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**A Student's Guide to
Mark Tedeschi QC's**

EUGENIA

**A True Story of Adversity,
Tragedy, Crime and Courage**

Nick Clark

What is the purpose of this guide?

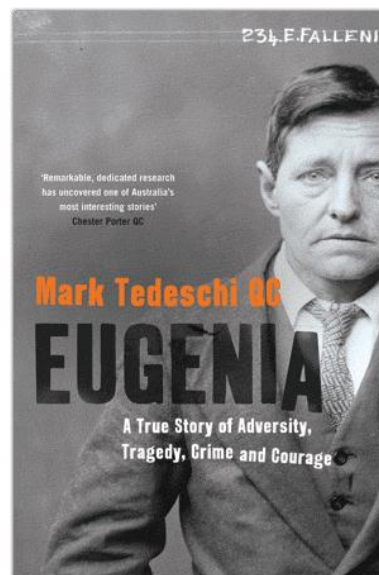
This guide is written for teachers and students to highlight themes and sections of Mark Tedeschi QC's book *Eugenia* that are relevant to Legal Studies. Those who read *Eugenia* will learn a great deal about the **criminal trial process**, and about the essential characteristics of the **jury trial** and **adversary system** in Australia. These are processes which have remained essentially the same since the 1920s, and bring to light important discussions about the **nature of justice**, the **rights of the accused** and the influence of a **sensational media** on the criminal trial process.

How to use this guide?

There is no substitute for a cover-to-cover reading of *Eugenia* itself; however, this guide provides suggested readings with page references and discussion questions that can be used to cover aspects of the trial.

Also see www.eugeniafalleni.com.au for a video tour by Mark Tedeschi QC of important places in the book.

Buy your copy of Eugenia at all good bookstores or order the eBook online...



Cover image: Eugenia Falleni, alias Harry Crawford, special photograph no. 234, Central Police Station, Sydney. *Justice and Police Museum*, Sydney, record no. 31246.

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Introduction

The trial of Eugenia Falleni is one of the most complex and compelling cases to come before a court in Australia's history. It is valuable to the reader as a tale of misunderstanding and unrequited love, prejudice and discrimination against an accused, and at face value as a tragic criminal matter which led to a miscarriage of justice.

The story of Eugenia, who migrated from Italy to New Zealand as a child, begins on a ship in the middle of the Pacific Ocean where a young sailor, Eugene Falleni, is discovered by the all male crew to be a woman! After this revelation she was brutally assaulted and dumped in Newcastle, Australia – alone and destitute.

She persevered and again assumed a male identity, living life in Sydney as a man. Harry Crawford could drink with the best of them and worked at physically demanding jobs for which only men would be considered suitable in the early 1900s. His fear of discovery did not prevent him from finding love.

Harry married, and his wife, Annie Birkett, had no idea that he was anything but a man. If not for a slip of the tongue and the intervention of a neighbour, Annie may never have discovered Harry's secret. Her discovery led to the fateful events in the Lane Cover River Park, and eventually to the exposure of Harry Crawford as Eugenia Falleni. Placed on trial for the murder of Annie, Eugenia faced a trial marred by sensational and prejudicial coverage by the press, and was not provided legal representation which matched the skill and prowess of the Crown's advocate.

The court system which tried Eugenia is essentially the same system used today to deal with criminal matters. A study of Eugenia is a glimpse into issues of criminal justice that are as relevant today as they were in the 1920s.

Relevance to the legal system today

There are differences between the justice system in the 1920s and today:

Standards of justice

Eugenia's trial lasted two days. If her trial had occurred today it would be more likely to have run for two months to allow for more stringent examination of witnesses, evidence and much longer addresses by the advocates. Today, the high expense of the jury trial has prompted calls for more trials by judge alone.

The Media

The media attention before and throughout the trial was sensational and highly prejudicial against Eugenia. Most strikingly, it shows the lack of acceptance and understanding of those who do not conform to traditional gender roles. Press coverage in *Eugenia* raises similar questions about the problems of a 'trial by media', as do contemporary issues with social media websites and their influence on the public and, in turn, the trial process.

The use of evidence and the craft of the advocate

Eugenia examines in detail the evidence used in the trial and provides a clear and easily comprehensible discussion of the limitations of medical science in the 1920s. It delves into the way in which the defence and prosecution constructed their cases based on the witnesses they called, and the questions they asked.

Who was Harry Crawford?

Character Profile: Harry Crawford

The life of Harry Crawford was one fraught with the fear of discovery and the persecution that would inevitably follow should his sex be discovered. Contemporary ideas and attitudes about gender are a great deal more flexible than they were in the 1920s.

The medical term used to describe Eugenia Falleni in the 1920s was 'sexual invert' which combined homosexuality and transsexualism as one. Eugenia was Harry Crawford for 22 years and as far as we know no one, other than people who already knew or were told, suspected that he was anything other than a man.



Eugenia Falleni's changing identities:



Glossary

Transgender – a broad category which describes people whose gender does not conform to typical gender roles.

Gender roles – a way of defining human behaviour as being masculine or feminine. Typical gender roles associate feminine behaviour with people whose sex is female and masculine behaviour with people whose sex is male.

Transsexual – a person whose physical sex at birth conflicts with their perceived psychological gender.

Gender Identity Disorder – a medical term for transsexualism, where a person experiences gender dysphoria, which are feelings of discontent about the biological sex they were assigned at birth.

Eugenia Falleni assumed the identity of Harry Crawford after arriving in Sydney and maintained this identity for 22 years. Harry was a Scotchman who liked to swear, drink and had an eye for the ladies. His behaviour, appearance and occupations conformed to the typical masculine gender role. He married Annie Birkett in 1913, and was married again in 1919 to Lizzie. His identity was exposed by Detective Sergeant Robson just before he was charged with the murder of Annie.

Complete the readings on the following page to find out more about Eugenia's background.

