The development of the regional criminal bar

By William Walsh and Ian Nash

Over the years, there has been an emergence and recognition of regional bars in New South Wales. This has been an important development as it has meant that citizens and solicitors in the regions have had access to barristers who live and work in the area and hence are familiar with the community psyche and problems of the 'locals'. Members of the regional bars have played, and continue to play, an important role in the administration of the criminal law in various country courts.

The establishment of the Office of the Director of Public Prosecutions in 1987 saw crown prosecutors being appointed to various regional centres on a permanent basis as DPP offices were established in those cities. In more recent times, a small number of public defenders similarly have been appointed permanently to country areas.

Crown prosecutors have played a major role in the administration of criminal justice in regional New South Wales. For many years, crown prosecutors travelled from Sydney to appear in the Supreme and District courts in various regional towns. Even with the establishment of 'permanent' crowns outside the metropolitan area, from time to time crown prosecutors still travel long distances to various regional courts. The same applies to the 'regional' public defenders.

The private bar has also established itself outside Sydney. In addition to Newcastle and Wollongong, solicitors in areas surrounding Lismore, Coffs Harbour, Dubbo, Wagga Wagga, Albury and, of course, Orange enjoy access to local barristers.

Criminal justice and a sense of community

Most would agree that country towns, even the bigger regional centres, enjoy a stronger sense of community than metropolitan areas. While some parts of Sydney have fostered an identity in which local issues are debated and pursued, generally a sense of community is either limited or non-existent.

The opposite is true of country towns. Along with the support that residents offer each other, people have a tendency to closely follow local issues. The trait is fostered by what is an almost uniformly strong regional press. Even smaller country towns like Cowra (*The Cowra Guardian*), Molong (*The Molong Express*) and Grenfell (*The Grenfell Record*) have their own newspaper.

Criminal Appeal in Dubbo

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❑ APPEAL: Syringe bandit Stanley Fernando is led to court for the Crown's appeal.

Dubbo in 2000.

The Crown claimed the sentence of six years jail, with a non-parole period of three years, was "mani-

During a 17-day period from July 30 2000, Stanley John Fernando, 21, committed armed robberies of the Ashwood Country Club, RSL Motel, West Dubbo Post Office, Just Jeans in Orange and an attempted armed robbery at the Endeavour Court Motel.

When he was arrested in the backyard of an east Dubbo home he attempted to strangle the police officer and take his service pistol, before finally being overcome.

Chief Justice Spigelman said courts must protect members of society, such as taxi drivers, motel receptionists and service station attendants, against "this particular kind of crime".

He also noted the "particular terror" which a liquid-filled syringe "inflicts" upon victims of crime.

Justice Spigelman, along with Justice James Wood and Justice David Kirby, in the CCA's historic first sitting in Dubbo.

During the hearing the Crown contended that the sentencing judge should have taken into account that Mr Fernando was on bail and parole when the offences were committed - a point that was not raised when the sentencing judge listed aggravating circumstances of the crimes.

However defence counsel Andrew Haesler argued it would have been "painfully obvious" to the sentencing judge that Mr Fernando was subject to the condition.

The sentence, handed down last March, was appropriate because the judge "attempted to make a balance that was in the community interest and ... in the interest of the

Weekend Liberal, Saturday, 9 February 2002, p.5.

The pages of local papers are usually well stocked with tit-bits about the goings-on at the courthouse, particularly if the matter is criminal. Cases that would not rate a mention in the Sydney press often feature prominently. In Lismore in 2004 Chief Justice Spigelman, while opening a sittings of the Court of Criminal Appeal said:

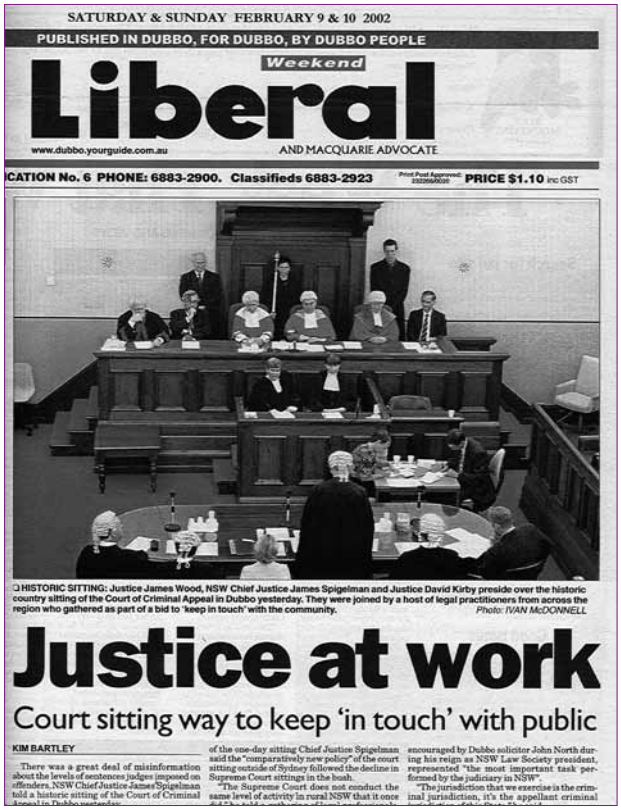
> I have no doubt that the regional media report more fully and comprehensively than the citizens of Sydney get, where the reporting tends to be very highly concentrated on exceptional, controversial cases.

Clients are often as concerned with the publicity their matter will attract as they are with advice about the merits of defending it or the likely penalty. While more often than not little can be done, sensitivity to the issue is useful.

A related consequence is the awareness that some local judicial officers have of community concerns and the coverage their decisions receive. Quite properly deterrent sentences are sometimes imposed in relation to offences of immediate local concern with the expectation that the message will be broadcast.

Country circuit 'closures'

A major blow to regional New South Wales occurred in the 1990s when a decision was made on so-called 'bureaucratic efficiency grounds' to remove sittings of the District Court from a large number of country towns. As a result, a large number of towns lost their District Court sittings. These were not tiny towns but towns with populations from 3000 to 10,000. Despite opposition by regional barristers and the Bar



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HISTORIC SITTING: Justice James Wood, NSW Chief Justice James Spigelman and Justice David Kirby preside over the historic country sitting of the Court of Criminal Appeal in Dubbo yesterday. They were joined by a host of legal practitioners from across the region who gathered as part of a bid to 'keep in touch' with the community. Photo: IVAN McDONNELL

Justice at work

Court sitting way to keep 'in touch' with public

KIM BARTLEY

There was a great deal of misinformation about the levels of sentences judges imposed on offenders, NSW Chief Justice James Spigelman told a historic sitting of the Court of Criminal

of the one-day sitting Chief Justice Spigelman said the "comparatively new policy" of the court sitting outside of Sydney followed the decline in Supreme Court sittings in the bush.

"The Supreme Court does not conduct the same level of activity in rural NSW that it once

encouraged by Dubbo solicitor John North during his reign as NSW Law Society president, represented "the most important task performed by the judiciary in NSW".

"The jurisdiction that we exercise is the criminal jurisdiction, it's the appellant criminal

Weekend Liberal, Saturday, 9 February 2002, p.1.

Association, the 'closures' went ahead. This decision denied easy access to justice to thousands of citizens across New South Wales.

The Supreme Court no longer has proclaimed regular sittings in country towns. The Supreme Court comes to the country on a 'needs basis'. The District Court, which in this day and age is the main criminal trial court in New South Wales, continues to have defined regular sittings. The 'loss' of the Supreme Court coming to certain country towns has resulted in the demise of the traditional ceremonial opening of the Supreme Court sittings in country towns - with a church service, formal procession and ceremonial sitting. Such opening ceremonies were a timely reminder to the community and to the legal profession of the importance of the administration of justice in a local community. In more recent years, a few District Court judges, on their own initiative, have 'organized' ceremonial openings of the District Court in some country towns to mark the commencement of the Law Year. This symbolic aspect of superior court sittings in country areas is discussed further below.

With the closure of so many District Courts in regional New South Wales, citizens were required to travel long distances to the nearest District Court now located in a major regional town. However, such citizens have little or no access to public transport unlike their counterparts in the Sydney, Newcastle and Wollongong areas.

