VICTORIAN BAR NEWS

No. 123 ISSN 0150-3285 SUMMER 2002

Changing of the Guard

Welcomes: Justice Redlich, Justice Williams, Justice Young, Chief Judge Rozenes, Judge Bourke, Judge Coish and Judge Gaynor ☐ Farewells: Judge Hassett and Judge Jones ☐ Ceremonial Sitting to Mark the Sesquicentenary of the County Court of Victoria ☐ Robes and Rehabilitation: How Judges Can Help Offenders "Make Good" ☐ The New Essoign Club: Developing the Plan ☐ Recent Activities of Bar's Legal Assistance Committee ☐ Charles Francis Retirement ☐ Youth and Family XVI World Congress ☐ Bar Hockey

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LUDLOWS

VICTORIAN BAR NEWS

No. 123 SUMMER 2002

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Cover: *Photographed at the 150th Sesquicentenary celebrations of the County Court on 18 November 2002, Michael Rozenes QC (left) and Chief Judge Glenn Waldron (right), anticipating the imminent "changing of the guard" with Judge Waldron's retirement after 23 years as Chief Judge, and the elevation of Michael Rozenes to Chief Judge of the County Court. See story pages 22–26).*

Welcome: Justice Redlich

Welcome: Justice Williams

Welcome: Justice Young

Welcome: Chief Judge Rozenes

Welcome: Judge Bourke

Welcome: Judge Coish

Welcome: Judge Gaynor

Farewell: Judge Hassett

Farewell: Judge Jones

Robes and Rehabilitation

The New Essoign Club: Developing the Plan

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for the year 2002/2003
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And Then There Were Three

ASTUTE readers of *Bar News* will have noticed in the last edition a new face in the photograph at the head of this column. Who is this unfamiliar thorn between the two familiar roses?

Judy Benson has been at the Bar for nearly five years though to her it feels like only five minutes. In an earlier life she spent nearly two decades — from 1978 to 1996 — in the book publishing world, first as editor, then as publisher and manager, of a number of tertiary, educational and university press publishers in both Sydney and Melbourne. Readers will be familiar with the names of many of these organisations, university presses such as the University of NSW, Oxford and RMIT; scholarly, educational and general publishers such as Allen & Unwin, Pitman/Longman, and legal publisher Butterworths, where she started out in 1978 as a book editor then editor of their loose-leaf services prior to the days of electronic publishing. (As she recalls everyone used manual typewriters then — how times have changed in such a relatively short period of time.) There was even a stint in the late eighties working with Eve Mahlab to develop the publications side of her enterprising directory/diaries business.

Now at the Bar she decided to put her background experience and knowledge at the Bar Council's disposal, and so as if by magic, here she is. Other interests include opera and travel; she once owned and managed an antiques shop in Sydney; she has lectured and tutored at university in Latin and Ancient History; and she represented Victoria in competition croquet for two years.

Although she has some ideas of her own for *Bar News*, she would be interested to encourage a range of other suggestions from colleagues in the profession so that this august journal will evolve into a vehicle of increasing relevance to us all.

In the dying days of October this year the Victorian Bar Council received from the A-G a bundle of documents amounting to over 105 closely typed pages comprising commentary and text on the ASIO Legislation Amendment (Terrorism) Bill 2002 which is under scrutiny by the Senate Legal and Constitutional References Committee Inquiry. Comment was sought and required by 7 November.

SILLY SEASON

It's election time and Victoria is in hustings mode. At the time of writing, polling day is a fortnight hence. Memory of the complete surprise arising from the last State election is cautionary in predicting whether a result will be clear on the night or even shortly thereafter. *Bar News* has traditionally made a feature of reporting welcomes to the Bench from its ranks, and it is pleasing to be able to report that the Editors have had to work overtime for the past three years to keep up with the number of welcomes following the announcement of appointments. There have been numerous appointments to the magistracy, as well as to the County and Supreme Courts made by Attorney-General Rob Hulls in the life of the Bracks Labor Government.

We wait and see what will tumble out of Santa's sack in the new year for those hopeful of a judicial life.

TERROR AUSTRALIS

War and the threat of war appears to have been averted at least temporarily by Iraq's acquiescence to the UN Security Council's Resolution requiring weapons inspectors to enter Iraq and scrutinize the country's numerous installations after a hiatus of some four years. The inspectors fly out to start undertaking their mission within days; for the sake of world peace the international community hopes they have courage and purpose.

But the other war, against terrorism, continues unabated not least within the bunkers of the Commonwealth Attorney-

General's Department. In the dying days of October this year the Victorian Bar Council received from the A-G a bundle of documents amounting to over 105 closely typed pages comprising commentary and text on the ASIO Legislation Amendment (Terrorism) Bill 2002 which is under scrutiny by the Senate Legal and Constitutional References Committee Inquiry. Comment was sought and required by 7 November — the space of just one week. The Bar Council duly referred the material to its Human Rights Committee and to the Criminal Bar Association for comment and recommendation. Both bodies roundly condemned the proposed legislation as objectionable. Why?

The legislation contemplates compulsory detention for up to seven days for the purpose of information gathering. Those compulsorily detained may be denied legal representation for up to 48 hours; after this time they may be given access to a security-cleared lawyer. The boundaries of legal professional privilege are attacked. The right to silence appears to be abrogated in the Bill, as does the privilege against self-incrimination. The Bill imposes a reverse onus on those detained in having to prove they don't have the information they are suspected of having. There are inadequate restrictions and safeguards on the use of the information obtained.

As a profession we have the obligation to ask whether the threat of terrorism requires such extreme measures and why the measures and methods known only too well in the criminal law should not apply here as well; as a community, we should demand that our elected representatives explain to us in clear and unambiguous terms what justifications there are for adopting this course and what international standards and protocols have been invoked in the drafting of the Bill. Should we not learn the lessons of history and keep our heads when all around us appear to be losing theirs? To do otherwise is to descend ourselves into the very barbarism we deplore in others.

No, it does not at all seem to be a season of of peace on earth and good will to all — yet. But she is sure it will, in due course. Once that jolly old fellow with the white beard in the red coat is dispensing largesse to the children we might permit a warm and fuzzy feeling to settle around the heart. Enjoy it while it lasts.

RETIREMENT OF CHIEF JUSTICE WALDRON

Chief Justice Waldron retired in November 2002 after 23 years as Chief Judge of Victoria's major trial court. During that 23 years the County Court grew significantly both in numbers and in jurisdiction. In his last year it moved into its new, and some would say palatial, quarters on the old ABC site. A formal farewell to His Honour will be publiched in the next issue of *Bar News,* as will welcomes for Judges Howie and Campton.

The Editors

Maintaining "Professional Standards"

IN a recent speech Chief Justice Spigelman of the New South Wales Supreme Court discussed competition policy, regulation and the legal profession. He pointed to the danger that the application of competition principles to legal regulation will undermine the performance of lawyers' duties to the court, which are an integral and important element in the administration of justice.

He demonstrated the fallacy in competition policy claims that the removal of existing legal professional regulations and rules of professional conduct will benefit consumers and create a level playing field for other professions with which lawyers are seen to be in competition. He identified educational qualifications, manifest personal integrity, enforceable professional obligations, the fiduciary relationship, the role of reputation, compulsory insurance and retrospective control of fees in the existing scheme of legal professional rules and regulation as having a cumulative effect of differentiating the legal profession from other professions and protecting consumers in their choices and dealings with lawyers.

Spigelman CJ went on to note that:

> Potential trade rivals like accountants and merchant bankers are not subject to the same restrictions, e.g. fiduciary duties, compulsory insurance, fidelity funds, retrospective fee adjustment. Nor is the content of the educational and character requirements, codes of ethics and statutory behavioural rules necessarily comparable. I give particular emphasis to fiduciary duties.

The speech by Spigelman CJ is timely having regard to the lobbying taking place to push for so called "professional standards legislation". A professional standards package was adopted by the Law Council of Australia in 1998. There were two key elements to the package: the introduction of multi-disciplinary practices (MDP's), and the capping of damages in liability claims.

These issues are back on the agenda, and the Law Council of Australia is pushing hard for the adoption of both nationally. The Victorian Bar Council recently re-examined the issue concerning capping of damages in liability claims against lawyers. The Bar Council remains opposed to any cap.

What is the justification for MDPs? The then president of the LCA put it succinctly in *Australian Lawyer* February 1999. He stated:

> The underlying philosophy of such an approach is to remove the existing restraints on the capacity of the legal profession to compete with other service providers …

The major reason the LCA adopted the position it did on MDPs had little to do with benefits for clients. Major supporters of the proposal were the big national law firms and the fear of what was, in 1998, the "Big Six" accounting firms involving themselves in the provision of legal services.

The differences between lawyers and other professionals are obvious to most. Legal practitioners are part of a system which derives its authority from the State. Legal practitioners have a duty to the court as well as to the client. The duty to the court overrides that to the client, and is a duty that does not apply in the same way to other professions. Accountants, for example, have a duty to reveal and make public the true state of affairs of a company. A lawyer, subject to overriding duties to the court, has a duty to maintain and preserve confidentiality and remain free of conflict of interest. MDPs threaten four principles fundamental to legal practice.

- the need for a clear distinct system of control of discipline of lawyers – to maintain standards,
- the independence of the legal profession which is necessary to defend "rights of clients and the rule of law",
- the maintenance of client confidentiality as a legal privilege essential to the proper lawyer/client relationship,
- the avoidance of conflict of interest.

The maintaining of these fundamental principles is for the protection and benefit of clients — not lawyers.

I return to the speech of Spigelman CJ. In relation to MDPs he stated:

> … I do not know how a multi-disciplinary practice will cope with the major differences in occupational culture about conflicts of interest. Accountants, who see no conflict in combining audit and consulting services, and merchant bankers, who have no fiduciary constraints, would regard lawyers' sensitivities as uncommercial.
>
> There is no doubt that fiduciary obligations often interfere with maximising income. The widespread affection for the "Chinese Wall" indicates the direction in which competitive pressures and commercial convenience will drive behaviour. The terminology of a "Chinese Wall" carries a connotation of ancient wisdom and inscrutable inpenetratability. In Australia we should call it the "dingo fence".

Chief Justice Gleeson of the High Court at a University of Sydney graduation ceremony on 7 May 1999 stated as follows:

> Nevertheless, I am convinced that if we abandon the idea of a profession, and

> accept that the pursuit of financial reward is the primary objective of legal practice, the public, and lawyers, will have lost something of substantial value …

In another speech, one to the Women Lawyers Association of New South Wales on 26 October 1999, Gleeson CJ quoted Justice Sandra Day O'Connor of the United States Supreme Court:

> One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market.

There is a real danger that if legal practice becomes no more than business, then lawyers will lose the rights and privileges attaching to such practice. Primarily at risk with MDPs are the ethical standards of the profession. Maintenance of standards must be our highest priority. The *Australian Financial Review* editorial of 8 November 2002 stated:

> But if ever there was a time when the legal profession was on the nose, it is now. We have already had a glimpse of how some corporate lawyers conducted themselves in this year's document-shredding case involving British American Tobacco. That case suggests the legal profession has not faced up to the fundamental tension running deep through commercial legal practice: Lawyers have duties both to rich and powerful clients and to the Court itself. Unfortunately, some lawyers have made the mistake of viewing the law primarily as a means of advancing their client's commercial interests, rather than a profession that imposes onerous obligations on its practitioners … the best way for lawyers to head off the challenge to privilege is to place renewed emphasis on their professional obligation.

MDPs have been resisted in the USA. The International Bar Association has opposed introduction of MDPs, recognising the unique and distinguishing character of lawyers, and the ethical duties and responsibilities of a lawyer to the court and to the administration of justice, as well as to the client.

If business and the market dominate, legal practice will lose its soul. Of course we work for a living and income, but preoccupation with the market place and with competition "… with the making of money is not conducive to the giving of disinterested yet sympathetic and wise legal advice"

If business and the market dominate, legal practice will lose its soul. Of course we work for a living and income, but preoccupation with the market place and with competition "… with the making of money is not conducive to the giving of disinterested yet sympathetic and wise legal advice" (The Honourable Sir Daryl Dawson, Paper to 29th Australian Legal Convention 27 September 1995 "The Legal Services Market"). An informed and detailed debate is necessary before the introduction of legislation to allow MDPs. Despite the LCA endorsement of MDPs, this is an issue that has not yet been properly analysed within the Australian profession. There has not yet been a debate, much less an informed debate.

Spigelman CJ in his speech concluded that a society with a strong respect for certain kinds of tradition is needed to sustain the market economy itself. He quoted Rabbi Jonathon Sacks, Chief Rabbi of the British Commonwealth:

> When everything that matters can be bought and sold, when commitments can be broken because they are no longer to our advantage, when shopping becomes salvation and advertising slogans become our litany, when our work is measured by how much we earn and spend, then the market is destroying the very virtues on which in the long run it depends …
>
> The market, in my view, has already gone too far: not indeed as an economic system, but as a cast of thought governing relationships and the image we have of ourselves. … The idea that human happiness can be exhaustively accounted for in terms of things we can buy, exchange and replace is one of the great corrosive acids that eat away the foundations on which society rests; and by the time we have discovered this, it is already too late.

Barristers have a role to play in ensuring the profession maintains the highest ethical principles, in ensuring the making of money does not become the dominant feature of the practice of the law. I fear that the multi-disciplinary practice is a creature wholly invested in the making of money.

Jack Rush QC
Chairman

Legal Profession Tribunal: Publication of Orders

Under section 166 of the Legal Practice Act 1996 ("the Act"), the Victorian Bar Inc, as a Recognised Professional Association, is required to provide the following information in relation to orders made by the Legal Profession Tribunal ("the Tribunal") against its regulated practitioner:

1. Name of practitioner: Damian P Sheales ("the legal practitioner").
2. Tribunal Findings and the Nature of the Offence
   (a) Findings
   The legal practitioner admitted that he was guilty of unsatisfactory conduct as defined by paragraph (b) of the definition of "unsatisfactory conduct" in section 137 of the Act in that he contravened Rule 74(b) of the Rules of Conduct of the Victorian Bar Incorporated by failing to reply to correspondence from its Ethics Committee within the time allowed.

(b) Nature of the Offence
The legal practitioner failed to respond to correspondence from the Ethics Committee of the Victorian Bar Incorporated when requested to do so.

3. The Orders of the Tribunal were as follows:
   (a) The legal practitioner is to pay a fine of $500 to the Legal Practice Board by 4 November 2002;
   (b) The legal practitioner is to pay to the Victorian Bar Incorporated by 4 November 2002 its costs of the proceedings, agreed at $1,200.
4. As at the date of publication no notice of appeal against the orders of the Tribunal has been lodged. The time for service of such notice has expired.

Supreme Court

Justice Redlich

The announcement of Justice Redlich's appointment to the Supreme Court on 22 October was received with enthusiastic praise from the legal profession, judiciary and the community in general. His Honour graduated as bachelor of laws from the University of Melbourne with honours in 1968 and served articles with Ray Dunn before being admitted to practice in August 1969. His Honour came straight to the Bar and read with John Greenwell and has followed with a very distinguished career at the bar for 33 years.

After an early career of conspicuous success in "crash and bash" and drink driving cases and an expanding practice in criminal law, His Honour was appointed in 1980 as counsel assisting in the Board of Enquiry into the Richmond City Council. The Board consisted of the now Chief Justice Nicholson who became a great admirer and close friend of His Honour. The recommendations of that inquiry resulted in extensive amendments to the Local Government Act, particularly with respect to the conduct of elections and postal voting.

From 1982 to 1984 His Honour was special prosecutor for the Commonwealth where he had responsibility for investigating matters arising from the Costigan Royal Commission into the Painters and Dockers Union, exposing as it did large-scale tax fraud, and the Stewart Royal Commission into the Mr Asia drug syndicate. His office was responsible for taking both civil and criminal law remedies arising out of those commissions and pioneered the use of Mareva injunctions in relation to tax and other types of criminal offences. He was instrumental in the formation of the first Commonwealth Director of Public Prosecutions Office which, on his retirement, subsumed his staff, then in excess of 100 persons including some 40 lawyers. While special prosecutor, he also played a pivotal role in the establishment of the National Crime Authority and in resolving what should be the limits to its jurisdiction and powers.

Upon his return to the Bar in 1984 he was appointed one of Her Majesty's Counsel. He was immediately successful with a general practice and was engaged by the government of the day to oversee the investigation by Victoria Police into the Continental Airlines scandal.

His Honour has maintained a wide-ranging practice throughout his career, appearing in common law, commercial and criminal law matters and has appeared extensively in appellate jurisdictions. He has been involved in major criminal trials, appearing at different times for prosecution or defence. The trials included the prosecution of the professional hit man responsible for the death of the Griffith drug campaigner, Donald McKay, and the Wilsons, heroin couriers for the Trimboli drug syndicate, as well as one of Victoria's longest trials, concerning a conspiracy by members of Victoria's Vice Squad to pervert the course of justice. He successfully defended, in another important case, a lawyer charged with money laundering.

In the early 90s His Honour represented the Department of Human Services in the Kew Cottages fire inquest in which nine disabled persons died, and more recently appeared for the Department of Natural Resources and Environment in the Linton fires inquest in which five Country Fire Authority volunteers died.

