quite a respectable way of dividing a building. Miles Franklin's people lived in the Brindabellas and they transported a carriage over the Brindabellas to take mother to church. If you go by plane from here to Canberra you can imagine the amount of effort that this carriage took to get it there just to give mother that added bit of England - a bit of prestige - and yet they refer constantly to the possum rugs that they snuggled up in of a night-time to keep them warm.

THE KILLINGS AT STRINGYBARK CREEK – NEW EVIDENCE FROM A SURVIVING WITNESS

IAN JONES

I realise the title of my paper is provocative if not downright preposterous. The gunfight at Stringybark Creek in which three police were killed by the Kelly Gang took place on the 26th of October 1878, one hundred and fifteen years ago. Now, even if a witness remained silent, year after year after year, surely by now that mysterious individual would be just as dead, just as buried as Sergeant Kennedy, Constable Lonigan, Constable Scanlon and everyone else involved. True, if the witness were human.

Picture me, in the Wombat Ranges, eight and a half months ago, pushing through dense bush near German's Creek. Ahead on a low branch I see a white cockatoo which doesn't fly away as I come closer. At first I'm surprised by this but then I see it's a very old bird, too smart to waste energy in the manner of old birds. So as it watches me with one bright, black, wary eye, I say with characteristic wit and originality, "Hello, cocky!" Imagine my amazement as the old warrior raises its tattered crest and shrieks, "Constable Fitzpatrick's a bastard!"

Obviously someone at some time has taught the old fellow this cry and, of course, the idea is utterly fantastic but could it have been the Kelly Gang, during their stay at nearby Bullock Creek? So with some misgivings but encouraged by the thought a one hundred and twenty year old bird isn't going to live much longer in the wild, I take him back to the Melbourne University's Veterinary Science School. Picture six months of extraordinary, trail-blazing research at the School's very well known Department of Avian Psychology, stimulating the old bird's memories and then training him to put those memories into words. Imagine my feelings as I'm given a tape-recording in which I hear in words sometimes screeched, sometimes croaked, sometimes scarcely audible, what is really a birdseye view of Stringybark Creek.

Imagining all that is one thing but believing it is something entirely different. But what a tempting fantasy, to look down on that acre or so of roughly cleared bush on a rise beside the creek and see exactly what happened on that evening. A fantasy, sure, yet there is a witness to help us achieve that birdseye view and, in the process, solve some mysteries. Even though the Stringybark Creek gun battle is the best documented incident of its kind in Australian history, subjected to intense scrutiny in three inquests, two trials and numerous written and oral eyewitness accounts, some details remain controversial and on these details depend important moral and potentially legal judgements of Ned Kelly's behaviour at this seminal encounter with his police enemies. A birdseye view, a precise orientation of the gunfight must be established before we can resolve these controversies and the moral and legal issues they bear on. So we are pursuing something much more important than just historical curiosity, antiquarian interest or the desire for some authentic re-enactment. This overview of the action, this placement of figures in a landscape represents a critical element in re-evaluating the evidence on which Ned Kelly was found guilty of murder and executed. The landscape, as in any passage of arms or any battle, however big, however small, was in fact a participant in the action. The landscape of Stringybark Creek is our surviving witness, whose evidence has yet to be examined.

The site, about twenty miles from Mansfield, is well-known, signposted and marked on the creek's western bank by the Kelly tree which until recent years carried a deep blaze with "1878 Kelly shot Lonigan" carved into its wood, today replaced by a metal bas-relief of Ned in helmet and armour. Less well known but increasingly visited is the site of the hut only about a mile to the north-west where the Kellys were operating their still-to-be and their goldmine when the police camped at nearby Stringybark Creek. For those familiar with the story, forgive me but I think we had better just recap on the events of the Stringybark Creek gunfight.

In pursuit of Ned and Dan Kelly for the alleged wounding of Constable Fitzpatrick the previous April, a plain-clothed police party from Mansfield, Sergeant Kennedy and Constables Lonigan, Scanlon and McIntyre, made camp at Stringybark Creek on the 25th of October, *clearly* unaware that they were so close to their quarry. They pitched their tent in a clearing made by a party of goldminers actually right beside the remains of the miners' hut which had been burned down about six months before. As Constable McIntyre later explained, this was a simple safety measure; no timber had been left standing near the hut so the police party camping on this site would be safe from falling branches.

In the late afternoon of the following day, Saturday the 26th of October, while Sergeant Kennedy and Constable Scanlon were away on patrol to the north, Ned Kelly, Dan Kelly, Joe Byrne and Steve Hart crept up to the police camp which was [end page 13] being minded by Constables Lonigan and McIntyre. Knowing that a second police party was approaching from the north and believing, with some justification, that the police were likely to try and emulate their New South Wales colleagues who had recently gunned down two suspects (including a very popular old Wangaratta priest) Ned Kelly claimed that he and his mates intended only to bail up the policemen and take their horses and guns. The sole survivor of the police party, Constable McIntyre, told the 1881 Royal Commission that he believed this to be true and the Commission subsequently reported "*there seems no reason to suppose the murders were the result of premeditation*", something which should be burnt into the flesh of many, many Kelly historians who have operated since 1881.

When challenged by the Kelly party who emerged from speargrass about forty yards from the police campfire, McIntyre surrendered; he was unarmed, holding a fork at the time and he had very little alternative, but Lonigan, an old enemy of Ned's and probably *because* he was an old enemy of Ned's, tried to fight. According to McIntyre's generally accepted account as presented on oath at the inquest into Lonigan's death and at both Ned Kelly's trials for the murder, Lonigan tried to draw his revolver and was shot by Ned Kelly, either before he could move or as he ran to cover - the story did change. However, Ned Kelly and McIntyre (the latter in an unsworn statement to Superintendent Sadleir three days later), both said that Lonigan took cover behind a log and had come up to fire at the Kellys when Ned Kelly shot him. McIntyre's official version describes a ruthless killing; the alternative Kelly version and McIntyre's one matching account show the fatal shot being fired in what is morally if not legally self-defence. Our witness may be able to clarify this point and show which of these versions is true.

Ned Kelly then told McIntyre that if he could get the other two police to surrender on their return to camp he would spare their lives. The Kellys were now a gang, made so by the killing of Lonigan - there was no gang before this, just Ned and Dan Kelly, fugitives with a small reward on their heads and two young men who happened to be with them the day the police arrived at Stringybark Creek. As Kennedy and Scanlon approached, the Kellys took cover and McIntyre urged his Sergeant to surrender. However Kennedy obviously thought that McIntyre was playing a joke on him and, smiling, put his hand on his revolver. The Kellys *emerged from cover* - this isn't the way you conduct an ambush - calling on the police to surrender and a gunfight started. At first McIntyre said that Scanlon dismounted and was shot by Ned Kelly when making for a tree. Although this was said in a sworn deposition at the inquest, he claimed elsewhere he'd been misquoted by reporters on this point. He also said that the trooper slid from his horse and was shot while on his hands and knees, trying to unslung his rifle. Ned Kelly, on the other hand, always insisted that he shot Scanlon while the policeman was mounted, vehemently stressing the point immediately after his capture when he was nearly dead. It was very, very important to him that he made this point.

Sergeant Kennedy had dismounted; McIntyre escaped on the sergeant's horse. Kennedy fell something less than half a mile to the north-west on the banks of German's Creek (in the middle between Stringybark Creek and Bullock Creek) after a running gunfight with Ned Kelly. Rather than let the dying policeman linger in pointless agony, Ned Kelly fired a fatal shot into his chest at pointblank range.

Little controversy attaches to the shooting of Kennedy. Ned Kelly provided what are generally accepted as accurate and, if I might say, extraordinarily honest accounts of the Sergeant's death in two letters and several oral descriptions. However we are left with serious contradictions in the Kelly/McIntyre versions of Scanlon's and Lonigan's deaths. While careful comparison of the verbal evidence can go a long way to clarifying our understanding of what happened - and John Phillips has done this expertly in his book *The Trial Of Ned Kelly* - we're still hampered by our inability to place these events with any precision in the landscape of Stringybark Creek and to establish the physical relationship between the combatants in the two crucial phases of the action, the bailing up of Lonigan and McIntyre and the challenging of Kennedy and Scanlon.

Now, there are major problems in defining the geography of the gunfight in spite of apparently straightforward pictorial documentation.

This is McIntyre's sketch plan (*reproduced in McMenemy, p.83*) identified by his writing and included in the prosecution brief for Ned Kelly's trial. McIntyre subsequently identified the left-hand dot (below the word "Men") as Ned Kelly, Dan Kelly was next to him then apparently Steve Hart then Joe Byrne. It is a rather tricky piece of work which leaves out a vital orienting feature, the police tent, and it is perhaps unintentionally misleading in depicting the two logs with their ends crossed which would mean that one log was resting on the others with its end sticking up several feet into the air.

Two photos of the site (*McMenemy, pp. 83, 84-85*) taken by the Melbourne photographer Burman on or about the 3rd of November, scarcely more than a week after the shootings, show no such feature. There are several logs lying on the ground, including at least two, possibly three large ones, none of them resting up in the air. Clearly, the layout of the fallen timber suggested crossed logs. The figures represent, in both photos, Ned Kelly (behind the log), McIntyre and Kennedy. The man representing Kennedy has his hands raised because McIntyre in one of his earlier versions said Kennedy had surrendered. There was even a suggestion that Kennedy might have been killed at that point and it wasn't until the Beechworth trial that McIntyre was needled by Gaunson into an admission that Ned Kelly and Kennedy were actually [\[end page 14\]](#) exchanging shots with each other. Fortunately, the two photos are taken from almost the same angle only five or six feet apart. Viewed together, they tell us a great deal. The man representing Kennedy has been moved about four yards between one photo and the next; obviously, framing and composition have dictated his position rather more than any evidential considerations. It seems, as we may discover later, more likely that he was actually on the other side of that log behind him. Much more importantly, the two viewpoints provide almost a stereoscopic view, a three dimensional view allowing us to see behind trees or figures which obscure some of the background or middle distance. Now, by using this 3D information, applying some measurements we have and compensating for the very marked foreshortening (the sort of packing together effect of the lens which Mr Burman has used - surprisingly, the equivalent of about a 100mm. lens on a modern 35mm. camera) I built up a mud map affair of the clearing as photographed, which artist John Ward used with the photographs to create a birdseye view of the clearing, a much deeper clearing than you'd expect from the photos. (*The John Ward drawings cannot be reproduced here but they will be included in Ian Jones' biography Ned Kelly, A Short Life, Lothian, Melbourne 1995*) The tent down beside the two burnt posts and the burning fire were placed as per McIntyre's verbal evidence and aligned with physical traces visible in the photos. It's a bigger fire than you'd need to boil a billy; it had been built up as a beacon to enable Kennedy and Scanlon to find the campsite more easily on their return, the smoke rising rather sluggishly with rain coming. Overall, it's a peaceful scene, a typical little campsite in the bush.

We have our landscape but without figures. Seemingly, we are no closer to matching McIntyre's plan with the scene. However, a vital clue was provided by McIntyre at Ned Kelly's Beechworth trial. He said that immediately before Kennedy and Scanlon returned to the camp, Joe Byrne and Dan Kelly "went over to the speargrass at the south side of the open ground, about five feet high, at the same side from which the four men first came from."

So now we have a rough compass alignment for McIntyre's sketch; the men are advancing from the south. We also have the very important detail that for the second phase of the gunfight, Joe Byrne and Dan Kelly took up the position in the speargrass from which the gang had first bailed up Lonigan and McIntyre. In the first phase we have men advancing from the speargrass; in the second phase we have Joe Byrne and Dan Kelly in that same patch of speargrass.

In the photos the man representing Ned Kelly was aiming to the right towards Kennedy and Scanlon who approached down the creek from the north. This means that the speargrass on the southern edge of the clearing which featured in both phases of the gunfight, must be roughly towards the left of the photo and towards the left of our birdseye view. Ned gave us another valuable clue when he wrote to the governor shortly before his execution and mentioned that the members of the gang were in a direct line in front of Kennedy and Scanlon. Steve Hart was in the tent; aligning his position with Ned's behind the left hand log, a direct line would place Joe and Dan either up beyond the logs on the left or down behind the photographer's position. Logically, their position would have been included in the picture. Following our rough compass directions, and on Ned's evidence that the photos showed "the positions of the men at the time of Kennedy and Scanlon's advance", Dan and Joe were in the speargrass, which is visible in the background behind that log and you can see it again in the birdseye view. The log, incidentally, was mentioned by Ned Kelly at Euroa; when talking to one of the prisoners at Faithfull's Creek, he mentioned how they crept up behind a log.

So we have McIntyre's sketch pretty well aligned with our birdseye view. The men advancing in a line up to the speargrass; the fire isn't quite in the same angle of the logs - but you can understand an error of that kind, a subtle difference of angle - but it is broadly on the other side of the so-called crossed log. The position that the Kellys advanced from was close to Stringybark Creek which Mansfield newspaper editor G. Wilson Hall tells us was on the far side of the clearing opposite the tent and we can pretty clearly imagine from the speargrass on the birdseye view the little creek running down past the edge of the bush there. Ned Kelly called it a spring, as we will see, and it's very much that. Even in a wet year Stringybark Creek just bubbles along and you can hardly see it in the undergrowth in spots; you can hear it more often than see it. Ned confirmed that position was close by the creek when he said that immediately before bailing up Lonigan and McIntyre "we approached the spring as close as we could get to the camp." He also described how, as Kennedy and Scanlon approached, "my brother went back to the spring." Joe isn't mentioned there because Ned claimed in both his outlawry letters that Steve and Joe played no part in the action which gives the lie to the stupid theory that Ned Kelly forced the other men to fire into the bodies of the dead police to incriminate them. It just doesn't hold water.

Now that we've orientated McIntyre's sketch with the clearing we can recreate the shooting of Lonigan. McIntyre's sketch and his verbal evidence place Lonigan near the fire. McIntyre specifies that he was ten or twelve feet away on the other side of the logs with his back towards the speargrass from which the four men emerged. As the men challenged the two police and as McIntyre swung around to face the Kellys, he said Lonigan ran four or five yards to what McIntyre described as "my left rear", roughly down along the line of the left log. McIntyre claimed that Lonigan endeavoured to get behind a tree three or four yards off. On the evidence of his sketch and on his evidence of both the placement of the tent and the reason for that placement, there were *no* trees in that direction. Ned Kelly and McIntyre (in his account to Superintendent Sadleir) both say that Lonigan took cover behind a log and came up to fire at the Kellys. Clearly this was [end page 15] down near the butt end of the left hand log.

So here we have the moment as Ned fired the fatal shot at Lonigan. Lonigan has just dropped his revolver, he's just lunged to his feet as the bullet hits him. The Kellys emerge from the speargrass, Ned Kelly firing a shot on the righthand end of the line. McIntyre is facing the Kellys; note that he has his back to the action - he didn't see what happened. His evidence is quite clear that he was watching Ned Kelly in the seconds before the fatal shot was fired and saw it fired.

Then he turned to see its effect. Ned Kelly says "as soon as I shot Lonigan he jumped up and staggered some distance from the logs with his hands raised and then fell." It appears that Lonigan either staggered past the end of the log or stumbled across it, eventually lying in a position where he was screened from Kennedy and Scanlon as they rode back into camp from the north. Obviously the body was invisible or the so-called ambush would hardly have been very successful. McIntyre's sketch suggests that Lonigan fell in open ground in full view of the returning police. He made some attempt to claim that the body had been moved five or six yards but he later admitted that this hadn't happened. On another vital point McIntyre's sketch did not fit the facts. Lonigan was killed by a bullet which entered his brain through, and I quote Dr Samuel Reynolds, "the inner side of the right eyeball." McIntyre was never asked to explain how Lonigan could have received such a wound while running away from his killer at the oblique angle shown in his sketch. It would appear that Lonigan was facing Ned when the bullet struck him. Okay, let's try and cling to McIntyre's version and suggest that Lonigan was looking back over his shoulder as he ran. It doesn't work. At a range of some forty yards even a marksman as exceptional as Ned Kelly would not aim by choice at the head of a running man. The target is too small, too unsteady. He would aim at the man's body. But, if that man were not running but coming up from behind a log then that head was the only possible target.

The dialogue between McIntyre and Ned took place. Then as Kennedy and Scanlon approached from the north the gang took up the positions previously established. The gunfight started. Kennedy dismounted, firing across his horse's rump. Ned says that Scanlon, while still mounted, fired a shot from his rifle without unslinging it. That's easily accomplished if it was slung bush fashion with the muzzle downwards. It means he'd simply have to grip the breech and trigger of the Spencer rifle, swing it under his arm and across his body and fire it like that. Ned says that he then shot Scanlon and saw him roll off his horse. McIntyre gives this description of the trooper's death, "*he fell upon his knees in dismounting, he caught at his rifle as if to take it out of the strap and endeavoured to get upon his feet. He again fell on his hands and knees and in that position was shot under the right arm.*" He is obviously describing the actions of a badly wounded man, wounded before he fell to the ground from his horse. Let's see what happened. According to McIntyre all the gang have run forward from their hiding places calling on the police to surrender. Again this is no ambush - they have run forward from their cover, from their hiding places. The placement of the figures (in the birdseye view) is approximate, I stress, but broadly in the areas of action we're using here - McIntyre in a very uncomfortable position between Ned and Kennedy, Kennedy dismounted on the off-side of his horse, firing across the rump, and Scanlon on the ground trying to unslung his rifle after he's fallen from his horse. Steve is well out of the way with quite a bit going on between him and Scanlon - Ned and possibly McIntyre and Kennedy are moving between him and Scanlon. Dan Kelly, coming down from the speargrass, has just been wounded or is about to be wounded, shot in the shoulder by Kennedy. Joe Byrne is to Scanlon's right in a perfect position to fire the fatal shot, even armed as he probably was with an unfamiliar police revolver. McIntyre admitted that four shots were fired as Scanlon fell. Joe Byrne was probably his killer. McIntyre grabbed Kennedy's horse and escaped to the north. Kennedy eventually followed, pursued by Ned Kelly, to be killed slightly less than half a mile to the north-west.

Our witness, the landscape, has enabled us to build up a picture of the gunfight which fits all the available evidence except one crucial detail, the very first piece of evidence we noted. For this reconstruction to be valid the police camp had to be placed on the eastern bank of the creek and of course everyone knows it was on the western bank, marked by the Kelly tree. So have we been led up another garden path? Is this another 120-year-old white cockatoo? Or is the Kelly tree in the wrong place, on the wrong side of the creek? Placing the camp where we have, on the eastern bank, means that the creek, running roughly north/south, lay between the police and the Kelly hut to the north-west. Immediately it becomes clear why the Kellys approached the clearing via the creek. Remember? "We approached the spring as close as we could get to the camp," Ned Kelly said.

This orientation also explains the comment by Mansfield Shire President James Tompkins in his account of the expedition to recover Kennedy's body, "We got down to Stringybark Creek and saw the tracks of the bushrangers going over the creek." Tompkins' observation was borne out by Senior Constable James who discovered the Kelly hut the following month. He reported, "I traced from the murders to where they crossed Stringybark Creek after the murders." If the police camp had been on the western bank by the Kelly tree there would have been no need for the Kellys to cross the creek coming or going. Many of us, I'm sure, are familiar with J.J. Kenneally's *Complete Inner History of the Kelly Gang and their Pursuers*. For many of us this was our rag book in Kellyana. Kenneally did his field work in the 1920s with Tom Lloyd as his guide and Tom Lloyd certainly knew his way around the area. Some would believe he was further down the creek at the actual time of the gunfight; certainly he arrived up at the hut on Bullock Creek almost immediately afterwards. Kenneally described Sergeant Kennedy retreating across Stringybark Creek and his body being

16

found across the creek from where Scanlon had fallen. He described Tompkins as crossing the creek to discover the body. Everything confirms that the gunfight took place on the eastern bank of the creek. How could local tradition make such a blunder?

An earlier Kelly tree seems to have been destroyed in the 1939 bushfires and the present tree was marked by a local who was fed up with being asked by visitors to show them the site of the gunfight. The late Jack Healy of Tolmie who owned land up from German's Creek between Stringybark and Kelly's Creeks, told me in 1960 that he believed the actual site to be further upstream - he even pointed the site out to me. For what seemed to be very good reasons at the time I doubted him. About 1970, Melbourne solicitor Tom Bell located the original 1884 survey of the area in the central plans office of the Lands Department. The plan, which was reproduced by Keith McMenomy in his excellent book (p.86), actually places the scene of the police murders by the Kelly Gang on the eastern bank of the creek but if we expect to see a site matching the Kelly tree on the western bank that expectation seems confirmed by that little dot marked "hut", almost directly opposite. Now this could be taken to mean the burnt-down hut beside the police tent but the surveyor who notes the nearby Kelly hut as "ruined" would not have identified a couple of burnt posts as a hut. G. Wilson Hall, the Mansfield editor, tells us that the police camp was near the ruins of two huts. The second hut may have been rebuilt by 1884/5 or the hut marked by the surveyor might have been a new building erected by a party who worked the Stringybark Creek diggings between 1878 and 1884. It seems most likely that the remains of the marked hut on the western bank were taken eventually as marking the site of the police camp. From the 1884/5 survey Tom Bell calculated the distance of the police site from Stringybark Creek's junction with Ryan's Creek then labouriously worked his way up Stringybark Creek from the junction with a chain measure to establish that the Kelly tree seemed to be within the area broadly indicated by the surveyor. That suggests that the actual site of the gunfight lies on the eastern side of the creek, almost directly opposite the Kelly tree. However, there are some discrepancies between the initial survey and the more accurate survey made in 1931, discrepancies which I hope to unravel with the help of Brian Hayes, senior surveyor at the Wangaratta office of the Division of Survey and Mapping.

