



# Forbes Flyer

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### History reports itself

Recently, correspondents of the *Sydney Morning Herald* shared some jokes about wigs and lawyers. One letter-writer was blunt, saying that “[a]ny barrister will give you 10 spurious reasons why they retain the wig and gown, and at the same time fail to mention that it makes them feel special, while creating an air of superiority over others.”<sup>i</sup> Another was more cryptic, suggesting that “Australian lawyers wear wigs and gowns so they will never be confused with quail”.<sup>ii</sup> A reference to the quail as courtesan, perhaps.

Given the fact that an overwhelming number of Australians appear to be able to function without a wig, it is likely that there are more reasons spurious than sensible for its retention by barristers. However, the issue is not without some complexity.

In May 1999, Western Australia abolished the wig in civil but not criminal matters, with the Chief Justice of Western Australia quoted as saying that one of his long-term goals was to ensure “that the law of the Courts and its procedures are appropriate for the times in which we live”.<sup>iii</sup>

Earlier, in December 1998, the Chief Justice of the Federal Court had noted that Tasmania had already abolished wigs in civil matters, and had said that wigs would no longer be worn at all in the Federal Court, adding that arguments in favour of wearing wigs in criminal trials or in family law matters did not apply in the Federal

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Court as its work was essentially non-criminal and did not deal with family law cases.<sup>iv</sup>

Is this recognition, implicit and explicit, of a paradox that while wigs on the one hand are old hat in our democratic times, they fulfil or are perceived as fulfilling a role in the areas in which the law is and must be the most intrusive?

What will a legal historian in a hundred years make of all this? Or will it be history? Will wigs in 2106 be regarded as necessary or desirable, whatever clobber the barristers – if they still exist – are wearing?

One highly experienced barrister who dons a wig for his criminal work is the Senior Crown Prosecutor for New South Wales, Mark Tedeschi QC. In this issue, we feature his “History of the New South Wales Crown Prosecutors 1901-1986”, with its vignettes of the colourful characters and cases of the times. An earlier essay, covering the period 1830-1901, was published in 2002, in a collection of essays compiled for that state’s Bar Association’s centenary.<sup>v</sup>

**David Ash**  
Editor

## History of the New South Wales Crown Prosecutors 1901-1986<sup>vi</sup>

By Mark Tedeschi MA LLB QC<sup>vii</sup>

The first day of the law term in 1901 began like many first days before and since, with a formal opening in the Banco Court in the presence of the public and the profession. The *Sydney Morning Herald* of 13 February reported the fineness of the ermine gowns, the presence of many notables, and the fact that there were quite a few ladies in the public gallery. The *Herald* further recorded that after the conclusion of the formalities, "there was little in the list of interest to anyone but persons concerned in the appeals, and after the formal business had been disposed of the majority of visitors to the court left the legal gentlemen and litigants to themselves".

There was no note of anyone remarking on the fact that a mere six weeks earlier New South Wales had changed from a colony into a State of the Commonwealth. Despite the unremarkable opening day of the new century in the Supreme Court, 1901 was a particularly significant year for the criminal law in the fledgling State. That year saw a complete revision and re-compilation of criminal law in New South Wales with the passing of the *Crimes Act, 1901*. Also in that same year, extensive renovations and remodelling of the Central Criminal Courthouse at Darlinghurst took place, involving the refitting of the interior and the complete rebuilding of the central stone columns so as to match the more recently built Quarter Sessions Courts on either side.<sup>viii</sup>

The Law Almanac for 1901 records that New South Wales was served by eight Crown Prosecutors, one for the Central Criminal Court<sup>ix</sup> (who was the most senior of them), one for the Sydney Quarter Sessions<sup>x</sup>, one for the Metropolitan, Suburban and Hunter District, and one for each of the other five country Districts. However, there were also a large number of temporary Crown Prosecutors appointed for

several weeks at a time to prosecute sittings at country circuit courts.

The Crown Prosecutor for the Central Criminal Court in 1901 was none other than Charles Gregory Wade, who was later to become the Premier of New South Wales.<sup>xi</sup> Wade was born in Singleton in 1863, and after secondary schooling in New South Wales obtained a Bachelor of Arts degree at Oxford. He was called to the Bar of the Inner Temple in 1886 and in the same year was admitted to the Bar in New South Wales. He became a Crown Prosecutor in 1891 and spent some years doing the Western District circuit. He then moved to the Central Criminal Court where he fought some important and prominent cases.

One of the most interesting cases prosecuted by C G Wade was the *Talune* case<sup>xii</sup>, a charge of murder on the high seas, before Acting Justice Sly and a jury at the Central Criminal Court in April 1901. The accused, Jane Smith, was a 32-year-old New Zealander who had left her husband in New Zealand and voyaged to Sydney aboard a passenger vessel called the *Talune*. She was charged with murdering a fellow passenger, Patrick Conway, who was also a New Zealander, and who had died on board from the effects of strychnine poisoning. It would seem that the accused had known the deceased for a considerable time beforehand, and that the motive for killing him was to rob him of a considerable sum of money with which he had left New Zealand.

The case must have received a considerable amount of pre-trial publicity because Wade commenced his opening by telling the jury that they should "dismiss from their minds all that they had heard and read about the case and put aside their sympathies which might otherwise go out strongly towards the victim in his agonising torture". He assured the jury that he would "put before them calmly and fairly the facts of the case, neither overstating nor advancing any unreasonable argument". He acknowledged right at the beginning a weakness in his case, that no

one could say they saw the accused give strychnine to the deceased, but he informed the jury that he would show that the accused was the last person who had been seen with the deceased before his death.

Ignoring the onus of proof, Wade further asserted in his opening address that "there were other circumstances in respect of her demeanour, actions, and statements which would have to be explained by the accused. These were of a contradictory character, especially in relation to the accused's avowed knowledge and purchase of strychnine and her account of her acquaintance with Conway both on the vessel and since his death". His address occupied an hour and a half.

The first day saw evidence being given by Dr Taylor, the government medical officer and pathologist, who had conducted the post-mortem examination on Conway. He stated his opinion that the deceased had died from asphyxia due to convulsions. He acknowledged that strychnine poisoning causes the kind of convulsions which Conway had suffered on the *Talune*, and informed the Court that a victim of strychnine poisoning, unlike many other poisons, would remain conscious for a considerable time in extreme agony. Dr Taylor had removed the contents of the stomach and viscera from the body and placed it in a tin canister which he labelled for transmission to the government analyst. He stated his opinion that the symptoms indicated death by strychnine, a poison which acted on its victim in a time which could be from as little as three minutes to as much as a few hours. In cross-examination by defence counsel, Mr G H Reid KC, the doctor admitted that the symptoms were also compatible with death from epileptic convulsions. He also acknowledged that fits were common in people of middle age having diseased kidneys, and that this deceased had diseased kidneys. However, Dr Taylor was of the view that the disease of the kidneys in Conway's body was not the cause of his death. The government analyst then gave evidence that in the undigested food from the stomach that had been given to him, he found

three quarters of a grain of strychnine. He also found strychnine in the tissues of various organs, including the intestines. In cross-examination, the analyst acknowledged that there had been cases in which as much as 10 grains of strychnine had been taken by a person without causing death. On the second day of the trial, a pharmacist in Christchurch gave evidence that the accused had purchased two lots of strychnine from him. Jane Smith gave a statement from the dock in which she denied buying any poison, or taking any poison aboard the *Talune*, or giving Conway anything to cause his death. The newspaper report records that she sobbed bitterly during her statement. The Judge told the jury in his summing up that they had to determine two facts beyond a reasonable doubt: whether Conway had died from strychnine poisoning, and if so, whether the accused had given it to him.

After retiring, the jury returned with a question for the judge. What they wanted to know was, if the jury could not agree that Conway's death came about by strychnine poisoning, whether that was the end of the matter. Despite his earlier directions, the judge unhelpfully informed the jury that they should consider the whole of the evidence as to the cause of death and that the order in which they considered the issues in the trial was entirely up to them. The following day the jury announced that they had failed to agree. A retrial in June 1901 before Mr Justice Stephen, which was again prosecuted by Wade, also resulted in the jury failing to agree. Later in June 1901 Wade prosecuted Jane Smith a third time, this time before Mr Justice Owen. The brief report of the case states that the accused's statement was so inaudible that neither the Judge nor the jury could hear, and a shorthand writer, having taken down the statement, was compelled to read it out to the Court.<sup>xiii</sup> Surprisingly, considering that she had undergone two previous trials, Smith said to the jury "I did not think it necessary to bring any of my friends over here as witnesses, as it is quite bad enough for myself and husband". After retiring overnight, this third jury also announced to the trial judge that they were unable to agree,

and Jane Smith was discharged and released.

Wade resigned his position as a Crown Prosecutor in 1902, in order to pursue his private legal work, and also to pursue his political aspirations. Also in 1902, he became a foundation member of the Council of the New South Wales Bar Association. He took silk in 1906. As a barrister, he was said to be "never brilliant or dextrous, but had a kind of massive personal strength which made his careful and thorough work tell".

In 1903, Wade was elected to the New South Wales Legislative Assembly as the member for Willoughby. The following year, he was elected to the seat of Gordon and appointed Attorney General and Minister of Justice in the Government of Premier Sir Joseph Carruthers. His period as Attorney General saw the introduction of many legal reforms, including the protection of neglected children and measures for the independence of the judiciary. However, his legislation to control the liquor industry and gambling among the working classes drove many to revile him and to call his moral rectitude hypocritical. In 1907, Wade succeeded Carruthers as Premier of New South Wales while retaining the portfolio of Attorney General and Minister of Justice. It was said of his period as Premier that "though he ruled the state with strict economy, his was a stoutly optimistic view of the States borrowing". He remained Premier until 1910, when his party lost government and he became leader of the Opposition. He retained the seat of Gordon until 1917. In that year he became New South Wales Agent-General in London. He was knighted in 1918 and created KCMG in 1920.

