



# The Public Defenders of NSW - An Essential Arm of the Administration of Justice

*Public Defenders Criminal Law Conference*  
9 March 2024

The Hon. A S Bell  
Chief Justice of New South Wales

# ***The Public Defenders of New South Wales – An Essential Arm of the Administration of Justice***

## **Address to the Public Defenders Conference**

**Sydney**

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**Chief Justice of New South Wales<sup>1</sup>**

### **Introduction**

- 1 In the year ending 30 June 2023, 29 Public Defenders and the Senior Public Defender, Belinda Rigg SC, offered their services as independent legal representatives for legally aided persons in NSW. Those 30 Public Defenders accepted 1,094 of 2,026 requests for legal assistance from persons granted legal aid by Legal Aid NSW, the Aboriginal Legal Service or another community legal service. This amounted to 1,775 days spent in court, including 8 High Court hearings, 32 Court of Criminal Appeal hearings, 76 Supreme Court trials, 260 District Court Trials, 211 Local Court hearings, 7 Coroner's Court appearances and 23 Children's Court matters. In relation to each of these appearances, there were countless hours of preparation and, in amongst that preparation, the Public Defenders also managed to provide legal assistance or advice to the profession on at least 192 recorded occasions and to develop important resources for the judiciary and the profession such as the *Bugmy Bar Book* and various other professional education opportunities, including today's Conference.<sup>2</sup>
- 2 In the year of the Supreme Court's bicentenary, my topic today seeks to emphasise that each institution, and not least the Public Defenders, is shaped

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<sup>1</sup> The Chief Justice acknowledges the great assistance and fine research of his Director of Research, Ms Meghan Malone, in the preparation of this paper.

<sup>2</sup> Public Defenders, *Annual Review 2022-2023* at 4-5.

by its history. The reputation that the Public Defenders have built as some of the leading criminal advocates in NSW, and indeed the nation, and as an institution of great public value is one that has been forged over time. Many public defenders have continued their contribution to the administration of justice by taking up judicial office, thereby continuing their invaluable public service.

- 3 Before continuing further, I acknowledge the Gadigal of the Eora nation and their thousands of years of care and custody of the lands upon which we meet and the surrounding waters. I also pay my respects to their elders past and present as well as to all First Nations people present today or following on the livestream. The connection between the Public Defenders and Indigenous peoples and the Office's passion for issues concerning Indigenous justice is a subject to which I will return later in this address.
- 4 The character of the Public Defenders Office has been moulded by the people who have made up the organisation. As my address will highlight, for many, their work as Public Defenders has come at a great personal cost. The psychological, intellectual and physical demands of the role are rigorous and the cases frequently confronting. Nonetheless, today's Public Defenders continue to be, as they have been throughout the organisation's history, renowned for their skill, industry, work ethic, social conscience and personal character.
- 5 For those who have been following my speeches, you will be aware that they invariably have a strong historical flavour. Institutional history has more than intrinsic interest. It is essential that those who are entrusted with institutional responsibility understand the origins of those institutions, and the forces that have shaped them. In the broader context of the criminal law in this state, we are all greatly indebted to Dr Greg Woods KC, scholar, judge and former Public Defender, for his monumental work on the history of criminal law in

New South Wales which has been an invaluable source of assistance in preparing this address.<sup>3</sup>

### **Early history of the Public Defenders in NSW (1907-1941)**

- 6 Proposals for the creation of a “public defender” in New South Wales emerged as early as 1893. On 22 July of that year, the *Bulletin*, under the editorship of the legendary J.F. Archibald, called for the appointment of a Public Defender as a bulwark against what was viewed as an “unreasoning panic” in New South Wales whereby there were increasingly more convictions, hangings and “fervour generally” against prisoners. The *Bulletin* referred to the criminal justice system in New South Wales at the time as a “miserable parody on equity” noting that the State:

“allows the prisoner, in capital cases, wherewith to prove his innocence, about one-twentieth the amount which it cheerfully spends to demonstrate his guilt – in other cases it allows nothing. On one side there are the police, the detective force, the Law Office machinery, the Crown Prosecutor, and probably an outlay of £200 or £300 in cash; and on the other there is generally nothing at all, except the prisoner locked up in gaol, and sometimes some solicitor or the other, who is allowed, probably, a total of £20, and who is required to be his own detective and police force, and all the rest of the legal machinery combined. The odds already tend to the conviction of the prisoner ...”<sup>4</sup>

- 7 Mr Arthur Griffith, Member for Sturt and a staunch supporter of the creation of a public defender, attempted on four occasions throughout the early 1900s to lay down the principle that a public defender should be appointed in all cases where a public prosecutor was appointed if the accused had no money for his defence.<sup>5</sup> Each of Mr Griffith’s proposals for a public defender was initially opposed, including by the Attorney General who said that there was no “foundation in the shape of a miscarriage of justice for this demand”. Rather, it

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<sup>3</sup> G D Woods, *A History of Criminal Law in New South Wales (Vol 2): The New State 1901-1955* (2018, Federation Press) (**A History of Criminal Law**).

<sup>4</sup> “Wanted, A Public Defender” (1893) *The Bulletin* 13(701) 4 at 4.

<sup>5</sup> New South Wales Legislative Assembly, *Parliamentary Debates* (Hansard), 31 October 1907 and 669-670.

was felt that judicial officers would prevent any wrong convictions and ensure that the prosecution's burden of proof was satisfied.<sup>6</sup>

- 8 The origins of the Public Defenders Office today in fact lie in the *Poor Prisoners Defence Act 1907* (NSW) (**Poor Prisoners Defence Act**).<sup>7</sup> Section 2 of that Act provided that:

“Any person committed for trial for an indictable offence against the laws of New South Wales may, at any time before the jury is sworn, apply to the committing magistrate, or to a judge of the Supreme Court, or to a chairman of quarter sessions, for legal aid for his defence.

If the judge or chairman of quarter sessions or the committing magistrate is of the opinion, on the facts brought before him, that such person is without adequate means to provide a defence for himself, and that it is desirable in the interests of justice that such legal aid should be supplied, he shall certify this to the Attorney-General, who may thereupon cause arrangements to be made for the defence of the accused person, and payment of the expenses of all material witnesses.”<sup>8</sup>

- 9 Previously, legal aid had only been available to defendants charged with a capital offence.<sup>9</sup> The Attorney-General at the time, Mr Gordon Wade, said in his Second Reading Speech of his motivations for bringing the *Poor Prisoners Defence Act* that:

“[I]n the past, occasions have arisen, from time to time, in which it was noticeable that many individuals charged with offences of a minor nature, who were without means, had not the capacity in themselves to put before the court the real merits of their defence. Sometimes it happened that facts were brought to light, in the course of a prosecution, disclosing strong grounds for mitigation of punishment, and at times by mere chance, we have ascertained that what looked like a clear case of conviction really had no merit behind it.”<sup>10</sup>

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<sup>6</sup> Ibid 670.

<sup>7</sup> Woods, *A History of Criminal Law* at 140.

<sup>8</sup> Section 69 of the *Judiciary Act 1903* (Cth) also allowed applicants to apply to the Commonwealth Attorney General for counsel to act for them free of charge when charged with an indictable offence under Commonwealth law.

<sup>9</sup> This is interesting given that in England historically, the common law did not guarantee a defence in capital cases. The logic behind this was that evidence should be so incontrovertible in such cases that a defence is not required: Blackstone, *Commentaries on the Laws of England (Volume 4)* at 355.

<sup>10</sup> New South Wales Legislative Assembly, *Parliamentary Debates* (Hansard), 31 October 1907 at 661.

- 10 In this respect, the *Poor Prisoners Defence Act* was a positive step towards the legal aid system that exists today.<sup>11</sup> By 30 July 1908, 16 accused persons had applied for legal assistance pursuant to the *Poor Prisoners Defence Act* and 10 of those applications were granted.<sup>12</sup>
- 11 However, the scheme had considerable deficiencies. In particular, there were concerns about the consequences of leaving the provision of legal aid at the discretion of the judiciary, both because it may leave some accused persons without aid and because the process of determining whether a person should be entitled to aid was a source of further delay of the trial process.<sup>13</sup> When the *Poor Prisoners Defence Act* was debated, the creation of a public defender, with an independent ability to determine whether or not an accused person required legal assistance and a regular salary, was proposed as an efficient and effective solution to these issues. However, the proposal was opposed on several bases, including that the public defender might “receive his fees without defending the prisoner”. Although Mr Griffith condemned these arguments as demonstrating a “pathetic” level of confidence in the profession,<sup>14</sup> the *Poor Prisoners Defence Act* was ultimately passed without any public defender being statutorily appointed.
- 12 Following the passage of the *Poor Prisoners Defence Act*, many accused persons facing long prison sentences continued to appear in courts unrepresented.<sup>15</sup> The first applications made pursuant to the *Poor Prisoners Defence Act* in January 1908 by Leslie Harris and Louis Perkins were refused on the basis that they failed to show that it was in the public interest for counsel to be assigned by the Crown.<sup>16</sup> More than 20 years later, Agnes Jones, a 65 year old Aboriginal woman, was refused legal aid in her 1929 trial for the assault of a fellow prisoner on the basis that, despite her inability to

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<sup>11</sup> Woods, *A History of Criminal Law* at 141.

<sup>12</sup> New South Wales Legislative Assembly, *Parliamentary Debates* (Hansard), 30 July 1908 at 299.

<sup>13</sup> “Poor Prisoners Defence Act. Remarks By a Judge. Need for Amendment” *Sydney Morning Herald* (15 October 1908) at 13.

<sup>14</sup> New South Wales Legislative Assembly, *Parliamentary Debates* (Hansard), 31 October 1907 at 675.

<sup>15</sup> Woods, *A History of Criminal Law* at 146.

<sup>16</sup> “The Poor Prisoners Defence Act: An Application for Counsel Refused” *The Australian Star* (21 January 1908) at 7.

fund a defence herself in circumstances where she alleged her conduct was in self-defence, the trial judge found her to be “bad-tempered and quarrelsome”.<sup>17</sup>

- 13 In order to deal with some of the deficiencies of the *Poor Prisoners Defence Act*, in 1938, the New South Wales Bar Association developed a “dock brief” system whereby prisoners in custody awaiting trial able to pay a small fee could brief counsel by selecting from an array of willing counsel. However, prisoners were only permitted to view the backs of counsel in making their selection.<sup>18</sup> Although a “dock brief” system had been successful elsewhere in the world and had some success in New South Wales, it was sometimes criticised as “undignified” and many accused still lacked the requisite fee to obtain representation this way. These criticisms of the “dock brief” system meant that, at the opening of the April sittings of the Quarter Sessions in 1939, no junior barristers were available to the four accused appearing in the Darlinghurst courts that day,<sup>19</sup> an illustration of the unsatisfactory arbitrariness of the system. However, the “dock brief” system persisted in some form into the 1960s.<sup>20</sup>

### **The Public Defender as an administrative office (1941-1969)**

- 14 In 1941, a new Attorney General, Mr Clarrie Martin QC, took office and sought to reform the criminal justice system in New South Wales. He was Attorney General for almost 12 years under the famous Premierships of William McKell, James McGirr and Joseph Cahill.
- 15 In addition to making some small administrative reforms to the “dock brief” system, one of his first acts as Attorney General was to appoint the first Public Defender. The office could not be statutorily created due to the strong support for the private bar then held by the upper house of Parliament. As such, Attorney General Martin used his ministerial powers to establish the office

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<sup>17</sup> H Ireland, “The case of Agnes Jones: tracing Aboriginal presence in Sydney through criminal justice records” (2013) 10(3) *History Australia* 236 at 244.

<sup>18</sup> Woods, *A History of Criminal Law* at 653.

<sup>19</sup> *Ibid* 654.

