Stephen Page

ATT: Committee Secretary
Senate Legal and Constitutional Committee

A submission on Australia's judicial system, the role of judges and access to justice

THIS SUBMISSION CANVASES THE FOLLOWING ISSUES:

- Performance manage poorly performing justices (up to dismissal).
- Perverse fact findings/errors of law should be investigated as miscarriages.
- The need for an open, public and published paedophile register.
- A more open appeal process is required to protect the factually innocent.
- Violent priors should be published to the jury for trials of violence.
- The legal principle of *doli incapax* be abolished.
- Violent crimes which result in death should be deemed murder.
- Introduce a uniform criminal code to avoid cross-jurisdictional laws.
- Joint trials for joint-enterprise crimes.
- Abolition of "Homosexual Advance Defence" as a mitigator.
- The ability to appeal findings of fact in all jurisdictions, criminal and civil.
- Deportation as a matter of policy for convicted violent non-citizens.
- Similar to deeming provisions for drugs, firearms be deemed to be loaded.
- Creation of a Criminal Cases Review Commission similar to the UK model.

To open this submission I will present a quote by Dr Martin Luther King in a letter from a Birmingham Alabama jail he wrote in 1963, "**Injustice anywhere is a threat to justice everywhere**".
He was jailed for protesting without a permit.

ABOUT THE AUTHOR

Stephen Page is a former Detective Sergeant with the NSW Police Force who also served as a captain (Infantry Corps) with the Australian Army. He is a recipient of Australian Defence Medal, the National Medal and NSW Police Medal, in addition to four commendations and two citations.

As a police officer, Page performed duty at several Sydney stations, including Blacktown, Mount Druitt, Bankstown. He also served with the Tactical Response Group and State Protection Group.

He undertook specialist investigative duties with the Major Crime Squad, Crime Agencies, the State Major Incident Group and the Task Force Group. During his policing career, he had no sustained complaints, nor was he mentioned in any public enquiry.

Page holds a Bachelor of Policing, Diploma of Policing and a Diploma of Security and Risk Management. His other work experience includes senior security management roles in critical infrastructure and retail. He is a happily married father of two.

Page has had direct involvement in many of the matters discussed in this submission. He was case officer in the death of and the prosecutions of serial killer together with paedophile and killer He served as commander of Task Force Taradale, investigating the gay-hate murders of and . He was also the police officer who initially charged, and later withdrew, armed robbery charges against

With three friends who have died from murder, and the opportunity of observing the courts in action, he is well placed to comment.

WHO JUDGES THE JUDGES?

Justice **Murray Gleeson** in a speech in 2004 in Adelaide posed the question as to whether judges are "out of touch or out of reach". The answer could well be both.

There are many cases on record where Australian judicial officers have had public allegations made about their conduct, resulting in a public loss of confidence in the judiciary. Some examples:

Magistrate **Peter Liddy** (paedophilia)

Magistrate **Richard Dutton Brown** (paedophilia)

NSW Magistrate **Ian McDougall** (Judicial Commission findings)

Magistrate **Jennifer Rimmer** (plagiarism of others' judgements)

NSW Magistrate **Murray Farquhar** (perverting the course of justice)

Chief Magistrate **Di Fingleton** (threatening a witness)

Judge **Robert Kent** (taxation offences)

Judge **Marcus Enfield** (perjury)

Judge **Angelo Vasta** (Fitzgerald enquiry findings)

NSW Judge .

NSW Judge **David Yeldham** (Royal Commission

NSW Judge **Jeff Shaw** (Police Integrity Commission findings)

NSW Judge .

NSW Judge **Vince Bruce**

NSW Judge **Ian Dodd**

High Court Judge **Lionel Murphy**

There are no doubt many other instances of allegations of improper conduct, but this sampling should prove a point: that blind faith should not be offered to the judiciary.

ATTITUDES FROM THE BENCH

Views of judges and magistrates are often not in step with mainstream society. Consider these:

Judge **Michael Kelly** presided over a 2007 trial involving the rape of a 13-year-old boy, giving a 24-year-old offender a suspended sentence and describing the episode as adolescent "experimentation". Kelly stated the boy consented to his own abuse. On reading the victim impact statement, he described the document as a "waste of time" and the victim "wouldn't have done well in a British public school in the '30s."

