

Paul Byrne SC (1950 - 2009)



Paul Byrne SC, the most outstanding criminal lawyer of his generation at the bar, passed away on 12 May 2009 at the age of 58 years after a lengthy battle with cancer.

Paul was born in Adelaide on 12 October 1950 to Berenice and John Byrne, the third of four children. He came to Sydney in 1954 and attended Balmoral Infants' and Mosman Public schools before his family travelled to England in 1959 because of his father's work. His family returned to Australia in 1960 and he completed primary school at Artarmon Public School and secondary school at North Sydney Boys High School.

He attended Sydney University obtaining bachelor degrees in arts and law, graduating from the Sydney University Law School in 1976. Whilst an undergraduate he obtained employment with the Legal Aid Commission's predecessor, the Public Solicitor's Office and ultimately, whilst a legal clerk, instructed in the appellate practice of the Public Defenders of New South Wales. Particularly, he worked as an instructing clerk and solicitor for Howard Purnell QC, the senior public defender, a generous mentor to all with whom he came in contact, within the Legal Aid community and throughout the private profession and author of the leading criminal law practice of the day.

Howard's generosity towards other members of the profession no doubt had a great influence upon Paul who throughout his career demonstrated generosity towards other members of the profession, perhaps equalled, but never surpassed. On admission as a solicitor in 1977 Paul continued to practise at the Public Solicitor's Office. In March 1978 he married his beautiful wife Karen. Their sons Tom and Jack were born in 1980 and 1984. In late 1979, at 29 years of age, he was called to the bar and was appointed a public defender, following in the footsteps of Reg Blanch QC, now a Supreme Court judge and chief judge of the District Court.

When Paul came to the Public Defenders the depth and breadth of ability and experience of his new colleagues was enormous. Apart from Howard Purnell other public defenders included in no order of importance, Jeffrey Miles, Peter Hidden and Michael Adams, Roger Court QC, Bill Hosking QC, Charles Luland QC, Martin Sides QC, Ken Shadbolt, Dr Greg Woods and John Lloyd-Jones QC and John Shields QC. Whilst he was there he was joined by Rod Howie, Virginia Bell and Daryl Melham. There, Paul had an unrivalled reputation for industry and preparation. Bill Hosking at the time conferred an award called the 'Ron Newham (a senior Legal Aid Commission solicitor) Trophy', for the most industrious and productive member of the floor to encourage productivity. Mr Newham allocated the briefs. Paul won that 'trophy' hands down year after year. In a galaxy of stars in the area of the criminal law Paul's light shone as brightly as anyone, notwithstanding the strict seniority system that operated on the floor.

Paul was prepared to take on the toughest cases as a public defender, approaching them with energy, complete commitment and enterprise, as well as imaginative and novel thinking. His capacity to analyse legal issues amongst the mesh of factual issues, to identify the real points to be taken and to develop creative and sometimes unique strategies emerged

as hallmarks of his style developing his skills as a trial advocate. He attempted, for example, for the first time in New South Wales to use polygraph evidence in the defence case, albeit unsuccessfully. He led the charge to challenge, by independent scientific evidence, the reliability of experts in sciences usually the preserve of the police, such as fingerprint and ballistics evidence. He always had the quality of courtesy to all, which he carried throughout his career, which made him almost unique amongst great, but competitive, advocates.

In 1983, when Paul Landa was attorney general, Paul was appointed as director of the Criminal Law Review Division, succeeding Dr Greg Woods QC (also a public defender and now a District Court judge) who had been director under Frank Walker QC.

Paul brought this capacity for clear thinking and his lateral approach to issues and problems to his work as the director. He became a very close confidante of the attorney. At the Attorney General's Department he was regarded as an outstanding advisor on matters pertaining to all aspects of the criminal law.

He was appointed as a full time commissioner to the Law Reform Commission for a period of four years in 1984. There he undertook a number of projects demonstrating his imaginative approach to issues and his incredible capacity for hard work. His 'report' in relation to reform of juries, although now over twenty-three years old, contains many of his ideas well ahead of their time. Some suggestions were adopted others await their proper recognition. It amply demonstrated his intellect and his grasp of the wider picture as well as his innovative approach to the law. Paul was a real 'law reformer' not just a lawyer and that permeated every aspect of his professional career. He took silk in 1995. He modestly delayed his application for silk for several years and only lodged it when his father was dying. He was appointed on that first application, but sadly his

