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## Phillips' brief

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### THE CRIMINAL RESPONSIBILITY OF A "FAILED CADET SOLDIER"

On 10 November 1988, Julian Knight was sentenced for "one of the worst massacres in Australian history".<sup>1</sup> Knight, then aged 19, had shot and killed seven people, and injured 19 others, in a shooting spree carried out on Hoddle St, in suburban Melbourne, on 9 August 1987. The Hoddle Street massacre, as Knight's crimes became known, became one of Australia's most well-known mass murders.

The circumstances in which the killings occurred were outlined in contemporaneous media accounts, and later in the remarks made by Hampel J in sentencing Knight. In the weeks prior to the shooting spree, Knight had left Duntroon Military College where he had been training as a cadet. Knight had wanted to be a soldier and had been in the army reserve before going to Duntroon. At Duntroon, Knight clashed with his superiors and, after an incident in which he stabbed a sergeant with a pocket-knife, left the college.

Knight moved home and attempted to re-establish contact with friends and a former girlfriend. He bought a car which had problems with it, and, in trying to get it fixed, incurred a significant debt. Two days before the shooting spree, Knight discovered that his ex-girlfriend was hosting a party to which his friends had been invited, but from which he was excluded. On the day of the killings, after drinking heavily at a bar, Knight went home, dressed in "military garb", armed himself, and positioning himself behind trees and cars, shot at pedestrians and motorists "with deadly accuracy, and reloading his weapons methodically".<sup>2</sup>

In the Supreme Court of Victoria, Knight pleaded guilty to seven counts of murder and 46 counts of attempted murder. Relying on expert medical evidence, Hampel J concluded that, at the time of the killings, Knight suffered from a "diagnosable serious personality disorder" although he was not "medically or legally insane".<sup>3</sup> Hampel J stated that the explanation for Knight's crimes lay in his "background", his "fragile and disordered personality" and his inability to cope with an "accumulation of pressures and stresses" in his life.<sup>4</sup> The judge noted that Knight had been fascinated with military life and war and firearms since childhood, as his adoptive father had been an Army captain, and that Knight had built a fantasy life around "heroic killing in battle situations".<sup>5</sup>

Knight was sentenced to life imprisonment for each of the seven murders. Reflecting Knight's youth and his prospects of rehabilitation, as well as other factors, such as his guilty plea, Hampel J fixed a minimum term of 27 years.

As this thoroughly psychologised explanation of Knight's crimes suggests, in the criminal legal process, responsibility for the murders was held to lie squarely with Knight himself. Counsel for Knight had pointed to community responsibility for permitting a situation in which a young man was "encouraged and trained in the use of weapons in combat situations", and permitted to own weapons and keep them within easy reach, but, while the judge acknowledged the fact that "society" had not yet "matured sufficiently" to ensure that the use of lethal weapons, and their availability, was "strictly controlled", Hampel J concluded that "all the community can do is to understand why such horrors occurred and try to reduce the risks".<sup>6</sup>

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<sup>1</sup> *R v Knight* [1989] VR 705 at 705.

<sup>2</sup> "Shooting Rampage Leaves Six Dead, 18 Wounded", *Associated Press* (9 August 1987).

<sup>3</sup> *R v Knight* [1989] VR 705 at 708. This feature of *Knight's* case led the court to give "little weight" to personal or general deterrence in sentencing.

<sup>4</sup> *R v Knight* [1989] VR 705 at 706.

<sup>5</sup> *R v Knight* [1989] VR 705 at 706.

<sup>6</sup> *R v Knight* [1989] VR 705 at 708-709.

Beyond the boundaries of the criminal justice system – which is built on individual responsibility for crime – the debate about Knight's responsibility was more wide-ranging. Within days of the killings, media coverage of the case incorporated questions about Duntroon's selection of army recruits, and the bastardisation to which young cadets at the college were subject.<sup>7</sup>

Around the time of the trial, one of the expert medical witnesses, Tim Watson-Munro, garnered attention for stating that, while Knight was responsible for his crimes, the victimisation to which he was subject at Duntroon “made a big contribution to his state of mind”.<sup>8</sup> More recently, in addition to periodic discussion about gun crime,<sup>9</sup> Knight's case has been connected with those of soldiers who are charged with offences after discharge from the military or following service in war.<sup>10</sup> Knight was referred to as a “failed cadet soldier” in several reports,<sup>11</sup> and military training and culture formed the backdrop to evaluation of Julian Knight and his crimes in popular discourse.