Last month my son Darren and I explored the banks of Stringybark Creek with a particularly ambitious wish list. Following photographic and descriptive criteria, we were looking for a rise beside the creek offering an acre or so of almost level ground with a steepish, high slope immediately across the creek to the west with the timberline and ridgeline dropping away to the south, as shown in the Burman photos, and with a lower, gently sloping ridge to the east and what James Tompkins called "particularly boggy ground" immediately to the north. We could find no credible site in the vicinity of the Kelly tree.

Independently, we decided that the camp must have been sited further upstream, up the gully. After pushing through some particularly dense and rain-sodden scrub, we crossed the creek

and on the eastern bank found an area of slightly less than an acre on an almost level rise, its original area somewhat reduced by gold-sluicing. **Looking to the south-west, the direction in which I believe the Burman photos were taken, the site produced a vista strikingly similar to the Burman photos –**

- a falling ridge and timberline to the south and a steep, high slope to the west, unfortunately almost impossible to photograph because of the density of the scrub which has grown up. To the east across a very slight swampy dip at the edge of the rise was a lower, gentle slope, again obliterated by scrub and timber but closely matching a photo dating from the 1880s. This photo was a bit of a puzzle - Keith McMenemy and I couldn't really reconcile it with the Burman pictures. However, once the penny dropped **I realised that the photo was taken looking east** - the sun direction aligned with the line of the gully means it has to be. The unusual effect in the background was caused by the timbers being ringbarked and sprouting from the stumps produced this characteristic effect. By 1889, as Brenda Leitch discovered in her research some little time ago, this area was "a blooming wheatfield".

Bronwyn and Elizabeth can vouch for the fact that immediately to the north of the rise is a particularly boggy piece of ground. In a sketch or engraving based on the Burman photos and printed in the *Illustrated Australasian Sketcher*, a rather odd open area with speargrass on it was tacked right on the edge of the clearing. As soon as Elizabeth saw that she said, "That's the swamp that mummy and I sloshed through." She may well be right.

We had arrived at the area pointed out to me by Jack Healy nearly thirty three years before and rejected by me because of my stubborn conviction that the site was on the opposite bank of the creek and at this point the bank was too steeply sloping to provide the campsite shown in the photos. Of course it provided the background to the campsite. **Careless reading** of sources, particularly Kenneally, and mental inflexibility **doomed me to thirty years** of chasing my tail where the site of Stringybark Creek was concerned. It may be too early to say that we have located the actual site of the Stringybark Creek gunbattle. **However we can say with complete confidence that perhaps for fifty years people have been honouring a spurious landmark**, trying to imagine the course of the gunfight in a cramped and crumpled mirror-image of the terrain where it actually took place. At this point let me make it clear I didn't set out to prove that the Kelly tree was in the wrong place, least of all on the wrong side of the creek. This was a totally unexpected and frankly unwanted by product, unwanted

17

because it seemed to overshadow, to almost obscure the whole point of the exercise which was and is to build up a more detailed and accurate picture of the deaths of Lonigan and Scanlon and yet confirmation that the true site is on the opposite bank of the creek also confirms the accuracy of the reconstruction we have arrived at. Our witness insisted that I accepted the key to the problem even when I couldn't recognise it and thought I didn't want it.

Let me sum up - our witness, the landscape, demonstrates clearly that **McIntyre's official version** of Lonigan's death was inaccurate, apparently intended to eliminate any argument of self-defence in Ned Kelly's shooting of the constable. Alternatively, viewing it more sympathetically, McIntyre tried to minimise the extent to which Lonigan's actions brought about his own death by portraying the shooting as an immediate response by Ned Kelly to an impulsive reaction on the part of Lonigan. I think it is important to recognise this alternative and I'm quite prepared to believe it.

In the case of Scanlon our witness demonstrates that **McIntyre was probably in error**, apparently unaware that the trooper had been wounded on horseback by Ned Kelly before sliding to the ground. We can now see that Joe Byrne was perfectly placed to fire the fatal shot at the kneeling policeman, the shot whose effect was described by McIntyre. In the case of both police deaths it appears that Ned Kelly told the truth. In the case of Lonigan's shooting our new evidence reinforces the conclusion that **McIntyre's testimony** at Ned Kelly's trial **was, for whatever reason, very seriously flawed**. The campsite at Stringybark Creek has kept its counsel for more than a century. Now I suggest it emerges with eloquent testimony to what really happened on that tragic spring evening.

Weston Bate: McIntyre stole Kennedy's cover. Was this a cowardly or impulsive act or what? Where did he leave the Sergeant?

Ian Jones: I think it's difficult to say. I doubt if it was actually Kennedy's cover at the moment McIntyre grabbed it. McIntyre made the point when cross-examined by Gaunson that the horse was pretty restive with two men firing at each other which was the point when he made the crucial admission that there actually was a gunfight going on between Ned Kelly and

Kennedy. The horse had pretty clearly moved away from Kennedy who then retreated to a tree, possibly the tree which is visible on the right of the Burman photos. Certainly he removed Kennedy's only chance of escape and there's a very poignant moment in one of McIntyre's depositions when he says, "he looked at me as I rode past him but didn't say anything" and it's particularly poignant that Kennedy struck out after McIntyre when he left the campsite as though McIntyre and the horse were his only hope. He struck off towards Benalla. I can't say that McIntyre was cowardly. It was a nightmarish situation and I've tried to identify with his feelings. I don't think the Kellys would have killed him. People say he saved his life by doing that but I don't believe that. I believe the Kellys would have kept McIntyre overnight perhaps and released him in the morning. It was a spur of the moment thing, a ghastly decision to make and I don't think anyone at the time accused him of cowardice and I don't think Ned Kelly really ever did. He was critical of McIntyre on other grounds but not on that.

Keith McMenomy: I think Ned Kelly in one of his letters said, "I don't call McIntyre a coward for he had the presence of mind to know his position."

Ian Jones: Yes, it's true, Keith. I don't know what was going on in McIntyre's head and I'm prepared to give him the benefit of the doubt over the shooting of Scanlon and the benefit of the doubt over his motivation for the adjustment of detail in the shooting of Lonigan. But some of the other discrepancies are really quite extraordinary and I find them difficult to explain. Police policy wasn't involved because in 1913 Superintendent Sadleir published the account that McIntyre had given to him and that account totally agreed with Ned Kelly's, that Lonigan was behind a log and actually coming up with his revolver to fire when Ned Kelly shot him.

Glenn Davis: One of the mysteries which I don't know much about concerning Stringybark Creek and I don't know if it's apocryphal or if it has any substance, is that Scanlon and Kennedy had been tipped off earlier about the whereabouts of the hut at Bullock Creek.

Ian Jones: It's one of those things that's slow to die, Glenn. It's totally illogical that Kennedy and Scanlon knew the Kellys were so close. The night they arrived at Stringybark Creek McIntyre was going to be the cook. They had some ham and of all things, sweet cakes to go with it and at their first meal everyone said it was awful, it didn't work with the ham, so Kennedy suggested that McIntyre try and shoot a kangaroo on that first night, to give the menu a bit of variety. There's no evidence that McIntyre actually fired a shot. He went out looking for a kangaroo and didn't see one but he certainly shot at the parrots the following day for the same reason. If Kennedy knew the Kellys were within a mile there's no way in the world he would have told McIntyre to go out and shoot a kangaroo. He never would have divided his force like that. It just doesn't compute.

Gary Dean: I'd just like to congratulate you, Ian, on that talk and I've had serious doubts about the location myself, but there's something else I think that I've found that brings other doubts too and that's the actual arms that the Kelly gang had at the time of the Stringybark Creek shootings. There was the rifle, of course, which was given to Ned by Harry Power, the one that was used to shoot Lonigan. There are other reports such as a statement made by Williamson when he was in gaol as to the weapons that were purchased almost some twelve months prior to Stringybark Creek on behalf of the gang. Can you shed some light on that?

Ian Jones: Sure. The Kellys were quickly placed in a situation where they needed every firearm they could muster. They were fugitives. They bailed up Faithfull's Creek at Euroa then bailed up the Euroa bank. If you check the breakdown of the Kellys' armament at Euroa you'll see that the funny old sawn-off carbine with which Ned shot Lonigan wasn't there but for

obvious reasons. It was a pretty hairy old weapon, very accurate but it would have taken perhaps twenty seconds to reload and it appears from a careful analysis of those weapons at Euroa that all these rumoured extra guns have just evaporated. We can identify the rifle that Dan had but all the other weapons are the ones taken from Stringybark Creek with the exception of one revolver, probably a pocket revolver, which could have been the Colt pocket revolver which turned up after Glenrowan which I believe Ned Kelly was carrying at the time. Ned said, "We only had the rifle and the old gun." I very much believe that he did have a pocket revolver at Stringybark Creek which he carried bush fashion stuck in his waistband

behind his back. There's a very, very credible moment in McIntyre's testimony where he describes Ned tossing the old carbine from one hand into the other and whipping out a revolver. I do believe that. The other guns just aren't there. I believe that Steve Hart and Joe Byrne were unarmed at the beginning of the gunfight and I believe they took over a pair of police Webleys after the shooting of Lonigan. I have never seen any evidence to suggest other than that. When Kennedy and Scanlon arrived back in the camp the Kellys were armed with two police revolvers, the shotgun McIntyre had been using, Dan's old gun and Ned's carbine. Williamson is a pretty dubious witness, I'd have to say. He seems to have told the truth when there was no other possible alternative.

Gary Dean: I do know the existence, and admittedly it's only oral history which has been handed down through family members, of a muzzle-loading pistol that Ned was supposed to have had. In fact, the gang had a pair of them. They were actually duelling pistols. Dan and Ned were supposed to have had those and the story goes that straight after Stringybark Creek on the way back to the Kelly hut that night Dan actually fell off his horse - he got knocked off by a tree or something - and bent the barrel of his pistol. They attempted to straighten it but were unable to and discarded it. Now the other pistol still survives today.

Ian Jones: McIntyre, who was trying to make the gang as heavily armed as possible, never claimed that any other member of the gang was armed with a pistol when they arrived. There was an old muzzle-loading pistol used by the gang at some stage which they got from somewhere or other which was one of the weapons on the packhorse at Glenrowan. Now that could well be kosher. As for the story of Ned and Dan both having them, I think the bottom line is if all the weapons identified by oral history as belonging to the Kelly Gang were accumulated you'd have a pile as big as those two projectors in the middle of the room. I'd be willing to accept certainly the existence of one muzzle-loading pistol but not, I believe, at Stringybark Creek but I could be wrong. I have been many times.

From the audience: There's one problem, Ian, that duelling pistols tended to be made very solid in the barrel. If it was bent it could only be the tang at the back which would imply that the stock was broken off.

Ian Jones: Yes, I've done a lot of work in oral history and I know its horrendous traps and not only in oral history. If we believed Tompkins who gives an excellent account of the finding of Kennedy's body we would believe it was found to the southwest not to the northwest. He says, "It was my suggestion that we look back in the direction of Mansfield." Now what do you say? I can say okay, it's a slip of the tongue - he meant in the direction of Benalla but he said Mansfield. I'm not quite as sceptical as my old mate, Keith McMenemy, about oral history but I do look for pretty solid substantiation. If I had accepted oral history at face value at Stringybark Creek I might have been a lot better off. I might have found the place a lot earlier.

Question: Ian, that accounts for the weapons that the Kellys had but what about the weapons carried by the police? What's the basis of the suggestion that they came to shoot the Kellys down? It wasn't an expedition to arrest them but to shoot them down and that seems to be based on the weapons they had and also in oral history that they had straps and equipment to take bodies back.

Ian Jones: The straps aren't oral history. That's actually from me from a document which states that they were carrying two special straps made by the Mansfield saddler Bowles, extraordinarily long straps that were designed to sling a pair of bodies on a packhorse. You could loop the two straps over a packhorse and then put a body on either side so that they'd

lie straight. In Westerns they drape a body over a horse and by the time rigor mortis sets in you have a U-shaped body. It's not terribly practical and these boys were well equipped to bring back a pair of bodies and have them in a decent sort of manageable, stiffened condition. As far as the arms went, each trooper was armed with a Webley revolver, standard issue for a trooper. Kennedy borrowed a Spencer repeating rifle, a formidable weapon, from the Woods Point gold escort and he borrowed a double-barrelled shotgun from the Mansfield vicar,

Mr. Sanderford, the gun which was almost certainly the one which subsequently killed Aaron Sherritt and almost certainly the one which fired the fatal shot at Kennedy. I think there is a raft of evidence that the police were ready for a gunfight. McIntyre admitted that the party was quite ready to shoot Ned and Dan Kelly. There's an illuminating incident as they're riding up into the Wombat Ranges; they saw a tigersnake and McIntyre and Lonigan had a little race to see who'd get it and McIntyre killed it and said "First blood, Lonigan!" There's more than a suggestion there that there's going to be other blood. Depending on which story you believe, Lonigan is said to have made some fairly dubious statements like "if anyone is going to kill Ned Kelly I will." Constable Strahan - a "blathering fellow" according to Standish - made some remarks that he'd shoot Ned Kelly down like a dog. One way and another, particularly with the no-questions-asked shootings of Midnight and the gunning down of Father Healey by the New South Wales police, any fugitive might think he had a good chance of being shot at.

I have taken up Keith's point about the target practice. I totally accept that the Kellys were prepared to defend themselves and from their reconnaissance on the Friday night they knew the police party was heavily armed, but if they were anticipating a gunfight Ned Kelly would not have gone into it carrying that extraordinary old muzzle-loading, single-shot carbine. You fire a shot - great if you hit someone; if you don't hit them it takes twenty seconds to reload it, you're forty yards from them and you've got a pocket revolver stuck in your waistband. He would have been in gigantic trouble. Everything suggests to me that Ned Kelly truly believed his only chance to secure his own safety and the safety of his mates was first of all to disarm this party who had camped so close to the place where he and the boys were desperately trying to raise money in some forlorn-hope way to get another trial for Mrs Kelly. He was a fatherly man - he displayed this in many ways - and just as he made what Keith rightly described as a totally futile attempt to go back and rescue the boys from the Glenrowan pub, so, I believe, he made what was an equally ill-advised attempt to disarm the police party and send them back to Mansfield. He did this because he believed, as he said, "the country was woven with police."

Linda Wellwood: My greatgrandfather was Edward Monk who brought the bodies out. You mentioned the special type of slings the police had taken in with them. I'm wondering why they didn't use them to bring their bodies out, because his own account of the whole thing was tying them up with stirrup leathers and slinging them either side of his horse Tommy.

Ian Jones: Quite frankly, I don't know. I don't know when they found them. There's no evidence that they actually ever took them. I can vouch for the fact they were actually made and they were still in existence in 1934. A farmer called Egan in Mansfield had them. I couldn't comment on that. Just one point before I forget. Monk is probably one of the fellows in the Burman photos. There's a note attached to the photos in the Prosecution Brief that Monk had shown Burman the site and showed him what happened so it's London to a brick that Monk is in the photos.

Linda Wellwood: That'd be interesting because I haven't as yet been able to find a photo of him.

Ian Jones: You've got a couple of distant ones there.

Linda Wellwood: The other thing was that I was a little bit surprised about your business about the tree. I was always lead to believe that was not the real tree. The real tree that the bullets went into was cut down in the 1880s. The Mansfield Historical Society and everything you read about it say that. It was a special timber, it was needed and it went to Albury. But that one we visit today has got nothing to do with it.

Ian Jones: I would believe it. It's too young. But of course it's very difficult to say "a tree" because three trees were marked actually by the Government.

Linda Wellwood: I was always told that the thing was on the eastern side of the creek and then I thought, what is he on about?

Ian Jones: Here is an example of oral tradition really getting it right. That's fabulous. You see, as I said, if I'd balanced my scepticism and what I thought was sound knowledge with belief in a man who proved to be an incredibly reliable source or if I'd run into you I could have arrived at it sooner.

Leo Howard: I'm rather interested in this whole Kelly story because my grandfather was a policeman in those times, although he didn't go after the Kellys, and my father was a mounted policeman in Bruthen in Gippsland. I remember when I was a small boy asking my father to tell me the story of the Kelly Gang and he said, without any prejudice either in favour of the Kellys or against, that the Kellys were petty thieves. They were cattle duffers and they were made into major criminals as Professor Weston Bate said today. He suggested I should tell you that.

Ian Jones: Thank you Leo. Weston and I were discussing this point just before and he told me you'd said this. I think if it hadn't been for Stringybark Creek, Ned Kelly's life would very much have paralleled that of Jim Kelly. They would have caught Ned, he would have done time over the Whitty larceny, he would have served five or six years, come out, probably got into trouble again, served another four or five years, come out, maybe got into trouble again. I think he was too intelligent for that and I think he would have ended up like Jim, a greatly respected man in the district who could have gone to the Boer War and could have got a VC and could have gone to the First World War with a remount unit the way Jack Lloyd did. And as Les Carlyon said in a lovely passage in some of the terrific stuff he wrote for our *Last Outlaw* magazine "he might have seen the cripples come back from the First World War, seen the first Model T Fords coming down the Hume Highway." It's lovely.

From the audience: Ned's half brother Jack King was in the First World War.

Ian Jones: Was Jack? I didn't know that. Of course, Kate's son died in France then but I didn't know Jack was in the First World War. Fascinating.

Mick Hamilton: For Ned to have shot Lonigan right between the eyes at that distance and with that weapon, was Ned an extraordinarily good shot or was Lonigan extraordinarily unlucky?

Ian Jones: You could say there was an element of both but it does seem Ned was an extraordinarily good shot. He was using a gun he was very familiar with. It may well have been, as Gary said - and I was the first one in fact who advanced the theory - a gun that had been given to him by Harry Power. We showed it that way in *The Last Outlaw* and I think he said he could shoot a kangaroo at a hundred yards every time and on the strength of that I tend to believe it. As Keith said, Ned could sound vain at times but he was just being accurate.

Mick Hamilton: Was it in fact loaded with more than one ball?

Ian Jones: No, that swandrops story, what can you say? That comes from G. Wilson Hall and it's just not on. McIntyre specifically describes Ned removing the shot from the cartridges and loading it with bullets and this is precisely what they did with exactly the same weapon and probably some of the same ammunition when they went to shoot Aaron Sherritt. They removed the shot and loaded each 12-gauge cartridge with a great hunk of lead which made a one inch hole in poor Aaron's throat and another one inch hole in his side and a three inch hole out the back - it's not attractive stuff. Ned more or less said the police at Glenrowan hadn't played fair using shot. The swandrops theory was an attempt to explain some of the

extra wounds in the bodies. As for the extra wounds, you had bodies lying in the middle of a gunfight with at least two fellows firing very unfamiliar weapons, you had shots going in all directions and I find it completely credible that they simply picked up extra wounds on the way. I think it was John Phillips who first reminded me that it was a revolver bullet in the wound in Lonigan's thigh, which obviously he didn't get behind a log and I think it was more than possible that Lonigan's revolver went off as he was killed and he shot himself in the thigh. But the swandrops thing just isn't on.

Laurie Moore: But an instinctive shot from the hip can be very accurate and through talking to a weapons training expert about this I understand some of the weapons training these days focusses on that. My point though is about the psychology of fear and their fear that the police had superior weaponry and that they therefore in their own interest should disarm them, and their practicing shooting for accuracy at the creek suggests that to me. There's something strange about the fact that the police had to borrow arms, had to borrow a Spencer. As you know, I rang you from the Justice & Police Museum in Sydney and pointed out that they feel they have a Webley Bulldog revolver which was associated with Ned and a most strange and vicious looking fighting knife which they wanted me to verify. If it were so, we haven't looked at the other side of the applied psychology of the weaponry in terms of knives or whatever and that knife still hangs up there unidentified, unverified and I just don't know if it demonstrates that they were expecting some sort of a clash.

Ian Jones: Every bushman would carry a knife. Whether they've got the right one or not, who knows.

Ian Atkin: I teach Year 12 VCE history and a lot of it relies on how much credence we can put on different sorts of history and that's why I was interested in your ideas about oral history. I took a group over to Stringybark Creek only about four weeks ago and one of the last things they were left with was the fellow there saying oral tradition had Dan screaming at the top of his voice at McIntyre as he was disappearing, "Shoot the bastard, don't let him get away." How does that fit in with what you're saying about Kelly letting him run?

Ian Jones: That was actually one of McIntyre's variations. Once he's making a break for it, I can imagine Ned saying, oh come on, this fellow surrendered - as someone would say at the time, he's broken his parole. I think the bottom line is if Ned Kelly had wanted to shoot McIntyre he would have done it, he would have put a bullet into his horse and brought him down or put a bullet into McIntyre's back. McIntyre was no more than twentyfive yards from Ned when he jumped on Kennedy's horse. You can establish that by whatever placement you make in the size of the clearing and all the rest of it. Joe Byrne said at Euroa that he did fire one shot after McIntyre. McIntyre gave the impression that there were shots whistling all around him. None hit the horse. If anyone was trying to shoot McIntyre they were all extraordinarily bad shots. Yet McIntyre himself said the Kellys were the best bushmen, the best horsemen and the best shots the colony could produce. Joe Byrne may have taken a snap shot at McIntyre but there was certainly no concerted attempt to kill him that I can see. If there had been, the horse would have been hit by several bullets and McIntyre himself would have got a bullet in the back. A man riding away from you at a gallop offers a pretty good target, much easier than a running man. I can't see it. Whether Ned Kelly said let the bastard go, who knows. It would not be uncharacteristic of him to do that. It may be romantic of me to think so but I think its quite possible. (Suggestion from the audience that it could have been another cockatoo!)

