"It's 2014 or Never"

By Julian Knight*

Introduction

On 9 August 1987 I was "responsible for one of the worst massacres in Australian history".[1] This massacre in Hoddle Street, Melbourne, was, as I said in an open letter to the Editor of the *Sunday Herald Sun* in 2009, 'despicable, cowardly and senseless'.[2] As a result of my actions 7 people died and 19 were wounded. All of them were innocent of any wrongdoing or of causing me any harm. The judge who ultimately sentenced me for my actions added that; "Many more were fortunate to escape death or injury as you indiscriminately fired over 100 rounds of ammunition, from three weapons, at passing motorists and at the police as they tried to apprehend you."[3]

On 29 October 1988, I plead guilty to 7 counts of murder and 46 counts of attempted murder in the Supreme Court of Victoria. On 10 November 1988, Justice George Hampel sentenced me to a total effective sentence of Life imprisonment with a minimum non-parole term of 27 years.[4] This minimum term – after which I could be considered by the Adult Parole Board for conditional release on parole – was at that time due to expire on 8 August 2014. With the granting of a number of "emergency management days" (EMD) pursuant to the *Corrections Act 1986* (Vic) 'on account of good behaviour while suffering disruption or deprivation during an industrial dispute,'[5] and 3 EMD for meritorious conduct in trying to save a fellow inmate's life in 2000,[6] that minimum term expired on 8 May 2014.

The Punishment of Murderers in Victoria Since 1836

Contrary to popular belief, most murderers were not executed when capital punishment was in force in Victoria. From the settlement of Victoria as the Port Phillip District in 1836 to the last execution in 1967, there were 186 executions in Victoria but only 142 of

those were for murder. Only three of those hung for murder after 1857 were teenagers: all were 19-years-old (David Gedge on 11 November 1863, Elijah Cockroft on 12 November 1894 & James Williams on 8 September 1904). During the 20th Century only 23 people were hung for murder, including a US serviceman hung by the US military authorities at Pentridge Prison (Private Edward Leonski on 9 November 1942), one triple hanging (Robert Clayton, Norman Andrews & Jean Lee on 19 February 1951) and the hanging of one man since pardoned on the ground of innocence (Colin Ross on 24 April 1922).[7]

During 1928-1987, only 11 convicted murderers were executed in Victoria but 88 were released from prison. Of those released, the average period in custody was 14 years (22 were released after serving 5-10 years, 30 after serving 10-15 years & 23 were released after serving 15-20 years).[8] During 1965-1974 – when there was only 1 execution (Ronald Ryan on 3 February 1967, the last execution in Victoria & in Australia) – 17 prisoners convicted of murder had their death sentences commuted to set periods of imprisonment.[9] All of them were eventually released and none of them served longer than 27 years, 5 months.

The Release of Murderers in Victoria Since 1836

Since 1836 every convicted murderer who has been given a "ticket of leave", a conditional pardon (a release on licence) or a minimum non-parole term has been released. During the operation of the "ticket of leave" system between 1850 and August 1860, 20-43% of a prisoner's sentence was served by way of a "ticket of leave".[10] This system was replaced by a system of absolute remissions where up to ¼ of a prisoner's sentence was reduced. From 1 July 1908, indeterminate sentences were introduced, with an Indeterminate Sentences Board to administer them, pursuant to the *Indeterminate Sentences Act 1907* (Vic).[11] The Indeterminate Sentences Board was eventually abolished in 1957.

From 1 July 1957, the *Penal Reform Act 1956* (Vic) established the modern Adult

Parole Board of Victoria, the first parole system in Australia.[12] The Board was required to review all prisoners serving sentences, except those prisoners who had been convicted of murder and had their mandatory death sentences commuted to life imprisonment or to a set number of years. These prisoners were released by way of executive action (i.e. a release on licence pursuant to a granting of the royal prerogative of mercy).

The fact is, 'from the inception of sentencing in Victoria, a sentence of imprisonment was rarely, if ever, served in full.'[13] It is also a fact that, 'In Victoria, approximately 86 percent of prisoners are released within three months of their expected eligibility date, ... and this rate has been relatively stable over the years.'[14] The 2010-2011 annual report of the Adult Parole Board confirmed that up to 90% of prisoners are granted parole at their earliest eligibility date (EED) for release on parole.[15]

When the mandatory death sentence for murder was abolished in Victoria in 1975 it was replaced with a mandatory sentence of life imprisonment. This remained the sentence for murder in Victoria until the passage of the *Penalties and Sentences Act 1985* (Vic). Following the passage of this Act the sentence for murder became either life imprisonment or life imprisonment with a minimum non-parole term or imprisonment for a set number of years. The *Crimes (Amendment) Act 1986* (Vic) was assented to on 20 May 1986, amending the *Penalties and Sentences Act* and authorizing the Supreme Court of Victoria to fix a minimum term of imprisonment for any person who on 1 July 1986 was serving a term of imprisonment for the term of his or her natural life.[16] At this time there were 119 prisoners serving life imprisonment for murder: excepting those that died in custody, all bar 2 had minimum terms set and have been released. Of the 2 prisoners who have not had a minimum term set (Ray Edmunds & Paul Haigh), both had their applications for a minimum term refused (Edmunds[17] & Haigh[18]). The last prisoner of the pre-1986 "Lifers" waiting to have his application heard (Barron[19]) died in Thomas Embling Forensic Hospital on 11 August 2013 after serving 39 years. Of the 78 applications for a minimum term (known as "s.18A applications") heard during 1986-1989, 76 resulted in terms set of 14 years or less, 1 term was 16 years (for a double

murder) and 1 was for 17 years (for a triple murder).[20]

Aside from the fact that no murderer since 1836 with a "ticket of leave", a pardon or a minimum term has been denied release on parole, other facts are that:

- No released convicted murderer has served longer than 27 years and 5 months in prison (Bill O'Meally).[21]
- The second longest serving released murderer served 26 years and 11 months (Keith Ryrie).[22]
- No released murderer has served more than 17 months beyond his earliest eligibility date for release on parole (Robert Pickford).[23]
- No released murderer convicted as a teenager has served more than 21½ years in prison (Christopher Lowery & Charles King).[24]

The Recidivism of Released Murderers

A 2007 study by Corrections Victoria's Research and Evaluation Unit, "*Who returns to prison? Patterns of recidivism among prisoners released from custody in Victoria in 2002-03*", found the following:[25]

- "Offenders who serve longer terms of imprisonment are less likely to be re-convicted and re-imprisoned than those serving shorter sentences." (page 10)
- "Studies have consistently found that prisoners with homicide … offences have considerably lower recidivism rates than average." (page 10)
- "The lowest rates of recidivism were evident for those serving the longest sentences (more than two years)." (page 15)
- "Prisoners with homicide … offences have recidivism rates that are significantly below the cohort average[3]." (page 16) "Endnote 3. … only 5 per cent of prisoners with murder as their most serious offence, … returned to prison." (page 23)

Of the pre-1986 "Lifers" released from prison, only 2 have committed a further

murder (Michael Lane[26] & John Coombes[27]) and neither of them received any media attention when they were originally released. None of the "notorious" murderers of the past – O'Meally, Ryrie, Lowery and King, *et al* – have killed again. The majority have not returned to prison at all.

The Risk of Reoffending

I was 19-years-old at the time I committed the Hoddle Street shootings; I will be 46 when I become eligible for parole. In addition to the low recidivism rate for murderers, Corrections Victoria has found that only 15.8% of those prisoners aged 45-49 years at the time of release are returned to prison within 2 years.[28]

In September 1997 I was examined by Professor Paul Mullen, then with Victoria's Forensicare, on behalf of the Adult Parole Board. In his report dated 25 September 1997, Professor Mullen wrote that, '... despite a decade of confinement in a high security context, Mr Knight has not developed any signs or symptoms of a major mental illness'. He also wrote that, '... there is evidence that Mr Knight has matured and a number of the aspects of his then personality have been replaced by more adult ways of understanding and responding to the world."

On 19 August 2004, I completed Corrections Victoria's so-called Tier 1 Assessment. This assessment was based on the Canadian LSI-R:SV (Level of Service Inventory – Revised: Screening Version). On a scale of 0-54, with 54 being the highest risk of reoffending, I scored a 2 – Low. Even Corrections Victoria assert that, 'The LSI has been found to be effective in the prediction of recidivism.'[29] An earlier finding by Loza and Loza-Fanous was that:

> Over the last 15 years, a number of studies have been conducted to support the validity and reliability of the LSI-R. … recent reports indicate its usefulness in the assessment of violent recidivism.[30]

Corrections Victoria simply overrode this 'Low' rating with their own subjective assessment that I was a 'High' risk of re-offending. This supposed unbiased finding was supported with a finding in June 2011 by Corrections Victoria's then Senior Clinician (a social worker without psychiatric or psychological qualifications) that I was, "Not ready to engage in treatment at this time". This finding was supposedly not at all influenced by my ongoing Supreme Court proceedings against Corrections Victoria over my sentence management (*Knight -v- Hastings* Case No S CI 2011 04459). The cause of action in that proceeding was my lack of progress through the prison system and my exclusion from prison programs designed to address my offending behaviour. By coincidence, the position of Corrections Victoria was that I was unable to progress from maximum security because I was supposedly "not ready to begin treatment". This is not a position they have taken with respect to any other prisoner.

Corrections Victoria subjected me to a further clinical assessment, a so-called Tier 2 Assessment developed by Corrections Victoria, in early 2008. This assessment was based on interviews conducted by the aforementioned 'Senior Clinician' (social worker). The resulting assessment report took 20 months to complete and underwent five drafts. Each draft was submitted to the clinician's clinical supervisor and also to the then Assistant Commissioner for Offender Management Services. Why each draft of a clinical assessment report was submitted to a senior Corrections Victoria bureaucrat has not been explained. The fact that the report underwent five drafts was only revealed during the cross-examination of witnesses in the hearing of the FOI application *Knight -v- Department of Justice* (Case No G821/2010) by the Victorian Civil and Administrative Tribunal in late September 2011.[31]

In 2010 a total of 220 Tier 2 assessments were conducted in Victorian prisons, almost all at the medium security Marngoneet Correctional Centre. My Tier 2 assessment was conducted at the maximum security Port Phillip Prison (where I remain). The person who conducted it had never conducted a Tier 2 assessment before and has not conducted one since. It could be argued that Corrections Victoria chose a novice assessor to conduct

my Tier 2 assessment to avoid having to lower my Security Rating in order to transfer me to the Marngoneet Correctional Centre.

The failure to progress through the prison system and the failure to undergo (or complete) programs designed to address offending behaviour, are both grounds for decisions by the Adult Parole Board to refuse or delay parole.[32] They are also excuses that can be relied upon by Corrections Victoria to shift the blame for a parole refusal onto the prisoner whilst absolving themselves of any responsibility for his situation.