His Honour served on the Bar Council for some eight years and held the office of Chairman of the Victorian Bar Council from 2001 up until the time of his appointment. During his reign as chairman His Honour has steered the Council through some very difficult and significant issues for the profession. Ask any of the previous chairmen and they will tell you how demanding this role can be and often involving the sacrifice of a busy practice. His Honour has always been a staunch supporter of equality before the law and has served on various Bar committees such as the Equal Opportunity Committee and the newly established Ethical Standards Committee of the Law Council of Australia. His Honour was instrumental, along with a former Bar chairman, Neil Young QC, in the commissioning of the report on Equality of Opportunity for Women at the Victorian Bar.

During the period that he was eligible to take a reader (before taking silk), his commitments were such that he was only able to take one reader, Edwin Tanner. His Honour was and has continued to be committed to the Readers' Course over the years and was Chairman of the Bar Council during the inception of the Bar's program of Continuing Legal Education.

His Honour's reputation at the Bar has always been one of generosity, compassion — a man of vision and purpose. He has enjoyed the company of his fellow barristers, of solicitors and of his clients, all of whom have had great respect and affection for him. So also has he enjoyed admiration from the Jewish community which he served for 12 years as chairman of the Jewish Community Council of Victoria. He has three sons with his wife Estelle, who are now achieving success in their own right.

His wide-ranging experience, his meticulous attention to detail, his unfailing courtesy, his understanding of human strengths and frailties and his good humour ensure that he will grace the Bench with the same success as he has graced the Bar.

Justice Williams

JUSTICE Katharine Mary Williams was appointed to the Supreme Court of Victoria on 25 October 2002.

The Winter 1999 issue of *Bar News* featured a Welcome to Her Honour Judge Williams. In that Welcome it is said: "As Kathy Gorman she showed early that she was a quick learner having matriculated from Sacre Coeur, where she was Head Day Girl, to be able to start her law course at Melbourne University at 16".

Nothing changes. She is still the same quick learner. After only a little more than three years on the County Court she has been appointed to the Supreme Court.

Promotions from one court to another are not the appropriate place for a lengthy biography. Much of what can be said of Justice Williams has already been said a very short time ago. Suffice it to say that she is a woman of high intelligence, high academic attainment and eminent good sense.

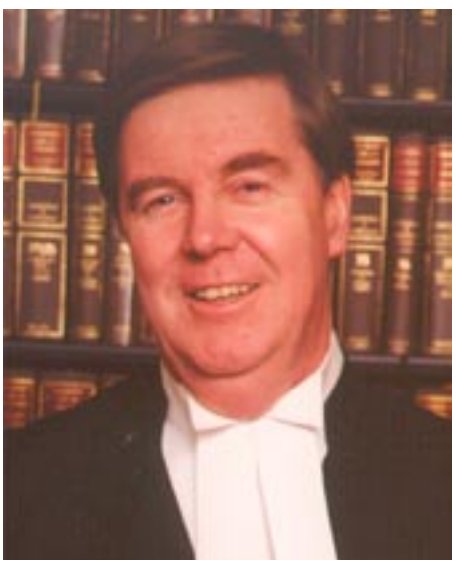
One of her brethren on the County Court, commenting on her elevation, said: "She was wasted here". He went on to say that "what stands out is her sheer competence and commonsense. When she fixes you with that piercing, slightly quizzical, gaze …".

Those who have appeared before her in the County Court would agree with that assessment. She is polite but firm; a good black letter lawyer but not a pedant; an intellectual lawyer, but pragmatically realistic. She is an excellent appointment who adds significant strength to the Supreme Court of this State.

We wholeheartedly welcome that appointment.

Family Court

Justice Young



THE appointment on 26 August 2002 of Peter Young QC as a justice of the Family Court of Australia has been greeted with universal acclaim by the profession.

His Honour was educated at St Bede's College in Mentone. He studied law at Monash University. In 1972 he was articled to Mr Colin Boltman at Abbott Stillman & Wilson. In 1973 His Honour was admitted to practice. He signed the Roll of Counsel in 1975. Almost immediately, His Honour practised exclusively in the then newly created Family Court of Australia. He was able to blend his rapidly developing family law practice with his love of the turf by appearing on behalf of racing stewards before various tribunals and courts.

At the ceremonial sitting for His Honour's appointment much was said of his great love of horseracing. For many years he has been a member of the Committee of the Victorian Amateur Turf Club, now known as the Melbourne Racing Club. Since 1999 he has been joint Vice Chairman of the Club.

Much was made of His Honour's ownership of a number of successful horses. Charitably, little was said of the (many more) unsuccessful horses.

As junior counsel His Honour appeared in many of the cases that defined the Family Law Act and forged a new learning of the principles arising thereunder. These cases more often than not had complex commercial overtones. His Honour dealt with these matters with ease. His Honour appeared in the High Court and the Full Court of the Family Court.

In November 1997 His Honour was appointed as Queen's Counsel. His appointment was a recognition of his standing in the profession as a leader. As senior counsel he assiduously pursued his philosophy that a negotiated settlement is to be preferred to a judicial determination. His Honour was often sought after to mediate disputes.

Notwithstanding this belief, His Honour was a formidable opponent as a trial lawyer. His forensic skills had been sharpened by years of courtroom battles including many years attending the Ballarat sittings of the court.

His Honour served on the Victorian Bar Ethics Committee for four years.

His Honour had two readers, Joanne

Stewart and Tom Serra. They have continued to remain members of his chambers, Suite G on the 11th floor of Latham Chambers. This is indicative of the strength of bond that His Honour has formed with all those who have had the privilege to work with him closely. His Honour in fact made reference at the ceremonial sitting that he shared chambers for 27 years with a closeknit and supportive group.

In the finest tradition of the Victorian Bar, His Honour's door was always open for a quote, a story or a tip.

His Honour's wise counsel was more often sought rather than his tips by his closest friends.

His Honour is married to Kaye and they have two children, David and Katherine. His brother, Neil Young QC, is a past chairman of the Victorian Bar. His Honour's mother attended the ceremonial sitting but sadly his father died after His Honour took silk in 1997.

It is testament to His Honour's capacity for work and time management that outside of his professional life and passion for the turf he was able to find time to have an extraordinarily healthy interest in the stock market and support the Essendon Football Club. At the ceremonial sitting the (then) chairman of the Victorian Bar made reference to the fact that there were many at the Bar whose legal acumen and industry one can admire, but there are few of whom it can be said that one has never heard a critical word spoken by or against them.

His Honour will take to the Bench his love of hard work, his forensic skills and many fine personal qualities. His Honour's good humour and dignity will carry him through the many challenges that lie ahead.

County Court

Chief Judge Rozenes

HIS Honour came to Melbourne from Poland aged three in 1949. His parents had survived the Holocaust. His Honour's grandparents had arrived before him with his cousin George Hampel. They all lived together in a flat in Mathoura Road, Toorak.

His Honour's first experience of standing up for the powerless was at Caulfield North Primary School. He gave a much bigger school yard bully his comeuppance. The headmaster was not persuaded of the rightness of his cause and His Honour was asked to leave. Since then His Honour has battled with words.

His Honour has always been in a hurry. At Brighton Grammar he won the school sprints, came third in the APS Sports and played football, cricket, and tennis for the school. He captained the debating team and spent his spare time fixing cars and other wayward machines.

Justice Ray Finkelstein lived in the flats across the road. He remembers their joint car-washing business as teenagers. Cars were left with them on a Saturday night and returned sparkling to their owners on a Sunday morning. Their satisfied customers rarely checked their odometers.

His Honour wanted to be an engineer. Failures in maths and sciences in the leaving exams meant for a rethink.

His mother lamented after fellow student left school early to work at Myers, "Your cousin George is a lawyer. Your cousin Danny is a doctor. And you will end up a carpet roller at Myers!"

One sunny Spring day His Honour accompanied cousin George in his MG to Shepparton where George made a short and successful plea. They were home in time for lunch. His Honour decided to go to the Bar.

His Honour graduated LLB from Monash University and did articles with Galbally and O'Bryan.

Shortly after His Honour's admission to practice, Frank Galbally was to act for the defendant in a lesbian stabbing murder trial. On the first day of the trial he called His Honour into his office: "Morris, [this after two summer clerkships and a year of articles] go down with Nola [Frank's secretary] and choose a jury and I'll be there by 10:45 ..."

His Honour borrowed the robes of his cousin George and duly appeared before Justice Gillard in the 4th Court. The gown was a little long. It caught under the corner of a chair when His Honour jumped up to announce his appearance. His chin hit the table. The robes tore. Justice Gillard responded: "I have no trouble in taking your appearance from the kneeling position. Thankyou Mr Rozens (sic)."

Needless to say, Frank did not appear in court until just before the end of the Crown case. Over the luncheon adjournment His Honour asked Frank if they would make any submissions when the Crown closed. Frank replied: "No, Morris, the judge knows the law. If he didn 't know the law, he wouldn't be a judge."

When Justice Gillard asked Frank what course the Defence would take, Frank told him that his learned junior had a submission. The transcript of His Honour's no-case submission has a certain Pythonesque piquancy. After its rejection, Frank led the defendant through her evidence in chief. This reduced the jury and His Honour to tears. The acquittal thereafter was a formality. Subsequently Frank was heard to say: "That Morris, he'll be a judge one day."

His Honour signed the Bar Roll in 1972

and read with cousin George. He joined the Foley list that dominated the Criminal Bar at the time. His Honour first lodged in Tait Chambers, then Four Courts, and then Owen Dixon East. His Honour and Justice Goldberg were responsible for installing the luminaries of the 1st floor of East in Aickin Chambers on the 27th floor of 200 Queen Street, or Golan Heights, as it became known. Aickin subsequently supplied four Federal Court Justices and the current Chief Magistrate before His Honour's appointment.

While reading, His Honour had a junior brief in the Magna Holdings secret commissions case. This led to a number of briefs in commercial crime matters acting for the Grollos and Sir Andrew Grimwade.

His Honour established the bow tie as the *sine qua non* of the criminal barrister. Chief Magistrate Darcy Dugan soon confronted a Bar table of defence barristers in the TNG land deal case, all resplendent in bow ties. He came back after lunch wearing a grin and his own straight tie extravagantly arranged in a bow.

His Honour appeared in many celebrated cases, perhaps none more notorious than the CUB armed robbery case. Justice Vincent, Dunn QC and His Honour appeared for the accused who were all painters and dockers. Witnesses disappeared in suspicious circumstances. A regiment of security officers surrounded the Supreme Court.

His Honour's client was Tommy Wells, an old boxer. At the sound of a bell he was out of his corner and punching. Tommy wanted to give evidence. The other accused did not think this was such a good idea. During a break in proceedings, Choco Riley, Dunn's client, leaned over the dock and said quietly to His Honour: "Your wife and children, they're in good health?"

His Honour made no reply.

There was a shooting in another court. Two people died. There were then no mobile phones. Over a hundred members of the Bar waited anxiously in William Street. A cheer went up when the CUB defence team emerged.

His Honour steadfastly proceeded to lead Tommy through his evidence. The other accused then gave evidence too. All were acquitted.

His Honour took silk in 1986 with fellow members of Aickin, Peter Faris and Justice Finkelstein. In the next ten years he appeared in the many major fraud trials that were the legacy of the eras.

In 1997 the poachers' counsel turned gamekeeper and moved down a few floors in 200 Queen Street when he was appointed as the Commonwealth Director of Public Prosecutions. As well as demonstrating his considerable flair for administration, His Honour appeared regularly in the High Court in major cases such as *Dietrich* and *Ridgeway.* He made many submissions to parliamentary inquiries.

His Honour argued vigorously before a Senate estimates committee about the need to pursue criminal sanctions for corporate malpractice.

Tony Hartnell, then head of the Australian Securities Commission, opposed this. Next day the *Financial Review* banner read: "HARTNELL LOSES CRIME BATTLE". In the DPP Annual Report, His Honour wrote: "… a regulatory strategy without a credible threat of prosecution is simply no strategy at all."

The following year, His Honour reported on: "… the production of guidelines which will ensure that there is maximum co-operation between our respective agencies in the investigation and prosecution of corporate crime."

His Honour was responsible for the prosecution of the three War Crimes cases. A relative of Holocaust victims, he showed his Judicial calibre in the *Wagner* case. He reported: "I discontinued his further prosecution when it was established that his health was such that there was an unacceptable risk that he would die in the course of the trial process."

A technophile, His Honour was responsible for the introduction of computer technology for document imaging, exhibit handling and court presentation in complex trials.

His last report as DPP commented on an audit report recommending the contracting out of prosecutions. He wrote "A cornerstone of our great democracy is the criminal justice system. As long as it is able to fairly and justly resolve disputes between the citizen and the State it will retain public confidence in the administration of justice and serve us well. That confidence will only be earned when the process of prosecution is conducted and seen to be conducted in the public interest by an independent prosecutor without fear or favour. We presently have such a system and we should guard it jealously."

Returning to the Bar, His Honour found himself in demand for interstate cases that took him far from his wife Barbara, son Ben and daughter Georgia, both with legal careers.

His Honour chaired the Criminal Bar Association for three years in difficult times. He ensured that its voice was heard when new legislation such as the Criminal Trials Act was being drafted.

His Honour now takes up a new position in our democratic edifice a long way from a ghetto in Poland. Cometh the hour, cometh the man.

Judge Bourke

GIVEN the recent plethora of appointments and retirements, it would take a particularly special appointment to ensure a packed house in the ceremonial court of the County Court at the welcome of yet another judge. And indeed a packed house it was when current and former colleagues, friends, family and admirers of Judge Michael Bourke assembled to welcome him to judicial office. Although the now famous pirouette performed by Judge Gullaci was not repeated by His Honour it was an occasion marked by good will, humour and feeling.

The formal aspects of His Honour's background are that he was born on 26 May 1953. His father, Jack, was a public servant and his mother, Pat, a school librarian. Although his father left school aged 14, he was ranked fourth in the State when he took the public service exam in 1932. Moreover he served as private secretary to Jack Galbally QC when Galbally was government leader in the Upper House.

His Honour was one of five children; his brother Kieran is an engineer, his sister Leonie is raising a family, Lisa is a second-

ary school teacher and Patrick is a solicitor working with Simon English's firm.

His Honour is married to Denise Weybury, a former member of this Bar and currently a senior litigator with the TAC. Possessing a prodigious intellect she once won "Sale of the Century", putting paid to the suggestion that opposites attract. Some of His Honour's more mischievous friends, of whom there are many, have never forgiven Denise for failing to use the spoils of victory to upgrade her husband's wardrobe. In her defence, however, His Honour has always seemed to prefer the "Dave Sullivan look" to that of Don Johnson!

There are two children of their union; Nicholas, a year 12 student at Essendon Grammar, and Georgia in year 9 at Penleigh. His Honour's pride and love for all members of his family was touchingly evident at his welcome.

The Bourke family grew up in the Ashburton/Glen Iris area. In grade 5, His Honour won a scholarship to St Kevin's College, from where he obtained his HSC in 1970. From there he attended the University of Melbourne and eventually obtained his Bachelor of Laws in 1977. Articles were undertaken with McGrath and Colman in 1978 and His Honour was admitted to practice on 1 May 1979. After some time with that firm he then went to Stugnell, Deakin Duncan between 1979 and 1980.

The making of His Honour was obviously the signing of the Bar Roll in 1981, having been in the same Readers' Course as their Honours, Judges Cohen and Hogan. He read with the long-suffering George McGrath whose chambers were reduced to the status of a changing room during His Honour's reading period, due to an almost obsessional commitment to physical fitness, which saw His Honour run from home in Ascot Vale to chambers regularly. Such was the indelible mark which this particular reading period of some three years left on McGrath, that when he was asked to provide some anecdotes on his former reader for the purposes of the welcome, McGrath replied; "Mick who?"

His Honour was an extremely gifted student, especially in Latin. Some unkindly remark that his natural talents were not matched by application. However, his ability to pass Jurisprudence with recourse only to the learned and often cited *Nutshell* publication was testament to His Honour's ability to quickly get to the crux of the matter and dispense with the highly exaggerated importance of lectures and tutorials. Doubtless the University Blacks and Blues for whom His Honour played with distinction in "A" grade appreciated his scholastic perspicacity.

Be that as it may, aided and abetted by his great friend Terry Forrest QC, he initially surprised and delighted his parents by announcing that a study group had been formed at university, which would meet every Sunday afternoon at Judge Forrest's house. Alas he neglected to inform them that the academic endeavours would indeed be carried out in the outer of the Prahran football ground. Worse still, one particular Channel O VFA Match of the Day broadcast depicted crowd scenes of one of His Honour's siblings (who was also a member of the study group) discharging a projectile at umpire Gambetta. The study group disbanded shortly thereafter!

Although His Honour had a general practice in his first years at the Bar, recent years have seen him appearing almost exclusively in the criminal jurisdictions of all courts with the emphasis being on committals and County and Supreme Court trials and pleas. He was a relatively rare breed in that he appeared on both sides of the Bar table for many years. The ability to appear for the battler with gusto and courage one day and the next be briefed by the Crown and display absolute integrity and fairness was probably His Honour's greatest attribute. When one knew one was opposed to His Honour, regardless of which side he was appearing on, one knew that that the battle would be civilised, robust and always even-handed. He used to boast that for some years no accused had been convicted in any trial in which he had appeared. Eventually it was realised that by then he had a huge prosecution practice!

His Honour has had two readers, Michelle Hodgson and Ric Patterson, and has also participated as a mentor in the Victorian Bar Aboriginal Mentor Scheme and has generously given of his time to the Bar Readers' Course in many differing roles. In addition to his commitment to legal aid clients, His Honour's contribution to pro bono work has been extraordinary. He has represented many clients for no fee and was a volunteer at the North Melbourne, Essendon and Fitzroy Legal Services.