father passed away before he took silk. In 1983 he obtained a masters degree in law from University of Sydney (with first class honours) receiving the University Medal, his thesis being concerned with 'identification evidence'. In the 1970s and through the 1980s the inadequacy of the law in relation to both the admissibility and treatment of evidence of identification of suspects, particularly by strangers, had stood for many years both in England and Australia. The English Court of Appeal in *R v Turnbull* (from 1976) had, in part, sought to address the many difficulties that identification of suspects by strangers presented. In Australia the 1937 High Court judgment of *The Queen v Davies and Cody* considered the problem of the suspect identified alone in custody, but the jurisprudence left many aspects of identification unsatisfactorily treated. Paul's ideas in relation to the vexed issue of identification found their expression finally in the High Court judgment of *Domican v The Queen* (1992) 173 CLR 555, in which he was led by Peter Hidden QC, but for which he had obtained 'special leave'. The success of the appeal no doubt was due to Peter Hidden's great skill, but the principles that the High Court laid down in *Domican* have all the hallmarks of the ideas of Paul previously expressed in his thesis and sought to be incorporated into the law up until that time in his own advocacy in other cases. As Justice Hidden says, 'his finger prints are all over the decision of the High Court'.

Appearing for Mr Judge in *McKinney and Judge v The Queen* (1991) 171 CLR 468, Paul and Peter Hidden persuaded the court to change the law's treatment of police 'verbals' forever, paving the way for later necessary legislative reforms that largely ended the practice.

One could not have had a finer friend. He was generous, helpful, loyal, honest, diligent, responsible and constructive. He was a modest man, yet he had much of which to be proud.

Significant decisions in which he appeared in the High Court were many. Many were triumphs. In fact, in the area of criminal law there is no advocate in Australia who had as much success as Paul in landmark decisions concerning this area over the last 15-20 years. Included amongst his successes are the decisions of *Campton v The Queen* (2000) 206 CLR 161 (on warnings for delayed complaint in sexual assault matters), *Azzopardi v The Queen* (2000) 205 CLR 50 (on the silent accused in court), *BRS v The Queen* (1997) 191 CLR 275 (appropriate warnings on non-propensity evidence and corroboration), *Smith v The Queen* (2001) 206 CLR 650 (on identification of a suspect by police from a security video), *Antoun v The Queen* (2006) 224 ALR 51 (on bias or failure of a judge to disqualify himself) and *Grey v The Queen* (2001) 184 ALR 593 (on prosecution disclosure) to name a few.

These successes of course were matched by success in the Court of Criminal Appeal and the Court of Appeal over many years and multiplied many times over on issues to diverse to summarise here. A quick search of reported judgments lists over 200 reported cases in those jurisdictions. On many occasions whilst a junior he was led by Chester Porter QC. A very formidable team, indeed! Chester referred to him, in his autobiography *Walking on Water*, simply as 'a brilliant lawyer' (at p.308).

Paul was not only a very fine appellate advocate, he was a splendid trial advocate as well. Clarity of thought, capacity to identify the real issues and industry brought him successes in many trials some of which seemed unwinable. He appeared in too many high profile trials to detail here. His 'success' rate exceeded any

reasonable rate for defence counsel.

He took cases that others could not do, or would not do, for which no financial reward was immediately available (or available at all) to prevent injustice. No amount of provocation or pressure (of work or from others) caused him to lose his 'cool', so to speak. He was unflappable, in conference and in court. He appeared at all times dispassionate, but he was passionate in his support for, and advancement of, the rights of the individual. Quirky and humorous asides whilst under pressure reflected his calm exterior. When confronted by a hostile expert wearing a bow tie, he assured his junior before cross-examination: 'Don't worry. Juries don't like experts that wear bow ties.'

He was counsel of choice in criminal matters of all types to solicitors in New South Wales, Queensland, Victoria and Tasmania. Terry O'Gorman, a nationally well-known Queensland advocate for civil liberties, frequently retained Paul for his New South Wales and Queensland cases. Leading and 'high profile' criminal law solicitors in private practice in New South Wales including David Giddy, Kathy Crittenden, Greg Walsh, Phillip Gibson and Chris Murphy also frequently briefed him. But he also took much Legal Aid work. It was the work that interested him, not the size of the brief fee. He had no interest in 'going for the ride' in long cases with multiple accused. He wanted to work, make a difference and not just 'pull' in a cheque.

Apart from trial and appellate work in the criminal law Paul also appeared frequently before tribunals, inquiries and commissions and in quasi-criminal matters in all jurisdictions. On a number of occasions he appeared before the Independent Commission Against Corruption for individuals and corporations. He had an almost invariable knack of succeeding in having his clients avoid censure or adverse comment by that organisation. He had an extensive practice in administrative legal matters that were connected to

the criminal law and from time to time appeared in the Land and Environment and Industrial courts in relation to environmental or occupation health and safety offences.