Of the almost 27 years I have served to date, all of that time has been spent in maximum security prisons. I have served 12½ years of that time in high security punishment or "management" facilities. Only five prisoners in Victoria have served that amount of time or more in high security (Greg Brazel – 20 years, Bill O'Meally, Paul Haigh & Peter Alan Reid – 13 years, John Taylor – 12 years). I was granted a medium security rating in mid-1999 and held that rating for the next 3½ years but I never left maximum security. Corrections Victoria's fear of adverse publicity in response to any public perception that I am "doing it easy" in prison, and the consequent political fallout that would entail, combined with a certain amount of personal disdain that senior Corrections Victoria officials apparently have for me, has meant that they have adopted an unofficial policy that I "get nothing, go nowhere." The reasons for this policy, of course, are not legitimate so specious "smokescreen" excuses have been and are used in their place. Hence, for example, the reason why I have not been placed in a medium security prison or a minimum security "open camp" is supposedly not because of a fear that the *Herald Sun* would complain loudly about such a placement, but because I am "not ready for treatment." I am currently the fifth longest serving prisoner in Victoria, but I am now the only Life sentence prisoner with a minimum term from the 1980s who remains in maximum security.

It should also be noted that in excess of 250 prisoners in Victoria are serving sentences for murder, and 44 of those are serving Life sentences with or without minimum terms.[33] My sentence is only the 31st highest sentence in Victoria; there are 19

other murderers serving longer minimum terms than mine.

Litigation

Over the past 13 years I have been involved in almost continual litigation against Corrections Victoria in the Supreme Court of Victoria and in the Victorian Civil and Administrative Tribunal. During the same period I have been the subject of equally constant media attention resulting from press releases and "leaks" from State Government ministers,[34] Corrections Victoria and prison officer union representatives. It needs to be remembered that, although I have been in custody since August 1987, my first Supreme Court proceeding against Corrections Victoria was not initiated until October 2001. When I was declared a vexatious litigant on 19 October 2004, I had 10 years left to serve of my minimum term.[35] By coincidence, and contrary to the Supreme Court's usual practice of making a declaration for life, I was only declared a vexatious litigant for a period of 10 years. The Parliament of Victoria's Law Reform Committee commented on this anomaly in their report on their Inquiry into Vexatious Litigants in 2008. They reported that:[36]

> Vexatious litigant orders in Victoria are usually drafted so that they remain in force for the remainder of the litigant's life. The Committee is only aware of one case in which the Supreme Court imposed a time limit on an order.[859]
> (859 See *Attorney-General (Vic) -v- Knight* [2004] VSC 407)

My vexatious litigant declaration expires on 19 October 2014; five months after my minimum term expires. It would seem that it is recognized that I am not vexatious by nature but that I simply annoy the prison authorities.

The fact remains that the only progress that I have made in the prison system has resulted from the initiation of proceedings in the Supreme Court of Victoria. My return to the mainstream prison population in 2007 after spending over 13½ years in High Security

"management" and "protection" facilities was only achieved after I initiated the Supreme Court proceeding *Knight -v- Anderson* (Case No 9363 of 2006). My Tier 2 assessment was prompted by the same proceeding.[37]

A consequence of my litigation has been that Corrections Victoria appears to tailor their record keeping in relation to my sentence management with a view to supporting whatever position they have taken in court. The minutes of a prison management "case conference" held at Port Phillip Prison on 1 August 2007 records the following instruction to prison staff: 'Be mindful how we relate and record information pertaining to Julian due to the potential for litigation.'

The Purpose of Parole

The nature and purpose of setting a minimum non-parole term was discussed by the High Court in *Power -v- R* . The court stated that:

> The intention of the legislature in providing for the fixing of minimum terms is to provide for mitigation of punishment of the prisoner in favour of his rehabilitation through conditional freedom, when appropriate, once the prisoner has served the minimum time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence.[38]

In sentencing me His Honour Justice Hampel stated in relation to the nature of a minimum term that:

> A minimum term is not a period at the end of which the prisoner is released. It is a period before the expiration of which, having regard to the interest of justice, he cannot be released. In sentences for murder, if a minimum term is fixed it must be fully served; no remissions operate to reduce it.[39]

On the question of whether I should be granted a minimum term on my life sentence, His Honour found that:

> In my view, the fixing of a minimum term in this case is appropriate because of your age and your prospects of rehabilitation, as well as the other mitigatory factors I have already mentioned which justify some amelioration of your sentence, not only in your interest, but in the interest of the community.[40]

Justice Hampel, now retired and a professor at Monash University's law faculty, has not changed his view since then. In an interview in 2007 he said that, "The judgment [*R -v- Knight* [1989] VR 705] sets out all my thinking about the case. I really don't have much to add, and my views haven't changed."[41] His Honour also rejected a suggestion that if my crimes had been committed now, a minimum term would be unlikely to be set. He said that, "I would have some doubt about that. I'm not saying he would or he wouldn't. I don't think I'd categorically say he wouldn't."

Then, as now, the Crown had 28 days in which to lodge an appeal against a sentence on the ground on leniency. They had from 10 November 1988 to 8 December 1988 in which to appeal Justice Hampel's sentence. They did not do so. This is not surprising given that the Crown had already acceded to the granting of a minimum term in my case. On the first day of my plea Crown Prosecutor John "Joe" Dickson, QC, stated that the position of the Crown was that, "We do not submit, Your Honour, that it would be inappropriate for Your Honour to fix a minimum sentence in this case."[42] On the second day of the plea he again said in relation to the setting of a minimum term that, "... I repeat, as I said the other day, we do not submit it would be inappropriate to do so."[43] In sentencing me Justice Hampel noted that, "Mr Dickson did not contend that a minimum term should not be fixed.[44]

Former Supreme Court judge and Chairman of the Adult Parole Board, Justice Frank Vincent, commented that my sentence, "was then and now a very lenient one."[45] Opinions expressed publicly now regarding the supposed leniency of my sentence should have been, could have been, and were, expressed then. Although one of the senior police officers who attended Hoddle Street, then Chief Inspector Pat Murtagh, and the police

informant in my case, then Detective Sergeant Graeme Kent, said publicly that I should not have been given a minimum term, the then Secretary of the Victoria Police Association, Chief Superintendent Brian Harding, stated that my sentence "mirrored society's revulsion of the crime,"[46] and that it was "pretty adequate in the circumstances."[47] Another, unnamed senior police officer made the point that if police thought the sentence was too light they would "comment in a formal capacity" to the Director of Public Prosecutions.[48] If any of them did, the DPP never took any action. Any delay on the part of the Adult Parole Board as to deciding to release me on parole could be seen as motivated by a prevailing opinion amongst the Board members that, "Knight got off easy. He should have got life. We can't re-sentence him so we'll use the parole system to achieve the same end." Justice Vincent, however, also pointed out that, "… the board does not and cannot in principle say that because a minimum term was set too low we will ... increase the period."

The Release of Multiple & Mass Killers

Writing on life sentences in the *Herald Sun*, columnist Alan Howe wrote, 'I mean, how many mass killers have been released back into society? Can't think of one, myself.'[49] In fact, a number of multiple (3+ deaths) and mass (5+ deaths) killers have been released both in Australia and overseas.

In Australia, a number of offenders who were convicted of killing 3-15 people have served varying terms of imprisonment before being released. Practically all of them are not even remembered by the public or have their cases revisited by the media. Myron Kelly bombed a policeman's house in NSW in 1957, killing the policeman and two others. He served 33 years. Clifford Bartholomew killed 10 members of his extended family at Hope Forest near Adelaide in 1971. Originally sentenced to death he had his sentenced commuted and ended up serving only 8 years and 3 months before being

released in 1979. Until the Port Arthur massacre in 1995, Bartholomew's crime was the worst mass shooting in Australia's history. Who now has even heard of Clifford Bartholomew?

On 8 March 1973, the "Whisky-Au-Go-Go" nightclub in Brisbane was set alight. 15 people died in the ensuring blaze. Two men were convicted of setting the fire and were sentenced to life imprisonment.[50] One of the men died in prison but the other, James Finch, was released in 1988 in a blaze of publicity after serving 15 years and was then deported to the UK.

Another notorious multiple murderer deported to the UK after serving his sentence was Archibald McCafferty. Over three days in August 1973 McCafferty committed three murders in Sydney. Sentenced to life imprisonment in 1974,[51] he was an accomplice to the murder of another prisoner in 1981 and was convicted of his manslaughter in 1983.[52] He became eligible for parole in 1993 but fought his deportation. In 1997, after serving 23½ years, he was finally released and deported back to his native Scotland.[53]

On Christmas Day 1975 an arsonist set fire to the Savoy Private Hotel in King's Cross, Sydney. The ensuing blaze left 15 dead and 20 injured. In 1976 the arsonist, Reginald Little, was convicted of four representative counts of murder and sentenced to life imprisonment. He was released some years ago.

On 15 July 1977, the anti-drugs campaigner Donald Mackay was murdered in Griffith, NSW. His body was never found. Two years later two drug couriers were murdered in Melbourne. The man convicted of these three contract killings, James Bazley, was arrested in 1980 and later sentenced to life imprisonment. In 1992 a minimum term of 11 years was set but in 1993 a Crown appeal against the leniency of this sentence was upheld and it was increased to 15 years.[54] In 1995 he was released without revealing where Mackay's body is or what happened to it. He still refuses to say.

In 1977 Berwyn Rees killed two people during the robbery of a gun store in Sydney but evaded apprehension. Three years later he killed a police sergeant and

wounded a constable during his arrest near Mount Sugarloaf in NSW. Sentenced to life imprisonment in 1981 he received a minimum term of 27 years in 1993.[55] He was released in 2007 after serving that term.

The most infamous bombing in Australia's history - that of the Hilton Hotel in Sydney - occurred in the early hours of 13 February 1978. Two council workers and a policeman were killed in the blast. In 1989 Evan Pederick surrendered to police and confessed to planting the bomb. Later that year he received a sentence of 20 years with a 13½ year minimum term after agreeing to testify against a supposed accomplice. He later appealed against his conviction,[56] but his appeal was unsuccessful and he served his minimum term and was released in 2003.

On 24 September 1978, Daniel Lovec killed three – including his wife and their 6-year-old son - and wounded a fourth during a mass shooting in South Australia. In 1979 he was sentenced to life imprisonment and in 1987 had a minimum term of 18 years set by the Supreme Court of SA.[57] An appeal against that sentence was unsuccessful,[58] and in 1996 he was released after having served 18 years.

The Hoddle Street shootings were not the first mass shooting in Victoria. On 24 January 1924, Norman List ran amok with a rifle in the Royal Botanic Gardens in Melbourne. After shooting dead three people and wounding a fourth he fled the scene. On 1 February 1924, his body was found in a creek at Pakenham.[59] On 21 May 1980, Sulejman Kraja opened fire with a revolver in a corridor in the Supreme Court of Victoria, killing three and wounding two others. He only stopped shooting when he ran out of bullets, and he was tackled by a bystander outside the court. The following year he was sentenced to life imprisonment but in 1993 he received a minimum term of 24 years. An appeal against that sentence in 1994 was unsuccessful,[60] and in 2004, after serving his minimum term, he was released.