Judge **Derek Bollen** in 1993 stated that "a measure of rougher than usual handling" may be used by a man to obtain his wife's consent to sex.

Judge **Bland** in 1993 on rape said that "No often subsequently means Yes" in a trial.

Judge **Sarah Bradley**, presiding over the 2005 gang rape of a nine-year-old girl at Aurukun in Queensland, said the girl "probably agreed" to have sex, and did not record convictions against six of the accused and gave suspended sentences to the other three. (2)

Again and again, the offenders treated most leniently by our judges and magistrates are child sex offenders. An ordinary person reading these comments could easily conclude that crimes against children and women are on the lower end of serious.

Attitudes from the bench (cont'd)

We have Judge who was found by an appeals court to deal with defendants with "severity and ill temper". said "There is never an excuse for rude or overbearing conduct." (6)

No submission on the public confidence of justice in Australia would be complete without mentioning The judiciary should remain removed from the media on discussing matters before the courts, yet spoke out publicly

Even if this is a correct statement, it is unhelpful from a judicial officer. It only demonstrates bias.

PUBLIC PAEDOPHILE REGISTER (MEGAN'S LAW)

In 1994, seven-year-old **Megan Kanka** of New Jersey, USA, was kidnapped, raped and killed by her twice-convicted paedophile neighbour. Her parents were not aware of the neighbour's background. The resulting outcry over whether parents should be informed of paedophiles living in their neighbourhood resulted in the enactment of a number of local laws, loosely referred to as "Megan's Law", allowing US law enforcement agencies to name offenders, together with publishing their photographs, addresses and details of their crimes. Efforts have been made to introduce various Megan's Law-style legislations in Australian states, but these have been abandoned through fear of vigilante reprisals.

As a result, child-sex offenders such as and are allowed to mingle, anonymously, back in mainstream society at great risk to children. A Megan's Law-style legislation should be introduced that puts put the safety of children at a higher priority than the privacy of convicted child-sex offenders. published widely as this country's worst paedophile, is currently serving a prison sentence but comes up for review ir The families in the area where may be released should be informed of the risk to their neighbourhood and the safety of their children

The argument of likely vigilante reprisals is valid, but the rights of a child-sex offender are overshadowed by the rights of future child victims. It is available in other jurisdictions.

conduct. (13)

Sentences should be consistent and reflect the seriousness of the offence.

FINDINGS OF FACT – PROTECTING THE FACTUALLY INNOCENT

"To no one will we sell, or deny, or delay, right or justice." **The Magna Carta, 1215.**

Retired High Court Judge **Ian Callinan** confirmed that some judges have hidden agendas when they make a finding of fact, as reported in *The Courier-Mail* of November 23, 2007. He said: "When I was at the bar, I sometimes thought, and not just in constitutional cases, that judges were not always as candid about their real reasons for deciding a case as they might have been". Mr Callinan also criticised High Court judgements as "too long, too wordy and too numerous" and often "self indulgent" and "productive of uncertainty". (16)

The inability to determine on facts and an inability to administer the law is a great cost to the community. In August 2006, *The Sunday Telegraph* reported that had been consistently criticised in the NSW Court of Criminal Appeal for "making mistakes in dozens of cases". How much is each of these appeals costing the government, and the community? And why is there no managerial action?

According to the *Herald Sun* of January 13, 2009, had 14 convicted persons appeal against his decisions in 1 year, and 12 were upheld. (17)

According to 2007 NSW Criminal Court statistics published by the Bureau of Crime Statistics and Research (BOCSAR), there were 417 appeals upheld for all matters. How many of these were "factually" innocent, and slipped through the system? How many magistrates, judges, etc., appeared more than once in cases involving appeals fully upheld? The community is more interested in miscarriages of justice, where the factually innocent are convicted, as opposed to the guilty gaining acquittal on technical grounds. After all, technical grounds can be reviewed and laws changed preventing re-occurrence. When a factually innocent person is convicted, surely there should be a focus on the conduct of the particular judicial officer who found the offence proven.

