My Case is in Court for a What….? Common Listings in Criminal Cases

The Downing Centre Court Complex has six levels of courtrooms, housing both Local and District courts.

The Downing Centre court list contains a many dozen names each day for a variety of different types of court proceedings.

If you're not sure of the difference between a trial and a hearing, or what happens at a committal, this blog will answer all these questions. Whether you are representing yourself in court, or simply want to know a bit more about what goes on inside the courtroom, read on to have the different types of court appearances explained.

Annulment application

If your court case is heard in your absence and you did not attend, you may be able to appeal the decision by lodging what is known as a section 4 annulment application. You have two years after the conviction or sentence was imposed to make this application, and you will need to show good reasons why you didn't attend in the first place.

Appeal

There are different types of appeals, the two most common of which are:

1. Severity appeals, which are appeals on the basis that the penalty was too harsh, and
2. Conviction appeals, which are appeals against being found guilty

You normally have 28 days to appeal a decision from the Local

court to the District, or three months if you have a good reason for the delay.

Bail Application / Release Application

If you are refused bail at the police station, the next step will be for police to bring you before a Magistrate who will decide to release you on ‘bail’. Bail is a promise to attend court, and may come with or without conditions. An application to be released on bail used to be called a bail application, but is now called a release application.

Committal Hearing

Criminal cases start in the Local court, but more serious charges can progress to a higher court, such as the District or Supreme Court. A committal hearing is a Local Court proceeding to decide whether there is enough evidence for a case to go to a higher court, or whether the charges should be dismissed.

Defended Hearing

A defended hearing is Local Court proceeding to determine your guilt or innocence. Witnesses will normally take the stand and answer questions from the prosecution and defence. The magistrate will then decide whether or not you are guilty.

Mention

A mention refers to any short court appearance, typically lasting no more than a few minutes. It can involve asking for an adjournment (ie for the case to go to another day), simply entering a plea of guilty, or indicating a plea of not guilty and asking the magistrate to order the prosecution to provide you with all of the materials they are relying upon, which is called the ‘brief of evidence’.

Reply to Brief

If you plead not guilty, the magistrate will normally order police to serve the brief of evidence within a certain timeframe, usually 4 or 5 weeks. At the same time, the magistrate will relist the case for another mention in order for you to go through that material and either confirm your plea of not guilty, or change it to guilty. That court date is called reply to brief.

Section 32 Application

A section 32 application is where you asked the magistrate to dismiss (throw out) the charges because you are suffering from a mental condition, and because it is more appropriate for you to be placed on a mental health treatment plan than to punish you under the regular law.

Sentencing Hearing or 'Plea'

If you enter a plea of guilty – or are found guilty – the next step is for the magistrate to decide upon your penalty. This process is called a sentencing hearing, or 'plea in mitigation', or simply a plea. The magistrate will normally read any relevant materials, such as the police papers and your character references, and hear verbal submissions from your lawyer and the prosecutor before deciding the penalty.

Trial

A trial is a District or Supreme Court proceeding where your guilt or innocence is decided. Like a defended hearing, witnesses normally attend court and are questioned by both sides. However, a trial usually occurs before a jury of 12 people who decide guilt or innocence.

So there you have it – some of the most common proceedings you are likely to come across in the Downing Centre.

The Role of the Registrar in Downing Centre Court

Gone are the days where after a long legal career, lawyers would wind down by "retiring to the bench" and becoming a judge.

Nowadays, the job of a magistrate or judge involves a lot of tough work; with one magistrate describing it as "a bit like putting your mouth over a fire hydrant."

Thousands of cases pass through our local courts each year, and it can take months or even years to finalise any particular case. A standard local court list could have over 100 cases on any given day, all of which must be dealt with by day's end.

To ease the pressure, registrars are often used to sort cases out before they come before magistrates. As well as in the Downing Centre Local Court, which is the busiest court in the state, registrars are employed now in many Sydney and regional local courts, as well as in District, Supreme and Federal courts. The roles of Registrars vary from court to court.

Registrars have some, but not all, of the powers and functions of their counterparts, and can preside over both civil and criminal proceedings.

What are the powers of a Registrar?

Local court registrars have the authority to make decisions about procedural matters; for example, adjourning cases, accepting pleas of guilty, ordering the service of brief materials, granting access to subpoenas, listing cases for

defended hearings, and so on. Judicial decisions are then left to magistrates and judges; including presiding over sentencing hearings and defended hearings in the Local Court, and jury trials in the higher courts.