Today most Victorians know of Rob Farquharson, the father convicted of killing his three sons and sentenced to life imprisonment with a minimum term of 33 years. No-one, however, remembers Josephine Zikos, who in September 1982 killed her husband

and their three children. Found not guilty by reason of insanity she was sentenced to Governor's Pleasure and was released back into the community some years later.[61]

On 7 February 2009, Australia experienced the worst bushfires in its history; 173 people died in the "Black Saturday" bushfires in Victoria. Three months later, on 30 April 2009, Australia's worst convicted arsonist was quietly released from Port Phillip Prison. Gregory Brown was released after serving 18 years and 9 months – his entire sentence. Of the more than 200 fires he had lit in his lifetime, some were lit in Victoria on 16 February 1983 – "Ash Wednesday". On 17 September 1989, he set fire to the Downunder Backpackers Hostel in Sydney. The resulting inferno killed 6 people and injured 18 others (an almost identical death and injury toll as the Hoddle Street shootings). Not arrested until 1990, he successfully plead diminished responsibility in the Supreme Court of NSW (a partial defence not available in Victoria) and was convicted of 6 counts of manslaughter instead of murder. He was sentenced in relation to those counts and in relation to other fires to a total of 16 years. His appeal against that sentence was dismissed by the Court of Criminal Appeal of NSW.[62] He was later transferred to Victoria to face multiple counts of arson relating to fires he lit – including some of the "Ash Wednesday" fires – in Victoria. He became eligible for parole in 2001 but refused to undergo any form of psychiatric assessment or to undergo programs designed to address his offending behaviour. He sought to obtain a 'straight release' from prison (i.e. with no parole conditions) which he achieved at the end of April 2009. A belated application by the Department of Human Services to have him subjected to a guardianship order was rejected by VCAT,[63] and he was released the next day. His release was not reported until a week later.[64] There was no media campaign to keep him in prison. No grandstanding press conferences by the Attorney-General. No threats by the State Government to legislate to keep Brown in prison.

Another killer to successfully plead diminished responsibility to multiple counts of murder was Paul Evers. On 30 August 1990, Evers went berserk with a shotgun in a block of flats in Surry Hills, Sydney, and shot dead 5 people. In 1992 he was convicted of

five counts of manslaughter and sentenced to 25 years imprisonment with a minimum term of 18 years. His appeal against that sentence was unsuccessful,[65] and he was released in 2008.

Andre Chayna also plead diminished responsibility to multiple counts of murder in NSW. On 12 November 1990, she stabbed to death her sister-in-law and her 8-year-old daughter and hid their bodies. Two days later she stabbed to death her 9-year-old daughter. The bodies were discovered the next day and she was arrested. She was found guilty of three counts of murder by a jury in the Supreme Court of NSW, but on 15 February 1993, the Court of Criminal Appeal upheld her appeal against those convictions and substituted verdicts of manslaughter.[66] On 8 June 1993, the Court of Criminal Appeal re-sentenced her to 12 years imprisonment with a 6-year minimum non-parole term. She was freed in 1996.

Overseas a number of multiple and mass killers have been released. In Quebec, Canada, on 8 May 1985, Denis Lortie, a 25-year-old soldier, went on a shooting spree in the Quebec Parliament Building. He surrendered after killing 3 and wounding 13. After a second trial in 1987 he was convicted of 2nd degree murder and sentenced to life imprisonment with a minimum term of 10 years. In December 1995 he was released on parole after serving only 11½ years.[67]

On 15 November 1988, 23-year-old policeman and White supremacist Barend Strydom went on a shooting spree with a pistol in Pretoria, South Africa. He killed 8 and wounded 18 before being arrested. In 1989 he was sentenced to death but in 1991 his sentence was commuted to life imprisonment. In 1992 he was released as part of South Africa's peace process.

Dozens of terrorists convicted of multiple killings have been released as part of various peace processes and prisoner exchanges over the past two decades. In South Africa and Northern Ireland numerous convicted gunmen and bombers have been released. In Israel no Palestinian terrorist has served more than 34 years in prison before

being released.[68] In Germany during 1977-1982 Christian Klar committed 9 murders as a member of the notorious Baader-Meinhof Gang ("Red Army Faction"). In 1985 he was sentenced to 6 life sentences and various other terms of imprisonment. He served 26 years and was released on 19 December 2008.[69] The last of the RAF terrorists, Birgit Hogefeld, was released on 20 June 2011.

The Sentencing of Multiple & Mass Killers

The claim that if I was sentenced today I would not receive a minimum term is also a claim that is not substantiated when sentences handed down since 1988 are examined. A number of multiple and mass killers throughout Australia have had minimum terms set on life sentences.

In Victoria, Gregory Brazel was sentenced on 28 March 2003 to life imprisonment with a minimum term of 27 years on his third conviction for murder.[70] In 1992 and 1993 he received set terms of imprisonment for two murders committed in 1990.[71] He later confessed to a third murder for which he received the Life/27 years sentence, later reduced to Life/22 years on appeal.[72] His total effective sentence, however, amounted to Life/35 years when time already served is taken into account.

Serial killer Paul Denyer was only 20-years-old when he killed three women over six weeks in mid-1993 in Melbourne's bayside suburb of Frankston. Originally sentenced to life imprisonment in 1993, his appeal in 1994 was upheld by Victoria's Court of Appeal, who set a minimum term of 30 years.[73]

On 21 August 1993, 25-year-old gun enthusiast John Lascano killed three people in a gun shop in Springvale, Melbourne. In 1994 he was sentenced to life imprisonment with a minimum term of 27 years. His appeal against that sentence was dismissed in 1995 by Victoria's Court of Appeal.[74]

The previously mentioned Robert Farquharson was charged with killing his three

sons in 2005. At his first trial in 2007 he was convicted and sentenced to life imprisonment. A successful appeal resulted in a retrial in 2010 in which he was again convicted and sentenced to life imprisonment but this time he received a minimum term of 33 years.[75]

Melbourne's so-called "Gangland War" between 1996 and 2007 resulted in a number of individuals being convicted of multiple killings. The first was Victor Brincat, convicted of three murders and sentenced to life imprisonment with a minimum term of 23 years on 14 March 2006. Two months later, on 3 May 2006, career criminal Keith Faure was convicted of two murders and sentenced to life imprisonment with a minimum term of 19 years.[76] Faure had already served terms of imprisonment for two counts of manslaughter and for his part in the armed robbery and murder of a Thornbury jeweller in 1987.[77] On 19 July 2006, Carl Williams was convicted of one murder and received a set term of imprisonment.[78] On 7 May 2007, he finally plead guilty to four other murders and received a sentence of life imprisonment with a minimum term of 35 years.[79] Brincat and Faure had both agreed to become Crown witnesses and testify against their co-offenders before they were sentenced, while Williams was providing police with information in the hope of receiving a sentence discount when he was murdered in Barwon Prison on 19 April 2010.

In NSW, Sam Constantinou was arrested in 1983 over three murders he committed in 1982. Sentenced to life imprisonment in 1984 he received a minimum term of 30 years in 1999.[80] Kathleen Folbigg was convicted in 2003 of murdering three of her children (aged between 8 and 19 months) and the manslaughter of a fourth child (aged 19 days). On 24 October 2003, she was sentenced to 40 years imprisonment with a 30-year minimum non-parole term in the Supreme Court of NSW. On 17 February 2005, however, the Court of Criminal Appeal upheld her appeal against sentence and re-sentenced her to 30 years imprisonment with a 25-year minimum non-parole term.[81]

In South Australia, Alistair "Sandy" MacRae was convicted on 4 July 1997 of a

double murder committed in Adelaide in 1985, and was sentenced to life imprisonment with a minimum term of 36 years. MacRae had previously been convicted of two other murders committed in Victoria during 1984-1985. At his first trial in 1989 he was sentenced to life imprisonment with a minimum term of 18 years, later reduced to 16 years on appeal.[82] At his second trial he was sentenced to life imprisonment with a minimum term of 26 years.[83]

One of South Australia's Snowtown murderers, James Vlassakis, was convicted of 4 of the 12 Snowtown "bodies in the barrels" murders and sentenced to life imprisonment in 2001.[84] In 2003 he received a minimum term of 26 years.

Western Australia's most notorious example of a multiple murderer receiving a minimum term was the 1993 case of William Mitchell. On 22 February 1993, 24-year-old Mitchell killed four people – a woman and her three children - on a farm at Greenough. Originally sentenced to life imprisonment with a minimum term of 20 years, a Crown appeal against leniency was upheld by the WA Court of Criminal Appeal in 1994 and the minimum term was revoked.[85] In 1995, however, the High Court of Australia overturned that decision and reinstated the minimum term[86] (a lesson for those that seek to pressure a State's judiciary to change an initial sentence).

In the Northern Territory, on 18 August 1983, 36-year-old truck driver Douglas Crabbe drove a semi-trailer into the Inland Motel at Ayers Rock leaving 5 dead and 16 injured. At his second trial in 1985 he was convicted of 5 counts of murder and sentenced to life imprisonment.[87] On 8 December 2004, the Chief Justice of the Northern Territory set a minimum term of 30 years.[88] He became eligible for parole in 2013.

In Queensland, on 23 June 2000, 37-year-old Robert Long set fire to the Palace Backpackers Hostel in the town of Childers, leaving 15 dead and 20 injured. In 2002 he was convicted of murder and sentenced to life imprisonment with an effective minimum term of 22 years. An appeal against conviction and a Crown appeal against the leniency of the sentence were both dismissed by the Queensland Court of Criminal Appeal in 2003.[89]

A number of multiple and mass killers overseas have had minimum terms set on life sentences. In Canada, on 24 August 1993, 53-year-old university professor Valery Fabrikant committed a mass shooting at Concordia University in Montreal, Quebec, which left 5 dead and 1 wounded. In 1994 he was sentenced to life imprisonment with a minimum term of 25 years (he was also declared a vexatious litigant in 2000).

In Israel, on 20 May 1990, 21-year-old soldier Ami Popper opened fire on a group of Palestinians waiting at a bus stop in the town of Rishon le Zion, killing 7 and wounding 15. In 1991 he was sentenced to life imprisonment but in 1994 that sentence was commuted to 40 years.