But there were other significant effects of these 'closures'. No longer would accused persons in those towns, which lost their District Court sittings, be tried by a jury of their true fellow citizens but by citizens of a major regional centre. The jury's important local knowledge was lost. In addition, the 'closed District Court towns' were faced with the cost and inconvenience of having not only the accused but witnesses, police and doctors having to travel from their town to the major regional centre to give evidence. For example, the Cobar sittings were abolished and the sittings transferred to Dubbo – a round trip of 600 kilometres. Given that there are only a limited number of police and doctors in each country town, the loss of such personnel whilst giving evidence in another centre is a significant burden to any local community. And, of course, there is the additional cost of such an exercise.

To a lesser extent, some smaller towns in New South Wales, over recent years, have lost their Local Court sittings.

The symbolic importance of the presence of the superior courts

The closures referred to above also need to be seen in the context of the symbolic importance of the presence of superior courts to local communities.

Between 2000 and 2006 the Court of Criminal Appeal sat in a number of regional centres including Bathurst, Wagga Wagga, Dubbo and Lismore. It was an initiative of the then Chief Justice Spigelman who was on the bench on each occasion. The significance of such occasions is reflected in the speeches made at the ceremonial sittings that marked their opening. On more than one occasion the then chief justice noted the importance of bringing the face of justice to the broader community. At Bathurst in 2006 he said:

> Nothing is more significant in terms of public confidence in the administration of justice than the direct exposure to criminal justice and in particular, criminal sentencing.

The director of public prosecutions at the time, Cowdrey QC, speaking on behalf of the bar at the opening of the

Court of Criminal Appeal in Dubbo

Warm welcome for ju

Representatives of Dubbo's traditional owners welcomed three Supreme Court judges to the west yesterday before sharing coffee and cakes with them in the city's historic court-house described by one of the visiting judiciary as a "little architectural gem".

After accepting the judges' invitation to morning tea, the Aboriginal spokesmen and women requested a photo shoot in the grounds of the Brisbane Street complex.

The judges cheerfully agreed before returning inside to begin a historic sitting of the NSW Court of Criminal Appeal.

Before NSW Chief Justice James Spigelman, Justice James Wood and Justice David Kirby smiled for the camera, they had presided over the ceremonial opening of the court which attracted a big roll-up of local and out-of-town legal practitioners, both solicitors and barristers.

Local magistrate Tom Hodgson, Judge Finnane of the District Court and Gerry Peacocke, representing the city council, joined the Supreme Court judges sitting along the bench.

The event, a forerunner to only the third time that the Court of Criminal Appeal has sat outside of Sydney, also drew NSW Law Society president Kim Cull to Dubbo.

With numerous dark suits contrasting against the red of the judges' attire, the proclamation was read as a small number of the general public filtered

ONLINE AUCTION

WARM WELCOME: Russell Ryan, NS Spigelman, Narrell Boys-Peckham, Jus David Kirby and Will Burns.

Weekend Liberal, Saturday, 9 February 2002, p.4.

Wagga Wagga sittings of the Court of Criminal Appeal in 2000, referred to the tradition of the courts bringing justice to the regions that dated to Saxon and Norman times in England.

The observations made by those who spoke on behalf of the communities are equally notable. In 2004 the mayor of Lismore not only said how honoured his community was but that he regarded it as 'a very positive development that will help our community appreciate, to a greater extent, the workings of the court system'. At the opening of the Dubbo sittings in 2002 councillor Gerry Peacock, formerly the mayor and local member of NSW Parliament, referred to the occasion as 'historic', it being the first time that the court had sat there in its appellate jurisdiction. While noting the development of the city he said '[t]his sitting, in a sense, is another aspect of this growth in education, because it gives our people an opportunity to see how another facet of law is administered at first hand.'

The presence of the superior courts in regional areas has importance beyond providing ease of access. In demonstrating the continuing administration of justice at all levels, it has symbolic as well as educational significance. Given this, it is unfortunate that the initiative appears to have had a hiatus, at least since 2006.

The courthouses

A particular joy of regional practice is the almost constant opportunity one has to work in beautiful, historic and often surprisingly functional courthouses. It is all the more surprising when one understands a little of their history.