Taking into account those who could not financially afford the legal costs of an appeal, successful appeals may well have totalled much more than 417. Sometimes the truth can cost too much. We don't monitor how many appeals are made against particular judges or magistrates, nor their success/failure rates. One would think that a series of successful appeals would identify a judicial poor performer, but apparently not – in 2007, the posed a "Budget Estimates question" to the NSW Attorney General and Minister for Justice. He received this response: "Courts do not record statistical information regarding appeals from individual magistrates or judges. Courts only collate information that is necessary to manage cases. It has not been the practice of the courts to regard the number of appeals from an individual magistrate or judge to be, of itself, an appropriate performance measure." (18)

On the contrary, the number and success of appeals, together with a robust (beefed-up) complaints process through the NSW Judicial Commission would be an excellent performance indicator. Surely a judicial officer who is regularly being appealed against and found repetitively to 'err at fact or law' undermines the confidence and ability of the whole system. This is recurrent process corruption.

The failure to review trends in these appeals and thereby identify poorly performing judges and magistrates is a disgrace. It is probably fair to say that a perjurer can derail a single matter before the courts in which they are involved. The perjurer then runs the risk of being caught out and potentially jailed. Compare this with the incompetent judicial officer, who can spend their whole working career jailing the innocent and acquitting the guilty without risk of sanction.

Some may believe that NSW jails do not have people inside who are factually innocent. This assumption turns a blind eye to history and blind to the experiences of other jurisdictions. As at March 2009, there have been 234 convicted persons (some on death row) exonerated in the United States. Considering there is only DNA evidence in 5 to 10% of cases, the true number would be much greater. See website www.innocenceproject.com. For miscarriages, see www.netk.com.au.

Findings of fact (cont'd)

In one recent miscarriage of justice, professional boxer **"Bangin" Ben Edwards** was convicted in an ACT magistrates Court in 2008 of an assault on a doorman. On appeal, Justice Richard Refshauge said the hole in the evidence on which Magistrate **Grant Lalor** based his guilty finding was so big "you can drive through it without any risk of hitting the sides". Edwards was initially sentenced to nine months periodic detention but his appeal was upheld and he was acquitted. For **Ben Edwards** justice – at great cost – was served in the end, but why not at the beginning? Is this an isolated case? And what if Edwards had not found the money to pay for an appeal? (19)

With parallels to the Ben Edwards story, a well-known US alleged miscarriage of justice involves boxer **Rubin "Hurricane" Carter,** who was convicted in 1967 of three murders. Carter appealed his sentence three times. In 1985, US Judge Haddon Lee Sarokin of the United States District Court for the District of New Jersey finally upheld Carter's appeal and the conviction was dismissed. Sarokin stated that Carter and his co-accused had not received a fair trial, and that the prosecution had been "based on racism rather than reason and concealment rather than disclosure".

Our legal system is not based on the US model, but on the UK model. That country's system is infamous for producing miscarriages of justice and also disadvantaging defendants, as in the cases the Rettenden Two, Cardiff Three, Edmonton Three, Bridgewater Four, Guildford Four, and the Birmingham Six. Details can be viewed at www.innocent.org.uk. The real difference between the UK and Australian criminal justice systems is the greater effort in the UK to repair miscarriages – the justice system is supported by the Criminal Cases Review Commission. Details of its role, and successes, can be viewed at www.ccrc.gov.uk.

The NSW Judicial Commission has as its charter to investigate complaints of "misconduct" against judicial officers. However, it only investigates if the matter can not be resolved on appeal. Selective investigation means most miscarriages can be ignored by the commission. Applying the Commission's charter to the Ben Edwards case, there would have been no investigation as there was no misconduct complaint and the judgement could be appealed. This policy sets up a dangerous situation: a judicial officer can make ridiculous findings of fact, yet no action will be taken to protect the community from them. Perpetual (in)justice at its finest.

In Australia, we have three levels of government: the legislature, the executive arm and the judiciary. The politicians are accountable to the community by regular election. There is no such accountability within the judiciary, and appointment as a magistrate or judge is a lifetime appointment.

The International Covenant on Civil and Political Rights (*1966, Article 14.1*) states:
"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." (20)

By failing to investigate and deal with judicial incompetence, are we not failing in our obligations to this international covenant?