In Sweden, on 11 June 1994, 24-year-old army officer Mattias Flink ran amok with an assault rifle in Falun, leaving 7 dead and 3 wounded. He shot at police before he was eventually shot and wounded and taken into custody.[90] In 1995 he was sentenced to life imprisonment in Sweden's Supreme Court. In 2010 he received a minimum term of 32 years in the Örebro District Court but later that year the Court of Appeal increased the term to 36 years.[91] Flink is, however, eligible for parole after 24 years. Sweden, contrary to any public perception that Scandinavian countries are "soft on crime", hands down more life sentences per capita than Australia. In 2008 (when Sweden's population was 9,000,000) there were 170 people serving life sentences in Swedish prisons. In Victoria in 2008 (when Victoria's population was 5,364,000) there were 45 people serving life sentences. This equates to 1 life sentence prisoner for every 52,941 Swedes and 1 for every 119,200 Victorians. The difference between Sweden and Victoria lies not in their criminal justice systems or in their tabloid media but in their prison systems. Although Flink's sentence is similar to my own, he started temporary leaves from prison in 2007 after having served only 13 years of his sentence. In Victoria convicted murderers are now only eligible for unescorted temporary leaves from prison in the final 12 months of their sentence.[92]

So Why 2014 or Never?

The possibility of my release on parole posed a number of legal and practical problems for successive State Governments. The current State Government "solved" these problems by passing the Corrections Amendment (Parole) Bill 2014, which amended the *Corrections Act 1986* (Vic) to ensure that I could only be considered for release if I was near death or otherwise physically incapacitated. The Bill was passed by Parliament on 27 March 2014, received the Royal Assent on 1 April 2014, and came into operation the next day; five weeks before the expiry of my minimum term.

Threats over the previous 12 years by the current and former Victorian Premiers and various State Government ministers to enact *ad hominem* legislation ("one man Act of Parliament") to keep me imprisoned amounted to nothing more than public grandstanding. Those threats did, however, indicate that the authorities had no intention of ever releasing me. Such legislation was neither necessary nor advisable as it would almost certainly have been struck down as unconstitutional by the High Court, as occurred with the 1994 NSW legislation directed against Gregory Kable.[93] By a 4 to 2 majority the High Court held in *Kable* that the NSW legislation was unconstitutional in that it breached the separation of powers doctrine, and Kable was released. McHugh J found that:

> [The Act] makes the Supreme Court [of NSW] the instrument of a legislative plan, initiated by the executive government, to imprison the appellant by a process that is far removed from the judicial process that is ordinarily invoked when a court is asked to imprison a person. The Act expressly removes the ordinary protections inherent in the judicial process.[94]
>
> ... ordinary reasonable members of the public might reasonably have seen the Act as making the Supreme Court a party to and responsible for implementing the political decision of the executive government that the appellant should be imprisoned without the benefit of the ordinary processes of law.[95]

Earlier legislation in 1990 in Victoria directed against Garry David – the *Community Protection Act 1990* (Vic) – was not challenged before David died in 1993 but; '[i]t is very likely that the Victorian legislation would have been deemed the same had it been challenged.'[96] Both Kable and David were serving set sentences that had expired and both had threatened to commit acts of violence when they were released from prison. Neither situation applies to me.

Indefinite detention legislation that was subsequently enacted in 2003 in Queensland was held by the High Court in *Fardon*, by a 6 to 1 majority, to be lawful.[97] The legislation in question was directed at serious sexual offenders who were deemed to still pose an unacceptable risk to the community at the expiry of their sentence. The High Court held that the legislation was constitutional in that, unlike in *Kable*, it was not directed at a particular person but was directed generally at those who were serving a sentence for a serious sexual offence, and that the Supreme Court of Queensland was exercising judicial power when determining an application made under the legislation.[98]

In contrast to the cases cited above, I am not serving a set sentence, I have not made any threats about what I would do after I was released, and I am not a sexual offender. There was no need for enacting any indefinite detention legislation to keep me imprisoned; I am already serving a life sentence. Such a sentence, whether served in prison or in the community on parole, continues for the rest of my life. In order to keep me imprisoned, the State Government only had to impress on the Adult Parole Board that they make the "right" decision (i.e. that parole be denied), which they did in 2012 and again in 2013. To continue to apply such pressure would have tainted any future decision by the Board that I not be released. Whether or not the Board in fact took any notice of the expectations of the executive government in arriving at its decisions not to release me are irrelevant; the *perception* would be that the Board was doing what it has been told to do by the State Government. This would have created a dilemma and a public perception problem – and a potential legal problem – for a Board that values it independence from government.

There is likewise now a perception that the Board caved in to the pressure that was created by my victims, the media and the general public to keep me in prison. Such a perception engenders a belief that the public can now dictate the Board's decisions as to whom and who does not get parole. More damaging is the assumption that the fight to keep me imprisoned has been won. By the time I became eligible for release my victims and the public had nearly 26 years to get used to the fact that I was most likely going to be released in 2014. The turmoil that this would have caused would have been repeated every time I was considered for release. The cry would have soon become one of, "How many times are we going to have go through this?" Any decision to *never* again consider me for release would have resulted in a challenge to the High Court in Canberra, whose seven justices don't read the *Herald Sun*, don't listen to 3AW, and don't care what politicians in Spring Street have to say.

The decisions by the Adult Parole Board of Victoria in 2012 and 2013 that I cannot be released because I pose an unacceptable risk to the community set a precedent. I am he first murderer eligible for release in Victoria in 177 years to be deemed an unacceptable risk to the community. As indicated above, of the hundreds of convicted murderers that have been released to date in Victoria, none have served more than 17 months beyond their earliest eligibility date for release on parole. The threshold test of having to prove that you won't re-offend is equivalent to being asked to prove a negative: how can you prove that you *won't* do something? You can only prove that you are not a risk to the community if you are *in* the community! This is a test, however, that every murderer in Victoria to date has passed to the Board's satisfaction. The question arises as to whether any of those murderers already on parole in the community will be returned to custody because they are deemed to pose an unacceptable risk under the Board's new guidelines, or is the Board seriously claiming that only certain murderers from now on pose an unacceptable risk?

If the State Government's plan is to use me as a test case for legislation designed to remove the minimum terms given to those murderers who they claim to be an

unacceptable risk to the community – the fact that such legislation is unnecessary aside – it is establishing a controversial precedent not only in Victoria but in Australia. The so-called "cement-in" legislation in NSW[99] was applied to a handful of notorious murderers that had been given mandatory life sentences with recommendations by the sentencing judge that they never be released, but who were subsequently seeking or had obtained minimum terms. That situation no longer exists in Victoria and it never applied to me.

It is possible that the High Court will find the provisions of the Corrections Amendment (Parole) Bill 2014 to be within the power of Parliament to enact, but will find their *ad hominem* nature to be invalid (even though *ad hominem* legislation is not, of itself, invalid). The problem for the State Government is then what threshold do they set? My prediction is that every murderer in Victoria with a release date will continue to be released, and will be released on or close to their EED. I suspect that the only other murderer the authorities have no intention of ever releasing is the Frankston serial killer, Paul Denyer, whose minimum term is not set to expire until 2023. If the threshold test becomes one of convictions for three or more murders, to capture myself and Denyer, it also ensnares murderers whose release the authorities do not want to prevent (such as more than one Crown witness). If any amended legislation incorporates an "escape clause" so that the authorities can release those they want to release and detain the rest, it would constitute a ground of seeking judicial review ("inconsistent treatment") that would be exploited by those denied release. By this circuitous route the parole system would essentially revert back to what it is today.

Given the life expectancy of an Australian male born in 1968 is around 72-79 years,[100] a permanent non-release decision would mean an effective doubling of my minimum term, that I would be the youngest prisoner in Victoria to serve a whole-of-life sentence (the youngest prisoner in Victoria to receive a whole-of-life sentence was Les Camilleri, who was 27-years-old at the time of his arrest in 1997), and around 30 more years of litigation. The person who has the most to lose from a permanent non-release decision is me. As such, the person who is most likely to fight the longest and the hardest

is me. How many of those who currently loudly campaign for me to remain in prison have the stamina or interest to fight for that long? The State Government may have no fear of the costs involved, given that their legal fees are paid with taxpayers' money, but they risk undermining their own criminal justice system with judicial pronouncements that run counter to their stated policies.

Forcing a showdown in the High Court may buy the State Government a few years – and allow them to Pontius Pilate-like absolve themselves of the responsibility for my release – but the risk is that their decision or legislation gets struck down and I get released on the High Court's terms and not theirs. The flow on effect is that such a judgment sets the benchmark for any other prisoner in the future that the State Government wishes to keep imprisoned.

To rely on the Adult Parole Board to make the "right" decision was likewise fraught with legal problems. As mentioned above, any decision by the Board in 2014 that I could not be released because I supposedly pose an "unacceptable risk" would not only have set a precedent, it would also have created a ground ("apprehended bias") for a judicial review of their decision. The Adult Parole Board of Victoria operates a system of parole that is arguably the most repressive, unfair and reactionary in Australia. Other parole systems may incorporate some or even many of the unfair practices of the Victorian system, but none of them incorporate *all* of them. Aside from being specifically excluded from the operation of the *Charter of Human Rights & Responsibilities Act 2006* (Vic), the Board, in exercising its functions, 'is not bound by the rules of natural justice.'[101] It likewise does not have to, and nearly always doesn't, release to the prisoner being considered for parole any reports, victim submissions or any other material the Board is relying on when making its decision. [102] The prisoner being considered for parole has no right of appearance before the Board and is not entitled to be represented by a lawyer. The Board does not necessarily have to even consider the release of a prisoner whose minimum non-parole term has expired: the operative word in the enabling legislation is '*may*'.[103] Even if released, a prisoner is still deemed to be under

sentence,[104] the Board may impose any conditions that they see fit,[105] and the Board may cancel the parole at any time.[106] In the case of a life sentence prisoner, that means that he can be returned to prison for any breach of his parole conditions at any time during the remainder of his life. It is hard to believe that the Adult Parole Board of Victoria, with its unfettered power to impose any conditions it deems fit, cannot devise a parole plan for me that would address my supposed risk of re-offending. They have, after all, managed to do that with every murderer they have considered for parole since 1957.

In an online article titled "Murder is killing, but Carl Williams is no Julian Knight",[107] Deakin University law lecturer Mirko Bagaric posed the question; 'If you had the choice between there being another Carl Williams or Hoddle Street mass murderer Julian Knight on the streets, who would you prefer?' Bagaric answered the question, 'Carl Williams'. Whilst correct to point out that the random spree killer creates more fear in the community than the gangland boss, Bagaric overlooked another pertinent fact: if both myself and Williams had been given full pardons and released, I would have re-enlisted in the Army, Williams would have gone back to dealing drugs and killing people.

