

Obituary

An Outstanding Defender and Scholar

Paul Byrne SC, 1950–2009

Any chance meeting with Paul invariably would enrich your day. Incongruous as it seems to speak of a man with such vitality in the past tense, Paul Byrne loved life and lived it with an energy and compassion that shone through an irrepressible, irreverent smile. But never confuse affability and empathy with susceptibility or guile when it came to Paul Byrne the professional. Judge Steve Norrish and Ian Barker QC knew what they meant in describing Paul as the most outstanding criminal lawyer of his generation at the bar. A big call, and one on closer investigation that brooks no challenge.

I take the liberty to suggest the measure of his greatness. Paul was the consummate ‘quiet achiever’ so celebrity was not essential, though much has been made of unwinnable cases he won and the law he made. In fact Paul’s success as a defender is better measured in the lives he influenced, and not just the hit list of cases in his favour. ‘He approached the toughest cases with commitment and enterprise and novel thinking’ said the *Sydney Morning Herald*.

More than this, he respected the power of knowledge over persuasion. Often I would receive a call from Paul on the eve of a case wanting to know where research and critical scholarship could inform his argument. He led the charge to challenge, by independent scientific evidence, the reliability of experts in sciences usually the preserve of the police, such as fingerprint and ballistics evidence. Paul was tireless in confronting the Court of Criminal Appeal with comparative data on sentencing trends until even the most luddite judge could not say ‘lies, lies and damned statistics’.

This recognition of knowledge as the advocate’s reason came from Paul’s exceptional scholarship. In 1983, the year he obtained a Sydney University masters degree in law with first class honours and the University Medal, he was appointed director of the Criminal Law Review Division. In 1984 he became commissioner to the Australian Law Reform Commission. He took silk in 1995. In his time at the ALRC Paul authored one of the most persuasive and prevailing arguments for jury trial as we know it and, despite the subsequent mendacious meddling of politicians, it remains as true today as the day he wrote it.

Paul has rightly been commended for dogged courage at times when the defender’s task was anything but easy or fashionable. His mentor at the Public Defender’s office (and long-time Institute of Criminology advisor) Howard Purnell QC would have been justly proud of Paul’s tenacity. But rigor more than redoubtability characterised a Byrne defence. And moral integrity as well as ethical reasoning imbued its powers of persuasion.

Michael Kirby is right. Paul Byrne was a lovely, loveable and loving man — renaissance man in the truest sense. Charlie Waterstreet captures the sense of Paul as a lawyer/citizen/friend when he said ‘Paul was as comfortable and convincing in front of a full bench of the High Court as he was appearing in the Local Court for a drunk driver, a

true democrat ... He built the barricades against the police state using his wits, his incredible logic, his powerful oratory and a charm that left every tree he passed birdless.'

Paul Byrne had an understanding of the relevance of disciplines outside the law to sharpen the thrust of legal reasoning. Criminology for Paul was not the devil's art or some flight of fancy as many practitioners tend to dismiss what they do not understand. He looked to critical scholarship as a fertile field of authority and enjoyed the social location and contextual relevance of critical legal thinking. This explains his energetic enthusiasm and considered advocacy for the work of the Institute and the impact of its journal which he read with relish.

I knew on so many occasions Paul's 'man of action-man of mystery' side. He had this uncanny knack of timing and intervention when things were toughest for the Institute of Criminology, which he held in the highest practical and professional regard. He would ring the day an impossible invoice would fall on my desk and the future of our work would be ensured by a cheque in the mail and the warmest best wishes. He was a true friend in his hands-on support for the Institute, in his respect for his law school, his true application of the powers of scholarship and his unwavering loyalty to me as a mate and colleague. Charlie can have the last word as it encapsulates the choir voice of Paul's army of friends; 'He leaves this planet with less prisoners than it would have had but for his magical thinking. His pixie spirit has more legal miracles to perform for those who call on it to help them transform and transfix judges and jurors'.

Professor Mark Findlay

Faculty of Law, University of Sydney