<sup>20</sup> Public Defenders, *Annual Review 2001-2002* at 5.

within the Law Department and provided that appointments to that office would be the responsibility of the Public Service Board.<sup>21</sup> Attorney General Martin said of the new administrative office:

“The appointment of a Public Defender will be a considerable advance in the criminal jurisprudence of N.S.W., where the State’s obligation to provide for the defence of its less fortunate citizens is recognised.”<sup>22</sup>

- 16 The appointment of a public defender was not only justified by the government of the day on the basis that it would ensure fairness for the individual. It was also posited as a means of generating considerable savings of public money and improving the efficiency of the criminal justice system generally by expediting important trials.<sup>23</sup> Mr Martin said in the Legislative Assembly on 24 July 1941 that:

“for too long in this State many people without adequate defence have stood in danger of losing their freedom, and the Government believes that a time such as this, when we are striving for democracy and freedom, the rights of individuals should be preserved.”<sup>24</sup>

Martin himself would see service in New Guinea and other posts from 1942-1945 while continuing in office as Attorney General<sup>25</sup> but it is interesting to note the connection he drew between the need for proper representation of accused persons and the broader issues of freedom being defended in the theatre of war.

- 17 Later in 1941, Mr Gordon Champion, former Deputy Clerk of the Peace, was appointed as the first Public Defender.<sup>26</sup> As the *Daily Mirror* on 22 August 1941 put it, “Legal precedent for N.S.W. will be established at the Darlinghurst

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<sup>21</sup> Woods, *A History of Criminal Law* at 658.

<sup>22</sup> “Public Defender to be Named Soon” *Daily Mirror* (22 July 1941) at 2.

<sup>23</sup> “Public Defender to be Appointed” *Daily Telegraph* (22 July 1941) at 7.

<sup>24</sup> Legislative Assembly of New South Wales, *Parliamentary Debates (Hansard)*, 24 July 1941 at 40.

<sup>25</sup> “Cabinet Minister as Soldier” *Daily Mirror* (23 July 1943) at 4.

<sup>26</sup> “History of the Public Defenders” *The Public Defenders*

<[7](https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_aboutus/public_defenders_history.aspx#:~:text=There%20has%20been%20a%20Public,by%20Clarrie%20Cullen%20in%201953.>.</a></p></div><div data-bbox=)



Court next Tuesday when barristers retained by the Crown will appear respectively for the prosecution and for the defence.”<sup>27</sup>

- 18 Mr Champion’s first appearance involved a case of assault occasioning actual bodily harm. The Crown alleged that 50 year old George William Hutchinson had drawn a knife and inflicted wounds on 71 year old Robert Thompson’s neck in an argument over the “right to use a kettle” before striking Mr Thompson three times with the kettle. The jury returned a not guilty verdict without even leaving the box.<sup>28</sup> In another case, Mr Champion succeeded in convincing a jury that a man who had administered a number of hypnotic tablets to his wife and then also taken the tablets in performance of a suicide pact was not guilty of attempted murder after both parties to the pact survived.<sup>29</sup>
- 19 Within just over a month, the aptly named Mr Champion had secured 8 acquittals in all 8 of the cases in which he appeared.<sup>30</sup> He became somewhat of a household name, with his profile even featuring in the *Australian Women’s Weekly*.<sup>31</sup>
- 20 One of the grounds upon which the creation of a public defender was opposed at the time at which the *Poor Prisoners Defence Act* was debated in 1907 was that, as put by Mr William Robson, then the Member for Ashfield, it would be impossible to have “one public defender ... going about like a spring-heeled jack with 16 league boots, hopping about from court to court defending poor prisoners at Darlinghurst, and at the circuit courts and quarter sessions in the country.”<sup>32</sup> However, it would seem that is what Mr Champion ultimately accomplished. Although his winning streak couldn’t last forever, by

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<sup>27</sup> “Public Defender Will Make Legal History” *Daily Mirror* (22 August 1941) at 7.

<sup>28</sup> *Sydney Morning Herald* (15 September 1941) at 2

<sup>29</sup> “Man Acquitted in Poison Case” *Sydney Morning Herald* (6 September 1941) at 15.

<sup>30</sup> *Ibid.*

<sup>31</sup> (27 September 1941) at 2.

<sup>32</sup> New South Wales Legislative Assembly, *Parliamentary Debates* (Hansard), 31 October 1907 at 680.

the end of 30 June 1944, his acquittal rate remained above 65% in jury trials and 78% in appeals.<sup>33</sup>

- 21 More than winning cases however, it seems that Mr Champion's work had a real impact on the lives of many people from disadvantaged backgrounds across the state. In one case of a boy younger than 15 who pleaded guilty to five charges of housebreaking after spending the greater part of 7 years in state institutions from which he had escaped on 6 occasions, Mr Champion was said to have been "moved by the story" and offered to Judge Markell that he discuss reform measures with the boy. Judge Markell thereafter remanded the boy until later in the week and remarked that, "The boy may think the whole community is against him. That is wrong. I will give him a chance if I can help him."<sup>34</sup>
- 22 Mr Champion's work as Public Defender was also aided by the establishment of the office of the Public Solicitor in 1943. It was responsible for granting legal assistance to persons of limited means in both civil and criminal matters. Solicitors of the Office of the Public Solicitor often appeared in criminal matters or instructed the Public Defender or other barristers.<sup>35</sup> The Public Solicitor could provide legal aid to a person where satisfied that they were not entitled to a property of a total value of more than 100 pounds.<sup>36</sup>
- 23 After only four years in the role, the state's first Public Defender, Gordon Champion, died suddenly, aged only 47. Mr Champion was on his way to the Darlinghurst Courts where five men were on trial for charge of conspiracy concerning clothing coupons.<sup>37</sup> He had been reportedly told by medical professionals that he must reduce his enormous workload due to his health.<sup>38</sup> His death was mourned across the state and was acknowledged in the

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<sup>33</sup> "Legal Aid a Success" *Daily Mirror* (27 July 1944) at 2; "Mr Champion Lives Up To His Name" *Daily Mirror* (31 July 1942) at 5.

<sup>34</sup> "Six Escapes by Boy Delinquent" *Daily Mirror* (19 September 1944) at 2.

<sup>35</sup> *Legal Assistance Act 1943* (NSW).

<sup>36</sup> *Ibid* s 6(4).

<sup>37</sup> "Missing Exhibits Mystery" *Daily Mirror* (3 December 1945) at 2.

<sup>38</sup> "Mr Gordon Champion: Sudden Death On Way to Work" *The Cumberland Argus and Fruitgrowers Advocate* (22 August 1945) 3.

Quarter Sessions by Judge Barton and the prosecutor in the conspiracy trial.<sup>39</sup>

- 24 This commitment to justice, often at great personal expense, remains present in the Public Defenders Office today. The late Judge Peter Zahra SC was well-renowned for upholding the Public Defenders' reputation for working tirelessly and taking on the most difficult cases. Judge Zahra was the Senior Public Defender from 2001 until 2007 when his Honour was appointed to the District Court bench. His Honour first joined the Public Defenders in 1989 and was appointed as a Deputy Senior Public Defender in 1999. After his appointment to the bench, Judge Hock recalled that Judge Zahra often lamented that his chambers were in the "Crown prosecutors' wing" of the Court and that he was "outnumbered".<sup>40</sup> That quip aside, the judicial oath to serve without fear or favour, affection or ill-will was steadfastly adhered to not only by Judge Zahra but all public defenders who have proceeded to the Bench.
- 25 In his capacity as Senior Public Defender, Judge Zahra appeared in many major murder and drug trials, including for Kathleen Folbigg whose trial and conviction in relation to the deaths of her four children was one of the most highly publicised in the state. Justice Button said of Judge Zahra that "he was selfless and self-deprecating but he did murder trial after murder trial and they were the toughest ones. Really."<sup>41</sup> Peter Zahra's extraordinary work ethic continued on the District Court and I fear contributed to his premature and tragic death.
- 26 Returning to the history, although throughout the 1940s and 1950s demand for legal representation by the Public Defender increased,<sup>42</sup> the vast majority of criminal cases before the courts involved unrepresented defendants or private barristers and solicitors and the public remained doubtful about the

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<sup>39</sup> "Collapse on Way to Trial" *Daily Mirror* (17 August 1945) at 2.

<sup>40</sup> A Bonnor, "The decent best: the late Judge Peter Zahra" *BarNews* (Winter 2022) <<https://bn.nswbar.asn.au/article/the-decent-best-the-late-judge-peter-zahra>>.

<sup>41</sup> *Ibid.*

<sup>42</sup> "Legal Aid A Success" *Daily Mirror* (27 July 1944) at 2.

role that state provided legal assistance might play.<sup>43</sup> After Gordon Champion's passing in 1945, Mr F.W. (Fred) Vizzard QC was appointed to the role.<sup>44</sup> Prior to his appointment, he had also been the Deputy Clerk of the Peace and had in fact appeared against Mr Champion on behalf of the Crown in several cases.<sup>45</sup>

- 27 Mr Vizzard, who would lead the Public Defenders for 21 years until his retirement in 1967, played a critical role in changing the public perception of the Public Defenders. During his time as a Public Defender, Mr Vizzard represented an estimated 4,000 people, including in many murder trials.<sup>46</sup>
- 28 In 1961, Mr Vizzard took on the case of notorious child kidnapper and murderer, Stephen Leslie Bradley. Bradley was tried and convicted of the kidnapping and murder of Graeme Thorne, an eight year old boy whose father had won 100,000 pounds in the 1960 Sydney Opera House lottery. The *Sydney Morning Herald* described Mr Vizzard as having "hacked at an impenetrable wall of circumstantial evidence" in the case and as being, next to Bradley, the most hated man in Sydney.<sup>47</sup>
- 29 On the occasion of Mr Vizzard's last appearance in the Quarter Sessions, judges, barristers and solicitors gathered to pay tribute to his work. Judge Amsberg reflected that even though Mr Vizzard lost in the Bradley case, "Mr Vizzard fought valiantly every step of the way, giving to his clients his best, exciting the admiration of all those who saw and heard him".<sup>48</sup> Shortly after Mr Vizzard's passing, the Court of Criminal Appeal on 14 December 1971, comprised of Justices McClemens (the first Chief Judge at Common Law), Brereton and O'Brien, paid tribute to his work. Justice McClemens said that

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<sup>43</sup> Woods, *A History of Criminal Law* at 666.

<sup>44</sup> "History of the Public Defenders" *The Public Defenders*

<[<sup>45</sup> See, eg "Free Renters Guilty: Two Go To Gaol" \*The Sun\* \(14 July 1942\) at 2.](https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_aboutus/public_defenders_history.aspx#:~:text=There%20has%20been%20a%20Public,by%20Clarrie%20Cullen%20in%201953.>.</a></p></div><div data-bbox=)

<sup>46</sup> "Former Public Defender dies" *Sydney Morning Herald* (14 December 1971) at 8.

<sup>47</sup> "Along gaol corridors: 'Get a Public Defender'" *Sydney Morning Herald* (18 May 1967) at 2.

<sup>48</sup> "A public defender for 21 years" *Sydney Morning Herald* (14 October 1967) at 8.

Mr Vizzard had set an outstanding example in his advocacy for his clients, irrespective of who they were or what offences they were accused of.<sup>49</sup>

- 30 Under Mr Vizzard's leadership, the Public Defenders built a reputation among prisoners and the public alike as an efficient and effective avenue for obtaining legal representation. Simultaneously, demand for legal aid increased. In 1965, around 1000 people charged with serious offences sought legal aid. That figure rose to around 1,200 in 1966 and was estimated to increase by a further 600 applications in 1967.<sup>50</sup> However, the then three Public Defenders could not meet this demand and the overflow was assigned to private bar. Although the Registrar of the NSW Bar Association who was responsible for arranging private representation in these cases tried to find the best possible representation in these cases, in 1966, only 70 of the 430 counsel at the bar in New South Wales took on the overflow cases. None of those barristers were Queen's Counsel. It also remained possible throughout the 1960s for accused persons to obtain a "dock defence" for \$6.30 per day.<sup>51</sup>

### **Public Defenders as a statutory office (1969-1995)**

- 31 Following Mr Vizzard's retirement, there were still only three public defenders – Mr C.D. (Clarrie) Cullen, who had been appointed in 1953 following 25 years' service in the Crown Solicitor's Office and who was responsible for many of the regional matters,<sup>52</sup> and Mr H.F. Purnell AM QC, who went on to become the first statutorily appointed Public Defender, and Mr E.F. Byron. Mr Purnell recalled in a lecture delivered at the University of Sydney in 1975 that throughout this period, he was taking on an average of 150 cases a year and sometimes, as many as 200.<sup>53</sup>

- 32 The growth of the Public Defenders was facilitated by the passage of the *Public Defenders Act 1969 (NSW) (1969 Act)* which established the Public

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<sup>49</sup> "Tribute to former defender" *Sydney Morning Herald* (15 December 1971) at 17.