Eugenia's identity exposed

Read pages 4 – 9

In this scene Eugenia is subjected to brutal treatment on the ship which she was serving on as Eugene Falleni. This scene explains the origin of her perpetual fear and terror of being discovered as a woman while living for 22 years as Harry Crawford.

Harry Crawford's Work Ethic and Search for Love

Read pages 22 and 26 – 28

These scenes describe Harry Crawford's work ethic and life as a man, and his growing confidence in having relationships with women.

Married Life with Mr and Mrs Harry Crawford

Read pages 34 – 40

The nature of Harry and Annie's married life was raised during the trial. Their married life was sometimes volatile, sometimes loving; however, when Annie discovered Harry's secret, things would never be the same.

Annie Birkett

Annie was a widow with a nine-year old son, Harry Birkett, and worked as a live-in housekeeper in Wahroonga in Sydney's northern suburbs. She met Harry Crawford in 1912 when he was employed as the coachman and yardman at the house. When they married in 1913 they moved to Balmain and then Drummoyne. Married life with Harry Crawford was difficult, and was made more so after Harry Crawford's daughter came to live with them. After discovering Harry's secret, she continued to live with Harry for eight months before the events in the Lane Cove River Park.



Annie Birkett around 1910

Autopsies and Evidence

Tragedy in the Park

Complete the exercise below before you read Chapter 8. The fateful events in the Lane Cove River Park are the key to understanding the trial. What happened at the picnic? Did Harry murder Annie? Or was it all a terrible accident? You decide.

Read the descriptions and list of objects below.

- A boy discovers a body in a clearing off a walking track in the Lane Cove River park
- The body is female and on top of a makeshift fireplace.
- She is badly burned above the thighs so as to make identification impossible.
- Her clothes are also burnt and unrecognisable.

Some objects remain on the body and are collected by the police:

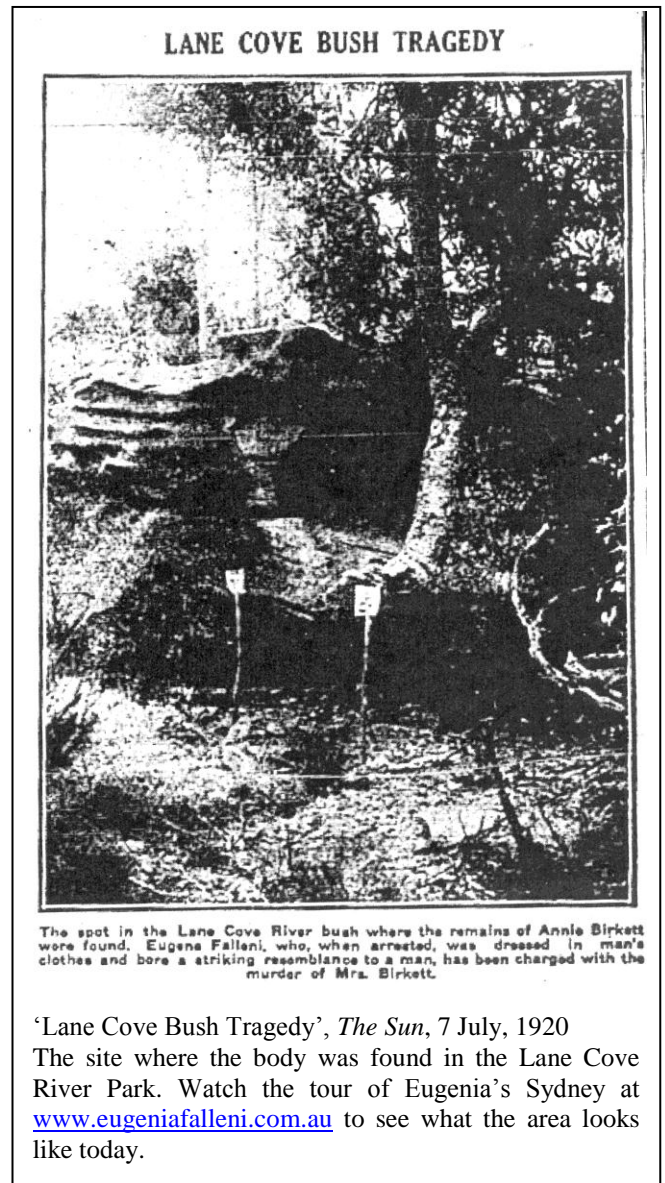
- false teeth - upper and lower
- shoes
- an unremarkable diamond ring,
- a small greenstone pendant attached to a fine metal chain
- a brooch
- lock of hair
- black lace-up shoes, with homemade patches on the side of the soles

Some objects are also found near the body:

- a cheap picnic basket
- an enamel cup
- a blue headed hatpin
- a quart size (approx. 1L) whisky flagon with a spoonful of kerosene in the bottom
- The forensic pathologists who conduct the autopsy find no evidence of violence on the body and believe the cause of death was due to being burnt by the fire.

Answer the questions below to help you make some predictions based on the evidence above:

- List the evidence you think would be useful in identifying the body.
- How would this evidence be useful?
- List the evidence which would not be useful in identifying the body.
- Why is this evidence not useful?
- What modern forensic technologies/techniques could help to establish the identity of the body?



Read Chapter 8, Tragedy in the Park, pages 55 – 65 and answer the following questions:

- Why did Annie and Harry argue?
- What does the author suggest about the following?
 - a. the cause of Annie's death?
 - b. Harry's motivation for disposing of the body?
 - c. How the body was disposed of?

Read pages 63 to 65

- What was the police theory about what had occurred?
- What conclusion did the coroner come to regarding the body?

Explanation of 1st Autopsy

Read Chapter 9 pages 62 - 65

The first autopsy of the body found no evidence of violence and the pathologists suggested that fire had been the cause of death. The Coroner's findings stated that there was not sufficient evidence to say whether she died accidentally or as a result of foul play.