Was this wider, social debate about responsibility anything more than a manifestation of the sort of collective soul-searching that a mass killing might be assumed to provoke? A different perspective on Knight's case emerges when it is viewed in light of other cases involving military or war veterans charged with serious offences. In this light, it appears that the tendency to read Knight's actions through the lens of his military experience (albeit brief) – and to regard his criminal conduct as in part caused or determined by that experience, and thus, his responsibility for such conduct as “diminished” in some way – is a strong theme in legal evaluation of defendants like Knight.

From a study of cases in which defendants charged with serious offences are identified as ex-soldiers, it becomes clear that ex-soldiers are accorded special status in criminal adjudication and sentencing practices – as “veteran defendants”. The category of “veteran defendants” rests on the (changing) social meanings of war, soldiers and soldiering. Different ideas about criminal responsibility run through these cases, which centre on the ex-soldier as a complex figure, simultaneously agentic and victim-like, courageous and vulnerable, both more and less than other defendants.<sup>12</sup>

In this author's analysis, the special status of veteran defendants has two main aspects: (1) veteran defendants as enjoying “enhanced subjectivity” at law, according to which they have a “thicker” legal personality than other defendants; and (2) veterans as having “diminished capacity”, whereby they have impaired or reduced responsibility for crime. Looking over the 20th century (and the first years of the 21st century), there is a historical interplay between these two aspects of the specialness of “veteran defendants”, with the latter becoming more prominent over time. And it seems that it is into this category that Knight, with his “fragile and disordered personality”, falls.

Julian Knight has been the subject of media attention again in recent years. In anticipation of the expiry of his minimum term in May 2014, Knight made a case for his release on parole.<sup>13</sup> But, in February 2014, the Victorian government amended the legislation governing actions of the Adult Parole Board to ensure that Knight could be released only if he was seriously incapacitated or in danger of dying.<sup>14</sup> In retort, it seems, Knight has brought an action against the Commonwealth

<sup>7</sup> See, for example, D Monaghan, “Accused a Duntroon Cadet for 6 months”, *The Sydney Morning Herald* (11 August 1987) p 4; H Pitt, “Accused Wanted to Die, Massacre Court Told”, *The Sydney Morning Herald* (19 April 1988) p 1.

<sup>8</sup> Extracted in D McKnight, “‘Bastardisation’ under Fire”, *The Sydney Morning Herald* (14 November 1988) p 10.

<sup>9</sup> See T Brown, “Blood on the Streets”, *The Herald-Sun* (8 April 1999) p 34; S Hewitt, “In the End, Just a Coward”, *Sunday Herald Sun* (20 May 2001) p 3.

<sup>10</sup> See C Wilson “Australia's Most-Wanted Army Hero”, *The Sunday Age* (19 January 1992) p 5.

<sup>11</sup> See K Marks, “Mass Killers Jail Degree in Weapons Systems”, *The Independent* (23 May 2001) p 16.

<sup>12</sup> See A Loughnan, “‘Society Owes Them Much’: Veteran Defendants and Criminal Responsibility in Australia in the Twentieth Century” (2015) 2(1) *Critical Analysis of Law* 106.

<sup>13</sup> See P Anderson, “Let Him Die in Jail: Hoddle St Massacre Victims Have Their Say”, *The Herald-Sun* (6 August 2007) p 17; L Houlihan, “‘We Will Never Ever Forgive You’: Victims Reject Apology as Self-Serving”, *The Sunday Herald Sun* (21 June 2009) pp 1, 4.

<sup>14</sup> See s 74AA *Corrections Act 1986* (Vic). The provision applies only to Knight. For analysis of this provision in light of the *Kable* doctrine, see J Gans, “News – One Person Parole Law Enacted in Victoria” (2014),

government seeking damages for the abuse he suffered as a cadet at Duntroon.<sup>15</sup> If this action proceeds, it might reignite debate about Knight's responsibility for his crimes.

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<http://blogs.unimelb.edu.au/opinionsonhigh/2014/03/27/news-one-person-parole-law-enacted-in-victoria>.

<sup>15</sup> See M Inman, "Hoddle Street Killer to Sue over Alleged Duntroon Abuse", *The Canberra Times* (16 June 2014) pp 1-2; E Byrne, "Hoddle Street Murder: Julian Knight Closer to Suing the Commonwealth over Duntroon Military College Treatment", *ABC News* (9 February 2015).