

## The conviction of Frederick Lincoln McDermott

By Chester Porter QC

Since I am the last survivor of the 1951 McDermott Royal Commission, I have followed the further proceedings consequent to the finding of the body of Lavers with great interest. It is now quite clear that McDermott was an innocent man, wrongly convicted of murder. The dreadful injustice suffered by him was only fully revealed long after his death.

Before moving on, some thought should be given to how this injustice occurred.

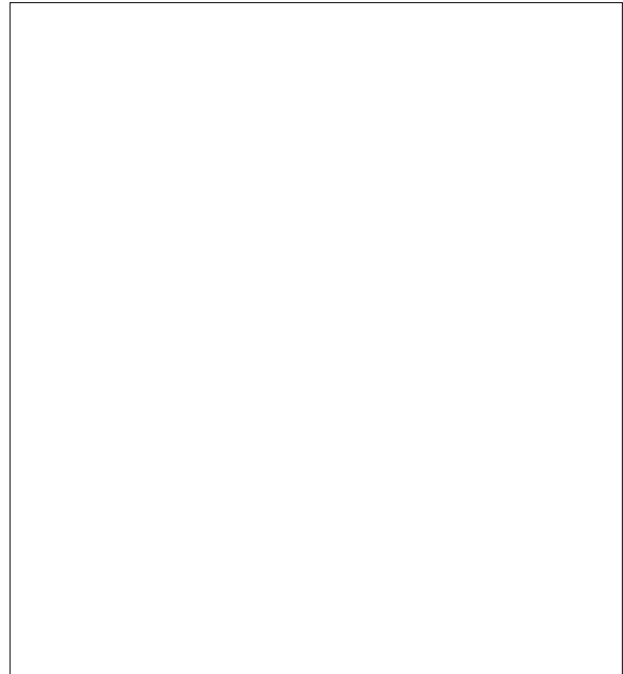
Lavers disappeared in September 1936 (when I was 10 years old) and McDermott was arrested in 1946. The case was presented as a triumph of police investigation solving this murder after 10 years. The atmosphere of the trial was 'Aren't the police wonderful', which hardly assisted the accused. In fact, the first lesson of the McDermott injustice is that care needs to be taken when cold cases are allegedly solved. The jury needs to be aware of the idea that an old case has been marvellously solved.

*... the first lesson of the McDermott injustice is that care needs to be taken when cold cases are allegedly solved.*

Furthermore, there is the question of the public reward for solving old cases. These rewards are paid out at the discretion of the police. The key lay witness against McDermott shared the reward money. In particular, Ms Essie May King, who purported to identify McDermott from photographs ten years after a very casual encounter, received a substantial payment in return for her evidence. Of course this was unknown to the jury.

Ms King's identification was from a series of photos but one of them of Parker turned out to have been after the alleged identification. Under the Evidence Act and in accordance with High Court rulings today the jury would receive far more detailed direction as to the dangers of identification evidence. Some judges might have refused to admit this evidence as being too unreliable and prejudicial.

The notebook shorthand verbal in which McDermott allegedly admitted to saying that he had killed



Itinerant rural worker Fred McDermott (pictured) on his way to the Grenfell courthouse for the committal hearing, Photo: Newspix

Lavers and then refused to say any more, would not be admitted in evidence today. It is quite possible that so far as it went, this evidence was true. That is McDermott did admit to telling his partner Florence Hampton that he had murdered Lavers. McDermott, like many shearers had been questioned by the police in 1936 and when they were drunk, as often occurred, she would accuse and he would agree.

*The key lay witness against McDermott shared the reward money.*

However, McDermott maintained his innocence after conviction so impressively as to convince the Anglican chaplain of Long Bay Gaol, plus the warders. I heard one warder urge Jack Shand to free McDermott, saying 'He should not be here'.

Yet according to the police, McDermott did not assert his innocence when accused. It is hard to believe. Fortunately today the entire interview would be videoed and recorded. That is one great reform.

The work of Tom Molomby SC, improving at times on what was revealed in the royal commission, shows

that the police concealed exonerating evidence, in particular that the witness, who saw the suspect car with the cocky cage not long before Lavers disappeared, would have said (but was not asked) that McDermott was not in the car.

Certainly since Nick Cowdery QC became director of public prosecutions, every effort should be made by the prosecution to reveal all relevant evidence to the defence.

At his trial McDermott, in his statement from the dock, tried to raise an alibi. The property owner where McDermott claimed to be shearing rebutted this alibi and the rebuttal was strongly put before the jury as evidence of guilt. This was even claimed when an ignorant, often drunken shearer was trying to trace his movements after more than ten years.

The idea that a mistaken alibi is strong evidence of *... a casual shearer has no records and frequent drunkenness would not assist his memory.*

guilt seems misconceived to me. Who among us, with all our written records can safely claim an alibi for a time ten years ago. It would depend on chance. But a casual shearer has no records and frequent drunkenness would not assist his memory.

This was an example of the atmosphere of the trial. The clever police have nailed this murderer after ten years and we the jury will not let him wriggle out of it.

The police mistake as to the suspect car having a 56 inch track, when in reality it was 54 7/8 inches, was no one's fault. The manufacturer of the Essex car was happy for all the journals to publish incorrectly that the suspect car had a standard track. The error was only discovered by measuring car tracks. However this error substantially destroyed the Crown case.

It must be noted that McDermott, an innocent man, with no police record apart from drunken behaviour, did not give evidence. Yet this was the man who could convince prison officers that he was innocent. I know of no other prisoner who managed to do this.

Fred Vizzard, the public defender chose to advise his client to make a statement rather than give evidence.

Vizzard was convinced that McDermott was innocent, as was his instructing solicitor Cec Bourke. Yet who could say Fred Vizzard's advice was wrong.

In those days an accused person who gave evidence was open to Crown badgering and bullying, not infrequently assisted by the presiding judge. An ill educated, drink afflicted shearer giving evidence of events ten years ago would have no chance of not making a mistake, and not contradicting himself. A well educated intelligent person giving evidence in his own defence would have a hard enough time, nervous badgered and bullied, to give a good account of himself. A person such as McDermott would have no chance.

That is why the cases of wrongful convictions are

*In those days an accused person who gave evidence was open to Crown badgering and bullying, not infrequently assisted by the presiding judge.*

crowded with ignorant, ill educated persons, persons with IQs as low as 70. That is why McDermott was the ideal suspect to solve an old murder. And that is one of the main reasons why he was convicted.

Had he been an intelligent salesman still in possession of a business diary he might well have survived cross-examination, unless he was nervous and made one mistake, which would then be regarded as strong evidence of guilt.

Statements from the dock have been abolished. Now an accused must choose either to give evidence or say nothing. I hope that modern judges will ensure that an accused, giving evidence, is heard and treated fairly. It was not so in the past. That may well be the fundamental reason for the injustice suffered by Frederick McDermott.

I note that Johann Pohl, wrongly convicted of murdering his wife on 9 March 1973 was subsequently exonerated after serving his full sentence, when the true murderer confessed. Pohl did not give evidence at his trial, but made a statement from the dock.