In his introduction to Terry Naughton's pictorial record of New South Wales courthouses, *Places of Judgment*, J.M Bennett quotes Dowling J, a foundation judge of the District Courts, who recounted:

> When my first Circuit was undertaken, there was not in the whole of it a building worthy of being called a Court house…. In some places there were only slab huts. At other places, I had to go to an hotel, or perhaps make use of an outhouse, such as a dancing room…. But almost all I had to fit up with my own hands by using calico, hammers, nails and packing cases - to give them the semblance of a court.[1]

The chapter includes a description of the 'gunyah style' courthouse built in Wee Waa in the 1850s. There were no windows and instead the timber slabs for the walls were 'set three inches apart to admit light and air.' Limited research suggests that 'gunyah' is an Aboriginal word meaning a crude bush hut.[2]

Although a few regional courthouses of substance appeared during the first half of the 1800s in places such as Windsor, Berrima and Hartley, it wasn't until the 100th anniversary of settlement was approaching and the gold rush had arrived that a concerted building effort took place. The activity followed legislative authority being given for circuit courts, exercising criminal jurisdiction, to sit in country districts. A town's nomination as a venue for a circuit court became a status symbol and Bennett describes the construction of imposing courthouses as a manifestation of that rivalry.[3]

Whatever the precise reasons, regional New South Wales remains dotted with lovely examples of colonial courthouses. Many, if not most, are still in use. Across the state towns such as Grafton, Dubbo, Orange, Goulburn, Parkes, Cowra, Deniliquin and Broken Hill enjoy the continued use of courthouses built in the second half of the 1800s by colonial architects such a James Barnet and Walter Vernon.

Bathurst courthouse is a particularly notable example. Some would argue that it is the finest courthouse in regional New South Wales if not the state. The grandeur of the building is probably responsible for the well-known myth that its plans were drawn in England, intended for India but mistakenly ended up west of

Panoramic view of Bathurst Courthouse. Photo: by John O'Neill

the Blue Mountains. Two brief observations about the building. The first is the miniscule size of the original witness box in the jury court. Well into the 1990s a witness was required to remain standing after taking the oath while the court officer placed a small stool, like that of a milkmaid's in a children's book, behind them so they could sit. The box's dimensions might have been drawn to force a witness to give their testimony on their feet as was formerly the custom. A new, more generous, facility has since been added. The second is the utility of the place so far as the work of a practitioner is concerned. The legal rooms are many and appear to have been purpose built. They remain furnished with large, apparently original, wooden tables that suit well the needs of a barrister in a trial away from chambers.

With water seen running down the interior walls of at least two court houses in the area during the welcome but persistent rain of 2010, it is hoped that money will continue to be spent on maintaining these wonderful and important public places.

Other developments

In recent years, the regional Supreme and District Courts have witnessed the 'disappearance' of the deputy sheriff – an honorary position occupied by a leading local citizen - at sittings of those courts in country towns. The deputy sheriff participated in ceremonial sittings of the courts and on other occasions. A deputy sheriff was recognition of involvement of the local community in the administration of justice.

The advent of AVL conferencing has had a major impact for regional barristers. No longer is it necessary to travel long distances to various gaols scattered throughout the state for a conference with a person in custody. Such a conference can now be done effectively with the regional barrister in the town in which he/she is located and the person in custody perhaps hundreds and hundreds of kilometers away – the saving in time and cost has been enormous.

The lifestyle

Life for a regional barrister is very good personally and professionally. It enables members of the bar to practise law and, at the same time, to enjoy the benefits of living and working in a wonderfully peaceful and enjoyable environment without the hassles of traffic congestion and the hustle and bustle of city life and city practice. Living 'out of a suit case' and driving long distances are the hallmarks of the regional barrister. But traffic jams are unknown as he or she crisscrosses the state clocking up thousands of kilometers each year.

Endnotes

1. T Naughton, *Places of Judgment, New South Wales* (Law Book Company, Sydney, 1987) with a historical introduction by J.M Bennett, p.6.
2. www.aboriginalculture.com.au/housingconstruction.shtml
3. ibid., p.9.