One of the reasons given for the stance taken by the current and the previous State Government that I will never be released is that I have never shown any remorse (a cry echoed by the media). In 2009 the then Premier, John Brumby, stated that, "It is my view that he should remain behind bars for the rest of his life."[108] In 2010 the then Minister for Police (and Corrections), Bob Cameron, said, "Quite frankly, his prospects of getting parole are something between zero and zilch. The situation is not going to change with Julian Knight. He has been in jail for many years and has shown no signs of remorse. He is going nowhere."[109] On the same day, the then Shadow - but future - Minister for Corrections, Andrew McIntosh, proclaimed, "Life means life. No one in Victoria wants Julian Knight released. A Baillieu government will never release Julian Knight from prison. If necessary a Baillieu government will introduce legislative changes to ensure people like Julian Knight are never released. Under no circumstances will he get out of

jail."[110] Six months later, and now in office, McIntosh repeated that "… Victorians expect Julian Knight to be behind bars for the rest of his life."[111] A collection of documents outlining when I have shown remorse has been provided to the Adult Parole Board, to Corrections Victoria and is posted on the website HYPERLINK "http://www.julianknight-hoddlestreet.ca" www.julianknight-hoddlestreet.ca. After these documents appeared on the web the claim by politicians, police and journalists was that I haven't shown any *genuine* remorse. In the Victorian Court of Criminal Appeal in 1992, Marks J commented that:

> Remorse, of course, is an elusive concept. Only the person said to experience it truly knows the extent, if any, of its existence.[112]

In the Victorian Court of Appeal in 2004, the then President of the court, Winneke P, presciently stated that:

> Remorse, or contrition for conduct, can be a factor which can be taken into account in mitigation of a sentence; but in the long run the person who is best qualified to find its presence or absence must be the trial judge whose findings in this respect, in the absence of glaring error, will rarely be interfered with by an appellate court. It has been said, in my opinion properly, that it is rare to find convincing evidence of genuine remorse. Indeed, remorse is an elusive concept which is not to be confused with such emotions as self-pity.[113]

There will, no doubt, be many who will claim – as many already do – that any remorse that I have shown over the past 26 years is not genuine and is only self-pity. Even to accept this claim in the face of evidence to the contrary, it has no bearing on my risk of re-offending. In a 2011 court report consultant psychiatrist Dr Lester Walton wrote that;

> It is increasingly documented scientifically that expression of remorse, or otherwise, has no predictive value regarding risk of reoffending.

A lack of continuing expressions of remorse are likewise of little to no predictive value. It is commonly accepted that in the prison environment;

> … expressions of emotion are not safe. Emotion is often seen as a sign of weakness and vulnerability which can lead to assaults. It is commonplace for [a] prisoner to adopt a neutral emotional tone and over the years this becomes part of their institutionalised state.[114]

Even the former long-serving Catholic Chaplain of the Victorian prison system, the late Fr John Brosnan, told his biographer that;

> … it was unusual to see obvious remorse in prison, even in prisoners who had committed the most terrible crimes. Few had ever expressed any repentance to him for the offences which sent them to prison.[115]

In the majority of s.18 applications heard by the Supreme Court of Victoria – indeed in the majority of murder cases – the presiding judge has found that the defendant had shown little, if any, remorse. Comments such as, "There is, we think, no evidence of remorse, either in the respondent's conduct or words prior to or during his trial"[116] and "…I cannot be persuaded that any remorse has been shown" and "I saw no evidence of remorse at the trial"[117] and "It is also disturbing that there is no substantial evidence of genuine remorse on the part of the applicant at having taken another man's life"[118] and "shown not the slightest remorse"[119] and "The prisoner showed no remorse and continues to deny the offence"[120] and "the learned judge said that he was not satisfied that the applicant was remorseful"[121] and "the appellant has not shown any remorse or that he has any insight into his criminal wrongdoing,"[122] are essentially the rule rather than the exception.

Another factor that supposedly points to the risk that a prisoner will re-offend is his behaviour in custody. It is a factor that is considered by the Adult Parole Board of

Victoria when it makes decisions about a prisoner's release on parole. In fact, a prisoner's good behaviour whilst in prison only serves to indicate that the prisoner will behave when he is under direct supervision and control. Amongst convicted murderers, behaviour in custody has no predictive value. Those murderers who have re-offended – including those that have committed further murders – are evenly split between those who previously were "model" prisoners and those that had atrocious prison records. The predictive value of behaviour in custody is, therefore, equivalent to the toss of a coin. Even amongst the psychiatric community it has "been established that behaviour during incarceration is not an effective predictor of post-release community behaviour."[123]

My supposed misconduct whilst in prison has in the past been relied upon by various State politicians to support their claim that I will never be released. In an interview with 3AW's Neil Mitchell on 1 October 2002, the then Premier of Victoria, Steve Bracks, stated that, "all these offences that he's committing, make sure that he'll be locked up for the full period of his incarceration." Of the 87 incidents recorded against me by the prison authorities, none concern a major incident. No-one has died at my hands or been hospitalized or been raped or taken hostage by me whilst I have been in prison. I am not a stand-over man or a sexual predator or in any way involved in the prison drug trade. I have not escaped or tried to escape or started or been involved in any fires or riots. I have no recorded incident involving violence since December 2000, and that incident concerned a push-and-shove match with another prisoner. Given my profile within the prison system, it should be surprising that I have not been involved in *more* violence. The majority of the incidents recorded against me concern such "offences" as making an official complaint that prison staff were leaking information about me to the media, or the unauthorized possession of chewing gum. One "incident" was helping an elderly prisoner who had fallen over and injured himself, and then cleaning up the resulting blood spill. Another incident concerned my unauthorized possession of a cut-down syringe – which I found in a cell I was placed in and which I handed in!

After yet another front page story concerning my supposed misconduct in prison

in the *Herald Sun* on 15 June 2001,[124] the then Chief Executive of CORE – The Public Correctional Enterprise, John Griffin, drafted a 2-page memorandum to the then Corrections Commissioner – and Secretary to the Department of Justice of Victoria during 2002-2012 – Penny Armytage. The stated purpose of this memorandum was to provide Ms Armytage 'with a briefing regarding the allegations reported in today's edition of the *Herald Sun* regarding prisoner Julian Knight.' Mr Griffin found that, 'Of the material seized in the search of his cell, none was found to contain addresses or personal details (e.g. partners' or children's names) of staff or judges', and he concluded that, 'It is my view that none of the material seized represents a threat to the security of the prison, or the safety of any staff or members of the judiciary.' So much for the oft-repeated claim that I was keeping dossiers on judges and prison staff.

When the *Sunday Herald Sun* reported on 20 May 2001[125] that I had obtained a Bachelor of Arts degree from Deakin University, with a major in Strategic and Defence Studies, the response of Commissioner Armytage was not to defend my studies but to announce a review of prison education in Victoria. The fact that my degree had been completed during 1988-1995, and been awarded in 1996, that I had obtained a "normal entry" to the degree course (based on my 1985 HSC Anderson Score and the fact that I was not old enough to gain entry as a mature age student) and that the Office of Corrections had given me the last two awards from the Prisoner Study Award Trust to assist me begin my studies, was not mentioned at all by Ms Armytage during the various radio and press interviews she gave to announce the review of prisoner education. Nor did she mention that, apart from strategic and defence-related subjects, I also studied journalism and psychology. Since then, I have studied law, criminology, French, hospitality, horticulture, information technology, asset maintenance, engineering, fork lift operation, small business management, first aid and fitness, and completed a private investigator course.

A further factor relied upon by the Adult Parole Board in making parole decisions is a

prisoner's, 'willingness to participate in offence-specific and other programs' and his participation in those programs.[126] (Note that the emphasis is on *willingness* and *participation* rather than 'successful completion'). In fact, most empirical and meta-analysis conducted in other jurisdictions of programs designed to address offending behaviour indicate minimal positive results or are equivocal. Even Corrections Victoria, who only measure recidivism rates for the 2-year period following release, admits that:

> The survey [of Offender Behaviour Programs in Victorian Prisons] indicated that many program initiatives have targeted Violent Offenders. At this stage, there is no evidence to support any of these programs in successfully reducing reoffending.[127]

The question of the validity and success rates of programs designed to address offending behaviour aside, I have already completed a number of programs ("Anger Management", "Stress and Relaxation", Prison Fellowship's "Change on the Inside", PSYCH-ED, "Exploring Change", High Intensity Violence Intervention Program and "Parole Readiness"). I began requesting to undergo such programs in 1999, even though my clinical assessment by prison authorities did not commence until August 2004. More than 7 years after that initial assessment, the conclusion of Corrections Victoria was – as indicated above – that I was "not ready to begin treatment." It has not escaped me that such a conclusion provides a ready-made excuse for the denial, or at least deferment, of my release on parole.

It has been the longstanding practice of the Victorian prison authorities that convicted murderers would spend the first third of their sentence in maximum security, the next third in medium security, and the final third in minimum security. The timeframe for the first move, from maximum to medium security, has remained constant despite a change in sentence management policy that murderers can only obtain a minimum security rating in the last three years of their sentence. In 1999, after I had served 12 years of my 27-year minimum term, I was finally granted a medium security rating by the

then Supervisor of Sentence Management, Ms Isabel Hight. For the next 3½ years local prison management made repeated requests to Corrections Victoria for me to be transferred to a medium security prison. Their requests were simply ignored. Now almost 27 years into my sentence I remain in maximum security. It is apparent that as long ago as 1999 the authorities had no intention of ever releasing me. Paul Denyer is now 20 years into his 30-year minimum term and remains in maximum security; an indication that, as I predict above, the decision has already been made to deny him parole in 2023. In contrast, however, to my and Paul Denyer's cases, other "Lifers" inevitably progress to a medium security prison after serving a third of their minimum term. The La Trobe University gunman, Jonathan Horrocks, was transferred after serving 10 years of his minimum term. John Lascano, whose sentence is the same as mine - Life imprisonment with a 27-year minimum term – was transferred after serving 11½ years. Even the Russel Street bomber, Craig Minogue, another high profile "Lifer" whose minimum term is three years longer than mine, was transferred to a medium security prison after serving 22 years. The longest a convicted murderer has served continuously in maximum security is 24 years, 5 months.

It has also been the longstanding practice of the Adult Parole Board of Victoria to make recommendations to the Victorian prison authorities about what programs they expect prisoners to complete and, with respect to murderers, to make a tentative date for release on parole 1-3 years prior to the prisoner's EED. In my case, my last in-person appearance before the Board was on 25 January 2008 and my last appearance by video link was on 25 May 2011. As far as recommendations to the prison authorities were concerned, the Board had made none by the time the Corrections Amendment (Parole) Bill became law on 2 April 2014.

Conclusion

The next Victorian State election in due on 29 November 2014, six months after my

earliest eligibility date for release on parole. A deferment of my parole for whatever reason brings the consideration of my release by the Adult Parole Board into the start of the election campaign. It is axiomatic to state that "law and order" is a staple of every election campaign, and that both sides of politics would seek to out-do the other with promises of being "tough on crime" (and on prisoners and parolees). In my case, both the State Government and the Opposition have made promises to keep me in prison. Such a promise, regardless of which side was elected, locks them into keeping that promise for the following three years. A legal challenge to the decision not to release me (and the special legislation enacted by the State Government to provide legislative support to their election promise) will run its course during that period.

It is generally accepted by the legal profession and the criminal justice system that:

> The assessment of the risk to the community is a generally a matter to be carried out by the Parole Board at the end of the non-parole period.[128]

Those in the State Government and in the Opposition that think that there is political mileage in interfering in the decision as to whether I am released or not, and those members of the Bench that would defer to their opinion as to whether my sentence was sufficient, would do well to remember what was said in the English case of *R -v- Wilkes*:[129]

> The constitution does not allow reasons of state to influence our judgments: God forbid it should! We must not regard political consequences; how formidable soever they might be: if rebellion was the certain consequence, we are bound to say "*Fiat justitia, ruat caelum*".