Under rule 8.2 of the NSW Local Court Rules, registrars are permitted to:

- Adjourn proceedings, without the consent of the parties;
- Make orders by consent;
- Set times by which documents must be served on the other party;
- Deal with subpoenas;
- Determine preliminary matters prior to the commencement of a hearing or trial;
- Conduct pre-trial reviews;
- Grant costs applications; and
- Make orders in relation to the just, efficient and timely management of court proceedings

How is a registrar different to a magistrate?

Aside from the greater limitations on the power of registrars, proceedings before registrars are often less formal. While some registrars do sit in courtrooms, these are often much smaller, and some may even sit in a small office room with none of the usual trappings of a courtroom.

This is not the case at the Downing Centre Local Court, where the Registrar sits in courtroom 4.4, on level 4.

Unlike magistrates or judges who are addressed as 'Your Honour', the correct way to address a registrar is simply 'Registrar.'

From court to court, registrars and their expectations of formalities differ, and while getting to your feet is required when speaking to a Local Court magistrate or District Court judge, this is not always the case with registrars.

What are the qualifications of registrars?

Although registrars perform important administrative functions, they are not always legally qualified. However, legislation now requires that a person must be an Australian lawyer to be appointed as a registrar in the NSW District court.

While Local Court registrars do not currently need legal qualifications, the Litigation Law and Practice Committee has recommended that admission as an Australian lawyer should be made a prerequisite.

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10 Bits of Legal Jargon Used in Court

Going to court can seem like a minefield to many – when to stand, when to sit and when to bow, how to speak to the magistrate or judge, where to speak from, what to call them, what to say – the list goes on.

Adding to the confusion is legal jargon used by prosecutors, defence lawyers and whoever that person is that decides the case.

While plain English is often the best approach, it can help those who are going to court to know some of the most common terms used inside courts like the Downing Centre.

Here are some of the top ones, so you can look like a pro – or at least understand what everyone is going on about.

'Court list'

This is the list of cases that will be heard in court on any particular day.

The Downing Centre Local court list is printed and posted on Level 4, and contains all the matters that will be heard, along with the courtroom they will be heard in.

The District Court lists are also printed and posted daily.

1. 'Standing a matter in the list'

This is a handy thing to do if you can't have your matter heard straight away – because you are waiting for a witness, a document, or maybe even your lawyer!

Asking for a matter to be "stood" or "held" in the list means that you would like your case heard later in the day.

Prosecutors, criminal defence lawyers and unrepresented defendants can all request that the case stands a matter in the list.

2. Magistrate, judge or registrar?

Many people use the terms interchangeably, or use the term 'judge' to refer to all judicial officers of any court.

The difference is simple: in the local court, the judicial officer is a magistrate, and in the district court, the judicial officer is a judge.

Sometimes, the person in court will be neither a magistrate nor judge, but someone called a 'registrar' – who sorts out cases, decides upon adjournment applications, and undertakes other administrative duties in order to take some of the pressure off magistrates or judges.

When speaking to a Magistrate or Judge, you should address them as "Your Honour", and a Registrar should simply be address as "Registrar".

In Downing Centre Local Court, the Registrar sits in courtroom 4.4 – which is often where your matter will be listed on the first court date.

3. 'My friend'

If you hear a lawyer and a prosecutor referring to each other as "my friend" at the bar table, this doesn't mean that they are golfing buddies on the weekend.

Rather, this is a term used by all lawyers and prosecutors when they refer to one another. The tradition originated from a time when there were few lawyers who would indeed all know each other.

4. 'Adjournment'

This is when the court proceedings are postponed until a later date.

An adjournment application can be made by either the defence or prosecution for a range of reasons – to receive legal advice, to await the service of materials, to obtain a medical report, to complete counselling or a program like the Traffic Offender Program or Magistrates Early Referral into Treatment program ('MERIT'), to prepare for a sentencing hearing, and so on.

5. 'Brief service orders'

If a lawyer requests 'brief service orders', they are asking for the judge or magistrate to order the prosecution to give all of the statements and other materials to the defence by a certain date.

Brief service order will ordinarily be made on the first court date if the defendant indicates a plea of not guilty, and the prosecution will ordinarily be ordered to serve the materials within 4 weeks. A further court date will normally be set 6 weeks away, to allow the defence to go through those materials

and either confirm the not guilty plea, or enter a guilty plea.

