

# Court Justice, Episode Two: Alcohol and Crime

In episode two of the fly-on-the-wall documentary series of what goes on in Australia's busiest courthouse, cameras followed three cases involving alcohol that came before the Downing Centre Local Court.

Alcohol is a factor in 40% of all crimes. [It costs the Australian economy around \\$15 billion each year](#) through loss of life (\$4.135 billion), workforce reduction and absenteeism (\$3.579 billion) and road accidents (\$2.202 billion).

**Daniel: Smashed a poker machine and urinated on it.**

The first case is that of Daniel, who had been drinking heavily at the races all day.

In the late afternoon, Daniel smashed a poker machine and then urinated on it. He has no recollection of the events, but with a previous record including a conviction for [affray](#), Daniel was apprehensive about his fate.

In the result, the magistrate opted for a 12-month good behaviour bond in lieu of prison time, fined him \$1,200 and ordered him to pay damages of \$1,825.

For Daniel, this is the equivalent of one month's wages.

**Two young men from the UK beat up a café owner**

In the second case, two young holiday makers from the UK beat up café staff after a night of drinking, because one of them didn't like the meal he'd ordered, saying it was 'too spicy'.

After being refused a refund for the chicken sandwich, the young men, both in Australia on holiday visas, faced the prospect of being kicked out of the country for their alcohol-

fuelled attack.

They both faced charges of assault and property damage and their lawyer asked for the Judge to consider a [good behavior bond](#).

Magistrate Milledge refused that request, saying the victim deserved better justice given that he suffered facial injuries and damage to one shoulder and his ribs.

“The community is sick to death of young yahoos flexing their muscle when something doesn’t please them”, Her Honour remarked.

The two young men were ordered to participate in [forum sentencing](#) – where they will have to face their victim, apologise and agree on a punishment.

The men were also each ordered to pay a \$700 fine.

#### **Rasha: [Low range drink driving NSW](#)**

In the third case, Rasha, a loan manager who needs her car for work, pleaded guilty to [low-range drink driving](#) after being pulled over by police and registering blood alcohol concentration of 0.06.

One in four deaths on Australia’s roads involve drink driving, and alcohol is a factor in more than 2,000 car accidents every year.

Unfortunately for Rasha, she has twice been convicted of drink driving, and the magistrate showed no leniency the third time. She disqualified Rasha from driving and fined her \$660.

As a result of having no driver’s licence, Rasha also lost her job.

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# Court Justice, Sydney: The Boxer, the Neighbour and the Graffiti Artist

Australian TV viewers got a glimpse of what really goes on behind the doors of Sydney's busiest courthouse last night as the first episode of [Court Justice, Sydney](#) aired on Foxtel.

The series showcases a selection of cases that come before the [Downing Centre Local Court list](#). It's the first time television crews have been allowed access to the courtrooms, where large numbers of cases are heard every day.

Producers say the series intends to demonstrate that the reasons people find themselves in court are not always clear cut, and magistrates often have a difficult job to do.

Film makers were given time with magistrates, court staff, defendants and complainants, and several courtrooms were decked out with small fixed-rig cameras to capture the highs and lows of court proceedings.

## The Boxer

Episode One covered the trials and tribulations of three defendants – a championship boxer, a graffiti artist and an alleged nuisance neighbour.

Boxer Garth Wood rose to fame in 2010 when he defeated Anthony Mundine by knock out. It was also his fists that led to charges of '[affray](#)' after a late night altercation in Sydney, when he punched a man who was violent against his friend.

Affray is an offence under [section 93C](#) of the Crimes Act 1900

(NSW) which carries a maximum penalty of 10 years' imprisonment. For the defendant to be found guilty, the prosecution must prove that he or she used, or threatened, unlawful violence towards another and the conduct would cause a reasonable person to fear for his or her personal safety.

[Self-defence](#), which includes the defence of another person, is a complete defence to the charge.

On the night of the incident, Mr Wood had been out drinking with mates. As they were leaving to go home, two of the men got into a fight – the complainant (or alleged victim) punched Mr Wood's friend who toppled from a ledge to the footpath.

Mr Wood ran to his friend's defence. He told the court that the attacker had taken off his shirt and was swearing and behaving violently. Wood gave evidence that he thought the man was going to jump down on his friend "WWE style", and his instinct was to immediately stop the man from doing so by punching him.

"When he came at me, I punched him," Mr Wood told the court. Magistrate Jacqueline Milledge found that the prosecution had failed to negate the possibility of self-defence, and accordingly found Mr Wood not guilty.

### **Nuisance neighbour**

Single mother Bridget Campbell was facing charges of [contravening an Apprehended Violence Order](#) (AVO) taken out by her neighbour Ramon Ashourian.

The two are community housing tenants and have been in dispute for some time. Mr Ashourian claimed Ms Campbell breached her AVO by calling out and threatening him from her apartment.