He came to the re-formed Forbes Chambers in 1989. His orderliness was legendary. His accumulation of books and memorabilia from Formula 1 racing almost took over his room. Yet there were dozens of folders, briefs, and related papers stacked in neat piles, tagged by colourful post-it pads. In order to get to his desk to speak with him there one needed the abilities of an Olympic high hurdler or high jumper to bound over the many books, files, helmets, paintings and other objects strategically, but systematically scattered around his chambers.

He took cases that others could not do, for which no financial reward was immediately available (or available at all) to prevent injustice. No amount of provocation or pressure (of work or from others) caused him to lose his 'cool', so to speak. He kept his emotions under wraps in his work no matter how he actually felt at the time. He was unflappable, in conference and in court. He appeared at all times dispassionate, but in reality he was passionate indeed in his support for, and advancement of, the rights of the individual.

His generosity knew no bounds. But it was always tinged with thoughtfulness. He knew his friends well and had an encyclopaedic memory, not just of the law, but of personal information to inform the choice of gift, or its timing.

He left Forbes Chambers in late 2006 to become the head of Samuel Griffiths Chambers. For any chambers concerned with the criminal law obtaining him as a leader was the 'catch of the century'. Paul was a generous contributor to the bar in a range of ways, particularly to the Benevolent Fund and the bar's ethical work.

Whether he was leader of the floor, or a member of the floor, he was a mentor

and trusted advisor and colleague, no matter what the comparative seniority was at the time. He had an insatiable appetite for work. He just could not say 'no' to solicitors. Although, on occasions, he might exasperate Peter Schell, then registrar of the Court of Criminal Appeal (now of the Court of Appeal) with some delay in filing submissions, he never let him down, nor disappointed the court with the quality of the written material provided.

Yet, as important and grand was his career as a barrister, he had many other interests. His primary interest always was his family. He was an absolutely devoted husband to his wife, a loving and supportive father to his sons Tom and Jack. He was also committed to his wider family and had a close relationship with his parents, siblings, his wife's family and his nieces and nephews. He took pride in all of their achievements. His niece, Rose Byrne (daughter of his brother Robin), is an internationally known actor whose success gave him much joy.

He attended his first Grand Prix as a child in 1960 in England. His father's passion for the sport was infectious and Paul became a devoted follower of the sport. He frequently travelled overseas to attend its races. He possessed a myriad of exotic and desirable motor vehicles, was on speaking terms with Jack Brabham and, on one occasion, was the next best thing to a dining companion with Ayrton Senna, when he, Karen and Senna's family were staying at Villa D'Este on Lake Como. Although very ill, he insisted on attending the 2009 Grand Prix in Melbourne.

He loved popular music from the 1960s including Motown rhythm and blues, the Rolling Stones and the Bee Gees. He had particular love of Roy Orbison's music. He spent many pleasurable hours watching performers such as Wilson Pickett, the Four Tops and the Temptations when they performed in Australia. He also loved the Beach Boys as a northern beaches boy of the sixties ought. His enjoyment of Brian Wilson's concert at the Opera

House in 2004 is a special memory for me. He shook the hand of Levi Stubbs, the greatest male rhythm and blues singer to come out of Detroit. On one legendary occasion, always one to enjoy his time away from work, he joined Gene Pitney on the stage of the Revesby Workers' Club to help him out as he sang *The Man who Shot Liberty Valence*. I do not think Gene needed the help though. That song was a particular favourite for reasons I have not fully understood, given Paul's abhorrence of illegality, revenge and judicial or extra judicial killings.

Paul was cut down in his prime by the illness with which he was diagnosed in early March 2008. High judicial office was overdue. At the time he was briefed to appear for the chief executive officer of Pan Pharmaceuticals, Jim Selim, whose legal future appeared bleak (accordingly to the daily newspapers). With Paul's skills in play Mr Selim was acquitted of all the charges for which he was tried in the Supreme, District and Local courts. A Crown appeal to the Court of Criminal Appeal as to the Supreme Court verdict of 'not guilty' by direction was unsuccessful.

One could not have had a finer friend. He was generous, helpful, loyal, honest, diligent, responsible and constructive. He was a modest man, yet he had much of which to be proud. Within the area of law within which he practised he was a true giant. His modesty and his lack of hubris was reflected in his wishes on his death. He desired no funeral service whatsoever and was privately cremated in the presence of his sons. He is survived by Karen, Tom and Jack (on the cusp of graduating in law), his mother, his siblings, Robin, Meredith and Belinda, their families, and Karen's. He had the dream of opening chambers called 'Liberty Chambers'. It would be a good thing for our society and our profession if, sometime in the future, his dream could be realised by someone else from the bar.

By his Honour Judge Stephen Norrish SC