The term ‘serve’ means to deliver the materials according to methods set out in the court rules – which usually require hand delivery – although the defence may agree to accept service by a less formal method, such as via email or fax.

6. ‘Interim order’

This is an order made by the court which will stay in force just until the next court date.

An example of an interim order is where the defendant in an Apprehended Violence Order (AVO) case is required to comply with AVO conditions until the next court date, or a defendant who faces criminal charges complying with bail conditions.

7. ‘Listing advice’

A local court listing advice is a form that is usually available on the bar table inside the courtroom, which the defence is required to fill out and hand up to the court if the case is being set down for a defended hearing. The defence is required to specify a range of matters: including which prosecution witnesses they require to attend the hearing, the estimated time for the hearing, and whether or not audio-visual facilities are required.

8. ‘Representations’

Criminal defence lawyers often write a detailed letter to the prosecution in order to persuade them to drop all or some of the charges. This letter is called ‘representations’.

9. ‘Pre-Sentence Report’

A pre-sentence report (or ‘PSR’) may be ordered by the magistrate or judge after you plead guilty or are found guilty. The report contains background information about you,

and says whether you are eligible and suitable for alternatives to imprisonment; such as a good behaviour bond or community service order.

PSR's are normally ordered if the court is contemplating sending you to prison. However, defence lawyers will sometimes ask the court to order a PSR if they feel it will assist you in court.

In either case, you will need to report to your nearest Probation and Parole Services for assessment.

10. 'Non Conviction Orders'

If the court grants a 'section 10 dismissal or conditional release order', it means that a criminal conviction is not recorded against your name even though you are guilty of an offence. You also escape a fine, licence disqualification and any other penalty – although a good behaviour bond can be imposed, and you may have to pay a small fee for court costs and a 'victims compensation levy'.

So if you are going to court, all the very best to you. We hope that your 'representations' are successful if you are pleading not guilty, or that you get a non conviction order if you are pleading guilty!

Free Legal Services at the Downing Centre Court

Attending court for a criminal case can be a nerve wracking experience – particularly if you cannot afford to hire a lawyer.

The good news is there is a range of free legal services at the Downing Centre which may be able to assist you on the day.

Here are a few of those services:

Legal Aid

The Legal Aid office is located on Level 4, opposite Courtroom 4.6.

Legal Aid offers free legal services in a range of criminal cases. Duty lawyers are available on all court days to assist those who have a matter in court, but are not legally represented.

Duty lawyers can offer advice and assistance to anyone, regardless of whether they meet the eligibility criteria or not – but if a person requires ongoing representation in court (e.g. for a more serious case or a hearing/trial) they will need to satisfy a means and merit test.

In certain cases, Legal Aid duty lawyers can seek an adjournment for defendants to obtain proper legal advice.

Duty Solicitor / Barrister

Duty solicitors and barristers are located on Level 5, near Courtroom 5.1.

They are fully qualified members of the legal profession who have volunteered their time to help members of the public free of charge.

Duty solicitors and barristers are able to assist people who are due to appear in court by providing free legal advice – and sometimes representation – for a range of criminal cases.

While you do not need to book an appointment to see a duty lawyer, it is best to arrive early as they can get very busy, and may not be able to assist everyone.

Aboriginal Legal Service NSW/ACT

The Aboriginal Legal Service (ALS) office is also located on Level 4, near Legal Aid.

It operates similarly to Legal Aid in so far as it provides free legal advice on a wide range of criminal cases, but it is targeted towards Aboriginal and Torres Strait Islander people.

ALS lawyers are well known within the Indigenous community, and will often be able to make a judgment as to a person's Aboriginal status in a culturally sensitive manner.

ALS lawyers are able to provide assistance to Indigenous people on the day of court without a prior appointment.

Those who have a court case simply need to show up at the ALS office before entering the courtroom. The ALS lawyer will be able to provide them with advice before dealing with the case in court.

In more complex or serious cases, they may seek an adjournment to obtain further information or undertake preparations.

Women's Domestic Violence Advocacy Service

The Women's Domestic Violence Advocacy Service (WDVAS) is an initiative of the Legal Aid Commission which offers assistance to women seeking protection from domestic violence.

While they are not able to provide legal advice, they can refer women to Legal Aid lawyers – including those who are affiliated with the Domestic Violence Practitioner Scheme.