Judge Bourke appeared in one of this State's most lengthy and difficult trials, the trial of Beljedev and others, and in his last appearance as counsel had his client discharged of murder at the committal.

His Honour is a very down to earth fellow. Becoming disillusioned with the AFL due to the demise of Fitzroy he has become an avid supporter of the Melbourne Knights soccer team and regularly attends their home games with former secretary of the club, Steve Drazetic. Long queues commonly formed at the clubrooms on match days by patrons wanting to meet a bloke called "Bourkie" for some free legal advice. Naturally he would oblige whenever he could.

His Honour is a devoted family man, an enthusiastic gardener and a bit of a film buff it seems. He has watched "It's a Wonderful Life" in excess of 100 times and has cried every time. He has also been caught by his children shedding numerous tears during "Lassie Comes Home". Such empathy shall surely stand him in good stead for judicial office.

There are no airs and graces about the Bourke family. As mentioned by His Honour at his welcome when his daughter Georgia was once asked what her parents did, she replied, "Dad keeps axe murderers out of gaol and Mum stops paraplegics from receiving money."

His Honour was a fine lawyer and doubtless will be an excellent judge. He is universally regarded as a "good bloke". Since his appointment, less has been seen of him at the Essoign Club; one suspects that that is because in the confines of the Celtic Club less fuss is made of him and that is exactly how he would want it to be.

The entire profession congratulates His Honour on his appointment. We are very fortunate to have a judge with such ability, humour, humility and humanity.

Judge Coish

ON 10 September 2002 the Executive Council announced the appointment of Phillip Coish as a judge of the County Court of Victoria. It was an appointment particularly well received by the profession as the crowded courtroom at His Honour's welcome some six days later demonstrated.

His Honour, the son of an Anglican priest, was educated at Melbourne Grammar School. His tertiary studies began at the University of Melbourne, from which he graduated as a Bachelor of Commerce in 1977. Three years later in 1980 His Honour graduated from Monash University as a Bachelor of Laws. He

served his articles of clerkship under Mr David Cotter of the firm of Lander and Rogers and was admitted to practice on 1 April 1982. Then, on 18 November 1982, His Honour signed the Roll of Counsel and began reading in the chambers of Mr Boris Kayser, whose practice is in the criminal jurisdiction. At his welcome, His Honour expressed his appreciation for the guidance given him by Mr Kayser, particularly in matters of court craft. Those who later became acquainted with His Honour's advocacy skills will attest that the lessons learned by His Honour in his tutelage were well-remembered by him.

After several years of practice in the Magistrates' Courts, His Honour's interests turned to the field of accident compensation in which he quickly developed special expertise. For seventeen years His Honour appeared regularly before the Workers' Compensation Board, its successor, the Accident Compensation Commission and, since 1992, the County Court of Victoria. His appearances, however, were not limited to the tribunals of first instance as His Honour became involved in numerous appeals to the Supreme Court of Victoria and other superior courts in matters concerning, in particular, the far-reaching amendments which were made in 1992 to the Accident Compensation Act. His Honour's industry and legal scholarship earned him a formidable reputation as an appellate advocate over the last decade of his time at the Bar.

Between 1993 and 1995 His Honour undertook post-graduate studies in public and international law on a part-time basis at the University of Melbourne. His Honour's thesis, for which he was awarded the degree of Master of Laws, concerned judicial interpretation and legislative change in relation to the Accident Compensation Act.

Predominantly, His Honour's practice was devoted to the representation of plaintiff workers as his service as Secretary to the Australian Plaintiff Lawyers Association would perhaps imply. In more recent times, however, His Honour was also retained to advise and act for employer interests, which might be seen perhaps as a recognition by those retaining him that they would benefit as much from His Honour's representation as plaintiffs had done before them.

His Honour had two readers, Joe Melilli and Mark Carey, both of whom profited from His Honour's advice and guidance in the same way as the numerous members of counsel who found their way to His Honour's chambers in need of his assistance. It is a tribute to His Honour that, for all the demands that were made on his time, he was yet able to serve as Secretary to the Accident Compensation Bar Association for many years. In addition, His Honour, as an accredited mediator, conducted and participated in numerous mediations over the past eight to ten years.

His Honour is the devoted father of two children, Georgina and Tom, for whose care be became solely responsible some five years ago. It is a measure of His Honour's love and affection for them that he was able to commit himself selflessly to their welfare and happiness whilst at the same time managing a busy professional practice. Since his marriage to Dr Cathy Bastion on 22 September last year, His Honour has doubtless enjoyed some welcome assistance in that regard.

Away from the Bar, His Honour's principal sporting interest is cycling. Although, when pressed, he speaks with beguiling modesty of his accomplishments as a cyclist, it is a sport about which he is known to be passionate and at which he has demonstrated considerable ability. Notably, he has had success in several gruelling cycling events around Port Phillip Bay and in rural Victoria in the past and he continues to participate in such events annually, as well as engaging in regular weekend cycling sessions with a number of similarly-minded devotees.

As a supporter of the Collingwood Football Club His Honour has accepted his team's misfortunes with the same forbearance and resignation that exemplifies his response to life's adversities generally and in particular to those which have more or less recently attended practice as a barrister in the accident compensation jurisdiction.

His Honour is nothing if not compassionate. He is a kind, gentle and patient man whose calm and reflective demeanour disguises a joyful and often irreverent sense of humour. His capacity for clarity of thought and expression and his abiding sense of fairness, combined with the attributes already mentioned, fit him superbly for the challenges of his new office.

The Bar congratulates His Honour on his appointment and wishes him a long, successful and happy judicial career.

Judge Gaynor

HER Honour first came to the notice of the nation when she featured in a documentary that centred around the life of a barrister. To see her leaning over the bath which had one of her children in it, bidding the child goodbye was one thing. To be made aware it was 8.00 am, and Liz was going to deliver a final address in a major criminal trial later that morning was another. To see Liz, with hair going in all directions, slightly frazzled and a cigarette dangling from her lips whilst she bid the infant farewell summed her up.

To those who have known Liz for some time there is a trait within her that has been continuous. She has always displayed her concern of others (whether family, friends or ordinary citizens), albeit

sometimes with an apparent haphazard manner, that vein in her is her reason for being.

Liz was born into a family that can best be described as a traditional Catholic, 1950s unit. Her father, Bernie, ran the firm Rennick & Gaynor. He was a person who stood up and was heard as to his beliefs and principles. He did so regardless of what others may have said or thought.

The Gaynor household was seldom dull. Liz is the eldest of 12 children and the evening sit-down meal for the 14 Gaynors and the usual blow-ins was akin to the production line at a car assembly plant. One need only contemplate the number of middle loin chops and potatoes required to have some idea of the operation. Many Gaynors share Liz's outward and vociferous nature. The political debates were vigorous and loud.

Liz matriculated from Loretto Mandeville Hall when she was 16, with exceptional marks. During her school life she had also excelled in sport and debating. Her move to Melbourne University and St Mary's College saw Liz spread her wings. Meeting fellow students from rural Victoria saw Liz become familiar with establishments such as The Clyde and Naughtons.

As is her personality, Liz took on these new pursuits with great enthusiasm. She would be seen at University College balls on the shoulders of a burly male swinging her arms in the air in harmony with Dion and "Run Around Sue".

Her academic life saw her take a real interest in the law of contract. Liz enjoyed the subject so much that she enrolled in the subject three times. Up until the time Liz graduated from Melbourne University her life had been a relatively sheltered one, by way of whom she met and mixed with. She completed her articles at her father's firm, but her stay as a solicitor was a short one.

The last 20 years of her life have been somewhat broader! Liz worked for Australian Associated Press as a journalist. In that employment she reported on the Costigan Royal Commission into the Painters and Dockers Union. She also spent time in Canberra as a parliamentary reporter.

In 1985 Liz signed the Bar Roll. A member of her intake was someone who did not fit the persona she had grown accustomed to at school and university. However, the union grew and bonded and Liz married her fellow Bar inductee, John Smallwood. Their marriage has been a truly joyous one. Liz has so successfully combined the daunting roles of being a wife, mother and barrister.

Liz has the rare gift of being at home when talking to anyone from anywhere. Such location could be in a judge's chambers or the Supreme Court cells. It could be with someone old or young, perpetrator or victim. Within a short time anyone who meets her has confidence in her. There is no veneer to her make-up, she is solid brick (it could perhaps be said bluestone).

In the recent past Liz has faced personal health challenges. Again, she confronted them with great optimism and acceptance of the situation, but with real fight as well.

Her Welcome was attended by many. Those who made up the numbers reflected the impact Liz has had upon those who have been fortunate enough to have met her and call her a friend. People who met her at school, university, Bench, Bar and dock attended.

Her Honour's intelligence, common sense and common touch will see her regarded as a truly learned judge and a valued contributor to our community.

County Court

Judge Hassett

JUDGE John Hassett has retired from the Bench after 18 years of selfless service to the community as a County Court judge.

Originally hailing from central Victoria, he attended first Marist Brothers College in Bendigo, then Assumption at Kilmore. His capacity for hard work became evident early, when he came to Melbourne after completing his leaving certificate and worked full-time whilst studying matriculation at night. He completed the course in a year.

John then worked as a law clerk, first in the State Law Department, then with Frank and Jack Galbally. He then completed the articled clerks' course at RMIT — incidentally, the last such class — whilst serving articles at the firm of Gair and Brahe. Admitted to practice in 1967, he rapidly rose to the status of a partner in that firm.

Later John started his own firm, in partnership first with Joan Walter, and later, Ian Munro.

It is a notorious highlight of his time as a solicitor that he acted for Ronald Biggs at the time Biggs was discovered living and working in Melbourne, and continued to take instructions whilst his client managed to successfully elude capture.

In 1971, he was called to the Bar, and read with the late Neil McPhee. As a young barrister, John Hasset enjoyed both civil and criminal law, including a strong circuit practice at Warrnambool. But it was the field of criminal law which most excited him and in which he excelled.

His Honour had two readers, both distinguished lawyers. His reputation as a lawyer, and his highly tuned social conscience, no doubt caused them to serve their tutelage in his chambers.

One of them, Frank Brennan, is a Jesuit priest and son of the current High Court Chief Justice. Frank's work in the areas of law, Aborigines and social justice is well-known. The other was Bob Williams, who currently holds the Sir John Barry chair at Monash University, and was formerly dean of the Monash Faculty of Law. Bob's expertise in the fields both of criminal law and the law of evidence was doubtlessly honed back in Hassett's chambers.

In February of 1979, John Hassett was appointed a prosecutor-for-the-Queen. In the early eighties, he co-wrote *Heath and Hassett — Indictable Offences in Victoria* at the request of the then DPP, now Victorian Chief Justice, John H. Phillips. Justice Mark Weinberg, then dean of the Melbourne University Law School, described the book as "the best $15 worth imaginable for anyone interested in the practice of criminal law".

Meanwhile, in 1978, the Criminal Bar Association of Victoria was formed. His Honour was one of its founders and prime movers. It was the first specialist barristers' association set up anywhere in Australia. Whilst these days, the commercial bar, family law, town planning and common law bar associations, inter alia, are well accepted, the Criminal Bar Association of Victoria commenced in the days when the Bar Council was seriously concerned as to such an organization's potential to undermine the authority of the Bar's governing body. It was largely due to the calm efforts of people like Hassett that the utility and purpose of a large group of specialist criminal barristers (over 100 at the inaugural meeting, and 300 members within a few years) combining into a loose-knit, well-run association came eventually to be accepted and embraced by the Bar.

John was the initial treasurer, and soon became vice-president, then acted for several years as secretary, first under inaugural chairman Michael Kelly QC (now Judge Kelly), then John Phillips QC (now Chief Justice) and Frank Vincent QC (now Justice of Appeal). He was a remarkably energetic, thorough, and effective secretary.

One of his major contributions to criminal barristers was to co-write in 1979, with Lovitt QC, the report which introduced the first scale of criminal fees across the board for barristers — from Magistrates' Court appearances to murder trials and High Court appeals.

The 78-page report was described by Lovitt as "originating from a micro-cassette of disorganized, Pethedine-influenced, rantings — dictated by me from a hospital bed, after an old-style cartilege operation — which Hassett then turned into a work of art". Hassett then helped push it through the Bar Council, Law Institute, and the various legal aid bodies that in those days preceded the Victorian Legal Aid Commission, set up in 1980. The scale thus introduced was then reviewed from time-to-time, until the Commission unilaterally abandoned the review system 10 years later. But the scale remained. Most of its components still form the basis of the manner of calculating fees. Although many now express discontent with the current level of fees in legal aid matters, the principles which still guide the calculation of fees arose from that body of work back in 1979.

Hassett worked enthusiastically and smoothly under the various styles of the first three CBA chairmen. When he was appointed a permanent prosecutor-for-the-Queen, he remained secretary, underlining the principles under which the CBA was formed, namely that it represented both defence and prosecution barristers.

He went on to serve on the Bar Council (1974–77), and was involved in many of its committees, including the Law Reform Committee and Bar Rules Committee.

Possessed of an impish sense of humour, a devout Monty Python fan, he

specializes in self-deprecating humour. As a prosecutor, perhaps his most famous trial was the Roger Wilson murder trial, when Mark Clarkson, Christopher Dale Flannery (later to be christened in NSW as "Rentakil"), and "Weary" Williams were tried for the apparent murder of Wilson, a former member of the Victorian Bar. The lack of a body, and the disappearance and probable murder of a key witness, were difficulties that Hassett and his junior, Lex Lasry, faced. When the three accused, represented by Cummins QC, Phillips QC and Walker QC, were acquitted, a disillusioned Hassett still found the ability to crack a joke, as usual, against himself. "Since I became a prosecutor, I have managed to get far more accused off than I did whilst a defence barrister."

In 1984, John Hassett became His Honour, Judge Hassett. No judge was more prepared to work for as long as it took to get it right. No judge took his role more seriously. Yet he was prepared to go out on a limb if he thought his interpretation and application of the law was correct. As he said, "If I'm wrong, that's what the Court of Appeal is there for." But he was rarely wrong. Hard work, intellect, and a dedicated approach to his job saw to that.

All thinking trial lawyers, civil or criminal, defence or prosecution, plaintiff or defendant, would readily acknowledge that from Judge Hassett they invariably received a trial conducted in a sensitive, efficient, scrupulously fair manner.

And in the task of sentencing in criminal matters, no one agonized more over the immensely difficult task of gathering together all the competing influences, legal and factual, then giving each of them the appropriate weight, in order to achieve a just result.

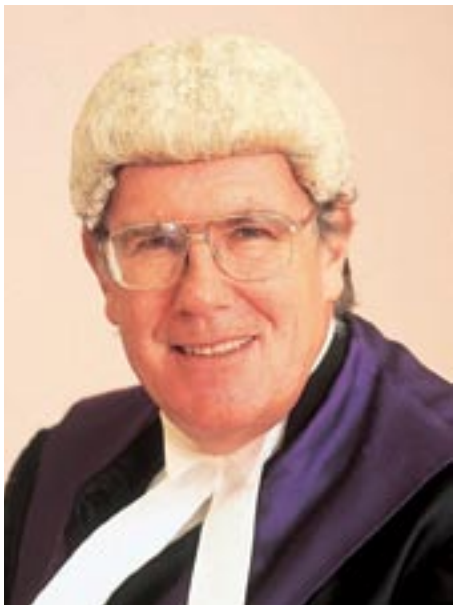
His Honour, with his careful, intense approach to the work of a judge, and his regard for the stature and reputation of his court, was a natural in the area of court administration. Indeed he has become one of the true heroes in the saga of the new County Court building.

From 1985, His Honour worked through countless different proposals for a new County Court complex. In his speech at the ceremonial opening of the highly praised new Court building, His Honour Chief Judge Waldron paid tribute to Judge Hassett's work — from the development of the concept, its eventual acceptance by government, the architectural, planning, and building phases, right through to the very day it opened.

Now, no doubt he will continue his life-long commitment to the Catholic Church; to enjoy a more leisurely life with devoted wife, Val, and his two daughters and their children; to work on spoiling many a good walk (on the golf course) with people like his recently retired brother judge and great friend, David Jones; and to fearlessly, and with the obligatory blind optimism, follow his beloved Collingwood Football Club. As to the order of the aforesaid pursuits, well that is up to John Hassett and the others involved!

The Bar wishes him a long and happy retirement. He has certainly earned it.

Judge Jones



THE retirement of Judge David Jones is time to reflect on His Honour's remarkable contribution to the law in many diverse areas which, it is hoped, will not be entirely lost in retirement. His Honour was one of Jim Jones' three sons, who was a career public servant and for many years a former Deputy Registrar of the Workers Compensation Board whose contact with the judges at the Workers Compensation Board first sparked Judge Jones' interest in becoming a lawyer. His brother Peter is also at the Bar.

Educated at Christian Brothers College, East Melbourne, His Honour graduated from the University of Melbourne with a Bachelor of Laws and commenced articles with Ellison Hewison & Whitehead in 1963, which was then a small law firm. His admission was moved by Hazeldene Ball and His Honour's early practice was in personal injuries litigation. His Honour's ability was recognised by the award of the Law Institute's Solicitors Prize in 1967, and admission to the partnership of Ellison Hewison & Whitehead in 1967. His Honour's ability, hard work and respect of his clients was instrumental in transforming Ellison Hewison & Whitehead from a small family firm to the very large firm that it is today.