The English translation of the Latin maxim "*Fiat justitia, ruat caelum*":

> "Let justice be done, though the heavens fall."

On 29 June 2012, three members of the 22 members of the Adult Parole Board of Victoria decided the following with respect to my repeated applications for a tentative date for release on parole:

> Correspondence from prisoner, further incident reports and reports from Professor [Paul] Mullen and Professor [James] Ogloff considered. The prisoner's request for an indication as to his eventual release date in letter dated 24 May 2012 is refused. The Board considers that there is no prospect of an order for release on parole in the foreseeable future. In the Board's view the prisoner continues to represent a danger to the community.

I was informed of this decision on 4 July 2012: the same day the Board "leaked" its decision to Melbourne's *Herald Sun* newspaper.[130] An application for judicial review of the Board's decision to the Supreme Court of Victoria was ultimately dismissed on 12 March 2013.[131] In response to that decision, I formally requested that the Board review its decision of 29 June 2012. The Board's new decision was to simply request a progress report by 20 November 2013. On 7 November 2013, the day before I marked 6 months to EED, a progress report for the Board was completed by two Community Corrections Officers. Following the submission of that report, I submitted my own draft parole plan. On 9 December 2013, the Board decided the following:

> Correspondence noted.
> Progress Report noted.
>
> Previous decision to stand.

The above is the Board's decision quoted in full. It is an example of the wholly inadequate notification given to prisoners in Victoria of Adult Parole Board decisions. Any written requests for further information are responded to with the inevitable response of 'Correspondence noted.'

As a result of the Board's procrastination and absence of any indication as to what

its expectations are, and the absence of any right to natural justice in parole hearings in Victoria, the proceeding *Knight -v- Adult Parole Board* (Case No M82 of 2013) is now awaiting hearing in the High Court of Australia.

Pursuant to section 74(5) of the *Corrections Act 1986* (Vic), the Adult Parole Board of Victoria has an unfettered power to impose *any* condition on a parole order.

> **74. Release on parole after service of non-parole period**
> (5) The Board may—
> (a) impose additional terms and conditions on the parole order; and
> (b) attach to a condition to which the parole order is subject a requirement for electronic monitoring of the prisoner to monitor compliance with the condition; and
> (c) vary the terms and conditions to which the parole order is subject.

Is the Board seriously going to claim that with their vast collective wisdom and experience they are unable to formulate a parole order that cannot address my supposed, and as yet unarticulated, risk of re-offending? They have managed to do this with every other murderer they have dealt with since the Board's inception in 1956, and their predecessors managed to do it with every murderer eligible for release since 1836. That they are apparently unable to do so in my case suggests that they have ulterior motives in deciding that I will not be paroled. Those that question my unrelenting litigation in the Supreme Court of Victoria would do well to first question the state of the parole system in Victoria.

At the time of my sentencing it was the unanimous opinion of the expert psychiatrists and psychologists who examined me (Dr Allen Bartholomew, Dr David Sime & Dr Kenneth Byrne) that I suffered from a serious anti-social personality disorder. In 1997, forensic psychiatrist Professor Paul Mullen found that my personality had improved and that I had 'not developed any signs or symptoms of a major mental illness'. In 2012, Professor Mullen and forensic psychologist Professor James Ogloff found that I was not a

psychopath and did not have an anti-social personality disorder. It would seem that Dr Allen Bartholomew's prediction during my plea in 1988 that "in 20, 25 years' time" a professional opinion as to whether I was "dangerous to release" could be made "with great precision",[132] was prescient. In short, I am not the disturbed 19-year-old I was in 1987. As Justice Hampel noted when he sentenced me:[133]

> Your prognosis is undoubtedly better than that of someone with brain damage because it appears that your condition is likely to improve as you mature over a period of years when you will cease to be a danger to the public. It was common ground among the doctors that in 20-25 years time the degree of change and therefore the degree of danger which you present can be assessed. In that sense it is thought that your prognosis is reasonable, particularly as you are bright and have a desire to better yourself.

The expert opinion as to my mental state means that I am not the same man who committed the Hoddle Street shootings 27 years ago. It also means that for many years the Victorian prison authorities treated me as something I was not – a psychopath. The Supreme Court of Victoria would have done well to recognize this fact when considering my repeated claims that Corrections Victoria were intentionally stonewalling my progression through the prison system. The Supreme Court of Victoria would also do well to note Professor Mullen's opinion that I am not a querulant complainant when they consider the inevitable application by the State Government to extend my vexatious litigant declaration when it expires on 19 October 2014. Professor Mullen is in a strong position to make that claim, given that he is a leading writer on the subject.[134]

As part of my plea agreement with the Crown I undertook not to raise the issue of the bastardization I was subjected to as a junior staff cadet at the Royal Military College, Duntroon. This was the only condition the Crown had to not opposing the setting of a minimum non-parole term in my case. When I was denied parole 24 years later I considered myself no longer bound by that undertaking. On 26 November 2013, I

submitted a 94-page Personal Account of my experiences at Duntroon to the Defence Abuse Response Taskforce (DART). On 8 April 2014, I filed a civil claim against the Commonwealth in the ACT Supreme Court. In evidence given at my plea hearing in 1988, forensic psychologist Dr Kenneth Byrne gave uncontested evidence that in the 8 months prior to my entry into Duntroon my 'total stress scale added up to 85 points'.[135] In the period from my discharge from the Army to the day I committed the Hoddle Street shootings the scale rose to 404 points, an 89% chance of becoming medically or psychiatrically ill. If the ill-treatment I received at Duntroon had no bearing on my actions in Hoddle Street, 16 days after my discharge from the Army, then why the concern of the authorities that I not raise this issue in court?

The State Government has sought to avoid the provisions of the Corrections Amendment (Parole) Bill 2014 being declared unconstitutional by following the New South Wales legislation that was found to be valid by the High Court in *Crump v NSW*.[136] The essential feature of the NSW legislation that the High Court found to be a valid exercise of legislative power was that it did not alter the sentences of those murderers it was aimed at; it simply changed the administrative process of granting parole. The Victorian Government has simply copied the NSW provisions but narrowed their application to only one person.

With the passage of the Corrections Amendment (Parole) Bill 2014, that amended the Corrections Act to ensure that I will not be paroled until I am near death, it has been recognized that successive Victorian governments and the Victorian prison and parole authorities have intentionally stonewalled my progression through the prison system. Such legislative amendments were foreshadowed as long ago as 2002.[137] Writing in *The Age*, John Silvester wrote that:

> The mass killer has been declared a vexatious litigant after he appeared in court 15 times in [2003], launching actions over prison conditions, computer access and his desire to be allowed to ready himself for release. The backstory

> here is simple. Knight has been denied access to pre-release programs because authorities were not prepared to do anything that increased his chances of freedom.[138]

This is exactly what I have been claiming in the Supreme Court for many years. Despite various recommendations made by professors Mullen and Ogloff in their 2012 reports as to my preparation for consideration for release, the Board made no recommendations to Corrections Victoria as to my future management. They have never failed to make such recommendations before. Such a failure is further evidence of the accusation that the authorities are not prepared to do anything that increases my chances of freedom. This, in turn, supports the associated accusation that the authorities do not agree with the setting of a minimum term in my case. The prevailing opinion seems to be that I should have received a whole-of-life sentence and, given that I cannot be re-sentenced, they simply intend to manipulate the parole system to achieve that result.

If there was no chance of my being paroled, then the Corrections Amendment (Parole) Bill 2014 was, to use John Silvester's words, 'nothing but a pre-election publicity stunt.' The question still arises as to why, amongst the hundreds of murderers in prison and on parole in Victoria, successive State Governments have singled me out. If the claim by the Victorian authorities is that they are making the requirements and the threshold test for parole stricter, the question arises as to what they intend to do with those murderers already in the community? Do they intend to return them to custody? If not, why not?

For those that keep repeating the mantra that I was sentenced to life imprisonment and that I have no "legitimate expectation" of being released after the expiry of my minimum non-parole term, need to recognize two facts. The first is a legal fact. The minimum term on a life sentence represents the punitive portion of the sentence. The period after the expiry of that minimum term represents the protective portion of the sentence. As the Victorian Court of Criminal Appeal said in *Dumas*:[139]

> The power to fix a minimum term may, and no doubt will, be exercised as a means of converting an indeterminate sentence into a finite one in cases where the proper authorities consider that after the minimum term has expired it is appropriate for the offender to be released on parole.

The second is a simple fact. In Victoria since 1836 every eligible murderer has been released on or near his or her earliest eligible release date. Why am I the exception? Perhaps the Victorian authorities could give a reason that does not equally apply to any other murderer.

Notes:

* BA (Deakin); prisoner, Port Phillip Prison.