The WDVAS is are able to provide emotional support, information about the court process and a safe area where they can await their turn in court without seeing the alleged perpetrator.

The Service is also able to refer women to other community

support services, including those offering safe housing, income support and counselling services.

Salvation Army Court Services

The Salvation Army has an office on Level 5.

It offers counselling, advice and emotional support to those who are due to appear in court, especially complainants and other witnesses. While they are not able to provide legal advice or representation, they can outline the court process and refer cases to a duty lawyer.

The Salvation Army also runs prison services to assist those in custody and their families, as well as post-release services to help former inmates reintegrate into the community.

Behind the Scenes: Downing Centre Magistrates

Appearing before a magistrate at the Downing Centre Court can be a nerve wracking experience.

For those who are charged with crimes, magistrates can be viewed as tough, emotionless beings with all the power in the world over their future.

Experienced criminal defence lawyers will often be aware of the particular likes and dislikes of specific magistrates, and how to go about getting the best possible result.

Although some think that magistrates ‘live in an ivory tower’ and are ‘out of tuch’ with the community, the reality is that

magistrates often live in the same communities and deal with the same day-to-day issues as most others – even though they have led illustrious legal careers.

He we take a behind-the-scenes look at three of the most accomplished magistrates at Sydney's Downing Centre court.

Graeme Henson – Chief Magistrate

Graeme Henson was appointed as Chief Magistrate of the Local Court of New South Wales in 2006.

In 2010, he was also appointed as a Judge of the District Court of NSW by then Attorney-General John Hatzistergos. He currently serves in both roles interchangeably – although he is usually found in Court 5.2 at the Downing Centre Court; or in the Chief Magistrates Office on Level 5.

Magistrate Henson was admitted as a lawyer in 1980. He spent two years working for the Office of the Director of Public Prosecutions between 1986 and 1988 before being appointed a Magistrate. Besides his judicial positions, Mr Henson is also a member of the Wollongong University Faculty of Law Committee and the Anglican Aged Care Board.

His Honour has presided over several newsworthy cases during his time on the Bench: earlier this year, he sentenced Rebecca Hannibal, the 19-year-old woman who supplied her best friend Georgina Bartter with three ecstasy pills.

Ms Bartter ultimately died after consuming the pills; collapsing at the Harbour Life Music Festival in 2014.

At a sentencing hearing in June, His Honour placed Ms Hannibal on a 12-month good behaviour bond after providing lengthy remarks on sentence.

And late last year, Mr Henson made headlines after he infamously revoked Amirah Droudis' bail.

Ms Droudis was the partner of Sydney siege gunman Man Haron Monis, and was facing charges for murdering his former wife. A review of her bail was ordered by then NSW Attorney-General Brad Hazzard following the highly-publicised siege. Ms Droudis is currently in custody at Silverwater Womens' Prison awaiting trial.

Besides overseeing a wide range of criminal cases in the Local Court, the Chief Magistrate has been known to fight for greater working benefits for his fellow colleagues.

Back in 2012, he made the news after demanding a range of entitlements for Magistrates, including a minimum two-week court break over the holiday season, as well as mid-year break for the Local Court Conference.

He has also asked for extended long service leave, greater carer's leave entitlements and free travel on public transport.

Jane Mottley – Deputy Chief Magistrate

Magistrate Mottley began her legal career in 1979 when she commenced working as a clerk at North Sydney Court.

But she soon rose through the ranks; being admitted as a lawyer in 1989 and spending time working for Legal Aid and the State Drug Crime Commission, before being appointed as a Magistrate in 2000. She was promoted to the role of Deputy Chief Magistrate in 2009.

Like her colleagues, Magistrate Mottley has presided over many famous cases before the Court: earlier this year, she heard a bail application made by disgraced criminal lawyer Ugo Parente, who was charged with drug supply after police located a number of containers filled with GHB in his car and home. Her Honour refused Mr Parente bail.

In December 2014, Ms Mottley sent Manly Sea Eagles player

Jamil Hopoate to prison for his 'savage and unprovoked' assault on a man outside the Ivanhoe Hotel in Manly, finding that 'Mr Hopoate and his co-offenders set out to exact revenge on a person or persons'. She handed him an 18 months prison sentence with a non-parole period of 12 months.

Christopher O'Brien – Deputy Chief Magistrate

Christopher O'Brien was appointed a Deputy Chief Magistrate in January 2014, after spending 8 years as a Local Court Magistrate working all around the state.