From the audience: This is belated applause for your *Last Outlaw* and also the interesting books you've written. The point of my question is, there's a couple of things about the timing of Stringybark Creek. From the time Lonigan took cover until when he was shot, was that only a matter of minutes? Also, I thought the time between that and when Kennedy and Scanlon came back to camp was about half an hour but the impression you gave this afternoon was different.

Ian Jones: I'm sorry, I'm falling between two stools in assuming a lot of you know what happened when some of you know nothing. Lonigan would have dived behind the log and almost immediately come up to fire. The thing is, what Laurie said about a snap shot is very

true. Ned was actually covering McIntyre, Dan was covering Lonigan and Dan didn't shoot which suggests that Dan wasn't the bloodthirsty young fellow of popular anti-Kelly tradition. McIntyre specified he saw that Ned was covering him and then swung the gun to the side to shoot at Lonigan. In *The Last Outlaw* we showed him going down behind the log, checking his revolver for a moment and then lunging up to shoot, and Ned shooting him in the eye. That's probably what happened. I can't see any lapse of time.

There is one titillating story which I know intrigues Marian Matta here as much as it intrigues me. At Euroa Ned Kelly did talk to Stephens, a groom at Faithfull's Creek, who was a particularly good witness and an ex-policeman. He gave a very good and fair account of Ned's description of Stringybark Creek and he says that Lonigan came up from behind the log, Ned fired and wounded him in the head, Lonigan went down behind the log and then came up and Ned shot him with the other barrel. Ned didn't have a double-barrelled gun (*aside*) which is something I forgot when we corresponded on that point. I can see what's happened. Good as his memory is, he's confused a detail of the shooting of Kennedy with the shooting of Lonigan. The fact remains that there was a bullet graze on Lonigan's head but how did that bullet graze get there? If Ned Kelly fired it he'd done his dash, his muzzle-loading carbine was empty, he's twenty seconds away from another shot with a policeman about to pump a cylinder of Webley bullets at him with another twelve bullets in his pocket or pouch. You'd never do it; no-one in his right mind outside a western would shoot at anyone with a revolver at a range of forty yards. It would just be ludicrous. In Kenneally you will read a story that Joe Byrne rarely if ever missed a two shilling piece when thrown in the air with a revolver. Absolute codswallop! You cannot do that with a revolver. There is no way in the world Ned would have fired at Lonigan hoping to hit him with a revolver at forty yards range so he was effectively tied to a single shot so where did the second shot come from? I can't believe there was a second shot.

Marian Matta: What about Dan's gun?

Ian Jones: I think if anyone had fired a second shot McIntyre would have mentioned it. I believe there was only one shot. I believe it was a pretty jam-packed few seconds leading up to the fatal shot. Lonigan took some little time to die. Let's not duck the unattractive details. People even with bullets in the brain don't die neatly or quickly. Witness JFK with half his brain gone and his body is still trying to live twenty minutes later. Lonigan was described by McIntyre as lunging and plunging through the grass and it wasn't until he actually fell to the ground, probably on the other side of the log, that he screamed out, "Oh Christ, I'm shot!" which is one of those bad lines that people produce when they're not trying to produce good drama and it's the sort of thing you hesitate to write and of course it happens.

From the audience: I read somewhere or heard somewhere that Ned was shot through the beard.

Ian Jones: There were a couple of versions, one that it was one of Kennedy's shots that went through his beard and another version that it was one of Scanlon's. Ned mentioned this at Euroa. He talked to several of the people at Euroa very openly about the shootings. I might add, the thing about Ned Kelly's honesty is, in his accounts of the shooting of Kennedy, Ned Kelly didn't have to tell anybody that Kennedy had dropped his revolver when Ned fired the last shot of the gunfight at him as opposed to the shot that killed him. Ned didn't discover until he came up to Kennedy that Kennedy had actually dropped the revolver when he'd been shot. For those of you who don't know, Ned was approaching, Kennedy came out from behind a tree to fire at him, Ned dropped to his knees, fired and hit Kennedy under the arm. Kennedy then turned to keep going; apparently - Ned said this at Euroa - blood had run down his hand. You can understand his arm was numb and suddenly Kennedy realised he'd dropped his revolver, turned to surrender and as he turned, Ned saw a hand coming around in the dusk with a black, dark clot of blood - and only people who've seen it can know how dark blood can look in these circumstances - thought he had the revolver and fired the second shot which hit him in the chest and would have, I'm sure, proved fatal.

From the audience: I heard like Ian that there was some statement from Dan that if they killed

McIntyre there would be no witness and I'm not a Kelly country local, I heard it somewhere in Melbourne.

Ian Jones: Dan certainly was the one who said let's handcuff him. I'm not aware of any remotely reliable evidence that Dan said let's kill him. I may have edited it out but I don't think so. Any of the other scholars remember that?

Des Regan: One point that's always puzzled me which is fairly central to the whole thing is the revolver bullet in Lonigan's thigh and you posed the scenario which crossed my mind that he shot himself with his own weapon but I have difficulty in integrating that into the sequence of events. There are a number of ways it could be played - did he come up from behind the log, pointed his revolver, Ned shoots him, he falls down, he's thrashing about and in the thrashing movement shoots himself?

Ian Jones: I can only look at the possibility. I think its more likely he was struck by a stray bullet in the fight. As I say, I regard that as an outside chance that he shot himself but I can't discard it.

Des Regan: One other theory that has been put to me is that he didn't really have the chance even to bring the revolver up, that his head came up and he was shot and in a convulsive action fired into the thigh. I guess that's the other possibility.

Ian Jones: He'd be an incredibly inept policeman if he brought his head up without having his revolver there.

Des Regan: That's the problem. I can't integrate it into a logical sequence.

Ian Jones: Exactly. I could give you half a dozen scenarios of how it could have happened. Off the top of the head - he comes up from behind the log, bang! he's hit, grabs at his eye, falls forward and as he falls forward onto the ground he's got the gun in his right hand, the hand is convulsed - I won't embarrass people by lying on the ground. Easy to see how the gun could go off at that moment of hitting the ground. Scenario two... (protests from audience!) I think you could come up with a few.

THE TRIAL OF NED KELLY: "MR BINDON KNOWS NOTHING OF MY CASE."

THE CHIEF JUSTICE OF VICTORIA, HIS HONOUR JOHN H. PHILLIPS

At the end of the sittings of the Supreme Court held in this court-room in the spring of 1878 the presiding judge, Mr. Justice Redmond Barry, pronounced sentence on two men and a woman who stood in the dock. They had earlier been convicted by a jury of being accomplices in the attempted murder of a police officer, Trooper Fitzpatrick. The two men, William Skillion and William Williamson, were each sentenced to six years imprisonment; the woman received a sentence of three years, because, the judge said, she had a child of six months which she was still feeding. Her name was Ellen Kelly. According to the evidence given by Trooper Fitzpatrick at the trial, he had gone to Ellen Kelly's home with a warrant for the arrest of her son Dan for cattle-stealing. Dan, so Fitzpatrick said, had seized a police revolver from him while his older brother Ned had fired a shot at the trooper, wounding him in the wrist.

A few minutes after sentence had been pronounced, clutching her child to her, Ellen Kelly trudged with her companions up the gentle slope towards the high walls of Beechworth Gaol. Their footsteps lead them as surely to their punishment as those of their escort, Trooper Fitzpatrick, lead him in the fullness of time to dismissal in disgrace from the Victoria Police Force. In the grim gaol yard Fitzpatrick broke the bitter silence.

"Well, Billy," he said to Williamson, "I never thought you'd get anything like that."
Williamson disdained to reply but Ellen Kelly did so. "My sons will play up over this," she said.

"There will be murder done now!"

Twenty months later, three police officers and one of her sons were dead; the other son was in police custody. While the bodies of his brother Dan, Steve Hart and Joe Byrne were recovered from the ashes of the Glenrowan Inn on the 28th of June 1880, Ned Kelly was held under heavy guard. Later he was transferred to the Melbourne Gaol. As he lay recovering in the prison hospital from multiple gunshot wounds, a number of criminal charges were pending against him. In March 1878 warrants for his arrest and that of his brother Dan had been issued for horse-stealing and following the visit to his mother's home by Trooper Fitzpatrick further warrants were issued against the two brothers on a charge of wounding Fitzpatrick with intent to murder. But the police could not find them to effect their arrest. After Kelly's mother had been sentenced in October of that year, the Kelly brothers, with Byrne and Hart, had remained in hiding and a massive police hunt followed but despite continued determined efforts their whereabouts remained unknown.

On the 25th of October 1878, a party of four police, Sergeant Kennedy and Troopers Scanlon, Lonigan and McIntyre, had left Mansfield to search for the Kellys and their friends and following a series of incidents where the police had camped at Stringybark Creek, on the following day only Trooper McIntyre remained alive. After a night hiding in the bush he returned to Mansfield. As a result of his account of what had occurred, search parties recovered the bodies of his companions from the camp or nearby. All had died from gunshot wounds. Immediately an inquest was held in Mansfield by the local coroner and a number of witnesses gave evidence. These included Trooper McIntyre and a Doctor Samuel Reynolds who had examined the bodies of the dead police. As a result, further warrants for the arrest of the Kellys were issued for the murders of Kennedy, Scanlon and Lonigan.

Then in December 1878 the Kelly Gang, as it was now called, robbed the National Bank at Euroa of more than two thousand pounds and in February 1879 robbed the Bank of New South Wales at Jerilderie of a similar sum. Despite many reports of alleged sightings, more than eighteen months passed without the police being able to make an arrest. On Saturday 26th of June 1880, a young man named Aaron Sherritt, who had given the appearance of working with the police to betray the Kellys, was shot dead at his house on the Woolshed. The momentous events at Glenrowan, including Kelly's capture, occurred in the days following.

By August of that year Kelly was pronounced well enough to attend court and a preliminary enquiry into the deaths of the police was conducted at this Beechworth court. Mr. Charles Smyth, a very experienced barrister and senior Prosecutor, appeared with Mr. Arthur Chomley for the prosecution, and Mr. David Gaunson, a Member of Parliament and a well-known police court practitioner, appeared for Kelly. The first witness called for the prosecution was Trooper McIntyre and he gave evidence of the departure of the police party from Mansfield and said that on the following day, they having camped overnight at Stringybark Creek, Sergeant Kennedy and Scanlon left to patrol on horseback, leaving he and Trooper Lonigan in the camp. At about five o'clock in the afternoon four armed men entered the camp. It was the Kellys and their companions. According to McIntyre, Ned Kelly pointed a rifle at the unarmed Trooper Lonigan. Lonigan held up his arms then, McIntyre said, Kelly shot Lonigan dead. The gang then held him, McIntyre, prisoner for about three quarters of an hour until the sergeant and Scanlon returned to the camp. Shots were then exchanged and Sergeant Kennedy fell from his horse. McIntyre seized the opportunity to jump on the back of the animal and rode away with more shots being fired after him.

After McIntyre there followed a parade of witnesses who had been captives of the Kellys in the months following the incidents at Stringybark Creek and with whom Ned Kelly had had conversations. He had spoken frequently of the deaths of the police and had given details of what he said had occurred. Then followed Edward Living, the teller at the Bank of New South Wales at Jerilderie, who had been imprisoned by the Kellys after the bank robbery. Ned Kelly had asked him where the local newspaperman might be found and had forced Living to go with him to the journalist's home, only to find him absent. Then, said Living, Kelly handed the man's wife a roll of manuscript and he said these words to her, "Get this printed. It is part of my life." The manuscript was produced and shown to the Magistrate.

Other than Trooper McIntyre, the most significant witness called at this proceeding was Dr Samuel Reynolds who, you will recall, had conducted the post-mortem examinations on the dead police at Mansfield. Reynolds said that on his examination of Trooper Lonigan's body he had discovered that Lonigan had four wounds; he considered them all to be bullet wounds.

At the end of the evidence Kelly was committed for trial at the Supreme Court on a charge of having murdered Thomas Lonigan.

During the months that followed, David Gaunson, Kelly's solicitor, discussed with Kelly's married sister, Mrs Skillion, the selection of a barrister to appear for his client in the coming Supreme Court proceedings. Their choice was a logical one - it fell upon a Mr Hickman Molesworth who had already sixteen years experience as a barrister and who was a rising star in his profession. The son of a Supreme Court judge, he was a popular and respected figure. But Molesworth demanded very considerable fees. Those he quoted for the defence of Ned Kelly were fifty guineas for the first two days of the trial and ten guineas for each day thereafter. Mrs Skillion, no doubt in good faith, made repeated but unfulfilled promises for the payment of these fees. Molesworth wanted payment in advance.

At the end of September the identity of the trial judge became known; it was to be Mr Justice Redmond Barry, the same judge who had sentenced Ellen Kelly in 1878. Twice knighted, Barry had been a judge of the Supreme Court of Victoria since 1852. An Irishman and graduate of Trinity College, Dublin, he had come to Australia in 1838. He was a man of both generous and stern instincts who imposed harsh sentences and who yet gave away to the poor, in secret benefactions, a considerable part of his income.

By the beginning of the second week of October, Kelly's legal representatives had accepted that there was no possibility of obtaining the money for the fees before the date fixed for the trial which was the fifteenth of that month. On that day Molesworth appeared before Mr Justice Barry and asked for an adjournment of the trial to enable further time for the fee money to be collected. Barry refused and ordered that the trial proceed on the following Monday.

Shortly before nine o'clock on that Monday morning, Molesworth's clerk knocked at the door of another barrister called Henry Bindon. Although he was thirtyseven years of age, Bindon had been a barrister in Victoria for less than a year. He had never appeared in the Supreme Court; indeed, he had only succeeded in passing the matriculation examination at his third attempt at the age of twentyseven. It took him a further eight years to complete the Bar examinations in London. The clerk conducted Bindon back to Molesworth's chambers and Molesworth there asked him, as a favour to a brother barrister, to go up to the Court and attempt to get the case further adjourned. The difficulty with the fees was explained to Bindon. But Bindon faired no better than Molesworth; Barry would only agree to an adjournment for ten days and suggested that if the money for Molesworth's fees could not be obtained, then the Crown could pay a nominal fee to a barrister to defend Kelly. Kelly's solicitor made further desperate and unsuccessful attempts to obtain the fees and on the afternoon before the trial was due to commence went to see Bindon in his chambers. It was agreed Bindon would go to the court on the following morning and make yet another application for adjournment. Both men knew it would inevitably fail and that the trial would proceed with Bindon conducting the defence. And for this the Crown was prepared to pay him seven guineas. The die was cast; Edward Kelly, on trial for his life for murder, would be represented by the most inexperienced barrister in the colony.

The morning of Thursday 28th of October 1880 was, for Melbourne, unseasonably hot. A warm spring wind blew eddies of dust among the hundreds of people assembled in Russell and La Trobe Streets. Filling the roadway and pressing forward onto the verandah of the old Supreme Courthouse, they had come to catch a glimpse of the trial of the century. As expected, Bindon's application for a further adjournment was dismissed, and Edward Kelly was arraigned on a charge of having murdered Thomas Lonigan at Stringybark Creek on the twentysixth day of October 1878. He pleaded not guilty and in a very short time a jury of artisans and farmers was sworn in.

After a short opening speech by Smyth the call of "Thomas McIntyre" rang through the old building. The watchers in the court-room saw a soberly dressed, thin man of medium height come forward to take the oath. Here was the prosecution's only eyewitness. Above a very Irish face his receding brown hair left a sort of widow's peak on his forehead and a pointed beard completed the picture. As he stared straight ahead at the jury his hands gripped the rail of the witness box. In answer to questions from Smyth, McIntyre described the expedition's departure from Mansfield and the first camp at Stringybark Creek when the Sergeant and Trooper Scanlon had departed on patrol, leaving Lonigan and he alone, and then, said McIntyre, four armed men came into the camp.

"Are any of those men present in this court-room?" asked Smyth.

"Yes," said McIntyre.

"Where?" asked Smyth.

The word hung in the air. "Over there," came the reply and McIntyre's finger swung up until it pointed directly at the dock.

"The witness," Barry's voice came down from the bench, "has identified the prisoner."

McIntyre went on to describe the death of Lonigan very, very simply. What had happened, he said, was that Ned Kelly had brought his rifle up, pointing directly at Lonigan, then he fired and Lonigan fell immediately. The gang then advanced and he, McIntyre, was taken prisoner. Ned Kelly told him he believed the police had come to shoot him rather than to arrest him. McIntyre went on to describe the Kellys' calling on the sergeant and Scanlon to surrender upon the police patrol's return, the subsequent exchange of fire and his own escape on Kennedy's horse after Kennedy had fallen from it, apparently wounded.

Henry Bindon rose to cross-examine McIntyre. He asked this vital eyewitness twentytwo questions; of that meagre number, less than half related to matters of significance. In response to the questions that did matter, he obtained from McIntyre an admission that none of the police party had a warrant for the arrest of the Kellys in their possession and none of

them were in uniform but Bindon entirely failed to challenge McIntyre on his description of Lonigan's death, which description plainly involved Lonigan being shot dead without him having made a movement of any kind, and specifically without him drawing or attempting to draw the police revolver with which he was then armed.

McIntyre was followed by a procession of witnesses who'd been prisoners of the Kellys during the various raids they had carried out. George Stephens, a groom, and James Gloster, a hawker and his assistant, Frank Beecroft, repeated the evidence they'd given at the Beechworth court, namely that Kelly had told them that Lonigan had run behind some logs, drawn his revolver and rested the revolver on the logs before he, Kelly, fired at the policeman. He told Stephens that Lonigan had attempted to fire at him and that he, Kelly, had fired two shots; one bullet, he said, grazed Lonigan's temple and the other, fired after Lonigan had attempted to fire, had hit him in the eye.

Then came Edward Living, the clerk from the Bank of New South Wales at Jerilderie, and he gave again the evidence of the production of the manuscript in the office of the journalist. It was a statement about Kelly's life that he wanted printed. Mr Chomley, who was examining this witness, handed some documents up to the witness box and the witness identified them as those that Ned Kelly had produced. Chomley sought to tender this manuscript in evidence but Bindon immediately objected. He got help in his objection from a very unexpected quarter - he got it from the Senior Crown Prosecutor because Smyth quickly informed the judge that the documents were not, in fact, in the handwriting of Ned Kelly and he didn't want to press the matter. Barry upheld the objection and the manuscript was not received in evidence. Charles Smyth showed his usual deft touch in the handling of the production of this manuscript which has become famous as the Jerilderie Letter.

In law, Living the bank teller *had* given sufficient evidence to enable Barry to rule that Kelly had adopted the contents of the manuscript so as to make it admissible in evidence. In those circumstances it mattered not at all that it was not in Kelly's handwriting; his statement "This is part of my life; get it printed" clearly showed that he adopted its contents as his own. But once the objection was taken by Bindon and more importantly, once the matter was not pressed by Smyth, it was inevitable that the judge would rule that the document could not be received in evidence. The real reasons behind Smyth's court tactics are easy to discover. The Jerilderie Letter is Ned Kelly's own forceful and, some would say, persuasive statement of what he claimed was the persecution of himself and his family by the police. Had Bindon not made his ill-considered objection the jury would have been able to take into the juryroom, when considering their verdict, a written account of the relevant events which was most favourable to Ned Kelly. But Bindon's objection prevented all of that happening.

Dr Reynolds was the next witness. He testified that on the 29th of October 1878 he had performed a post-mortem examination on the body of Trooper Thomas Lonigan. He said he found a gunshot wound near the right eye and another on the temple which was merely a graze. There was a further gunshot wound on the left arm caused by a bullet passing right through the left forearm and yet another fourth gunshot wound on the left thigh. This last wound travelled under the skin and around to the inner edge of the thigh at the front.

"What, Doctor, in your opinion," asked Smyth, "was the cause of death of the deceased?"

"The wound through the eye was the sole cause of death," replied Dr Reynolds.

Henry Bindon, who had had very few questions to ask of any of the other witnesses, did ask several questions of the doctor. In them he sought to deal with rumours that had persisted for over two years that the bodies of the policemen had been mutilated by the Kellys after they had been killed.

"Dr Reynolds, was it your opinion that any of their wounds had been inflicted after death?" Bindon asked. "No," said Reynolds firmly, and finally Bindon asked about the wound in Lonigan's thigh. "Do you remember, Doctor, extracting that bullet?"

"I well remember," said Reynolds, "it was a small bullet, an ordinary revolver bullet."

Re-examined by Chomley, the doctor said that if wounds were inflicted after death on a body which was still warm and where circulation had not actually ceased it would be difficult to state accurately from their appearance whether they had occurred before or after death. Barry thanked the doctor for his attendance and excused him.

Smyth stood up. "That," he said, "Your Honour and gentlemen of the jury, is the case for the prosecution." The judge then asked Bindon what course the defence proposed to take.

"The defence will not call any evidence, Your Honour," Bindon replied.

"So be it," said Mr Justice Redmond Barry. "So be it."

Charles Smyth began his final speech to the jury by stressing that it was clear than six months before the police were killed warrants had been issued for the apprehension of Ned and Dan Kelly for the crimes of horse-stealing and attempted murder. So, Smyth argued, the police at Stringybark Creek were there with the full authority of the law and accordingly entitled to the full protection of the law. Smyth commended Trooper McIntyre's description of the cold-blooded shooting of Lonigan by Ned Kelly to the jury and thumped home the point that McIntyre was never challenged in cross-examination about it. However, said Smyth, McIntyre's evidence did not stand alone; Kelly had admitted shooting Lonigan to a number of witnesses and their accounts had not been challenged by Bindon either. Further, the Senior Prosecutor claimed, Dr Reynolds' evidence completely corroborated the evidence of Trooper McIntyre although such corroboration was hardly necessary due to the lack of challenge to McIntyre's evidence.

