

# 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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## Channel Nine Reporter Accused of Child Pornography Offences

In 2014, *A Current Affair* reporter Ben McCormack sat in the Downing Centre District Court as former 'Hey Dad' star [Robert Hughes was found guilty of child sex offences](#).

Today, the sexual assault complainants' champion – who liaised with the victims of Hughes and others – was himself arrested and charged with sexually inappropriate conduct towards children.

It has been reported that police detectives launched an investigation into the 42-year old after a tip off from the Joint Anti Child Exploitation team. Officers arrested Mr McCormack at 7.30am this morning during a vehicle stop at Moore Park and conveyed him to Redfern Police Station.

Police then executed search warrants at Mr McCormack's home in Alexandra and at the offices of *A Current Affair* in Willoughby, where they seized a mobile phone, computers, USBs and external hard drives.

"Police will allege in court the man was engaged in sexually explicit conversations about children with an adult male and discussed child pornography," a police spokesperson stated.

Mr McCormack was charged with '[using a carriage service for child pornography material](#)'.

### **'The charge**

'Using a carriage service for child pornography material' is an offence under [section 474.19 of the Criminal Code Act 1995](#) (Cth).

For a person to be found guilty, the prosecution must prove beyond reasonable doubt that he or she:

1. Accessed material, or caused material to be transmitted to him or herself, or transmitted, made available, published, distributed, advertised, or promoted material, or solicited material, and
2. The person used a 'carriage service' to do this, and
3. The material was 'child pornography material'.

The prosecution must establish that the defendant 'intended' to do one of the acts listed in subsection 1 above, and that he or she was at least 'reckless' as to whether the material was 'child pornography material'.

The maximum penalty for the offence is 15 years' imprisonment.

Mr McCormack has been granted conditional bail and is scheduled to appear in [Downing Centre Local Court](#) on the 1<sup>st</sup> of May.

He is entitled to the presumption of innocence unless and

until the prosecution is able to prove the case against him.

## **Definitions**

[Section 7 of the Telecommunications Act 1977](#) defines a 'carriage service' as "a service for carrying communications by means of guided and/or unguided electromagnetic energy"; which includes fixed and mobile telephones and the internet.

Section 473.1 of the Criminal Code Act defines 'child pornography material' as:

(a) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who

(i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;

And does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(b) material the dominant characteristic of which is the depiction, for a sexual purpose, of:

(i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; **or**

(ii) a representation of such a sexual organ or anal region; or

(iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;

In a way that reasonable persons would regard as being, in all the circumstances, offensive; **or**

(c) material that describes a person who is, or is implied to be, under 18 years of age and who:

(i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;

And does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; **or**

(d) material that describes:

(i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or

(ii) the breasts of a female person who is, or is implied to be, under 18 years of age;

And does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

## **Defences**

Section 474.21 of the Criminal Code Act provides that a person is not guilty of 'using a carriage service for child pornography material' if he or she convinces the court on the 'balance of probabilities' (ie more than 50%) that the conduct:

(a) was of public benefit; and

(b) did not extend beyond what is of public benefit.

The conduct can only be of public benefit if it was necessary for:

(a) enforcing a law of the Commonwealth, a State or a Territory; or

(b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or

(c) the administration of justice; or

(d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

An additional defence is available for law enforcement officers acting in execution of their duties.

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## **Sydney Taxi Driver Charged with Indecent Assault**

[A 45-year old taxi driver has been charged](#) with indecently assaulting a 25-year old woman during a trip between the Sydney CBD and Leichhardt.

The driver picked up the woman from outside a licensed venue in George Street, Sydney and drove her to Norton Street in Leichhardt.

Police allege the driver “indecently assaulted the woman a number of times” en route, then “attempted to stop the woman” after she got out of the cab.

The complainant reported the matter to Leichhardt Local Area Command who commenced an investigation, resulting in the man attending Glebe Police Station at 2pm yesterday.