Prior to his appointment to the Bench, he spent 17 years working as a partner in a Sutherland law firm.

He has also presided over several interesting cases – including that of a police officer who was charged with misconduct in public office after he drove a drink-driver home.

Police officer Christopher Dove failed to charge the woman with drink driving, instead seizing the opportunity to make sexual advances towards her.

Magistrate O'Brien dismissed the charge under a section 10 dismissal or conditional release order, finding that the officer's legal battles were 'sufficient to reflect the objective seriousness of the offending overall.'

He also sentenced a young law student who ran naked through a Byron Bay kebab shop during schoolies last year, dismissing the charge of offensive behaviour under a non conviction order.

Police Officer Sentenced for Drink Driving

Earlier this year, we published a blog about a police officer who was charged with drink driving and driving without a licence.

46-year-old Andrew Clarke, a Detective Sergeant who had worked for the NSW Police Force for over 26 years, made headlines in July after he blew a high range reading of 0.17 at a roadside breath test – more than three times the legal limit.

Subsequent investigations revealed that he had not held a licence in over 25 years, despite the fact that NSW Police guidelines require police officers to hold a current driver licence.

Officer Sentenced

After appearing at the Downing Centre Local Court earlier in the year, Mr Clarke proceeded to sentence before Local Court Magistrate Gary Wilson last week.

Mr Clarke's criminal defence lawyer argued that the Court should have regard to the fact that he was not performing duties as a police officer at the time of the incident, and that he was suffering from mental health problems which were exacerbated by his duties as an undercover officer.

However, the police prosecutor argued that a heavy sentence was warranted due to Mr Clarke's role as a police officer, which meant that he should have known about the seriousness of his actions.

After hearing submissions from both sides, Magistrate Wilson imposed a fine of $2,000 and made an order preventing Wilson from applying for a licence for nine months.

A fine carries a criminal conviction, which means that the offence will be recorded on Mr Clarke's criminal record.

His lawyer indicated that this could have a detrimental affect on his ability to continue as a police officer in NSW.

A Fair Penalty?

High range drink driving is considered to be a serious offence in NSW, especially if the offender does not hold a driver licence.

In NSW, section 110 of the Road Transport Act 2013 prescribes a maximum penalty for high range drink driving (i.e. a reading of 0.15 or higher) of 18 months imprisonment and a fine of $3,300 for a a first offence.

For the offence of driving without a licence, section 53 of the Road Transport Act 2013 prescribes a maximum penalty of $2,200.

Taking all matters into account, it could certainly be argued that Mr Clarke received a relatively lenient penalty – particularly considering his breach of the public's trust as a police officer.

Police with Criminal Convictions

Although Mr Clarke may fear losing his job, he can take comfort in the fact that hundreds of other police officers around the state have been allowed to keep their positions despite being convicted of criminal offences – many of which are more serious than high range drink driving and driving without a licence.

Last year, the ABC obtained records under Freedom of Information laws showing that 434 officers in NSW have convictions for criminal offences; which is around 1 in 40.

Many officers have been convicted of more than one crime – and

several of them are senior members of the police force.

A breakdown of the offences showed that 58 officers have been convicted of high-range drink driving, 144 have convictions for mid-range drink driving, 39 have convictions for stealing, 14 for break, enter and steal, 7 for common assault and 4 for assault occasioning actual bodily harm.

These statistics have led many to question whether those who are entrusted with enforcing the law should be allowed to become police officers – or, indeed, continue working within the force if they commit criminal offences.

On the Run – Australia's Most Wanted

An elusive father and son duo has featured heavily in the news over the past week.

Gino and Mark Stocco are two of the most wanted fugitives in the nation at present. They are suspected of number of serious criminal offences, including stealing firearms, burning down farms, killing animals, damaging and destroying property, and various acts of identity fraud.There are nine outstanding warrants for their arrest.

Police hope that the increased media attention will assist members of the public to recognise and report the men to police.

But they are not alone: Police recently released a list of 20 of the Most Wanted People in Australia as part of Operation Roam; a national initiative between Crime Stoppers and state

and territory police which aims to gather information from the public to assist in tracking down fugitives.

Counting down five of Australia's most wanted:

5. Brady Hamilton

47-year-old Brady Hamilton has been on the run for 16 years, after he allegedly bashed a man named Peter Ledger to death in Erskine Park in 1999.