He produced a recording of a female – alleged to be Ms Campbell – calling him a "pussy" and threatening that her friend would beat him.

Ms Campbell's defence lawyer submitted that the tape was "contrived", or made up. He questioned the credibility of Mr Ashourian's claims that he felt very afraid and intimidated, as the alleged incident occurred at 4am yet he waited until 7pm to contact police.

Magistrate Megan Greenwood found Mr Ashourian to be an unreliable witness and dismissed the charge against Ms Campbell.

### **Street art is expensive**

In the final case of the evening, 29-year old street artist Timothy Turner pleaded guilty to graffiti-related offences after being arrested at a railway yard with a group of other people.

Mr Turner has a history of graffiti offences and Deputy Chief Magistrate Chris O'Brien showed little sympathy, at one point telling him that he simply did not believe his claim that he did not intend to use the graffiti implements that were found in his possession.

On the first charge – 'enter a building with intent' – His Honour recorded a conviction against Mr Turner and ordered him to undertake 150 hours of community service.

On the second charge – possess graffiti implement with intent – Mr Turner was placed on a good behaviour bond under [section 9 of the Crimes \(Sentencing Procedure\) Act 1999](#) for a period of 15 months. And on the third charge – being in the rail corridor – he was convicted and fined \$1,000.

There are nine more 30-minute episodes of the series to screen. Those who work within the criminal justice system hope the observational viewing will educate the public and act as a deterrent to would-be offenders.

As the Chief Magistrate explained: "Research shows that

[confidence in the criminal justice system](#) is higher amongst people who understand how it works and this program will give the community an insight into how magistrates make their decisions.”

[Studies also show](#) that untrained members of the public who are given all of the facts of a case will normally hand-down penalties equivalent to, or more lenient than, those delivered by magistrates and judges, discrediting claims by radio shock-jocks and tabloid newspapers that the judiciary is ‘soft on crime’.

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# Don't Speak During a Police Search!

By Paul Gregoire and Ugur Nedim

NSW police executed a search warrant at the home of Brenton Van der Vegt in the NSW town of Bourke on 8 February 2012. They did so after receiving information that the man may have been in possession of child abuse material.

At the time, Mr Van der Vegt was living alone, having separated from his wife after the rocky breakdown of their marriage.

During the search, police located files containing child abuse material on Mr Van der Vegt's computer, as well as several discs with similar material on them.

The material was found in a locked gun safe, along with a number of other pornographic discs. Several of these discs contained sexual material with unknown adults. One contained

Van der Vegt and his ex-wife together, while six of the discs contained “young children in sexual settings.”

Mr Van der Vegt was subsequently charged with two counts of [possessing child abuse material](#), under [section 91H](#) of the NSW Crimes Act 1900, which carries a maximum penalty of 10 years imprisonment.

At a jury trial in the [NSW District Court in Sydney](#), Mr Van der Vegt pleaded not guilty to both offences.

His [criminal lawyers](#) argued their client had unwittingly downloaded the child abuse material onto his computer, and his ex-wife had planted the discs into his gun safe. They submitted their client only owned the discs that featured adult pornography.

### **The computer files**

At trial, Mr Van der Vegt’s ex-wife admitted that she deleted child abuse material, after she’d accidentally come across it. She said she’d done so on 20 October 2011 after their separation, not in June 2010 while they were still together, as the defence team argued.

Van der Vegt’s ex-wife explained that at the time she deleted the material, the pair were negotiating a settlement of their matrimonial property.

Despite being a child care welfare worker and it being mandatory for her to report such material, the defendant’s ex-wife decided not to notify authorities straight away, so as not to prejudice the settlement negotiations.

Instead, she claimed to have reported it to police several days after the settlement was finalised.

### **The discs in the gun safe**

The defence submitted that Van der Vegt had no knowledge of

the child abuse discs being in the safe, and that his ex-wife had placed them in there. Her motive, they said, was "bitterness" and revenge due to their acrimonious separation.

His ex-wife testified that she had no knowledge of where the safe was, nor where the keys were. She gave evidence that she was only aware that her former husband was "talking about getting" a safe.

The woman acknowledged that she had accessed the defendant's house without permission while he was away, by deceiving his real estate agent in order to obtain a key. She also admitted taking property whilst there.

During cross examination, she accepted that she had the capacity to access the computer and burn discs when she was at the residence.

### **Police search**

The police search of Van der Vegt's house was captured on video camera. The recording along with the transcript were submitted as evidence. The two senior constables cautioned Van der Vegt prior to executing the search warrant.

NSW police senior constable Campbell found the discs whilst searching the safe. They were in similar containers labelled in the defendant's handwriting. As the discs were taken out of the safe, Campbell and Van der Vegt had a verbal exchange regarding the contents.