Explanation of 2nd Autopsy

Read Chapter 14 pages 97 - 102

The second autopsy found 7 fractures in the skull. Were these fractures caused by the heat of the fire? Or were they from a blow to the head?

First Autopsy vs Second Autopsy

1. The pathologists who examined the body found that the person had been killed by the fire, and that there was no evidence of violence. The coroner was sceptical about this and stated in his findings that violence could not be ruled out.
2. The pathologists found seven skull fractures, one of which they thought could have been due to violence. They were still convinced the person had been killed by the fire.

Modern Forensic Techniques

Read pages 229 - 230

There were particular flaws in the autopsy of Annie Birkett. The pathologists' limited knowledge about the effects of burns to the body, and the discovery of fractures in the second autopsy raise questions that modern techniques would avoid.

- How did Annie die according to the first autopsy?
- How did Annie die according to the second autopsy?
- What does modern forensic science have to say in regard to the cause of death?

Glossary

Displacement effect – where a witness has seen an image of the accused and that image subconsciously displaces the original memory of the witness.

Kerosene - A flammable liquid that was most often used as fuel for lamps until the electric light made it obsolete. It is less volatile than the petrol used in modern cars and burns slowly.

Sighting witness - Witnesses who place the accused or the victim in the vicinity of the crime, at the time the crime was alleged to have taken place.

Forensic Pathologist – a medical doctor who is specialised in conducting post mortems of human remains and coming to findings in regard to the cause of death and when the person died. The key role of the pathologists in Eugenia's trial was commenting on whether cracks in the victim's skull were caused by fire, or by violence.

Investigation and Arrest

Harry's arrest

Harry Crawford is approached by the police and taken to Central Police Station. What follows before she is arrested and charged is a game of skilful manipulation by Detective Sergeant Robson using Harry Crawford's secret as leverage to obtain evidence.

Read pages 81 - 91

- What made Harry Birkett believe that Harry Crawford had murdered his mother?
- Why did Detective Sergeant Robson not include the details about Harry Crawford's gender in the witness statements? p.83
- Why was Detective Sergeant Robson 'deliberately vague' about whether Crawford was under arrest? p.84
- What was the purpose of having Harry examined by the Government Medical Officer?
- What evidence was found when the police searched Harry's house?

Beyond Reading

Why did Crawford not challenge whether the police had arrested him? How did this help the police investigation?

Police seek help from the public

Read pages 97 - 99

The police sought help in gathering evidence for the trial. This occurred after Eugenia was arrested and led to a number of witnesses who had observed Harry at home and in the vicinity of the Lane Cove River Park on the weekend the murder was alleged to of occurred.

Eugenia taken to see Annie's Remains

Read page 100

Annie's body is exhumed for a second autopsy. Eugenia is taken by the police to the morgue to see the remains.

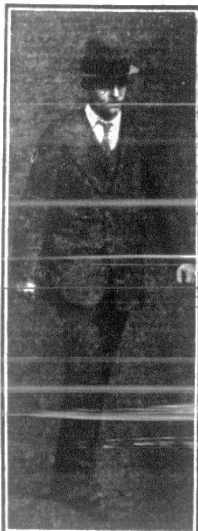
What was the purpose of taking Eugenia to see the exhumed remains of Annie Birkett? Was this necessary or ethical?



Harry Birkett

Harry Birkett was ten years old at the time his mother, Annie, married Harry Crawford. He lived with his mother and stepfather in Balmain, and left school at fourteen to work full time for a grocer. After Annie's disappearance, Harry Birkett accepted the fact that his mother had fled her troubled marriage and he was placed, by Harry Crawford with an Italian family who knew Harry's secret and family background. In April 1920, a member of the family told Harry Birkett that his stepfather was in fact a woman dressed as a man. This prompted Harry Birkett to contact his aunt, Lily Nugent, and the police regarding his mother's disappearance. He testified at the trial and was a key witness in establishing that the body discovered in the Lane Cove River Park was that of his mother, Annie Birkett.

Photographing Eugenia



Eugene Falleni



EUGENE FALLENI.
(latest photograph.)

The photographs of Harry Crawford, Eugenia Falleni and Jean Ford present an interesting paradox for the viewer.

The two images to the left are photographs of Eugenia published in the *Daily Telegraph* and *The Sun* newspapers around the time of her first court hearing. They were used by the police to seek witnesses to place her in the Lane Cove River Park around the time of death.

Question: *Why was it unfair that the police arranged for Eugenia to be photographed in male clothing for her first court appearance?*

Image 1 is Eugenia Falleni, taken between 1910 and 1912 in Sydney.

Image 2 was taken on the day of Eugenia's arrest. Would you have thought this was a photograph of a man if you did not know it was a woman?

Image 3 shows Eugenia two weeks after the trial in Longbay Gaol.

Image 4 shows Jean Ford, in Long Bay Gaol after eight years in prison.



Image 1: 1910 - 1912



Image 2: 5 July 1920

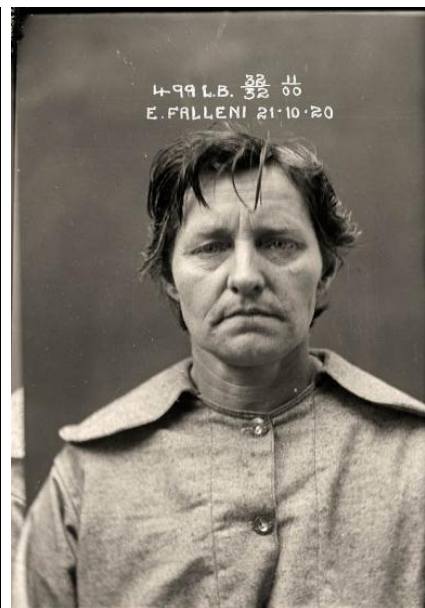


Image 3: 21 October 1920



Image 4: 16 August 1928

Murder in the 1920s and Today

The following table contains sections defining the offences of homicide in the *Crimes Act 1900 (NSW)*:

In 1920	In 2012
<p>S18 (1) (a) Murder shall be taken to have been committed where the act of the accused, or thing by him omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him, of an act obviously dangerous to life, or of a crime punishable by death or penal servitude for life.</p> <p>(b) Every other punishable homicide shall be taken to be manslaughter.</p> <p>(2) (a) No act or omission which was not malicious, or for which the accused had lawful cause or excuse, shall be within this section.</p> <p>(b) No punishment or forfeiture shall be incurred by any person who kills another by misfortune only, or in his own defence.</p>	<p>S18 (1) (a) Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.</p> <p>(b) Every other punishable homicide shall be taken to be manslaughter.</p> <p>(2) (a) No act or omission which was not malicious, or for which the accused had lawful cause or excuse, shall be within this section.</p> <p>(b) No punishment or forfeiture shall be incurred by any person who kills another by misfortune only.</p>

Glossary

Actus reus – **‘the guilty act’**. This is the physical element of a crime. It is an action (or inaction) by the accused. For example, in establishing murder it must be proved that the accused’s action (or inaction) lead to the victims death.

Mens rea – **‘the guilty mind’**. This is the mental element of a crime. It refers to the accused’s intent at the time of the commission of the *actus reus*. For murder it must be proved that the accused intended to kill or cause grievous bodily harm or was reckless as to whether their action would lead to the death of the victim.

Standard of proof – the degree to which the prosecution must prove the accused is guilty of an offence. The standard of proof in criminal trials is *beyond a reasonable doubt*.

Defining Murder

Read the definitions of murder above and the glossary.

- How was murder defined in 1920?
- How is murder different to manslaughter? (Elements of the offence)
- What is the prosecution required to prove?
- What is the standard of proof in a criminal trial (see p.xxx)?
- Distinguish between the penalty for murder in 1920 and today.

The Jury Trial Today

The trial of Eugenia Falleni was quick by today's standards. In the 1920s a two day trial was considered to be a long trial. Today criminal trials for murder can run for as long as two months or more depending on the complexity of the evidence, and length of advocate's addresses and examination of witnesses. Jury trials in the 1920s required a unanimous verdict, that is, all 12 jurors must find the defendant guilty, whereas in New South Wales today, majority verdicts can be allowed by the judge which require only 11 of the 12 jurors to find the accused guilty or not guilty.

Read pages 232 – 233

- Why do you think murder trials now take much longer than they did in the 1920s?
- What is the author's opinion regarding the length of criminal trials?
- What does the author say in regard to the jury system?



The cells underneath the Central Police Station. The cells are essentially the same as they were in the 1920s and are still used to hold the accused before they are taken to the dock in the court rooms at the Central Police Court (now the Central Local Court). See the tour of Eugenia's Sydney at www.eugeniafalleni.com.au for Mark Tedeschi's QC's tour of the Central Police Station, the cells, and the Central Local Court in Liverpool Street, Sydney.



The Central Criminal Court in Darlinghurst, 2011.

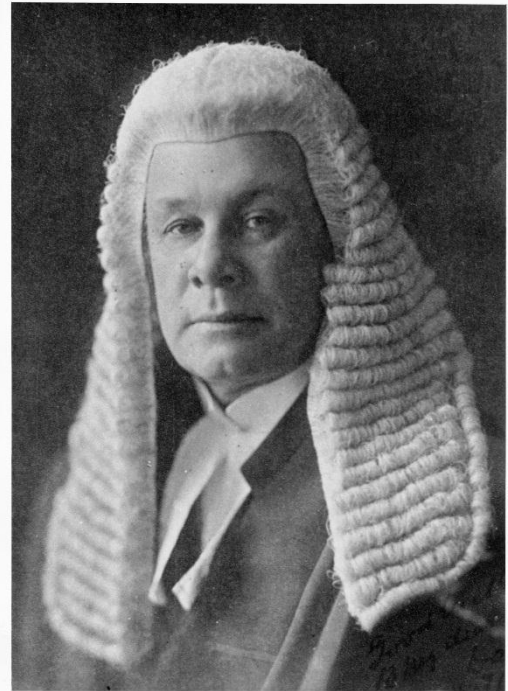
The Trial

Coyle KC's opening address

The Senior Crown Prosecutor's opening address to the court framed the case for the jury by telling the prosecution's version of events with reference to the evidence and witnesses that were to be called and the motive for the crime.

Read pages 125 to 131.

- Why did the Chief Justice remind the jury that the accused was on trial for murder and not sexual perversion? (p.125)
- What did the prosecutor, William Coyle KC, see as the main difficulty in prosecuting the case? (p.126)
- What did Coyle suggest was Eugenia's motive for murdering Annie? (p.127)
- Which facts did Coyle believe he could prove beyond a reasonable doubt? (p.128)
- Summarise the key points of the prosecution's case. (p.129)
- Of the seven fractures identified in the skull of Annie Birkett only one was considered to be caused by violence, the other six by fire. Why was it important that the prosecution convince the jury the fracture was due to violence?



William Coyle KC

Bill Coyle KC was the first Senior Crown Prosecutor of New South Wales, and was appointed King's Counsel (KC) in the month before the trial of Eugenia Falleni. He had a reputation in the legal community and the media, for captivating and engaging juries, and had earned his nickname 'the bulldog' because of his tenacious and clever cross-examination of witnesses. He prosecuted the Crown's case in the trial of Eugenia Falleni and again represented the Crown when the case was appealed.

Family Witnesses

Lily Nugent, Annie Birkett's sister, and Harry Birkett, Annie's son, testified at the trial against Eugenia. They were critical in establishing that the body found was Annie's and that the relationship between Annie and Harry had been strained.