Police say that Hamilton was an inner circle member of the Comanchero motorcycle group. They claim that he was called in by the group's Supreme Commander to take care of Ledger after there was a disagreement about the swap of a Triumph motorcycle for a Harley-Davidson.

Hamilton is said to have visited Ledger along with two associates, including fellow Comanchero Ian Clissold, brutally bashing him after demanding money and the return of his club colours.

It is believed that the men did not intend to kill Ledger, but simply wanted to 'teach him a lesson'. However, the bashing went one step too far and Ledger's body was later found dumped outside a house in Erskine Park.

It is believed that Hamilton fled the state after the incident. Despite police issuing numerous appeals for information about his whereabouts, Hamilton remains on the loose.

4. Warwick McEwen

Warwick McEwen ran a successful chiropractic business in Campbelltown for over two decades before he was charged with 45 counts of child sexual assault which had allegedly been committed at his workplace in the 1980's.

He had previously spent time in custody for other child sex

offences; but in 2006, shortly after his release from prison – and the laying of fresh charges – McEwen decided to take off.

Police were alerted to his disappearance after he failed to appear at Campbelltown court in relation to the new charges.

3. Stuart Pearce

Adelaide man Stuart Pearce is believed to be the most wanted person in South Australia.

He is wanted for his alleged role in the horrific murder of his wife, Meredith, and their three children in 1991.

Police say that Pearce tied his wife to a chair and stuffed a towel into her mouth, before spreading petrol across the floor and lighting a fire that quickly destroyed the family's Parafield Gardens home.

His three children, aged 11, 9 and 2, were found with plastic bags over their heads. They are believed to have suffocated to death before the fire took hold.

By a stroke of luck, another son, Matthew Pearce, escaped injury as he was sleeping over at a friend's house on the morning of the incident.

There are a variety of explanations for the heinous alleged incident: some say he was suffering severe financial hardship and wanted a way out. Others believe it had something to do with drugs, as 25 cannabis plants were found in a bunker underneath his home.

There have been no reports of Pearce's sighting since the incident – and police do not know whether he is still in Australia, or even alive.

2. Michael Davison Tillman

A renowned snooker player, Michael Tillman is wanted by in

relation to his alleged involvement in an attempted murder which occurred in Surfers Paradise in 2010.

Police say that Tillman became involved in an altercation with his friend, Troy Kiss, whilst the pair were enjoying a night out with friends.

Tillman allegedly stabbed Kiss 11 times in the neck, chest and back, and was charged with attempted murder and grievous bodily harm as a result. He was released on bail pending his trial, but whilst in the community, Tillman allegedly attacked another man named William Patterson at a pub.

Mr Patterson says that he was confronted by Tillman and three of his friends in 2011. The group threw him to the ground, before Tillman allegedly bit his face – leaving him with a chunk of his cheek and half his nose missing. Tillman then fled the scene.

Although there have been numerous reports of sightings since, police have been unable to track Tillman down.

He had previously served time in prison for the killing of a former friend outside a Sydney hotel in 2003 by gouging his eyes out.

1. Graham Gene Potter

Victoria's most wanted fugitive, Graham Gene Potter, is also one of the country's most dangerous.

In 1980, Potter murdered 19-year-old Kim Barry, a shop assistant from Wollongong, after she reportedly refused his sexual advances. In a horrific act of violence, he cut off the young woman's fingers and head while her brother slept in the next room. On the night of the incident, he was enjoying his bucks night, and had met Ms Barry at a local nightclub.

Ms Barry's body was found dumped near Jamberoo. It is believed that her bra had been used to tie her wrists and legs

together. Her fingers and head were discovered around 1km away in a plastic bag, together with clothing and bedclothes belonging to Potter.

The heinous crime earned Potter the nickname ‘the head and fingers killer.’

Potter spent 16 years in prison for the murder – and incredibly ended up marrying his wife whilst in prison.

He was released from custody in 1996, but went back to prison again in 2008 after being charged with conspiracy to murder and various drug offences.

In a desperate bid to secure his early release, Potter acted as a police informant; giving authorities valuable information about drug importation schemes. His co-operation with police resulted in him being granted bail – but he failed to appear at Melbourne Magistrate’s Court in 2010.

There have been sighting of Potter since – one in 2012 when he was pulled over by police and fled yet again, and another in 2013 when he was seen picking fruit on the NSW and Victoria border.