<sup>50</sup> "Along gaol corridors: 'Get a Public Defender'" *Sydney Morning Herald* (18 May 1967) at 2.

<sup>51</sup> *Ibid.*

<sup>52</sup> "Second Public Defender" *Newcastle Morning Herald and Miners' Advocate* (31 October 1953) at 1; Woods, *A History of Criminal Law* at 665.

<sup>53</sup> H.F. Purnell QC, "The Role of the New South Wales Public Defenders" (Lecture, Sydney University Law School, 13 August 1975) at 6.

Defender as an independent statutory office. The *1969 Act* passed with bipartisan support. Mr McCaw, then Attorney-General, said of the bill during his Second Reading speech:

“For a long time the need for the State to provide legal assistance has been recognized on two grounds: first that a person held in custody and charged with serious crime should have the help of a trained legal adviser, and second that it is in the interests of the State, for smooth and efficient administration of justice, that legal assistance should be provided in these cases.”<sup>54</sup>

33 By s 4 of the *1969 Act*, any person charged with or desiring to appeal from a conviction for an indictable offence could apply to the Attorney-General or a “prescribed officer” for legal assistance from the Public Defenders. That person was to be granted such assistance if it appeared “that the applicant’s means are insufficient to enable him to provide or to continue to provide adequate legal assistance for himself”.<sup>55</sup> No specific means test was provided for.

34 The *1969 Act* also provided that Public Defenders must be barristers<sup>56</sup> (earlier public defenders, including Messrs Champion, Vizzard, Cullen and Purnell, had been Crown Law Officers)<sup>57</sup> and created a mandatory retirement age of 70.<sup>58</sup>

35 Most importantly, the *1969 Act* removed the appointment of Public Defenders from the jurisdiction of the Public Service Board. Instead, the power to appoint Public Defenders was conferred upon the Governor, thereby ensuring that the Public Defender was a statutory position with complete independence.<sup>59</sup> The Attorney-General said of this element of the *1969 Act*:

“With our population growing annually, and fairly rapidly, by the coming of immigrants to our shores, some of whom do not yet fully understand our legal system and its implications, it is tremendously important that they as well as

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<sup>54</sup> New South Wales Legislative Assembly, *Parliamentary Debates* (Hansard), 9 September 1969 at 745-746.

<sup>55</sup> *1969 Act*, s 4(3).

<sup>56</sup> *Ibid* s 3(2).

<sup>57</sup> H.F. Purnell QC, “The Role of the New South Wales Public Defenders” (Lecture, Sydney University Law School, 13 August 1975).

<sup>58</sup> *1969 Act*, s 3(3).

<sup>59</sup> *Ibid* s 3(1).

people who have lived here all their lives, when they go into court charged with serious crime, should have no reserve in their minds about the position of the lawyer who is appointed to defend them. That is particularly so when the appointment to defend is made by the Crown, which itself prosecutes.”<sup>60</sup>

36 Not long after the passage of the *1969 Act*, Mr Purnell also persuaded the Attorney General to establish a floor for the Public Defenders in Phillip Street such that they would also be physically independent from the Attorney General’s Department.<sup>61</sup>

37 Prior to his appointment as a Public Defender, Purnell had, like Champion and Vizzard, been a chief instructing officer for the Crown. When asked how he found the transition between the two officers, he remarked that “it is a remarkable thing, a tribute to our system I suppose, but no matter which side I’m on, win or lose, justice seems to prevail.”<sup>62</sup> The importance of Public Defenders having prosecutorial experience and vice versa is a subject to which I will return.

38 Mr Purnell, who was later described as having “[written] the book on criminal law”,<sup>63</sup> seems to have been an eccentric character. He was described as having a “purple-tinted wig” on account of his wife spraying it with hairspray “to remove its new-boy look”. After a brief period of service as a policeman, he joined the RAAF where he served during World War II. Mr Purnell was the first non-Soviet serviceman to enter Hitler’s Berlin bunker where he, after bribing the Russian guards, managed to souvenir a set of Hitler’s door handles, a fact that emerged at his retirement dinner when the Chief Justice was present.<sup>64</sup>

39 The *Sydney Morning Herald* on 18 May 1967 gave the following account of Mr Purnell’s advocacy style:

“... he is probably the most *emotional* barrister at the N.S.W. Bar. In the tense atmosphere of a murder trial his short, taut frame leans forward and his wide forehead furrows and he explodes a barrage of rattling questions. Suddenly

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<sup>60</sup> New South Wales Legislative Assembly, *Parliamentary Debates* (Hansard), 9 September 1969 at 746.

<sup>61</sup> Woods, *A History of Criminal Law* at 666.

<sup>62</sup> “Along gaol corridors: ‘Get a Public Defender’” *Sydney Morning Herald* (18 May 1967) at 2.

<sup>63</sup> “Final farewell for staunch defender” *The Sydney Morning Herald* (17 July 1993) at 15.

<sup>64</sup> *Ibid*; “Now it’s Hitler’s doorknobs!” *Sydney Morning Herald* (22 May 1983) at 22-23.

realising he is thumping the table and shouting, he stops to compose himself, his voice modulates to a plaintive whisper, a cry for the humanities underlying all jury cases – a man passing judgment on a man.”<sup>65</sup>

40 One of Mr Purnell’s most famous cases was that of Georgina Marie Hill, known as the “Bird Lady”.<sup>66</sup> Ms Hill was convicted murder after she shot her de facto husband on 19 December 1979. On appeal, Street CJ held that there was a “significant volume of evidence adduced before the jury establishing the propensity of the deceased towards unpleasantly violent conduct when affected by drink.”<sup>67</sup> Mr Purnell raised several grounds of appeal, the principal being that the murder conviction was unsafe and unsatisfactory in light of the evidence of the history of violence by the deceased towards Ms Hill.

41 In upholding the appeal, quashing the conviction for murder and substituting for it a verdict of guilty of manslaughter, Street CJ concluded:

“The unsafe and unsatisfactory overtones of the verdict are manifest in the strong case of provocation which can be perceived from the objective statement of the undisputed facts. This was a case in which, from the human point of view, the appellant can receive a significant measure of understanding in having ultimately lost her self-control after a prolonged period of intense emotional strain. It is difficult to accept that she should be regarded as a murderess to be called upon in consequence to suffer the mandatory sentence of life imprisonment.”<sup>68</sup>

His Honour went on to sentence Ms Hill to four and a half years imprisonment, a shorter sentence which was intended to give full effect to the strong subjective circumstances of the case.<sup>69</sup>

42 The case has a modern resonance in view of the imminent passage of the *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW).<sup>70</sup>

43 Mr Purnell also remains the only barrister to argue and win two High Court appeals on the same day – the *Veen (No 1)*<sup>71</sup> and *Maric*<sup>72</sup> cases in 1978.

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<sup>65</sup> “Along gaol corridors: ‘Get a Public Defender’” *Sydney Morning Herald* (18 May 1967) at 2-3.

<sup>66</sup> *R v Hill* (1981) 3 A Crim R 397.

<sup>67</sup> *Ibid* at 398.

<sup>68</sup> *Ibid* at 401.

<sup>69</sup> *Ibid* 403.

<sup>70</sup> *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW).

<sup>71</sup> *Veen v The Queen* (1979) 143 CLR 458; [1979] HCA 7.



*Veen* involved a twenty year old offender, Richard Veen, who was a sex worker in Kings Cross. He had Aboriginal heritage, although he felt rejected by both the black and white communities, was sexually assaulted by a school teacher whilst still a teenager, was homeless and parentless, had a substantial criminal history, and suffered brain damage which triggered violence when he drank alcohol. Veen was charged with murder after he stabbed a client, with whom he had consumed excessive alcohol, to death when the client refused to pay him and made a racist remark.

- 44 Veen accepted responsibility for the stabbing however, at trial, his counsel put two alternative defences to the jury: provocation and diminished responsibility. The jury returned a verdict of guilty to manslaughter and informed Justice Rath of the Supreme Court for the purposes of sentencing that it had returned that verdict on the basis of diminished responsibility. Justice Rath sentenced Veen to life imprisonment. In so doing, his Honour gave predominant weight to the fact that “the community is entitled to be protected from violence” and relied heavily on psychological evidence of the risk that Veen posed to the community.
- 45 Judge Hosking QC was Mr Purnell’s junior in both *Maric* and *Veen*. He reflected on *Veen* in his memoir, *Justice Denied*:

“After lengthy consideration, Howard Purnell QC lodged an application for special leave to appeal to the High Court ... Purnell hesitated, not because of a lack of belief in the case’s merits, but because this was not an appeal against conviction – the High Court had a practice of refusing leave to argue appeals against sentence... Nevertheless, we had to try for the benefit of our client and flew to Brisbane, Queensland, where the High Court was sitting... Purnell succeeded in persuading the High Court judges that Veen’s case raised important questions of principle and general importance...

It was Purnell’s detailed and passionate submission, passion being a rare emotion to be permitted when addressing the High Court, which overcame the High Court’s usual practice of not entertaining sentence appeals. Since *Veen*, the High Court has been ... more amenable to granting special leave to appeal in sentence matters.”<sup>73</sup>

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<sup>72</sup> *Maric v The Queen* (1978) 52 ALJR 631.

<sup>73</sup> W Hosking QC and J Suter Linton, *Justice Denied* (HarlequinMira, 2017) (**Justice Denied**) at 169-170.

46 All five judges who heard the *Veen (No 1)* appeal were in favour of quashing the life sentence imposed by Justice Rath. The unanimous view of the Court was that “a sentence should not be increased beyond what is proportionate to the crime in order merely to extend the period of protection of society from the risk of recidivism on the part of the offender.”<sup>74</sup> *Veen* was resentenced to 12 years imprisonment.<sup>75</sup>

47 Mr Purnell retired in 1983 after 16 years as the Senior Public Defender. By this time, he had appeared in as many as 2,000 appeals and 200 murder trials. Under his leadership, the size of the Public Defender’s Office had increased from 3 to 15. On his retirement, Mr Purnell reflected that the growth of the Public Defender’s had made a “noticeable” difference to the rates of conviction and the lengths of sentences imposed in the State. He also commented that:

“There have always been those who say that if you’re a public defender you can’t be much good...

That is, I think, nonsense.”<sup>76</sup>

I completely agree.

48 In this vein, Mr Purnell had said of the Public Defenders whom he supervised in 1975 that:

“It was said of the appointment of Crown Prosecutors in the old days that certain of them were members of the Bar who had tired of the hurly-burly of private practice. I will not have tired people as Public Defenders nor will I have incompetent people.”<sup>77</sup>

49 Unfortunately, shortly after Mr Purnell retired, *Veen* was released from prison and reoffended in strikingly similar circumstances. He plead guilty to manslaughter based on diminished responsibility. However, the Crown submitted, and Justice Hunt accepted, that in the circumstances, a life

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<sup>74</sup> *Veen v R (No 2)* (1988) 164 CLR 465 at 472 (per Mason CJ, Brennan, Dawson and Toohey JJ).

<sup>75</sup> Although Mason and Aickin JJ were in favour of remitting the matter to the Court of Criminal Appeal for resentencing.

<sup>76</sup> J Slee, “Public defender calls it a day” *Sydney Morning Herald* (25 March 1983) at 10.

<sup>77</sup> H.F. Purnell QC, “The Role of the New South Wales Public Defenders” (Lecture, Sydney University Law School, 13 August 1975) at 7.

sentence was appropriate. Following an unsuccessful appeal in the Court of Criminal Appeal, Veen again sought leave in 1988 to appeal to the High Court.