1. See *R -v- Knight* [1989] VR 705, at 705. Reproduced at HYPERLINK "http://www.lexis.com/research" www.lexis.com/research (Ref: 1988 VIC LEXIS 530).
2. "'We will never, ever forgive you': Victims reject apology as self-serving", by Liam Houlihan, crime reporter, *Sunday Herald Sun*, Sunday 21 June 2009, pages 4-5.
3. *R -v- Knight* [1989] VR 705, at 705. See Paul Anderson, *"Dirty Dozen 5: Done and Dusted"*, Hardie Grant Books, Prahran, 2011. Colin Bannister, *"7000 Brave Australians: A History of the Royal Humane Society of Australasia 1874-1994"*, The Royal Humane Society of Australasia, Cheltenham, Melbourne, 1996. John Crook & Andrew Harding, *"Gun Massacres in Australia: The Case For Gun Control"*, 2nd Edition, Gun Control Australia, Chelsea, Melbourne, 1994. Peter Haddow, *"Hoddle Street: The Ambush and the Tragedy"*, Strategic Australia Pty Ltd, Fitzroy, Melbourne, 1998. Andreas Kapardis, *"They Wrought Mayhem: An Insight Into Mass Murder"*, River Seine Press, Melbourne, 1989. Paul B. Kidd, *"The Australian Crime File: A 'Best of' Collection of Notorious True Crime Stories"*, The Five Mile Press, Rowville, Melbourne, 2005. Michael Kuzilny, *"A Life In Crime: Real life stories from the Streets"*, New Holland Publishers (Australia) Pty Ltd, Sydney, 2007. Jack Levin & James Alan Fox, *"Overkill: Mass Murder and Serial Killing Exposed"*, Dell Publishing, Bantam Doubleday Dell Publishing Group Inc, New York, 1996. Darren More, "*Duntroon: The Royal Military College of Australia 1911-2001*", Royal Military College of Australia, Canberra, 2001. William "Bill" O'Brien, *"Agents of Mayhem: The Global Phenomenon of Mass Murder"*, Lothian Books, Thomas C. Lothian Pty Ltd, Port Melbourne, 2000. Royal Military College of Australia, *"Journal of the Royal Military College, Duntroon, June 1987"*, Canberra Publishing and Printing Co, Canberra, 1987 [Ref: Kokoda Company, 15 Platoon - page 32]. Steve Samuelson & Roy Mason, *"A History of Australian True Crime"*, Ebury Press, Random House, North Sydney, 2008 [page 200]. Time-Life Books: Sarah Brash (ed), *"True Crime: Mass Murderers"*, Time-Life Books, Richmond, Virginia, 1992. Larry Winter, *"The Australian Book of True Crime"*, Pier 9, Murdoch Books, 2008. See also HYPERLINK "http://www.julianknight-hoddlestreet.ca" www.julianknight-hoddlestreet.ca, HYPERLINK "http://www.en.wikipedia.org/wiki/Hoddle_Street_massacre" en.wikipedia.org/wiki/Hoddle_Street_massacre, & HYPERLINK "http://en.wikipedia.org/wiki/Julian_Knight" en.wikipedia.org/wiki/Julian_Knight.
4. Reported at *R -v- Knight* [1989] VR 705. Reproduced at HYPERLINK "http://www.lexis.com/research" www.lexis.com/research (Ref: 1988 VIC LEXIS 530).
5. Section 58E, *Corrections Act 1986* (Vic) & regulation 78, *Corrections Regulations 2009* (Vic).
6. See Coroner Francis Hender, Inquest into the death of Dean Williamson, Coroner's Case No 3813/00 & "Knight calls for suicides shakeup", by Jamie Berry, *The Age*, 10 April 2003, page 13 (`HYPERLINK "http://www.theage.com.au/" www.theage.com.au`) .
7. Ivan Potas & John Walker, "*Trends and Issues in Crime and Criminal Justice*", No 3, *Capital Punishment*, Australian Institute of Criminology, Canberra, February 1987, Table 1, & Dr Peter J. Lyn & George Armstrong, *"From Pentonville to Pentridge: A History of Prisons in Victoria"*, State Library of Victoria, Melbourne, 1996, Appendix 1 (pages 202-207). * NB: ages are not recorded for the first 54 executions that took place during the period 1842-1857.
8. See *In the Matter of a Minimum Term Application Pursuant to s.18A of the Penalties & Sentences Act 1985 by Rodney Paul Schultz, Peter John Lawless & Hans Kumar Sharma* (unreported, Supreme Court of Victoria, Gray J, 6 March 1987), BC8700635, page 6.
9. See *R -v- Jolly* (1990) 52 A Crim R 83, at 89.
10. Arie Freiberg & Stuart Ross, "*Sentencing Reform & Penal Change: The Victorian Experience*",

The Federation Press, Leichhardt, 1999, pages 9-10.

11. *op.cit*., pages 12-16.
12. *op.cit*., page 16, & Adult Parole Board of Victoria, "*Fifty Years of the Adult Parole System in Victoria 1957 to 2007*", Carlton, Melbourne, July 2007, page 3.
13. Freiberg & Ross, *loc.cit*., page 10.
14. Freiberg & Ross, *loc.cit*., page 177, source: Office of Corrections, "Corrections Master Plan", Neilson Associates, Melbourne, 1983, page 256.
15. See Adult Parole Board of Victoria, *"Annual Report 2010-2011"* & "Get out of jail card: Nine out of 10 inmates given parole as soon as possible", by Geoff Wilkinson, *Herald Sun*, 2011, page 3.
16. See Supreme Court of Victoria, *Practice Note No 2 of 1986*.

17. See *R -v- Edmunds* (unreported, Court of Criminal Appeal of Victoria, 13 December 1993) BC9300974, (unreported, Court of Criminal Appeal, 24 November 1994) BC9401324 & Butterworths Editors, "*Australian Sentencing Decisions 1991-1994*", Butterworths, North Ryde, Sydney, 1995, page 257.
18. See *R -v- Haigh* [1983] VR 65 (FC), (unreported, Court of Criminal Appeal of Victoria, 14 February 1994) BC9400976 (CCA), [2009] VSC 185 (12 May 2009), & [2012] VSC 617 (13 December 2012).
19. See *R -v- Barron* [1975] VR 496 (FC).
20. See *Bugmy -v- R* (1990) 169 CLR 525, at 538 per Dawson, Toohey & Gaudron.
21. See *R -v- O'Meally* [1952] VLR 499 (murder trial), *R -v- O'Meally (No 2)* [1953] VLR 30 (appeal), *R -v- Taylor & O'Meally* [1958] VR 285, *R -v- O'Meally* [1965] VR 626 & William John O'Meally, "*The Man They Couldn't Break*", Unicorn Books, Schwartz Publishing, East Melbourne, 1980.
22. See *Ryrie* (1993) 64 A Crim R 332 (CCA); BC9300642 & Butterworths Editors, "*Australian Sentencing Decisions 1991-1994*", Butterworths, North Ryde, Sydney, 1995, pages 259 & 261.
23. See *R -v- Pickford* (unreported, Court of Criminal Appeal of Victoria, 5 February 1987) BC8700661 (CCA), [2000] 2 VR 15, BC200005773 (CCA).
24. See *R -v- Lowery & King* [1972] VR 554, (No 2) VR 560, (No 3) [1972] VR 939, [1974] AC 85 (PC) & "A young life cut short by casual savagery", by Tony Wright, *The Saturday Age*, 14 May 2011, page 26.
25. Shasta Holland & Kym Pointon (Research & Evaluation Unit, Corrections Victoria) and Dr Stuart Ross (Department of Criminology, University of Melbourne), "*Who returns to prison? Patterns of recidivism among prisoners released from custody in Victoria in 2002-03*", Corrections Research Paper Series, Paper No 01, Department of Justice, Melbourne, June 2007, pages 10, 15, 16 & 23 (Endnote 3).
26. See *R -v- Lane* [1983] 2 VR 449 & [2003] VSC180.
27. See *R -v- Coombes* (unreported, Court of Appeal of Victoria, 16 April 1999) BC9902012 & [2011] VSC 407 (26 August 2011).
28. Holland & Pointon, *op.cit*., Table 4, page 15.
29. Office of the Correctional Services Commissioner, Felicity Dunne, *"A Framework for Reducing Re-offending: Differentiated Case Management in Victorian Corrections"*, Department of Justice, Melbourne, 2000, page 10. See also Auditor-General of Victoria, Performance Audit Report "*Addressing the needs of Victorian prisoners"* (J.W. Cameron, November 2003).
30. Wagdy Loza & Amel Loza-Fanous, "Anger and Prediction of Violent and Nonviolent Offenders' Recidivism", *Journal of Interpersonal Violence*, Vol 14, No 10, October 1999, page 1016.
31. See *Knight -v- Department of Justice* [2011] VCAT .
32. See *Debono -v- Department of Justice – FOI Officer* [2008] VCAT 1791.
33. See Office of the Correctional Services Commissioner, *"Statistical Profile of the Victorian Prison System 2003-04 to 2007-2008"*, Corrections Victoria, Melbourne, January 2009), Table 15, page 24.
34. See, for example, Media Release from the Office of the Attorney-General, "Vexatious Litigant Application Against Julian Knight", HYPERLINK "http://www.dpc.vic.gov.au/" www.dpc.vic.gov.au, Monday 24 November 2003. See also Media Release, "Coalition government to keep Julian Knight in jail", HYPERLINK "http://www.dpc.vic.gov.au" www.dpc.vic.gov.au , Tuesday 18 February 2014.
35. *Attorney-General (Victoria) -v- Knight* [2004] VSC 407, at [1]. See also Fitzroy Legal Service, *"The Law Handbook 2007"*, page 190.
36. Parliament of Victoria Law Reform Committee, "*Inquiry into Vexatious Litigants*", Parliamentary Paper No 162, Session 2006-2008, Victorian Government Printer, Melbourne, December 2008,

page 194 & HYPERLINK "http://www.parliament.vic.gov.au/lawreform/Vexatious" www.parliament.vic.gov.au/lawreform/Vexatious Submission VL/14. See also Dr Simon Smith, "*Maverick Litigants: A History of Vexatious Litigants in Australia 1930-2008*", Maverick Publications, Elwood, 2009.

37 See *Knight -v- Anderson* [2007] VSC 278.

38. *Power -v- R* (1974) 131 CLR 623, at 629 per Barwick CJ, Menzies, Stephen & Mason JJ. See also *R -v- Dumas* [1988] VR 65, at 71; *R -v- Knight* [1989] VR 705, at 710; *Bugmy* (1990) 169 CLR 525, at 530-1.

39. *R -v- Knight* [1989] VR 705, at 710.

40. *R -v- Knight* [1989] VR 705, at 711.

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42. Transcript, *R -v- Knight*, Friday 28 October 1988, at page 89.
43. Transcript, *R -v- Knight*, Monday 31 October 1988, at page 111.
44. *R -v- Knight* [1989] VR 705, at 711.
45. "Parole row looms on Hoddle St murderer", by Peter Munro, *The Sunday Age*, 3 July 2011, page 5.
46. "Sentence 'accurately portrays revulsion'", by Fiona Higgins, Paul Conroy & Damien Murphy, *The Age*, 11 November 1988, page 21.
47. "Jail death stalks killer", by Neil McMahon, *The Sun*, 11 November 1988, page 2.
48. "Sentence 'accurately portrays revulsion'", by Fiona Higgins, Paul Conroy & Damien Murphy, *The Age*, 11 November 1988, page 21.
49. "Life should spell forever", by Alan Howe, *Herald Sun*, 18 October 2010, pages 24-25.
50. See *R -v- Stuart & Finch* [1974] Qd R 297 & *Stuart -v- R* (1974) 134 CLR 426. See also Malcolm Brown (ed), *"Australian Crime: Chilling Tales of Our Time"*, Lansdowne Australia Pty Limited, Sydney, 1993.
51. *R -v- McCafferty* [1974] 1 NSWLR 89.
52. See *Gallagher* (1985) 160 CLR 392; (1986) 20 A Crim R 244.
53. See *McCafferty -v- Minister for Immigration & Ethnic Affairs* (1995) 61 FCR 275; BC9502015. See also *McCafferty -v- Offenders Review Board* (unreported, Court of Criminal Appeal of NSW, 19 June 1995) BC9504950.
54. *Bazley* (1993) 65 A Crim R 154. See also "Naked City: This is James Bazley as career hitman. He is nearing life's end. He could say what happened to Donald Mackay. He won't", by John Silvester, *The Saturday Age*, 12 November 2011, page 26.
55. *R -v- Rees* (unreported, Supreme Court of NSW, Smart J, 12 August 1993) BC9301842.
56. *R -v- Pederick* (unreported, Court of Criminal Appeal of NSW, 21 May 1997) BC9701982. See also *R -v- Anderson* (unreported, Court of Criminal Appeal of NSW, 6 June 1991) BC9101925. Malcolm Brown (ed), *"Australian Crime: Chilling Tales of Our Time"*, Lansdowne Australia Pty Limited, Sydney, 1993.
57. *R -v- Lovec* (unreported, Supreme Court of SA, O'Loughlin J, 4 August 1987) BC8700270.
58. *R -v- Lovec* (unreported, Court of Criminal Appeal of SA, 24 September 1987) BC8700229.
59. See Steve Samuelson & Roy Mason, *"A History of Australian True Crime"*, Ebury Press, Random House, North Sydney, 2008, page 41 ("Bloomin' murder in gardens").
60. *R -v- Kraja* (unreported, Court of Criminal Appeal of Victoria, 11 November 1994) BC9401295.
61. See *In the Matter of the Estate of Nickolaos Zikos* (unreported, Supreme Court of Victoria (Probate), Nathan J, 31 March 1987) BC8700621.
62. *R -v- Brown* (unreported, Court of Criminal Appeal of NSW, 20 February 1995) BC9504405. See also Paul Collins, *"Burn: The Epic Story of Bushfire in Australia"*, Scribe Publications, Carlton, Melbourne, 2009.
63. *AC (Guardianship)* [2009] VCAT 753 (29 April 2009).
64. "Exclusive: Killer among us - Australia's worst arsonist is 'sure to strike again' but VCAT says he free to do what he wants", by Keith Moor, *Herald Sun*, 2 May 2009, page 3.
65. *R -v- Evers* (unreported, Court of Criminal Appeal of NSW, 16 June 1994) BC9301748. See also Don Howard & Bruce Westmore, *"Crime and Mental Health Law in New South Wales"*,