The officer stated that the first two discs were labelled "mixed video." Van der Vegt then said, "Mate, as far as I am aware, mostly adult by the look of it, it's adult." The officer confirmed that he meant pornography, and when more discs were produced, the defendant said they were the "same thing."

Police found the defendant's fingerprint on one of the discs



that featured child abuse material.

Van der Vegt decided to take the witness stand at trial. In cross examination, the he prosecution put it to him that he had never said words to the effect of, ““Look, I’ve never seen that DVD before in my life”, or otherwise denied knowing about them. The defendant conceded this.

In its closing submissions, the prosecution emphasised this point – highlighting to the jury that Van der Vegt did not deny knowing about the discs or say that he had accidentally downloaded the material. This, according to the prosecution, was a recent invention that was entirely inconsistent with the defendant’s statements to police during the search.

### **The verdict**

As is customary in jury trials, [District Court](#) Judge Toner directed the jury that the defendant must be presumed innocent unless the prosecution had proved to its “satisfaction [beyond reasonable doubt](#) he was guilty as charged.” His Honour also reminded them that his ex-wife had lied to the real estate agent to gain access to the property.

On 6 June 2014, the jury found Mr Van der Vegt not guilty on the first count of possessing child abuse material relating to what was found on the computer. However, they found him guilty on the second count of possessing the material that was found on the discs locked in the gun safe.

### **Appealing the conviction**

Mr Van der Vegt appealed his conviction to the NSW Court of Criminal Appeal (NSWCCA), which heard the case on [15 August 2016](#). He didn’t appeal his sentence, as he had already served the term in its entirety by the date of the appeal.

The sole ground of appeal was that a miscarriage of justice had taken place, as the prosecution had “impugned” Van der

Vegt's [right to silence](#) during the search.

The appellant's lawyers argued that, during the cross examination and closing submissions, the jury had been asked to make an adverse inference against Van der Vegt's silence regarding the discs containing the child abuse material, as he'd made no direct mention of them while police were questioning him.

Van der Vegt's barrister Grant Brady took particular issue over the prosecution's remark, "At no point in time did he say I've never seen that before, because he knew what was in them and he knew what was on them."

Mr Brady argued that the jury could only understand this as the prosecution stating that Van der Vegt "had demonstrated a consciousness of guilt by reason of his silence."

The barrister also took issue over the brevity of the process for displaying the discs during the search, and that they weren't individually presented to his client.

### **The NSWCCA's findings**

NSWCCA Justice Button did not "accept that any miscarriage of justice has occurred in this case," as Van der Vegt had not "exercised his right to silence at all during the search."

His Honour noted that the conversation between Van der Vegt and police during the search had been a continuous one, with no significant pauses.

"In particular, it is not the case that the applicant spoke freely with regard to the discs that showed sexual activities of adults," His Honour continued, "but then remained silent with regard to the discs containing child abuse material."

Mr Van der Vegt was found to have neither exercised his right to silence partially or completely, the justice reasoned. That right had not therefore been impugned during the trial.

To the contrary, what was said in the witness box by Van der Vegt was inconsistent with what he had said to police at his home.

For these reasons, Justice Button dismissed Mr Van der Vegt's appeal.

### **Dilution of the right to silence in NSW**

[On 1 September 2013](#), NSW passed a law which inserted [section 89A](#) into the state's Evidence Act.

That section provides that during "official questioning" by police for a "serious indictable offence" (ie one which carries a maximum penalty of at least five years' imprisonment), an unfavourable inference can be drawn from the suspect's failure or refusal to mention a fact that:

- He or she could reasonable have been expected to mention at the time, and
- That is later relied on in his or her defence.

["Official questioning"](#) means questioning by an investigating official in connection with the investigation of the commission or possible commission of an offence, and includes questioning during an investigation, interview or search.

However, the section only applies if:

- A "special caution" was given to the suspect, containing words which inform him or her of the effect of failing to disclose facts which may be relevant,
- That caution was given before the failure or refusal to mention the relevant facts,
- The caution was given in the presence of an Australian legal practitioner (lawyer) who was acting for the suspect at that time, and
- The suspect had been given the opportunity to consult a lawyer.

The requirement for the presence of a lawyer has effectively meant that lawyers rarely attend police interviews anymore, as this can jeopardise their clients' right to silence.

It has created a situation where suspects no longer benefit from the protection of lawyers during interviews, leaving them susceptible to police pressure and making it more likely that they will speak with police – usually to their detriment.

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## **NSW Courts Are Overflowing, Overworked and Delayed**

By Paul Gregoire and Ugur Nedim

Over the last four years, the NSW criminal courts have seen a marked increase in delays and workloads, according to the latest NSW Bureau of Crime Statistics and Research (BOCSAR) [figures](#).

These increases have been spurred on by the rapid growth in arrests that police have been carrying out over this same period.