50 As put by Judge Hosking, despite Mr Purnell's absence, "the bar table of the High Court that day in Canberra was anything but a Public Defender-free zone."<sup>78</sup> On this occasion, Veen was represented by two very experienced Public Defenders, Peter Hidden QC, who would go on to become a long serving judge of the Supreme Court and about whom more will be said later, and Stephen Norrish KC, who became a judge of the District Court. They led Catherine Lyons AM, the first female Public Defender who was "noted for her dedication to the oppressed".<sup>79</sup> Interestingly, both counsel for the Crown were also former Public Defenders, Rod Howie QC, later Justice Howie of the Supreme Court, and Robert Keleman SC, later a judge of the District Court.

51 Veen's second appeal was ultimately rejected by a four judge majority of the High Court. The Court emphasised that:

"It is one thing to say that the principle of proportionality precludes the imposition of a sentence extended beyond what is appropriate to the crime merely to protect society; it is another thing to say that the protection of society is not a material factor in fixing an appropriate sentence ...

It must be acknowledged, however, that the practical observance of a distinction between extending a sentence merely to protect society and properly looking to society's protection in determining the sentence calls for a judgment of experience and discernment."<sup>80</sup>

Not long after Veen was sentenced for the second time, legislation was introduced reducing the maximum sentence for manslaughter from life to 25 years.<sup>81</sup>

52 Under the supervision of Mr Purnell and subsequent Senior Public Defenders, there were a number of important changes to the office.

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<sup>78</sup> Hosking and Linton, *Justice Denied* at 173.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Veen v R (No 2)* (1988) 164 CLR 465 at 473-474.

<sup>81</sup> Hosking and Linton, *Justice Denied* at 177.

- 53 By 1974, the Attorney-General had appointed a Legal Aid Commissioner as a “prescribed officer” who could grant applications for legal aid to be provided by the Public Defenders.<sup>82</sup> In the same year, approval was granted to increase the number of Public Defenders from six to eight and to allow for increased numbers of legal aid applications to applicants with recent records of indictable offences to be approved.<sup>83</sup>
- 54 In 1979, the *Legal Aid Commission Act 1979* (NSW) (**Legal Aid Commission Act**) statutorily established the office of Legal Aid Commissioner who was made responsible for determining eligibility of persons for legal aid and for arranging the provisions of such aid, including by arranging for the services of the Public Defenders to be provided.<sup>84</sup>
- 55 A number of other Public Defenders also rose to prominence and made profound contributions to criminal law and the State. One of those people was Judge Charles Luland QC who, like many of the great Public Defenders including Mr F.W. Vizzard who I have already discussed, also had considerable experience as a prosecutor but, perhaps somewhat uniquely, as a police officer. Prior to commencing legal practice, Judge Luland worked with the Commonwealth Police Force and was eventually admitted as non-practising barrister in 1971. He joined the private bar in 1973 and was appointed as a Public Defender in 1976 where he remained for 13 years. Whilst at the Public Defenders, Judge Luland met Justice Reginald Blanch, who was appointed as a Public Defender on 17 January 1983 at only 30 years old, the youngest Public Defender to be appointed to office. Appointed as a Public Defender on the same day was Judge Roger Court QC, who was also very young at that time and went on to serve as a judge of the District Court.
- 56 Justice Blanch said of his appointment that he was “looking forward to the next 40 years as a public defender”.<sup>85</sup> However, Justice Blanch went on, of course, to be the first NSW Director of Public Prosecutions, a position which

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<sup>82</sup> 1969 Act, s 4.

<sup>83</sup> E.J. O’Grady, “The NSW Government & Legal Aid” (1975) 1(8) *Legal Service Bulletin* 197 at 199.

<sup>84</sup> *Legal Aid Commission Act*, ss 11(1)(c), 12(g) and 56(1AA)(b).

<sup>85</sup> “Public defenders are youngest yet” *Sydney Morning Herald* (18 January 1973) at 3.

he occupied between 1987 and 1994. Whilst Justice Blanch was Director of Public Prosecutions, Judge Luland was also appointed as a Deputy Senior Crown Prosecutor and then a Senior Deputy Director of Public Prosecution. Judge Luland was appointed to the District Court bench in 1993 where he once again worked with Justice Blanch who ultimately became Chief Judge of the District Court from 1994 until 2014.<sup>86</sup>

57 Justice Blanch's experience on all sides of the criminal justice system would prove immensely valuable. His work as Chief Judge of the District Court in reducing the extent of trial delays, including by spearheading changes which saw DPP and Legal Aid lawyers communicate earlier in the committal process in order to coordinate the charges and conduct any plea bargaining, may be attributed to his practical experience with delay as both a Public Defender and Crown.<sup>87</sup> It is thus hardly surprising that a formalised system for secondments of Public Defenders to the Crown Prosecutor's chambers or to Royal Commissions and ICAC investigations was later legislatively enshrined.<sup>88</sup>

58 Acting Justice R A Hulme, another example of a former Public Defender who also had considerable experience as a prosecutor, acknowledged Justice Blanch as a mentor in this respect.<sup>89</sup> His Honour was appointed as a Crown Prosecutor in 1990 and then a Deputy Senior Public Prosecutor before being made a Deputy Senior Public Defender in 2003. His Honour was then appointed to the District Court bench in 2005 and was made an acting Supreme Court Justice in 2008 and a permanent judge in 2009. He had distinguished himself as both a Crown Prosecutor and as Public Defender during his time as a barrister<sup>90</sup> and was, of course, and remains an outstanding and incredibly hardworking judge.

59 Judges Peter McGrath SC and Kara Shead SC are more recent examples of Public Defenders who have had experience on the other side of the bar table.

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<sup>86</sup> Judge S Norrish KC, "Charles Luland (1938-2002)" (Summer 2002) *Bar News* at 78.

<sup>87</sup> K Chapple, "Changing times at the District Court" (Winter 2004) *Bar News* 52 at 52.

<sup>88</sup> *Public Defenders Act 1995* (NSW), s 15.

<sup>89</sup> *Swearing In of the Honourable Robert Allan Hulme As a Judge of the Supreme Court of New South Wales* (2 March 2009) at 11.

<sup>90</sup> "The Hon Justice Robert Allan Hulme" (Winter 2009) *Bar News* at 86.

It was said at Judge McGrath's Swearing In as a Judge of the District Court that when he was a Deputy Senior Public Defender, the Public Defenders did not want him to return to his role as Deputy Director of Public Prosecutions but were able to console "themselves by noting ... the benefit of having a fair-minded prosecutor on the other side who understands the pressures of defence and prosecution and uses this knowledge to ensure balance and fairness in the criminal justice system."<sup>91</sup> Similarly, it was said of Judge Shead, who finished her time as a Deputy Senior Public Defender by appearing for Mr McNamara in the well-known, lengthy and challenging Rogerson and McNamara trial, that her Honour had viewed her role as both a Crown and Public Defender "as a facilitator of justice, not one arguing blindly for a conviction or barracking for an accused" and that this would allow her to "bring a fair, balanced and inspired approach to the task of public service and administering justice for [the District Court]."<sup>92</sup>

60 Following Purnell's retirement as Senior Public Defender, Eric Shields QC occupied that office. Under his leadership, another famous Public Defender rose to prominence, Justice Peter Hidden AM, who was appointed as a Deputy Senior Public Defender in 1985. In 1987, Peter Hidden was appointed as Senior Public Defender before returning to the private bar in 1992 and being appointed to the Supreme Court bench in 1995. His Honour retired in March 2016 after over 20 years of service to state as a judge (although he continued to sit as an acting judge until 2021). Justice Button, presently a judge of the Supreme Court, credits his own appointment as a Public Defender in May 1991 to Justice Hidden's support and mentorship.<sup>93</sup>

61 Peter Hidden appeared as Senior Counsel in a number of very significant cases when serving as a Public Defender, in addition to *Veen (No 2)*. Those included *Petty v The Queen*,<sup>94</sup> the leading case on the right to silence,

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<sup>91</sup> *Welcome to His Honour Peter McGrath SC As a Judge of the District Court of New South Wales* (24 March 2022) at 7.

<sup>92</sup> *Swearing in of His Honour Judge Weber SC and Her Honour Judge Shead SC as Judges of the District Court of New South Wales* (7 February 2019) at 15.

<sup>93</sup> *Swearing In Ceremony of the Honourable Richard Button As a Judge of the Supreme Court of New South Wales* (12 June 2012) at 10.

<sup>94</sup> (1991) 173 CLR 95; [1991] HCA 34.

*Jiminez v The Queen*,<sup>95</sup> an important case on the offence of dangerous driving, and *Domican v The Queen*,<sup>96</sup> which concerned the warnings to be given to juries where identification is an issue.

62 Justice Hidden was also well-known for his appearance as counsel for Tim Anderson in the Hilton bombing trial. Mr Anderson said the following of Justice Hidden in his book, *Take Two: The Criminal System Revisited*<sup>97</sup>:

“My barrister, Peter Hidden, the Senior Public Defender, was smooth, urbane and low key. He was the perfect gentleman-barrister, likeable, well-versed in law, relying on the evidence and hardly ever raising his voice. You sensed instinctively that he would never hit below the belt.”<sup>98</sup>

John Jiggins in his book, *The Incredible Exploding Man*,<sup>99</sup> described Justice Hidden in the Hilton bombing trial as being “a man who seemed to be decency personified”.<sup>100</sup> So true.

63 Another Public Defender who appeared in the Hilton bombing trial was Justice Michael Adams, who prior to his appointment as a Supreme Court judge in 1998 had served as a Public Defender for two years. Judge Hosking QC wrote that:

“so brilliant was Michael Adams’ cross-examination of Richard Seary, the star Crown witness, at the Hilton Hotel bombing inquest at Glebe that it was included in James Glissan’s collection of great cross-examinations... It must be said there were never any half measures involving the future Honourable Justice Michael Adams QC. Adams was a rising star at the Bar ... Adams’ style was robust and forceful yet, at the same time, observed the etiquette of the Bar.”<sup>101</sup>

64 A consistent theme across this period of the Public Defenders history, and its present, is the Office’s willingness to take on some of the most difficult and

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<sup>95</sup> (1992) 173 CLR 572; [1992] HCA 14.

<sup>96</sup> (1992) 173 CLR 555, [1992] HCA 13.

<sup>97</sup> T Anderson, *Take Two: The Criminal System Revisited* (1992, Bantam).

<sup>98</sup> *Swearing In Ceremony of the Honourable Peter John Hidden AM As a Judge of the Supreme Court of New South Wales* (16 October 1995) at 7.

<sup>99</sup> J Jiggins, *The Incredible Exploding Man: Evan Pederick & the Trial of Tim Anderson* (1992, Samizdat Press).

<sup>100</sup> *Swearing In Ceremony of the Honourable Peter John Hidden AM As a Judge of the Supreme Court of New South Wales* (16 October 1995) at 8.

<sup>101</sup> Hosking and Linton, *Justice Denied* at 191.

unpopular cases. One such case was that of Anita Cobby, Judge Hosking's last as a Deputy Senior Public Defender. Ms Cobby, a 26 year old woman and former Miss Western Suburbs 1979, had been walking home from Blacktown Station in February 1986 when she was kidnapped and subsequently brutally sexually assaulted and murdered. The case received a huge amount of publicity and the five men charged, all of whom were ultimately convicted or pleaded guilty, were each granted legal aid.

65 Hosking said of the trial that:

"The concept of legal aid itself seemed to be on trial... I lost count of the number of friends and strangers who asked me 'Why on earth would you accept a case like this?' or 'Do you enjoy it?' There is a simple answer, apart from duty. There are many, many occupations and professions which are not only more unpleasant, but some are also very dangerous. There is the challenge of appearing in what you know is a losing brief for a particularly despised client. Particularly, where there is no real issue as to identity, and the crime is so harrowing and has such cruelty, there will be not a scintilla of public sympathy for your client. This was such a case. During it and afterwards I received considerably personal criticism for accepting the brief. Even my son... who was still at school, was criticised by the other boys. They wanted to know why his father would appear in such a terrible case.