- Lily Nugent, Annie Birkett's sister, was called as the first witness. Coyle KC, the prosecutor, asked her to look at a brooch, and a necklace with a heart shaped pendant. What was the purpose of asking her to examine this evidence? (p.135)
- Read the exchange on pp.135-6 between Coyle KC and Lily Nugent. Why did Coyle not ask a further question about Lily's conversation with Annie?
- What did McDonnell's decision not to question Lily Nugent's identification of the evidence indicate to the prosecution?

Sighting Witnesses and the Displacement effect

Read pages 145 – 148

It was three years from the events in the park to Eugenia's trial. Witnesses who testified during the trial had a key role in establishing Harry Crawford's presence in the area at the time of the murder, but would their testimony be allowed as evidence today?

- What is the displacement effect?
- What is the media's special responsibility?
- Summarise the factors which affect the reliability of a witness.

Sighting Witnesses

Read pages 148 and 149.

The following is a summary of the evidence presented by each sighting witness called during the trial.

Mrs Irene Carroll	Mr James Hicks	Mr James Woodbury
<p>3pm Friday saw a man sitting on a rock with his head in his hands</p> <p>Later, saw the same man walking in the direction of where the body was found.</p> <p>Identified the accused in a line up of 20 men, but had seen the accused photograph in the newspaper</p>	<p>Between 5.30am and 7am on Sunday saw a man walking towards the spot where the body was found.</p> <p>Taken, along with the accused, to the site where the body was found, and to the paper mills where he pointed out where he saw the accused.</p> <p>Admitted to identifying the accused after seeing his photograph in the newspaper.</p>	<p>At 7am on Sunday saw a man walking toward the spot where the body was found.</p> <p>Identified the accused for the first time in court.</p> <p>Despite working as a watchman at the paper mills he did not mention seeing the man to authorities when they found the body.</p>

Selection of Witnesses

Read page 150 and 154

- Identify the TWO problems with the sighting witnesses' testimony.
- Identify the inconsistencies in the testimony of the witnesses.
- How did Coyle KC intend to overcome the inconsistencies in the witnesses' testimony?

Examination of the pathologists

Read pages 157 to 160.

- What did Drs Palmer and Sheldon suggest had led to Annie's death?
- Identify TWO ways in which McDonnell challenged the expertise of Dr Palmer.
- Why was the evidence relating to the blisters and the cracks in the skull key to the defence case?

Examination of Robson

Read pages 171 to 175.

- What do most 'non-lawyers' not know about the right to silence?
- Why was the dildo a relevant object to admit into evidence?
- What were the issues with introducing the revolver as evidence?

The Defence Case

The defence case was inadequate and did not include any expert witnesses to counteract the weight of expert knowledge offered by the Crown's pathologists, or the sighting and police witnesses. The courts in the 1920s allowed the accused to make a dock statement at the start of the defence case. Their statement could not be cross-examined by the prosecution and allowed the accused an opportunity to sway the jury in their favour.

Read pages 176 to 179

- What is a dock statement?
- What was done to prepare the accused to make a dock statement?
- What were the limitations of Eugenia's dock statement?
- Read Eugenia's dock statement on page 178. How effective do you think it would have been in persuading the jury of her innocence?



Eugenia Falleni and Det Sgt Robson walk into the first court hearing

Detective Sergeant Robson

Robson was the police officer who investigated the information provided by Lily Nugent and Harry Birkett about the disappearance of Annie. After obtaining the evidence regarding the unidentified body found in the Lane Cove River Park and having Harry and Lily identify the items found on and around the body as being Annie's, Robson used the information that Harry Crawford was a woman to his advantage when questioning Crawford. Following Crawford's arrest, he ran the investigation which found additional witnesses and evidence for the trial. Robson was called as a witness during the trial.

- Outline the positives and negatives of a defendant making a dock statement.
- Summarise the defence case on pages 178 to 179.
- Why was the prosecution allowed a ‘case in reply’?

Closing Addresses

*The contrast between the advocates, William Coyle KC, and Archibald McDonell is clear when looking at their closing addresses. The author provides a detailed analysis of ways in which McDonell may have suggested Annie’s death was an accident, and other compelling arguments against the prosecution’s case. The readings provide an excellent prompt for discussing the **standard of proof** in a criminal case and the right to adequate legal representation.*

- Who ‘gets the last word’ in closing addresses today?
- What was the main flaw in McDonell’s closing address?

The author states on page 183 that the criminal law does not deal in absolute certainties. Why is this so? Must the prosecution prove the exact cause of death to ensure a conviction for murder? What would have raised a reasonable doubt about the death of Annie Birkett?

Read pages 183 to 186.

- What arguments could have been offered to dispute Harry Crawford’s intent to kill Annie Birkett?
- What does the author see as the strongest argument against the prosecution’s case?
- What had the prosecution’s case failed to prove?
- Why was McDonell’s attempt at attacking the motive for murdering Annie Birkett futile?



Archibald McDonell

McDonell was a barrister, appointed by Legal Aid, who represented Eugenia at the trial. He was a relatively inexperienced and unremarkable advocate compared to William Coyle KC, but had an excellent knowledge of criminology, psychiatry and a particular interest in ‘sexual inversion’ - a crude term which combined both the qualities of homosexuality and transsexualism. While his specialist knowledge did him credit in the cross-examination of certain witnesses, his failure to object to prejudicial evidence and to capitalise on flaws in the prosecution’s case showed that he was out of his depth in representing Eugenia at her trial.

Glossary

Adversary system – a court system where advocates (usually barristers or solicitors) represent the parties and present their cases before a judge and jury. Each party's representatives can cross-examine the witnesses for the other side. The prosecution, also called the Crown, must present evidence which proves the accused is guilty. The defence can question the prosecution's evidence, and introduce evidence which raises doubt about the guilt of the accused. This system is different to the Inquisitorial system where the judge does most of the questioning in an attempt to arrive at the truth.