Smyth then turned to the question of motive and his fist now smashed down on the table. "I'll tell you what the prisoner's motive was! It was one of malignant hatred against the police. Edward Kelly was at war with society." And Smyth drew his gown about him. "That dead constable was doing no more than his duty in searching for the Kelly Gang. Gentlemen of the jury, the Crown says there is only one verdict which is a true verdict on the evidence, a verdict of guilty of murder."

Henry Bindon began his final speech to the jury nervously as well he might for he had never addressed a jury in his life. In his faintly trembling hands he clutched a sheaf of papers; they were his insurance policies against drying up, the ultimate horror of the fledgling advocate. On each page, in bold printing, was the full text of a point he wanted to make to the jury. A quarter of an hour later, with more than an occasional mistake which required correction by the judge, he was well embarked on this task. Trooper McIntyre's account, he submitted, was a well-prepared and rehearsed one. Kelly's admissions to the various witnesses that he had held captive, he argued, were made only for the purpose of bluffing them. Nevertheless, at Euroa and Jerilderie, Kelly had never inflicted any harm on anybody. At Stringybark Creek, he contended, there was evidence of various shots being fired and who could tell for sure which shots had been fired by Ned Kelly. And Bindon too made a final appeal to the jury.

"You have a most important and serious duty to discharge. Do not take the life of a man on the prejudiced evidence of a single witness."

A host of unanswered questions still cling to Henry Bindon; he was certainly inexperienced but was he also incompetent? What is the explanation for his evident academic difficulties? Is it illness or had he reluctantly taken up a calling in which he had no real interest? Throughout the trial Bindon appears to have been quite unable to appreciate the legal significance of the statements that Kelly had made to the various witnesses. They each involved, in law, the notion of self-defence. True it was that self-defence did not sit happily with some of the objective facts of the case because, after all, it was Kelly and his companions who had confronted the police and it was Kelly and his companions who had first presented firearms.

But with care and persistence, a case for Kelly could have been adequately presented and it went thus: Trooper Lonigan's action in drawing his gun put Kelly in immediate danger of death or at least grievous bodily harm. Kelly's action in shooting Lonigan in the circumstances, believing that the police had come to shoot him down rather than arrest him, and that Lonigan was about to do just that, was the infliction on Lonigan of no greater injury than Kelly, in good faith and on reasonable grounds, believed to be necessary. And such a defence would have been in accord with the law of self-defence in 1880.

The most obvious comment about Bindon's conduct at the trial is that he allowed Trooper McIntyre's description of the critical event, Lonigan's death, to remain unchallenged - unchallenged by cross-examination and unchallenged by any account his own client might have given to the court. In 1880 an accused person was not permitted by law to give sworn evidence in his own defence but he might make an unsworn statement from the dock. Bindon must have advised Kelly against taking this course. But what of Bindon's failure to challenge McIntyre's account in cross-examination? Remember the essentials of McIntyre's story, that Kelly simply shot dead a motionless Trooper Lonigan. That was what the jury was told. Now I have to tell you that much earlier, Trooper McIntyre had given a very different version of this event. In October 1878 he had made a statement to his superior officer. It still exists in the Victorian state archives. In it, in his crabbed handwriting, McIntyre describes the death of Trooper Lonigan thus, "Suddenly and without us being aware of their approach, four men with rifles presented at us, called upon us to bail up, hold up our hands. I being disarmed at the time did so. Constable Lonigan made a motion to draw his revolver which he was carrying and immediately he did so he was shot by Edward Kelly and, I believe, died immediately." The terms of this statement provoke questions of a very grave order indeed. Why did Trooper McIntyre not tell the jury at Kelly's trial that Lonigan had made a motion to draw his revolver? And what does the phrase "immediately he did so" mean? The same archives show that by the 10th of July 1880, a few months before the trial, Trooper McIntyre's account had substantially changed because on that date he submitted a second statement to his superiors. This statement, referring to the death of Lonigan, reads, "I instantly held out my hands to show I was unarmed, and as I did so I saw the man on the right of the party move his rifle from the line of my chest and shoot Lonigan who had no time to get under cover or draw his revolver. On being shot he fell immediately." All references to Trooper Lonigan drawing his revolver had now been removed and no mention was made of these matters in the evidence McIntyre gave at the trial.

Did Bindon not know of McIntyre's first statement? It would be astonishing if he did not because in the Argus newspaper of Tuesday 29th of October 1878 there appeared a very accurate account of it. Did Senior Crown Prosecutor Smyth know of it? In a modern trial a Crown Prosecutor would be obliged to draw the court's attention to such a statement and the failure to do so might lead to a verdict being overturned on appeal. But the mists of time have closed over this matter and I cannot supply an answer to this question. What is abundantly clear is that the contents of McIntyre's first statement should have been used to attack the accuracy of his evidence.

Bindon also failed to address the jury about some vital aspects of the evidence of Dr Reynolds. A proper analysis of the doctor's evidence would have proved of great value in Kelly's defence. Even over a gulf of a hundred and thirteen years this witness can be seen to have given his evidence with complete scientific detachment. Dr Reynolds' evidence proved that at least three bullets had struck Lonigan. I say this because although the doctor found four wounds on his body the bullet which passed right through the left forearm might have travelled on to cause any one of the other wounds. Are Dr Reynolds' findings consistent with the evidence of McIntyre who described Kelly killing Lonigan with one shot? Plainly not unless, after McIntyre's escape and when Lonigan had been dead for more than half an hour, additional shots were fired into his body. This scenario had never been advanced by the prosecution at the trial because there was not a scrap of evidence to support it. For a start, Dr Reynolds, called as a reputable expert by the Crown, was of the opinion that all the wounds had been inflicted before death and he expressly stated this during the course of his cross-examination at the trial. While he conceded to Chomley that it was not possible to give such an opinion with respect to wounds that had been inflicted after death but before circulation

had ceased, this concession was plainly hypothetical. If it had been impossible to form an opinion about Lonigan's wounds Dr Reynolds would have said so; he did not say so. Instead he gave the firm opinion that all were inflicted before death. Moreover he swore at the Beechworth Court, although this was not brought out at the trial, that the wound through the eye would have occasioned death in a few seconds.

Now thus, on proper analysis, Dr Reynolds' findings were in direct conflict with McIntyre's version of the events and should have been used by Bindon as a basis to launch a trenchant attack on McIntyre's evidence. He entirely failed to do this and by contrast, the wily Smyth, no doubt without batting an eyelid, repeatedly assured the jurors that Dr Reynolds' evidence corroborated that of Trooper McIntyre's.

Could Bindon have argued that Dr Reynolds's findings supported Kelly's version of events? Did they, for example, support the version Kelly had given to Stephens the groom? At first glance it would appear that such an argument could not have succeeded because Kelly told Stephens he fired only two shots, one of which grazed Lonigan's temple and the other struck him in the head. This version could account for the graze to Lonigan's temple and the fatal wound near the eye. It could also accommodate the wound through the left forearm because the bullet which caused that wound might have gone on to cause either of the other two, assuming the trooper had had his forearm raised. But what of the fourth wound in the thigh? This was a curious wound indeed, with the bullet entering under the skin and passing along under the surface of the skin to the inner part of the thigh where it lodged. The Argus newspaper's report of Dr Reynolds' cross-examination at the trial stated that the doctor swore that he had extracted the bullet from the thigh wound and that it was a revolver bullet. The accuracy of this report is confirmed by Mr Justice Barry's handwritten notes of evidence which are still in the State archives. So, Dr Reynolds' evidence proved that a revolver bullet was fired into Lonigan's thigh before he died but McIntyre had sworn that Kelly had killed Lonigan with one shot from a rifle. On the evidence before the jury, which included Kelly's statements to Stephens, Gloster and Beecroft, the only person who had drawn a revolver before his death was Lonigan himself. The jury were entitled in law to act upon the statements of Kelly to this effect. Therefore it was clearly open to the jury to find that Lonigan, no doubt accidentally, must have shot himself in the thigh while drawing his revolver or immediately after he had drawn it. The singular appearance of the thigh wound strongly suggests that this is what occurred. And thus, it could have been argued, Kelly's account of Lonigan's death to Stephens was not only consistent with Dr Reynolds' findings but was, on the evidence, the only version which fitted in with them. But Bindon put none of this to the jury.

Henry Bindon did not appear in another significant case after Edward Kelly's trial. He remained living and working in Melbourne but in 1891 a paralytic illness struck him down. He never recovered and died in South Yarra in September 1893 aged forty-nine.

Charles Smyth continued as Senior Crown Prosecutor until 1895 but an ungrateful government declined to give him a pension and he was obliged to sue to establish his claim, finally succeeding in the Privy Council three years later.

Ned Kelly's trial was completed in just two days and the speed with which it was conducted is reflected in the summing up of the trial judge which took a little over a quarter of an hour. Barry first told the jury they must accept his directions as to matters of law and he defined murder for them. He then told them what in law constituted self-defence. He said, "In law, if a man is assaulted in such a manner as to put him in immediate and obvious danger of instant death or grievous bodily harm, he may defend himself forthwith and may wound and even kill the person by whom he is assaulted, providing he inflicts no greater injury on that person than he, in good faith and on reasonable grounds, believes to be necessary." Barry then shortly reviewed the evidence and acknowledged that there was evidence which raised an issue of self-defence for the jury to consider; he did not tell them, as he had told another jury in the trial of Robert Burke in 1866, that there was no evidence of self-defence. Their verdict, he told them, must be unanimous and must be either a verdict of guilty or not guilty of murder. He repeatedly stressed to the jury they must obey his legal directions.

It is necessary now to make some comments on the summing up of Mr Justice Barry. As I have noted, he had accepted that there was an issue of self-defence for the jury's consideration. Let me encapsulate that matter. While Trooper Lonigan and the other police were empowered by law to arrest Kelly and bring him before a magistrate, neither Lonigan nor the other police were empowered by the law to shoot Kelly down. Thus, the real issue for the jury in Kelly's trial was, in factual terms, the nature of the police expedition. If they were bent on effecting a lawful arrest of Kelly or his brother then Kelly's killing of Thomas Lonigan was murder, but if Kelly could show that their real purpose was to shoot him down and that in those circumstances he inflicted no greater injury on Lonigan than he, in good faith and on reasonable grounds, believed to be necessary in order to defend himself then the defence of self-defence had been made out and he was entitled to be acquitted. Barry dealt with this topic right at the end of his summing up. He said, "Here, gentlemen of the jury, four constables went out to perform a duty, a duty to arrest the prisoner and his brother and when in pursuit of those two persons they therefore had a double protection than that of the ordinary citizen: that of being ministers of the law, charged with the administration of the peace of this country."

In my opinion these sentences, couched as they are in terms which would make them appear to be legal directions and which the jury would have considered were binding on them, effectively removed from the jury's consideration the essential issue in Kelly's defence. Sir Redmond should have told the jury that it was for *them* to decide whether the police were acting as ministers of justice or summary executioners. Instead, the matter was put to the jury in terms conclusively in favour of the prosecution, and accordingly, the conclusion is inescapable that the judge's summing up contains significant misdirections, and were misdirections of this sort to occur in a modern trial it is likely that the verdict would be set aside and a new trial ordered by the Court of Criminal Appeal. But in 1880 there was no Court of Criminal Appeal.

It is not my purpose in this presentation to suggest Kelly was an innocent man. It must be acknowledged that the case against him was a strong one and time has not diminished the force of the evidence but every accused person has - and had in 1880 - the right to a trial according to law and so too, such persons are entitled to an expectation that their defence, whatever its shortcomings, is sufficiently put to the court. The trial of Edward Kelly fails to meet either of these ideals.

After a retirement of only half an hour the jury returned with a verdict of guilty of murder and Edward Kelly was asked, in accordance with ancient custom, whether he had anything to say as to why sentence should not be pronounced on him according to law. He chose to record for posterity a strong complaint about the way his defence had been conducted.

"Mr Bindon knew nothing about my case! I lay blame on myself that I did not get up yesterday and examine the witnesses myself."

At a signal from Barry, the court crier approached the bench and placed the black cap over the judge's wig. Then he called for silence while sentence of death was passed.

Barry now faced Ned Kelly. "Prisoner at the Bar, the sentence of the Court is that you be taken from the place where you now stand to the place whence you came and that you be taken thence at such time and to such place as His Excellency the Governor shall direct and that you then and there be hanged by the neck until you are dead and that your body be buried in the precincts of the gaol in which you shall have been last confined after conviction, and may God have mercy on your soul!"

"I will go a little further than that," said Ned Kelly evenly, "I will meet you there where I go."

As the Court rose at the end of the proceeding, the two men, judge and convicted felon, briefly faced each other. Within four weeks they would both die, Kelly on the scaffold and Barry in his bed. And thus, in the minds of many, would the condemned man's prophecy be fulfilled.

Indeed, the Ned Kelly drama ended with all the principal actors, Kelly, the three police officers and the judge, all of them dead and the saddest part for many, including me, is that they were all sons of Ireland.

After the court rose Henry Bindon removed his wig and gown and walked down the gloomy gallery to a small door which led from the court into La Trobe Street. It was relatively quiet there, away from the tumult of oaths and imprecations of the mob gathered in Russell Street outside the gaol, and like a litany he kept hearing Kelly's words from the dock, "Mr Bindon knew nothing about my case!"

He crossed the street and turned down the slope.

"Mr Bindon knew nothing about my case."

In the gardens in front of the Public Library he found a stone seat and he slumped on it and there, alone in the gathering darkness, he wept.

As those bitter tears were being shed, Kelly spoke to his solicitor in the condemned cell. "How long have I got?" he asked.

"It can't be more than three or four weeks," said David Gaunson.

"Three or four weeks, then I'll be joining Dan. You never met Dan, did you, Mr Gaunson." Gaunson shook his head. "He was a lovely man, my brother. Did you know Dan had a great gift, the gift of song? Oh, Mr Gaunson, if only you had heard Dan sing."

Mr Justice Phillips concluded his presentation by singing "Come My Beloved" from "Atalanta" by George Frederic Handel.

THE KELLYS AND BEECHWORTH REVISITED

IAN JONES

This whole thing is Jill's fault because Jill read my book *The Friendship That Destroyed Ned Kelly* and felt that Beechworth was almost a character in the book. It's very perceptive because that's the way I saw it and it seemed appropriate to make just a few remarks about the Kellys in Beechworth at this symposium. It's *The Kellys And Beechworth Revisited* because at the first Kelly symposium in 1967, we had a barbeque on the Stanley oval and Colin Cave asked me if I'd say a bit about the Kelly and Beechworth so I did, with a glass of very amiable red in my hand, as I remember. It was tape-recorded and transcribed and I didn't even see it because as the book was coming out I was away filming the adventures of an Australian counter-espionage agent called John Hunter rampaging around South East Asia and so it hit print with a couple of interesting blunders and slips of the tongue - perhaps blame it on the amiable red! Since then it's been rather amusing to see some of those blunders occur in quite learned works whose authors hadn't even read *Ned Kelly Man and Myth*. I think that's a process of what we might call academic osmosis.

That paper was really a sort of works-in-progress report on my research on Joe Byrne and Aaron Sherritt and I won't attempt to recap all that - you could write a book about it! But what I'll do is just touch on Beechworth and the presence of the Kelly in Beechworth.

The story is all around you. The Byrne family would have gone to St. Joseph's Church down here for special occasions. Usually they went to church in a little chapel-cum-school down in the Woolshed Valley but they would have come up here on special occasions. Aaron Sherritt married a Catholic girl, Ellen Barry, at the Catholic Church - they were married "behind the altar" in the presbytery there. It's a magnificent church which would have looked like a cathedral if it had been built the way it was designed. It had a spire, a stunning structure, but gold was petering out, the goldrush was moving on and the money started running out so it was never finished. It became to me a sort of symbol of what happened to Beechworth in the runup to the Kelly period, a town with magnificent beginnings which passed the roaring days and then by the Kelly era had already settled into this period of rather staid respectability. It's quite surprising - people visited Beechworth and commented even in those days what a mellow sort of place it was. Already it had a feeling of age about it.

The Anglicans pipped the Catholics for the highest hill. It doesn't happen often in country towns but they did in Beechworth. Up on the hill is the Anglican church, Christ's Church, very English, very mediaeval. The Sherritt family used to go there. They had quite a long, chequered career with the Anglican church which came partially to an end, I gather - and I didn't put this in the book as it's a little dubious - when one of the Sherritt boys had a blue with some of the Church elders. As church was coming out one day they got a couple of calves and tied tins to their tails and turned them loose into the congregation. Words developed and the Sherritts didn't go back for many years. So checking through the baptism records you get a Sherritt child every two years and suddenly there's a gap and you think what's happened? They haven't discovered the Pill in this period - and then years later you suddenly get a rush, three Sherritt children all baptised at once. All that was happening just up there on the hill. Have you all seen the facade of the hospital further down here? Stunning thing. Joe Byrne's father died in that hospital. The whole Byrne family would have come up from the Woolshed and trooped sadly through that magnificent entrance to go and see Paddy, old before his years and dead at thirtysix odd.

I should imagine very few of you have heard the story of the monk in the Priory here who was a Kelly sympathiser and of course there was a tunnel to the Heart of Erin hotel and the Kellys used to be spirited in and out. You haven't heard that story? Ah well, you will soon. Of course it wasn't a priory, it was a Brigidine convent and it wasn't built until 1888 but one of the constables will probably come up with a lovely story about it sometime.

I remember very well my first impression of Beechworth as I entered the town. I thought it's a lovely town - what a pity they've put that Spanish Mission tower on that lovely old Post Office. Of course, it turns out that the Spanish Mission tower is much older than the rest of the building. It represents by far and away, the oldest part of the building. Last night our constable told us that the clock was removed from the face of the tower looking towards the gaol and the courts so the convicts wouldn't know when the warders were being changed. I'm not sure that's true. Bron has done some work on this and she doubts that there was ever a clock in it. However the symbol of the blank face looking towards the gaol and the court is very powerful, men doing time or about to do time for whom time is not allowed to exist. That, of course, is the part of the town you immediately think of when you think of the Kellys - you think of the gaol and the courthouse. All the gang except Steve Hart were tried in that courthouse, as well as Aaron Sherritt who was effectively almost a member of the broader gang until Stringybark Creek. It's a beautiful building and what a magical encounter we had with it last night. And every member of the gang including Steve Hart and Aaron Sherritt served time in Beechworth Gaol.

The pubs are a part of the Kelly story. Our constable last night told us there were ninety-six pubs. I don't know when there were ninety-six but there may have been at some stage. In 1874, which is a good lower start for the leadup to the Kelly story, there were sixty-one hotels in the municipality and of those about twenty were in the town itself. The pub with the best Kelly connections seems to be the Hibernian Hotel on the corner of Loch Street and Ford Street. In the Kelly period it was run by an Austrian Jew called Joseph Wertheim and that doesn't seem to have worried anyone - the Irish still flocked along to the Hibernian Hotel! And Mr Wertheim, contrary to the silly racial stereotypes, was a popular and generous host as was another Jew, a Dutch Jew called Jacob Vandenberg who ran the Vine Hotel out on the road towards Wodonga. The two men, incidentally, were friends and former mining partners, both lovely characters, although Joseph Wertheim does seem to have got himself into trouble. He seems to have had a rather short fuse and tended to blow up a bit but obviously the Kelly circle got on well with him. Members of the family and sympathisers stayed at the Hibernian during the trials and Aaron Sherritt and his bride probably spent their wedding night there. That was one of the two hotels where Aaron's widow stayed after Aaron's murder. The other was the Empire Hotel which we walked past last night and the constable talked about it being built seventy-five years after something, I'm not sure what, but that building was built after the second Empire Hotel was burnt down in 1879. Bronny found a lovely reference - as Ned was being driven up from the railway station in a cab after arriving in Beechworth for his trial, they turned the corner to go up to the gaol and Mr Zincke (who had been going to defend him) and Aaron Sherritt's widow were on the verandah of the hotel. As the cab passed, Ned raised his hat. We don't know if he was raising his hat to Mr Zincke; I doubt very much whether he had ever met Belle Sherritt but it's an extraordinary moment.

I was very grateful for the tour we had last night but there are a couple of things I have to pick up. Someone questioned the constable's identification of the Alliance Hotel as the place where Ned Kelly and Wild Wright had their fight and someone suggested it was the Imperial. Indeed it was the Imperial, Edward Rogers' Imperial Hotel where Ned Kelly had the fight with Wild Wright. The constable had told us a moment before that the hotel on the corner was originally the Railway Hotel and had become the Nicholas Hotel. As I understand it, and I could be wrong, that was the Alliance Hotel which in 1876 became the Railway Hotel with the coming of the railway and ended up becoming the Nicholas Hotel. However, it was definitely the Imperial where Ned and Wild had their immortal stoush. The other point I had to pick up concerned the Kelly cell under the town hall. If Ned Kelly was ever in it I'll throw a garden party. Certainly he wasn't in there over the Ah Fook incident and he certainly didn't spend several weeks in it. He spent about a week in the Benalla lockup over the Ah Fook incident but I doubt very much whether he was ever in that little cell.

In Ford Street next to the Post Office is a shop and on the front of it you can still see J. Ingram. That's James Ingram's bookshop. James Ingram was one of Beechworth's pioneers and several of the Kelly group used to visit his shop. Joe Byrne was a very common, frequent visitor and Ned Kelly himself used to drop in there - he was quite well known to Ingram.

Kate Kelly went in there and also Aaron Sherritt, not to do much reading, I imagine, but he probably used to drop in with Joe. They used to talk to him in a little back room which still existed in the early 1960s when Roy Harvey was running the shop. Roy was a lovely man and a fountain of knowledge about Beechworth. He had a reminiscence of Joe and Aaron sitting with Ingram in the rather pokey back room with rather dusty, unread newspapers and dusty, unloved toys and an open fireplace and a little, rather sad Dickensian backyard outside. An absolutely magical place. It's all very fluorescent and lit and different now. It had to be but it was a pity to see it go.