This trial clearly raised the question, does the community want symbolic or real representation for major criminals? ... In such a case, where there is justifiable community anger, counsel has at least two options. One can merely go through the motions to ensure it appears the formalities of a fair trial were observed. Alternatively, counsel does what her or she should do in every case. That is, to do one's professional best for a client who would not have a clue what that involves."<sup>102</sup>

### **Creation of the Public Defenders Office (1995- )**

66 In 1994, the Public Accounts Committee reviewed the office of the Public Defender with a view to proposing reforms to the *1969 Act* which would facilitate an increase in the size of the office and greater accountability of the Public Defenders.<sup>103</sup> The principal recommendation made by the Report was for the establishment of the statutory Office of the Public Defenders to be subject to all the accountability requirements of other statutory authorities in

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<sup>102</sup> Hosking and Linton, *Justice Denied* at 235.

<sup>103</sup> Parliament of New South Wales, *Public Defenders Act 1995: Report on Five Year Review of the Act* (Report, 2002) (**Report on Five Year Review**) at 5.



the public sector and the appointment of a Senior Public Defender to manage that office.<sup>104</sup>

- 67 Those recommendations were later implemented by the *Public Defenders Act 1995* (NSW) (**1995 Act**) which, like the *1969 Act*, received bipartisan support. The then Attorney General, the Hon. J W Shaw QC, said in his Second Reading speech that the *1995 Act* was intended to ensure Public Defenders could “continue to perform their duties with diligence, efficiency and excellence” in a manner “unfettered ... by the threat, real or perceived, of government interference or retribution”.<sup>105</sup>
- 68 The *1995 Act* put the positions of Senior Public Defender and Deputy Senior Public Defenders on a statutory basis.<sup>106</sup> It provided that those offices must be filled by Australian lawyers of at least 7 and 5 years’ experience respectively.<sup>107</sup>
- 69 Importantly, the *1995 Act* also permitted the Public Defenders to take on a broader scope of work, including “ancillary proceedings” such as bail applications and proceedings relating to mentally incapacitated offenders.<sup>108</sup> It also enabled Public Defenders to accept work from agencies other than the Legal Aid Commission of New South Wales including the Aboriginal Legal Service and other community legal centres.<sup>109</sup>
- 70 Not long after the passage of the *1995 Act*, the work of the Public Defenders and the Legal Aid Commission were the subject of discussion in the application for a stay, and appeal from that decision, in the *Milat* case.<sup>110</sup> In that case, Ivan Milat was committed for trial in the Supreme Court on charges of seven counts of murder, one count of attempted murder and one count of

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<sup>104</sup> Public Accounts Committee, *Annual Report 1993-1994* (Report No 85, October 1994) at 8 and 42-43.

<sup>105</sup> New South Wales Legislative Council, *Parliamentary Debates* (Hansard), 30 May 1995 at 60.

<sup>106</sup> *1995 Act*, Pt 2.

<sup>107</sup> *Ibid* Sch 1, cl 2.

<sup>108</sup> *Ibid* ss 8(2), 9(2) and 10(3).

<sup>109</sup> *Ibid* ss 8(1)(c) and 12.

<sup>110</sup> See, *Attorney-General (NSW) v Milat* (1995) 37 NSWLR 370; (1995) 80 A Crim R 530 and *R v Milat* (Supreme Court (NSW), 11 August 1995, unrep).

armed robbery. He sought a temporary stay of his prosecution until such time as the Executive would agree to provide funds for his legal representation at the rates specified by his preferred solicitors and counsel. At first instance, Hunt CJ at CL made orders that the prosecution of Milat be stayed until the daily fees offered for the trial as well as the time and fees for preparation by Milat's preferred representatives were increased. The State had argued there were a number of alternatives to this arrangement proposed by the Legal Aid Commission which would avoid the prosecution needing to be stayed, including that a public defender be briefed, either by a private solicitor of Milat's choice or by a Legal Aid Commission solicitor.<sup>111</sup>

71 On appeal, Hunt CJ at CL's orders were set aside with the Court of Criminal Appeal (constituted by Gleeson CJ, Kirby P and Mahoney JA) holding that there was no reason why the prosecution should be stayed. In so holding, their Honours reasoned as follows with respect to the role of the Public Defenders:

"The trial will be lengthy and complex, and will place considerable demands upon the capacity of the lawyers representing both the Crown and the appellant. Central to the issue raised in this appeal is the appellant's right to a fair trial. Quite apart from that, however, it is obviously most undesirable that such a trial should proceed with an unrepresented accused. If that were to occur, the length, and cost to the community, of such a trial would be increased greatly, as would the risk that a second trial might become necessary. The State has a substantial interest in seeing that the respondent is provided with proper legal representation..."<sup>112</sup>

Their Honours went on:

"A public defender of senior counsel status, briefed with a junior counsel of the respondent's choice, would undoubtedly have the experience and competence to conduct the respondent's trial. The public defenders in this State are amongst the most able practitioners in the legal field..."<sup>113</sup>

72 The support for the work of the Public Defenders from the bench is also exemplified by the comments of then Chief Judge at Common Law, Justice James Wood, who remarked when the *1995 Act* was reviewed five years after

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<sup>111</sup> *R v Milat* (Supreme Court (NSW), 11 August 1995, unrep).

<sup>112</sup> *Attorney-General (NSW) v Milat* (1995) 37 NSWLR 370 at 371.

<sup>113</sup> At 376.

its passage, that he had found the Public Defenders' "competence and commitment" to be "first class".<sup>114</sup> That Report ultimately concluded that there was "strong support for the role of Public Defenders" and that the *1995 Act* remained appropriate for securing its objectives.<sup>115</sup>

### **Relationship between the Public Defenders and Indigenous Australians**

73 As outlined earlier, one of the most important changes brought about by the *1995 Act* was that it allowed the Public Defenders to be briefed by community legal centres other than the Legal Aid Commission, including the Aboriginal Legal Service. This change seems to have cemented what was already a practice among Public Defenders of representing Indigenous Australians and being sensitive to the justice issues faced by that community.

74 That practice began early in the history of the Public Defender's Office with the first Public Defender, Mr Gordon Champion, who was known for defending many Aboriginal people across the state.<sup>116</sup> In one case in which he defended an Aboriginal man, Mr Donald Ritchie, who was charged with the murder of Mr Richard Gwynne in South Lismore in March 1944, was ultimately convicted of the lesser charge of manslaughter and sentenced to 10 years penal servitude. The case was one of great public importance in Lismore with the public galleries crowded with as many as 100 public spectators, including many Indigenous people. Mr Ritchie's account, which the jury informed the judge they had ultimately accepted, was that he assaulted Mr Gwynne after Mr Gwynne made suggestions of finding and engaging with Aboriginal women. Mr Ritchie also gave evidence that he had consumed large amount of highly potent methylated spirits prior to the assault. In addressing the jury, Mr Champion is said to have warned that "there was one law, and the same law applied for black and white." Mr Champion had gone on to say that the

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<sup>114</sup> Report on Five Year Review at 14.

<sup>115</sup> *Ibid* 15.

<sup>116</sup> See, eg "Jury Acquits Aborigine of Grave Charge" *Truth* (10 September 1944) at 26.

“accused was entitled to no more and no less consideration than if he were a white man.”<sup>117</sup>

- 75 Many Public Defenders had backgrounds in Aboriginal community legal centres and Indigenous justice before coming to the bar and joining the Public Defenders. In many cases, this experience has shaped their experience as Public Defenders. For instance, although Justice Hidden described his time as a Public Defender as the “most satisfying” in his career, he referred to his work with the Aboriginal Legal Service as “the most stimulating and ... disturbing” period of his life.<sup>118</sup>
- 76 Justice Dina Yehia spent 14 years as a Public Defender after spending some time with both the Western Aboriginal Legal Service and the Legal Aid Commission. From August 2000, following the introduction of the *1995 Act*, Justice Yehia served as an Acting Public Defender funded under an agreement with the Aboriginal and Torres Strait Islander Commission’s Higher Court Project for the provision of Public Defender representation through Aboriginal Legal Services.
- 77 In 2013, Justice Yehia was the first woman to be appointed as a Deputy Senior Public Defender. In the same year, she appeared as lead counsel in *Bugmy v The Queen* (2013) 249 CLR 571; [2013] HCA 37 (**Bugmy**), a case with profound implications for criminal law in New South Wales and which speaks to the great importance of the work done by Public Defenders, especially for Indigenous Australians. Justice Yehia, said of the case that:

“We took the opportunity, given we were before the High Court, to argue that the High Court should endorse an approach that obliges sentencing judges when sentencing Indigenous offenders, to take into account the systemic disadvantage and deprivation and the disproportionate over-representation of Aboriginal and Torres Strait Islander people in custody.

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When I was appointed to the District Court and conducted a high volume of sentencing cases, the importance of the judgment became clear to me.

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<sup>117</sup> “Aborigine Found Guilty of Manslaughter at Lismore” *Tweed Daily* (30 June 1944) at 2.

<sup>118</sup> Swearing In Speech, 1995.

Practitioners were relying on it in ways I had not anticipated. Progressively, it became a seminal case when sentencing Indigenous and non-Indigenous offenders. Now I think that although we didn't have the win we had hoped for, the judgment has had a significant impact on sentencing law and on the way practitioners present their case. It is more impactful than I believed it would be in those first few months."<sup>119</sup>

- 78 Together with a number of others, including Judge Sophia Beckett who also worked for the Western Aboriginal Legal Service before eventually being appointed as Deputy Senior Public Defender, Justice Yehia was instrumental in the development of the *Bugmy Bar Book* which is an important resource for courts and legal practitioners applying the principles of *Bugmy*. That Bar Book has now been referenced in 38 published judgments of NSW Courts and, alongside the Walama List at the District Court, another project spearheaded by Justice Yehia which focuses on therapeutic justice in sentencing proceedings for Indigenous offenders,<sup>120</sup> has been hugely impactful for Aboriginal and Torres Strait Islander peoples interacting with the criminal justice system in New South Wales.
- 79 Judge Peter McGrath SC, another former Deputy Senior Public Defender who returned to serve as a Deputy Director of Public Prosecutions, also contributed significantly to working groups for both the Walama List and the Bugmy Project.<sup>121</sup> Judge Craig Smith SC, who was appointed to the District Court bench in 2021, is another example of a Public Defender whose career commenced with the Western Aboriginal Legal Service, an experience which was “formative and forged in [him] a deep commitment to the issues faced by Aboriginal people in our justice system.”<sup>122</sup>
- 80 Judge Robert Bellefleur, Australia's first Indigenous judge and a staunch defender of Indigenous rights, was also a former Public Defender. However,

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<sup>119</sup> S Anderson, “The architects of the Bugmy Bar Book: Ten years of change” (Summer 2023) *Bar News* <<https://bn.nswbar.asn.au/article/the-architects-of-the-bugmy-bar-book-ten-years-of-change>>.

<sup>120</sup> See, eg, Justice D Yehia, “Walama List and Cultural Healing: Not Just A List but an Idea” (Speech, 11 March 2023, Public Defenders Conference).

<sup>121</sup> *Welcome to His Honour Peter McGrath SC As a Judge of the District Court of New South Wales* (24 March 2022) at 3.

<sup>122</sup> *Swearing In of His Honour Judge Craig Smith SC As Judge of the District Court of New South Wales* (8 March 2021) at 3.

as put by Tony McAvoy SC, “his legacy is far broader”.<sup>123</sup> Judge Bellear helped to establish the Aboriginal Legal Service as well as the Aboriginal Medical Service and the Aboriginal Housing Company. He subsequently served as Counsel Assisting the Royal Commission into Aboriginal Deaths in Custody in 1987 prior to his appointment as a Public Defender in 1991.<sup>124</sup>

81 Judge Bellear was then appointed to the District Court Bench in 1996. Even after his appointment to the bench, Judge Bellear remained a strong advocate for Indigenous justice issues as the Chairperson of the New South Wales Aboriginal Justice Advisory Committee and the Patron of the Ngalaya Indigenous Lawyers and Law Students Association. He also frequently volunteered to go on circuit in remote parts of Western NSW where he was able to visit Aboriginal communities and administer justice.<sup>125</sup>

82 Today, about 85% of the work briefed to the Public Defenders comes from Legal Aid NSW lawyers, or from private lawyers who have obtained a grant of legal aid. However, the remaining 15% is briefed by the ALS or other community legal centres.<sup>126</sup> Public Defenders also continue to provide continuing legal education to the lawyers employed by the various legal services that represent Indigenous Australians, including by presenting papers and lectures.<sup>127</sup>

### **Connection between the Public Defenders and Regional NSW**

83 Just as the Public Defenders have overtime been characterised by their willingness to represent and advocate on behalf of Indigenous Australians, so too have they worked to ensure access to justice in rural and remote NSW.