Appointed a member of the Law Institute Council in 1967 he became president of the Law Institute in 1977/78 and was involved in the time of great change and was a driving force behind compulsory professional and indemnity insurance, the young lawyers' section, the regulation of solicitors' investment companies as well as the locum employment service and establishment of the management advisory service. His Honour was also heavily involved in setting up the Legal Aid Commission and was the first chairman of the Legal Aid Commission from February until July of 1980.

His Honour's capacity for hard work, thoroughness and diligence involved him in a large range of work from personal injuries litigation through to regular appearances at the Broadcasting Control Board. His Honour resigned from the partnership of Ellison Hewison & Whitehead to become chairman of the Australian Broadcasting Tribunal for a period of five and a half years in 1980. His Honour's chairmanship of the Australian Broadcasting Tribunal was at a time of upheaval and controversy in the media. His Honour was required to determine whether or not applicants were of good character, such as Alan Bond (who wasn't) and Kerry Packer (who was). He was required to stand up to and find against Rupert Murdoch who, whilst respecting His Honour's integrity and thoroughness still managed to have the legislation changed after His Honour's decision. It was a mark of Rupert Murdoch's respect of Judge Jones that he invited His Honour's whole family to the 1984 Olympic Games, all expenses paid. It was an even greater mark of His Honour's integrity to refuse the kind offer.

Integrity, hard work and thoroughness have characterised His Honour's judicial career. As a result, controversies have been remarkably few. Upon his appoint-

ment to the Bench there was controversy and even some criticism from the Bar Council as His Honour was the first solicitor to ever be appointed to a Court Bench in Victoria. Although not having practiced extensively in criminal law as a solicitor, His Honour worked hard to ensure that all criminal trials were conducted efficiently, courteously and with justice done to all sides. Indeed, many experienced members of the profession have suggested that Judge Jones' conduct of criminal trials should be filmed as a model to all.

Whilst a member of the County Court, His Honour was involved in the introduction of technology to the County Court transforming it to the most technicologically advanced court in Australia. Some of the efficiencies driven by His Honour — the pilot project for court reporting which has led to all courts being equipped with video technology, together with the County Court case listing and case management system in criminal matters — have led to an early resolution of many contested criminal matters, and the technology in use at the new County Court complex is largely as a result of His Honour's hard work. In the civil jurisdiction His Honour assisted Judge Keon-Cohen to go through the backlog of the civil damages list, which in 1996 were some ten thousand cases, to significantly reduce the backlog of cases, by calling at least fifty cases a day, until the job was complete.

His Honour was also appointed to the Accident Compensation Tribunal and was president for a brief term. In 1998/99 His Honour was president of the Administrative Appeals Tribunal and remained the deputy president until 1996. His Honour has now been appointed to the Adult Parole Board and has an appointment at the Monash University which His Honour hopes to pursue in retirement together with his favourite sport, golf. An accomplished sportsman as cricketer, footballer and tennis player, His Honour also had a strong interest in motor racing and horse racing. His Honour has been a member of a number of boards and committees including the Corpus Christie Hospice and the Mercy Hospice. He has a close-knit family, married for nearly forty years to his wife, Jacquie, whom he met whilst working during the university vacation on a wheat silo, and has four children, Angela, Dominic, Catherine and Elizabeth.

His Honour was also awarded a Medal of the Order of Australia in 1987 for his services to the law.

His Honour's enormous contribution to the County Court and the law will be missed as he has virtually done the work of two judges in his time upon the Court. His strong commitment to public service by being appointed a judge when he could have taken a far more financially lucrative role in various media organisations upon his retirement from the Broadcasting Authority and his commitment to hard work, in particular, his ability to prove his critics wrong by his actions, together with his strong compassion, evident in criminal cases, will be missed by the Court and the Law.

The Bar wishes His Honour well in retirement.

The Bar Care Scheme

AT its meeting on 24 October 2002, th Bar Council resolved to establish the Bar Care Scheme, a counseling-service for members of the Bar and their immediate family. The establishment of the scheme is recognition that the health and well-being of a member can be adversely affected by the pressures of professional and personal life and that the Victorian Bar has a role to play in ensuring that assistance is available to members who require it.

The objective of the scheme is to enable members to immediately access a counselling service which will assist the member with emotional and stress-related pressures arising from family or marital problems, multiple life stressors, drug or alcohol dependency, and practice pressures. A vital feature of the scheme is that full confidentiality will apply to the identity of those who use it.

The scheme is available to any member of the Bar and their immediate family. The cost of the initial consultation and referral will be met by the Bar Council.

The Cairnmillar Institute ("the Institute") will be the initial referral point for the Bar Care scheme. The Institute is well regarded for the quality of its services and is experienced in delivering the services required for this scheme. Its consultants are trained in psychology, medicine or social work and have specialist training in counselling and psychotherapy. The Institute will provide initial counselling and will refer clients to other specialist service providers where necessary. Inquiries to the Institute during business hours will be attended to immediately by the managing consultant and within one or two hours outside business hours. Appointments will be made within 24 hours of the initial contact.

A member who wishes to access the scheme should contact the Institute on 9813 3400 and advise that they require assistance in accordance with the Victorian Bar's Bar Care Scheme. The Institute is located at 993 Burke Road, Camberwell, 3124.

During the course of the initial consultation the counsellor will provide assistance and will determine what follow-up services or treatments are needed. The counsellor may then arrange for subsequent consultations or referrals to other service providers. The cost of any subsequent consultations by the Institute or another service provider will be the responsibility of the member and may be reimbursable from government or private health insurance schemes.

In order to monitor the usage and operations of the scheme, the Institute will provide periodic reports to the Bar Council. Those reports will be confined to usage statistics and operational issues and will not in any way or at any stage identify those who use the scheme.

The scheme is now in operation. General enquiries regarding the scheme may be directed to the Executive Director of the Bar, David Bremner, on 9225 7990 or the Executive Officer, Anna Whitney, on 9225 7927. Requests for assistance should be made directly to the Institute.

Justice Flatman

GEOFF Flatman died on 18 September 2002 and was buried from Immaculate Conception Church, Hawthorn, on 24 September 2002.

The funeral service was attended by about 1000 people. Eulogies were delivered by his spiritual adviser and tennis partner Phil Hughes, his two sons Sam and Tom, his friend and pupil Claire Quin, his supporter and associate Bronwyn Hammond, and the Honourable Mr Justice John Harber Phillips, Chief Justice of the Supreme Court.

The eulogies made clear the breadth of interests and influence which Geoff had. Although his two central interests had been his family and the law, he was active in many other areas, and was liked and admired by everyone who had anything to do with him.

He had been a judge of the Supreme Court for just over a year when he died. For almost the whole of that period he had suffered greatly from the cancer which was to take his life. Despite that, he sat on a number of cases. He liked it. He was good at it. Those latter two propositions came as no surprise to those close to him.

His wide influence was a direct result of a varied background. He was born in Mortlake; he was educated there and at Merbein, Mildura and Wesley College. He had lived in Mortlake, Merbein and Wangaratta. The details of his education are set out more comprehensively in the Welcome to him published on his appointment to the Supreme Court (*Bar News*, Spring 2001).

When His Honour was at the Bar between 1971 and 1994 he practised mainly in criminal law and largely for accused persons. It was in that context that his sense of fairness became finely honed. His attitude to life and the law is reflected in part in the fact that he took on eight readers, all of whom are grateful for the experience of reading in his chambers.

When at the Bar he had also conducted a number of prosecutions in the Supreme and County Courts, and his appointment as Chief Crown Prosecutor in 1994 and then Director of Public Prosecutions in 1995 were warmly welcomed by the profession.

After the resignation of Bernard Bongiorno QC (now Justice Bongiorno of the Supreme Court) there had been some controversy surrounding the position of Director. At the time of his appointment both the Office and Geoff personally were the subject of detailed scrutiny. Geoff survived all the scrutiny and ensured that the office of Director continued to be held in high esteem.

He occupied the position with passion on the one hand — to get things right — and with equanimity on the other — to make all those around him comfortable. It was no accident that he kept a low public profile; any day he or the Office did not appear in the media was a good day.

The work he did behind the scenes was something else. He supported the prosecutors and Office of Public Prosecutions to the full. He was always concerned to ensure that there were sufficient resources to see the job done properly. He took up the cause of victims of crime; he tried to give them a say in the process and he met many of them. He often spoke to community groups. He did not give up being a barrister and continued to appear in important cases in the Court of Appeal and High Court. In particular, he took on the issues arising out of child sex cases and propensity evidence. He was a fierce advocate for those causes he believed in.

He had a deep interest in the law and was author or co-author of a number of learned articles. Several of the articles have been referred to favourably in the High Court and Full Federal Court. In 2001 he was appointed Adjunct Professor in the Faculty of Business and Law at Deakin University.

Away from the law his life centred around his family, his wife Margaret and sons Sam and Tom. He was very proud of them and they of him. He loved overseas travel and had travelled with his family on a number of occasions, but he was equally content to spend time with them at Lakes Entrance. He had a great interest in food and wine, subjects which he took very seriously. He was a devotee of the opera, or at least he used to go to the opera. His true hobby and relaxation was tennis. He played a number of times a week when he could. For many years he captained a team first as Wesley Old Collegians and later as Grace Park. His tennis partners and his friends Nuncio La Rosa and Mirko Bagaric were his pall bearers.

The constant themes of those who spoke at the funeral were those of love and friendship. It is simply true to say that Geoff never did anybody a bad turn. He was open, honest and faithful. He will be greatly missed and the Supreme Court, the profession and the community have lost the opportunity to have his service on the Court for many years. The loss to his family is immeasurable.

> Still in thy right hand carry gentle peace,
> To silence envious tongues be just and fear not.

John Birrell

JOHN was educated at Melbourne Grammar and Melbourne University. He had a good school career, being a bright student, and at university he showed all the attributes of a typical mid 1960s law student — erratic attendance at lectures, last-minute depositing of assignments, early morning preparation for exams and the requisite long stints in the Union café and at Naughtons or Poyntons Hotels.

He enjoyed life to the full at these times. He was not a gifted sportsman, but he was always involved. He loved the team environment for the best reasons. He loved his Demons, and one remembers well visits to the "G" where he would rail highbrow abuse upon opposition teams and the umpires.

After university, he set himself up as a specialist solicitor in shipping law. In his mid forties he joined the Bar. He was quick to develop the airs and graces required of a barrister in Owen Dixon Chambers. His solicitor colleagues after the usual plea for briefs suggested that nobody in their right mind was going to brief a 45-year-old solicitor with "L" plates on. He persevered and established his general practice with an emphasis on shipping law.

John had a brilliant wit (if sometimes barbed). He was always good company. Fortunately, the lung cancer from which he died was of short duration. He faced the pain of his condition with great courage whilst retaining his sense of humour. I remember suggesting to John that he would be cynical enough to have a smoke during chemotherapy. With a grin he replied, "That's a good idea — I used to have one in the shower."

John died aged 57 and is survived by his devoted and loyal partner, Wendy.

Eric Hewitt

ERIC Edgar Hewitt QC was born on 2 November 1917. He died on October 2002 after a long life devoted to the law. During his 84 years, Eric Hewitt was barrister, judge, law reporter, author and scholar.

When World War II broke out, he was a part-time law student at Melbourne University. He joined the Royal Australian Navy and served (inter alia) in the Pacific. On his discharge late in 1945 he resumed full-time studies at the University of Melbourne and completed his degree in 1947. As a returned serviceman he was required to serve only nine months articles.

He was admitted on 2 August 1948 and immediately came to the Bar, reading with Noel ("Snowy") Burbank. Five months later the next reader, young Charles Francis, moved in. Three was a crowd in Burbank's chambers, even though these chambers were amongst the most palatial in Selbourne Chambers.

Eric was crowded out of his master's room by the entry of Charles Francis, and Allen Brenton allowed him to share his very large room in Selbourne Chambers, which was high up in the "loft" or the "attic", and which he also shared with Ted Hill.

Eric had a great respect for Ted Hill, despite the difference in their political views. He said of Ted Hill: "Ted Hill was a highly successful and honourable barrister who did not allow his political views to influence his ethics at the Bar. He was honourably regarded by the profession, by both judges and practitioners."

From 1950 until 1963 Eric was a law reporter for the Victorian Law Reports. In his book *Memoirs of a Barrister and Judge*, he refutes the theory that only "briefless barristers" write law reports by inserting the title page to the 1959 Victorian Reports, which shows Kevin Anderson as the editor and the reporters as Eric Hewitt, Stan Hogg, Leo Lazarus, John Fogarty, Daryl Dawson and Jim Gobbo.

Eric took silk in 1963 almost immediately after suffering a subarachnoid haemorrhage in his chambers which deprived him of speech and rendered his left side paralysed. The attack occurred while he was talking to Noel Bergere on the phone and he, to use his own words, was rescued from his chambers by "Noel and Robert Brooking".

In 1964, only months after taking Silk, he was appointed as a judge of the County Court and also, as was the custom in those times, a judge of the Court of Mines and chairman of general sessions.

It is hard for a barrister of today to imagine the Bar to which young Eric Hewitt was admitted. In 1964, when he was appointed to the Bench, there were only 260 barristers at the Victorian Bar. When he was appointed to the Bench the Supreme Court building was home both to the Supreme Court and the County Court. The latter also sat at the Hawthorn Court of Petty Sessions and the RSL Hall in Hawthorn.

Eric Hewitt was the author of three books: *Administration and Probate* published in 1963; *Judges Through The Years* published in 1984, being a chronology of the judges of the County Court from 1852 to 1984; and a book of reminiscences published in 1996, entitled *Memoirs of a Barrister and Judge*. He was also the editor for Butterworths of the reprint of Early Victorian Reports.

In October 1988 His Honour suffered a stroke, once again being rendered speechless and paralysed down the left side. But once again he battled adversity and was back on the Bench by 18 September 1989. He retired some six weeks later at the age of statutory senility.

Eric Hewitt was a man of firm ideas and strength of character. Twice he suffered afflictions which would have stopped a less strong-minded person. Some of his ideas on crime and punishment as revealed by his sentences were then considered "old-fashioned"; but they now reflect what is becoming the "new fashion".

He was a man of rigid principle, who saw it as his duty not to get too close to his clients. He believed this would affect his objectivity, and considered that that objectivity could be maintained only if the solicitor were used as a full-scale "buffer". He was also a very private man, of whom it is difficult to find boisterous anecdotes.

He was always sartorially immaculate, in striped trousers with a rose in his lapel and a loud but elegant bow tie — as flamboyant, in his more conservative way, as the more famous of his readers, Bob Vernon of the leather coat.

His departure is a loss to his friends and his family — and to the Bar, the membership of which he was so proud.

Ceremonial Sitting to Mark th County Court of Victoria

Chief Judge Waldron.

Monday 18 November 2002

Speech by Jack Rush QC Chairman, Bar Council

MAY it please the Court.

The Victorian Bar is proud and delighted to be part of this ceremonial sitting to mark and celebrate 150 years of outstanding service by this Court in the administration of justice throughout the State of Victoria. The Court has, over the course of one-and-a-half centuries, earned and maintained the confidence and trust of Victorians.

The Court has distinguished antecedents. Its predecessor in its civil jurisdiction was the Court of Requests, presided over, at one point, by Mr Redmond Barry, then of counsel, and later Sir Redmond Barry of the Supreme Court, Chancellor of Melbourne University, and founder of the State Library of Victoria.

For 150 years, the judges of this Court have decided cases across a wide spectrum of law and practice. The early judges held joint appointments as judges of the County Court; as chairmen of the Court of General Sessions; as judges of the Court of Mines; and as judges of the Court of Insolvency. Since 1928, the Court has had jurisdiction over the adoption of children. Judges of this Court have also served as chairman or president of the Workers Compensation Board, the Liquor Control Commission, the Industrial Appeals Court, the Administrative Appeals Tribunal, the Police Service Board, and the Youth Parole Board. Her Honour Judge Jennifer Coate of this Court was appointed the first President of the Children's Court of Victoria. She serves concurrently in that capacity, and as a judge of this Court.

For 150 years, the judges and staff of this Court have gone out to every part of this State, providing access to justice for all

e Sesquicentenary of the

Jack Rush QC.

Victorians. In 1864, long before the speed and convenience of motorized transportation, the six judges of the County Court sat in 64 places out of Melbourne. Judges then as now were required to be away from home for lengthy periods in service of the community. As an example, in 1862, His Honour Judge Quinlan, whose family lived in St Kilda, was assigned to thirteen regions of Victoria from Echuca to Kerang.

For over a century from its establishment in 1852, the Court sat as regional courts of civil jurisdiction. In 1957, those regional courts became the single County Court of Victoria. The judges and staff still travel on circuit to Bairnsdale, Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Morwell, Sale, Shepparton, Wangaratta, Warrnambool, and Wodonga — circuits lasting four to five weeks at a time.

In 1968, effective 1969, the Court of General Sessions was abolished, and its jurisdiction vested in the County Court so that, from then on, the County Court as such has exercised both civil and criminal jurisdiction.

For many years, there were six judges, then nine judges. The huge growth in the Court has, however, been in the last 30 or so years, since the 1969 move to the old County Court building across the road. In the 30 or so years since 1969, the number of judges has nearly trebled from 21 judges to 58 judges. Moreover, several retired judges sit as reserve judges, an additional six reserve judges.