Chief Justice of NSW – the head of the court system in NSW. The Chief Justice is an highly experienced and eminent member of the judiciary who hears cases, directs the operation of the courts, and serves as Lieutenant-Governor of NSW.

Jury – a selection of 12 people chosen randomly from the community who listen to the evidence presented during a trial and make a decision on whether the accused is guilty or not guilty. At the start of a trial jurors can be challenged by the advocates if they feel a certain person would have an unfair prejudice against their case. A few challenges can be for no reason, but jurors can also be challenged if the advocates feel a certain person would have an unfair prejudice against their case.

Senior Crown Prosecutor – the head of the New South Wales Crown Prosecutors.

Motive – the reason suggested by the prosecution for the accused committing the crime.

Beyond a reasonable doubt – the standard of proof in a criminal trial, which is not as high a standard as scientific or absolute certainty. Traditionally, Judges will not define the meaning of this term referring jurors to the accepted dictionary definition of each term.

Examination in chief – where the advocate asks questions of witness who they have called to testify in the court. The aim of the questioning is to allow the witness to provide evidence to support the advocate's case.

Cross-examination – where an advocate asks questions of a witness originally called by the opposing party. The aim of this questioning is to discredit the evidence already given by this witness.

Dock statement – is a historical practice (abolished in NSW in 1994) which allowed the accused to make a statement to the jury at the beginning of the defence case, instead of testifying as a sworn witness. The dock statement was unsworn and not subject to cross examination. While it allowed the accused to present some positive information about themselves to the jury, it could also damage their credibility for being unwilling to face cross examination.

Case in reply – in criminal trials, the prosecution presents its case, then the defence presents a case in response. If the defence introduces evidence that the prosecution could not have anticipated, the judge will allow the prosecution to reply, which usually means to call other witnesses.

The Law Speaks: Verdict and Sentencing

The Chief Justice Instructs the Jury

Chief Justice Sir William Cullen instructed the jury after the closing addresses. He provided a summary of the evidence and sent the jurors out to decide whether Eugenia was guilty or not

Read pages 188 to 190.

- What were the three facts Chief Justice Cullen directed the jury to come to a decision about?

Verdict and Sentencing

*The 12 jurors return after an hour and a half of deliberation. A conviction for murder required a unanimous verdict, with death by hanging the **mandatory** penalty. Today, juries still preside over murder trials, however, the possibility of majority verdicts and the absence of the death penalty provide an interesting contrast with the 1920s.*

Read pages 191 to 193.

- What reasons does the author give for the jurors being under pressure to deliver a quick verdict?
- What circumstances at the Darlinghurst court house may have placed pressure on the jurors to make a decision quickly?
- Why would jurors be locked up until they had made a decision?
- What was the verdict and sentence?

The Appeal

The prosecution and defence both have the right to seek an appeal to a higher court. Archibald McDonell represented Eugenia again, six weeks later, in the NSW Court of Criminal Appeal.

Read pages 194 and 195.

- What arguments did McDonell raise during the appeal?
- What judgement did the appeal court make?
- Read pages 194 and 195 and explain why Eugenia's sentence was commuted to life imprisonment. <add image of newspaper article>



Sir William Portus Cullen

Sir William Portus Cullen KCMG LLD, was Chief Justice of New South Wales and was the judge in Eugenia Falleni's trial. He was a highly regarded and experienced judge who had been Chief Justice for a decade before the trial of Eugenia Falleni. He was known to be 'courageous in his judgements and rapid in his determination.' See *p.x of Eugenia* for more details.

The Media and Transsexualism

The media coverage of Eugenia's trial was sensational and prejudicial. The publication of a photograph of her on the day of her arrest dressed in male clothing served to prejudice her in the eyes of a society which perceived her transsexual nature as a perversion. The police appeal in various newspapers for witnesses to come forward was also highly problematic by today's standards due to the displacement effect (see p.14 of this guide).

The sensational coverage of the case surely had an effect on the juror's perceptions of the accused. While Chief Justice Cullen reminded the jury at the start of the trial that Eugenia was on trial for murder, not 'sexual perversion', it is clear from reading the newspaper articles at the time that in the media she was on trial for both.

Glossary

Prejudice – an attitude toward a person or group of people which is unfair, intolerant or based on a preconceived idea, rather than on the person's behaviour at face value.

Trial by media – a general term used to describe media coverage that suggests the accused is guilty or of such poor character that their guilt is inferred. This may prejudice a jury, or trial against the accused.

Read the excerpts quoted from *The Truth* and *The Sun* newspaper on page 108

- The article in *The Truth* from 11 July says 'working fewer hours for better money than she would have received had she 'remained' a woman'. How is this statement prejudicial?
- What does the article in *The Sun* from the 14th July say about the attention the case was receiving from the public?
- Discuss the following statement:

'The trial by media of Eugenia Falleni was as much for sexual perversion as it was for murder.'

Some points to consider in your answer:

- Newspaper articles about the case described Eugenia's appearance in great detail and showed a lack of understanding and empathy about her choice to live as a man. (see Newspaper Source Study on the next page)
- The articles implied that her dressing as a man was indicative of a deceitful nature and, by extension, would lead her to murder to defend her gender status.

Newspaper Source Study

The media coverage of before and after the trial was highly prejudicial to Eugenia and presented her living as a man as a sexual perversion. It was implied that because of her transsexual gender she was deceitful, deceptive and because of this capable of murder to protect her secret. Read the following newspaper articles, analyse the language used to describe Eugenia, and respond to the points alongside the articles.

- Is the mention of Eugenia as an Italian woman relevant to the case?

- What impression do you get from this description of Eugenia?

'In the dock she appeared distinctly nervous. With her left hand – she wears a gold band ring on the little finger – she "fiddled" with the dock rail... The face, particularly around the mouth is considerably wrinkled and suggests that she is older than her state age – 45. Her complexion is sallow, and her small eyes are brown.'

- What is the purpose of this heading?
- Discuss which information following the heading is relevant to the legal proceedings.