NSW police are making more arrests despite the fact that [crime rates](#) in this state have dropped to a forty year low. Crime across NSW has either declined or remained stable in most major categories over the two year period ending December 2016.

“Last year NSW police put more than 244,000 people before the NSW courts, an increase of 14 percent on the corresponding figure for 2012,” [Dr Don Weatherburn](#), director of BOCSAR [wrote in a statement](#). “That’s close to the record set just after the

heroin epidemic peaked in 2001.”

As Dr Weatherburn [has pointed out](#), crime rates in NSW have actually been declining since 2001, after the heroin drought began. The doctor believes the shortage of this drug was a major contributing factors that led to the drop in crime.

## **NSW District Court**

When a person is charged with a [strictly indictable offence](#), they will ultimately appear at a committal hearing in the Local Court.

This hearing is to decide whether the prosecution has enough evidence for the case to be sent to the District or Supreme Court to be heard by a judge and jury. This is referred to as being committed for trial.

The latest BOCSAR figures found that the median delay in the NSW District Court between being committed for trial and the finalisation of the trial rose by 56 percent between 2012 and 2016. This was an increase from 243 days to 378 days.

The time between arrest and finalisation of a trial rose to 714 days, which was up from 512 in 2012.

## **Overworked courts**

There's also been a substantial increase in the workload of the NSW District Court over this same period.

The number of matters committed for trial rose by 35.4 percent, while those committed for sentence increasing by 37.6 percent.

Being 'committed for sentence' is when a person enters a plea of guilty in the Local Court, and they're subsequently sent to a higher court to be sentenced.

Between 2012 and 2016, the number matters that were finalised

by a trial increased by 39.7 percent, while the number finalised by a sentence rose by 36.1 percent.

The increase in workload for the NSW District Court has primarily come from cases involving [illicit drug offences](#), [sexual assault](#) and related offences, and theft and related offences.

There were an additional 577 defendants on drug offence charges whose cases were finalised before the court. There were an extra 283 defendants on sexual assault charges that had finalised court appearances. And there were 225 more defendants on theft offences.

## **NSW Local Court**

There's also been a substantial increase in the workload of the NSW Local Court in recent years.

There were 18,445 more cases finalised by the local courts last year, than in 2012 – a 17 percent increase.

The increase in the NSW Local Court workload is primarily attributed to three types of offences.

The first is an increase in traffic and vehicle regulatory offences – these include people accused of driving while their licences are disqualified or suspended. There were an additional 8,976 defendants on these types of charges.

Justice procedure offences, or bond breaches, were the second highest contributor. There were an additional 6,177 defendants on these sorts of charges.

Acts intended to cause injury or assault were the third highest. These accounted for an extra 2,747 cases that were finalised before the local courts.

## **Increasing numbers on remand**

Over the period 2012 to 2016, there was a substantial increase in the proportion of defendants being refused bail – a 19.8 percent increase. In 2012, 5.9 percent of defendants were refused bail, while in 2016, the figure rose to 7 percent.

BOCSAR custody statistics [released earlier this month](#) outline that at the end of March this year, the adult prison population in this state was 12,955 people – an all-time high.

A whopping 58 percent of this increase is attributed to a rise in the numbers of inmates on remand – those who've been refused bail and are waiting on their cases to be finalised. Many of these people will eventually be released after their charges are withdrawn or thrown out of court.

In 2016, 2,638 defendants had their bail refused in all levels of the courts: Supreme, District, Local and Childrens.

Of these remand inmates, 173 were eventually found not guilty on all charges. This means these people were kept in detention with long waits for court appearances, even though, in the end, they were found to have done nothing wrong.

Recidivism rates in NSW are getting [close to 50 percent](#), meaning that almost half the people behind bars, return to prison within two years. So detaining innocent people inside prison for prolonged periods means they're more likely to return to prison after they've been released.

In effect, the NSW prison system is potentially producing its own revolving door prisoners.

### **Increasing incarceration**

There's also a rise in the number of people being sentenced to prison. The proportion of convicted offenders who were given prison sentences increased by 22 percent. It was up from 8.4 percent in 2012 to 10.2 percent in 2016.

As NSW police arrest more people, and the courts send more

behind bars, the NSW government is making sure there will be enough room for them. Last year, the government announced that it is investing \$3.8 billion to fund [an extra 7,000 prison beds](#) in this state.

This is an almost 50 percent increase in the capacity of NSW adult correctional facilities. So it seems the government is set to continue on with its tough on crime stance and fill up these new prison beds, despite the fact that crime is actually falling.

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## The Downing Centre Courtroom Enters Your Lounge Room

By Sonia Hickey and Ugur Nedim

Fans of *Judge Judy* and dramas like *Boston Legal*, *Ally McBeal* and *LA Law* can now enjoy all the drama of real life court cases, straight from the courtrooms of the Downing Centre.