Former Justice **Geoff Davies** stated "The rule of law is dependant on maintenance of public confidence in the judges who administer it. Without an adequate system of dealing with the judges who do not maintain the standard the public is entitled to expect, public confidence in the judiciary is bound to wane." He suggests also that "...an appeal is an answer only to an erroneous judgment. It gives no satisfactory answer about the conduct of the judge if, notwithstanding his or her improper conduct, the judgement cannot be corrected." He suggests a model in Queensland similar to NSW, but is obviously unaware that the NSW model will not investigate if it can be resolved by appeal. (21)

ABOLISH DOLI INCAPAX

In the UK, after the 1993 murder of two-year-old **James Bulger** by two 10-year-old boys, the principle of *doli incapax* for children (between 10 and 14 years) was abolished via the 1998 Crime and Disorder Act. *Doli incapax* is the rebuttable presumption that necessary intent (or *mens rea*) to commit an offence could not be formed by a child. This principle should not be available for offences of murder, robbery and rape.

Young people can commit horrible crimes. In 2003, a 38-year-old father of two,
when he was shot by a 13-year-old boy. The boy was charged with the shooting homicide. The same offender had been charged with armed robbery and the sexual assault of a woman in another Canley Heights store. (22)

If children are capable of killing, robbing or raping, they are capable of facing punishment. Children who appear before the children's courts for minor matters should be treated leniently – if they even appear there. There are plenty of diversion programs before matters get that far. But some "children" have shown no likelihood of rehabilitation.

A leading case on negligence, Blythe v Birmingham Waterworks, broadly held that negligence means to be doing something that a reasonable and prudent person would do, or failing to do something they would. Surely it must be negligent to drive a car with poor skills, unlicensed, and
' (23)

While we are on the subject, let's allow names of "children" above the age of 14 charged with Murder, Robbery and Rape be allowed to be published. Concealment is not open justice.

THE ABILITY TO CROSS JURISDICTIONAL BOUNDARIES

The NSW Crimes Act was written in 1900, when correspondence was by the written letter, air travel was primitive and roads were poor. Australians (and therefore the criminal element) now have easy access around the country, by various forms of transport and electronic media. In 2009, legislation should be such that cross jurisdictional matters should be dealt with without hindrance.

An example of jurisdictional difficulty is the prosecution of
heard before Magistrate in WA in 2008. Whilst she found evidence of she acquitted the defendant organisation on the technicality of conflicting state and federal legislation. (25)

Police from NSW were refused access to o interview him, in Victoria, as the offence was outside the jurisdiction. (26)

A uniform Australian criminal code would stop jurisdictional barriers, like this, and many others.

MISCARRIAGES OF JUSTICE IN MODERN AUSTRALIA

"All that is necessary for the triumph of evil is that good men do nothing." **Edmund Burke**

Miscarriages of justice do happen in Australia – and poor judges and magistrates have their role to play. The justice system is slow to react, if at all, when an error is found, and does not like admitting it makes mistakes. Consider these examples:

English jurist **William Blackstone** said it best: *"Better that 10 guilty persons escape than that one innocent suffer".*

There are many contributing factors leading to false convictions – improper conduct by police, false identification or false evidence by witnesses and flawed forensic evidence. Judicial incompetence has also played its part, together with the judiciary's closed-door attitude to admitting mistakes.

There have been many convictions overturned as a result of police corruption, but it is fair to say there are now numerous watchdogs overseeing law enforcement. Could it be that police, in the past and no doubt in the future, have bowed to "noble cause corruption" because they knew the justice system was flawed and they were trying to prop it up?

The judiciary does not have legitimate and real watchdogs. It's been demonstrated, over and over again, that they are prone to perverse findings of fact not supported by the evidence. They are not taken to task, they are not performance managed, and they allowed to continue their dysfunctional performance. What the judiciary dismissively calls "erring", the community calls miscarriage and injustice.

NSW Chief Justice Spigelman in his April 2003 speech at the Sydney 5th World Wide Common Law Judiciary Conference presented a speech on the topic of "Dealing with Judicial Misconduct." In the opening stages, he stated: "I find it helpful to consider issues of judicial misconduct and judicial incompetence from a rule-of-law perspective. The rule of law requires that laws are administered fairly, rationally, predictably, consistently and impartially. Judicial misconduct and judicial incompetence are incompatible with each of these objectives." However, in his 5100-word diatribe on the robustness of the judiciary, he failed to further mention the topic of judicial incompetence as an entity. Perhaps it was better left unsaid. (30)

Lindy Chamberlain in *Through My Eyes* (1990) said:
"This is your Australia. This time, all this happened to me. The next time it may be you, and if your case doesn't capture the national imagination, you won't have any hope of doing a thing. No-one wants to know, and only a few close friends will care. You'll rot in obscurity like others I could name. It's time our legal system treated everybody equally and was allowed to determine truth and justice."