POSED AS MAN
EUGENE FALLENI IN COURT
CHARGE OF MURDER
A Remarkable Woman

There was a big crowd present at the Central Police Court this morning, when Eugene Falleni, an Italian woman, was presented on a charge of having feloniously and maliciously murdered Annie Birkett, on, or about October 1, 1917.

The accused woman was strangely interesting. She bore an extraordinary resemblance to a man, for facially she is masculine, and she wore a man's clothes.

In the dock she appeared distinctly nervous. With her left hand—she wears a gold band ring on the little finger—she "fiddled" with the dock rail. In her right hand she carried a grey felt hat. Her hair is almost black, clipped short, of course, and neatly brushed and parted on the left side. Her head and face are remarkably small. The face, particularly around the mouth, is considerably wrinkled, and suggests that she is older than her stated age—45. Her complexion is sallow, and her small eyes are brown.

HOW SHE WAS DRESSED

The strange woman's clothing consisted of a well-worn dark grey cloth sac suit, a white tennis shirt, and a neatly-tied green Broadway tie. Her well-polished boots seemed about size six, and were of patent leather, with dull uppers. She is of medium build.

On the application of the police, sergeant White (police prosecutor), a remand until July 14 was granted by Mr. Jennings, S.M.

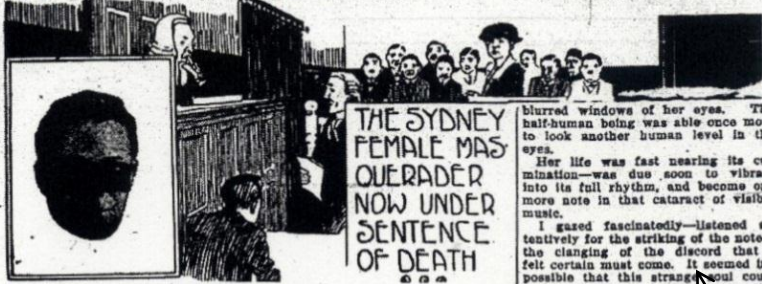
Mr. Maddocks Cohen appeared for Falleni, and said he would make no application for bail.

Sergeant White (to the Magistrate): Perhaps your Worship had better say that bail is refused. Some application for it may be made elsewhere.

Mr. Maddocks Cohen: I have no intention of asking for bail anywhere.

On the charge-sheet were Falleni's three aliases—Eugene Mariello, Harry Crawford, and Harry Leon Crawford.

THE FALLEN TRAGEDY



THE SYDNEY FEMALE MASQUERADER NOW UNDER SENTENCE OF DEATH

The Man in The Mask

He had to content itself with suffocating gusts of falsehood. So it was that a pathetic figure, longing to be man, because it knew itself no longer woman, went nervously through the days, doubly afraid of the loneliness that all souls fear, and seeking any means to win companionship, and to satisfy the fantastic curiosity of the ghoul that ruled it.

Signs of Life

In minor ways only was the stricken soul within able to give faint signs of life. There were small deeds of decency, small politenesses and generalities. There was also a crookedness of glance, showing that the usurper which peered from the windows of the eyes was forever casting quick glances behind lest the de-throned soul should leap to rebellion.

I have a friend, an old god, who, having long since retired from business, has plenty of leisure. He took me lately to an unusual sort of show, where we lounged in a dress circle seat.

The theatre was huge and the footlights looked like the Milky Way. I sat back and listened to, and gazed at, a cataract of strange music, uncertain whether I was seeing sound or hearing colour.

Visible Music

As it was the first visible music I had met, my bewilderment was natural enough. The notes of sound resembled countless pulsating multinitated butterflies, wonderfully harmonised, even the most bizarre effects swinging into perfect accord.

My friend, the retired god, explained that it was the music of life, every note being the soul of a human being.

At random I chose one note—the

blurred windows of her eyes. The half-human being was able once more to look another human level in the eyes.

Her life was fast nearing its culmination—was due soon to vibrate into its full rhythm, and become one more note in that cataract of visible music.

I gazed fascinatedly—listened attentively for the striking of the note—the clanging of the discord that I felt certain must come. It seemed impossible that this strange soul could become music that would vibrate with a single note in that vast cataract from the orchestra of life. It was too grotesque, I thought, to find other grotesqueries that would harmonise it to a chord.

I was wrong.

One Word or Two

The foreman of the jury spoke one word instead of the expected two, and changed the whole setting in attendant. I saw the other notes required to complete the bizarre chord. They were—the unseemly scarlet robes of a judge, whose voice was broken as he spoke sentence of death; the slack jaw of a yawning jurymen; the portly figure of the female witness who, referring to the accused, had said, volubly: "Yes, I know her, and she knows me," as though inviting the doomed half-human to a quarrel over the front fence of the dock; the dynamic imperturbability of the Crown counsel, who had placed another shining horse-hair in his legal halo; and, above all, the tragic calmness of the central figure—the keynote that bound these bizarre contradictions into an harmonious whole.

At that word "Guilty" those different notes had leapt instantly to their places, and the effect was a mighty chord of pain—a wall of tragedy.

Again, the Dress Circle

The tension was past. I leaned back in my seat within that theatre of life. I was once more aware of the old retired god beside me. That pulsating cataract of visible music was magnificent before me—sound to be seen, colour to be heard. I saw that tragic chord, whose keynote I had been watching, swing into and mingle perfectly with that mighty harmony of sound and colour—a fluttering pale butterfly—a shrill note of sorrow.

It faded from sight and hearing as the music roared and sobbed onward.

My friend, the retired god, remarked detachedly:—

"Mighty fine music!"

"Yes!" I agreed. "All mighty fine for retired gods, but not much fun for the poor wretch whom the composer has chosen to be the keynote of a tragic chord."