84 One of the greatest issues associated with the *Poor Prisoners Defence Act* at the time of its introduction in 1907 was that the requirement that an

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<sup>123</sup> T McAvoy, “Obituary: Bob Bellear 1944-2005” (2005) 6(10) *Indigenous Law Bulletin* 21 at 21.

<sup>124</sup> Chief Justice Murrell, “Let us hear your voices: Tribute to Bob Bellear” (Speech, 18 August 2017, Supreme Court of the Australian Capital Territory) at 3.

<sup>125</sup> *Ibid.*

<sup>126</sup> Public Defenders, *Annual Review 2021-2022* at 7.

<sup>127</sup> See, eg, D Yehia, “Sentencing Aboriginal Offenders” (Lecture, Aboriginal Legal Service Conference, 1 July 2003); Public Defenders, *Annual Review 2021-2022* at 8.

application for legal assistance be made to a Supreme Court judge made obtaining legal aid, as put by then Member for Sturt, Arthur Griffith, “a very simple operation for persons living in or about Sydney”, but a far more complex one for those living in “Balranald, Wentworth or Brewarrina”.<sup>128</sup>

85 However, for the State’s first Public Defender, taking cases in regional courts appears to have been a strong priority. Albury’s *Border Morning Mail* recorded the first occasion on which Mr Gordon Champion made the journey to their town on 16 September 1942.<sup>129</sup> He first appeared in the courts in Newcastle on 29 June 1942<sup>130</sup> and is recorded as having appeared in the Quarter Sessions in Lismore as early as 5 May 1943.<sup>131</sup> The second Public Defender, Frank Vizzard was appearing in a murder trial in the Supreme Court sitting in Wollongong on 19 September 1951 when one of the co-accused collapsed in the dock. The collapse occurred immediately after the Crown Prosecutor informed the Court that the man had told police he suffered from heart attacks. Following a brief adjournment during which the man was examined by a doctor, the Court was informed that there was “nothing organically wrong with him, and that any disturbance was functional.”<sup>132</sup>

86 Still today, a roughly equal proportion of the Public Defenders’ work, 44%, is done in the regions<sup>133</sup> and Public Defenders have been dedicated to regional courts across the State, including in Albury, Wagga Wagga, Coffs Harbour and Dubbo as well as in the Campbelltown and Penrith District Courts. Although there are now a number of District Court judges also based regionally, Deputy Senior Public Defender, Michael King spoke of his first few weeks as a Public Defender in South-West NSW as being constantly on the move as the circuit rotated with two weeks in Wagga Wagga, two in Albury and two in Griffith. He described his chambers as a regional Public Defender

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<sup>128</sup> New South Wales Legislative Assembly, *Parliamentary Debates (Hansard)* (31 October 1907), at 664.

<sup>129</sup> “First Time in Albury” *Border Morning Mail* (16 September 1942) at 2.

<sup>130</sup> “Public Defender in Newcastle” (29 June 1942) at 3.

<sup>131</sup> “Pleads Guilty at Quarter Sessions” *Tweed Daily* (5 May 1943) at 4.

<sup>132</sup> “Collapse in Dock at Murder Trial” *Newcastle Morning Herald and Miners’ Advocate* (19 September 1951) at 3.

<sup>133</sup> Public Defenders, *Annual Review 2022-2023* at 5.

during that period as being an “iPhone and [a] car boot”. Judge Christine Mendes was also formerly a South-West NSW based Public Defender.<sup>134</sup>

87 Many Public Defenders also hail from regional NSW.

### **The Judiciary and the Public Defenders**

88 The quality of the legal minds that comprise the Public Defenders is perhaps best exhibited by the great number of Public Defenders who have gone on to become outstanding judicial officers in NSW, and national, courts.

89 This situation is quite unlike that which prevails in the U.S. Despite the long and storied history of public defenders in the U.S.,<sup>135</sup> comparatively few Public Defenders serve as judicial officers in that country’s top courts.

90 In 2020, only 7% of all U.S. federal judges and 1% of federal appellate judges were former public defenders or legal aid attorneys.<sup>136</sup> However, in recent years, there has been a concerted effort to appoint more former public defenders to the federal bench. In 2021, President Biden appointed five former public defenders to the federal court of appeals. This was the same number that President Obama had confirmed over eight years.<sup>137</sup> Although there have been concerns in some quarters that public defenders are unable impartially to decide criminal cases,<sup>138</sup> there has largely been broad support for the appointment of greater numbers of public defenders to U.S. courts. It has been argued that public defenders can bring to the bench a “firsthand perspective” on “issues like what limits should be put on the government’s

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<sup>134</sup> K Balendra, “On the road with Michael King, Deputy Senior Public Defender” (Autumn 2021) *BarNews* <<https://barnews.nswbar.asn.au/autumn-2021/74-on-the-road-with-michael-king-deputy-senior-public-defender/>>.

<sup>135</sup> See, eg C Foltz, “Public Defenders” (1897) 31 *American Law Journal* 393 in which legislation establishing public defenders in various states is advocated for by Clara Foltz, the first woman lawyer on the West Coast of America and later the first woman to be appointed deputy district attorney in the U.S.

<sup>136</sup> R Wagner, “Public defenders rarely make it on the federal bench. Not anymore” *Courthouse News Service* (21 January 2022) <<https://www.courthousenews.com/public-defenders-rarely-make-it-on-the-federal-bench-not-anymore/>>.

<sup>137</sup> M Friedrich, “The Rise of Public Defense Attorneys on the Judiciary” *Arnold Ventures* (5 April 2022) <<https://www.arnoldventures.org/stories/the-rise-of-public-defense-attorneys-on-the-judiciary/>>.

<sup>138</sup> M Bookman, “Can Public Defenders Become Fair Judges, And Other Stupid Questions” (2022) 51 *Georgetown Law Journal Annual Review of Criminal Procedure* i at i.



power to use force, to inflict violence, to detain, to imprison, and to kill” and on “how those issues arise and are handled day to day on the streets, in the jails and prisons, and in prosecutor offices.”<sup>139</sup> It has also been said in the U.S. context that:

“The asset that former public defenders bring to the judiciary is their familiarity with viewing the law from the perspective of those they represent – and thinking in terms of the criminal justice system’s flaws.”<sup>140</sup>

91 While several former justices of the U.S. Supreme Court have been prosecutors, Justice Ketanji Brown Jackson, who was appointed to that court in 2022, is the first justice to have formerly served as a public defender. At her confirmation hearing, Justice Jackson reflected that there was a “direct line” between her experience as a public defender and her judicial approach, including her desire to ensure that defendants appearing before her understand the proceedings.<sup>141</sup>

92 In Australia, Justice Virginia Bell is also the sole example of a former Public Defender who has served on the nation’s highest court. Her Honour was a Judge of the Supreme Court, Court of Appeal and later the High Court. She had been appointed as a Public Defender in 1986 where she remained until her Honour returned to private practice in 1989. Judge Andrew Haesler SC, himself a former Senior Public Defender prior to his appointment to the District Court, said of Justice Bell that:

“In every generation there is a barrister about whom judges say if I murder my wife or husband I want them to represent me. When she was at the bar, that person was Virginia Bell.”<sup>142</sup>

In fact, so well-renowned as defence counsel was Justice Bell that a punk rock group, “Mutant Death” wrote a song about her with lyrics, “The police

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<sup>139</sup> R Balko, “The Supreme Court’s massive blind spot” *Washington Post* (22 January 2015) <<https://www.washingtonpost.com/news/the-watch/wp/2015/01/22/the-supreme-courts-massive-blind-spot/>>.

<sup>140</sup> S Stewart, “Addressing Potential Bias: The Imbalance of Former Prosecutors and Former Public Defenders on the Bench” (2019) 44 *Journal of the Legal Profession* 127 at 137.

<sup>141</sup> A Bannon, “A Public Defender on the High Court” *Brennan Center for Justice* (1 March 2022) <<https://www.brennancenter.org/our-work/analysis-opinion/public-defender-high-court>>.

<sup>142</sup> *Farewell Ceremony for the Honourable Justice Virginia Bell Upon the Occasion of Her Retirement as a Judge of the Supreme Court of New South Wales* (19 December 2008) at [34].

they came and got me, they threw me in a cell, they said I had one phone call, I rang Virginia Bell.”

- 93 At her Farewell Ceremony as a Justice of the Supreme Court in December 2008, Justice Bell said of her time with the Public Defenders that “while skill in criminal advocacy is not confined to the public defenders, they are conspicuous both at appellate and trial level for their forensic ability”.<sup>143</sup>

*Supreme Court judges:*

- 94 Although Justice Bell is the only former Public Defender to occupy a seat on the High Court, there are several examples of Public Defenders who are current, or former, Supreme Court judges.
- 95 Justice Richard Button was appointed to the Supreme Court after working with the Public Defenders for 21 years. His Honour was appointed as a Public Defender in May 1991 after a number of years as a solicitor at the Legal Aid Commission and also a period as a volunteer solicitor at the Redfern Legal Centre whilst his Honour was employed at the State Bank. At his swearing in, his Honour described the work of Public Defenders as “difficult and stressful but very rewarding”. He went on to say that the “*esprit de corps* is very high, and the support staff are excellent” and that the Public Defenders Chambers “is an institution with a storied past, a notable present, and a glittering future”.<sup>144</sup>
- 96 Justice Button also spoke fondly of the secondments he was able to take from the Public Defenders to the Attorney General’s Department where he worked in criminal law reform.<sup>145</sup> Whilst Justice Button served as Public Defender, he conducted the *McKinney* terrorism trial in which the jury heard from over 300

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<sup>143</sup> Ibid at [53].

<sup>144</sup> *Swearing In Ceremony of the Honourable Richard Button As a Judge of the Supreme Court of New South Wales* (12 June 2012) at 10.

<sup>145</sup> Ibid.

witnesses, examined 3000 exhibits, watched over 30 days of surveillance tapes and listened to over 18 hours of phone intercepts over 181 days.<sup>146</sup>

97 Justice Mark Ierace had been the serving Senior Public Defender since 2007 when he was appointed to the Supreme Court bench in 2019. His Honour was appointed as a Public Defender in 1989 where he took up a large portion of the circuit work throughout the State. As the Senior Public Defender, his Honour appeared as counsel in some of the most infamous criminal trials, including the trial of the former New South Wales Crime Commission Assistant Director, Mark Standen for his involvement in a \$120 million drug plot, and the trial of Man Haron Monis' partner, Amirah Droudis for the murder of his ex-wife.<sup>147</sup> He also appeared successfully with Julia Roy in *Attorney General for New South Wales v XX* (2018) 98 NSWLR 1012; [2018] NSWCCA 198 on behalf of XX who was the Respondent to an application brought by the Attorney General for a retrial of XX for the murders of Clinton Speedy and Evelyn Greenup who, alongside Colleen Walker, were Indigenous children who went missing from Bowraville on NSW's North Coast between September 1990 and February 1991. XX had previously been acquitted of those offences in separate trials.

98 Like many of his colleagues at the Public Defenders, Justice Ierace also had significant experience as a prosecutor, albeit internationally, having served as a senior trial attorney in the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia.<sup>148</sup>

99 Justice Ierace said the following of the Public Defenders at his Swearing In as a Justice of the Supreme Court:

“From the moment I first knew of their existence and what they did, which was well before I qualified as a lawyer, I aspired to being a Public Defender. I have come to know something of the Public Defender's offices interstate and, through my international work, in the UK and in America. There can be no doubt that the New South Wales Public Defenders are the best-supported of

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<sup>146</sup> Ibid at 6.