For the first time ever in Australia, crews have been given unprecedented access to all areas of Australia's busiest court complex to film an observational documentary series.

Producers were given time with magistrates, court staff, defendants and complainants, and several courtrooms were decked out with small fixed-rig cameras to capture the highs and lows of court proceedings.

The [10-part series, which is due to air on Foxtel later this year](#), gives viewers a front row seat to the legal process, including the way cases are run and how decisions are made.

Central to the series are the court's twelve magistrates, who



are responsible for deciding the futures of tens of thousands of people every year.

## **Education and entertainment**

Throughout the series, magistrates offer additional commentary to explain what's happening in the featured cases.

Each 30-minute episode follows two or three cases, from drink driving to drug possession, and assault to larceny.

Until recently, filming inside courtrooms was [severely restricted in New South Wales](#) and our legal system has been slow to adopt advances in technology, and new ways to give the community an insight into the operation of the courts.

This is different to countries like the United States, where the broadcasting of entire cases has been occurring for decades.

Concerns about such broadcasting revolves around the privacy of participants, security issues and the risk of bringing the legal system into disrepute by turning magistrates into celebrities and courtrooms into scenes of soap operas.

However, privacy concerns were addressed by inviting those filmed to sign release forms, and the benefits of providing the community with an understanding of the court system are seen as outweighing the risk of turning proceedings into a spectacle.

## **Positive impact of broadcasting**

It is hoped the series will not only be educational, but act as a deterrent to would-be offenders.

The show also aims to shine a spotlight on social problems, and questions of ethics and morality that exist in our society – demonstrating that issues are not always black and white, or 'easily clarified.'

Viewers are set to see for themselves that magistrates are not as 'out of touch' as radio shock jocks and tabloid newspapers would like the public to believe. Rather, each case calls for a range of factors to be taken into account, and magistrates are required to give reasons for their decisions.

As Judge Henson of the court explains: "Research shows that [confidence in the criminal justice system is higher](#) amongst people who understand how it works and this program will give the community an insight into how magistrates make their decisions."

Indeed, those words are [backed up by studies](#) which have found that members of the public who are given all of the facts will often hand-down [penalties equivalent to, or more lenient than](#), those delivered by magistrates and judges.

The series, which is called Court Justice: Sydney', was filmed over a six-week period last year and producers expect that it will be a big hit. If it meets expectations, it may ultimately be franchised.

Executive Producer for CJZ, Michael Cordell says: "Gaining television access to our courts is one of the last frontiers of observational filmmaking in Australia. We've seen a lot of police shows, ambulance shows and the like, but we rarely get a chance to observe what happens in our courts, which are critical to the way society functions."

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## **Crime Figure Murdered the Day**

# Before Court Hears Audio Recordings

By Blake O'Connor and Ugur Nedim

The southern Sydney suburb of Earlwood was the scene of a public execution earlier this week, when 35-year old crime boss [Pasquale Barbaro](#) was shot dead while leaving an associate's house.

Mr Barbaro was the target of a failed assassination attempt in November 2015, when a gunman fired a barrage of bullets at him on Balmain Road in Leichardt. The attempt occurred a month before he was due to face charges of manufacturing the drug ice on rural properties in NSW.

Monday's execution style hit involved at least one gunman, who is reported to have jumped out of an Audi four-wheel drive and fired up to seven shots.

## Three Pasquale Barbaros

The Griffith-based Barbaro crime gang is said to be affiliated with the Calabrian Mafia, a powerful Italian underworld group. Barbaro's Grandfather, also named Pasquale, suffered the same fate in 1990, and another Pasquale Barbaro was shot dead with underworld figure Jason Moran in 2003.

Yet another related Pasquale Barbaro is currently serving thirty years in prison over the largest ever ecstasy bust in Australia, which occurred in 2007 when a shipping container full of tomato tins containing the drug was discovered in 2007.

## Timing of the hit

The latest hit was executed one night before a Sydney Court was [due to be played phone recordings of Barbaro](#) speaking with

Farhard Quami, the head of street gang Brothers for Life.

### **No stranger to trouble**

Mr Barbaro had a number of run-ins with business partners and the law.

Barbaro and a business associate, Aaron Sabbah, opened a bar and restaurant in Glebe which later collapsed owing almost \$300,000 in rent, causing tensions between the pair and those from which they obtained finance.

Sabbah was recently imprisoned for 12 months after demanding money from a mechanic shop owner whilst wielding a [large black dildo](#) in the company of two stocky men. During the sentencing proceedings in [Downing Centre District Court](#), Judge John North stated:

“... the offender can be seen to be carrying a large black dildo in his right hand, which he is swinging as he walks in”.