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66. *Chayna* (1993) 66 A Crim R 178. See also Don Howard & Bruce Westmore, *"Crime and Mental Health Law in New South Wales"*, LexisNexis Butterworths, Chatswood, 2005, pages 203, 277 & 451-4.
67. Ref: HYPERLINK "http://en.wikipedia.org/wiki/Julian_Knight" en.wikipedia.org/wiki/Denis_Lortie & HYPERLINK "http://www.canadianencyclopedia.ca" canadianencyclopedia.ca.
68. See "Palestinians' release after decades proves bitter-sweet", by Ruth Pollard, *The Age*, 20 October 2011, page 12.
69. "German terrorist leader released after 26 years", *The Weekend Australian*, 20-21 December 2008, page 13.
70. *R -v- Brazel* [2003] VSC 95 (28 March 2003).
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72. *R -v- Brazel* (2005) 153 A Crim R 152; [2005] VSCA 56.
73. *Denyer* [1995] 1 VR 186; (1994) 74 A Crim R 47.
74. *R -v- Lascano* (unreported, Court of Appeal of Victoria, 7 December 1995) BC9502546.
75. *R -v- Farquharson* [2010] VSC 462 (15 October 2010).
76. *R -v- Faure* [2006] VSC 169 (3 May 2006).
77. See *Gionfriddo & Faure* (1989) 50 A Crim R 327.
78. *R -v- Williams* [2006] VSC 367; BC200611298.
79. *R -v- Williams* [2007] VSC 131; BC200703282.
80. *Constantinou* (1999) 108 A Crim R 73; [1999] NSWSC 520.
81. *Folbigg* (2005) 152 A Crim R 35.
82. *MacRae* (unreported, Court of Criminal Appeal of Victoria, 21 February 1990) BC9000902.
83. *MacRae* (unreported, Supreme Court of Victoria, Teague J, 29 March 1994) BC9406388.
84. *Vlassakis* (2001) 125 A Crim R 290; [2001] SASC 371; BC200107083.
85. *DPP -v- Mitchell* (1994) 71 A Crim R 200.
86. *Mitchell* (1995) 184 CLR 333; (1996) 85 A Crim R 304.
87. See *R -v- Crabbe* (1984) 11 FCR 1; 56 ALR 733; *R -v- Crabbe* (1985) 156 CLR 464; *R -v- Crabbe* (1990) 101 FLR 133.
88. *Crabbe* (2004) 188 FLR 209; [2004] NTSC 63.
89. *R -v- Long; Ex parte A-G (Qld)* (2003) 138 ACrimR 103.
90. See HYPERLINK "http://en.wikipedia.org/wiki/Julian_Knight" en.wikipedia.org/wiki/Mattias_Flink, & HYPERLINK "http://members.nbci.com/_XMCM/beat_me/mattias_flink.htm" members.nbci.com/_XMCM/beat_me/mattias_flink.htm.
91. Ref: HYPERLINK "http://www.aftonbladet.se/nyheter/article2588106.ab" www.aftonbladet.se/nyheter/article2588106.ab.
92. This was not always the case. Long-term prisoners in Victoria were previously granted temporary leaves for many years prior to their release. Keith Ryrie, for instance, received 98 unescorted leaves from prison during the last 8 years of his sentence: see *Ryrie* (1993) 64 A Crim R 332, at 339 per Southwell J.
93. *Kable -v- DPP (NSW)* (1996) 189 CLR 51. See also Duncan Chappell & Paul Wilson (eds), *"Issues in Australian Crime & Criminal Justice"*, 6th Edition, Chatswood; LexisNexis Butterworths, Chatswoood, 2005, pages 155 & 303, & Richard Edney & Mirko Bagaric, *"Australian Sentencing: Principles and Practice"*, Cambridge University Press, Melbourne, 2007, pages 326-327.
94. *Kable -v- DPP (NSW)* (1996) 189 CLR 51, at 122 per McHugh J.
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Lakic, "Victorian Sentencing Turns Retrospective: The Constitutional Validity of Retrospective Criminal Legislation After Kable", (1999) 23(3) *Criminal Law Journal* 145, Edney & Bagaric, *op.cit*., page 326, Charles R. Williams, "Psychopathy, Mental Illness & Preventative Detention: Issues Arising from the David Case", *Monash University Law Review*, vol 16 (1990) 161, & Dr David Wood, "A One Man Dangerous Offenders Statute – The Community Protection Act 1990 (Vic)", *Melbourne University Law Review*, vol 17 (1990) 497.

97. *Fardon* (2004) 223 CLR 575; [2004] HCA 46.
98. *Fardon* (2004) 223 CLR 575; [2004] HCA 46, at [34] per McHugh J.
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101. See s.69(2), *Corrections Act 1986* (Vic).
102. See s.74B(2), *Corrections Act 1986* (Vic).
103. See s.74(1), *Corrections Act 1986* (Vic).
104. See s.76, *Corrections Act 1986* (Vic).
105. See s.74(4) & (5), *Corrections Act 1986* (Vic) & Schedule 4, Form 1, *Corrections Regulations 2009* (Vic).
106. See s.77(1), *Corrections Act 1986* (Vic).
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109. "Knight will never be free", by Stephen McMahon & Evonne Barry, *Herald Sun*, 5 August 2010, page 8.
110. *ibid*.
111. "Knight wins another day in court", *Sunday Herald Sun*, 2 January 2011, page 12.
112. *The Queen -v- Robert James Douglas* (unreported, Court of Criminal Appeal of Victoria, 24 April 1992) BC9200708.
113. *R -v- Whyte* [2004] VSCA 5 (13 February 2004), at [21] per Winneke P.
114. *R -v- Leach* [2004] NTSC 60 (12 November 2004), at [175].
115. Tom Prior, "*A Knockabout Priest: The Story of Father John Brosnan*", Hargreen Publishing Company, North Melbourne, 1985, page 10. See also Di Fingleton, "*Nothing to do with Justice: The Di Fingleton Story*", New Holland Publishers (Australia) Ltd, 2010.
116. *DPP -v- Moran* (unreported, Court of Criminal Appeal of Victoria, 28 February 1989) BC8900768 at page 2.
117. *Arlavi* (unreported, Supreme Court of Victoria, 1 May 1989) BC8900708 at pages 5-6.
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120. *Roberts* (unreported, Supreme Court of Victoria, 7 September 1990) BC9000677 at page 1.
121. *The Queen -v- Robert James Douglas* (unreported, Court of Criminal Appeal of Victoria, 24 April 1992) BC9200708 at page 1 per Marks J.
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Inpatients", *Criminal Justice & Behaviour*, Vol 37, No 4, April 2010: 365-383, at 365 quoting from G.T. Harris & M.E. Rice, "Actuarial assessment of risk among sex offenders", *Annals of New York Academy of Sciences*, (2003) 989: 198-210.

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125. "Know-all Knight", by Gerard McManus, *Sunday Herald Sun*, 20 May 2001, page 3.
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127. Office of the Correctional Services Commissioner, Felicity Dunne, *"A Framework for Reducing Re-offending: Differentiated Case Management in Victorian Corrections"*, Department of Justice, Melbourne, 2000, page 54. See also Shasta Holland & Kym Pointon (Research & Evaluation Unit, Corrections Victoria) and Dr Stuart Ross (Department of Criminology, University of Melbourne), "*Who returns to prison? Patterns of recidivism among prisoners released from custody in Victoria in 2002-03*", Corrections Research Paper Series, Paper No 01, Department of Justice, Melbourne, June 2007, page 20.
128. Richard G. Fox, *"Victorian Criminal Procedure: State and Federal Law"*, 13th Edition, Monash Law Book Co-operative Limited, Clayton, Melbourne, 2010, page 423 (section 9.12.2.1).
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135. Transcript, *R -v- Knight*, Friday 28 October 1988, at page 69.
136. *Crump -v- NSW* (2012) 247 CLR 1; 286 ALR 658; [2012] HCA 20 (4 May 2012)
137. See Neil Mitchell & Premier Steve Bracks, "Neil Mitchell", 3AW, Tuesday 1 October 2002, 0907hrs; "Clamp on prisoners no cure", Matthew Pinkney, *Herald Sun*, Monday 9 December 2002, page 18 - "... Knight has demonstrated his unsuitability for parole relatively early and perhaps it's time to consider a one-man Act of Parliament to keep him inside forever." Rob Elliott & Shadow Attorney-General Andrew McIntosh, "Evening", 3AK, Thursday 24 July 2003, 1808hrs; "Knight will never be free", Stephen McMahon & Evonne Barry, *Herald Sun*, Thursday

5 August 2010, page 8 - Shadow Minister for Corrections Andrew McIntosh: “Life means life. No one in Victoria wants Julian Knight released. A Baillieu government will never release Julian Knight from prison. If necessary a Baillieu government will introduce legislative changes to ensure people like Julian Knight are never released. Under no circumstances will he get out of jail.” Neil Mitchell & Premier Ted Baillieu, “Neil Mitchell”, 3AW, Friday 29 July 2011, 0933hrs.

138. “The case for Julian Knight legislation: public safeguard or political stunt?” John Silvester, *The Age*, Wednesday 19 February 2014, pages 10-11.

139. *R -v- Dumas* [1988] VR 65, at 71. Quoted with approval by Hampel J in *R -v- Knight* [1989] VR 705, at 710.

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