The driver was charged with indecent assault and common assault, and bailed to appear in [Downing Centre Local Court](#) on

13 January 2017.

## **Indecent Assault in NSW**

[Section 61L of the Crimes Act 1900](#) contains the offence of 'indecent assault', which carries a maximum penalty of five years' imprisonment in the District Court, or two years if the case remains in the Local Court.

A person is guilty if the prosecution is able to prove beyond reasonable doubt that they 'assault[ed] another, and at the time of the assault or immediately before or after it... also commit[ed] an act of indecency'.

An act of indecency must have some sexual connotation, and there must be an intention to obtain sexual gratification. As the NSW Judicial Commission explains:

"For an assault to be "indecent" it must have a sexual connotation. It will have that connotation where the touching or threat is of a portion of the complainant's body, or by use of part of the assailant's body, which gives rise to that connotation: *R v Harkin* (1989) 38 A Crim R 296 at 301. However, if the assault does not unequivocally offer a sexual connotation, the Crown must show that the accused's conduct was accompanied by an intention to obtain sexual gratification"

For those who plead guilty or are found guilty of indecent assault, the court can impose any one of the following penalties:

- A '[section 10 dismissal](#) or [conditional release order](#)', which means guilty but no criminal record. This may be accompanied by a good behaviour bond.
- A fine.
- A 'section 9' good behaviour bond, which comes with a criminal record.
- A community service order.



- An intensive correction order.
- A suspended sentence; or
- Prison.

The applicable penalty will depend on a range of factors, including the seriousness of the conduct, whether a plea of guilty was entered, the defendant's age, any mental condition/s suffered, demonstrated remorse, the likelihood of committing further offences etc.

Woman who are using taxis alone are advised to sit in the back seat, and to immediately report any untoward advances to the relevant taxi company and authorities after recording the driver's details.

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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 Madafferri 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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## **‘F\*\*\* Fred Nile’, ‘Bigots F\*\*\* Off’: Protesters Found Not Guilty of Offensive Language**

There is no list of words which are considered to be ‘[offensive](#)’ under NSW law.

Whether a word or phrase is offensive depends on the context in which it is used, and whether it would ‘wound the feelings, arouse anger or resentment or outrage in the mind of a reasonable person.’

The words must be said in or near a public place or school to constitute offensive language under the law.

### **Sydney Protest**

In September 2015, Christian Democratic Party leader MP Fred Nile led a protest in Sydney against proposed same-sex marriage laws.

A [counter protest](#) was conducted at the same time by members and supporters of activist group Community Action Against Homophobia (CAAH).

During the protest, CAAH convenors Cat Rose and Patrick Wright

were issued with [criminal infringement notices](#) (CINs) for offensive language after chanting 'fuck Fred Nile' and 'bigots fuck off'.

CAAH member and LGBTI Officer for the National Union of Students, April Holcombe, received a CIN days after the event for saying:

"We need to make a stand against them and make sure us using bad language about the fuckers is nothing compared to the epidemic of suicides there people contribute to".

Ms Holcombe later said:

"I was called 48 hours after the protest to be told that I had sworn, that this was on police footage, and that my \$500 fine was in the mail... The police are keeping tabs on protesters and trying to intimidate them with shady penalty notices".

Police then realised the CINs were invalid because they cannot be issued during a genuine demonstration or protest.

They then issued Court Attendance Notices instead.

## **In Court**

The case reached a defended hearing before Magistrate Bradd in Downing Centre Local court yesterday, where the trio faced fines of up to \$660 and criminal records.

The court heard Ms Rose told police that "fuck off is part of the common vernacular", to which police responded "it's not part of children's vernacular" – implying kids were around.

In delivering judgment, His Honour said there was no evidence Ms Rose used the phrase "fuck off" when speaking to police – which may have amounted to offensive language.

He noted that whether the word "fuck" is part of a child's vernacular "depends on the words that a child listens to from

others”.

He remarked that phrases like “you fucking beauty” and “fucking hell” are unlikely to be held offensive in this day and age.

His Honour found that the phrase “fuck Fred Nile” was used to dismiss an argument against marriage equality, and was not sufficient to wound the feelings, arouse anger, resentment, disgust or outrage in the mind of a reasonable person.