### **Why was Barbaro killed?**

There are several theories as to why Mr Barbaro was assassinated, none of them conclusive. Crime Journalist Keith Moor believes other underworld figures suspected [Barbaro of being a police informant](#):

“The suspicion is he was probably killed for breaking the code of Omerta which is the code of silence”.

But given the number and nature of Barbaro’s underworld associations, and the friction caused by some of his dealings, the investigation into his murder could be a long and drawn out process.

### **Lawyer Gunned Down**

Barbaro’s execution is certainly not the first time a person suspected of having links to the Calabrian Mafia has been

assassinated.

In March of this year, criminal defence lawyer [Joseph Acquaro](#) was gunned down outside his Brunswick restaurant in Melbourne. This was after Acquaro warned by police in June 2015 that his life was in 'grave danger'.

Acquaro represented a number of Calabrian underworld figures, including convicted drug supplier Francesco Madafferi and crime figure Rocco Arico.

Since the beginning of 2012, nearly two dozen people have died and more than 100 other have been injured in Sydney shootings.

Fairfield in Sydney's west is reported to be the 'most dangerous suburb in Sydney', with the highest number of shootings, including four within a two week period.

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## Downing Centre Court Lifts Suppression Order

By Sonia Hickey and Ugur Nedim

A Magistrate at Downing Centre Local Court recently made the decision to lift a [suppression](#) order on the Sydney school at the centre of allegations that a female teacher had a sexual relationship with a male student.

Magistrate Jacqueline Milledge [declined to extend an interim suppression order](#) over the name of the school, saying it is important for the community to be aware "this matter is afoot".

Her Honour did, however, suppress the identity of the teacher

in order to protect students, considering more students may come forward as victims or witnesses.

### **No plea against charges**

The teacher, who worked at [Sydney Grammar School](#) – one of Australia's most prestigious boys' schools where school fees cost \$30,000 per year – did not attend court for the hearing.

As the charges are 'strictly indictable' – which means they will need to be finalised in a higher court – the defendant's lawyers were not required to enter a plea, and they refrained from doing so.

The teacher has been charged six counts of having '[sexual intercourse with a person aged between 17 and 18 years under special care](#)' in contravention of [section 73 of the Crimes Act](#), which carries a maximum penalty of four years' in prison, and one count of indecent assault.

The court heard that the teacher and the boy were involved in extra-curricular school activities that required them to spend time alone together.

It is alleged a sexual relationship developed in that context, which lasted two to three months.

The student allegedly reported the relationship to a school counsellor last month.

### **Sydney Grammar 'supports parents and students'**

Court documents claim some of the offences took place at the woman's home, where she is alleged to have kissed and had sex with the boy twice.

It is further alleged the teacher had sex with the student four times at the school between February 1 and March 31 this year.

Sydney Grammar School has released a statement confirming NSW Police charged a member of its staff “with serious misconduct of a sexual nature”.

The statement said that as soon as the school became aware of the allegations, the teacher was suspended and banned from contact with students, pending an outcome on the matter.

“Parents at the school were written to about the situation, and support has been provided.”

### **Sexual abuse in private schools**

The case raises further concerns about the misconduct of teachers in elite schools, several private Sydney schools having been named in the Royal Commission into Institutional Responses to Child Sexual Abuse.

Those schools include [Knox Grammar](#), [Trinity Grammar School](#), [The King’s School and St Ignatius College](#), with allegations going back as far as the 1980s.

The Sydney Grammar school teacher was granted bail last week, and Ms Milledge adjourned the proceedings until December 8<sup>th</sup>.

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## **Court Backlogs Harm Victims and Defendants Alike**

Defendants seeking justice and victims wanting closure are being left waiting as [extensive court backlogs](#) place extra pressure on our already struggling criminal justice system.

It has been reported that [a seventeen-year old complainant in a sexual assault](#) case has been unable to attend school for 5

years, waiting for her alleged tormenter – her uncle – to be brought to justice and give her some closure.

On the other side of the coin, defendants – many of whom ultimately have their charges withdrawn or thrown out of court – are increasingly being held behind bars for months or even years awaiting the finalisation of their cases.

### **Justice Delayed...**

The [NSW District Court](#) is struggling to clear its backlog of cases.

At the end of July this year, [2042 criminal trials and 1195 sentencing cases](#) remained outstanding in the District Court – nearly double its caseload at the end of 2010, when there were 977 pending criminal trials and 722 sentencing matters.

### **Police Preferred Over Courts**

Government funding to the NSW Police Force has risen significantly in recent years despite declining crime rates, but similar levels of extra funding have not been extended to our courts in spite of vastly increased caseloads.

Criminal Defence Barrister Phillip Boulten SC has criticised the state government's failure to adequately fund courts, saying:

"[the] government has provided ample resources for police investigations ... [and] the police have been very efficient in arresting people... [but] there hasn't been the same level of resources applied to the justice system".