Doris (pensively): "Ah, well, when a man has seen his best days he's nearly always seen his worst as well!"

keynote of a chord just quivering to life. I watched it intently. It was the soul of Eugene Falleni.

Like all those notes of human music, it started as a butterfly thing, fluttering to the ebb of new, clean, eyes, and gazing wonderingly out to a wide panorama of life.

Time passed. The eyes blurred. That butterfly thing had shrunk back—or maybe the blurred eyes made it seem so. It was poised in an attitude of pain.

The Intruder

The body it had thought to inhabit as a mansion, wherefrom to make excursions about that wide panorama—the body it had thought to rule—was already ruled by an intruder. For that dainty soul-thing it had become but a prison.

All the while within that body there had lurked the ghoulish wrath of some unclean ancestor.

As the body grew, so that usurper had grown, an unnatural monster that bullied the timid soul-thing into surrendering its rightful sovereignty. Gloriated on this success, the ghoul had seized that frail soul, tortured it, and warped those fragile wings, so that its flights became grotesque acrobatics—tragic aerial jazes.

The windows of the eyes were more than ever blurred by the unclean dangers of that ghost, and the frightened soul seldom even tried to glance through the murkiness. Instead, it lay, bedraggled and languishing in a dark corner, its beautiful dreams and its exquisite desires torn and distorted by that evil intruder.

The body was a house divided—a tenanted mansion—an ugliness where nature hid its naked beauty in rage of bestiality.

The dwelling that had been designed for the sacred ceremonies of motherhood became a ribald clubhouse for mock rites of masculinity. The covering soul-thing was forced to witness those rites, even to participate in them, and instead of being able to breathe the clean ecstasy of

As the years passed something happened. It was the one thing I could not see distinctly. Twelve jurymen afterwards assured me they had seen it quite unmistakably.

They averred that this pathetic figure—no longer either male or female—had slain a woman. They were sure of it—so sure that they decided, all twelve of them, that this pathetic figure—this Eugene Falleni—should die.

There were other stories of that bewildered half-human thing wandering (frenziedly with the young son of the supposedly-murdered woman for the purpose of murdering him as well) if those stories were true, then that frail soul within its prison must have pleaded wonderfully with the ghoulish usurper of its demesne—for, although opportunity was made—the murderous intention did not become deed.

I still leaned far forward—still gazed intently upon that life—that human music—and was so intent upon watching its slow growth that I was still oblivious of that cataract of visible music roaring about me, and I had quite forgotten my friend, the retired god, sitting beside me.

The Trial

Next I saw Eugene Falleni on trial for the supposed murder. All the world knew now what usurpation had taken place within her; what discordance ruled that decrepit body; what ceremonies had been presided over by that unclean usurper of her soul.

I again stood beneath the hundred-gazed of curiosity, and listen to an incisive dynamic voice declaiming against her. I saw the owner of that voice, with practised dramatic gesture and well-covered disgust, cast before the eyes of her judges the grotesque symbol of her distorted longings.

The soul of Eugene Falleni was still unseen, but the power of the usurper had somewhat waned. The timid soul-thing began to stretch those warped wings, and at last even fluttered brokenly once or twice to the

This article from Smith's Weekly was written following the trial. It characterises Eugenia and her transsexual nature as a ghoulish intruder that possessed her, making her half-human, neither male nor female. What does this article show about attitudes toward Eugenia's gender?

NB: Read each column from top to bottom.

What is the effect of using the personal pronoun 'it'?

What are the 'one word' and 'two words' the foreman of the jury could speak?

Based on your knowledge of the case, would you expect the foreman to have said those 'two words'?

What does the 'ghoulish wrath of some unclean ancestor' represent? What type of prejudice is within this statement?

What does 'the body was a house divided' mean?

What is the Man in the Mask's attitude toward Eugenia's gender based on the quote below?

'an ugliness where nature hid its naked beauty in rage of bestiality.'

The Right Questions to Ask?

Eugenia's trial raises many ethical, social and legal issues. The following is a list of questions which rise from the case.

- Was the **adversary system** successful in achieving a just outcome?
 - Were the advocates representing the prosecution and defence evenly matched?
 - How important is skilled legal representation when on trial?
- Was the **criminal trial process** successful in providing a fair trial for the accused?
 - Did the way in which evidence and witnesses were obtained lead to a miscarriage of justice?
 - Was all the evidence presented relevant to the case?
- What influence did the media have on the trial?
 - What was the focus of the media coverage?
 - How was Eugenia described?
 - What effect did photographs in the newspaper of Eugenia dressed in male clothing have on the way society, and perhaps the jury, perceived her?
 - Was the coverage on Eugenia's gender in the newspapers in the public interest? Was it in the interest of justice? Was it relevant to the trial?
- Did the prosecution prove beyond a reasonable doubt that Eugenia Falleni murdered Annie Birkett?
 - What were the possibilities other than murder?
 - What were the flaws in the prosecution?
 - What were the flaws in the defence?
- Do you think Eugenia murdered Annie Birkett?

Read the author's remarks on this on p.236

References

Photographs

Images on pages 5, 6, 7, 9, 13, 16 and images 1 - 4 on page 10 are from the collection of the *Justice and Police Museum* in Sydney which is part of the *Historic Houses Trust*.

Images on page 12 by Mark Tedeschi QC.

Image on page 18: Chief Justice of NSW, Sir William Portus Cullen KCMG LLD, *NSW Supreme Court Website*, http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/pages/SCO_cjcullen, accessed July 2012.

Photograph on page 10 labelled 'Eugene Falleni': *The Sun*, 14/07/1920

Photograph on page 10 labelled 'Eugene Falleni, (latest photograph)': *The Daily Telegraph*, 15/07/1920.

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About the author of this guide

Nick Clark is a Legal Studies teacher working as the Education Coordinator of the Rule of Law Institute of Australia. He makes other resources which may be of interest to Legal Studies teachers and students. You can find them at <http://www.ruleoflaw.org.au/>

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