Like most successful politicians, reviews of Wade's parliamentary career were mixed. Governor Sir Harry Rawson reported in 1909 that he was "a high-minded, capable and strong Minister" and in dealing with delicate and complicated matters had exhibited "great tact, judgement and discretion". On the other hand, his speeches were said to be "prosy, dreary and humourless". Upon his death in 1922, his obituary

in the *Sydney Morning Herald* recorded that "his colleagues at the New South Wales Bar remember in his early days his dread of failure, failure which might mark him as unfit for the work he had chosen". It also recorded that "friends had to work hard to understand him, and in this they were encouraged not so much by any advances by the man himself, who remained to the end shy and unloquacious, as by the sterling genuineness and honesty of his character".

In 1920, Wade returned from the Agency-General in London to take a seat as a puisne Judge on the Supreme Court Bench. He set himself remorselessly to reread his law, lest he should fall short, in his own estimation, of the full measure demanded of him in that position. It is said of him that, though his health was not good, he gave up even his Sundays to this work, relentless as ever in exaction from himself.

Wade died suddenly in September 1922. He was stricken down on a Friday afternoon with a seizure in his Chambers at the Supreme Court. He had been presiding in the morning at a criminal trial and appeared to be in his usual health and spirits. He was noticed by his staff to be leaning over his chair breathing heavily. An examination showed that he had collapsed. His brother, who was a doctor, quickly came and attended to him. After briefly reviving the next day, he suddenly took a turn for the worse and soon passed away.

When Wade resigned his position as a Crown Prosecutor in 1902, his position as the State's sole prosecutor at the Central Criminal Court was taken by Hugh Pollock<sup>xiv</sup> who served in this capacity until 1912. Pollock was a barrister from County Cork, Ireland who had been admitted in New South Wales in 1890. He became the permanent head of the Attorney General's Department and then in 1891 the Solicitor-General, before retiring from that position to become a Crown Prosecutor in October 1894.

Pollock prosecuted some very high profile trials. One of them was the trial of Thomas Quinlan, a

15-year-old boy who was employed as a lift attendant at the Royal Hotel in George Street in the city. Quinlan was charged with the murder of Mrs Mercy Gregory, a 40-year-old resident at the hotel.<sup>xv</sup> He was alleged to have hidden in her room at night for the purpose of stealing some of her jewellery from her while she was asleep. Upon her unexpectedly waking up, Quinlan viciously stabbed her a number of times causing her death. On being confronted by the police several days after the death with overwhelming evidence of his guilt, Quinlan readily admitted to killing her but showed no regrets, fear or any other emotion whatsoever. Quinlan's trial for murder at the Central Criminal Court was before Mr Justice Cohen. Quinlan was represented by Mr Richard Windeyer<sup>xvi</sup> and the defence was insanity. In his opening address, Pollock asked the jury to disregard all they had read or heard of the case and to bring absolutely open minds to bear on the evidence. Rather unwisely, during the Crown case Mr Windeyer raised the character of his client by asking the licensee of the hotel: "was there not something in the boy's manner that you could not trust?" Answer: "I never cared very much for him. Honestly speaking, I never took kindly to the boy. I had slight reason to suspect his honesty." Another witnesses described the accused as "very sly". He was said to be always reading "Deadwood Dick" stories, and always kept his own counsel. When cross-examining the pathologist who had done the post-mortem examination on Mrs Gregory, Mr Windeyer asked the accused to stand up and asked the pathologist "look at this boy. Do his features strike you as being unusual?" Answer: "I do not think it is an unusual type of face. It would not strike me as such. Mind you, I am not an expert in anthropology, or even in insanity." Question: "Would it not be abnormal for the accused not to show any remorse after making a confession of murder?" Answer: "yes."

Mr Windeyer called his client to give evidence. The boy, now 15½ years of age, explained that his mother had deserted him and his brother, leaving him to work to support them both. He

acknowledged having killed Mrs Gregory. Mr Windeyer asked him "was Mrs Gregory a nice woman?" Answer: "She was not anything out of the ordinary; just like other women.". The mother of the accused gave evidence that he had been subject to "fits of abstraction" since he was three years old, when he was given an overdose of chlorodyne. The defence then called Dr Taylor, the government pathologist, who described the psychiatric condition of "moral insanity" which could be demonstrated by callousness regarding the commission of some grave wrong. In cross-examination by Mr Pollock, Dr Taylor gave the opinion that Quinlan's attitude was one of absolute callousness and that his face showed that he was unmoved by the occurrences. A Dr R T Paton said that the accused had been under his observation in the Darlinghurst jail. He did not appear to have any emotion of regret or fear, and this was an indication that he was distinctly abnormal. In his closing address, Mr Windeyer submitted to the jury that his client did not have the ordinary mental equipment of a boy of his age and he asked them to consider whether his client could be treated as a sane man. Mr Pollock asked the jury to put all feelings of sympathy from their minds and submitted that the evidence absolutely failed to prove insanity. The jury retired for a mere 10 minutes and returned with a verdict of guilty of murder, but with a recommendation of mercy on account of the prisoner's youth.

Another trial conducted by Pollock was the trial of Digby Grand and Henry Jones for the murder of Constable Samuel Long at Auburn.<sup>xvii</sup> The two accused were alleged to have killed the constable who had disturbed them in the course of an attempted robbery of a hotel in Auburn. Their first trial in April 1903 was unusual in that the main Crown witness, Thomas Woodford, claimed to have no memory at all of his evidence. The government medical officer testified that Woodford was suffering from nervous collapse and sheer fright, and that he was likely to be able to give evidence after an opportunity to recover for a few days. After lengthy debate on the law, Pollock convinced the trial judge, Mr Acting

Justice Rogers, to discharge the jury without a verdict. Pollock then decided to withdraw from the case because of what he considered as an unwarranted attack against him alleging personal unfairness made by the defence counsel in the presence of the jurors. Pollock considered that it would be more compatible with the interests of justice if he retired from further active prosecution of the trial.<sup>xviii</sup>

The second trial was conducted a month later by a Mr C E Pilcher which resulted in both accused being convicted with a recommendation for mercy. The reason for the recommendation was because the jury could not tell which of the two accused had actually shot Constable Long, and also because the evidence of Woodford when it was finally given was considered to be somewhat unreliable. A subsequent appeal challenged the right of the trial judge to discharge the jury without verdict. The Supreme Court in *Banco* held that the trial judge had an absolute discretion to discharge the jury which could not be interfered with by the appeal Court, and the convictions were confirmed.

Several months later, on 6 July 1903, the *Sydney Morning Herald* reported that some fresh information had emerged as to the reliability of the witness Woodford, prompting a request to postpone the execution of the two prisoners which was to have taken place the following day. The newspaper also reported that over the previous few days both prisoners had confessed to a number of robberies for which other people had been convicted. The following day, the *Herald* reported that a meeting of the State Cabinet had dismissed the fresh information concerning Woodford and that "the condemned men will therefore expiate their crime on the scaffold at nine o'clock this morning". Their executions were attended by a gathering of people which was not large or excited. Both prisoners were said to have "profited by the ministrations of their spiritual advisers during the past few days".<sup>xix</sup> Grand handed over a letter dealing principally with his spiritual condition, stating that he died penitent.

By implication he denied that he had fired the shot that killed Constable Long. After their bodies were cut down the customary inquest was held. The medical evidence showed that Jones had mercifully died from dislocation of the cervical vertebrae and injury to the spinal cord, while in Grand's case he had convulsively struggled for several minutes after the trapdoor had opened and death was found to have been due to strangulation.

On Pollock's retirement as a Crown Prosecutor in 1912, his position at the Central Criminal Court was assumed by Herbert Harris, who held it until 1920. The New South Wales Law Almanacs for 1906 to 1911 record that there were only seven permanent Crown Prosecutors serving the State of New South Wales during those years. Between 1912 and 1921 there were only six. The number did not exceed seven until the late 1940s.

In 1921, the Law Almanac records the first person who was designated as the Senior Crown Prosecutor, William Thomas Coyle KC. Coyle was born in the Sofala gold diggings in 1868, the child of Irish parents.<sup>xx</sup> After schooling at St Ignatius' College, Riverview and obtaining a BA degree with honours at Sydney University, where he excelled at rowing, he went with his mother to England. Just before departing for England he went to farewell a woman much older than himself with whom he had been very friendly whilst at University. She appeared with a man who claimed to be a clergyman and she announced to Coyle that they were going to be married then and there. Coyle recoiled from the suggestion of instant wedlock and immediately left her, only to be confronted shortly afterwards with some trumped up charge which the woman had initiated against him and which was peremptorily dismissed. Coyle was admitted to the Inner Temple in 1896. In London he made many friends and led a very active life. Whilst in London he married and returned with his wife to Sydney in 1900 where he was admitted to the New South Wales Bar. He built up a sound private practice, mainly in common law and criminal law.