Harsher bail laws have led to a sharp rise in people being 'held on remand'; locked up while awaiting the outcome of their cases. Statistics released by [The Bureau of Crime Statistics and Research](#) (BOCSAR) suggest that one-third of our state's 12,550 inmates are now on remand.



Of concern is the fact that nearly 40% of all defendants held on remand in 2014 did not ultimately receive a prison sentence – indicating they were either innocent or should never have been behind bars in the first place. And locking people up is expensive – [the average cost to taxpayers](#) for keeping an adult in prison is \$237.34 a day, and nearly \$700 a day for each child.

## **No Compensation**

Article 14(6) of the [International Covenant on Civil and Political Rights \(ICCPR\)](#) recognises a right to compensation for those who have been wrongfully convicted:

“when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment is entitled to compensation according to law”.

However, this [right has not been recognised by Australian law](#). And unlike in many parts of the US, Australian jurisdictions do not have statutory schemes for providing compensation to those who are wrongly imprisoned.

This means that those who are accused of crimes and held behind bars for long periods of time, only to have the charges withdrawn or dismissed, are rarely able to achieve compensation – unless they can prove an abuse of process, malicious prosecution or other form of serious misconduct on the part of the prosecution

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# Police Officer Convicted Over Assault

A NSW police officer has been sentenced to a 15-month section 9 good behaviour bond – which comes with a criminal conviction – over the assault of a man being held in custody at [Dee Why police](#) station on Anzac Day last year. The incident is yet another example of ongoing police brutality and abuse of powers in the state.

Last Friday, Leading Senior Constable Shaun Moylan was found guilty of two assault charges in Sydney's Downing Centre Local Court. The 41-year-old officer [was captured on a CCTV camera](#) violently pushing Mark Adamski twice in a charge cell.

Mr Adamski was affected by alcohol when he was arrested hours earlier over [an alleged domestic assault](#) in Narrabeen. The 32-year-old – who owns a recruitment agency – was being held in the cell when he and Moylan had a heated verbal exchange.

## **Evidence at the hearing**

During the defended hearing, CCTV footage was played showing Moylan open the cell door and confront Adamski, before pushing him in the chest. The constable leaves, the two continue to argue and then Moylan re-enters the cell pushing Adamski once more, this time in the throat.

The second push resulted in Adamski's head slamming against the back of the cell wall.

After the assault, Adamski pleaded with police to call an ambulance, but no medical attention was offered. On being released, Adamski was forced to catch a bus to Manly Hospital, where he was treated for injuries, which included a hematoma on the back of his head.

At the initial court hearing in May, Moylan claimed he was innocent, despite the evidence contained in the CCTV footage.

His criminal defence barrister cross-examined Adamski to the effect that he had “downplayed” his role in the incident and “exaggerated” Moylan’s.

However, other police officers on duty at the time backed up Adamski’s version of events.

Senior Constable Daniel Gill told the court that Moylan had used “significant” force and “cupped his hand” around Adamski’s throat during the second push. He also confirmed that Adamski had been requesting medical help, and that none was forthcoming.

Another officer working at the station that night, Constable Brendon Kitchener, testified that the use of force had disturbed him to the point that he reported it to other colleagues.

At a defended hearing in July, it came to light that Moylan had joined Constable Zoe Barrett at the station desk following the assault and remarked, [“I shouldn’t have gone in there.”](#)

Barrett said that Moylan, who was the acting supervisor at the time, went to the custody area to help another officer. She said she could hear loud noises coming from the “area and then it went quiet.”

The officer also told the court that she looked up at a monitor screen and saw a man falling backwards in the cell with Moylan standing at the open door.

On the following day, Constable Moylan – who’d been suspended from duties on full pay since July 2015 – claimed he was acting in self-defence and gave his version of the events.

Moylan testified that on the night of the incident, Adamski had been yelling obscenities, so he decided “as a courtesy” to

open the cell door to speak with him and calm him down. He claimed that this method had worked for him in the past.

He said that upon doing so, he immediately felt threatened, claiming that Adamski clenched a fist and said, "I will fucking have you." At this point, the constable said he thought he was about to be attacked.

But last Friday at Downing Centre Local Court, Magistrate Susan McIntyre dismissed Moylan's self-defence claim as "almost absurd." She said the CCTV footage shows that Adamski didn't move towards the constable "to any significant extent" and remained "well within the confines of the cell."

She found him guilty of the assault occasioning actual bodily harm and common assault.

## **Sentencing**

During the ensuing sentencing hearing, officer Moylan's barrister submitted that his client had already paid a "heavy price" over the incident, and that any criminal record would impact on his future employment. He argued the constable should be given a Section 10 (now a [section 10 dismissal](#) or [conditional release order](#)), which would mean avoiding a criminal record.

However, Magistrate McIntyre was unsympathetic, noting that the officer was "in a special position" and should not have abused his power. She sentenced him to a Section 9 bond, which carries a conviction.

