

# WHY THE JUDGE RATES COPS SO HIGHLY



By Brett Williams

**T**he shocking slaughter of a family of 10 women and children at Hope Forest in 1971 was then Australia's largest mass murder by firearm. Clifford Bartholomew had taken a .22-calibre rifle and shot dead his wife, Heather, and their seven children – the oldest 19 and the youngest just four.

He also shot dead his sister-in-law and baby nephew, who lay defenceless in his cot. And, as the bloody bodies of his victims lay strewn about the family farmhouse, Bartholomew called the local police station and told an officer: "I've killed the lot!"

He later pleaded guilty to murder and ended up convicted and sentenced to death, but avoided the gallows. Bartholomew scored a commutation and would serve just eight years in prison.

Recently retired Supreme Court justice Kevin Duggan was, back then, a 30-year-old rising legal star whom the SA government had appointed Crown prosecutor only a year earlier. He has never forgotten the chilling details of the Bartholomew massacre.

And one thing it reaffirmed in his mind was just how tough police work was for cops on the front line.

Still, today, he recalls that the officer who took Bartholomew's phone call at the local police station had to go to the murder scene. "And it was difficult to walk in the house for the bodies that

were strewn all over it," Duggan says.

"It was a case that taught me what a difficult job people have in that situation. More than any other case, it brought home to me the pressures that emergency-services people are under.

"Of course, the ambulance people had to go there, as well as all the police who were involved, from investigating officers through to technical-services people.

"I thought: 'Well, it was an exceptional situation, but what about the police officers who have to go to road accidents?' It's easy to read about that and say: 'Well, yes, it's their job,' but I've always thought that the community owes a lot to those people – a lot."

Two of the many court trials still vivid in the Duggan memory are those of gunmen Tony Grosser and John Raymond Black. Grosser shot STAR Group officer Derrick McManus 14 times during a 40-hour siege at Nuriootpa in 1994. Duggan presided over his second trial.

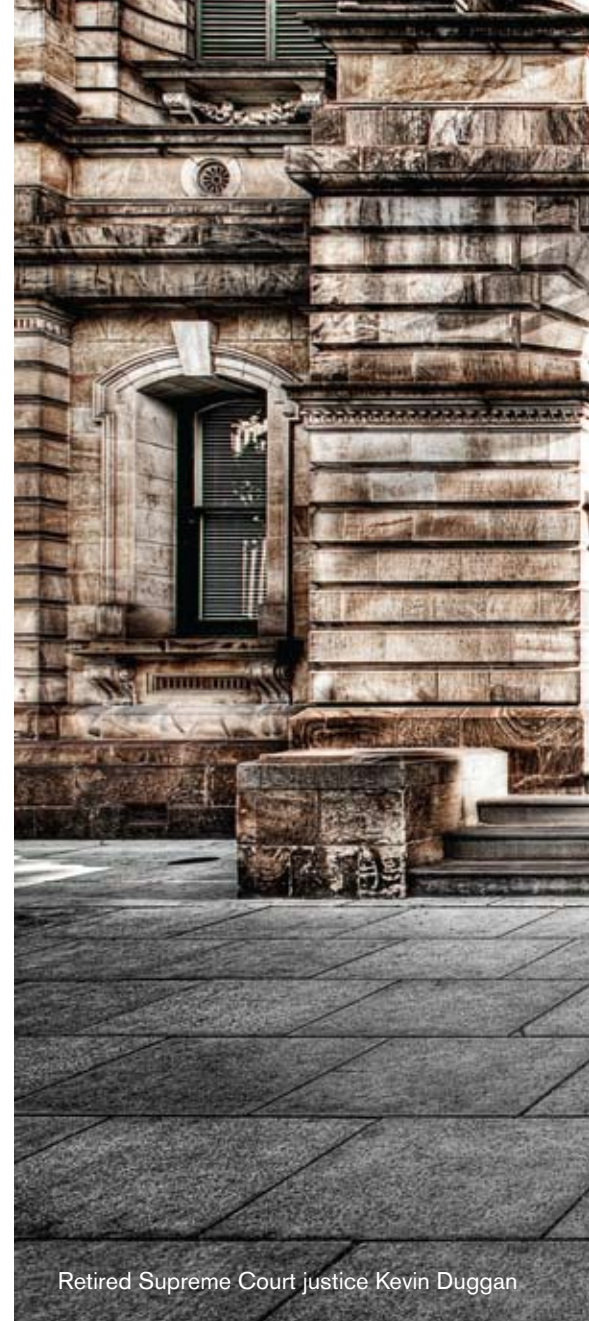
Black shot patrol officers Glenn Jeffries and Jim Tappin, now a Police Association committee member, back in 1977, when Duggan was Crown prosecutor.

The officers, responding to a report of multiple assaults at a women's shelter, attended the Elizabeth North home of Black, who had threatened to shoot his two children.

He emerged from his house armed with a .22-calibre rifle with which he shot Tappin once, in the chest, and Jeffries six times.

"One of them (Tappin) came reasonably close to losing his life," Duggan remembers. "If the bullet had been a little bit closer (to his heart)..."

In February this year, Duggan took charge of the trial of Michael Qunlivan and Luke and Robert Armistead. The



Retired Supreme Court justice Kevin Duggan

jury found all three guilty of the criminal neglect of five children in the case the media dubbed the House of Horrors.

As Duggan sentenced them to nine years' jail, with non-parole periods of six years, he remarked: "The manner in which these children were treated is beyond comprehension."