He acted as a Crown Prosecutor in country sessions on many occasions between 1913 and 1916. He became a King's Counsel on 26 August 1920 and two days later he was appointed as the first Senior Crown Prosecutor for the Supreme Court and Courts of Quarter Sessions.<sup>xxi</sup>

As the Senior Crown Prosecutor, Coyle prosecuted many sensational trials. He was known as a particularly tenacious and astute prosecutor. To criminals he was known as the "bloody bulldog". Possibly the most sensational case prosecuted by Coyle was the trial of the so-called man-woman, Eugenia Falleni.<sup>xxii</sup> Falleni was born in Florence, Italy, and went to New Zealand at an early age with her parents. At 16 years of age, she adopted the appearance of a young man, ran away to sea and worked for some years on vessels in the Pacific Islands. In 1899, she gave birth to a baby daughter, Josephine, at Newcastle. The father was a man called Martello, whom she never saw again. After giving birth, she resumed her identity as a male, using the name Harry Crawford. She approached a childless Italian couple in Double Bay in Sydney, telling them that the baby's mother was dead. The couple agreed to bring up the baby as their own. Falleni visited her daughter every now and again, but, more often than not, she had little to do with the child and worked in Sydney in menial jobs. In 1912 she met Annie Birkett, a pretty widow of about 30 years of age who had a young son, also called Harry. She courted Annie Birkett for two years and in 1914 they finally married, moving into a house in Balmain. Josephine was brought into the new household, and by this stage she already knew her "father's" true identity. Josephine, not surprisingly, proved to be a seriously troubled 15-year-old, causing her stepmother much worry. Eventually Josephine found her own place to live and Harry Crawford, Annie Birkett and her son, young Harry, then took a house in Drummoyne.

They lived at Drummoyne quite successfully and harmoniously until September 1917 when Annie for the first time after three years of marriage became aware of her husband's real gender. On 28

September 1917, Harry convinced Annie to go for a picnic together to a lonely bush spot in the Lane Cove River Park near Mowbray Road. There, Harry battered Annie into unconsciousness and then burnt her body on a huge bonfire. Harry initially told his stepson that his mother was visiting friends and the next day took the boy, now 14, to The Gap at Watsons Bay intending to throw him off the cliff. The boy refused to join Harry at the edge of the cliff and so they returned home. Thereafter, Crawford told people that his wife had run off with another man. Three days after Annie's death, a boy wandering in the bush stumbled on the charred and unrecognisable remains of her body. Nobody connected the remains of the body with the woman in Drummoyne who had left her husband. The following month, Crawford took the boy Harry to a lonely area at Double Bay and started digging what was to be the boy's grave. However, for reasons unknown, Crawford changed his mind and took the boy back to their home. In 1919 Crawford wooed another woman and married her at a registry office. Young Harry, in the meantime, had gone to live with an aunt, and eventually their suspicions led them to go to the police. The police then for the first time put together the disappearance of Annie Birkett and the discovery of the body at Lane Cove. Annie's dentist was able to identify the teeth found in the remains.

Eugenia Falleni's trial on 5 October 1920 was the first time she had worn female clothing since 1899. The trial aroused an enormous amount of public interest, due to the bizarre facts. She denied murdering Annie Birkett, however she was convicted and sentenced to death. The sentence was commuted to life imprisonment. She was released in 1931 and died in a pedestrian car accident in 1938.

Coyle went on to become a District Court Judge, a Chairman of Quarter Sessions, and in later years an acting Supreme Court Judge. He was known as having a quick wit and a keen sense of humour on the bench. He retired in September 1938 and enjoyed a long and happy retirement, dying at his



home in Double Bay in 1951.

In 1927, Coyle's place as the Senior Crown Prosecutor was taken by L J McKean KC. McKean remained as the Senior Crown Prosecutor for 13 years until 1940. During his tenure of office, another Crown Prosecutor took office who later went on to have a flourishing political career. That person was Vernon Haddon Treatt.<sup>xxiii</sup> By the time of his appointment in March 1928, Treatt had already had a distinguished career as a soldier. He was a Rhodes scholar<sup>xxiv</sup> and a graduate of Sydney and Oxford Universities, holding the degrees of MA and BCL. Treatt was a member of the NSW Legislative Assembly for more than 23 years and the Minister of Justice from 1939 to 1941. He also taught criminal law at Sydney University, one of his distinguished students being High Court Justice Michael Kirby.<sup>xxv</sup>

L J McKean's period as Senior Crown Prosecutor saw him do many significant trials. One of the most notable accused was Eric Craig whom McKean prosecuted no fewer than four times for murder in 1933. At the first trial, on 16 March 1933,<sup>xxvi</sup> McKean alleged that Craig had stolen a car in Elizabeth Street and then picked up "a woman of the unfortunate class" named May Miller whom he had later killed. When confronted by the police with a jacket which had belonged to May Miller, Craig alleged that the woman had suddenly for no reason tackled him and kicked him and that he must have gone mad in response to her violence to him thereby resulting in her death. Surprisingly, Craig was convicted only of the manslaughter of May Miller. In passing sentence, Mr Justice James said that he was unable to agree with the facts that must have been found by the jury. He said that he found it absolutely inadequate that Craig feared he would lose his life or suffer grievous bodily harm at the hands of such a little woman and that any provocation was quite inadequate in the circumstances. He sentenced Craig to 20 years' penal servitude.

Barely a fortnight later, on 29 March 1933, McKean prosecuted Craig for the murder of 16-year-old

Bessie O'Connor at Kogarah.<sup>xxvii</sup> Craig was alleged to have stolen a blue Essex sedan, picked up Bessie, taken her to a kiosk at Tom Ugly's Point, and later murdered her in the Royal National Park by fracturing her skull ten times. The case was one which depended entirely upon identification evidence, as the deceased had been seen with a young man in a vehicle matching the stolen one by a number of witnesses who claimed some considerable time later to be able to identify the man with her as the accused. Defence Counsel, Mr Mack KC, cross-examined the identification witnesses very skilfully. At one point Mack was cross-examining a woman who worked at the kiosk at Tom Ugly's Point who claimed to be able to identify the accused after seeing him with Bessie only momentarily. Pointing to his Junior Counsel, Mack asked the witness whether she could remember having seen him before, to which the witness answered that his face seemed familiar. Mack then pointed out that the man who merely seemed familiar to the witness had in fact cross-examined her extensively at the Coroner's Court. In his address to the jury, Mack pointed out that it was not until Craig's photograph had appeared in the newspapers that many of the witnesses had come forward to identify him. He submitted that the identification evidence was extremely weak. McKean, on the other hand, submitted that there was ample evidence upon which the jury could convict Craig. The jury failed to agree.

On 26 April 1933, McKean began the retrial.<sup>xxviii</sup> This time, Craig was defended by Mr Curtis KC. During this trial, Mr Curtis called for production of a statement made by a man named Thomas Brown, a commercial traveller, who had told the police that on the night of the tragedy he had seen a bloodied man standing next to a car similar to the one Bessie had been seen in. The statement was handed to Mr Curtis by McKean. A policeman conceded in cross-examination that when Brown was taken to a line-up he did not pick out Craig but instead picked a similar looking man. The policeman denied that that was the reason why Brown had not been called to give evidence at the



Coroner's Inquiry. The defence then called Thomas Brown in their case. He gave evidence of seeing a car similar to the one said to have been stolen by Craig. He gave evidence that he had stopped to help the man with his car which was broken down on the side of the road. The man had scratches on his face and blood on his shirt, and claimed to have injured himself on a bumpy road when his nose hit the steering wheel. The man, he said, was not Eric Craig.

The cross-examination of Thomas Brown by McKean KC was absolutely devastating to Thomas Brown's credibility. Thomas admitted that he had first got in touch with Craig's solicitors in the week before this second trial. After his cross-examination had finished and his evidence had been completely broken down, Brown collapsed and had to be taken to hospital where he was treated for hysteria. McKean asked the trial judge to commit Brown for trial on a charge of perjury. Curtis then alleged that Brown had been a setup sent surreptitiously by the police to Craig's solicitors in order to tempt the defence to call Brown and thereby discredit Craig's case. McKean in his address submitted that vilification of the police was often a red herring drawn across a trial and that the jury should not be led astray by the attack that had been made on the police. In his summing up, the trial judge, Mr Justice Davidson, said that he hesitated to think that anybody in the police force of New South Wales would be guilty of such a contemptible and disgraceful thing as had been suggested. The jury again failed to agree.

A third trial for the murder of Bessie O'Connor took place barely a week later.<sup>xxix</sup> The issue of the reliability of identification witnesses again loomed large. In his final address, Mr Curtis said "the possibility of human memory being consciously or unconsciously influenced by outside factors was so grave a danger that the jury could not convict a man on evidence of the class given in the present case. If the jury did convict on such evidence, then no man's liberty would be safe". In his closing address, McKean made a submission which would

be considered quite improper today. He asked the jury the rhetorical question "who was more likely to be telling the truth - the accused, who was most intimately concerned, his wife, who was little less concerned, or the witnesses, who had come to the Court at considerable displeasure?". This time Eric Craig was found guilty of murder and sentenced to death.

At the appeal in the Court of Criminal Appeal in July 1933, Mr Curtis sought to rely upon some fresh evidence which had only become known after the third trial. It consisted of a handkerchief with Bessie O'Connor's initials on it. The handkerchief had been produced to the police by a man called Walter Crothers. Crothers' name had been given to Eric Craig by a fellow prisoner at Darlinghurst jail. Crothers claimed that on the morning after the murder of Bessie O'Connor he had picked up a man who was known to him only as George at Taylor Square. George told him that he had been to Sutherland with a girl the night before. George had left a bundle of clothing in the back of Crowther's car and Crowther had later found all the clothing to be covered with blood. The clothing included the small handkerchief with Bessie's initials embroidered on it. Bessie's mother gave evidence in the Court of Criminal Appeal that her daughter had not ever owned any handkerchiefs, but the girl's stepmother claimed that she had in fact owned several. Curtis KC submitted to the Judges that this fresh evidence justified setting aside the conviction and ordering a new trial. The Judges of the Court of Criminal Appeal rejected Crothers' evidence as inherently unbelievable, finding that there was no corroboration of it and that Crothers had shown a capacity for invention rather than having any truth to the story. The appeal was dismissed.

