

**SUPREME COURT
LIBRARY
THE 50TH ANNIVERSARY OF THE RYAN
HANGING
Mike Richards**

Chief Justice Marilyn Warren, Justice Lex Lasry, distinguished guests, ladies and gentlemen.

Today marks the 50th anniversary of an event whose political and social significance is even better understood today than it was at the time.

The anniversary of Ryan's hanging is being recalled here and elsewhere as a defining moment in Australia's political and legal history: it marks the divisive event that prompted governments around the country that still retained the death penalty to cut the crimson thread running through our law and justice system and finally abolish capital punishment.

In essence, fifty years after his execution, the Ryan hanging is being remembered as a turbulent moment in our nation's history, one that inexorably led to a decisive break with a barbaric relic of our colonial past. Ryan's execution was an event that stopped the nation. But, more than that, it was an event that *changed the nation*.

There's been a great deal broadcast and published in the media this week about those historical and political aspects of the Ryan execution—and other speakers tonight will talk about that, as well.

What about some of the personal stories in this case? I'm interested in that question because—in writing my book about Ronald Ryan—I learned that the personal repercussions of his execution reached very much further than was appreciated at the time.

For the families, colleagues and friends of the murder victim and Ryan, the grief and anguish was naturally profound and enduring.

Less obviously, for those who had a role to play in the execution drama, the emotional scars ran deep, too, and 50 years on, those still with us say they'll never get over it.

Those scars have been borne by the legal team who defended Ryan, prison officials who managed his execution, anti-hanging activists who protested about it, and journalists who witnessed it, among others. Several of them who played honorable and commendable roles of that kind are with us here tonight. Two of them share this platform.

But in this place, before this audience, I want to speak about perhaps the most significant personal repercussion of the hanging—and how it was felt by a central but unlikely figure in the case: Supreme Court Justice John Starke, whose role we've just seen faithfully re-enacted in Court Four.

As many of you will know, Starke was a life-long opponent of the death penalty, and he was deeply involved in two other famous capital cases in Australian legal history. He appeared for Rupert Max Stuart in the Royal Commission inquiring into his conviction for murder in South Australia in 1958.

And he defended Robert Tait at his trial for murder in this Court in 1961. Starke famously appeared before the High Court in 1962 to secure an eleventh-hour reprieve for Tait, less than 24 hours before he was due to be hanged.

But—by a quirk of fate—Starke found himself the trial judge in Ryan’s case in March 1966.

Now, by another quirk of fate, in 1990—more than 20 years after Ryan’s execution—Starke’s path and mine crossed in an unexpected way. My wife and I were guests at a small birthday dinner with close friends (who’re with us tonight). Unbeknown to me, the other guests were Sir John Starke and his wife, Beth.

At that time, I was deep into the research for my book, but I’d always refrained from approaching Starke, as I believed it was inappropriate and against protocol to engage with a trial judge about a case—even though Starke had retired from the bench several years before.

So, I found myself at the dinner table sitting opposite the man who had presided at Ryan’s trial and was bound to pass the mandatory death sentence according to law if a guilty verdict was reached by the jury.

When Starke asked me what I was up to, I began by telling him I was writing a book about Ronald Ryan. Then I thought: ‘Well, it’s now or never!’, and so I asked if I could come and talk to him about it. Quick as a flash, he said: ‘Sure, when do you want to come?’

A fortnight later I duly drove to Starke’s house to conduct what I hoped might be a helpful interview with him about legal aspects of the trial. I was quite unprepared for what then transpired.

As I approached the front of the house I could see Starke waiting for me behind his security-screen door. ‘Good morning, Judge’, I began cheerily. Without a word of greeting, and looking anxious, Starke responded—*blurted out, almost*: ‘Do you think I did the right thing on Ryan?’

Stunned and puzzled by the question, I could only reply: ‘Judge, what do you mean?’ Showing me into his sitting room, Starke—clearly distressed—poured out the anguish he felt at having to sentence Ryan to death. More than that, he revealed to me a plan he’d devised in his mind to thwart the execution.