A BIASED SYSTEM FOR THE FACTUALLY GUILTY

An international Criminal Law Congress in Melbourne in 1996, **Peter Faris** QC said: "In my view, the major criminal defences, in order of importance, are as follows: 1. Delay. 2. Confusion. 3. Allegations of conspiracy by the police and prosecuting authorities to conceal and tamper with the evidence, thus raising a reasonable doubt." No room for ethics or truth here. **Margaret Cunneen** , confirmed this in her 2005 Ninian Stevens lecture at Newcastle University. She said of her criminal defence counterparts, "that it's somehow a noble thing to assist a criminal to evade conviction." (31)

The sport of turning a violent offender into a victim of unfair treatment allows serious offenders to escape justice[1].

Improper treatment of an accused should not mean the prosecution should completely abandon the case. This is not justice for the victim. (32)

The judicial system in Australia is adversarial. Other countries have an investigative system which searches for the truth. The reality of the adversarial system is that lawyers try to confuse jurors and break down truthful witnesses. The adversarial system is more inclined to let the guilty go free.

Evidence of bad character is among matters that normally can't be put before the court. There are circumstances, such as tendency evidence, where "similar acts" can be put before a jury, but the bar is so high and the incidents must be so "strikingly similar" that it is unworkable. If an offender is previously known for homicide, rape or robbery, and they are *previously known for offences in the same class*, why not tell the jury? Why do we withhold relevant information from a jury? Examples where previous convictions/ history were withheld from a jury include:

If an offender has an established conduct of violence or rape, and this is relevant to the matter before the jury, the jury should be informed to make up their own mind about the case.

CHINH NGUYEN – GLENN McENALLY – STOJCE PETRESKI

These three people, from Sydney, NSW, were good, honest men in loving relationships. At the end of their working day, all they wanted was to go home. Unfortunately, each met with an armed robber, resulting in their deaths. In each case, a murder charge was not successful.

If the violent actions of the offender (or their co-accused) have triggered a defensive response by the victim, and the victim dies as a result of the confrontation, the offender should be liable for murder. Foreseeability, self defence and provocation should not be available as defences in felony murder.

RIGHT TO SILENCE

The right to silence is enshrined in common law. The current "caution" administered by NSW Police Force and elsewhere is: *"I am going to ask you some questions. You do not have to say or do anything if you do not want to. Do you understand that?"* It's followed by: *"We will record what you say or do. We can use this recording in court. Do you understand that?"*

Informing a suspect of the right to silence is an internationally accepted convention. In the USA, it is known as the "Miranda warning" as a result of Miranda vs Arizona (1966), which also requires that a suspect be informed they have the right to legal assistance. In the UK, the Judges Rules of 1912 (later made law in the Police and Criminal Evidence Act of 1984) provide guidance for the cautioning of suspects. The accepted caution in the UK is: *"You do not have to say anything. But it may harm your defence if you do not mention, when questioned, something which you later rely on in court. Anything you do say may be given in evidence."*

The right to silence is a great tactical advantage to the defence. They say nothing, get the brief of evidence, and design their version of events around the weaknesses in the prosecution case. It is no bold statement to make that some defence solicitors coach their clients on what to put forward as a defence – anyone who believes otherwise is a fool.

If we model ourselves on a UK system, let's use the UK caution. Australian cautions should include the warning that the failing to mention exculpatory evidence at the time of interview could harm a defence. A jury should see that an accused had a warning to explain their actions, at the first availability, and failed to do so.

An example of the dysfunctional system of justice involved e admitted to an undercover police officer that he killed , in 1995. She was also raped. Those "admissions" were thrown out on a technicality: although it was a law enforcement operation, the offender wasn't informed of his right to silence during the questioning process. Why not allow covert investigations such as this when they can uncover the truth? was acquitted of the murder, and has since been convicted of several other rapes. (41)

The real and burning question here is: should we protect victims or protect the offender?