In 1935, L J McKean did his most well-known trial, known as the shark arm case. In April 1935, a fisherman in a boat near Coogee found a live shark entangled in his line. He towed the shark to an aquarium at Coogee where the shark was placed in some baths. A little while later, while several people were watching the shark in the

aquarium, it regurgitated a lot of scum, and when the water in the baths cleared, a human arm was found. The arm was subsequently identified as part of the body of one James Smith, by means of a distinctive tattoo and also because the fingerprints matched police records. Interestingly, Smith's wife gave evidence that the tattoo "resembled" her husband's. Eventually, Patrick Brady, who was the deceased's best friend, was charged with his murder. The trial of Patrick Brady was held before Chief Justice Jordan and a jury at the Central Criminal Court in September 1935.<sup>xxx</sup> L J McKean was the Crown Prosecutor. Brady was represented by Clive Evatt KC. The only evidence available to McKean was that the accused was the last person who had been seen with the deceased and that after being confronted by the police he had told a large number of lies as to his whereabouts and movements. The most important prosecution witness was a man named Reginald Holmes, who had provided two lengthy statements to the police about the matter, but unfortunately Holmes had been murdered on the evening before the Coroner's Inquiry. McKean valiantly tried to tender Holmes's statements in the trial, but Chief Justice Jordan wisely rejected the tender. At the conclusion of McKean's opening address, Mr Evatt sought a verdict of not guilty by direction from the trial judge, but the judge felt that he had no right to do that without allowing the Crown to call its evidence. A day later, at the conclusion of the Crown evidence, McKean argued that there was a circumstantial case fit to go to the jury, however the judge disagreed and directed the jury to acquit Patrick Brady. Immediately after Brady left the precincts of the Court, he was rearrested and charged on a warrant with having forged a money order in Tasmania.

Two months later, in November 1935, two men, Stanhard and Strong, were charged with the murder of Reginald Holmes. This trial was conducted by T S Crawford, then the Metropolitan Crown Prosecutor.<sup>xxxi</sup> The Crown case essentially depended upon identification evidence from a single witness. The most intriguing part of the

trial came during the evidence of the last witness for the Crown, a claims clerk for a life assurance company who was about to give evidence of a policy in the name of Holmes. The trial Judge, Mr Justice Halse Rogers, asked Crawford whether the Crown was suggesting as a motive that one of the accused would derive some financial benefit from the death of Holmes. Crawford replied "As your Honour's question stands - ". To which the judge demanded a direct answer to his question. Crawford then said "I will have to leave it", and the witness thereupon left the box without giving his evidence. The jury were unable to reach a verdict in relation to both accused. A subsequent retrial of Strong before Mr Justice Maxwell, also prosecuted by Crawford, resulted in him being found not guilty. The *Sydney Morning Herald* reported that the Court was crowded when the verdict was announced and immediately there was a loud outburst of cheering and clapping which was at once suppressed by the Court officials. Outside, women sobbed hysterically.

Thomas Simpson Crawford was only 14 years of age when he became a clerk in the Railways Department. Several years later, he became a telegraph operator.<sup>xxxi</sup> At 18 he decided that he wanted to study for the Presbyterian Ministry and so he went back to school and then to Sydney University, graduating with a BA and an MA. He was ordained as a Minister of the Presbyterian Church in 1902 and served in Newcastle, the Riverina District, and Campsie. He left the Ministry to enter politics and was the Labour MLA for Marrickville for seven years from 1910 to 1917. During that time he read for the Bar and was admitted in 1912. Following his defeat at the election of 1917, he was appointed a Crown Prosecutor in the same year. Crawford served as a Crown Prosecutor in the western District and later the southern and Hunter Districts, and in 1930 he became the Metropolitan Crown Prosecutor. He was appointed a KC in 1935. He was the Senior Crown Prosecutor between 1940 and 1947. He is probably best known as the author of "Crawford's Proof in Criminal Cases", a treatise on the elements of crimes which he first wrote in 1922

and which is still used to this day. One of his most famous cases was the trial of Frederick Lincoln McDermott who was convicted at the Bathurst Supreme Court in 1947 of the murder 10 years earlier of William Lavers near Grenfell.<sup>xxxiii</sup> McDermott served a lengthy sentence. Many years later, his conviction was the subject of an inquiry which exonerated him.<sup>xxxiv</sup>

One of Crawford's many interesting matters was the prosecution of Joseph Ryan for two robberies of mail trains.<sup>xxxv</sup> In the first trial in July-August 1935 in the Quarter Sessions Court before Judge Curlew, it was alleged that Ryan was responsible for stealing £10,000 from the Canberra mail train at Queanbeyan in May 1931. The Crown case depended largely on the evidence of one Percy Jacobs, a man with an extensive criminal history, who gave evidence of pre-planning of the robbery by Ryan. Jacobs claimed that Ryan had promised him £1,000 from the robbery, but he denied being personally involved in it. This prompted Judge Curlew to ask him "Why you were to get £1,000 I do not know. You did nothing to earn it", to which the Judge added the general observation "I do not know if the jury will convict anyone on this man's evidence alone". The Commissioner of Police, Mr W Mackay, gave evidence that he was present when a group of six or seven police, acting on information received, dug up a fowl yard at Jamisontown and found a bag with £7,600 from the robbery inside. The money was placed on a police rug at the scene, and, disturbingly, the Commissioner later discovered that an additional £100 had been placed on the pile. The remaining £2,300 was never found. The trial went for four days, a surprisingly long time for that era. Defence Counsel, Mr Curtis KC, submitted to the jury that Jacobs was an unmitigated liar and that "the rotten house the Crown has built, you would not hang a dog on". Mr Crawford, on the other hand, said that Jacobs and another witness, Morris, "had been described as men of mud. Wretches as they might be, sorry as to their characters, they were the very type employed by a mastermind when carrying out a criminal enterprise. And it is a mastermind who is now on trial". The Judge gave the usual

directions on corroboration of the evidence of an accomplice. The jury promptly acquitted Ryan.

Two months later, on 8 October 1935, T S Crawford prosecuted Ryan for robbing the Mudgee mail train at Emu Plains of gold bullion, about £5,000 in cash, and cheques to the value of £11,000. Ryan and an accomplice, Collins, were alleged to have got on the train at night, bailed up the guard and his escort, and broken open the safe from which they took the valuables. These they then threw down onto the side of the tracks, and then they jumped off themselves while the train was ascending a steep grade. They then met up near the Knapsack Bridge with one Morris, who drove Ryan to Morris's farm, where the proceeds of the robbery were buried by Ryan, who later came and retrieved them. At the trial, the two train employees were unable to identify their attackers. The main Crown witness was Morris, who admitted to Ryan's Counsel, Mr Curtis KC, that although he had been involved in both the Canberra and Mudgee train robberies, he had never been charged by the police with either offence. He denied Curtis's allegation that he had implicated Ryan in an attempt to save his own skin. Ryan gave evidence that on the day of the robbery he had gone to the funeral of a taxi driver at Waverley Cemetery, and he raised an alibi that that on the night of the robbery he had been at the widow's home with two other taxi drivers. His Counsel called the two taxi drivers to give evidence. After a six day trial and deliberations for twelve hours, the jury announced that they were unable to agree.

Crawford remained active in retirement, doing occasional prosecutions for the State and the Commonwealth and also being involved in a Royal Commission. He also performed various legal tasks in Nauru and the Solomon Islands. One of his former instructing officers, who still survives, recalls working with him on a rape trial at Maitland. The instructing officer, who later became a Crown Prosecutor himself, states that the association with Crawford "left me with admiration and respect for a courteous and

cultured gentleman whose conduct and demeanour during the subject trial provided a role model which I sought to emulate in my own career". The officer also recalls with amusement that each night Crawford requested him to obtain from the hotel licensee a small flask of rum and a lemon to help stave off the onset of influenza. He also gave instructions to be woken up at 7 am each morning. The instructing officer noticed each morning that the flask was empty and the lemon untouched. The lack of lemons obviously did him no harm. Crawford died in Newcastle in 1976 aged 100, his wife having predeceased him by 38 years.

Upon T S Crawford's retirement in 1947, the position of Senior Crown Prosecutor was given to Charles Vincent Rooney. Rooney had been a "coal lumper" on the Sydney waterfront when he decided to study law. Rooney was admitted to the New South Wales Bar in 1923. He was widely known and referred to in legal circles as "Mick", because of the slight Irish brogue which betrayed his origins. He had a quick wit and a wonderful way with words. One of his floor mates used to relate that when he and Rooney had not long been at the Bar, Rooney had at least one regular and highly remunerative client who was a notorious criminal. One day, this client was killed during an armed affray with police, and, on returning to Chambers the following day, Rooney was found sitting at his desk, head in hands, looking quite dejected. When asked "what's wrong?" Rooney replied "those bloody police have gone and shot my practice".

C V Rooney became a Crown Prosecutor in 1941. He joined Roderick (Rod) Kidston as one of the Metropolitan Crown Prosecutors. Rooney was an engaging character and a competent and effective prosecutor. His addresses to juries were thoroughly entertaining and used colourful language. For example, an accused in one of his trials told the court that his dear old mother would have been able to give him an unimpeachable alibi had she been fit to attend court. Replying to this assertion, Rooney suggested to the jury that had

there been any substance in that claim "red hot pokers and stockwhips could not have kept her away". Rooney became the Senior Crown Prosecutor in 1947 and held the position until 1954, when he was appointed a District Court Judge.