He then told me in detail of his attendance at the Cabinet meeting that met to consider Ryan’s fate, a meeting of Ministers to decide whether to commute his death sentence— as had become the norm in capital cases in Victoria for some years—or allow the hanging to go ahead.

I should briefly explain that it had been the practice in Victoria—but in no other Australian jurisdiction—for the Cabinet in capital cases to invite the trial judge to answer questions from Ministers about the trial, and especially the verdict. The objective was to ascertain whether there was anything that might be relevant and important to Cabinet reaching its decision on commutation.

Historically, this had been a controversial practice—certainly, in Victoria 100 years before and even in the mid-1960s in the other states—because it arguably gave rise to a perception of a breach of the separation of powers between executive and judiciary.

But Victorian judges had historically gone along to Cabinet meetings on the basis that it was an invitation—not a summons—to appear, and naturally they took their responsibilities in capital cases very seriously. Justice Starke had no qualms about accepting an invitation to the Cabinet meeting in Ryan’s case.

On the day Starke attended Cabinet, he knew that one of the questions he’d be asked would concern his judgment about the jury’s verdict. He told me it was a question that he’d dreaded and agonised about for many weeks—although his anxiety had been tempered by a lingering, irrational hope since the trial had concluded, that the government would commute Ryan’s sentence, after all.

Starke’s concern was not whether he had doubts about the validity of the verdict—for in truth he had none—but whether he should feign doubt to the Cabinet.

All of Starke’s anti-hanging convictions told him that he had an obligation to do whatever he could to avoid an execution that offended him, and which he believed to be morally repugnant.

In the weeks and months since the trial had ended, the question that had weighed heavily on Starke’s mind and that troubled him still as he entered the Cabinet room, was whether—in his words to me—he should ‘tell a lie to save a man’s life’.

Now, the core of the lie that Starke entertained in his mind—the lie that he told me about in detail—was that, as the trial judge, he would say that he considered the jury verdict was unsound.

Starke could think of a number of issues upon which he might base and express this fiction. As you know, before his appointment to the Bench in 1964, Starke had been the leading advocate at the Victorian bar, and he knew that while juries exercised their responsibilities conscientiously, the requirement in reaching a verdict ‘beyond reasonable doubt’ could be challenging and problematic.

Indeed, from his own experience as a criminal barrister, Starke knew that juries sometimes returned guilty verdicts for ‘murder’ when a finding of ‘manslaughter’ was a more appropriate one.

Although he firmly believed that the jury’s verdict in Ryan’s case was sound, Starke rehearsed in his mind the factors he would point to that might plausibly indicate to Ministers that the jury’s verdict was unsafe.

His hope was that he could put it in a way that might persuade the Cabinet to advise the Governor of Victoria to exercise the Royal prerogative of mercy and commute Ryan’s death sentence to one of life imprisonment.

In the event, when the Premier Sir Henry Bolte asked Starke if he agreed with the verdict, the judge’s innate honesty and integrity won out and he answered truthfully; he couldn’t go through with this obfuscation, his elaborate lie.

Later, Starke would worry terribly about his role in sentencing Ryan and agonise whether he could've done more to save him from the gallows.

During the course of my research, I also interviewed Starke's Associate, Ron Syme, who told me that—in his chambers on the morning of the hanging—Starke was inconsolable. He was slumped in his chair, and it took all Syme's efforts to actually get him out of his chambers and into the courtroom for a part-heard case that was due to resume.

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Sir John Starke died in 1994 at the age of 80. I'm quite sure that he worried about Ryan and his mandated appointment with the hangman until the day he died.

So, as we mark this important event in our social and legal history, and think about all those caught up in the tragedy of Ryan's escape from prison and his subsequent execution, there's a special place in my thoughts today for Jack Starke—a peerless advocate, a fine judge and a great humanitarian—who bore a very heavy burden of public duty and private conscience in having to pronounce a brutal sentence according to law.