Also in that 30 or so years since the 1969 move, the general civil jurisdictional limit has increased fifty-fold, from $4000 to $200,000. The jurisdictional limit in personal injuries cases has increased from $8000 in road accident cases, to unlimited jurisdiction in all personal injuries cases. The 1986 amendments widened the general jurisdiction, and invested the Court with the power to grant full equitable relief in cases within its jurisdiction. There has also been an increase in the length and complexity, as well as in the

In the 30 or so years since 1969, the number of judges has nearly trebled from 21 judges to 58 judges. Moreover, several retired judges sit as reserve judges.

The ceremonial sitting.

volume, of criminal trials in the County Court. Many longer, and more serious and complex, criminal trials came to be heard in this Court.

I think it is fair to say that life and work of a judge on this Court is far more demanding than that previously required, even if we go back only 20 years. Under Your Honour's leadership as Chief Judge for the last twenty years, the judges and staff of this Court have risen to meet the challenges of this huge increase in both the volume and complexity of the Court's work.

There has been a revolution in case management. His Honour Judge Keon-Cohen headed the civil initiative. His Honour Judge Jones worked with Judge Keon-Cohen on the civil initiative, and then headed the team that developed the criminal case list management system. In the civil damages list alone, there was an accumulation of some 10,000 cases, some going back 25 years. In both civil and criminal cases, the Court took, and now takes, an active role in case management and conferencing.

This Court is now a world leader in the use of computer and video technology. No other court in the world has the level of technology that this Court already has in this magnificent new complex, and that it is continuing to develop.

This complex is a symbol of the passionate determination and commitment of this generation of judges and staff of this Court — under the leadership of Your Honour. It reflects the combined efforts of the Court, the government, and private industry. The most recent part of this Court's proud 150-year heritage, it is a foundation for the Court's future in the new millennium.

The change to the court building has been matched by numerous recent appointments to this Bench. Indeed, in recent years, we have seen a generational change. Yet from the profession's perspective that change has been seamless. We have no doubt that is due to a great camaraderie within the Court. As the Court celebrates 150 years, we believe that cohesiveness and spirit to be one of its great strengths.

The contribution of this Court to the Supreme Court should not be overlooked. Since Sir Esler Barber's elevation in 1965, a total of ten judges of this Court have been appointed to the Supreme Court, including the first woman appointed to that court, Justice Rosemary Balmford, in 1996, and, most recently just a few weeks ago, Justice Katherine Williams.

Michael Rozenes QC (Chief Judge elect), Judge Frank Walsh and Chief Judge Waldron.

No other court in the world has the level of technology that this Court already has in this magnificent new complex, and that it is continuing to develop.

In this month of November, just a week after Remembrance Day, I would like to recall the outstanding record of military service in the two world wars of the judges of this Court. Five judges saw active service in World War I, Judge Macindoe being invalided home from Gallipoli. In World War II, the judges of this Court served in every branch of the armed forces, and in every theatre of war: 15 in the army, eight in the navy or naval reserve, and nine in the air force, several as pilots. His Honour Judge Vickery was awarded a war-time military MBE, the Military Cross, and was mentioned in dispatches. After the war, His Honour rose to the rank of Major General.

I previously mentioned the work of the Court. The judges of this Court have always borne a heavy workload of cases. Early records show that, in 1901, the six judges of this Court presided over 572 trials. By mid-century, the nine judges heard 1576 trials. And by the end of the last century, the judges sitting in Melbourne alone heard 2900 trials — an average over the last century of about 100 trials per annum per judge.

Over and above their judicial work load, the judges have authored leading texts on legal practice, including Judge Vickery's *Motor & Traffic Law*, a later edition by Judge Ostrowski; Judge O'Driscoll on licensing law; Judge Rendit on worker's compensation; Judge Fricke on trusts and on compulsory acquisition; Judge Hassett on indictable offences; Judge Neesham on County Court practice; Judge Jenkins on VCAT Domestic Building Legislation; and Judge Mullaly's looseleafs *The Victorian Trial Manual* and *The Victorian Sentencing Manual*, with which other judges also assisted, each now in its second edition. Earlier judges wrote texts on mining law, employers' liability, the Transfer of Land Act, bankruptcy and, of course, County Court practice.

This Court could not function without its staff. The judges of the County Court have been loyally served over many years by a dedicated and hard-working staff. The conditions have not always matched what is available in this new building. Yet in the city and in the country, over many years, the administration of this Court has been outstanding. I include in that the generous assistance that has been given by the administrative staff to the members of the Victorian Bar.

For over 150 years this Court has seen great characters, humorous moments, and legends created. Your Honours will be pleased to know that I have been advised that those matters belong in a less formal speech. What the Victorian Bar would place on the record today is that this Court has done its job – that the Court has served the State of Victoria well — that its record is outstanding. It can be said without fear of over-statement that the foundations for another 150 years have been well and truly laid.

May it please the Court.

Speech by David Faram, President, Law Institute

May it please the court.

I am very pleased and honoured to represent the Law Institute and the solicitors of this State at this ceremonial sitting to celebrate the Court's 150 years of service to the community.

There has been a gradual growth in the Court from a single judge in 1852; to six judges in the early 1900s; to 11 judges by the 1950s; to 21 judges in 1969 when the old County Court building was opened; to 58 judges today.

In recent times, the Court has been characterised by two significant developments — innovation in case management and the embracing of new technology.

Both have only come about because of Your Honour's leadership as Chief Judge, along with other the skills and dedication of other judges of this Court who have lead the way with the implementation of these changes.

The history of the County Court provides us with a telling insight into the law and social values of our past. It is a court that continues to reflect todays social values and mores — despite the often shallow observations and criticisms of the popular media.

As we have heard, the judges of the County Court were spread across Victoria administering justice fairly and impartially.

Some of the stories about these courts provide real historical milestones.

Heavy sentences, I am reliably informed, were the hallmark of County Court Judge Cazimir Woinarski. Regarded as courteous and dignified, Judge Woinarski was nevertheless merciless when it came to dealing with those who appeared before him.

In 1919, two youths who had robbed the Melbourne Zoo appeared before him. Though one was a first offender, he sentenced both to five years jail and a flogging of 15 strokes.

One of his mannerisms was to tug his beard when passing sentence, each tug being said to represent 12 months of the sentence.

On one occasion, he punctuated his mannerism with three tugs, saying: "and so I sentence you to three years . . ."

At which the prisoner burst into a tirade of abuse from the dock.

Woinarski gave his beard a final tug and concluded: "and nine months."

In 1862, Judge John George Forbes presided over the County Court at Maldon. Judge Forbes was famed for the speed with which he despatched business, pacing the Bench with hands thrust deep into his trouser pockets.

In quick succession, he dealt with a claim for an engineer's fees, a suit on a promissory note written in German, and an action to recover calls due to a mining company where the defendant had signed the deed in blank and did not know how many shares he held.

In an action for the loss of a rented horse, the judge ruled that the horse was vicious and had broken its reins and bolted through no fault of the defendant.

When Thomas Taylor was caught with six unregistered dogs, the case was dismissed on condition that he destroy five of them immediately and register the sixth. Thus truly presenting a "Sophie's choice" for the dog-loving defendant.

According to Michael Challinger's *Historic Court Houses of Victoria*, Wodonga rated a County Court which came on circuit each quarter to hear civil claims. One suit in 1876 was over a sovereign paid as entrance money for the horse "Blue Tail Fly" in the Albury Maiden Plate; another was a refund of 7 pounds stud fees after two mares proved not to be in foal.

It is because of stories like these, that the County Court of Victoria holds such a fascination. It was created by statute in 1852, shortly after Victoria became a colony.

David Faram, President of the Law Institute.

Judge Crossley, Judge Nicholson and Chief Justice Nicholson of the Family Court.

Gavin Silbert, Judge Jones, Judge Gaynor, Colin Hillman SC and Simon Cooper.

Depending on the quantum of the claim, a County Court judge sat alone or with a jury and could hear civil claims up to 50 pounds.

By 1880, a County Court was sitting in 63 towns. When a town was granted a County Court, its court house was either upgraded or a new one built.

Rented premises were not thought consistent with the dignity of a County Court.

About half the towns with County Courts also held Courts of General Sessions of the Peace. These were the criminal counterpart to County Courts and judges presided over them with one or more local justices.

Sitting with juries, they heard most indictable charges. Excluded were murder, arson and rape. Courts of general sessions were abolished in 1968 when both the civil and criminal jurisdictions were vested in the Court as we know it today.

The Court has a long and proud circuit tradition — something that continues to this day. It remains a vital part of any country town's annual calendar and provides a valuable service by providing country residents with appropriate access to justice.

Circuit towns have hosted their share of judges who have assumed cult status in the locale. A number have been great characters as well as eminemt jurists. George Crampton Leech was appointed a County Court judge in 1874. Judge Leech, who settled in Castlemaine, developed — late in life — a taste for theology and became a lecturer in mystic subjects.

Judge Michael Francis Macoboy was held up by a highwayman. And was subsequently immortalised in the song "The Wild Colonial Boy".

There was Judge Samuel Henry Bindon, whose son Henry, appearing in his first Supreme Court trial, unsuccessfully defended Ned Kelly. This was not a good case for the defence, and Kelly was, of course, convicted and hanged.

The first of the Winneke family of judges was Judge Henry Christian Winneke, father of Sir Henry Winneke, a former Chief Justice and grandfather of His Honour, Justice John Winneke, the president of the Court of Appeal.

Judge Quinlan came from Ireland, originally to work at the goldfields at Dunolly, and later completed his law course at the University of Melbourne.

He also founded a weekly newspaper, and stood twice, unsuccessfully, for parliament. As a judge, he wrote a County Court practice book, believed to be the first in Victoria. In 1882, he was offered an appointment as a judge. Three others had already refused, saying the pay was too low and that without a pension the position was not worth having.

There was also Judge Joseph Henry Dunne, who was born in Dublin and was appointed in 1872. The judge was known for his fondness for the drink and died suddenly in Fitzroy.

Judge Francis Mulvany was a keen golfer by all reports. He was president of the National Gallery Society and at one of its meetings, he suddenly collapsed and died in 1964 — while still in office as a judge.

As you know, as president of the Law Institute, I take great pleasure in taking part in the welcomes and farewells for this Court.

I make mention of this because a judge of this Court, Severin Howard Zichy Woinarski — whose father was Judge Cazimir Woinarski, whom, I referred to earlier — apparently went to great pains to keep secret the fact that he was leaving the Bench in 1969.

A week before he stepped down, a young barrister said at the conclusion of a case. "Your Honour, this will be the last time I shall be appearing before you." The judge replied, "What! Are you leaving the Bar?"

My learned friend, Mr Rush, has referred to the fact that 16 of the 58 judges of this court are women.

Judge Lynne Schiftan was the first woman was appointed as a judge to a Victorian court. In more recent times, it has been my pleasure to attend other welcomes for leading women barristers appointed to this Court, including Her Honour, Judge Gaynor.

As we have heard, there has been a revolution in this court with its new building. The demonstrated leadership and the collegial atmosphere that permeates these walls have put this Court in the position it is today.

When compared to similar administrations in other States and even overseas, this court is well ahead of the field.

The Court stands as a monument in our legal history and in a period of generational change, I am sure it will continue that proud heritage.

The Law Institute is honoured to participate in this important event.

May it please the Court.

Hadden Storey QC, Alan Cornell and Judge Davey.

Honourable Richard McGarvie, Mrs McGarvie and Justice Hansen.

Rob Hulls A-G and Jim Kennan SC.

Paul Elliott QC, Lorraine Hamilton and Judge McInerney.

Judge Nixon, James Nixon and Ross Ray QC.

Robes and Rehabilitation:

How Judges Can Help Offenders "Make Good"

Professor David B. Wexler, Lyons Professor of Laws, Professor of Psychology at the University of Arizona, and Director, International Network on Therapeutic Jurisprudence, at the University of Puerto Rico, gave the following lecture at the Leo Cussen Institute on 20 November 2002, sponsored by the Law Foundation of Victoria. The professor was introduced by His Honour Chief Justice Phillips.

Professor David Wexler.

JUST over a year ago, *Court Review* devoted a special issue to the topic of therapeutic jurisprudence (often called, simply, TJ). Judge William Schma, a leading judicial voice in therapeutic jurisprudence, introduced the issue in an essay titled "Judging for the New Millennium". Judge Schma noted that "it is important for judges to practice TJ because—like it or not—the law does have therapeutic and anti-therapeutic consequences". In other words, judges are increasingly recognizing that the choice is indeed either to be part of the solution or, instead, to in essence be part of the problem — of "revolving door" justice and the like.

In fact, in August 2000, the Conference of Chief Justices and the Conference of State Court Administrators, in a joint resolution, endorsed the notion of problem-solving courts and calendars that utilize the principles of therapeutic jurisprudence. The resolution noted that well-functioning drug treatment courts represent the best practice of these principles.

Regarding therapeutic jurisprudence specifically, the resolution states:

> There are principles and methods founded in therapeutic jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multi-disciplinary involvement, and collaboration with community based and government organizations. These principles and methods are now being employed in these newly arising courts and calendars, and they advance the application of [other policy initiatives, such as] the trial court performance standards and the public trust and confidence initiative.

Problem-solving courts — such as drug treatment courts, mental health courts, and domestic violence courts — may be the most obvious examples of "therapeutic jurisprudence in action," but it is crucial to recognize the potential application of therapeutic jurisprudence generally—in civil cases, appellate cases, family law cases, and, of course, in criminal and juvenile cases. The importance of the therapeutic jurisprudence perspective beyond the specialized problem-solving court context was underscored by a "vision statement" recently agreed to by the District Court for Clark County, Washington.

CRIMINAL LAW CONTEXT

In the criminal law context, the challenge for therapeutic jurisprudence is multifaceted, and includes a concern not only for defendants, but also for others drawn into the process, such as victims and jurors. The remainder of this essay, however, will focus on defendants and on the opportunity for courts to contribute to offender rehabilitation and reform.

Of course, judicial opportunity will be enhanced — but is by no means dependent upon — the presence of a group of lawyers practising therapeutic jurisprudence. Such a Bar is indeed emerging.

Dallas lawyer John McShane, for example, has a substantial criminal law practice that "focuses solely on rehabilitation and mitigation of punishment". McShane is in private practice, and he can pick and choose his clients. He chooses only those who agree to use the crisis occasioned by the criminal case as an opportunity to turn their lives around.

McShane seeks to defer disposition so as to allow the client an opportunity for rehabilitation. The hope, of course, is that the court will be impressed by, and take into account, such post-offence rehabilitation efforts and gains.

A packet of mitigating information is assembled and eventually submitted to the prosecutor in an effort at plea bargaining, or, failing that, to the court at sentencing. The packet consists of items such as: "AA Meeting Attendance Logs, urinanalysis lab reports, reports of evaluating and treating mental health professionals, and letters of support from various people in the community, such as AA sponsors, employers, co-workers, clergy, family, and friends."

This may be illustrative of the role of an excellent TJ defence attorney, but what about the role of the judge? Apart from the important legal niceties such as the possibility of deferred sentencing and the possibility of mitigating the sentence for acceptance of responsibility and for post-offence rehabilitation, what guidance can therapeutic jurisprudence give to judges interested in furthering offender rehabilitation?

Some of the most exciting therapeutic jurisprudence work involves the crafting of creative proposals for importing promising behavioral science developments — such as important research on rehabilitation — into the legal system and into the day-to-day work of lawyers and judges. Such work also offers an excellent opportunity for partnership between academia and the judiciary.

In other work, which I will only briefly summarize here, I have explored how judges might use some basic principles to increase offender compliance with conditions of release. Relatedly, I have explored how courts could encourage defendants to engage in relapse prevention planning.

COMPLIANCE

The compliance project was inspired by a book titled *Facilitating Treatment Adherence: A Practitioner's Guidebook*. The book itself has nothing to do with law; it is addressed to healthcare professionals and deals with improving patient adherence to medical advice. But many of its principles seem readily transferable to a legal setting. Some of the principles are completely commonsensical, such as speaking in simple terms. Patients sometimes may not comply with medical advice because they never really quite get the message.

Other principles are somewhat less obvious. For instance, when patients sign "behavioural contracts" — agreeing to follow certain medical protocols, for example — they are apparently more likely to comply with medical advice than if such a contract is not entered into. If patients make some sort of public commitment to comply, to persons above and beyond the healthcare provider, their compliance is likely to increase.

Relatedly, if family members are aware of a patient's promise, the patient is again more likely to adhere to the agreed-upon conditions.

Consider how these compliance principles might operate in a legal context. If a judge is considering a petition for the conditional release of an insanity-acquitted offender, or if, at a sentencing hearing, a judge is deciding whether to grant probation, the court could conceptualize the conditional release not simply as a judicial order but as a type of behavioural contract.

In addition, the hearing can serve as a forum in which an insanity acquittee or criminal defendant can make a public commitment to comply. Compliance should also be enhanced by the presence at the hearing of agreed-upon family members.

There is much more to this, of course, and the interested reader can consult the more detailed work. Let us now turn to the related material on relapse prevention planning principles.

RELAPSE PREVENTION

As with the compliance project, my interest in importing relapse prevention planning into the legal arena was triggered by a particular book, this time James McGuire's anthology titled *What Works: Reducing Reoffending*. The gist of McGuire's book is that certain rehabilitation techniques, known as the "cognitive behavioral" variety, seem particularly promising.

These programs are premised on the fact that offenders often act rather impulsively. Accordingly, the programs are geared to teaching offenders certain problem-solving skills: to understand the chain of events that often leads to criminality, to anticipate high-risk situations, and to learn to stop and think so as to avoid high-risk situations or to adequately cope with such situations should they arise.