Further down Loch St you have the Burke Museum which is well worth a visit. The Burke Museum held a couple of artifacts from the great Chinese participation in the Beechworth Prince of Wales Festival in 1873, including one of the suits of armour which was imported from China. It cannot be total coincidence that the Kelly body armour is an almost exact replica of a suit of ancient Chinese armour - the shoulderpieces, tubular breastplate and backplate, the aprons fore and aft - the resemblance is very striking. If you put a helmet on a couple of the warriors from the Entombed Warriors exhibition you'd have the Kelly armour to a T. It's highly credible that Joe Byrne looked at that suit of armour in the Burke Museum - it was there until the 1960s but I don't think it's there now - and when the idea of the armour came up, even though Joe opposed it, saying the bloody armour would bring them to grief, when it came to the crunch he contributed the actual design of the armour, being the loyal lieutenant and totally dedicated to Ned as he was.

I mentioned that Beechworth was a mellow place. It had a very British quality about it and was a rather English town. As you can see it still has that English quality mixed in with other things that I'll comment on in a moment, but the interesting thing is that even the Irish storekeepers in Beechworth didn't observe St. Patrick's Day which is a funny little thing. They knew they were in an English town; they knew it wasn't an Irish town. Rather than grope my way through my feelings about Beechworth during the Kelly period I'll just read a passage from my book.

"By now, Joe and Aaron's life had settled into a strange dualism. Their homes were primitive - mediaeval by European standards - yet a short ride took them to Beechworth which, by the early 1870s, had developed as a sophisticated and modern town. Founded on the wealth of the gold rushes and without the debris of preceding centuries to clutter its development, Beechworth had already achieved standards which many European cities would not match until the twentieth century."

(This is something that constantly strikes me in the Kelly story, people living in conditions which really are, by European standards, the thirteenth, fourteenth or fifteenth century, yet they've got what is in effect the twentieth century only half an hour's ride away from their homes. They get dressed in houses with dirt and cowdung floors put on their reach-me-downs and ride into town and there they are with gaslight and piped water and incredibly modern buildings. It's a fascinating dualism.)

"Its two main streets, Ford Street and Camp Street, marked a bold cross on the plateau, lined with prosperous shops and business premises. At the intersection, a handsome white granite post office with Italianate colonnade and tower had just been completed. Imposing, two-storey banks faced one another from rival corners and twenty hotels - from the modest little pubs to the palatial new Commercial in Ford Street - honoured the free-spending, heavy drinking gold diggers.

"Straddling its ridge, folded by gum and pine-clad hills, Beechworth had the healthy, hybrid air of an Indian hill station. Shop awnings formed friezes of deep shade along both sides of the main street, branding it as frontier, while at its head, on the town's highest hill, Christ Church's battlemented tower of white granite was splendidly English and mediaeval.

At the far end of the street, on a lower hill, the granite fortress of the gaol marked the opposite pole of British authority, sustained by an honour guard of public buildings - telegraph office, courthouse, survey office, police station and sub-treasury - handsomely colonial with their white flag poles and picket fences.

"Joe and Aaron's generation had taken their first steps in gold-mining camp and boom town but before they were out of their teens they found themselves living on the fringes of a highly developed urban community - a town which had grown to service the huge population of the Ovens goldfield with a flour mill, soap factory, iron foundries, sawmills, breweries, coach builders, a hospital, asylum, old people's home, library, museum, parks, swimming baths and racecourse. The very respectability of Beechworth, on which the civic fathers so prided themselves, was living proof that the Roaring Days had passed. Increasingly, and with diminishing success, the community would try to become its own reason for existence.

"For a time, Joe and Aaron were accepted and acceptable figures in the streets of Beechworth - Joe with his "peculiar swagger", Aaron with his "remarkable" walk, or turning heads with their latest horse, tight-reined to make it prance along the white-metalled streets.

"They would buy a pie at Dunlop's Scotch Pie Shop" (which is now the Beechworth Bakery - you can still buy a pie there) "opposite the Post Office, or a piece of fried fish (fresh daily on arrival of the Chiltern coach) from Cortissos's fish shop, and eat it while they hung around Gray & Co.'s saleyards, 'window shopping' for horses and cattle, smoking pipes packed with tobacco they'd bought at young William Foster's tobacconist shop, with its cigar-store Indian sloping out over the doorway like a figurehead." (That cigar-store Indian was still there in the 1960, so blackened you could hardly see a trace of colour. Now, sadly glossily painted, it is in the Burke Museum. At least it is preserved.)

"The lads often visited the shop of Beechworth pioneer, James Ingram - a newsagent, stationer and bookseller next to the post office - chatting with him in a Dickensian back room. Ingram, a small, fiercely eyebrowed and bearded Scot, found Joe 'a nice, well-behaved lad'. His thoughts on Aaron aren't recorded. But Richard Warren, son of a local newspaper proprietor, recalled him, 'Flash as Lucifer, dressed up to kill!...Anyone seeing him coming down Ford Street would ask, "Who the hell's this - some advance agent for the circus?"'".

So stand up there on the hill, look down that street and just see those two fabulous larrikins riding up the slope about to go back to Sheepstation Creek. It doesn't need a great deal of imagination.

Surprisingly little has changed. Jill was asking me about the roads in and out of Beechworth. They haven't changed a lot because of the structure of the place. You've only got to drive around the Gorge Road and you see what the country was like. It was incredible, great granite rocks everywhere. This place is almost solid rock and they were still taking rocks out of the streets and the footpaths long after Beechworth had become a town. The structure and shape and nature of the country means that the routes have remained much the same. The road comes in along the ridge from Wangaratta and out along the ridge towards Wodonga. It has changed, of course. The old Chiltern road used to cut down near Ingram's Rock - a magnificent place which people don't get to a lot these days, near James Ingram's house - and the road from there cut down towards Chiltern then followed a different route, winding down La Serena Hill. Because of the precipitous nature of the country you did get a lot of little bridle tracks cutting down the gorge and some of these became what were loosely roads but the broad structure didn't change. You've still got the Malakoff Road leading down and the Tannery road cutting down to Sheepstation Creek. and then a big gap and nothing but a few little tracks until you get right down the other side of that very rough part of the range.

We mentioned the Woolshed, a magical place. Jill commended the Woolshed Falls to you. You see and taste just a little bit of the Woolshed going down there. It had been an incredible sight with a succession of towns from Beechworth. Spring Creek came into Beechworth which was where the first goldrush was, then it went over the falls at the new town bridge and became Reids Creek and then it went down cataract after cataract, all the way down to the Woolshed. After that it went over the Woolshed Falls and became Reedy Creek and then it turned along the Woolshed and you had this staggeringly beautiful valley which even by the Kelly period had become a quiet and peaceful place. There were more than ten thousand diggers in its heyday with the little gold towns, Reids Creek, Upper Woolshed, Lower Woolshed, Sebastopol, etc. gradually popping up then slowly dying away as the next one popped up and the quest for gold continued down the creek to the appropriately named Eldorado.

For my book, John Ward, the artist who did that lovely work on Stringybark Creek yesterday, developed a birdseye view of the Woolshed to give an impression of what the valley was like in the Kelly period. (*Printed on the book's endpapers.*) The buildings were pretty scattered. By the 1880s a rather more sensitive writer than many described it as being "as green and quiet as an old grave, a kind of hallowed ground" which I think is a lovely description.

Up at the top (of the birdseye view) you've got Reids Creek - this is where the creek enters the valley then you've got the Woolshed falls below that then the creek winds into the Woolshed Valley. Right beside the creek is the old school where Joe Byrne and Aaron Sherritt went and over the creek is the new school which tends to confuse people a bit. It was during the Kelly period that the new school was opened but the original weatherboard building served as a school during the week and as a church on Sundays. The Byrne family first settled down where the creek makes a sweep around at the Devil's Elbow near the little settlement of Sebastopol which occupied the whole area called Sebastopol Flats. The Byrnes settled first of all in a little hut right beside the creek. As the family grew and they realised that living right on a goldrush creek wasn't a good idea, they moved slightly up the slope to a bigger house. Ironically, that one burned down quite soon after the Byrnes left the Beechworth district but the old hut remained for many years and its ruins were pointed out as the remains of the Byrnes' hut. It was quite a revelation to me in 1964 to interview Joe Byrne's sister aged ninetythree, fondly imagining I knew exactly where the Byrne house was and in the course of the conversation to realise that I didn't. The traces of what I thought were outbuildings further up the slope were actually the remains of the other house.

Further down is Ah On's shack across a dam from the Byrnes' place. This is where three diggers lived, the three men that Joe and Aaron had their run-in with which gave people the vague idea that Joe and Aaron were young larrikins baiting Chinese. This wasn't really true because they both had quite a bit to do with the Chinese; Joe spoke Chinese because there were two Chinese settlements close by and Joe spent a lot of time with the Chinese. There weren't many other kids around and he learnt to speak Cantonese. Aaron took out a gold claim with some Chinese diggers when he was about seventeen. They weren't the sort of fellows who went around throwing stones at Chinese so it does appear that these three were an outcast group whom the other Chinese called "black Chinamen" and Joe was reflecting the attitudes of his Chinese friends to this group who lived in the little hut.

Downstream was a family called the Batchelors who ended up staunch Kelly sympathisers. Anton Wick who played a role in the murder of Aaron Sherritt lived upstream. His son bought the Batchelors' house and the crossing came to be known as Wick's Crossing so there are some people who will try to assure you that the Batchelors' old house was Anton Wick's. That is not so; not that it matters a great deal but it's just one of those little pieces of misinformation you might pick up.

This beautiful valley became a crucible in the Kelly period with tremendous allegiance for the Kellys built on respect for Joe Byrne's mother. Mrs Byrne was a widow with seven kids and fourteen cows, a very hard-working woman, thoroughly decent, incredibly dogged, with wonderful friends in the valley and there was a first awful shock that went through the valley when it was discovered that Joe Byrne was a member of the Kelly Gang. He was such a "quiet", such a "respectable" boy. Of course he wasn't but he gave that air. Aaron looked like

a larrikin. Joe was just as big a larrikin and a more dangerous man in his way than Aaron but he didn't give you that impression. Joe, to some extent, had everyone conned. Bronny thinks I'm a bit ##### Joe but I have to look at Joe through Ned Kelly's eyes to really try and understand him. Ned thought the world of Joe; he regarded him as his best friend and that says a lot about Joe. He was a wonderful friend to Ned, a dedicated lieutenant and totally loyal; he literally dedicated his life to him and died at his side in battle - you can't ask for more than that. But in a way I prefer Aaron as a bloke. But all the allegiance in the valley was with Joe and with the Kellys.

Detective Ward had begun an appalling campaign against Aaron. Ward was a dreadful man who used to interfere with girls at the high school and fathered illegitimate children all around the place - he had the morals of an alleycat and I really despise him. He realised that Aaron was playing an incredible double game with the police and really was operating, *a.* in the interests of the gang, and *b.* in his own interests, so Ward decided to exploit this situation by making Aaron look like a traitor in the eyes of the Kelly Gang, to bring them out of hiding to kill him and therefore blow their cover and give the police a chance to catch them. When Aaron became the apparent traitor of the story, when it was becoming general knowledge through Ward's campaign that Aaron had betrayed the gang and this incredible situation was developing, the valley became an absolute crucible of incredible tension. When it came to the crunch and Aaron was killed no word of that killing escaped the Woolshed Valley. It was absolutely fantastic. Joe Byrne and Dan Kelly picked up Anton Wick who lived in a little shack with a little orchard, and took him along to the hut Aaron was living in, with his pregnant wife.

His mother-in-law was there that night with four police in the next room to guard Aaron Sherritt. Guard Aaron? Nonsense! You keep hearing there were four police guarding Aaron Sherritt but there was never any suggestion of it. If anyone was guarding then Aaron was guarding the police. They were there to go on bizarre watch parties and watch the Byrne homestead. Carefully supervised by Aaron, they watched the front of the Byrne house from a clump of trees. There was a mining race running along which was close to six feet high. Joe Byrne used to arrive, go along the mining race and cut up to the back of the house. He used to regularly visit his mother while Aaron and the police were sitting up in this clump of trees, watching the front of the house. Several of the police knew what was going on but why makes waves? It was very safe, they got good rations, they got plenty of grog, it was a bit boring but well paid so the farce continued. And of course it was this farce which killed Aaron Sherritt.

So on the night Aaron was killed Anton Wick was used to lure him to his door, Joe put those two massive slugs into him, one through his throat, the other through his side and Aaron died. Another seven-odd shots were fired and Aaron's dog was howling. Joe and Dan tried to get the four police to come out and fight, but at least two of them hid under the bed and they got Aaron's pregnant wife and shoved her under the bed. They then got his rather plump mother-in-law and tried to shove her under the bed as well but she wouldn't fit. The theory was that if the women stayed in there the Kellys wouldn't burn the house down which they threatened to do but obviously didn't even try seriously to do. After failing to get the police out of the bedroom Joe and Dan rode off and what was intended to be the bait to draw the police to Glenrowan for the final confrontation was spoilt; the plan was spoilt because news of that killing was locked in the Woolshed Valley. No-one said a word - nine shots, dogs howling and everyone knows what's happened - there were houses within a stone's throw of Aaron's and everyone just sat there. They said later they were scared. Perhaps they were. But that's the reality of the situation that had developed in the Woolshed Valley.

All that has gone now. There's hardly a trace left but each year Mrs Byrne's irises come up. It's utterly fantastic. In the middle of summer they're just a few brown, shrivelled shreds and you think that's it, they've gone this year. Come spring, a bed twelve feet square sprouts, up come the irises and they blossom profusely. I find it fantastic that the traces of ten thousand people have gone almost without a trace; the vegetation along the creek changes, the creek itself changes course; the shape of the ranges stays the same but the vegetation changes - scarred by bushfires and drought, starved of water by dams and roads, the whole look of the range can change spectacularly from year to year yet each year up come the irises, these incredibly fragile, beautiful things brought from another land, another climate, another world.

They remind me that the Byrnes, like the Kellys and the Harts, were very ordinary people who loved beautiful things just as we do and who really were living their lives reaching towards very simple and very ordinary things. I think it's something we need to remember occasionally.

Question: I have your book about Joe Byrne and Aaron Sherritt with the previously undiscovered photo of Joe. How do you authenticate a photo like that because in other photos of Joe and his family there's an unmistakable forehead shape and other features which obviously run through that family but that photo of Joe I just can't seem to manage at all.

Ian Jones: Have you looked closely at the death photo of Joe? First of all, that photo has an impeccable pedigree - it came from Bill Knowles who was the grandson of Anton Wick and who had the photo of Margret Byrne. After the trouble where Joe took Anton Wick's horse relations became strained between the two families but later Anton Wick and Margret Byrne resumed their friendship and, in the custom of the time, they exchanged portraits, and that was the portrait of Joe given to Anton Wick by Mrs Byrne. It took me some little time to identify it but I can have absolutely no doubt. Many, many features tally and Keith McMenemy and I have had chats about this and Keith's not given to scepticism - he's very wary. An artist called David Green in Newcastle really got the bit between his teeth and he blew up the death photo and the Bray portrait of Joe and he juggled them then compensated for the slightly different angle. He said the features matched absolutely perfectly.

You do get a very different effect in the Bray portrait, and you look at it and think that fellow is too old to be Joe Byrne but of course it's that downy moustache he's grown to hide his slightly imperfect lip. The lip was apparently perfect but a problem in the *quadratus labii superioris* (the muscle which controls the upper lip) obviously pulled it up when he was speaking - apparently a more common problem than you would imagine - and this moustache gives him maturity but when you cover the moustache you're looking at a very young man. And again you think you're looking at a bank clerk but then you look at him below the waist - he's a bank clerk from the waist up and a bush lair from the waist down. I can have absolutely no doubt but that it's Joe - the detail of the hairline, the ears sticking out slightly, the pale eyes, etc. It's all there.

Gary Dean: Just a comment - there was another hut only fifteen yards from Aaron's, the Weiner's, and Anton Wick had actually been down to visit them and was on his way home when Joe and Dan stopped him.

Ian Jones: At the inquest another useless piece of information cropped up - they said it was on the east side but it doesn't work, it was definitely west of Aaron's. Again the horrors, the exquisite, tantalising problem of working with oral history. Bill Knowles, the grandson of Anton Wick, was the most fantastic witness, an incredible witness who gave me a most meticulous description of his grandfather being bailed up and everything that was said - you can check out every detail of it. But he said the name of the people Wick visited was Mosse and it was Weiner. How does that happen?

Gary Dean: I was just going to add another thing to that. It is my belief that it was actually for the shooting of Aaron Sherritt that the armour was first made.

Ian Jones: Pull the other leg, digger, it's got a bell on it!

NED KELLY: SOCIAL BANDIT OR RURAL CRIMINAL?

DR. JOHN McQUILTON

I want to look at Hobsbawm's model of social banditry, and north-eastern Victoria in 1878, explain why I conclude that the Kellys were an example of social banditry and then offer some conclusions. I'll start with a couple of general points first. I wrote this paper about a week ago and it all seemed fairly clear and iron-clad, a "lay-down misere" type of argument as far as I'm concerned. Then I heard a couple of things yesterday which lead me to revise what I'd been thinking about. Weston Bate's paper offers an extraordinary new light on the sort of stuff I'm going to talk about because the model I'm using doesn't really look at the authorities and I think Weston is spot on with his characterisation of the fear of unrest. That makes the second major contribution he has made to Kelly scholarship, the first one being, of course, his development of Max Brown's first acknowledgement of the split between the squatters and the selectors that Max noticed as a young radical Marxist just out of the army in the late 1940s. Then we had Ian Jones discovering the difference between east and west and at the same time pointing out that there was more to Stringybark Creek than meets the eye, and finally the superb performance last night by Justice John Phillips. I've a line in this talk about Stringybark Creek where I say it couldn't be justified as self-defence. I now find that I may have to alter that opinion.

Let's begin with the fairly obvious. One of the things about Kelly debate and literature is the staggering number of trees which have been felled over that never-ending debate: was Ned Kelly simply a rural criminal or was the Kelly outbreak caused by police persecution which had reached a point where Ned Kelly was forced, to quote Sir Redmond Barry himself, to take up arms against society? The characterisations of Ned are often couched in two extremes. On the negative side he's been seen as a thieving, murderous thug, a bush bodgie or a cross between a chicken thief and a Hell's Angel, courtesy of Humphrey McQueen. My favourite of the negative comments about Kelly is this - "He was a man emotionally castrated by his mother, leaving him with no weapon but his gun." Others have claimed he was the father of our national courage, the quintessential Australian, egalitarian, with a healthy contempt for authority and an abiding belief in mateship.

That question will remain an important one because, for better or worse, Ned Kelly has passed into our folklore and remains its pre-eminent figure. That is a fact which really taxes some writers like Peter Ryan who wrote that the elevation of Kelly to folk hero status reflects "the black-hearted nothingness that lies at the heart of the Australian character", and you get others at the opposite end of the scale, like Max Brown, who see him as representing everything that was good in Australia and being Australian. That's an interesting and, at times, exciting debate but what it does is move the Kellys beyond the context of their times. The dates cease to have any relevance - Stringybark Creek could have been in 2228 - and when you remove the Kellys from the context of their times I think you begin to remove explanation for what happened. The date 1878 *is* important because I think you can't begin to understand the Kelly Outbreak until you lock it into its actual time. It's like trying to understand World War II while pretending it happened in the 1990s. This movement away from context is what has always intrigued me. As I've noted, the work of Max Brown and Weston Bate, in 1948 and 1867, suggested that context was important. So I want to look at that today and set it into the mould that the English historian Hobsbawm calls social banditry.

The major characteristics of social banditry are fairly easy to describe. It is a rural phenomenon and usually begins with the arrest or attempted arrest of the social bandit for an activity deemed criminal by the authorities but tolerated by the local community. Thus you have a disjunction between official and local attitudes towards the law. The social bandit takes to the bush and remains at large because of support and protection, or what is known as sympathy, which allows him to remain so. His protest is a personal one but he takes on a rough spokesman's role for those who support him.

His lawless career is enhanced by a certain prestige which is of great personal importance and that prestige is based on skills which are important to the bandit's sympathisers. In time, very quickly indeed, the sympathisers turn him into a legendary figure and the social bandit becomes a symbol of resistance - a surrogate, a vicarious means of expressing grievances. With the social bandit's death - and he must die, he cannot survive - he passes into folklore.

So that's the model and it is obvious that the social context becomes critical in this so I want to quickly look at north-eastern Victoria in 1878.

To put it bluntly, north-eastern Victoria in 1878 was a divided community. On one side were the squatters, on the other, the selectors. It doesn't matter how much we fiddle around with the edge of it, the evidence given to the Longmore Commission in 1879 shows that you have the selectors on one hand and the squatters on the other and the two don't really like each other. The police in 1881 added the additional claim that the region was a colonial "focus of crime." The division between squatters and selectors lies in the region's settlement history.

In the 1830s and 1840s the first Europeans arrived in this region. They were the pastoralists who squatted on large holdings and paid an annual licence fee for the privilege. The discovery of gold changed the picture radically. By the end of the 1850s there was a large population of diggers looking for land to settle on. To meet that need, Lands Acts were passed in the 1860s, allowing men and women to select land, hence the noun "selectors." The Lands Acts had a quite deliberate political dimension to them and they pitted the selectors against the squatters in open competition for the land. During the 1870s it became clear that selection had not been a roaring success. Over 35% of those who took up land had already left. They had given up and gone home, many back to Melbourne to form part of the group at the Hippodrome that Weston talked about. There were many reasons for that but the important point is that at the local level the squatters were blamed for selector failure - it wasn't necessarily true but the squatters were blamed for the selectors' plight. And from that sprang attitudes, ideas, and notions which could be seen as being lawless in intent and spirit.