In serious crimes, if there is a lawful court order for the use of a listening device, and conventional investigative techniques are not likely to succeed, why not allow the admissions to be put before the jury? Or does the offender's right to silence far outweigh the rights of the victim to justice? If the evil act by the accused outweighs the rights of the accused to silence, why not allow the evidence?

There are many other cases where admissions by an offender, caught on a listening device, have been thrown out (including It is time to stop treating offenders like victims, and victims like trash.

JOINT ENTERPRISE = JOINT TRIAL

The practice of split trials should be abolished. If it is a joint criminal enterprise, then it should be a joint prosecution, in much the same way the co-accused in a conspiracy are prosecuted together. Split trials allow the filtering away of evidence against one accused from another, are more costly to the community, and ensure repeat trauma for victims who have to re-live their experiences.

admitted in a police interview that both he and his co-accused knew the firearms they intended to use in were loaded before the offence. He, his brother and committed an armed robbery at The store in and store owner was killed.

and received a separate trial from They denied knowing the guns were loaded. The admissions from were not put to the jury, as they were hearsay, and not said in front of the accused. Both were acquitted of the charge of murder. Would the jury have come back with a different verdict if these admissions had been put before them? The only way to avoid this occurrence is having a joint trial, where all the evidence is tabled, giving the jury some chance of deciding the truth of the allegation. (42)

The mitigating factor of foreseeability and not knowing the gun was loaded (as in the case) should be nullified by law. Juries should be instructed to presume, in all instances, that each and every offender knew the gun to be loaded. The burden should be on the offender – victims deserve that. A "deemed loaded" provision should make an offender think twice before they take a gun to a crime.

THE CIVIL JURISDICTION

In the NSW civil jurisdiction, a perverse finding of fact from a magistrate can not be appealed, and the barriers here are Azzopardi Vs Tasman UEB Industries Limited and the NSW Local Courts Act of 1982, Section 73 (1).

The judiciary is simply not good enough for us to trust them with this irrevocable decision making process. I am able to provide further evidence on this point, and failures of building laws, separate to this submission.

and later offences could have, and should have, been avoided. Instead, we now have one family grieving for a loved one, and a woman who has to live with the trauma of being a rape victim.

Why do we give a non-citizen, convicted of a serious offence, continued residency? Exactly how many people are in our jail systems are not citizens? More importantly, how many have prior convictions?

HATE CRIME

There are many cases of injustice where members of the gay community have not received fair treatment, at the hands of both the police and the judicial systems. While it is true to say police attitudes are changing, the courts are slow to follow. All people should be equal before the law. Violence against others, purely because of the victims sexuality or race, is abhorrent. Australia is a tolerant multicultural community, and those who discriminate violently should be sent a strong message.

In 1998, a working party commissioned by the NSW Attorney General was formed to examine the "Homosexual Advance Defence" (HAD). Although this is not a true defence, it has been used as the foundations for a "qualified" defence of provocation, allowing a murder charge to be downgraded to manslaughter. The working party recommended that Section 23 of the NSW Crimes Act be reformed to exclude HAD as a foundation for provocation offences. This has not occurred, and an unwanted homosexual advance was used as a mitigating circumstance in a murder charge involving victim in NSW . Hate crime should be a circumstance of aggravation which incurs a greater penalty, rather facilitating a charge to be downgraded. (44)

Many miscarriages were revealed, including the original coronial inquest in the death of – which lasted just 30 minutes and delivered a finding of non-suspicious death, but was eventually overturned and declared a homicide. Such was the public interest in this injustice, the investigation has been the subject of two books (*The Beat* by I.J. Fenn and *Bondi Badlands* by Greg Callaghan) and a telemovie (*Blood Sport* by Crime Investigation Australia).

In Sydney between 1985 and 1995 there were many other gay-hate murder victims – , , and to name but a few. As the former head of Task Force Taradale, the author of this submission believes there is at least one likely homicide which has been accepted as non-suspicious death by a magistrate sitting in the coronial jurisdiction– that of in 1992. He was found with evidence indicating he had been assaulted prior. The case of who was stabbed to death at the same location some 12 months later, corroborates the opinion that gays were violently dealt with at

WHY THIS SUBMISSION?

Former US Marine **Adam Kokech**, a veteran of the Iraq war, told a 2007 Washington peace rally: "When injustice becomes law, resistance becomes duty." I have compiled this submission because I feel it is my duty to push back against a weak and failing judicial system.