He found all three defendants not guilty of the charge.

### **The Aftermath**

After court, Mr Wright declared:

“This is a big win for free speech and the right to protest... the police have attempted to scare marriage equality activists out of speaking up against bigotry. They have failed.”

Ms Rose stated:

“... with marriage equality still banned by law, the homophobes haven’t been defeated. We’ll keep protesting until we have our rights, and you can expect a few f-bombs along the way.”

Ms Hearn’s solicitor added that offensive language laws have:

“for too long been used as a social control applied disproportionately against marginalised and vulnerable people”.

It seems the NSW government may still have some way to go before completely silencing the voices of protesters.

The next marriage equality rally will be held on 26 November at Sydney Town Hall.



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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 funding 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.

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# Getting Out of Jury Duty

Serving on a jury can be a rewarding experience, but more than that, it's also a chance for any Australian citizen over the age of 18 to directly take part in the legal process.

## The role of the jury

The [role of a jury is to hear evidence and then apply the law](#) as directed by the judge, to decide if a person is guilty or not guilty of a particular crime they've been accused of. The jury's decision is called a 'verdict'.

In New South Wales, juries do not participate in the sentencing process.

If you are summoned, you must to attend court at a certain time on a certain date. A summons is a legal document so unless you have express permission not to partake, you need to attend court when you're required to do so, or you may face a hefty fine.

But even if you do attend court, you might not be chosen as part of a jury. And there are many reasons for this. Only a small portion of people who attend court for jury duty actually end up as part of a jury in a court room.

The most recent statistics released by the Office of the NSW Sheriff are from the year 2014-2015. They suggest that 278,000 citizens were selected throughout the state to be on the jury roll, but only 58,000 were actually required to attend court. Of those, 7050 actually served on a jury.

## Reasons for asking to be excused

In the same year, [the following excuses were knocked-back:](#)

- "I need to look after my cat,"
- "I'm allergic to air conditioning" and

- “I’m scared of buses and trains and have no one to drive me to court”.

However, the legal system can be understanding if you have a pressing reason, such as you own your own business and are indispensable to its day-to-day operations, or if you work in the system itself (lawyers, judges, police and politicians are not permitted to serve on juries).

If you attend court and realise you know the judge, one of the lawyers, the defendant, complainant or one of the witnesses, this is normally a valid reason for being excused.

People who are ineligible for jury duty include anyone who:

- has served time in prison in the previous 10 years,
- has been detained in a detention centre or other juvenile facility (excluding for a failure to pay a fine), or
- is currently bound by a court order that relates to a criminal charge or conviction; such as bail, a good behaviour bond, parole order, community service order, apprehended violence order or disqualification from driving.

If you fall into one of those categories, you can write to the Sheriffs department asking to be excused from jury duty even before attending court.

Otherwise, you can inform the Sheriff at court about your reasons for requesting to be excused – which may be decided in court by the judge.

### **‘Exemption’ versus ‘excused’**

Some people can apply for exemptions from jury duty. If you work in emergency services or are a full-time carer, a member of the clergy or live a very long way from any courthouse, you may apply for an exemption, which, if granted, means you will

not be chosen for jury duty for a specified period of time.

However, if you are chosen you will need to apply [to be 'excused'](#). This is different altogether, but illness, disability and work commitments, as well as pre-booked and paid for holidays may be valid reasons for being excused, so long as you can provide suitable evidence. Again, you may write to the Sheriffs department advising them of your reasons before attending court, or wait until you get to court to apply.

A change of address may also be a valid reason, especially if you are no longer in the state where you are required for jury duty. However, if you don't keep your address details up to date and therefore don't receive the summons, you may nevertheless be fined.

### **Jurors get paid**

It's worth noting that jurors [get paid for their services](#), and there are travel allowances in some circumstances, and meals provided too.

The average trial in New South Wales is about 7 days long. If you're summoned, then remember how important it is to partake in this civic duty, especially for the ongoing benefit of the system itself.

Besides, it could be one of the most interesting experiences you'll ever have.