This was particularly marked when it came to stock and it was seen in selector circles that to steal the squatters' stock was not such a bad thing after all. Some activities which involved stock were not even seen as theft. There was the curious euphemism "taking meat for private use" which simply meant the transfer of a squatter's sheep from his paddock to the selector's table. And what is interesting is that the police used that expression - it passes into the police reportage of the time.

When it came to horses the problem of defining theft was simply incapable of solution. Selectors accepted that a man could use another person's horse without any intention to steal. This was quite simply "borrowing" so if you lived in Beechworth and you wanted to visit someone in Mansfield there was no reason why you couldn't take your horse, drop it off in Benalla and take somebody else's, drop it off in Whitfield and take someone else's and so on to Mansfield. This wasn't seen by the selectors as theft. But the squatters who were the frequent victims of borrowing took a very different view of such activities.

So the north-east was supposed to be a focus of crime but if you look at the statistics it becomes a little disappointing from the police point of view. It doesn't seem to have been a focus of crime with one exception - the north-east was a major problem area when it came to stock theft. 6% of the colony's population lived in the region and they accounted for up to 20% of the colony's stolen stock. So no matter how you fiddle the figures you've got a problem here. But I think it needs to be said that I've already qualified that notion of theft into the three levels - theft for food, borrowing and then the tiny minority of people from selection backgrounds who took up stock theft for a living, who included, of course, the Kellys.

So that's the background - now let's see how the model actually works. The outbreak was certainly rural - you had four native-born selector sons from rural Victoria in the bush - they displayed a traditional rural mistrust of urban centres and what's interesting about the Kelly outbreak for those reading the papers at the time is how the regional urban centres like Beechworth, Wangaratta and Benalla became the most vocal anti-Kelly elements in the press,

often more so than the metropolitan press. They were completely at a loss to explain what was happening in the countryside and the countryside became almost another country.

You all know about the arrest - Trooper Fitzpatrick returning to Benalla with his wounded wrist and his brandy breath and his explanation for not taking up his post at Greta, namely, his attempted arrest of Dan Kelly. The charge was stock theft and the arrest was part of a widespread crackdown by the police to curb the prevalence of stock theft in the region. The local squatters were behind the crack-down and at the centre of attention was the Quinn clan of which the Kellys were a part. The Quinns, especially Jimmy Quinn, were somewhat notorious for their light-fingered attitudes towards other people's animals. Ned Kelly had already earned the reputation of being the region's leading stock thief although he preferred to describe it somewhat differently. Those of you who have read the Jerilderie Letter will know he called it "wholesale and retail horse and cattle dealing". But what the police missed in all this was that this was a crime that was widely tolerated by the region's selector community. And here we have that discrepancy that I referred to before between local and official definitions of crime. Stock theft was an aberration that was accepted by a sizable proportion of the region's population.

Now to sympathy - quite frankly, it wasn't the tragedy at Stringybark Creek which worried the police most or the two bank robberies. What really worried them was the existence of widespread sympathy for the Kelly Gang. Often people date the development of sympathy to the post-Euroa period but there's evidence that it existed before that, as early as November 1878, a week after Stringybark Creek. To give an example, Wild Wright, a friend of the Kellys who has been mentioned often, returned to Mansfield. The police were afraid, and probably quite rightly so, that Wild Wright would assist the gang in any way he could so they arrested him. They had to think fairly quickly because there was no Outlawry provisions to use so they charged him with threatening language and put him in the slammer. However, they didn't do their local credibility much good when they arrested his brother on the same charge because his brother was both deaf and dumb. The point was that Wright's mother, when she arrived on the scene, was not just pretty cranky about the arrests and their capricious nature but she named at least ten other families in the Mansfield district who were prepared to support the Gang. By the end of December the police realised that she, in fact, was correct. Sympathy for the Kelly Gang was substantial, it had spread across the region - the local rural community would not help the police. Was this through fear? That was an explanation the police clung to with some desperation yet the detective reports indicate that it wasn't fear, the ordinary police reports indicate it wasn't fear and in 1881, with Ned well and truly dead and a Royal Commission being held to enquire into the police force, the police could produce only one witness who claimed that he fled the region because he believed the Kellys would get him.

The problem for that one witness was that he was followed onto the stand by Constable Gascoigne who knew both the witness and the country well, and Gascoigne derided and dismissed his testimony. By early 1879 the more realistic among the police - like Sadleir and, curiously enough, Standish - had accepted that sympathy was widespread and there was not much they could do about it. It even reached into Melbourne. The young larrikins there were known to gather outside police headquarters for a verse or two of the Kelly ballads late at night. This could earn them a fine if not a gaol sentence, being part of the behaviour forbidden by the Outlawry Act.

Sympathy took two basic forms. The majority of people were passive sympathisers - this meant they withheld information, they wouldn't report sightings of the gang to the police - and this is where you get the peculiar explanation offered by Kenneally in *The Complete Inner History Of The Kelly Gang* where he said that many believed the Kelly Outbreak was a private quarrel between the Kellys and the police and therefore they took no part in it. A smaller number, like Wild Wright, were active sympathisers and they openly associated with the gang. Indeed, some of them used to "bounce" the police, to use the expression of the times, in all sorts of terrible ways. Superintendent Hare was a favourite target - for some reason they enjoyed bouncing him more than anyone else.

The thing about Kelly sympathy that startled me was that it wasn't just an Irish affair. Yes, the Irish Catholics were there and they seemed to be taking centre stage but if you look more closely at police and detective reports and even the police spy reports you find that Kelly sympathy cut across traditional ethnic, religious and even racial barriers. Sympathisers included not only the Catholic Irish but also the Protestant Irish - who would have thought the orange and the green could have got together over any issue! - the Scots, English, Germans and, as Ian mentioned, the Chinese. The reason for that sympathy lay in the Kellys' backgrounds - here were four young selector sons at large in the bush, their outlawry rooted in the vexed problem of stock theft, and that in turn reflected a region sharply divided between squatters and selectors. The police were a bit shy about putting a figure on the number of sympathisers in the district but Sadleir was inclined to support the *Ovens & Murray Advertiser's* estimate that about eight hundred family heads in the region could be listed. I wouldn't mind that sort of support if I were running for parliament.

What distressed the police most about the Kelly sympathy were the oral traditional explanations which had sprung up with it, e.g. the Kelly brothers had been hounded by the police since boyhood, Mrs Kelly had been jailed on the evidence of a liar, the quarrel between the Kellys and the police reached its inevitable climax at Stringybark Creek, etc. You can argue the veracity of these interpretations but the effect was the same as it would have been if they were the literal truth. Basically, the Gang remained at large in north-eastern Victoria because the local community had voluntarily withdrawn its assistance from the police.

There are two striking examples of the nature of Kelly sympathy. Firstly Glenrowan - you have four men guarding sixtytwo prisoners. Four men guarding sixtytwo prisoners? Not really - you have four men guarding about five or six prisoners, the outsiders. Look at the extraordinary behaviour of the rest of the prisoners that day . They were waiting all day for the police special train - it didn't come so they ducked home, got their coats and came back. They could have easily warned Bracken or gone down the railway line to warn the police. Ned Kelly was playing hop, step and leap with some of them and they reckoned he was cheating - he was big, he had long legs, he should weigh himself down. He did - he stuck his pistols in his coat pockets so he didn't have such a great advantage. The behaviour of the prisoners at Glenrowan is a great example of the sort of sympathy that the social bandit can expect. The men who were watched were Curnow and Stanistreet and the other outsiders. They were the ones who could betray the gang but the rest of them - well, Mrs Jones described her hotel that day as "a house of sport" and she was quite right - there was drinking and dancing and all sorts of frivolity.

The other example for me is the reward of eight thousand pounds. I asked a colleague in the Economics Department how much that was worth today and he first of all suggested I had the figure wrong, that it couldn't be eight thousand pounds - which shows how much economists know of their history - but he reckoned it was probably worth about a million dollars. That reward was around for over a year and yet not one local took advantage of it. The man who betrayed the Kelly Gang in the end was the outsider, the local chalkie, Curnow, and if you look at all the people who put in a claim for the reward the locals are conspicuous by their absence.

The spokesman - the Kelly Outbreak was the culmination of decades of conflict between the Kellys and the police and Ned Kelly himself in his letters argued that he had been forced to seek personal revenge for treatment meted out to his family but he also wove into his personal rebellion a broader sense of selectors' grievances. This is the secondary element that starts to come through in his speeches and letters, e.g. he attacks the power of local squatters to impound and he criticises the local police for their high-handed activities. I'll give you two quotations from the man himself which suggest that he was in fact acting as a rough spokesman. This famous one was delivered in prison in an interview with an *Age* reporter:

"If my lips teach the public that men are made mad by bad treatment, and if the police are taught they may not exasperate to madness men they persecute and ill-treat, my life will not be entirely thrown away."

and from one of the letters:"...it will always pay a rich man to be liberal with the poor.

He shall find that if the poor man is on his side he shall lose nothing by it."

Both, I think, are somewhat remarkable statements from a man who left school at the age of eleven. They show a basic notion of social justice and indicate that Kelly himself was aware of the broader implications of his own personal struggle with the forces of law and order. Look at the targets for attack by the gang. Again I think this demonstrates the rudimentary spokesperson's role that the Kellys had come to fill. The principal targets were the police who had become for many selectors symbols of an oppressive authority, and the banks, symbols of the rich, and during both bank robberies Kelly burned mortgages held against local selectors. This was not a capricious act - he was not a pyromaniac. He burned them deliberately because he knew the significance of a loan held against the land by a local bank. And I think that if Ned Kelly were around today there would be several farmers in north-eastern Victoria who would applaud him if he burned mortgages again.

The prestige element - daring, flashness and personal prestige all played a part in the Kelly Outbreak. These are the elements which are most often celebrated in folklore and popular culture. Kelly's prestige was based on skills and attitudes important in the north-east's selector communities. He was a skilled horseman and bushman. His loyalty to his family, and his mother in particular, was valued by a community which often saw the women and children left to farm while the men sought work elsewhere to keep the family's head above water during the critical years of selection establishment. Kelly himself was capable of attracting an almost fanatical loyalty. I think you'd be familiar with Frank Harty's quote, "Ned Kelly is the best bloody man that has been in Benalla. I would fight up to my knees in blood for him." It was a nice sentiment but it didn't do him much good. It was overheard and reported by a local policeman and Frank Harty went to gaol for making that statement. Kelly was seen as a natural leader even by his pursuers - even Captain Standish who had the most to lose from the Kelly Outbreak saw Kelly as a natural leader. And of course he was flash.

In characteristic social bandit fashion, Ned Kelly added to his prestige during the Outbreak. Look at the bank robberies, meticulously planned, carefully executed. Add to that the behaviour of the Gang during their, if you like, public appearances, because they have that feel, they are making a public appearance for their adoring public. Think of Mrs Scott whom Keith mentioned yesterday. Mrs Scott was the wife of the bank manager at Euroa and before Ned Kelly walked into her drawing-room on that December afternoon in 1878 the only thing that she knew about Kelly came from the press and if you read the press it's an extraordinary portrait - an hereditary criminal, a thief, a murderer, a man who mutilated the dead. That was the image Mrs Scott had when someone opened the door and said, "Mr Kelly has come to call." Yet she fell completely under his charm. As was quoted yesterday she believed he would have done better as a general than a bushranger - she felt his skills could have been put to better use - but she praised his loyalty to his mother and his brother and she referred to him as "Mr Kelly" until the day she died, sometimes to the embarrassment of her husband, who was a bank manager after all, and her children.

We have to be fair about this, not everyone fell for the Kelly charm. Mrs Scott's nurse did not. On hearing she had fallen into the clutches of the terrible Kelly Gang she screamed and fainted. Brought to with a stiff dose of whiskey, she found she was still in their clutches so she screamed and fainted again. I don't know if Mrs Scott's nurse was a dipsomaniac or not but apparently she had to be revived several times. That's oral tradition. It might be a trap, Ian, but it's good sometimes.

For me the best example of the flashness associated with the gang can be found in their leisure activities. It gets a bit boring, I guess, being a bushranger out there in the bush. Of course, the gang moved pretty much as they wished from place to place. They attended local race meetings and dances, despite police surveillance, and when life became very boring the gang would go out and track the police parties that were out tracking them. When you think about it, it's almost Monty Pythonesque the way that worked.

The last element in the model is the legend and in fact it's the legend which causes people the most problem with Hobsbawm's notion of social banditry. But it's the legend itself which so powerfully reflects the surrogate role the social bandit fills.

There are three elements in that legend: a man who robs from the rich and gives to the poor - the Robin Hood element; the man who never kills but in self-defence or just revenge; and thirdly, a man who seems invulnerable to his enemies, a man who cannot die.

Even today, oral tradition persists that Ned Kelly lived up to the Robin Hood expectations of his sympathisers and it's interesting to note that police files provided some evidence for this oral tradition. Money stolen from the banks was used to support the families of men who had been arrested as sympathisers in Standish's crack-down of 1879. And even more intriguing, any north-eastern resident cashing a banknote which smelt of earth could expect a visit from the local constabulary since there was a notion the Kellys had their treasure buried right across north-eastern Victoria. If you brought in a banknote that smelled as though it might have been buried, the local shopkeeper was supposed to contact the police.

Sometimes the support received could be demonstrated in an ostentatious way. Take the example of the McAuliffes, a family identified, and rightly so, by the police as leading sympathisers. Mrs McAuliffe was a widow and before the Outbreak she had a daughter in service, she had fallen behind in her selection payments and her sons regularly sheared in the Riverina. By the middle of 1879 she'd recalled her daughter from service, she'd paid her selection arrears, she had men on wages improving the selection, she'd rented extra land for cattle that she had recently bought, one son was on an all-expenses-paid holiday in Tasmania and the other sons had what a police report described as "a plentiful supply of sixpences." When interviewed by the police Mrs McAuliffe claimed she'd had a bumper harvest. If she had, she was the only selector in 1879 in north-eastern Victoria who had a bumper harvest.

Originally I would have said that by no stretch of the imagination could the deaths of three policemen at Stringybark Creek be seen as purely self-defence or just revenge. After yesterday I'm not so sure. I was pleased to hear, though, that any attempt to claim it was premeditated murder is somewhat dubious. The events of that day are so clouded that such an attempt seems not to be right. Even McIntyre, after Kelly was dead was prepared to concede that Stringybark Creek was not an example of premeditated murder. But the point is that it was widely believed by ordinary people living in north-eastern Victoria that Stringybark Creek was a killing excused by self-defence and just revenge. The police treatment of the Kelly family and Mrs Kelly's gaoling in particular lent credence to Kelly's claim that he had no choice but to shoot. What is curious is that this was a belief that reached far beyond the selectors. Mrs Scott, writing after the Euroa robbery, believed that the three troopers at Stringybark Creek had brought on their own fate. More interestingly, the same claim was made in the anonymous pamphlet published in 1880 as part of the massive agitation mounted for a reprieve for Kelly. This was the famous *"Kelly's Defence, by A Lady"*, who, it was rumoured, was a close friend of the Chief Commissioner of Police.

The story of Ned Kelly's invulnerability was the subject of endless police spy reports. Aaron Sherritt, who knew Ned Kelly well and was himself an expert bushman, described Kelly as "extraordinary", "superhuman", a man who could "beat me into fits". Many believed that the Kellys would die a natural death, in their beds, of advanced old age - they would never be caught. No-one could catch them, not even the trackers, it seemed. Of course, Ned was captured, yet I would suggest that the capture itself eerily blends fact and legend into one of the most striking images associated with Australian bushranging. You've got a helmeted figure looming up out of the morning mist, advancing on the hotel in a vain attempt to rescue his mates, striking a certain amount of fear into the police. He seems impervious to police fire - they're firing at him and watching the body continuing to come on, calling, "Shoot away, you can't hurt me, I'm in iron".

His execution would have been one of the most publicised ones in the nineteenth century so it was impossible to believe that he had not died, to believe that, like Jesse James or Billy the Kid, he had somehow escaped. But this aspect of the social bandit's legendary invulnerability did find expression in stories about Dan Kelly and Steve Hart. As you know, after the siege and the firing of the hotel, the police raked the blackened stumps of their bodies from the ashes, but neither corpse was identified.

So did they die? Dan Kelly and Steve Hart were reliably reported to have fought in the Boer War, they were seen, naturally enough, in the trenches at Gallipoli although I don't think they were at Tobruk, and as late as 1948, Dan Kelly was reported to be alive and well and living in Queensland. It's obvious that they weren't in these places but this is part of the social bandit legend - these men do not die, they live on elsewhere, and anyone who has visited Missouri or the south western United States will know that neither Jesse James nor Billy the Kid died, they simply escaped and went elsewhere and lived happily ever after.

What does the example of the Kelly Outbreak as an example of social banditry tell us about the whole business? Basically, for me the social bandit model has several advantages when it comes to discussing the Kellys and other bushrangers. It shelves the admittedly fascinating but, for me, futile debate of bad blood and police persecution by looking at the bushranger's place and time. The social bandit represents the values and beliefs of those who support him even if in an extreme form. It offers us a rare chance to examine the beliefs and aspirations of ordinary men and women in rural areas in the last century. And finally, I think the concept of social banditry goes a long way towards explaining why Ned Kelly became a part of Australian folklore, why he took that first step into Australian folklore. I've no doubt that the oft-mentioned anti-authoritarianism of Australians played a part but fundamentally, I think Ned Kelly became a legendary figure in the beginning because he fulfilled a basic social need in nineteenth century rural communities. He was a man who spoke for people.

Jill Eastwood: One of the questions that has often been in my mind is about raising the money for the defence. As you said, there were eight hundred heads of families who were sympathisers. I know they were very poor but even given all the circumstances, I would have thought they could have managed it with a real network, as we would call it now, although Ned himself couldn't raise the money for a retrial for his mother. I have wondered whether they thought they wouldn't need to in the end, that they perhaps thought they would get the equivalent of legal aid and so they didn't have a campaign big enough to raise the money. This is for the trial, for the payment of Hickman Molesworth who charged fifty guineas and then seven guineas a day.

John McQuilton: I don't know. If you accept that many of the sympathisers saw this as being a private quarrel that would partly explain it but the other thing is that, with Kelly captured and the trial coming on, the north-east was in a state of extraordinary crisis. Montford in time referred to it as being far worse than the period when the Kellys were at large. The region was gripped by crisis and quite frankly all forms of communication had collapsed at that stage. Montford himself talked about having to arm the region to fight what he called guerrilla war. So I don't know - that period is very confused. Whether they were expecting people to contribute, as they say, do a whiparound, I don't know. The police patrols had been re-established and there was an element of fear in the region; the police seemed to have the upper hand, they'd been reinforced again. Most of the selectors basically felt that it was a private quarrel but also, with the police so conspicuous in public, that anyone who seemed to step out of line would be in strife and in fact that did happen. They were still arresting people under the Outlawry Apprehension Act even after its provisions had expired. Mrs Jones was one. So that might explain it. Because people concentrate on the Kelly Outbreak itself they forget that last period itself, that immediate aftermath which was quite extraordinary.

Glenn Davis: Just following up the issues of the social bandit and the concept of the Republic of the North East, I'm under the impression that there was a series of meetings held from about the middle of 1879 to mid-1880 attended by people like, I presume, members of the Tanner family, the Kershaws, the McAuliffes and Ned himself. I think John Molony said David Gaunson appeared at one and there's a series of notebooks filled with strategies and ideas probably from which the Proclamation of Independence was finally drawn up. We know the Proclamation did exist. It was taken from Ned at Glenrowan and appeared in London in the late 1960s. Can you elaborate at all on these meetings and the notebooks, if possible? Secondly, at Glenrowan Ned was quoted as saying that the rural folks were "damned fools to worry their heads about parliament because this is our country". It meant so much but he wouldn't elaborate. Can you give us some details on that?

John McQuilton: I can give you some but you've got the fellow standing behind you who can give you the rest and he's not getting away either!

The republic itself fits in very neatly with the model because social banditry is essentially pre-political in nature. It exists in, if you like, politically naive communities and the selectors themselves don't emerge as a force, as in farmers' unions, until the late 1880s. Prior to that they weren't politically sophisticated enough to use the system despite universal male suffrage in Victoria, so their representatives frequently were radical on the hustings but once in the parliament they turned out to be conservative men and in some cases actually turned out to be squatters' men, so the Republic fits into that as a symbol of justice, of a better world, a different system where some sort of rudimentary justice can be dealt out. I never saw the Republic as a highly organised, sophisticated affair with Joe Byrne as Secretary of State and Steve Hart as Treasurer and President Ned being carted around, although it's an interesting thought. It's always been an emotional thing rather than anything else but Ian can tell you the mechanics of it because he's the one who first raised it. I find Gaunson very hard to incorporate into my image of it.

Ian Jones: I mentioned to Glenn last night that Gaunson appeared very late in the piece. Keith McMenomy and my son Darren (at quite an early age) were actually with me the day Tom Lloyd Jr first was prepared to talk about the Declaration of the Republic. It was an extraordinary occasion in 1964 and shortly after that Tom mentioned the minutes of the meetings - records of meetings he said - kept in an exercise book. In 1979, after publication of John's book, John Molony interviewed Tom while researching his biography of Ned. It was Molony who said David Gaunson had been at some of these meetings and he said that Tom Lloyd Jr had told him. I find that hard to accept, frankly. I'm with John (McQuilton). John made the comment in his book that the Republic was very much a symbol to the Irish, it was an alternative to English rule and there were models for people to look at. The South African model was fantastic and a fascinating one of the period. The first Boer War was actually taking place, a fact which we tend to forget, and the Republic of the Transvaal was actually established.