Once offenders develop such an understanding, they may prepare relapse prevention plans. For example, "I realize that

Professor Kathy Laster; Professor David Wexler; The Hon. Justice J.H. Phillips AC and Elizabeth Loftus, Executive Director Leo Cussen Institute.

If patients make some sort of public commitment to comply, to persons above and beyond the health care provider, their compliance is likely to increase. Relatedly, if family members are aware of a patient's promise, the patient is again more likely to adhere to the agreed-upon conditions.

I am at highest risk for criminal behavior when I party with Joe on Friday nights. I will therefore stay home and rent a video on Friday nights."

An interesting therapeutic jurisprudence inquiry is to explore how courts can encourage this "cognitive/behavioural" rehabilitative effort as part of the legal process itself. My suggestion — again, developed more fully elsewhere — is for the court to place some real responsibility on the defendant (with the assistance of counsel and others) to think through his or her situation and vulnerabilities.

Thus, a judge about to consider a defendant for probation might say, "I'm going to consider you but I want you to come up with a type of preliminary plan that we will use as a basis of discussion. I want you to figure out why I should grant you probation and why I should feel comfortable that you're going to succeed. In order for me to feel comfortable, I need to know what you regard to be high-risk situations and how you're going to avoid them or cope with them without messing up. And, speaking of messing up, I want you to tell me what happened that led you to mess up last time, and why you think the situation is different this time around."

Under such an approach, a court would be promoting cognitive self-change as part and parcel of the sentencing process itself. The process might operate this way: "I realize I mess up on Friday nights, and from now on I will stay home on Fridays."

Note that this condition is not the product of judicial fiat. Instead, the defendant has thought through a serious high-risk situation and has in essence come up with his or her own condition of probation. The offender is thus likely to regard the condition as fair and, linking back to our earlier discussion, is probably more likely to comply with it than if it had simply been externally imposed by the court.

According to the "what works" research, cognitive self-change programs seem promising, but, of course, they do not work for everyone. If an offender is committed to continued offending, for example, even substantial exposure to a program of problem-solving skills is simply not going to lead to desistance.

On the other hand, if an offender has a self-concept of being a basically good person who often finds himself in a jam, or in the wrong place at the wrong time, or mixing with the wrong crowd, such a person may well decide he wants to straighten out and take control of his life. For such a person, a cognitive skills development program may well help change his course.

Chief Justice Phillips,

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DESISTANCE

Who decides to change course, and *how* and *why*, seem to be questions locked away in what Shadd Maruna calls the "black box" of the "what works" literature. Maruna's book, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*, published in 2001 by the American Psychological Association, is, like *Facilitating Treatment Adherence* and *What Works*, a meaty work chock full of therapeutic jurisprudential implications.

In the remainder of this essay, I would like to explore how Maruna's findings might be relevant to judges — how, with these insights, judges might help offenders "make good".

Briefly, in his "Liverpool Desistance Study", Maruna interviewed both "persistent" offenders and those who, after a steady diet of criminal behavior, eventually become "desisters".

His objective was to use a "narrative" approach — consistent with the notion of "narrative therapy" — to see how the two offender types described made sense of their lives.

Desisting persons must in some way accept conventional society and conventional society must in turn accept them. Thus, their conversion "may remain suspect to significant others, and most importantly to themselves."

Maruna's principal contribution, of course, relates to the desisters. These ex-convicts need to develop a "coherent, prosocial identity", and need an explanation for "how their checkered past could have led to their new, reformed identities". Presumably, these explanatory narratives are not merely a result of desistance behavior, but should also be understood as "factors that help to sustain desistance".

Maruna notes that there is much drifting and zigzagging in and out of criminal activity. Accordingly, desistance is best seen as a "maintenance process", rather than as a specific event.

Generally, a desister's narrative establishes that the narrator's "real self" is basically good; that the narrator became a victim of society who turned to crime and drugs to cope with a bleak environment; that the narrator then became trapped in a vicious cycle of repeated criminal activity and imprisonment; that someone in conventional society believed in and recognized the potential of the narrator, thereby allowing him or her to make good.

But "reformation is not something that is visible or objective in the sense it can be 'proven'", It is a construct that is interactional in nature: desisting persons must in some way accept conventional society, and conventional society must in turn accept them. Thus, their conversion "may remain suspect to significant others, and most importantly to themselves".

Accordingly, the desisting interviewees in Maruna's study "seemed almost obsessed with establishing the authenticity of their reform". During the interviews, many provided supporting documents — letters from college teachers and from parole officers, copies of offence records showing the date of last conviction. Others urged the investigator to speak with family members, girlfriends, or to the manager or receptionist of a drug treatment clinic.

Not surprisingly, "while the testimony of any conventional other will do, the best certification of reform involves a public or official endorsement from media outlets, community leaders, and members of the social control establishment". In his final chapter, Maruna undertakes an exercise that is essentially a therapeutic jurisprudential one: he speaks of instituting and institutionalizing redemption rituals. These include graduation ceremonies

Professor David Wexler at the podium.

upon successful completion of correctional programs, re-entry courts "empowered not only to re-imprison each felon but also to officially recognize their efforts toward reform", and "rebiographing" clean ex-offenders through officially recognized record expungement procedures.

HOW COURTS CAN HELP

Two judicially related proposals mentioned by Maruna — graduation ceremonies and re-entry courts — are matters of considerable current interest.

In drug treatment courts, for example, applause is common, and, in some courts, even judicial hugs are by no means a rare occurrence. In Judge Judy Mitchell-Davis's Chicago courtroom, "upon successful completion of a drug court sentence, the offenders invite their friends and family to a graduation ceremony in the courthouse". Some of the graduates make speeches, and all receive a "diploma" from the court. In some such courts, "participants have asked that their arresting officer be present at their graduation".

These lessons from drug treatment courts can be extended, of course, to other specialized treatment courts and to ordinary juvenile and criminal cases. Judicial praise, family and friend attendance, and graduation ceremonies can all occur, for example, at the successful completion of — or early termination of — a period of probation imposed in a "routine" criminal case.

Such a ceremony would acknowledge a former offender's progress and, taking a page from Maruna, may, at the same time, itself contribute to the maintenance of desisting behavior. The strong suggestion that these ceremonies are themselves therapeutic, and are therefore not merely "ceremonial", might readily justify their widespread use. Relatedly, if they seem themselves to contribute to reduced recidivism, that crucially important societal benefit could easily justify their time-consuming nature.

Besides graduation ceremonies, Maruna endorses the notion of re-entry courts "empowered not only to reimprison each felon but also to officially recognize their efforts toward reform".

The apparent success of drug treatment courts, based on a team approach and ongoing judge–defendant interaction, has led to proposals for importing the model to the prisoner re-entry process.

Re-entry courts could tap many principles of therapeutic jurisprudence, and could serve a very important function. The problem, however, is that, at least in the United States, "in most jurisdictions, the authority for re-entry issues is not within the judicial branch".

Nonetheless, the function Maruna would like to see served — official recognition of efforts toward reform — can be performed by courts in at least some contexts. For example, unlike adult criminal courts, juvenile courts do typically retain a post-dispositional review authority, and such courts can in effect serve a major re-entry function.

The main lesson, of course, is that review hearings — for juveniles, for probationers, for conditionally released insanity acquittees — need not only be meaningful if one is to be "violated" and there is a real threat of revocation. Such hearings can and should also be meaningful — and not just routine and perfunctory — when all is going well. In many legal settings, courts have the discretion to set review hearings at intervals shorter than those mandated by law. Judges should consider taking such action even when they are not especially worried about an offender's compliance, for such a hearing could indeed recognize and applaud an offender's efforts and itself contribute to the maintenance of desistance.

Recall that desistance is best thought of as a "maintenance process". And recall that desisters — especially at the early stages of desistance — desperately need outside validation to convince themselves of their conversion.

The judge, of course, is the perfect prestigious person to confer public and official validation on the offender and the offender's reform efforts. Ideally, at a deferred sentencing hearing or at an "all is going well" review hearing, the judge also can comment favourably upon the sorts of matters that Maruna found to be so important to desisting offenders: impressive meeting attendance logs, for example, and letters from or the occasional live testimony of members of conventional society such as a college teacher, probation or parole officer, mother, girlfriend, manager or receptionist at the drug clinic, and the like.

When all goes well, of course, it is relatively easy for the judge to constitute the respected member of conventional society willing to "believe in" the defendant and to see the defendant's "real me" — the diamond in the rough. But all does not always go well. Review hearings will often be rather "mixed", and sometimes they will require revocation.

One guiding value, for example, is that "individuals are not condemned to a life of crime or despair by mental condition or substance abuse and that everyone can achieve a fulfilling and responsible life." Another is the belief that "everyone, no matter whom, has something positive within their make up that can be built upon."

Sentencing hearings will not invariably lead to probationary dispositions. Often, judicial discretion regarding disposition will be severely circumscribed.

Even in these far from favourable situations, the court can play a highly important — albeit a more long-range — role in potential offender reform. Consider the "vision statement" of the District Court of Clark County, Washington. That vision specifically embraces the use of principles of therapeutic jurisprudence to "make a positive change in the lives of people who come before the court".

Some of the vision statement's "guiding values" relate remarkably well to Maruna's findings regarding desister narratives.

One guiding value, for example, is that "individuals are not condemned to a life of

crime or despair by mental condition or substance abuse and that everyone can achieve a fulfilling and responsible life". Another is the belief that "everyone, no matter whom, has something positive within their make up that can be built upon".

A judge committed to this vision will not regard these guiding values as mere fluff. Such a judge, for example, is unlikely to tell a woman that she is simply "no good as a mother". And, even when imposing a severe sentence, such a judge is not going to say, "You are a menace and a danger to society. Society should be protected from the likes of you."

Instead, especially in light of Maruna's findings, a judge committed to the vision statement should search for and comment on whatever favourable features might eventually be woven together by the offender to constitute the "real me" or the "diamond in the rough". Sometimes, such a favourable feature might mitigate the sentence. If the judge takes the pains to emphasize it as a real quality — not simply as a mechanical mitigating factor — it may eventually constitute a meaningful component of the offender's self-identify. Such a judge might say something like this:

> You and your friends were involved in some pretty serious business here, and I am going to impose a sentence that reflects just how serious it is. I want to add one thing, however. There's been some testimony here about how you showed some real concern for the victim. I'm going to take that into consideration in your case. You know, according to some of the letters that were submitted, it looks like that sensitive nature is something you displayed way back in grade school. Nowadays, it seems to peek out only now and then. But if I could peel away a few layers, I'll bet I could get a glimpse of a pretty caring person way down there. In any case, under the law in this state, I'm able to reduce your sentence by a year for what you did when that caring quality came peeking out last March.

Sometimes, a search for and discovery of a favourable feature or quality may not influence the disposition at all, but it may nonetheless plant a helpful seed, like this:

> I don't really know what went wrong here. I do know you committed a robbery and someone was hurt. And I know that it is only right that I impose a sentence of such-and-such. What I don't understand is why this all happened. You are obviously very intelligent and were always a good student. Your former wife says that, until a few years ago, you were a very good, caring, and responsible father. You obviously have a real talent for woodworking, but it's been years since you spent time on a real woodworking project. Beneath all this, I see a good person who has gotten on the wrong path. I hope you'll think about this and change that path.
>
> With your intelligence, personality, and talent, I think you can do it if you decide you really want to.

A judge committed to the vision statement should search for and comment on whatever favorable features might eventually be woven together by the offender to constitute the "real me" or the "diamond in the rough.

CONCLUSION

Even if the sentence imposed is unaffected, following this process is likely to be worth the judicial effort. Maruna notes that both narrative development and desistance each constitute ongoing processes. In rewriting the narratives of their lives, desisting offenders often look to instances in their pasts when their "real" selves shone and when respected members of conventional society recognized their talents and good qualities.

Thus, even in instances where desistance seems not to have occurred, judges can use principles of therapeutic jurisprudence in the hope that their judicial behavior may constitute the building blocks of eventual reform and rehabilitation. This sort of judging may therefore have both short-term and long-term benefits. Ultimately, the benefits may be for offenders, and, in turn, for society as a whole.

And let's not forget the benefits to the judges, whose sense of professional satisfaction may soar. Who would not feel immense satisfaction receiving letters, as Chicago drug treatment court Judge Judy Mitchell-Davis (dubbed "Judge Judy" by defendants) often does, like this one?:

> Judge Judy, I just want to thank you for being the loving and caring woman that you are. You've really helped make a positive change in my life. I believe I'm going to make it. It feels so amazing to control my own thoughts and feelings. I feel so good about myself for the first time.

The New Essoign Club: Developing the Plan

LITTLE did the members of the Essoign Club Development Committee (ECDC)* realise what they were letting themselves into in March this year. The Bar Council's brief was disarmingly simple — turn the Essoign Club into a contemporary, vibrant, welcoming and profitable venue, one which would appeal to and be used by the whole Bar, young and old, male and female. Simple? The "new Essoign", to be refurbished and relocated, was to herald a new standard of service, an eclectic menu with innovative cuisine, a variety of different yet complementary areas and a special place where the Bar, the judiciary and guests could relax, recharge, network or just hang out. Simple? Sure …

Initially, the brief involved reporting to the Bar Council on whether or not there should continue to be an exclusive venue for barristers. The answer was a resounding "yes". It was considered important that members and their guests could relax and communicate uninhibited by the presence of clients, litigants and the public. Could the new Essoign be profitable and pay rent, unlike the present Club? The answer was a confident "yes" — so long as it became a place which served the needs of all counsel, including but not limited to the relatively small and homogeneous group which predominates at the present Club.

As at 31 March 2002 there were 1422 barristers in active practice. In February 2002, the present Essoign Club had 630 members (44.3 per cent of the Bar), but very few were younger or female members of the Bar. Indeed, only 23 per cent of Essoign Club members were less than 45 years of age (compared with 40 per cent

*The ECDC comprises Tony Howard QC (chair), Philip Dunn QC, Michael Colbran QC, Paul Santamaria, Sara Hinchey, and David Bremner, with food and catering consultant Sharyn May of Bibra & May.

Architects' perspective drawing.

of the practising list who were under 45 years). Of the 630 Club members, 87 per cent or 548 were male (representing 43 per cent of male barristers at the Bar) and only 13 per cent or 81 were female (representing 26 per cent of women barristers at the Bar). More pertinently, only a very small percentage of Club members actually used its facilities on a regular basis. Anecdotal evidence (reported by the Bar's consultants Bibra & May) suggested that approximately 15 per cent (94) of Club members used the Club one or more times a week with approximately 40 per cent to 45 per cent (252–283) using it one or more times per month. Given this disproportionate, unrepresentative picture, the Bar Council agreed that all members of the Bar should, in effect, automatically become members of the new Essoign,

without fee or for a nominal subscription only, by renewing membership at the same time as they complete their annual subscription for membership of the Bar. (There will be an opt out provision for conscientious objectors!) In this way the maximum patronage could be encouraged and expected.

One of the earliest tasks set for the ECDC was the drafting of a design brief. This was done in consultation with the architects Spowers. Like the old story of the accountants who if laid end to end would never reach a conclusion, there were differences of opinion — sometimes strong views were expressed. However, a consensus approach was called for. After all, this was an exercise for the whole Bar. Typically, the argument might come down to the choice of a single armchair, one of perhaps fifteen presented by the architects for consideration. One or two of the ECDC may have been lukewarm. Others — who may have taken more time to try the chair out — decided it was just the thing. The chair was in.

The next decision was whether the club ought to be relocated within Owen Dixon Chambers, and if so, where. The William Street frontage, from level one, looking through the trees to the Supreme Court, looked too good to ignore. In a stroke of inspired brilliance (or luck?),

both the Bar Council and BCL agreed that this premier site within the refurbished building was the most appropriate place to locate the new Essoign — "position, position, position". Not only is the outlook beautiful, light and airy, but also you can enter directly from William Street (beside the Commonwealth Bank) — a fact perceived to be an advantage by those who find waiting for lifts tiresome.

The ECDC was then charged with setting in place a plan for the refurbishment which would encourage maximum usage by members of the Bar, especially junior and women barristers. This task was assisted by a further important decision of the Bar Council and BCL — to relocate the Readers' Course and CLE facilities to the first floor, along with the Bar Library and the Bar Council chamber and chairman's room. The networking opportunities for the junior Bar were obvious. So too was the general interaction at all levels of the Bar that would occur throughout the day into the early evening.

Both the Bar Council and BCL agreed that this premier site within the refurbished building was the most appropriate place to locate the new Essoign — "position, position, position". Not only is the outlook beautiful, light and airy, but also you can enter directly from William Street.

To make the most of the hunger and thirst that would be evident with this captive audience, the ECDC determined that unlike its predecessor, the new Essoign ought to be open for breakfast and continue to serve food in its café and lounge areas throughout the day. It is anticipated that the readers will adopt this venue as their own and, being familiar and comfortable with it, continue to use the facilities throughout their careers at the Bar. From early evening, it is envisaged that the café and lounge will be transformed into an attractive and friendly bar facility, for those looking for a drink at the end of a long day — in the Bar's bar. Friday evening jazz is an option being considered.

Without doubt, the interior layout and design of the new Essoign has provided a great challenge. The space will be light and airy. There will be an informal, bustling café style/lounge area which

The Nuts and Bolts

Following on from the upgrade to the ground floor, works are proceeding on the first floor as the first stage of the upgrade to the balance of the building. The works include the total removal of asbestos, the upgrade of all building services, the inclusion of adequate fire protection, upgrades to the lifts and lift lobbies, new interiors and a new facade. Upon completion the building will comply with current regulations in accordance with the Building Code of Australia.