Rooney's most spectacular case was the trial of Mrs Caroline Grills, who was charged with multiple murders using the poison thallium.<sup>xxxvi</sup> The case came to be known as the thallium case. Caroline Grills was a most unlikely multiple murderer, being a 63-year-old married woman with four sons and numerous grandchildren and great-grandchildren. She was charged with killing four members of her extended family and the attempted murder of three others, all by the use of thallium. Thallium is a colourless, odourless and tasteless poison that causes blindness, baldness, mental disorder and eventually death. Four relatives of Mrs Grills and her husband had all died in very similar circumstances. In 1947, Mrs Grills' 87-year-old stepmother, and in 1948 an 84-year-old relative of her husband, had died very similar deaths after lengthy periods of deteriorating health, during a time when Mrs Grills was caring for them. Both of them had left property to Mrs Grills or her husband. Also in 1948, Mrs Grills' husband's brother-in-law died a very similar death. Four months later, Caroline Grills' sister-in-law died in the same way. There was no financial benefit to Mrs Grills or her husband in either of the last two deaths. In 1952 Mrs Grills attempted to poison another sister-in-law, Eveline Lundberg, who was the widow of her third victim, and also Mrs Lundberg's daughter and son-in-law. Mrs Lundberg had already become blind as a result of the poisoning. At around this stage there was wide publicity about another unrelated thallium murder, and as a result, Mrs Lundberg's daughter and son-in-law became suspicious and kept a very close eye on their Aunt Carrie. One day, in April 1953, the son-in-law saw Aunt Carrie, while carrying a cup of tea to Mrs Lundberg, placing her hand into her dress pocket and then putting it over the cup in a way which looked like she was putting something

into the tea. He managed to switch the cups before Mrs Lundberg could drink it and he surreptitiously poured the tea into a bottle which he gave to the police. The tea was later analysed by a government analyst and found to contain thallium. The bodies of two of her previous victims were then exhumed and found to contain traces of thallium. Her other two suspected murder victims had, unfortunately, both been cremated. Police located traces of thallium in the pocket of the dress Mrs Grills had worn on the day of her visit to Mrs Lundberg.

Although Mrs Grills was charged with all four deaths and the attempted murder of Mrs Lundberg, the Crown elected to proceed to trial in October 1953 only on the attempted murder charge, because the evidence in relation to it was the strongest. However, the trial Judge, Mr Justice Le Gay Brereton, ruled that the Crown could call evidence of the other deaths by poisoning. In his opening address, Rooney QC called Mrs Grills "a practised and habitual poisoner who had lost all sense of feeling". He alleged that "she poisoned for sport, for fun, for the kick she got out of it, for the hell of it, for the thrill that she and she alone in the world knew the cause of the victim's suffering". Defence counsel, Mr F Hidden, rather boldly submitted to the jury in his closing address that "if she committed these crimes, there can be no more treacherous, more violent poisoner in history. All the classic cases of murder and attempted murder are prompted by motives of revenge, lust or gain. In these cases there is no question of revenge, of sexual motive or gain." Rooney QC in his closing address emphasised the fact that no fewer than seven people who had been exposed to the charity and kindness of Aunt Carrie had all died from or suffered the effects of thallium poisoning. The jury took 12 minutes to find Caroline Grills guilty of attempting to murder Mrs Lundberg.

When Rooney QC was appointed a District Court Judge in 1954, everybody expected that Roderick ("Rod") Kidston would become the next Senior Crown Prosecutor. Kidston was acknowledged as

unsurpassed in his knowledge of the criminal law and procedures and he had lengthy experience as a Crown Prosecutor as well as demonstrable dedication to his office. Rod Kidston is best known today for an article he wrote for the Australian Law Journal in 1958 entitled "The Office of Crown Prosecutor (More Particularly in New South Wales)".<sup>xxxvii</sup> For many years, in fact until the publication of the first Director of Public Prosecutions "Prosecution Policy and Guidelines" in July 1987, Kidston's article was one of the principal authoritative statements of prosecutorial roles and duties in Australia. It is still occasionally referred to today. However, in 1954, the government of the day overlooked Kidston for the Senior Crown Prosecutor's position and instead appointed William James ("Bill") Knight QC directly from the Bar. Kidston had to be satisfied with appointment as the State's first Deputy Senior Crown Prosecutor and as a Queen's Counsel.

Bill Knight QC was the Senior Crown Prosecutor from 1954 until 1969. He was a competent and very effective prosecutor, however, he was said to have entertained overt animosities towards several judges, various members of the Bar, and towards two of his fellow Crown Prosecutors. Bill Knight's most prominent case was the trial of Stephen Bradley for the kidnapping and murder of Graeme Thorne, a crime which attracted the most amazing amount of public attention and grief, probably more than any other Australian crime in the 20th Century.<sup>xxxviii</sup> In June 1960, Graeme's parents won the then extraordinary amount of £100,000 in the first Opera House lottery. Five weeks later, Graeme was abducted on his way to school at Scots College. Several hours later, the kidnapper rang the Thorne's home and, speaking with a heavy accent, demanded £25,000 for the return of their son. The kidnapping resulted in a police investigation the likes of which had never been seen before. The case really marked a turning point in the use of scientific evidence to prove a circumstantial case against an accused. On the second day of the investigation, Graeme's empty schoolcase was discovered beside the Wakehurst

Parkway in French's Forest. Not long after, police found Graeme's school cap, raincoat, lunch bag and a maths book about a mile away. About six weeks later, Graeme's body was discovered wrapped in a chequered rug under an overhanging rock ledge on a vacant block of land in Seaforth. Graeme had died of a fractured skull and possibly asphyxiation.

A witness reported having seen an iridescent blue 1955 Ford Customline sedan in the vicinity of the Thornes' home on the morning of Graeme's abduction. The police checked tens of thousands of index cards at the Department of Motor Transport and interviewed many hundreds of owners of suitable vehicles, in an attempt to locate the relevant Ford. One of the owners of an iridescent blue Ford Customline who was interviewed was Stephen Bradley, who lived with his wife and children at Clontarf, not far from Seaforth. However, Bradley accounted for his movements at the time of the kidnapping. The rug wrapped around Graeme's body was found to contain a number of hairs from an animal. Some lime mortar, seeds from two varieties of cypress trees, and some clay were found on Graeme's clothing. Postmen were alerted to report any property answering these features. Eventually, some residents in Clontarf notified police that their neighbours, Stephen and Magda Bradley, who owned a Ford Customline, had unexpectedly left their house on the very day that Graeme Thorne disappeared, leaving no forwarding address. Stephen Bradley, who was born in Budapest and had arrived in Australia 10 years earlier, had a strong accent. Prior to their departure, Stephen Bradley had been observed by the neighbour burning photographs and negatives in what seemed to be a surreptitious manner. The neighbour retrieved several unburned photos, one of which showed Magda Bradley seated with the family's pomeranian dog on a travelling rug, which showed a marked resemblance to the rug found around Graeme Thorne's body.

By the time police set their sights on Stephen Leslie Bradley, he had become aware of the

renewed interest in him and, with his wife and their children, had already departed Australia on the ship *Himalaya* bound for London. In fact, Magda Bradley had booked a passage for herself and her children very shortly after the kidnapping. Stephen Bradley had separately booked his own passage on the same ship at a later time. Their former house in Clontarf was very closely examined by the police and was found to have the identical lime mortar, clay and cypress seeds as that found on Graeme's clothing. The hairs on the rug around Graeme's body exactly matched those of the Bradley's Pomeranian dog, Cherry, which they had left with an eastern suburbs pet before they departed for London. A Professor of wool technology established that the rug seen in the photograph found at the Bradley's deserted home showed exactly the same pattern as the one found around Graeme. The *Himalaya* was intercepted by police at Colombo in Sri Lanka and Bradley was interviewed by the police in Colombo. He admitted having kidnapped Graeme Thorne, but asserted that Graeme had accidentally died in the boot of his car when his head had hit a tyre lever while Bradley was driving. Bradley was extradited back to Sydney.

At the trial, in March 1961 at the Central Criminal Court at Darlinghurst, Bill Knight QC, assisted by junior Crown Prosecutor Vin Wallace, built up an overwhelming case against Bradley. The trial was notable for the variety of scientific witnesses called. They included a professor of plant biology, a botanist from the Botanic Gardens, a professor of wool technology, a forensics scientist who examined the animal hairs, and a technical officer from the Mines Department who found the traces of clay and lime mortar to be identical with similar materials found at the accused's former home in Clontarf. By the time of the trial, Bradley had changed his story from what he had said to the police in Colombo and was now denying any involvement in the kidnapping of Graeme Thorne. At his trial, in which he was represented by Fred Vizzard, the Senior Public Defender, Bradley gave evidence asserting that the confession he had made to the police in Colombo had been forced

from him by coercive conduct on the part of the police and that it was not the truth. A major issue at the trial was whether the death of Graeme Thorne had been caused accidentally, as originally alleged by Bradley, which would amount to manslaughter, or whether Bradley had deliberately struck Graeme to the head, thereby committing murder. Step-by-step during the eight-day trial, Knight built up a case that Bradley had deliberately murdered Graeme by delivering a fatal blow to the head. Stephen Bradley also called his wife to give evidence. Knight QC put to her in cross examination that she had known about the kidnapping and that was why she had booked a passage for herself and her children on the Himalaya very soon after the kidnapping. She denied this. The jury took several hours before returning a verdict of guilty of murder, and Mr Justice Clancy immediately sentenced Bradley to penal servitude for life. Bradley remained in prison on special protection, becoming very involved with the prison orchestra, before dying of a heart attack in Goulburn gaol in 1968 at the age of 45.

Another of Bill Knight's prominent cases was the 1956 trial of barrister, Trevor Ziems in the Newcastle Quarter Sessions. Ziems was charged with the manslaughter of a motorcyclist arising from a collision between a vehicle driven by Ziems and the motorcycle.<sup>xxxix</sup> It appears that Ziems had been driving the car erratically, crossing over onto the incorrect side of the road, for several kilometres prior to the accident. Ziems's defence was that prior to getting into his car he had been at a hotel in Newcastle where he had remonstrated with a drunken seaman who had viciously hit him a number of times about the head. Ziems claimed that the blows caused him severe concussion and that he had no memory thereafter driving his car or anything else until he was taken to the police station. The most controversial part of the case was that Bill Knight failed to call a Sergeant Phillis to give evidence at the trial. Sergeant Phillis had given evidence at the Coronial Inquest that he had been called to the hotel and had seen Ziems and the seaman staggering out of the hotel as though

they were intoxicated. In cross examination at the inquest, the sergeant admitted that his observations were also consistent with the seaman being drunk but Ziems showing the effects of receiving severe blows from the fight. In fact, Sergeant Phillis had told Ziems at the time that he should go to hospital to receive some medical attention for his injuries.