As for Mark Adamski, he was found not guilty of all charges brought against him.

## **Police brutality**

Of course, this is not the first case involving an abuse of powers by NSW police.

There's the high profile case of [Jamie Jackson Reed](#), who was restrained by police at the 2013 Gay and Lesbian Mardi Gras. In 2014, Magistrate Michael Barko found that police had used excessive force when apprehending the 18-year-old man.

And just last month, English backpacker Liam Monte [announced he was suing NSW police](#) over an institutional-cover up of his alleged assault, which involved an off-duty police officer on April 19 2013. After a slight altercation in a McDonald's on George Street in Sydney's CBD, several men followed Monte to the entrance of the restaurant and one, off-duty police officer Osvaldo Painemilla produced a badge and said he was under arrest.

Believing the badge to be a fake, Monte grabbed it and left. Painemilla's friends then pursued Monte up George Street and pulled him out of a taxi. A bus driver who witnessed the assault said the backpacker was struck about ten times in the face as he lay on the ground.

Monte was taken to hospital suffering severe facial bruising and a suspected fractured eye socket.

After being discharged from hospital, detectives from the Rocks police station arrived at Monte's hostel and arrested him for stealing.

On hearing the case in 2014, Magistrate Michael Barnes described it as an abuse of process. He concluded that police had brought the prosecution against Monte to "somehow negate the suggestion that the force applied" to him "was otherwise completely unjustifiable."

Magistrate Barnes found the evidence supported the police charges of stealing the badge and gave Monte a non conviction order, which means he escaped a criminal record.

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# Backpacker Sues NSW Police Over Bashing

A backpacker who was prosecuted for a minor offence after allegedly being bashed by a NSW police officer is now suing the Force, accusing it of an institutional cover-up over the failure to investigate or discipline an off-duty officer involved.

The trouble for Liam Monte started one Friday night in April 2013. He and some mates were eating at McDonalds on George Street in the Sydney CBD, larking around. It is understood the men were throwing French Fries, and that one of the fries landed on the shoulder of Dennis Schafer, who was there with an off-duty police officer named Osvaldo Painemilla, both of whom were intoxicated.

A dispute ensued and the two groups of men left the restaurant. Outside, Officer Painemilla produced his badge, saying he was a police officer and that Monte was under arrest.

Officer Painemilla later [admitted in court](#) to consuming about 16 alcoholic drinks that evening. Also in court, the officer claimed he was trying to calm the situation down, which was completely at odds with Monte and his friends' version of the events, as well as those of independent witnesses, who stated that the officer was highly aggressive, and was yelling threats.

The officer then pulled out his badge, after which Monte said it was fake, before grabbing it, running up the street and getting into a taxi.

Painemilla and his friends caught up with Monte, dragged him out of the taxi, through him to the ground and repeatedly punched and kicked him while he was on the ground.

According to a statement from a bus driver who witnessed the assault, Monte was "punched approximately 10 times to the face as he lay on the ground".

Monte was taken to hospital by ambulance, suffering severe facial bruising and a suspected fractured eye socket.

### **Monte charged and prosecuted**

Shortly after Monte was discharged from hospital, detectives from The Rocks police station in central Sydney arrived at his backpackers' hostel, where they arrested and charged him with assaulting Officer Painemilla.

The case proceeded to a defended hearing in 2014, during which the Presiding Magistrate, Michael Barnes, described the prosecution as an abuse of process by police.

The Magistrate noted that police initially charged Monte with "assaulting an officer in execution of his duty", but that charge was later withdrawn when independent witness statements made it abundantly clear that Monte did not assault anyone, but was the victim of a vicious and sustained assault by the drunk off-duty officer and his mates.

It was only then that police charged Monte with stealing the police badge.

The Magistrate noted that police had brought the prosecution in an attempt to "somehow negate the suggestion that the force applied to Monte was otherwise completely unjustifiable".

His Honour ultimately found that the facts supported the charge of stealing a badge, but did not convict Monte, instead giving him a [Section 10 bond](#) (now [conditional release order](#) without conviction) which means that he was found guilty but

no criminal conviction was recorded against his name.

### **Proceedings against police**

Monte is now [suing the NSW Police Force](#) for damages resulting from assault and battery, misfeasance in public office, unlawful imprisonment and collateral abuse of process.

[His statement of claim](#) argues that the Force is vicariously liable for Officer Painemilla's actions, and that police investigating the incident failed in their duties to fairly investigate the matter and charge those who assaulted him.

NSW Police are yet to file a defence in the case, although last month, lawyers acting for the Force applied to the NSW District Court for security of costs – asking that Monte be ordered to pay \$60,000 upfront to cover police costs in the event that Monte loses the case. That application failed.

A date for the civil trial has not yet been set.