A $100,000 reward has been offered for information leading to his arrest.

Man faces Downing Centre for

‘one punch’ assault

The Downing Centre District Court is the venue where James Ian Longworth, 34, is facing trial after knocking out a security guard with a single punch.

Described by a friend as “the nicest guy in the world”, Mr Longworth’s loved-ones were shocked by his actions.

The court heard that Mr Longworth was slurring and stumbling by the time he and a friend, Mr Hume, arrived at Bar 333 in the city. The court was told that before arriving, Longworth drank about 10 schooners of beer at another bar. He was refused entry from Bar 333 on that basis.

His friend walked away from the Bar despite being told he could enter, intending to come back in a few minutes.

After his friend had left, Mr Longworth punched security guard Fady Taiba to the ground. Taiba was seriously injured and later went into a coma.

Mr Taiba told police: “I gave him a tap. I didn’t know he would land like that. I stupidly gave him a tap.”

In court, Mr Longworth testified that: “I remember thinking I wanted to hit him and it was spontaneous. I just remember the impact of the punch and being in disbelief that I hit him.”

Mr Longworth said that he had been overwhelmed by the recent death of his father, and the fact that he didn’t get to say goodbye. He testified that he would not have reacted in that way on any other night.

Mr Longworth is pleading ‘not guilty’ on the basis that he did not intent to cause grievous bodily harm to Mr Taiba. This is an essential part of the offence of ‘cause grievous bodily harm with intent’, with which Longworth is charged. Under section 33 of the Crimes Act, that offence carries a maximum

penalty of 25 years imprisonment.

Specific Intent

Being intoxicated is not, by itself, enough for a person to be found ‘not guilty’ of an offence.

However, some offences require a person to have a specific mental state at the time of the incident. The fact that the person was severely intoxicated at the time may be used as evidence that he or she could not have formed the required intent, and could not therefore be guilty of the offence charged.

In that case, they may still be found guilty of an alternative, less-serious offence such as ‘recklessly cause grievous bodily harm’ under section 35 of the Crimes Act, which carries a maximum penalty of 14 years imprisonment.

‘One Punch’ Laws

Mr Taiba was fortunate to survive Mr Longworth’s the attack.

If the punch had been fatal, Mr Longworth could have faced mandatory penalties under new ‘one punch laws’. Section 25B of the Crimes Act says that anyone who assaults another person while intoxicated and causes their death is subject to a mandatory minimum prison term of 8 years. The maximum penalty is 20 years imprisonment.

This was part of the NSW government’s plan to crack down on alcohol-fuelled violence, which also included the Sydney lockout laws, and greater police powers to ‘move on’ intoxicated people.

Mr Longworth’s trial continues, and it remains to be seen whether the jury will find him guilty of the offence charged, or of an alternative offence.

Should Defendants be Handcuffed in Court?

The Public Service Association prison officer Branch President Steve McMahon believes that the Downing Centre escape should never have been possible, and wants to ensure it will never happen again. He wants all defendants who are in the 'dock' to be handcuffed, with the exception of pregnant women and those with medical conditions. The dock is where those in custody normally sit while in court, and also where defendants sit during jury trials and sentencing proceedings in the higher courts.

The story so far…

Last week, we reported on the extraordinary escape of Ali Chahine from the Downing Centre District Court. Unfortunately for Mr Chahine, he was re-arrested on Monday 4 October – less than a week after his bolt for freedom.

He was found hiding at a unit in Alexandria, and has since been charged with escaping lawful custody, as well as two counts of assault occasioning actual bodily harm.

Mr Chahine's bare footed bolt has sparked the call for all defendants to be handcuffed in the dock.

The bureaucratic response

At first, NSW Corrections Minister David Elliot tried to blame the judge for the escape, saying that he should have ordered Chahine to be handcuffed.

But a person in Mr Elliot's position should be aware such decisions are normally made by Corrective Services after

assessing the risk – not by the judge, who normally knows nothing in advance about the defendant or even the nature of the case.

Mr McMahon's response was to appeal to the NSW Corrective Services Commissioner Peter Severin to implement an across the board policy for all defendants to be handcuffed in court while they are in the dock.

Mr McMahon told ABC news that the Public Service Association had been "asking for a very long time that there be a blanket decision… [and that the issue] be taken out of the judges and magistrates hands and allow us to handcuff prisoners while they're on the dock."