Because of the Crown's failure to call Sergeant Phillis, Ziems's counsel, S Webb QC, was forced to call the Sergeant, who of course gave evidence in chief of his belief that Ziems was heavily intoxicated. Because of the then rules of evidence<sup>xl</sup>, Webb QC was unable to cross-examine the sergeant to elicit that part of his evidence favourable to Ziems. Ziems was convicted of the manslaughter of the motorcyclist. The Supreme Court then removed him from the role of barristers, and Ziems appealed to the High Court against his disbarment. Two of the High Court Judges, Fullagar J and Taylor J, commented on the fact that they could see no reason for the Crown's decision not to call Sergeant Phillis and that therefore Ziems may have been unfairly deprived of the benefit of some highly relevant, indeed critical evidence.<sup>xli</sup> The High Court upheld his appeal against complete disbarment and substituted it with an order that he be suspended from practice during the continuance of his imprisonment.

In 1967, the longest serving and oldest Crown Prosecutor was finally convinced to retire at the age of 78 years. B F F ("Buck") Telfer was born on 1st April 1889 and appointed a Crown Prosecutor for the Western District on 1st April 1939. He transferred to the Northern District in October 1943, retaining the right of private practice, and he worked in the Northern District for most of the rest of his career. He was a big man with prominent bushy eyebrows and he cut a formidable figure in Court. He was known to have a very close working relationship with the Quarter Sessions Judges before whom he appeared, particularly Judge Storkey VC. It was quite common for Buck Telfer to inform Counsel for an



accused before a trial that the trial judge had indicated to him that if the accused pleaded guilty he would not get a custodial sentence. It has been said that although he had a professional intimacy with the Judges that would be frowned on today, one never heard of him abusing it, and he never got any personal favour or advantage from it.<sup>xlii</sup> His favour with the Judges arose from his ability to manage an overcrowded Court list in a way which resulted in the Judge still having time for a game of golf.

Telfer had leave of absence due to illness (complications following a neurological operation) between February and July 1959. During this absence, his annual gold rail ticket expired and it required forceful written submissions from him to the Attorney General's Department, which wanted instead to issue him with vouchers for work related travel, before the Under Secretary of the Department was convinced to reissue him with a gold pass, which no doubt entitled him to travel for free at any time and for any purpose.<sup>xliii</sup>

In October 1957, a submission to the Attorney General from his departmental Under Secretary drew to his attention the question of Crown Prosecutors serving in office in advanced years.<sup>xliv</sup> He noted that up until that time "it has not been customary to call upon Crown Prosecutors for birth certificates... The Attorney General might consider that Crown Prosecutors should cease to hold office after retaining the age of 70 years. However, no specific term to that effect is contained in the instruments of appointment of Crown Prosecutors. Within the next few years the situation will arise as regards Mr Telfer who was born on 1 April 1899." This, of course, contained an egregious error, as Telfer had in fact been born on 1 April 1889. Instead of being 58 at that time, he was in fact 68. Over the next few years a number of Crown Prosecutors were sent requests to provide copies of their certificates to the Department.

Nearly ten years later, in November 1966, the Attorney General must have found out how old

Buck Telfer really was. A short note<sup>xlv</sup> records that on 4 November the Attorney General interviewed Mr Telfer in the presence of the Under Secretary. The Attorney "put to Mr Telfer that in view of his age (77 years) and the policy of the Government that officers, as a general rule, should retire at age 70, consideration should be given to his retirement." The note further records that after considerable discussion, Telfer agreed to tender a formal resignation to cease duty in July the following year (1967), and the Attorney agreed to this. Rumour of this pressure from the Attorney General must have spread to private practitioners in the northern country regions where Telfer practised as a Crown Prosecutor. In June 1967, the Secretary of the Clarence River and Coffs Harbour Law Society wrote to the Attorney General informing him that the Society had heard that Mr Telfer had been required to resign his office as Crown Prosecutor "by reason of the view of the present government that he has now reached such an advanced age as renders his further tenure of office undesirable".<sup>xlvi</sup> The Secretary informed the Attorney that "my Society is perturbed that an Officer of the Crown who has rendered and still renders capable service, who has discharged his office fairly and fearlessly and who has a contractual right to remain in office should be deprived of such office against his will." The reply to the Society from the Attorney was the predictable "I'm not at liberty to discuss the matter". Telfer's resignation became effective on 28 July 1967, and the Attorney wished him a lengthy and happy retirement. He had been a Crown Prosecutor for 28 years, 3 months and 28 days. To the writer's knowledge, there has not ever been an older or longer serving Crown Prosecutor before or since.<sup>xlvii</sup>

In 1969, recurring heart problems caused Bill Knight's retirement and ultimately his death at a relatively young age. He was replaced as Senior Crown Prosecutor by D F (Don) Kelly QC. Kelly, who was a handsome man with a reputation as being extremely good company. As he was a man of independent means and was unmarried, he was considered by many as one of the most eligible

bachelors in New South Wales. Whilst he was a very effective Crown Prosecutor, he also knew how to enjoy his leisure time and was known whilst working as a Prosecutor in the south-western District to keep a sporting rifle at one location and a set of golf clubs at another. He had had a distinguished war record and had been mentioned in dispatches during service in the southwest Pacific area.

One of Don Kelly's most intriguing trials was that of Lucio Perkins. Perkins was charged with the murder of his first wife who had come from the United Kingdom to join him in Australia after a lengthy separation. Within four or five days of her arrival, she had disappeared off the face of the earth. In an emotional letter, Perkins advised her daughter in England that her mother had died here in Sydney and was interred in a lawn cemetery. Sometime later, Perkins took on a new wife whom he married at the Registrar General's Department in Sydney and, with her, visited the previous wife's daughter in England. The new wife spoke to the daughter about what she had been told of the distressing circumstances of her mother's death in Cuba. The daughter then produced two letters from Lucio Perkins, the first telling of the death of her mother in Sydney, and the second about her mother's cremation, written at a time when Perkins was in fact enjoying a trip to Western Australia with another lady friend. Perkins' new wife promptly returned to Australia unaccompanied. The daughter sought the assistance of Scotland Yard and an investigation was commenced by New South Wales police. That investigation disclosed that upon his second marriage in Sydney, Perkins had claimed that his first marriage had been terminated by the death of his former wife in Cuba, and he had produced a document which was not a death certificate, claiming that because of the political conditions in Cuba he had been unable to get the official document. The police searched a caravan in which Perkins was living, and an original birth certificate of Perkins's own birth in Cuba was found. It was noticed that many of the details of death of his first wife, such as the name of the registry official

recording the death provided by Perkins to the celebrant of his second marriage, were precisely the same as those contained in his own birth certificate, despite the lapse of some 60 years between the two events. The jury convicted Perkins of the murder of his first wife.

Don Kelly's service as the Senior Crown Prosecutor was relatively short because of several strokes of increasing severity which struck him that eventually led to his admission to the St Vincent's Hospice at Darlinghurst. One of his fellow Crown Prosecutors who visited him from time to time was shocked to find him almost totally immobilised but with his brain seemingly unaffected.

Following Don Kelly's resignation in 1973, everyone expected Vincent Reinehr (Vin) Wallace QC to become Senior Crown Prosecutor. He had been appointed the Deputy Senior Crown Prosecutor and a Queen's Counsel earlier in that same year. However, the government instead appointed Leon G Tanner as Senior Crown Prosecutor. Leon Tanner was educated at Christian Brothers High School, Lewisham and the University of Sydney. He was admitted to the Bar in 1934 and appointed a Metropolitan Crown Prosecutor in 1954. Tanner was a deeply religious man who has been described as "one of nature's gentlemen". It has been said of him that if he did have a fault, it was that he suffered from "the sin of scruples". Prior to his appointment as Senior Crown Prosecutor, Tanner had prosecuted only few criminal trials, having appeared for the Crown predominantly in District Court appeals from the Magistrates Courts. At the time of his appointment as the most Senior Prosecutor in the State, he was not a Queen's Counsel (although he was soon appointed one) and was Vin Wallace's junior in terms of length of service. Despite this, he proved to be a good trial lawyer. Soon after his appointment as Senior Crown Prosecutor, he departed to England for the marriage there of a son. Within a year or so of his return, in 1975, he had retired.

Leon Tanner was followed as Senior Crown Prosecutor by Vin Wallace QC. Wallace had overcome a very traumatic childhood.<sup>xlvi</sup> Born in December 1914 at North Sydney, he lost his mother and a younger sister during the flu epidemic of 1919 when he was only five years old. His father took over the care of Vin and his brothers (one being his twin), but when he was 11, his father died of typhoid fever. His father died virtually penniless following the collapse of a newspaper and printing business he had set up in Wollongong. Vin actually spent some time with his two brothers in an orphanage. Despite all these difficulties, young Vincent was dux of Lakemba Public School in 1927. He attended Canterbury Boys High School and went on to Sydney University. He graduated in law from Sydney University and was admitted to the New South Wales Bar. During the war years, he was in the RAAF and did two tours of duty in the south-west Pacific area, being discharged as a flying Officer (Signals). In the late 1940s, he was appointed as a legal research officer in the Department of Attorney General and Justice. During that time he had a period of secondment acting as Private Secretary to Attorney General Martin, and this brought him into contact with the Crown Prosecutors. When a vacancy occurred in the ranks of the instructing officers to the Crown Prosecutors, he lodged an application and was accepted. Within four or five years, he had become Senior Instructing Officer and in charge of those instructing at the criminal courts at Darlinghurst. It was during this period he came under the influence and tutelage of Crown Prosecutor Rod Kidston.