Duggan has since read the *Police Journal* story *Uncovering the children's horror* (August 2011) and absorbed the comments of investigating officers Kerstin "Kaz" Wojciechowski and Erin Vanderwoude.

"I can't understand the extent to which it affected them without going through that experience," he says. "But I've got some understanding, having been through a number of these cases (as a judge)."

Throughout his long and distinguished



legal career, Duggan has lectured police, prosecuted their cases, and heard their evidence as a judge. He rates them highly.

"I've seen some very fine police officers in various areas," he says. "I've had a chance of comparing them with the work of police officers in, for example, the United Kingdom, and I think they compare favourably.

"Nevertheless, a judge has to avoid preconceived notions when assessing individual cases and the witnesses, including police officers, who give evidence. It is important to remain objective."

Duggan is aware that cops, along with members of the public, often see judges as overpaid, disconnected from the real world, and too lenient on sentencing.

"I think you have to be realistic about

this," he says. "These judges could be earning much more doing the jobs they previously did in the community. Most judges would find that they go down in income once they get on the bench."

Duggan notes that the salary of a newspaper editor never accompanies an editorial that questions judges' pay rises. "And I think it'd be a safe bet that it would probably exceed what the judges are getting," he asserts.

And he regards as "an unfortunate slur" the accusation that judges are "remote". Duggan insists that his work as a tribunal chairman with the SANFL, a lecturer of Adelaide University law students, and a reservist kept him well in touch with real life.

"I made up my mind that I certainly wasn't going to live in an ivory tower," he explains. "I picked extra-curricular

activities which were likely to involve me a lot with other people."

Duggan does not believe that he and his colleagues are above or overly sensitive to criticism. He concedes, however, that the failure of critics to take all the facts of a case into account does often upset them (judges).

With informed, constructive criticism, Duggan has no problem. But he acknowledges that acquiring facts, particularly in relation to sentencing – which he calls "one of the very controversial areas" – is difficult.

"This is why we've made some attempts to explain the reasons for our sentencing," he says, "not only by announcing them formally in court, but also publishing them on the court website."

Since he retired in July, Duggan



Duggan (second from right) with Peter Alexander, Ken Thorsen, Jim Litster and Dick Jones at a Homicide/Major Crime reunion in 2009

has spent extra time with his eight grandchildren, gone to the AFL and SANFL grand finals, and generally felt as if he were on holiday. And, after his 23 years on the bench and 46 years in the legal profession, he does not miss the courtroom.

The first time he walked into one was as a child with high-ranking police officer and Duggan family friend JB Walsh. And the courtroom environment instantly sparked his interest.

Adelaide-born Duggan, an only child, attended Rostrevor College, where his mother worked for 30 years as the college matron. During his school holidays, he worked as a copy boy for *The News* and loved the “buzz” of the environment.

Later, he studied law at the University of Adelaide and graduated in 1963. After two years, he went to work as an associate to High Court justice Sir Edward McTiernan until 1966.

In 1970, at the age of just 29, he became Crown prosecutor and, in 1979, a QC. Then, after a short stint as chief counsel with the Legal Services Commission, Duggan joined the Independent Bar in 1980 and practised from Bar Chambers.

In 1988 came his appointment to the Supreme Court, from which he retired as the longest-serving judge.

As a reservist, Duggan became a major general and held the office of

judge advocate general of the Australian Defence Force from 1996 to 2001.

A legal career was probably always his destiny, but Duggan concedes that he could well have found contentment in policing – as a mounted officer.

In his Crown-prosecutor days, when he lectured CIB courses at Thebarton barracks, he often called in on legendary police horseman Jack Cawley. He loved getting the hard-line Mounted Ops boss and WWII veteran reminiscing over a mug of coffee and hearing his horse stories.

One day, the now late Cawley told Duggan he should step out of the “dusty atmosphere of that court”, turn up at the barracks and help exercise the horses. A delighted Duggan took up the offer.

“I felt very inferior riding horses with these professional horsemen,” he remembers.

But that inferiority did not stop Duggan from eventually asking Cawley if he could go riding beyond the barracks gate and into the parklands.

At the future Supreme Court judge, Cawley barked an unequivocal “No!”

Apart from horse-riding, Duggan has always loved footy, and played for Adelaide University. He even had ideas of playing in the big league and tried his luck with South Adelaide. But he was to come up against the hardest man in football to impress.

“Neil Kerley suggested that I go back to University and play,” Duggan says with a

laugh. “But it was in 1964, when South won their last grand final and they played a much different brand of football.”

Today, he holds no regrets about careers – either the one he did not have in league footy, or the one he did have in the law.

“The career that I did have, it’s a bit like a police officer’s career: you see life in all its forms,” he explains. “And I have never wanted anything more out of a profession.”

Of great concern to Duggan are cases in which others, such as disgraced former Federal Court justice Marcus Einfeld, let that profession down.

Einfeld served jail time after lying about the identity of the driver of his car, which a speed camera snapped in Sydney in 2006.

Duggan urges observers not to judge “decent hard-working people within any calling” by the few who commit misdeeds. “I think that’s just a matter of common sense,” he says.

In retirement, Duggan has undertaken handyman work on his “big old house”, but more legal work lies just ahead. He has agreed to act as a consultant to the Federal Court in the preparation of a guide book for its judges.

The court is about to take on jury trials in cartel matters. “They will be quite big trials,” he says, “and I’m helping them with that, and helping them with certain aspects of jury trials.”