Criticism

There have been a number of studies showing that the way a defendant is presented in court can affect a jury's determination of guilt. Specifically, there are concerns that requring defendants to wear handcuffs could unfairly lead the jury to believe that they are dangerous, thereby increasing the likelihood of a conviction. It could also be argued that requiring defendants to wear handcuffs for several hours a day during trials that could last for weeks or even months is unnecessary and cruel, not to mention limiting their ability to write notes.

Forcing defendants to wear handcuffs would also go against centuries of legal tradition. As far back as the 1700s, the great legal mind Judge William Blackstone famously wrote that:

"it is laid down in our antient books, that, though under an indictment of the highest nature… [a defendant must be] *brought to the bar without irons, or any form of shackles or bonds; unless there be evident danger of an escape."*

This was quoted in an influential United States case which embedded the principle into US law.

And the fact remains that escapes from courthouses are extremely rare. In addition to all these points, who is to say that handcuffs will prevent an eager escapee from making a dash for freedom, given that stocky Mr Chahine was able to escape from level 3 of a secure courthouse in bare feet.

The Downing Centre Escape: A Lawyer's Eyewitness Account

On Wednesday afternoon, 30 September, a man left his shoes behind in his dash for freedom.

Mr Ali Chahine, 33, was facing the court for breaching his bail. He was originally charged with drug supply and receiving stolen goods. The bail application was being heard in courtroom 3.1, which is a Sydney District Courtroom located on level 3 of the Downing Centre court complex.

In the same courtroom, one of our lawyers, Avinash Singh from Sydney Criminal Lawyers®, was present for another case and witnessed the action.

Avinash noticed that the client looked agitated, and the decision to refuse him bail didn't go down too well.

Evidently Mr Chahine decided that, rather than be taken back into custody, he would roll the dice and attempt to leg it out of the courtroom.

While courtroom 3.1 is often very busy, it was fairly empty by Wednesday afternoon. Apart from his mother, lawyer, the DPP solicitor, Avinash and our client, only the Judge and court officers were present when Mr Chahine made a run for it.

Mr Chahine jumped over the wall of the dock and headed towards the door – he was in such a hurry that he left his blue thongs behind. At first, the DPP solicitor jumped back, before realising that she was not his target when he headed towards the exit.

Avinash says “He made it to the door before the Corrective Service Officers got to him – a large man and a small woman.

They had a firm grip on him but he must have escaped outside the courtroom.”

He remembers hearing “a scuffle outside” – it was later reported that two officers were badly injured during the encounter.

According to newspapers, Mr Chahine assaulted the pair before managing to flee the courthouse through a fire exit.

He is reported to have gotten onto a bus on Castlereagh Street, headed towards Newtown. Mr Chahine was last seen on Wednesday afternoon, disembarking from a bus at Central Station. The hunt continues.

Detective Inspector Stewart Leggatt believes that Chahine probably caught a train, and is currently in the Bankstown/Greenacre area.

Meanwhile, back in the courtroom, Avinash noted that the Presiding Judge did not say anything, but left the bench, probably intending to come back on when Mr Chahine was caught.

In the meantime, Mr Chahine’s Legal Aid lawyer was at a loss of what to do. Avinash recalls that she asked “Do I have to stay here?”, before leaving the courtroom a short time later.

When it became clear Mr Chahine was not returning, the Judge returned to the bench to deal with his final matter for the day, Avinash’s. His Honour said that this was the first time he had witnessed a defendant escape from the courtroom.

After the drama subsided, Avinash went on to successfully appeal his client's case.

The Blame Game

The NSW Corrective Services Minister, David Elliott, originally tried to pin the blame for Chahine's escape on the Judge, pointing out that the defendant was not wearing handcuffs, and was not in the dock.

But the fact is that defendants in court are rarely handcuffed, and Mr Chahine was, in fact, in the dock before he leapt out.

Moreover, the decision about whether to handcuff a defendant is for Corrective Services to make, not the Judge.

Penalties for Escaping

Interestingly, Mr Chahine was not the only man who chose last Wednesday to make his escape. On the same day, James Wiles, aged 25, escaped from Goulburn prison. He is also still on the run.

Escaping from lawful custody – whether it be a prison, police station, courthouse or elsewhere – is an offence under section 310D of the NSW Crimes Act 1900, which comes with a maximum penalty of ten years imprisonment.

So, if the escapees are eventually caught – as most are – they may ultimately regret their decision.