I recently began to seriously question the ability of many judges and magistrates to police themselves. Simple "Google" searches on words like "miscarriage", "injustice" and "travesty" revealed many stories on the poor performance of the Australian judicial system. What I saw disgusted me.

The courts do not offer sufficient protection to those people who deserve it most – victims, children, women and minority groups. The legal system is a system of laws, not true justice. Until the legal system is reformed, it remains both out of touch and out of reach. A "fair go" for all should be the future direction.

I do not want to throw out the baby with the bathwater. Fair, professional members of the judiciary by far outnumber the poor performers. I admit to being quietly impressed with magistrates like Allan Moore and Jacqueline Milledge. As is typical in many fields, good work will go unnoticed while bad work will bring the industry into disrepute.

I am not alone in my distrust of the judiciary. In a 2005 *Readers Digest* survey of trusted professions, judges came in at position 14, behind bus/train drivers at 12. Lawyers came in at 22, with taxi drivers at 21. Remember that judges were once lawyers. Police, firemen and ambulance officers were ranked in the top 10. (45)

The Australian justice system is riddled with injustice. Our community endures:

- the abuse of the criminal system, allowing the factually guilty to escape.
- inconsistent appeals processes, allowing miscarriages to stand.
- judges and magistrates prone to miscarriage who are not subject to review.
- a system which allows felony murders to be downgraded.
- a legal system which favours the big end of town.
- a system which withholds valuable information from jurors.
- a system which forgets those who need the most protection.

What our community deserves is a legal system that is open, honest and will admit mistakes; a legal system which searches for the truth.

I am proudly Australian, and strongly oppose unfair and unjust practices. I firmly believe truth and justice should go hand in hand, yet the courts continue to let down the community.

I am not alone in my concerns about the current system of justice in Australia. In *The Daily Telegraph* of May 21, 2007, the father of a Sydney rape victim, identified as Miss C, said: "Do not go to court. Sort it out outside of the court, if you get my drift ... Once you get to court, you will not get justice. It is a justice system in name only". (46)

Miss C was raped by a gang led by Bilal Skaf, and one of the gang was acquitted of this matter. He is serving two 15-year sentences for his role in other rapes. Was the jury informed of his other rapes? I haven't asked the question, but I think I know the answer.

I would also question the ethical standards of the defence lawyer in this case, who put it to Miss C that she "orgasmed" during the encounter.

The father of Miss C called for a "more inquisitorial system" and "a better system of selecting judges." He was quoted as saying, "They say the law is equal. Don't believe it".

Why This Submission (cont'd)

Consider the editorial published in *The Australian* on January 31, 2007:

"The judiciary alone cannot properly discipline itself ... The question is whether it is in anybody's interest, other than their own, for judges to work in a closed shop, where they only need to answer to each other. To *The Australian*, the answer is obvious. Over the years this paper has reported on the behaviour of lazy judges, drunken judges, jet-setting judges. We have pointed to members of the judiciary whose performance has delayed justice to those who appear before them, but who have been left alone by the only people easily able to order them to lift their game – their fellow judges."

The article comments on , and continues:

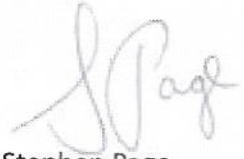
"This is not good enough. There is no doubting the intellectual acuity of the vast majority of judges and magistrates, or their commitment to justice for all who come before them. But there are duds among them now, and there will probably be more in the future... There is the risk that clipping the coin of judicial talent will bring the law into disrepute. We know the judicial guild abhors acting against its own – which means the best way of dealing with this problem is to end the closed, secret shop for disciplining poor performers." (47)

This time the situation was remedied. Not every story has a happy ending. If had been convicted of armed robbery, her chances of turning that conviction around, without support, would have been slim.

The flaws I have identified in this report are factual and supported by documentary evidence. The changes I have put forwarded are supported by public opinion. By allowing the judicial system to under-perform, true justice will never be achieved.

The changes I recommend could save a life. If I get criticised for my views, such is life.

In closing, I would like to quote **Robert F Kennedy**, Capetown, June 6, 1966.
"Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centres of energy and daring, those ripples build a current which can sweep down the mightiest walls of oppression and resistance."



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