In January 1954, Vin Wallace was appointed a Crown Prosecutor by Attorney General W Sheahan. At the time of his appointment, there were only nine Crown Prosecutors throughout the State, an increase of only one over the number in 1901. By the time he retired in January 1978, just 24 years later, there were no fewer than 35 Crown Prosecutors, a fivefold increase. The records of the Attorney General's Department during this period, particularly in the late sixties, are replete with

requests for the appointment of further Judges and Crown Prosecutors. A submission from the Under Secretary to the Attorney General dated 22 May 1967 notes that the Quarter Sessions Courts processed 1521 trials and committals for sentence in 1964, and that this figure had risen to 2300 by 1967.<sup>xlix</sup> It was noted, however, that this position was slightly ameliorated by an increase during the same period in the number of accused persons who pleaded guilty from 84% to 88%. Another submission from the Under Secretary in the same month noted that there were 80 trials outstanding at Parramatta Court, with an estimate of 1½ hearing days each trial, as well as approximately 34 sentences, which could be processed at the rate of ten per day.

Vin Wallace's appointment as a Crown Prosecutor in 1954 was met with a formal protest from the Bar Council, due to the fact that he was the first Crown Prosecutor who had not previously practised at the private Bar. However, within a short time, he had proven himself as a competent and fair Crown Prosecutor, and any opposition to him disappeared. His commencing salary in 1954 was £2610, with a restricted right of private practice. He commenced prosecuting in the Southern and Hunter Districts, but predominantly did trials at Newcastle, Maitland, Cessnock, Singleton, Scone, Muswellbrook and Quirindi. He thoroughly enjoyed this circuit life, which he would not have left if he had not been married with three young sons. The birth of his third son was announced to him by telegram whilst prosecuting a trial at Maitland.

In 1958, Wallace became the Crown Prosecutor for the Metropolitan District. His salary was then £5,590. In 1971, a Salaries Enquiry was appointed to investigate and report on the salaries of various senior officers employed by the State, including the Crown Prosecutors. The recommendations of the Enquiry resulted in the salaries of Crown Prosecutors being increased substantially in order to bring them more into line with incomes available at the private Bar. In 1973, Wallace was appointed as the Deputy Senior Crown Prosecutor

and as a Queen's Counsel. The following year, the 1974 law almanac records for the first time that there were now three Deputy Senior Crown Prosecutors. Vin Wallace remained as a generic Deputy Senior Crown Prosecutor, while R J (Reg) Marr QC was appointed Deputy Senior Crown Prosecutor (Appeals) and J K (Joe) Ford QC was appointed Deputy Senior Crown Prosecutor (Companies). In 1975, Vin Wallace was appointed Senior Crown Prosecutor.

Amongst his many trials, Vin Wallace prosecuted a number of corporate criminal matters.<sup>1</sup> One of them concerned the trial of some directors of the Sydney Guarantee Corporation Ltd, in which he was opposed by William Deane, who later became a High Court Judge and subsequently Governor General. The trial arose out of the issue of some debentures by the company on very attractive terms at a time when the company was said to have been demonstrably insolvent. The funds which had been obtained by the company as a result of the issue were used predominantly towards the attempted resuscitation of a number of other two-dollar companies of which the accused were the sole shareholders and directors. Those companies were also said to be insolvent. After a month long trial, the jury failed to agree. Wallace was so mentally and physically drained by this prosecution that he decided he wished to have no further involvement in pursuing such corporate matters.

Perhaps the most high-profile trial prosecuted by Wallace was the trial of Baker and Crump.<sup>li</sup> They were convicted of the murder of an itinerant seasonal worker named Lamb, and conspiracy to murder a Mrs Morse, who was the wife of a grazier at Brewarrina. Lamb was murdered for the sole purpose of stealing petrol from his car. The two accused had come upon him near Narrabri asleep in his car at the side of the road. Upon being awakened by the accused, as Lamb wound down the window of his vehicle, he was executed with a rifle bullet to his head. Having stolen Lamb's petrol, Baker and Crump took off to a vantage point overlooking the Morse property,

where Baker had previously been employed. There they maintained surveillance of the property using binoculars, until the Morse children had gone to school and Mr Morse had left for work. Mrs Morse was then abducted by Baker and Crump, despite her frantic appeals to her abductors. What followed were several days of repeated, abominable violations of Mrs Morse while she was immobilised by being bound on the ground between some tree roots. Mrs Morse was then taken to Queensland, where she was further violated before being executed by the two accused, and her body dumped in a river. Thirty years later, Vin Wallace became quite emotional as he recalled the facts of this case for the present author. Whilst there was some pressure to have Baker and Crump transferred to Queensland to be dealt with for the murder of Mrs Morse in that jurisdiction, the decision was taken to put them to trial in New South Wales for the murder of Lamb and a conspiracy to murder Mrs Morse. The fact that Baker was well known to Mrs Morse, coupled with the horrendous treatment of her from the outset, was alleged to demonstrate the inevitability that the two accused had accepted from the beginning the necessity to silence her. The jury hearing their trial agreed without hesitation and convicted both Baker and Crump of both offences.

Vin Wallace QC's retirement in 1978 at the age of 63, came after 45 years service in the public sector. Vin had been asked for an advice about a politically sensitive prosecution. He felt that some improper pressure had been brought to bear on him to come to a particular view about the matter. He found this pressure unacceptable and intolerable, and, as a result, felt that he had no future in government service and retired shortly thereafter. Since his retirement, Vin Wallace has led an active and happy life with his wife, Averild. At the time of writing, he has attained 91 years of age.

Upon Vin Wallace's retirement, Richard William Arthur ("Bill") Job QC became the Senior Crown Prosecutor. Bill Job graduated in law from Sydney

University in 1952. He was an instructing officer with the Clerk of the Peace Office from 1954 to 1962, and was the solicitor in the trial of Stephen Bradley for the kidnapping-murder of Graeme Thorne. In 1962, Bill Job went into private practice as a barrister for a short period, before being appointed a Crown Prosecutor in 1964. He became a Companies Crown Prosecutor in New South Wales, with Chambers in Selborne Chambers. This meant that he was solely involved in the preparation and conduct of criminal trials involving corporate crimes, mainly fraud and serious breaches of corporate governance. He was later joined by Tom Davidson. He remained a Companies Crown Prosecutor from 1964 to 1971, during which time he prosecuted a number of highly complex, lengthy trials alleging corporate crime. It included what was then the longest criminal trial in New South Wales, a three-month trial arising out of the collapse of the HG Palmer group. At that time, most trials in the Quarter Sessions would generally be dealt with in a single day, and a four-day trial was considered very lengthy.

Subsequently, Bill Job prosecuted in the Quarter Sessions (later the District Court) and Supreme Courts at Darlinghurst. At that time, the Crown Prosecutors' Chambers were in the Koala Motor Inn building in Oxford Street, Darlinghurst. He became a Queen's Counsel in 1976 and the Senior Crown Prosecutor in January 1986. He prosecuted many high-profile trials, including the Yagoona bombing case in which three members of the Ananda Marga sect, Tim Anderson, Ross Dunn, and Paul Alister, were charged with conspiring to bomb the Yagoona home of the leader of the right-wing National Front movement. They were convicted and their convictions were confirmed on appeal, but an inquiry some years later recommended their release and pardon. Job also prosecuted the second trial of Roger Rogerson in which he was convicted of attempting to pervert the course of justice by denying to a judicial inquiry that he had withdrawn some money from a bank, although he had been recorded by the bank's security cameras withdrawing the money.

Perhaps his most prominent trial was of the men convicted of the brutal murder of Janine Balding. On her way home from work one day in September 1988, twenty-year-old Janine got off a train at Sutherland railway station where she was accosted by four males and a female and taken at knifepoint in her own car to Mount Druitt, where she was raped repeatedly, tied in a ball and drowned in about eighteen inches of water. Three men – Steven Jamison, Mathew Elliot and Bronson Blessington – and a boy who was only 14 years old at the time of the crime, were convicted and sentenced to life imprisonment.

One of the Counsel who regularly appeared for the defence against Bill Job QC was the flamboyant and colourful barrister, Tony Bellanto (Sr) QC. In one trial, Bellanto was representing a man charged with the murder of his wife. He was alleged to have hired a boat and taken his wife out in it, later returning without his wife and claiming that she had fallen into the water and drowned. In the Crown case, Job led evidence of a motive to dispose of his wife, including the fact that the man had a girlfriend. In the defence case, the accused husband told a heart-wrenching story about his late wife and the circumstances of her death. During the telling of the story, he broke down in tears. In cross-examination, Job asked him to retell the story. The husband did just that, telling the story in almost identical words and breaking down again at exactly the same spot as he had the first time. Bill Job put to him what must have been obvious to the jury, that he had prepared and rehearsed this performance for the purposes of giving evidence in Court. The man was convicted.

By the time of his retirement as Senior Crown Prosecutor in January 1986, Bill Job had prosecuted more murder trials than anyone else in Australia. He then became the inaugural Chairman of the State Drug Crime Commission, a precursor to the New South Wales Crime Commission. Later, he became a Judge of the District Court. He was replaced as Senior Crown Prosecutor by Joseph Xavier ("Joe") Gibson QC. Subsequent Senior Crown Prosecutors have been

W H (Sandy) Gregory DSC RFD QC (1987-90), Allan C Saunders QC (1990-91), Ian S Lloyd QC (1991-1996) and the author (1997 to date).