<sup>147</sup> *Swearing in Ceremony of the Honourable Mark Ierace As a Judge of the Supreme Court of New South Wales* (31 January 2019) at 8.

<sup>148</sup> Ibid at 7.

any other public defender office anywhere. As well, there is no finer floor of criminal barristers and support staff in New South Wales.

There is a symbiotic relationship between the Public Defenders and the New South Wales Bar and also with Legal Aid and the ALS. They assist each other to improve their performance and public service. Long may that continue. Nor is there any finer position in New South Wales criminal law than that of Senior Public Defender..."<sup>149</sup>

- 100 Other former Supreme Court judges who have occupied offices at the Public Defenders at one time or another, and who I have not yet mentioned in this address, include Justice Terry Buddin of the NSW Supreme Court and Chief Justice Jeffrey Miles and Justices Malcolm Gray and Chrissa Loukas-Karlsson of the ACT Supreme Court.

*District Court:*

- 101 Public Defenders are also well-renowned for their service on the District Court. Among some of the current most senior judges on the District Court are a number of Public Defenders whose names I have not already mentioned thus far, including Judge Deborah Payne who on the occasion of her appointment to the District Court in 1997 was one of the first women judges on that court. Similarly, Judge Leonie Flannery SC served as a Public Defender for over 10 years prior to her Honour's appointment to the District Court bench in 2007. Last year, two Public Defenders, Judges Troy Anderson SC and Christine Mendes, were appointed to the District Court bench. Both spoke warmly and inspiringly of their work as Public Defenders.
- 102 In addition to those I have already noted, two other former Senior Public Defenders who have previously occupied seats on the District Court include Judge John Nicholson SC and Judge Martin Sides KC. Other District Court judges who have formerly served this state as Public Defenders include Judge Peter Berman SC, Judge John Lloyd-Jones and Judge Kenneth Shadbolt.

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<sup>149</sup> Ibid at 17.

## **Conclusion**

103 To the Public Defenders in the audience, I acknowledge the importance of the work you do in the administration of justice in New South Wales. To those who brief you from Legal Aid or the ALS or from community legal centres, I also acknowledge the significance of your work. You are performing an immense public service, and your work is at the heart of a fair and decent criminal justice system.

# New South Wales.



ANNO SEPTIMO

## EDWARDI VII REGIS.

\*\*\*\*\*

Act No. , 1907.

An Act to make provision for the defence of poor prisoners;  
and for other purposes connected therewith.

**B**E it enacted by the King's Most Excellent Majesty, by and with  
the advice and consent of the Legislative Council and Legislative  
Assembly of New South Wales in Parliament assembled, and by the  
authority of the same, as follows:—

5 **1.** This Act may be cited as the "Poor Prisoners Defence Act, Short title,  
1907."

**2.** (1) Any person committed for trial for an indictable offence  
against the laws of New South Wales may, at any time before the jury  
is sworn, apply to the committing magistrate, or to a judge of the  
10 Supreme Court, or to a chairman of quarter sessions, for legal aid for  
his defence.

Provision for legal  
aid.  
cf. Federal Judiciary  
Act, s. 69, subs. 3,  
and 3 Edw. VII,  
c. 38, s. 1.

If the judge or chairman of quarter sessions or the committing  
magistrate is of opinion, on the facts brought before him, that such  
person is without adequate means to provide defence for himself, and  
15 that it is desirable in the interests of justice that such legal aid should  
be supplied, he shall certify this to the Attorney-General, who may  
thereupon cause arrangements to be made for the defence of the  
accused person, and payment of the expenses of all material witnesses.

(2) ~~Upon committal the person committed shall be supplied  
with a copy of this Act.~~

20

[3d.]

# The First Public Defender



Mr Gordon Champion  
(1941)

## Public Defender Wins First Case

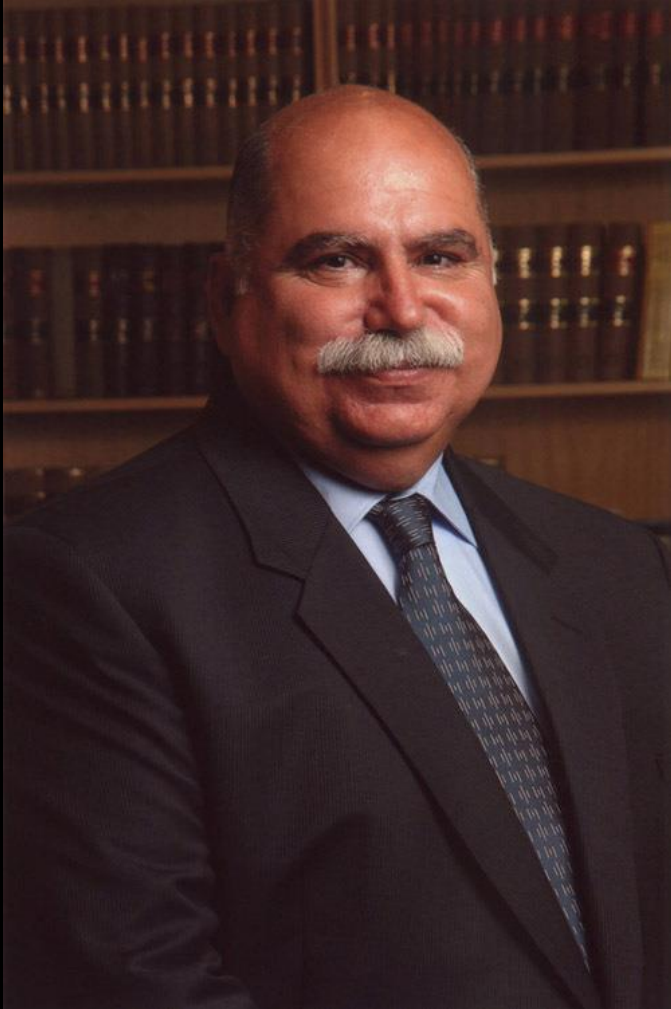
First appearance of the public defender (Mr. Gordon Champion) since his appointment was at the Quarter Sessions today before Judge Markell, when his client, George William Hutchinson (50), salesman, was acquitted of a charge of assault on Robert Thompson (71), in a Riley Street residential on July 21.

*The Sun* (9 October 1941) at 6

*Daily Mirror* (4 September 1941) at 2

## PUBLIC DEFENDER'S EIGHT ACQUITTALS

# Judge Peter Zahra



Source: *Nine News*

## Zahra and Arden's Drug Laws in New South Wales

Third edition

Peter Zahra  
Courtney Young

THE FEDERATION PRESS



# The Second Public Defender

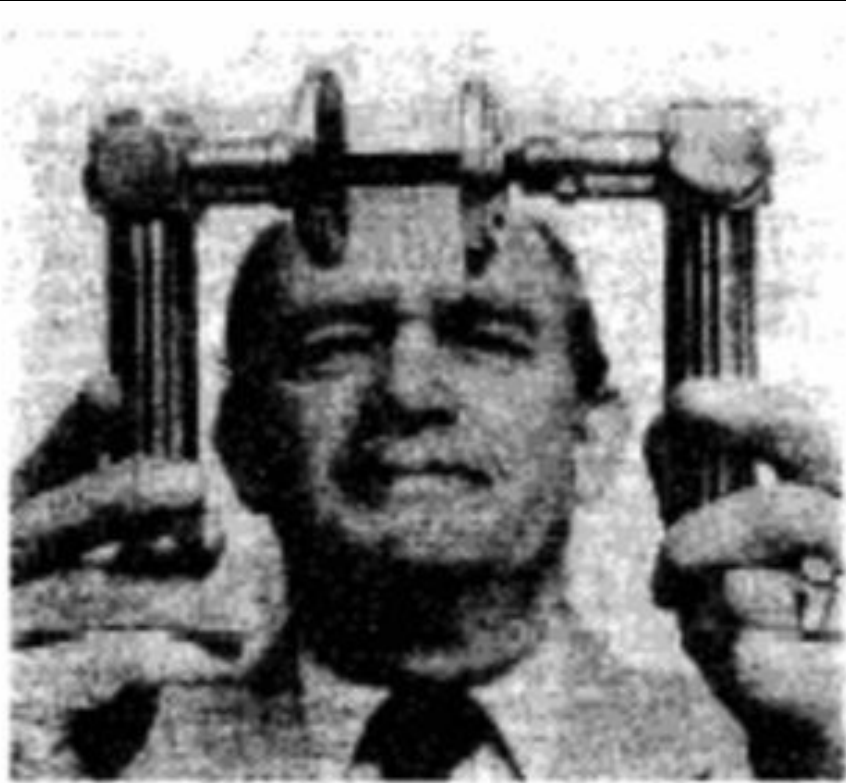


Mr F.W. (Fred) Vizzard  
QC



Crowds waiting to be let into Stephen Leslie Bradley's trial at the Central Criminal Court, Darlinghurst in 1961

# Howard Frank Purnell QC



● Howard Purnell and those doorknobs.

Purnell with Hitler's doorknobs (*Sydney Morning Herald* (22 May 1983) at 22-23).

## CRIMINAL LAW in NEW SOUTH WALES Volume 1

(Replacing Hamilton and Addison's  
Criminal Law and Procedure)

by

RAY WATSON, B.A., LL.B.  
*One of Her Majesty's Counsel for the States  
of New South Wales and Victoria and a member  
of the Bar of Papua - New Guinea*

and

HOWARD PURNELL, LL.B.  
*Senior Public Defender for the State of  
New South Wales; Barrister-at-Law*

With a Foreword

by

The Honourable Kenneth McCaw, M.L.A.  
*Attorney-General for New South Wales*

AUSTRALIA  
THE LAW BOOK COMPANY LIMITED



Robert Veen

Source: *ABC News* (online)

# Punishment must fit crime, judges rule

*Sydney Morning Herald* (3 March 1979) at 2.

## Man was stabbed 50 times, court told

A 40 year old man died after being stabbed more than 50 times, the Court of Petty sessions, Glebe, was told yesterday.

Before Mr J.B. Goldrick, SM, was Robert Charles Vincent Veen, 21, labourer, of no fixed address, formerly of Alambie Crescent, Wodonga, Victoria.

*Sydney Morning Herald*  
(14 March 1975) at 2.

## To protect society or fit the crime?

THE case of Robert Charles Vincent Veen illustrates how startlingly variable courts can be punishing killers with "diminished responsibility".

*Sydney Morning Herald* (5 April 1988) at 10.