John McQuilton: And of course the Kellys apparently bought passage to go to South Africa.

Ian Jones: Yes, the South African theme - Dan and Steve allegedly going to the Boer War and so forth - keeps cropping up. But to me, if there was no genuine impulse, if the Republic wasn't a guiding passion, I can see them almost arriving at the need for something like a republic because of the scale of what they were going to attempt at Glenrowan. A line I didn't write in the Mick Jagger film is, "You kill one policeman you're a murderer; you kill a hundred policemen, you're a hero." The dividing line between a criminal and a guerilla, a hero of the resistance, is very slim and in Ireland they're constantly tripping backwards and forwards across the line. Who was a criminal, who was a hero? When do you give a thug licence to go on being a thug and be a patriot at the same time? It's a very, very delicate balance. To me, the Republic was naive, it was doomed, it was hopeless like practically every Irish revolution, but if you couldn't find evidence of a republic you'd have to imagine it and I think the evidence is slowly building up. I think the Len Radic encounter with it in 1962 which I quoted in the notes of *Friendship* is absolutely credible. Here was a trained reporter who, in London in 1962 with no interest in the thing, saw a copy, a printed copy what's more, of Ned Kelly's Declaration of the Republic of North Eastern Victoria actually on display in a group of documents relating to Australia. By 1969, when with the help of Tony Richardson and Barry Jones I started racing round trying to locate it in the Public Records Office - operating from Melbourne, of course - the PRO in London had never heard of it. The only theory that Len and I can come up with is that it had been lent from a private collection and either they were covering the collector's tracks or the person who arranged the loan of the document had left.

John McQuilton: It will turn up.

Ian Jones: I believe so. However, my question - I find Ned Kelly as social bandit, the Robin Hood figure a fascinating concept. An American academic came out many years ago looking for Robin Hoods.

I had a talk with him and he finally decided that Ben Hall was the Australian Robin Hood. In all the field of history I have never found anyone who measured up to the Robin Hood criteria, including Robin Hood, *except* Ned Kelly. Am I being unreasonable?

John McQuilton: Thank you for that question; that's a real hard one. I don't think so. One of the disturbing things about Kelly for me was that I thought all I had heard about him would be overturned once I begin researching the historical record, I would find the comforting things you hear about this man would be untrue and he would emerge in his true colours. What was amazing was that I found proof of some of the more amazing claims in the police files themselves. Claims that I thought were oral tradition had come from the police. That's what makes Kelly a difficult study in some ways because at times it seems as though he's deliberately trying to match himself to this model which was invented long after his death.

Ben Hall suffers from two things. First of all he didn't get Ned's press. Ned Kelly had an extraordinary press right around Australia; Ben Hall didn't quite get that. But the other thing was that Ben Hall was associated with a group in society who very quickly disappeared. He was from the small, backblock squatters in the Lachlan, not the big ones but the small fellows forced on to the backblocks. That was his basic group for support and they of course disappeared with the advent of selection which hit that region about 1865 after he'd gone. In north-east Victoria you still have the selectors and squatting families on the land today and they carry with them some sort of tradition there. Hall didn't have that. His group disappeared fairly quickly. One of my post-graduate students is doing work on Ben Hall and he might be able to turn up more. But Hall could lay claim to having never apparently killed anyone. That was the interesting difference between the two, and if you go out to the Lachlan and talk about Ned Kelly they very quickly point out to you that "at least he (Hall) didn't kill anyone."

Linda Wellwood: When you were speaking before about the fear factor, you mentioned the 1881 Police enquiry and said there was only one witness who ever came forward. Do you have a name?

John McQuilton: Jacob Wilson. He didn't really prove his case. He was, in fact, after a bit of the reward.

Judy Shannon: I'm going to throw a spanner in the works. Has anybody ever looked at the deeds of all the houses in Beechworth that are on the historical list, or investigated where the selectors and the squatters got their mortgages from?

John McQuilton: I looked at the deeds for every selection in north-eastern Victoria taken up between 1860 and the introduction of the new act in 1884 and all the pastoral leases which existed from the beginnings of the licensing system in 1836.

Judy Shannon: Did they tie in with Mr Wallace of the Commercial Hotel and Mr Flint, his agent? Mr Wallace used to loan the money through Mr Flint. On my deeds in Finch St it reads like a story and incidentally the person who built that house was William Williamson. Whether he was anything to do with the famous William Williamson I haven't a clue. But the money that was loaned for the house, etc. came from the Commercial Hotel so you've got another network of things going on where money is tied up. Those eight hundred people could have easily owed money to the "mafia" at the Commercial Hotel, because Wallace had a hell of a lot of power here in Beechworth.

John McQuilton: If you're talking about loan-sharking, that's an entirely different kettle of fish because none of that could ever be attached to any title. It was illegal under the licence conditions, so the loan-sharking was always done over the counter not through the Lands Department. The whole business of the loan shark was well established.

Brian McDonald: Your book was a very fascinating read. The part I really enjoyed, though, was your *Kelly Literature: a brief review*. I thought it was brilliant. Are you going to expand on that in the future?

John McQuilton: No, I've been criticised because it was a bit harsh and I think in retrospect that was correct. One of the things about this seminar for me is that *The Kelly Outbreak* was a book revisited and I'm sometimes amazed at the passion displayed in some of the stuff that I've written there. I updated the literature review for the paperback edition but I'm going to wait until a certain significant biography is published before I do another update. Incidentally, there's a thing I felt I should mention today - I mentioned Max Brown at the start of this talk and it was the first edition of his book *Australian Son* which first introduced me to Kelly. I don't know whether people know it but he's still alive and well. Most people think he's been long dead and he gets very cross when people say "I thought you were dead." He's not too keen on that.

From the audience: There's something I picked up from Steven Williams. I'm a bit interested in Thunderbolt's story because of family connections but something I haven't heard of with other bushrangers and certainly not with the Kellys is the aboriginal involvement. Apparently Thunderbolt had a wide network in the aboriginal community and I believe that today they even talk about him very fondly which is of course the other side of the coin to the support for the Kellys down here. Thunderbolt had a lot of sympathisers in the area from the way he operated; he had a big body of enabling support during the period he survived and I think he existed for longer than anybody else.

John McQuilton: Yes, he did.

MODERN MYTH: SIDNEY NOLAN'S NED KELLY

JANE CLARK

Readers wishing to study the Ned Kelly series of paintings are directed to the following books:

Robert Melville, Ned Kelly; 27 Paintings By Sidney Nolan, Thames and Hudson, London, 1964.

Elwyn Lynn & Bruce Semler, Sidney Nolan's Ned Kelly, National Gallery of Australia, Canberra, Rev. Ed. 1989.

Andrew Sayers, Sidney Nolan - The Ned Kelly Story, catalogue published by the National Gallery of Australia and the Metropolitan Museum of Modern Art, New York, available from the National Gallery, Canberra.

Almost all of the other works named in this paper plus a selection from the Kelly series are reproduced in Jane Clark's Nolan Landscapes and Legends: A Retrospective Exhibition 1937-1987, Cambridge University Press, Cambridge, 1987.

When he died last year in London at the age of seventy five, Sir Sidney Nolan, OM CBE, was perhaps Australia's most celebrated and internationally acclaimed painter. He was respectably installed in an English country manorhouse, the subject of countless expeditions from Sweden to South Africa as well as books and television films. He had been knighted in 1981 for his services to art; he was represented in the Tate Gallery in London and the Museum of Modern Art in New York as well as all major Australian public collections. It's fairly hard to picture him as the twenty seven-year-old soldier, absent without leave from the army, that he was in July 1944. He was living in an old farmhouse called Heide at Heidelberg, outside Melbourne, under the alias Robin Murray. Today I'm going to speak mainly of Nolan's Ned Kelly paintings of that period in the 1940s but I also want to place these now famous images in the context of his larger career and his later work.

When I first met Nolan in the 1980s he recalled that when he came out of the army he was "more than interested in violence - we had been taught about arms and the use of utmost violence." He had not actually been a conscientious objector but he objected to going on active service and never did. He had been born and brought up in inner Melbourne and was also always proud of his Irish extraction - I think he was fifth or sixth generation Irish. "It seems strange," he said, "but when I painted the Kellys I thought of them as very angry, violent pictures and so did everybody else. Today they look quite tranquil but still on target." And then he would add, typically cryptically and without elaboration - and you always had to take everything he said with a grain of salt - the paintings were at least as much about himself as the nineteenth century bushranger. I think that's something that people who are familiar with the original images and know exactly what Kelly looked like and what his armour looked like have to remember - that these paintings were Nolan's work, they were about his life to some extent, certainly about his feelings and also about art. They are very consciously works of art talking about modern art. "You would be surprised if I told you," Nolan said to me, "from 1945 to 1947 there were emotional and complicated events in my own life. It's an inner history of my own emotions."

Ned Kelly, of course, was a child of Irish immigrants and in fact was much the same age when he went to the gallows in 1880 as Nolan was in 1945, when he was living out at Heide with his art-collecting patron friends, John and Sunday Reed. At that time Sid Nolan felt the atmosphere increasingly tense and strained by personal emotions which I think he felt had got out of his control. He also had feelings of being inescapably dependent on these other people, especially when he should have been in the army. Nolan's art throughout his career was always substantially autobiographical. When he decided at the age of twentyone to pursue a career as a full-time artist he had already been painting for several years.

He had begun when he left school at fourteen or fifteen, and at eighteen he was really steamed up about modern art, he recalled. His mother was always supportive although she hoped he'd become a schoolteacher and get art out of his system, but his father, a tram driver and part-time SP bookie, couldn't see the point of art at all, especially the modernism which Nolan dabbled in from the beginning, although he didn't put anything much in his way. Sid spent about a month at the National Gallery school and gave up because he thought it was too traditional. He wanted to paint modern art in the European sense.

In a period of emotional turmoil and heart-searching he left his young wife and new-born daughter and he painted a series of quite autobiographical pictures looking back on his childhood, for example *The Bathers*. In 1942, in the middle of this period, he was conscripted into the army. He was sent out to Dimboola in the Wimmera to guard stores, tins of bullybeef, apricot jam, pineapple and so on, stored so that if the Japanese ever came south there was going to be all this food for us. He began to paint the landscape, now painting in a Ripolin enamel which he had known Picasso had used and had called "healthy paint". What it did was give brilliantly bright, hard colours. It was necessary to work very quickly with it and to work flat so he would use masonite or cardboard or whatever he could get hold of in Dimboola, lay it flat on a table or a floor and the paint would swirl around and he would work very quickly. Sunday Reed, the woman he had been living with at Heide, would send him materials by train. She also sent books and magazines because the other facet of Nolan's career which continued from the beginning to the end was that he was always reading, always dipping into things, not only on art but all kinds of other reading matter.

Like many early twentieth century artists Nolan seized on a map-like conceptualised vision that is characterised by the art of primitive peoples, folk art, children's art and even the art of the insane, i.e. works of marginal artists who had not worked in art schools but who were natural painters. In particular, he and his contemporaries, especially Picasso, admired Henri Rousseau, the customs officer turned painter, who made wonderful dream-like landscapes with tigers and lions and naked women and snakes and things in them, painted in a dreamlike manner. We know that John Reed gave Nolan a book of Rousseau's art in the 1940s.

These Wimmera paintings of Nolan's, e.g. *The Flour Lumper*, with their bold primary colours and their simple shapes certainly share the qualities of children's art and this was something that the surrealists in particular talked a lot about - that art should capture the freshness of a child's eye. This was widely discussed in Australian magazines at the time, such as *Angry Penguins*, a surrealist magazine of which Nolan was a co-publisher, set up by a group of radical young artists and writers in Melbourne. It was also discussed in the more substantial establishment magazine *Art In Australia*; it was not just something the surrealists discussed in France. But Nolan's paintings also speak the vocabulary of European Modernism with their uninhibited spatial ambiguities. These paintings reflect very little of the disturbances of a world at war and Nolan was aware at the time that he wasn't painting about the times. He felt these paintings were a way of getting back from what was going on outside. Many of his contemporaries, Tucker, Percival and Boyd, painted much more harrowing subjects at this time. But they were all doing something completely new in Australian art. The landscape tradition in Australian art was always the strongest tradition from the colonial period, through the Heidelberg School and really up to the present, but this was looking at the Australian landscape in a completely new way. In the words of Nolan's artist friend, Albert Tucker, writing in *Angry Penguins*, "Nolan painted with a rare lyrical talent, an authentic national vision, for the first time since Tom Roberts, McCubbin and the early Streeton." What he meant was that since the Heidelberg school people had really been painting the landscape in much the same way but now Nolan was looking at it firstly with fresh, eyes through a childlike and emotional vision, and secondly with an awareness of European Modernism.

Whilst on leave at Heide and then when living full-time at Heide after he went AWOL from the army in mid-1944, Nolan found a forum of creativity which was largely unique in Australia at the time. John Reed was a lawyer and his wife was a woman of some independent means, and they gave house room to numerous artists and writers and poets, not just from Melbourne but also from Queensland and South Australia. These people lived there or came and went, but Nolan was the one who lived there the most permanently. He certainly had an affair with Sunday Reed and there's a theory that he probably had an affair with John as well, but whatever the circumstances - and it may one day all come out in a biography - it was an incredibly intense emotional relationship between the three of them. As John Reed put it, they were "inextricably interwoven in a pattern of complete mutuality and intimacy," for a period of almost ten years and when the break came it was really quite final.

Nolan at this time was also writing poetry and other works, with this very literary, artistic mind that he had. From the provocatively Modernist Wimmera landscapes of the early 1940s it was a fairly short step for Nolan to the Ned Kelly paintings. In the Wimmera, far from the city and cut off from Melbourne's lively if fundamentally fairly provincial art world, he had come to realise that the Australian landscape could be the subject for modern art. Before the war his great ambition had been to go to Paris and he really wanted, I think, to paint abstract art and to write poetry but now that he was stuck at home for the duration, he had found something here which suited his purposes better.

He set off with his poet friend Max Harris on a hiking trip through north-eastern Victoria in the summer of 1944/45, through the Kelly Country which he had heard of long ago from his grandfather who was reputedly a policeman in the days of the Kelly Gang although not in this area. He found, he said, "a rough scrubby landscape gone back to Genesis." He felt that the bush was "the most real aspect of life" with its smell and its light and everything else, and remember this was a boy who had been born in Carlton and brought up in St. Kilda and whose only real contact with the bush had been on holidays up near Shepparton where his aunt lived. He said at the time, "I find a desire to paint the landscape involves a wish to hear more of the stories that take place within that landscape, stories which may not only be heard in country towns and read in the journals of the explorers but which also persist in the memory, to find expression in such household sayings as 'Game as Ned Kelly'". And so he felt that the Kelly story could be a way of showing the Australian bush, a reason for painting the bush; "One is always trying to find something to put in front of the bush" he said.

As subject matter for artists, Ned Kelly and bushranging in general were, of course, far from new. There were plenty of images by artists and Keith showed yesterday one by Julian Ashton in the contemporary illustrated press; there were films in the early 1900s as well, and then there were artists like Tom Roberts in the 1890s, painting in a period after the first centenary of white settlement when there was a great searching for national themes. Roberts actually went up near Inverell where he heard first-hand accounts of bushranging days from the Cobb and Co. coachmen. His painting *Bailed Up* was painted in 1895 and then kept by Roberts and reworked in 1927, when there was another re-emergence of an interest in national mythology. It was purchased by the art gallery of New South Wales in 1928 and was in part probably inspired by Roberts' reading of *Robbery Under Arms*. In July 1940 Sydney artist Donald Friend had produced designs for a ballet on Ned Kelly, as he said, "in a wayward, rollicking humour". I suppose there is a bit of humour in the story but quite how you get a ballet out of it, I'm not sure. Friend said, "I chose Ned Kelly because all Australians regard him as a popular figure although he was a rogue". In 1942 the newspaper critic, Clive Turnbull, published *Ned Kelly, Being the Story of his own Life and Crimes*, which was a reprint of Ned Kelly's letter to Donald Cameron, with illustrations by a contemporary artist, Adrian Feint, and in the following year Turnbull published an (at that time) exhaustive Kellyana bibliography. Reporting in the Herald on the Modernist Contemporary Art Society exhibition of 1945, Turnbull admired "an amusing bushranger" by the painter Cedric Flower; unfortunately we have no idea where that is now or what it looked like.

Douglas Stewart's verse drama *Ned Kelly* was even more widely known. It was first produced on ABC Radio in 1942 and published the following year.

Nolan's first essays on the theme were painted at Heide in early 1945, including one called *Kelly and Sergeant Kennedy*. It was not only painted, it also had little bits of newspaper collage - the policeman's face was a collage of a newspaper illustration. He exhibited a couple of Kelly subjects at the Contemporary Arts Society in 1946 and this was probably one of them. It's a very rough and ready little picture, done just after he had been on that hike through the Kelly country. He had met members of the Kelly family and other descendants of Kelly associates and had talked to them. He always was a great storyteller himself and he loved to hear a good yarn so I can imagine he sat there and listened to oral history until it came out of his ears. He then spent time in the Public Library and the Public Records Office. He read the complete Royal Commission reports and in particular J.J. Kenneally's *Inner History of the Kelly Gang* which would probably have been his key secondary source. He also read newspapers in the Library which in those days was in the same building as the National Gallery which Nolan had always been very familiar with.

All these literary and artistic manifestations of the Kelly story were part of a renewed interest in Australian colonial history and, especially at this period around the Second World War, a fascination with Australian heroes; at the same time there was a great renewal of interest in Scott of the Antarctic and Burke and Wills, for example. As you probably know, Nolan also painted Burke and Wills and he painted the shipwrecked Mrs. Eliza Fraser and the Gallipoli story as well as others which had a kind of resonance of Australian emotion and character. There were, of course, critics who laughed at this twentieth century interest in colonial personalities, an attitude summed up even by fellow artist Donald Friend in his burlesque apotheosis of Ned Kelly which he described himself as "a giggle, nothing else." In it, Ned is shown being lifted through the pearly gates, surrounded by an assortment of other legendary figures, General Blamey, Phar Lap, Dame Enid Lyons and Colonel de Groot who cut the Sydney Harbour Bridge ribbon when it was opened. Friend also did a rather wonderful response to the first Ned painting by Sidney, exhibited as *Ned Kelly and Family*, showing a photographer's shop with "S. Nolan" above the door and the family lined up with a halo over this box-like armour. But in fact, bushrangers and especially Ned Kelly were widely recognised by all sorts of Australians as the stuff of myth because of the folklore centred on them. As Nolan put it, "If you are remembered and if people paint you and write poems about you, and if the tribe latches on to you then you have a myth." He was really in search of myths and in search of content for that Australian landscape when he went on that trip and met the Kelly clan. His own blending of sunlight and landscape and the dramatic cipher of representing Kelly's armour in silhouette as a simple black box - of course he knew as well as anyone that wasn't what it really looked like - his deliberately untutored style and intense emotion made an inspired combination.

Ned Kelly is one of the most well-known images of the lot from the 1940s. The stark silhouette of Kelly's home-made armour is rendered by Nolan almost as an abstract black square. He had seen the set of armour that had been in the Melbourne Aquarium since his early childhood and he knew perfectly well what he was doing. As he was also aware, abstract black squares were a feature of certain abstract modern art and had been around for quite a long time. "All I did," he said, "was put a neck on the square." But in fact his synthesis of narrative - the story especially in these early paintings comes out very strongly and you can get quite a good version of the Kelly story - and this symbol was unparalleled in Australian art. He worked intensively on the 1940s Kelly paintings for months. He also made hundreds of drawings, many of which are in the National Gallery in Canberra, and they include several anonymous bushranger heads. A lot of them look very like that mug shot with the painted-on beard which Keith showed; Nolan really had looked at his sources a great deal. Meanwhile he was continuing his reading and his research.

The group of paintings now commonly known as Nolan's first Kelly series - for as we will see he returned to the theme on many later occasions - were first exhibited together in 1948 in Melbourne by John and Sunday Reed. One of the series had already been exhibited before being purchased by Clive Turnbull who, as you will remember, was a great Kelly aficionado and scholar and it was then put in the exhibition. Nolan had given the other twenty-six to Sunday Reed when he left Heide for good in 1947, going up to Queensland. The Turnbull painting which was *Death of Sergeant Kennedy at Stringybark Creek* was purchased by the National Gallery of Australia in Canberra in 1972. Twenty-five of the remaining group were given to the Gallery by Sunday Reed in 1977, just a few years before she died, and the odd one out, the last one, entitled *First-class Marksman*, which had been sold from the Heide collection somewhat mysteriously before 1977 - I don't know that it was meant to have been sold - was eventually repurchased by Nolan himself then held by a number of private owners. It changed hands a few times during the art boom of the 1980s and is now (November 1993) on loan to the National Gallery of Victoria by Steve Vizard. We're very pleased to have it because there's no way we could afford to buy it.

It's important to realise these so well-known and frequently reproduced images, the ones that are mostly now in Canberra, were not the only Kelly paintings made by Nolan even at that time. Five other paintings from the 1940s can be seen at the National Gallery, at Heide Gallery (now the Museum of Modern Art), the National Gallery of New South Wales and the Lanyon Gallery outside Canberra, for example.