THE first floor will accommodate the Bar Council meeting rooms, the Readers' Centre including new lecture rooms, moot courts and video review rooms, the Bar Library and will be the home for the new Essoign. The whole of the floor is designed to incorporate maximum flexibility in use. New and larger toilet facilities have been provided.

The entrance to the Essoign will be directly from the lift lobby into the café area. Members will therefore be able to enter the Essoign and purchase food or refreshments and then proceed to the bar for alcoholic refreshments if they wish.

The Essoign has been designed with a completely new look. The design brief was to provide a range of options for guests by adopting an inner city cultural model with a café/lounge area on one side and a more traditional bistro style facility on the other.

The café/lounge area will consist of two separate sections — a café and a lounge. The café will have a combination of four-seater tables and two twelve-seater tables. It will be serviced by a self-service food servery which forms part of the bar. It will have a timber floor and decorative treatments to the ceiling which will enhance the lightness and informality of the area. The chairs in the café (and the bistro) will be upholstered in a comfortable macrosuede fabric, some in a stone colour and others in raisin. The café will seat 68 people.

The lounge area will use a combination of banquette and individual seating with low tables to create a relaxed environment. The seats will be tub chairs upholstered in the same fabric as used on the chairs in the café and bistro areas. The lounge will accommodate 24 people.

The bistro area will contain a variety of seating combinations ranging from two- to ten-seater tables to create a more formal dining facility with all tables being napped. The area will seat 129 people. The southern wall will feature a combination of banquette and individual seats. The floor will be carpeted and decorative ceiling features will again be utilised.

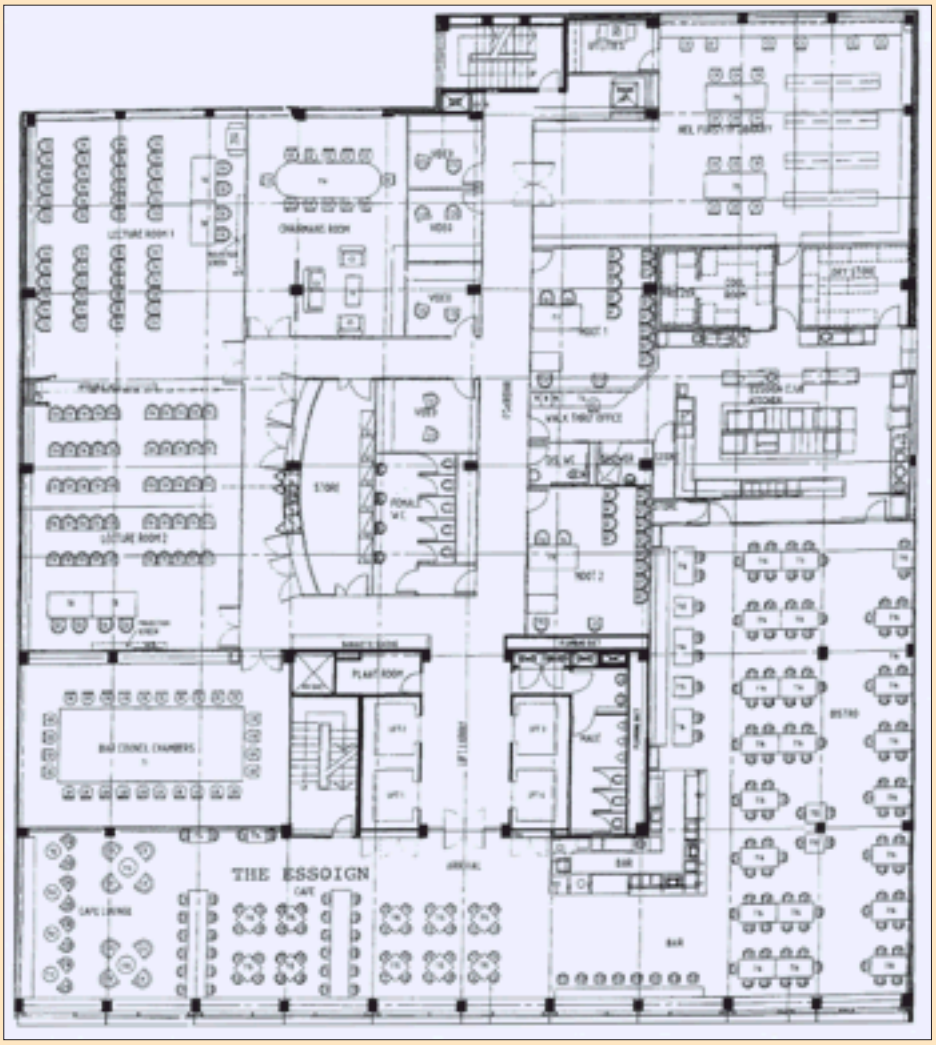
The bar is centrally located and designed with a glazed upstand and limestone face. Recessed lighting to the bar will enhance its finishes. Bar stools will be provided at a bench on the east wall in front of windows facing the Supreme Court.

The detail of the floor finishes and ceiling treatments has been carefully considered to ensure the appropriate ambience and atmosphere in each area. Materials such as carpet to the more formal areas, timber flooring to the café area and a limestone wall treatment have been used as highlights.

The furniture has been carefully selected to meet the demands of the respective areas and has been well researched by the Essoign Club Development Committee for flexibility and appropriateness.

will cater to a hopefully ever-changing, diverse clientele who are needing a quick and/or light, healthy lunch. The design will emphasise a comfortable and welcoming space, and a contemporary, fresh and timeless feel. Long tables will be retained to cater for large groups who wish to meet for lunch or a coffee. Smaller tables will also be available, as will individual bar and lounge seating, looking out over the Supreme Court. The lounge area will be furnished to encourage lingering and quieter interaction, or some time out with a local or international newspaper or perhaps a moment of individual reflection as to the true qualities of the trial judge!

The dining area or bistro will be a quieter, more formal and sophisticated place. It will cater for those wanting table service and a more leisurely lunch in attractive surroundings. Innovative food will be offered from an a là carte menu. The excellent wine quality and variety, which has been a mark of the old venue, will be maintained and enhanced in the new Essoign. In addition, a dedicated wine waiter will be available to assist in match-



Left: Floor plan of the new Essoign.

A new, state-of-the-art kitchen has been provided to cater for the normal daily needs of the Essoign as well as for larger functions when the need arises. The refrigerated areas, dry storage facilities and cooking equipment have been designed by catering equipment specialists to enable a wider range and greater volume of meals to be produced. The kitchen facilities will also cope with the extended hours of the Essoign ranging from breakfast, light snacks throughout the day, the midday meal and light refreshments during the evening.

The Essoign's location on the floor has been selected to take advantage of the William Street vista overlooking the Supreme Court.

Access to the new venue will be improved. The lift system in East is being upgraded over the course of the year. The stairs to the first floor from the William Street concourse near the Commonwealth Bank entrance and from the western end of the ground floor of East are also being upgraded. The western (rear) stairwell will be particularly convenient to members coming from Owen Dixon Chambers West and other nearby chambers.

ing menu choices with one of the many wines which will be on offer. Those with a need to hurry back to court will be able to order from a "fast track" menu.

A new "trolley" service is being proposed. This service will allow barristers to place a lunch order from the café menu prior to going to Court in the morning. The order will be delivered to that barrister's chambers, prior to 1 pm, in order to allow busy counsel the freedom to eat in chambers, with or without clients, thus avoiding the need to waste time standing in queues at lunchtime. Initially, this service will be offered to those with chambers in Owen Dixon Chambers East and West. The service may later be expanded due to popular demand.

The new Essoign will continue to offer its facilities as an attractive and unique function space to members of the Victorian Bar and judiciary. The carefully designed layout of the new Essoign will ensure that functions can be accommodated for groups as small as 10 or 20 (who, for instance, may dine in the Bar Library) and as large as 120 up to 175 (depending of the desired configuration). Bar Council dinners and cocktail parties, List functions and counsel's private and special occasions — bar mitzvahs, 21st birthdays, weddings and anniversaries, etc. — will all be catered for.

The appointment of a skilled, personable manager is considered a crucial ingredient to the future success of the new Essoign. The Bar Council and Essoign Club are delighted to announce that they have retained the services of Nicholas Kalogeropoulos, a very experienced, well-regarded, professional manager to run the new operation. Nicholas will work very hard to make the new Essoign the social hub of the Victorian Bar.

The Bar Council is presently establishing a standing committee to supervise the operations and running of the new Essoign and to ensure that it fits with the requirements of the Bar as a whole, as well as meeting the objectives set by the Bar Council and the directors of the new Essoign entity. This committee will comprise members of the Bar Council, the ECDC and the directors of the new Essoign entity. So as to ensure that all sectors of the Bar are well represented in this important task, representatives from the Women Barristers' Association, the jurisdictional associations and the junior Bar will also be part of the standing committee.

Already counsel should have noticed the presentation boards around chambers setting out the plans and finishes for the new Essoign. All members of the Bar are invited to contact any member of the ECDC to make constructive comments and suggestions about this important new phase in the development of the Bar. Links within all the courts have been established so that the judiciary can make appropriate suggestions and be encouraged to make the greatest use of the new venue.

On present estimates, March 2003 will see the opening of the new Essoign — in time for the March 2003 Readers' intake. The opening of the new Essoign will be marked with a party which all members of the Bar and Bench will want to attend. The occasion will give the Bar a fitting opportunity to welcome the Essoign's new style and location and to farewell the old Club in grand style.

As for the ECDC, it will continue to grapple with the big and small issues: publicity; on-going information for the Bar and licensing matters; such questions as the constitutional change required for the Bar Council to ultimately take over the management of the new entity; and how to provide for the most efficient methods of stock control, service, reporting of operations, achieving budget, membership categories, signing-in facilities and staff uniforms. But most importantly, the ECDC will continue the exciting and challenging task of ensuring the new Essoign meets the expectations and vision of the Victorian Bar as it embraces the 21st century.

CHIEF JUSTICE'S CHAMBERS
SUPREME COURT
MELBOURNE, 3000

Opening of the Legal Year:
Monday 3 February 2003

The services for the Opening of the Legal Year are as follows:

St Paul's Cathedral
Cnr Swanston and Flinders Streets
Melbourne at 9.30 am

East Melbourne Synagogue
488 Albert Street
East Melbourne at 9.30 am

St Patrick's Cathedral
Albert Street
East Melbourne at 9.00 am
(Red Mass)

St Eustathios Cathedral
221 Dorcas Street
South Melbourne at 9.30 am

I hope that many of you will find time to celebrate this event with your colleagues. Family and friends are also most welcome.

Members of the judiciary, Queen's and Senior Counsel and the Bar are invited to robe for the procession in the various robing rooms in good time for the start of the procession, in which all members of the profession are invited to join. Marshals will be present at the services to indicate the order of the procession.

Yours sincerely

John Harber Phillips
Chief Justice

Recent Activities of Bar's Legal Assistance Committee

The Victorian Bar Legal Assistance Scheme is now well into its third successful year of being administered by the Public Interest Law Clearing House ("PILCH"). In September this year volunteers were called for concerning the pro bono schemes in which the Bar participates. Responses from the Bar have been most positive and encouraging.

THE number of barristers who have volunteered to offer pro-bono legal assistance are as follows:

- Federal Court Order 80 scheme: 331
- Federal Magistrates' Court Part 12 scheme: 145
- Public Interest Law Clearing House (PILCH) scheme: 395
- Victorian Bar Legal Assistance scheme: 397

Some barristers have committed to more than one scheme and it may be that the total number is more than 397. On any view, this is a highly commendable level of participation from a Bar of about 1400 members in active practice. The Bar can feel justly proud of this important community service. Please accept our thanks on behalf of the Bar Council.

PILCH — A ONE-STOP SHOP

Recently PILCH has commenced to operate the LIV's pro bono scheme, which is proving to be very popular. PILCH has now become a "one-stop shop" which has effected significant flow-on efficiencies and savings for the Bar scheme.

One continuing initiative of the Legal Assistance Committee is the work of the Asylum Seekers Sub-Committee. That committee has met approximately monthly for most of this year. It includes representatives of the Victorian Bar, PILCH, the Federal Court, the Federal Magistrates' Court, Victoria Legal Aid, the Young Lawyers Section of the Law Institute of Victoria, the Asylum Seekers Resource Centre and other groups involved in the provision of pro-bono legal assistance to refugees and asylum seekers. Its main object is to co-ordinate the efforts of such groups with those of the Victorian Bar. Initiatives of the sub-committee include having the application form and explanatory brochure for the Bar's Legal Assistance Scheme translated into a number of languages commonly spoken by refugees. Those languages include, for example, Arabic and Dari. Printing of the brochures and application forms is currently being arranged. They will then be distributed to organizations dealing with refugee applicants, such as courts, the Asylum Seekers Resource Centre and Community Legal Services.

"AUDIT" OF THE VARIOUS LEGAL AND RELATED SERVICES OFFERED TO ASYLUM SEEKERS

A further initiative has been to complete an "audit" of the various legal and related services offered to asylum seekers by various organisations in Victoria. This information has now been gathered, and has been collated by PILCH. Distribution of the information in tabular form is presently being arranged. It is hoped that this will assist people advising refugees to know where to go for various kinds of services. It will also assist in the co-ordination of provision of pro-bono legal assistance to refugees between the Bar, PILCH, the Law Institute, Victoria Legal Aid and community organisations.

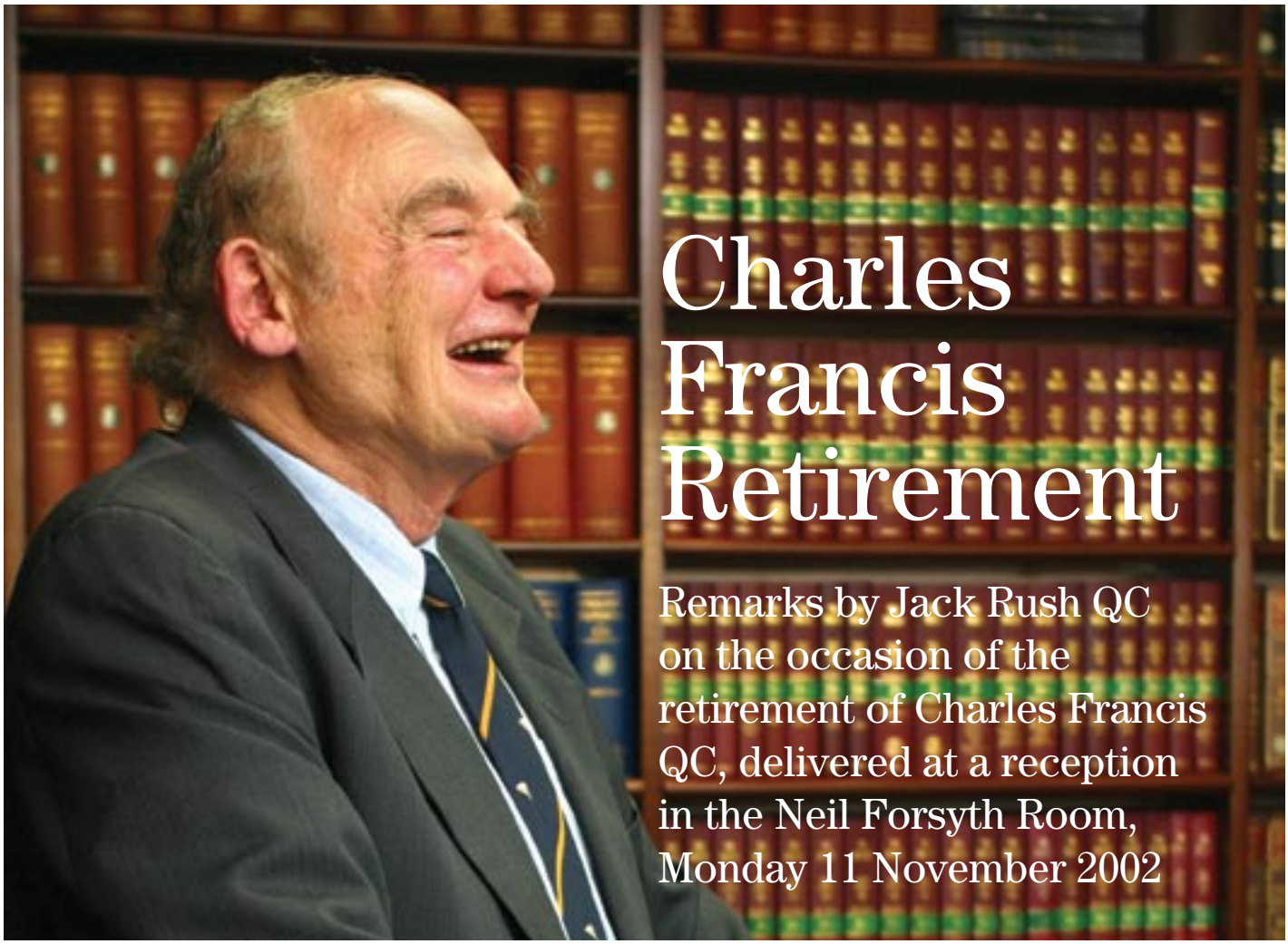
Areas in which the sub-committee has assisted so far also include facilitating the discussions which have led to arrangements for Victoria Legal Aid to provide duty solicitors at the Federal Court and Federal Magistrates' Court monthly Migration Directions days. Those solicitors, who are employed by Victoria Legal Aid, are available to advise and assist unrepresented applicants for refugee status. They can appear for such applicants at the directions hearing, and advise them about arranging representation and assistance on a more permanent basis, including referring them to the Victorian Bar's legal assistance scheme.