# Justice Reg Blanch



Chief Judge of the District Court, captured by Mark Tedeschi KC (2001-2002)

**Public defenders  
are youngest yet**



**Mr Blanch**

*Sydney Morning Herald* (18 January 1973)

# Justice Peter Hidden

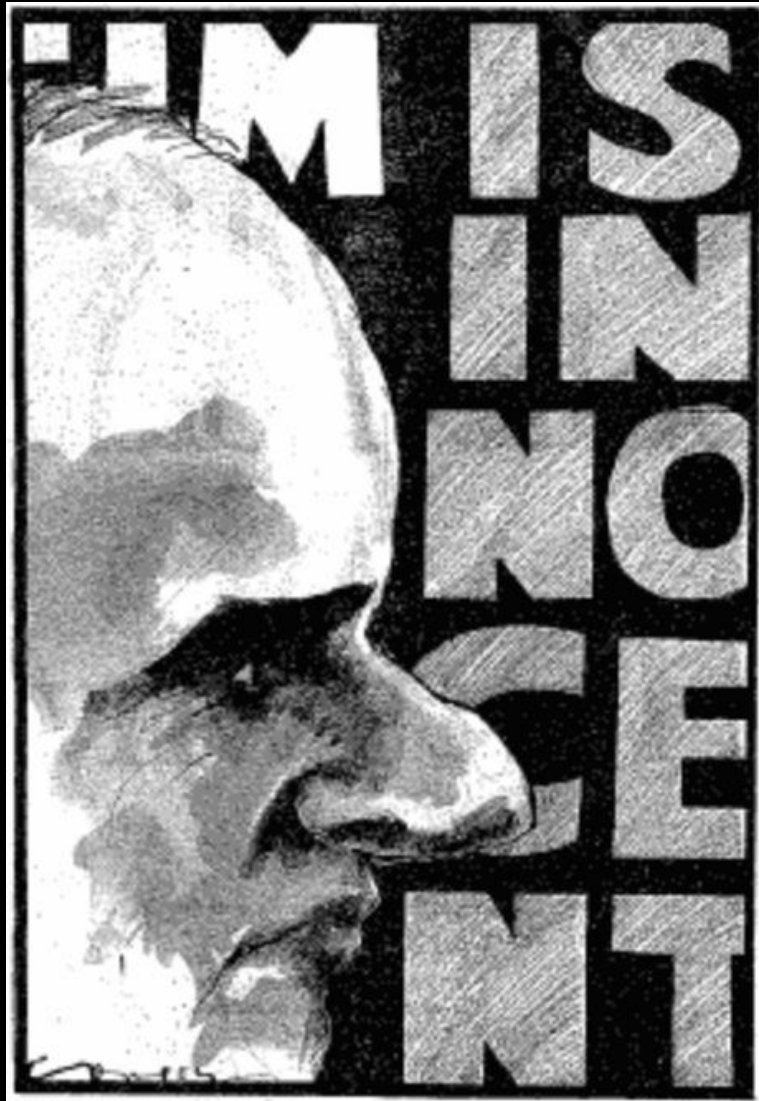
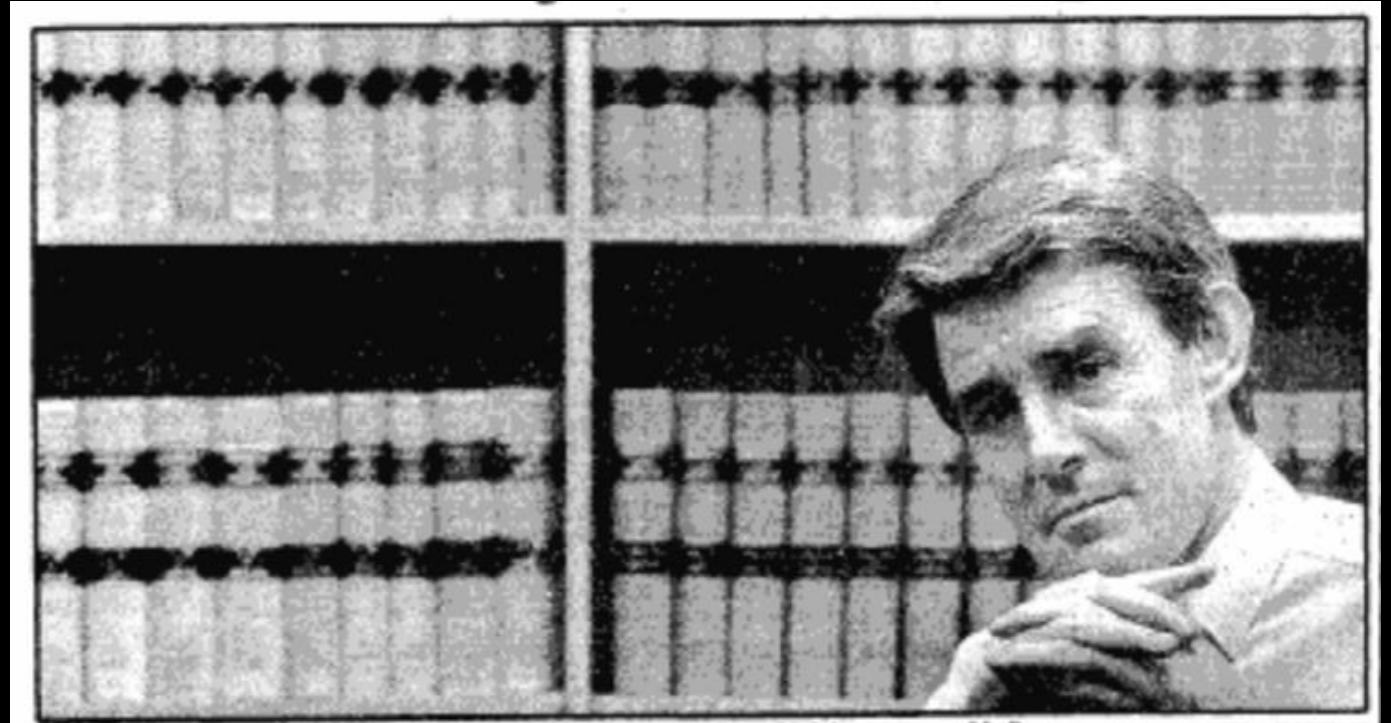


Illustration of Tim Anderson, who Peter Hidden represented in the Hilton bombing trial (*Sydney Morning Herald* (18 Nov 1990) at 33.



Peter Hidden QC (*Sydney Morning Herald* (5 April 1989) at 16.



New South Wales

## Public Defenders Act 1995 No 28

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# Aborigine Faces Murder Charge

*Northern Star* (29 June 1944) at 4.

# Aborigine Found Guilty Of Manslaughter at Lismore

LISMORE, Thursday: After a retirement of three hours the jury at a special sitting of the Supreme Court at Lismore today found Donald Ritchie (29), aborigine, of Maclean, guilty of the manslaughter of Richard Gwynne (66), at South Lismore, on March 14.

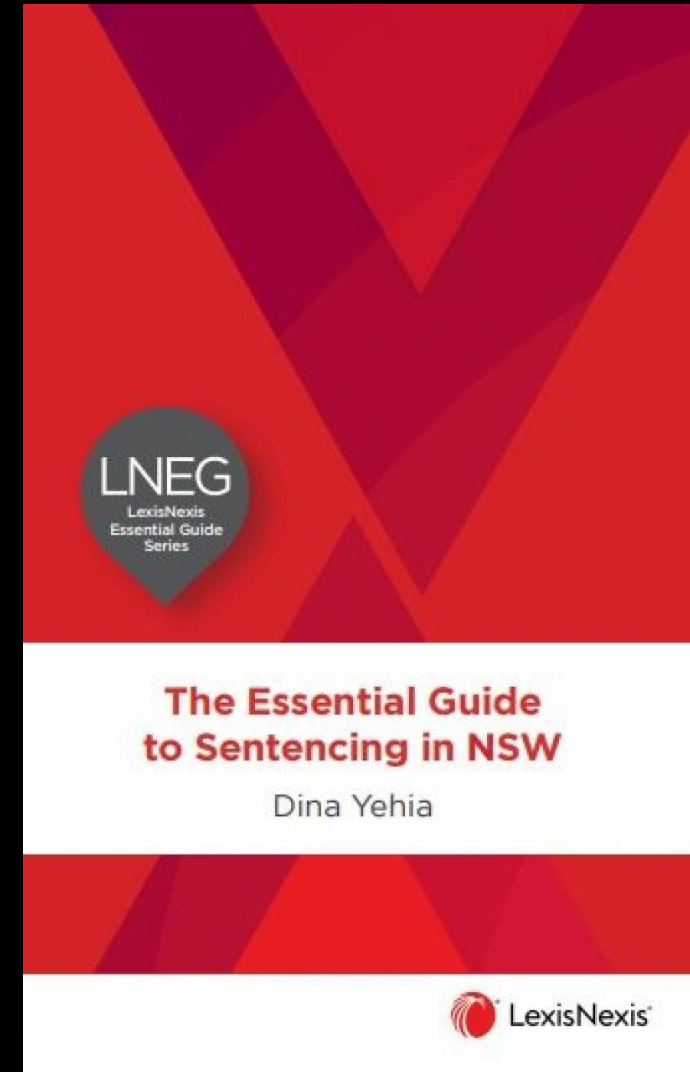
Ritchie, who had been charged with murder, was sentenced to penal servitude for 10 years by Mr Justice, Sir Percival Halse-Rogers.

*Tweed Daily* (30 June 1944) at 2.

# Justice Dina Yehia



Source: *ABC News* (online)

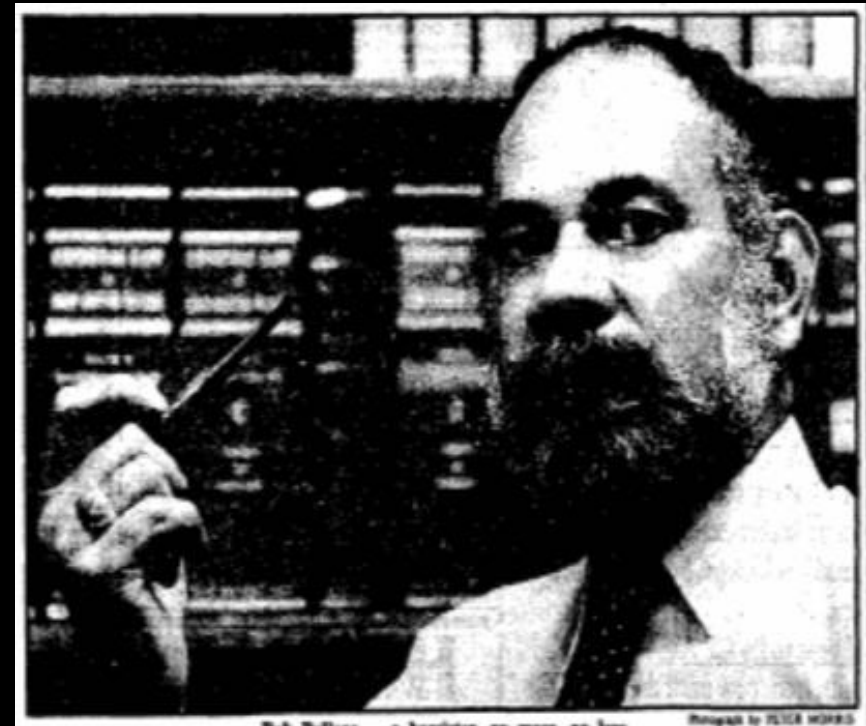




# Judge Bob Bellear



Bob Bellear with his nominee to the bar, Kevin Kitchener (*Sydney Morning Herald* (5 August 1989) at 2).



Bob Bellear when at the private bar (*Sydney Morning Herald* (16 October 1984) at 9).

### FIRST TIME IN ALBURY

One of the first administrative acts of Mr C. Martin, NSW Attorney-General, after he assumed office was to make the post of Public Defender a permanent public service appointment, and his choice fell upon Mr Gordon Champion whom Albury saw yesterday in that capacity for the first time. The Public Defender's services are at the disposal of people who cannot afford to engage private counsel, and the practice was inaugurated in Britain years ago. The Legal Aid Office assigns Mr Champion his duties, and they are varied in both civil and criminal jurisdictions. Yesterday, he was instructed by Mr Cecil Bourke, officer-in-charge of the Legal Aid Office. The instructing solicitor to the Crown Prosecutor was Mr W. C. Lacey, an old associate of Mr Champion's. In roughly 60 per cent of the cases he has handled Mr Champion has been successful.

*Border Morning Mail* (16 Sep 1942) at  
2.

### PUBLIC DEFENDER IN NEWCASTLE

The Public Defender, Mr. Gordon Champion, is on his first official visit to Newcastle. He has been assigned by the Crown to appear for an accused at the current Quarter Sessions.

Mr. Champion is a skilled and experienced criminal lawyer, and before appointment to his present position by the Attorney-General (Mr. C. E. Martin) was associated as Deputy Clerk of the Peace, with the leading criminal trials in the State.

Mr. Champion's instructing attorney is Mr Cecil Bourke, who is a native of Newcastle. He is a son of the late Mr. Thomas A. Bourke, who for many years was well known in the Northern District as an architect and surveyor as well as valuator for several of the municipalities.

*Newcastle Sun* (29 June 1942) at 3.



With Michael King holding a photo of John Papayanni,  
Wagga Wagga born Public Defender.



Outside the Wagga Wagga Court  
House, 2021

# Associate Justice Ketanji Brown Jackson



Source: *The White House* <<https://www.whitehouse.gov/kbj/>>



Source: *University of Colorado Law School*