Nolan certainly didn't paint the series in any particular order. They were all inscribed with a title and a date on the back and the order he painted them in, from 1st March 1946 to 18th May 1947, doesn't actually follow the Kelly story. He seemed to come at one episode then do another and for some episodes there's no painting whereas other episodes have a couple of paintings. It was as though he did a whole lot and then picked out the twenty-seven he thought were the best and then really felt he'd done Kelly enough. However, this first exhibited group of twenty-seven were the ones he singled out as his gift to Sunday Reed and for the public exhibition as a group and so I think even though it takes a little while it's probably worth running through that whole group so you see the ones he was making as a story. After some thought I've decided I'll show them to you in historical order as far as possible, not in the order that he painted them because that wouldn't make a lot of sense. This differs slightly from the order they were catalogued in 1948 because I thought that was a bit arbitrary. He, of course, had already left Heide and John and Sunday Reed put the catalogue together, perhaps not knowing quite what order Sid would have put them in.

The first is just called *Landscape* and in fact this is a good example of what I just said. This was the first catalogued in 1948 and was one of the last painted. It was as though, having done all that drama, he was now painting just the setting, that "living witness" that Ian Jones talked about, an empty stage where the drama would unfold. In the original 1948 catalogue each painting was accompanied by quotations, either from Kenneally or from the Royal Commission report or from some other contemporary source which Nolan had latched on to. Just to give you an idea, with this one, he had written, "The Kelly Country is that portion of north-eastern Victoria which extends from Mansfield in the south to Yarrawonga in the north and from Euroa in the south-west to Tallangatta in the north-east."

The next one is *Ned Kelly*, which, as we've said, is one of the most famous images of them all, a figure almost like a centaur, man and horse as one single image. Ned Kelly, who had done time already before he was twenty, did not wear the famous armour the whole way through as Nolan shows. The armour is used as a symbol, as a cipher - it's also so we know which figure is Kelly - and while historians might quibble about it, for Nolan it was a witty twist to the symbolism and provided a kind of mythic image that would carry Kelly wherever he was. As always in Nolan's work the images like this which seem so simple and straightforward –

almost, as we've said, as though a child would paint them - are rich in all sorts of eclectic origins and not just origins which seem straightforward like his research on the Kelly Gang. His curiosity was insatiable. He read constantly, as I've mentioned, looking through things and reading very selectively. We can see when we look at the paintings that he read the Kelly sources fairly thoroughly. On other occasions I think he flipped through books and his eye would be caught by something that he would store away for future use. He showed me little black notebooks that he kept from a very early time in which he would write down images that he had seen in a book or in real life, as though it was a little archive for the future. He skimmed images from life, from other artists' work, from books and so on. The landscape in *Ned Kelly* is much more Wimmera than the north-east but it's also immediately archetypically Australian. Arthur Streeton had once declared "Nature's scheme of colour in Australia is gold and blue," so Nolan was referring back to paintings like Streeton's *Land of the Golden Fleece*. This is Kelly put in front of an Australian landscape that everyone would immediately recognise as Australian. Streeton, of course, painted in the conservative 1920s whereas Nolan was making a modern statement about Australian landscape art.

In *Constable Fitzpatrick and Kate Kelly* the Kelly Outbreak is set to begin - we see Fitzpatrick taking Kate Kelly on his knee. Whether he did or not I won't say today but that's what Nolan is showing. This was, as we've heard, the significant incident of sexual harassment which led on to Ned's anger and to many of the events which would unfold in the subsequent images. Through the window you can see Ned in his armour. Nolan isn't saying whether Ned was really present but in spirit he was there and he had an awareness of what was going on. The other thing that's quite interesting is the figure of Kate; Nolan is quite consciously referring to Henri Rousseau's *Sleeping Gypsy* in the way she's draped across like a cut-out figure. Also the wallpaper in the Kelly drawingroom is like a garden painted by a child, with bright flowers crawling up the walls. It's very much the consciously naive style that he's using - folk art for folk mythology.

In the *Township of Mansfield* you've got again a kind of dreamy setting, a peaceful town where all this violence is going to come about.

The Firstclass Marksman - you will remember they did target practice out in the bush and this is Nolan's image of Kelly with those bright, beady eyes against a wonderful scribbly landscape. It's all done in a brightly-coloured housepaint enamel, very quickly painted, and of course the armour comes up very glossy black.

The Chase is really about the skilled horsemanship that many of them exhibited. These horses were taken directly from the work of Ucello, the great Renaissance master, so it's a kind of a joke. You're not meant to laugh uproariously but you're meant to smile and see that this is a kind of witty portrayal of the story. (*In response to a question about the striped armour shown in this painting*) When I asked Sid he said something about their being good horsemen and he was sure they would have been good footballers! He did actually paint footballers also in the 1940s, doing a wonderful thing called *Fullback* in 1943 or 1944. However he had an awful habit of making things up later either because he didn't want to tell you why he'd done something or he'd forgotten or because a nice witty idea occurred to him in 1980 which he hadn't thought of in 1940. I wonder whether the striped effect was just to do with camouflage in the landscape. It could be jockey silks as well, with his father being an SP bookie. I thought that remark in the '80s was a bit of a Sidism but I can't really explain it otherwise.

Here we have *Steve Hart*. We know that he won the races at Greta dressed as a girl and riding side-saddle and Nolan loved that image. He came back to it a few times. Look at the wonderful landscape behind. As he progressed through the series in time, he actually got more interested in the landscape. This idea of the landscape becoming more important than the action is something that characterised his art at that time.

Compare *Steve Hart*, which he painted quite late in the series with *Death of Constable Scanlon*, one of the ones he painted quite early. Scanlon was the second policeman to die on that fateful day in October 1878. I must say, having listened again to some of the accounts, I'm interested to go back and see how accurate Nolan is because in some cases, the officer's and constables' names were fairly interchangeable in Nolan's narrative. There is the most wonderful image at Lanyon, not in this core group, of McIntyre hiding in the wombat hole, simply titled *Policeman In Wombat Hole*. Nolan latched on to all sorts of specific episodes but I think in many cases the drama is a bit generalised. He would never have pretended otherwise; he wasn't setting out to be a realist historian. He would have been aware that the police weren't wearing their uniforms at Stringybark Creek but he's saying "this is Kelly in his armour, these are the Forces of the Law with their buttoned-up uniforms and their breeches and their helmets." What he was conscious of when painting this surreal moment when the policeman was bowled off his horse was images like Chagall's *Floating Lovers* - Nolan was very fascinated by the Jerilderie Letter and other things Ned wrote about regretting doing things and in this painting he's detached from the action and it's happening almost in spite of him. This figure floating over something so horrific compares with images he would have known very well from his research in books and newspaper illustrations. He also would have known those photographs that we looked at of Stringybark Creek and so on.

Another Stringybark Creek episode, called *Death of Sergeant Kennedy at Stringybark Creek* is the one that Clive Turnbull bought originally. Again there's a kind of Wimmera landscape. The other version of this incident titled *Stringybark Creek* is a wonderful, strong image with Nolan flinging the action at us, almost like a close-up in a film after you've had the far action. He had always been interested in film and I think if he had had the resources he would have made a film. He wrote to Sunday Reed from the Wimmera about how Disney would have loved the landscape and that Disney could paint although he wasn't a painter and how film captured things better than painting sometimes so I don't think it's entirely coincidental that occasionally, when you look through these paintings, it's almost like a storyboard for a film.

The Kelly Gang members were now of course on the run and with the passing of the Felons Apprehension Act in November 1878 they were officially outlaws and could be shot on sight and so they were being watched out for from *The Watchtower*. Andrew Sayers, one of my colleagues in the Canberra gallery, discovered something about this painting which is intriguing. The background picture is taken straight from a photograph in *Walkabout* magazine of Longreach - it's nothing to do with north-eastern Victoria at all. It's one of the latest paintings that Sid did in the series when I think he was really wanting to get into the outback, to get away from Heide and get into that really archetypal, dry, red, inland landscape and presumably was looking through *Walkabout* for inspiration. It's another example of how he grabs something from somewhere. I never queried that as a kind of Kelly landscape.

In *Morning Camp* the troopers are camping out in the Warby Ranges and they are actually in hammocks. I can see on a warm night you'd certainly choose to sleep under the stars and they apparently did sleep in hammocks sometimes.

The Burning Tree depicts them setting fire to a tree for warmth and if there was any way of showing the Kellys where they were this seems to be it.

The Slip - there's an account that Nolan quotes about troops of reinforcements being called in with their packhorses and one horse slipping one day. Here we have the horrible image of this horse slipping and sliding and falling - we feel he's falling for ever and suspended for ever, a ghastly sight. I really do believe Nolan was influenced in this painting by the images of the horses discovered in the caves at Lascaux in 1940.

These were much admired by the surrealists in the 1940s and had been published in the magazines which Nolan was reading. Again we see this grasping of a totally unrelated image because it just stuck in his mind.

The Encounter shows a timid policeman who appears to be actively trying to avoid Kelly. There is a theory, I believe, that the police knew they were out there but they weren't trying as hard as they might have.

Another one where Nolan is getting away from the drama and action and into the landscape is *The Peacock* (also called *The Alarm*) where the bird is keeping watch and giving the alarm.

It was around this time that I believe the stories of the manufacture of the armour were first heard and the rumours began to circulate that Kelly was planning more than mere robbery. As we know some historians will argue that he was actually planning to set up a republic in north-eastern Victoria. Certainly, at some point they were making armour. This lovely image is of Mrs. Skillion, Ned's sister Margaret, *Quilting The Armour*. She's sewing padding into it and as you can see Nolan made it all square and box-like as his Kelly wears. I think it's a rather awful image in that there's a woman doing this womanly thing of sitting outside the house on the porch in the twilight doing her sewing and what she's really doing is making the armour for this fateful encounter that her brother and his mates have planned - a horrible kind of irony. And by making this square Nolan's making a witty play on his own art, referring back not to the real Kelly armour but to *his* Kelly - this referring to his own art is something that he does more and more as the years go by. I think that quilted box certainly is an allusion to a coffin. (*In response to a remark about the background figure*) I suppose it could be Ned. I think he is chopping wood. I thought of him as just another figure in the peaceful farming scene but it quite possibly is Ned because he would have been around the family and, as you say, unclad.

The Marriage of Aaron Sherritt - in 1879 the police engaged Aaron Sherritt to some extent and this is a picture of Sherritt's marriage to a local girl, Mary Barry, complete with the police guard in the background. I suspect that this background might be a central Australian photograph as well, something around Alice Springs, but we haven't found it yet. But in June 1880, Aaron Sherritt was murdered by Dan Kelly and Joe Byrne whilst his hapless pregnant wife and his feckless guards hid under the bed. In *The*

Defence of Aaron Sherritt she is emerging from under the bed with the police, presumably after the event, just like the ludicrous and frightened figure of Governor Bligh that Nolan knew from a well-known colonial broadsheet, reproduced in a book by Professor Bernard Smith. Smith himself has pointed out that Mrs Sherritt and her companions - this triple-headed monster emerging from under the bed - also refers to a sculpture at the Parthenon in Athens of a triple-headed hydra which had been photographed and published in *Art In Australia* in 1942.

The Evening - one of those officers going for a ride on a sort of rocking-horse across the lovely landscape.

A Bush Picnic near Violet Town was supposedly where the gang got one of the police so plastered that he took Kelly as a dancing partner. I assume that's a good piece of oral history!

The Questioning shows the police coming round the local inhabitants to find out whether they knew about the Kellys' movements and just being told, "Go and ask the old man. He's having a bath." The sympathisers weren't overly helpful.

Kelly was now constantly evading his pursuers and as we know, he was now planning a major attack at Glenrowan. The Jerilderie Letter shows clearly that he believed he had every right to resist the law.

Many of the police officers were fellow Irishmen and he saw them as traitors to the cause and as we've heard, there were a lot of social reasons why Kelly was speaking for his family and friends and so on. The outlaws failed in their attempt to derail the train at Glenrowan and for two days they kept their sixtytwo hostages, mainly friendly, in Mrs Jones' Glenrowan hotel. This is *Mrs Reardon*, the wife of one of the railway platelayers who I think had been involved in the attempt to derail. She was allowed to flee with her babe-in-arms as the police laid siege to the hotel.

Siege At Glenrowan and *Burning At Glenrowan* is a kind of double whammy, two paintings making up one. Nolan said they were once one painting and he cut them in half. I don't actually believe that. I've had a look and can't see any saw marks! It's another good example, I think, of him spinning a yarn a lot later. It's not impossible that they've been painted and cut but he must have worked at them again because there's paint down the sides and they don't quite match exactly. He might have originally painted that scene and thought it needed two canvases and done it again. There's no doubt that he did a lot that he didn't finish and later discarded - some turned up later and others were destroyed. Once again Kelly is shown (partly) in stripes as in that other painting and that's another reason why I wondered if it was referring slightly to camouflage. It could also indicate the superhuman element and the way he was meant to come out of the mist. I think that Nolan's Ned Kelly is very much a real person. He was conscious of the ways in which Kelly did these things but at the same time his Kelly is a symbol, a dichotomy, and the dividing line is different in different paintings.

Having already escaped, Ned Kelly returned to make a stand. In *Glenrowan* he is standing with the police looking like the Keystone Cops and you can see the blacktrackers who have been brought in. Nolan said the police looked so much like an army that he gave them a regimental goat and you can see Mrs Reardon escaping as well. The other thing I think is nice is that the body paint of the blacktrackers, who had been brought in from Queensland, is all painted to look like police uniforms.

Ned was now taken to Melbourne to recover from his wounds. At Beechworth on 6th August he was remanded for trial at Melbourne and on 28th and 29th October he appeared before Judge Sir Redmond Barry. In *The Trial* Kelly is shown in the dock in full armour - you've got Barry there in his wig and gown and Kelly with his arms folded. Barry looks somewhat taken aback by the presence in the courtroom of this giant black-armoured Kelly with ghostly eyes, and by the exchange which occurred when he pronounced sentence of death, concluding with the usual "May the Lord have mercy on your soul" and Kelly's reply, "Yes, I say I will see you there where I go." This is the final incident in the Kelly series.

When this core group of twentyseven 1940s Kelly paintings was shown in 1948 the *Age* critic and former director of the National Gallery of Victoria, James MacDonald, said fairly predictably that it demonstrated Nolan's "second-rate, Hallowe'en, boogie-woogie notion of depiction". Artists loved them although critics were a little dumbfounded but interestingly they were shown in Paris a year later and there the Paris and the London critics were very impressed. Those critics were then quoted approvingly in the Melbourne and Sydney press so it took recognition in London and Paris for most people to think they were really worth looking at.

Nolan has always described his work as a series of cycles and he referred to *Finnigan's Wake* with the idea of creating the same images anew, going backwards and forwards, taking things from other people's art as we've mentioned, but also looking at his own art and reworking it in different combinations and sometimes with quite different meanings. In 1949 whilst travelling in the outback Nolan had written to Barrett Reid, his friend in Melbourne, "I can feel myself waiting, Kelly by no means finished." In 1953 he settled with his family in London and in fact remained based there for the rest of his career although he would return on visits.

The Reeds exhibited the Kelly paintings in Rome in 1950 and Nolan had asked Sunday to send him a set of slides from which he painted new versions of several episodes and they follow the original composition quite closely. Thus Ned Kelly rides again in London in the 1950s in *Kelly* as does Steve Hart in *The Disguise*. These were painted in 1955 but he didn't paint twentyseven as far as I know. The bright colours have gone, the exuberance has gone and there's much more of a feeling of tranquillity and reflection; also much of that quite childlike, fresh feeling has gone although they are not painted academically. The Ripolin enamel is now used matt rather than shiny and it's mixed with oil paint so you get much more subdued soft colours. It's as though the Australian landscape is seen through a glass darkly, through memory filtered by the twelve thousand miles from its source.

The other images that were much admired by overseas critics in the 1950s are much less storytelling and they start looking at Kelly in a completely new way. *Death of a Poet* in 1954 refers visually to the death mask and I think the title refers to the fact that Nolan thought Kelly was a very gifted writer and that the Jerilderie Letter contained quite a lot of folk poetry. The London critics felt that he was "searching for and finding the ethos of his country in its past and elevating it through visual poetry to the level of myth" and that the present evocation of the Kelly myth in the English paintings "had gained a new magic and imaginative power." The paintings were acquired for important English collections; *Death of a Poet* was bought by the Walker Art Gallery in Liverpool and in 1965 the Museum of Modern Art in New York purchased *After the Glenrowan Siege*. *Kelly Spring*, which was purchased by the Arts Council in Britain, is one of a number of curious images where Nolan was painting Ned Kelly at the time of the abortive Hungarian uprising of 1956 when the people of Budapest confronted the Soviet tanks and all that they could see of the Soviets were the faces reflected in the driving mirrors. I think in his mind the idea of people in tanks linked with the Kelly armour which he was painting. Some of the images mix the two abortive uprisings together. I think the English critics also liked Nolan's portrayal of Australia as a kind of exotic "other land" which was what they'd had in their imagination about Australia all along.

Meanwhile, back in Australia, attitudes to the Kelly story were polarised at this time. Frank Clune had recently published *The Kelly Hunters* and Douglas Stewart's radio play of 1942 was revived for the stage with a program cover and theatre sets designed by Sidney Nolan, Nolan sending them out from London. The production was never staged in Melbourne although it was planned that it would be. It was shown only in Sydney because the Olympic Games organisation condemned what it called "the heroisation of the outlaw" and it was considered not suitable for the theatre.

When Nolan's original 1940s series was exhibited in Melbourne again in 1958, once again by Sunday and John, the critic for *Nation* magazine attacked Nolan, Stewart, John Manifold, David Boyd and others for "the deification of Kelly, Burke, Leichhart and the rest which seems to derive from the fact that Australians, hungry for a mythology in a country barren of legends, are prepared to confect one from any old ingredients" and indeed, as has often been said, almost exclusively from our defeats. I think it's quite clear from everything we've heard this weekend and what Nolan said himself in the 1940s that it wasn't confected from nothing, that this mythology was still a living presence in the Australian imagination.

From the 1950s onward, Nolan's paintings are much less about their ostensible subject matter - Kelly or Burke and Wills or Mrs Fraser or Gallipoli - and much more about reflections on his own art and his own emotions and particularly his own place in world art, so he changes technique constantly and does Kelly again and again just sitting in the landscape, with nothing really new to say about Kelly but quite a lot to say about art in the twentieth century. While the 1940s painting drew on historical and literary sources and a wide variety of visual sources, increasingly the later paintings from the 1950s to the 1980s were transformations of his own art.

The haunting figure of Ned Kelly appears in paintings of the 1960s, e.g. *Kelly and Storm* (1962) painted in oil and enamel in a kind of dreamlike environment. He used this technique quite frequently around this time, I think more successfully with *Burke and Wills*.

Curiously, Kelly cropped up in the midst of other imagery as if he'd walked onto the wrong set in the middle of a movie on Eliza Fraser, for example, and yet it does work. You have the naked vulnerable figure of the convict, betrayed by Mrs Fraser, but at the same time this vulnerable little man is compared with the ironclad outlaw.

Also from the 1960s is the great multipanelled painting *Glenrowan* painted in 1966 and now in the Carnegie Institution in Pittsburg. It comprises nine panels with Kelly in it and it's got spattered blood and horses seen through a prism-like image. Nolan did about six of these huge multipanelled panoramas in 1955/6, three or four of which relate to Kelly and the others on quite different subjects.

In the 1970s and into the early 1980s he also worked on a series based on the fictitious poet Ern Malley, who turned out not to be a real person but a creation of some other people who concocted the verses. Nolan had been taken in and much admired the verses at the time. He reworked that theme in the 1970s and images from the Ned Kelly and Burke and Wills repertoires all got tied into these reworkings of his 1940s Ern Malley paintings, I think in a way to show that Ern Malley had also become an Australian myth. He also included images from his travels. He travelled widely through the '60s and '70s, going to Africa and New Guinea, etc. and these images got mixed up with them as well. He first visited China in 1965 when access was still very difficult and perhaps not unexpectedly Kelly *a.k.a.* Nolan popped up in a distinctly Chinese landscape in 1980.

It's been very well said that Sid Nolan had the mind of a poet, defined by T. S. Elliott as "a receptacle for seizing and storing up numberless feelings, phrases, images, which remain there until all the particles which can unite to form a new compound are present together." I think that sums up Nolan's imagination in many ways. He treated history and mythology as his own personal property with which he could do what he wished. His quest for artistic invention was always urgent and in later decades he was accused of being too prolific, because I think he wanted to let out what was stored in there. He passionately loved the painting process from the oils and the Ripolin enamels to the sweeping PVA, from the cratered textures of the 1960s to the spray cans which he wielded to the music of Mozart in his later years.

For all his official honours Nolan remained a non-conformist both in Great Britain where he made his home and in Australia where, once he had become wealthy and established, he visited almost every year. It seems almost a paradox that whilst he made us, his fellow Australians, look at our landscape and its legends afresh he also, by painting consistently Australian subject matter, put Australian art on the international map and arguably he did so almost single-handedly. There was a huge number of Australian artists, not only painters but writers and theatre people and so on, who left Australia in the 1950s at around the same time as Nolan but very few of them got the kind of focussed acclaim he attracted. He was taken up by Lord Clarke and various others but I think his mingling of history, narrative art and landscape really did have a universal appeal - not just an Australian or even a British appeal - and it will be very interesting to see what the New Yorkers think of them next year. As regards Ned Kelly himself, Sidney Nolan's paintings have become for many people - both in Australia and overseas - the 20th century image of Kelly, however accurate it is. I think you may have found that in some areas it's not as inaccurate as it looks at first.

Chance and risk were always key ingredients for Sidney Nolan - he worked so quickly and changed tack as often as possible because he didn't want to get stale. "Painting is only worth while," he said, "if you don't know the outcome. When you start painting you must never know what the end product is going to be; you should end up with something looking at you that you've never seen before." I suppose I should sum it all up by saying that as an artist, without doubt, Sir Sidney Nolan was as game as Ned Kelly.