The year 1986 marks a convenient point to complete this historical account, because in December of that year the *Director of Public Prosecutions Act* and the *Crown Prosecutors Act* were enacted.<sup>lii</sup> These two Acts heralded some major changes to the administrative structures concerning those who prosecute criminal matters in New South Wales. By 1986, there were 45 Crown Prosecutors in New South Wales, consisting of a Senior Crown Prosecutor, 6 Deputy Senior Crown Prosecutors, and 38 Crown Prosecutors. The most important change in 1986 was the introduction of an independent Director of Public Prosecutions for New South Wales who took over most of the prosecutorial functions previously exercised by the Attorney General.<sup>liii</sup> The *Crown Prosecutors Act* established a statutory regime for the appointment and tenure of Crown Prosecutors and set out their powers and functions. The Act very carefully maintained the continuing independence of Crown Prosecutors as independent counsel appearing on behalf of the Director of Public Prosecutions. The Act specified that Crown Prosecutors are responsible to the Director for the due exercise of their functions, and that the Director may make arrangements or give directions for the disposition of their work. However, the *Director of Public Prosecutions Act* clearly stated that the Director may not furnish guidelines to the Crown Prosecutors in relation to particular cases. The Crown Prosecutors have therefore maintained their role as independent counsel involved in finding bills of indictment and

conducting criminal trials and appeals. Experience over a period of 175 years since the appointment of the first Crown Prosecutor in 1830 has shown that the use of in-house barristers to conduct criminal jury trials and appeals on behalf of the State results in a most proficient and efficient professional service to the public.

## Autumn Quarters

### In autumn 1806

On 20 May, English philosopher John Stuart Mill is born. "If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."

### In autumn 1856

On 22 May, a bicameral New South Wales parliament opens.

### In autumn 1906

On 24 March, the *Census of the British Empire* shows England rules 1/5 of the world.

### In autumn 1956

On 23 March, the Islamic Republic of Pakistan becomes an independent republic within the British Commonwealth.

<sup>i</sup> Colin Shaw, *Sydney Morning Herald*, 22 February 2006.

<sup>ii</sup> Scott Poynting, *Sydney Morning Herald*, 24 February 2006.

<sup>iii</sup> Supreme Court of Western Australia media release, 17 May 1999.

<sup>iv</sup> Federal Court of Australian media release, 8 December 1998.

<sup>v</sup> Lindsay & Webster (eds), *No Mere Mouthpiece: Servants of All, Yet of None*, 2002, LexisNexis Butterworths.

<sup>vi</sup> The earlier history of the NSW Crown Prosecutors, from the appointment of the first Crown Prosecutor in 1830 until 1901, is the subject of an essay by the author in Lindsay & Webster (eds), *No Mere Mouthpiece: Servants of All, Yet of None*, 2002, LexisNexis Butterworths.

<sup>vii</sup> Senior Crown Prosecutor for New South Wales, Visiting Professor at the Centre for Transnational Crime Prevention

at the University of Wollongong. The author gratefully acknowledges the research assistance of Justine Rogers and the support of Nicholas Cowdery AM QC, Director of Public Prosecutions for NSW.

<sup>viii</sup> *Sydney Morning Herald*, 24 December 1901.

<sup>ix</sup> A part of the Supreme Court of NSW.

<sup>x</sup> The Quarter Sessions Courts heard criminal cases which were subsequently taken over by the District Court.

<sup>xi</sup> *Australian Dictionary of Biography*, vol 12 (1891-1939), MUP, 1990. *The Cyclopedia of NSW: An Historical and Commercial Review*, 1907. Obituary in the *Sydney Morning Herald*, 27 September 1922.

<sup>xii</sup> *Sydney Morning Herald*, 23-27, 29 April, 1 May, 12, 14, 19, 21-22 June 1901.

<sup>xiii</sup> *Sydney Morning Herald*, 21 June 1901.

<sup>xiv</sup> *The Cyclopedia of NSW: An Historical and Commercial Review*, 1907.

<sup>xv</sup> *Sydney Morning Herald*, 16 March 1906.

<sup>xvi</sup> 12 ADB 539. He was the eldest son of Sir William Windeyer J.

<sup>xvii</sup> See John D Fitzgerald, *Studies in Australian Crime*, Second Series, 1924, Sydney, pp 316-359.

<sup>xviii</sup> Such allegations were probably much rarer then than now and Counsel were possibly more sensitive than Counsel today. A similar allegation these days would generally not result in the prosecutor withdrawing from the case.

<sup>xix</sup> *Sydney Morning Herald*, 8 July 1903.

<sup>xx</sup> H T E Holt, *A Court Rises*, p 180ff.

<sup>xxi</sup> H T E Holt, *A Court Rises*, p 182.

<sup>xxii</sup> *Sydney Morning Herald*, 20 August 1920; Patricia Dasey, *An Australian Murder Almanac*, 1993, Griffen Paperbacks.

<sup>xxiii</sup> *Sydney Morning Herald*, 13 March 1928.

<sup>xxiv</sup> There have been at least three Crown Prosecutors who have been Rhodes scholars (Vernon Treatt KC, Charles Cato and Richard Cogswell SC), as well as a University medallist (Allan Saunders QC) and two Olympians (R W A Job QC and E O G Pain).

<sup>xxv</sup> Address by Justice Michael Kirby in Melbourne at the launch of *Principles of Criminal Law*, 2001, Law Book Company, by Simon Bronitt and Bernadette McSherry.

<sup>xxvi</sup> *Sydney Morning Herald*, 17 March 1933.

<sup>xxvii</sup> *Sydney Morning Herald*, 29 -30 March, 1 April 1933.

<sup>xxviii</sup> *Sydney Morning Herald*, 27, 29 April 1933.

<sup>xxix</sup> *Sydney Morning Herald*, 9 June 1933.

<sup>xxx</sup> *Sydney Morning Herald*, 10-11 September 1935.

<sup>xxxi</sup> *Sydney Morning Herald*, 20-22, 26-27 November 1935.

<sup>xxxii</sup> Radi, Heather et al, *Biographical Register of the NSW Parliament (1901-1970)*, 1979; Obituary in *Sydney Morning Herald*, 21 April 1976; *Australian Dictionary of Biography*, vol 8 (1891-1939), 1981, MUP.

<sup>xxxiii</sup> See Eric Clegg, *Return Your Verdict*, 1965, Sydney, ch 5.

<sup>xxxiv</sup> Royal Commission of Inquiry into the conviction of Frederick Lincoln McDermott for the murder of William Henry Lavers, heard before Mr Justice Kinsella, 10 Sep-20 Dec 1951, CGS 6196.

<sup>xxxv</sup> *Sydney Morning Herald*, 31 July, 1-2 August 1935.

<sup>xxxvi</sup> *Sydney Morning Herald*, 8-9, 13-16 October 1953.

Patricia Dasey, *An Australian Murder Almanac*, 1993, Griffen Paperbacks, p 63.

<sup>xxxvii</sup> (1958) 32 ALJ 148.

<sup>xxxviii</sup> Alan Sharpe, *Australian Crimes*, 1979, Ure Smith, p 121. *Sydney Morning Herald*, 8-10, 13-15, 21-22, 24, 28-30 March 1961.

<sup>xxxix</sup> *Newcastle Morning Herald and Miners' Advocate*, 3-4 May 1956. *Sydney Morning Herald*, 3-5 May 1956.

<sup>xl</sup> The Evidence Act s38 would now allow defence counsel to cross-examine the police officer.

<sup>xli</sup> *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279.

<sup>xlii</sup> A personal informant.

<sup>xliii</sup> Letter from the Under Secretary of the Attorney General's Department dated 19 August 1959. This and other departmental records referred to below are from the Attorney General's Department Records, State Records Office, Kingswood NSW (12/4598.2; 12/4606.2; 12/12686).

<sup>xliv</sup> Submission from the Under Secretary of the Attorney General's Department dated 4 October 1957. It later became the practice for Crown Prosecutors to be appointed until the age of 70. When the *Crown Prosecutors Act* was passed in 1986, the mandatory retirement age was specified as 65 years, however those who had previously been appointed to the age of 70 retained their right to serve to that age. In 1990, with the passing of the *Anti-Discrimination (Compulsory Retirement) Amendment Act*, it became impermissible to discriminate against anyone in employment because of their age, and hence the retirement provisions in the *Crown Prosecutors Act* were repealed.

<sup>xlv</sup> File note of the Under Secretary of the Attorney General's Department dated 4 November 1966, Attorney General's Department Records, State Records Office.

<sup>xlvi</sup> Letter from the Honorary Secretary, the Clarence River and the Coffs Harbour Law Society dated 22 June 1967, Attorney General's Department Records, State Records Office.

<sup>xlvii</sup> The oldest serving Crown Prosecutor is Billy Purves who does not mind me disclosing that he is presently aged 71. Barry Newport QC retired in January 2004 after 26½ years as a Crown Prosecutor.

<sup>xlviii</sup> Manuscript dated 12/12/2001 provided to the author by Mr V Wallace QC.

<sup>xlix</sup> Attorney General's Department Records, State Records Office.

<sup>i</sup> Attorney General's Department Records, State Records Office.

<sup>li</sup> Attorney General's Department Records, State Records Office.

<sup>lii</sup> The Acts did not come into operation until 1987. A proposal for the introduction of a Director of Public Prosecutions had been ventilated for almost a decade before 1986. Some of the Crown Prosecutors at the time felt that it would result in a loss of independence: see the article by Alan Viney, then a Crown Prosecutor and later a Deputy DPP, in the *Sydney Morning Herald*, 15 September 1981.



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<sup>liii</sup> Since 1986, there have been two Directors of Public Prosecutions, Hon R O Blanch AM QC (now Chief Judge of the District Court) and Nicholas Cowdery AM QC.

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