DEMAND FOR PRO-BONO ASSISTANCE GREATLY EXCEEDS SUPPLY

Notwithstanding our efforts, the demand for pro-bono legal assistance to refugees greatly exceeds supply. In administering the Bar's Legal Assistance Scheme, PILCH makes a strong effort to evaluate cases to ensure that meritorious cases with arguable points are given priority. PILCH has recently been contacted by the High Court of Australia, which potentially has 7000 cases where people are applying for relief directly to it pursuant to s.75(v) of the Constitution. Some of those may be conducted as test cases; many will be referred to the Federal Magistrates' Court. There are also numerous cases in the Federal Magistrates' Court and Federal Court (both at single judge and Full Court level) conducted by applicants for asylum who have no legal representation at present.

If you are willing to offer your services to provide pro-bono legal assistance (whether to refugees and asylum seekers or in any of the other numerous areas of law) and have not already put your name forward, please contact Emma Hunt or Samantha Burchell at the Victorian Bar Legal Assistance Scheme on 9225 6687.

Tony Howard QC, Chair, Victorian Bar Legal Assistance Committee
Michael Gronow, Convenor, Asylum Seekers Sub-Committee



Charles Francis Retirement

Remarks by Jack Rush QC on the occasion of the retirement of Charles Francis QC, delivered at a reception in the Neil Forsyth Room, Monday 11 November 2002

Charles Francis QC.

LADIES and gentlemen, it's my pleasure to welcome you this evening to this reception to mark the retirement of Charles Francis QC from over 53 years active practice at the Victorian Bar.

Today is the 33rd anniversary of the day of the grant of letters patent to Charles Francis — 11 November 1969.

Others have been at the Bar as long as you, some longer. But I understand that none of them was in active practice in the sense of regularly appearing in court to argue cases beyond their 50th year at the Bar — although there are a few faces here I see challenging any record.

Many of you will have been at the reception celebrating Charles' 50th anniversary in 1999, and will know his story. I won't tell it all again. However, a brief account is surely worthy of this occasion.

You were educated at Melbourne Grammar School. There was no such thing as a gap year in your time at school. You left school to join the RAAF. You served as an air gunner in World War II. In the final year of the War, you were posted to administration in one of the largest air force explosives stores in the country, in Bowral NSW. At the age of 20, you were acting commanding officer from time to

Suzanne Pitson, Geoffrey Francis, Derek Francis, Charles Francis, Sandy Stewart, Babette Francis, Michael Francis, Prue Francis, Rowena Francis and Tim Keen.

Robin Brett QC, Charles Francis QC, Jack Rush QC and Stewart Stribling.

Ross Nankivell, Peter Fox, Michael Shand QC and James Merralls QC.

Stewart Stribling, Babette Francis and Daryl Wraith.

Brett Young, Richard G.W. Lawson and Richard A. Lawson.

time. You remained involved in the RAAF obtaining the rank of Group Captain in the reserve. On a personal note I can speak of you, Group Captain Francis, with my father Wing Commander Jack Rush and Squadron Leader Stuart Collie (Master Collie of the Supreme Court) and Air Commodore Phil Opas QC leading Catalina Flying Boat Contingent at Anzac Day not so many years ago.

After the war, you went to the University of Melbourne and completed the LLB degree. You also obtained from the University of Melbourne a BA and a B Commerce. You were admitted to the Bar in October 1948 and signed the Bar Roll in February of 1949.

Charles met Babette at sea in 1953, in the days when only the brave and rich flew — everyone else who went to England did so by ship over a course of several weeks. Charles put those weeks to good use. He and Babette were engaged within a fortnight, and married in London 12 weeks later. It could never be said Charles Francis lacked passion.

It has been said that after marriage it is fortunate that the practice of Charles Francis expanded as quickly as his family. Charles and Babette have eight children.

Babette had been a journalist with the *Bombay Onlooker*, and had been the first woman to win the Scholar Sportsman Award at Bombay University. Her sport was badminton, and she has, in Australia, been an "A" grade badminton player for 40 years.

It has been said that after marriage it is fortunate that the practice of Charles Francis expanded as quickly as his family. Charles and Babette have eight children. Five are here tonight: Michael (a radiotherapist), Prudence (an oncologist), Geoffrey (an economic adviser to Commonwealth Treasury) Rowena (managing director of Australian Filters) and Derek (an economic adviser to the Commonwealth Bank). Your pride in your family and their pride and love for you has been a sustaining feature of your adult life.

Two of your readers are on the County Court Bench: Judge Fred Davey and Judge David Morrow. Both are on circuit and apologise for being unable to be here this evening.

Charles and Babette are both writers and speakers on the international scene, Babette in women's issues and Charles in human rights.

Last year, you were chosen to launch in Washington DC the book on the United Nations' record of human rights — to which you had contributed a chapter on rights of the child. You have also written a number of legal biographies including works on Sir William Stawell and Sir Charles Gavan Duffy.

The splendid 1999 *Bar News* article on the occasion of your 50th anniversary in practice by Paul Hayes lists a number of notable cases in which you had appeared. The span and success of your career as an advocate is enormous when one considers you appeared in the Lowe Royal Commission into the activities of the Communist Party of Victoria in 1949, you appeared in 46 murder trials, you appeared in the HG&R Nominees case that set major precedents in areas of law including contract mortgage and security guarantee in 1997. Then only last week you appeared before Justice Kathy Williams in her first bail application in the Supreme Court. It is worth recording that

Kathy Williams was not even born when you took your first brief.

You have been in "active practice" right up to retirement and your practice has continued to include substantial cases and court appearances right to the end.

In August, you settled a personal injuries case for over a million dollars. In March you won a large verdict for a 14-year-old girl injured riding a trail bike. Only two weeks ago, you completed one of a series of successful applications to bring suit on childhood abuse that occurred many years ago.

Charles has lost none of his fire. A year or so ago, he was threatened with commitment for contempt in the course of arguing a case. Indeed, just a couple of weeks ago, Channel 7s "Marshall Law" had an episode loosely based on the facts of that situation. That night the show had record ratings — but the critics concluded the lead lacked your passion and presence.

Charles tells the story against himself of an axe murderer he once defended. The plea was not guilty on the ground of insanity. It was coming on quite nicely until the client insisted on giving sworn evidence: "I killed him because he was a mongrel and a dog." His counsel, Mr Francis, was, he explained, a nice chap, but not very bright — and he'd been able to fool Mr Francis into thinking him insane — but he wasn't. The jury disagreed and upheld the insanity plea.

You served Australia in time of war. You served Victoria in the Legislative Assembly — and that ended up in a war of principle between Charles and the then premier. You served the legal profession and this Bar on an array of committees: the Human Rights Committee, the Victorian Law Foundation, the Law Reform Committee, the Attorney-General's Criminal Justice Committee, the Australian Committee for Law Asia, the Criminal Bar Association of Victoria. You served on the Bar Council, and then served as Chairman of the Bar from 1987 to 1988.

Your contribution has been extraordinary. Your career and life have been marked by other notable contributions to the community. You lectured in law at Melbourne University. You were president of the Military Law Society of Australia. You were ADC to the Queen when she was in Australia. You became Deputy Judge Advocate General of the RAAF. All this is only part of the life of Charles Francis QC. You have led a remarkable life distinguished by its generous contribution to others.

With your retirement there is truly a generational change at the Victorian Bar. You are the last barrister in practice to have served as an officer during World War II. The persons with whom you signed the Bar Roll, Sir John McIntosh Young and Sir Keith Aickin, are unknown or just names to many at this Bar. The same cannot be said for you. Like those persons with whom you signed the Bar Roll in 1949 you have had an eminent and distinguished legal career, a life of service.

You were kind enough to write to me a couple of weeks ago when I became Chairman of the Bar. You noted that you can't please everyone all the time – but importantly you advised on being true to your principles. Throughout your life you have lived by your principles often to your personal cost. Yet by living to those principles you have won the admiration of not only supporters but also of your opponents. You had a remarkable career as a barrister covering many jurisdictions. You retire as one of the pre-eminent barristers of the Victorian Bar.

On behalf of the Victorian Bar I wish you and Babette well in your retirement. I ask you to join with me in a toast to that effect: to Charles and Babette.

Family members watch as Charles speaks.

Richard Lawson, Sandy Stewart (son-in-law), Prue Francis (daughter) and David O'Callaghan.

Charles enjoys a joke watched by Debra Coombs.

Verbatim

The Need for the Last Word

Supreme Court of Victoria

10 October 2002
IF Asia Pacific Pty Ltd v *Galbally*
Coram: Dodds-Streeton J
Berkeley with Shaw for Plaintiff
Schlicht for Defendants

Her Honour: Mr Berkeley, what do you say that you have to establish order to — in relation to the restraint of trade terms?
Mr Berkeley: Can I come to that, can I finish what I want to say about this confidentiality business?
Her Honour: Yes.
Mr Berkeley: That's all I want to say.

If Food Be the Music of Life

Supreme Court of Victoria

Prime Life Corp. Ltd v *John Fairfax Publications Pty Ltd*
Coram: Nettle J
Wilson QC and G. Meehan for Plaintiffs
M. Wheelahan for the Defendant

His Honour: Mr Wheelahan, this is not intended to sound as it possibly will: how long do you think you'll be?
Mr Wheelahan: About an hour, I think.
His Honour: What if I adjourn now and we resume at two; would that cause anyone inconvenience?
Mr Wheelahan: No.
His Honour: Mr Wilson?
Mr Wilson: This may sound ridiculous, Your Honour. I'm married to a vegetarian and I regard my lunch as terribly important because it's the only chance I get to get a hot meal for the day. But is there any reason why we can't come back at 2.15? Does that cause Your Honour inconvenience if my learned friend is only going to be an hour? I mean, that gives him two hours.
His Honour: No.
Mr Wilson: If Your Honour says 2 o'clock particularly, I'm more than happy to accommodate Your Honour, of course, but it's . . .
His Honour: I'll adjourn to 2.15.

It is rumoured that after luncheon adjournment the button on the suit jacket of Wilson QC applied for injunctive relief, upon obvious and serious grounds.

The Monastic Life

High Court of Australia

8 November 2002
Joslyn v *Berryman*
McHugh J
Gummow J
Kirby J
Hayne J
Callinan J

Callinan J: Mr Jackson, it seems to me that clearly the people at the party, including Ms Joslyn and Mr Berryman, went out with the intention of getting drunk.
Mr Jackson: It would be a big night, Your Honour, big night.
Callinan J: With the intention of getting drunk and they fulfilled that intention.
Mr Jackson: Well, Your Honour, young people sometimes . . .
Kirby J: I just think "drunk" is a label and I am a little worried about — it is not necessary to put that label. It is just that they were sufficiently affected by alcohol to affect their capacity to drive.
Mr Jackson: Yes.
Kirby J: "A drunk" has all sorts of baggage with it.
Hayne J: Perhaps "hammered" is the more modern expression, Mr Jackson, or "well and truly hammered".
Mr Jackson: I am indebted to Your Honour.
Kirby J: I do not know any of these expressions.
McHugh J: No, no. Justice Hayne must live a very different life to the sort of life we lead.
Kirby J: I have never heard that word "hammered" before, never. Not before this very minute.

Sauce for the Goose

High Court of Australia

23 September 2002
Sydney
Coram: Gaudron J (In Chambers)

Her Honour: Now, would somebody kindly tell me what happens now? I am aware of section 91X. I presume I cannot say to this person, "Mr So-and-So, do you represent yourself?", which is what I would normally say. I presume I cannot extend to him the normal courtesies that I would extend to any person at the Bar table. Mr X, I am addressing you.
Mr G.T. Johnson: Yes. (instructed by the Australian Government Solicitor)
Her Honour: Shall I call you Mr X?
Mr Johnson: Well, it is a matter for Your Honour.
Her Honour: Well, it is not a matter for me. It is a serious question. I take it that you appear for the Minister.
Mr Johnson: I appear for the Minister . . .
Her Honour: And you, sir, are the applicant?
Applicant S200/2002: Yes, I am the applicant . . .
Her Honour: Yes. Now, what am I to do?
Mr Johnson: Your Honour, what the Federal Court has been doing . . .
Her Honour: You are Mr Johnson, are you?
Mr Johnson: That is right, Your Honour, yes. I should have announced my appearance.
Her Honour: No. You see, you are very lucky. You have a name. Yes, here it is.
Mr Johnson: Well, your Honour, if it is of assistance, the practice in the Federal Court, as far as I have been able to observe at least, has been to call the applicant by the assigned name.
Her Honour: The assigned name?
Mr Johnson: Well, there is an assigned, I think probably randomly allocated, set of letters in the Federal Court.
Her Honour: That is ridiculous. That is ridiculous. Do you think you had better tell me about the constitutional validity of 91X?
Mr Johnson: Well, Your Honour, I think that some submissions were put to Your Honour in the matters that were heard on 3 and 4 September and all that I can do, Your Honour, in relation to that is to formally repeat those, but with respect to the mechanics . . .
Her Honour: You repeat that it is valid and that I am to treat this person as if he had no name? Do you assert that? I am to sufficiently ignore the man's

humanity as to deny him a name in these court proceedings and to deny him the ordinary courtesies that I would extend to anyone at the Bar table?
Mr Johnson: Your Honour, my suggestion to the Court is that he be referred to as S200.
Her Honour: Well, that is exactly . . .
Mr Johnson: I understand . . .
Her Honour: That is to say I deny him a name and I deny him the ordinary courtesies that I would extend to anyone at the Bar table?
Mr Johnson: Except, Your Honour, that . . .
Her Honour: Well, let me call you Mr J41, shall I?
Mr Johnson: That is a matter for Your Honour, but, Your Honour . . .
Her Honour: Well, it is not. I would not do it. I would not do it because it is discourteous.
…
Mr Johnson: Well, Your Honour, could I respectfully suggest to Your Honour that if it is explained to the applicant that . . .
Her Honour: No, no, explain it to me. It is my problem; not the applicant. It is my problem. I was brought up understanding that there were certain courtesies and considerations to be extended to all fellow creatures. I was brought up at the Bar to believe that you treated people at the Bar table with respect. My time on the Bench has reinforced that learning, that one is to treat them with respect.
Mr Johnson: Your Honour, I am sure that no one would argue against that.
Her Honour: The Act is arguing against it. The Act is denying me my right to treat this gentleman with the respect I would normally afford to anybody I met in society, in the street, or with whom I had to have any professional dealings, including in terms of listening to his submissions.
…
Her Honour (to Applicant)**:** Sir — I will have to refer to you as sir. I would prefer to call you by your given name. The Act forbids me. I realise it is a gross discourtesy. It is not one of my making. So I shall be forced to call you "sir", if that is sufficient, and I invite you now to speak to your application. …
Applicant S200/2002 (through interpreter)**:** First of all, your Honour, I would like to thank you very much for paying me such respect, the way you treated me. I gratefully appreciate your concern in that regard . . .

A Strange Hang-up

High Court of Justice, London

14 October 2002
R v *Chrysler*

Counsel: What is your name?
Chrysler: Chrysler. Arnold Chrysler.
Counsel: Is that your own name?
Chrysler: Whose name do you think it is?
Counsel: I am just asking if it is your name.
Chrysler: And I have just told you it is. Why do you doubt it?
Counsel: It is not unknown for people to give a false name in court.
Chrysler: Which court?
Counsel: This court.
Chrysler: What is the name of this court?
Counsel: This is No. 5 Court.
Chrysler: No, that is the number of this court. What is the name of this court?
Counsel: It is quite immaterial what the name of this court is!
Chrysler: Then perhaps it is immaterial if Chrysler is really my name.
Counsel: No, not really, you see because . . .
Judge: Mr Lovelace?
Counsel: Yes, m'lud?
Judge: I think Mr Chrysler is running rings round you already. I would try a new line of attack if I were you.
Counsel: Thank you, m'lud.
Chrysler: And thank you from ME, m'lud. It's nice to be appreciated.
Judge: Shut up, witness.
Chrysler: Willingly, m'lud. It is a pleasure to be told to shut up by you. For you, I would . . .
Judge: Shut up, witness. Carry on, Mr Lovelace.
Counsel: Now, Mr Chrysler —— for let us assume that that is your name — you are accused of purloining in excess of 40,000 hotel coat hangers.
Chrysler: I am.
Counsel: Can you explain how this came about?
Chrysler: Yes. I had 40,000 coats which I needed to hang up.
Counsel: Is that true?
Chrysler: No.
Counsel: Then why did you say it?
Chrysler: To attempt to throw you off balance.
Counsel: Off balance?
Chrysler: Certainly. As you know, all barristers seek to undermine the confidence of any hostile witness, or defendant. Therefore it must be equally open to the witness, or defendant, to try to shake the confidence of a hostile barrister.
Counsel: On the contrary, you are not here to indulge in cut and thrust with me. You are only here to answer my questions.
Chrysler: Was that a question?
Counsel: No.
Chrysler: Then I can't answer it.
Judge: Come on, Mr Lovelace! I think you are still being given the run-around here. You can do better than that. At least, for the sake of the English Bar, I hope you can.
Counsel: Yes, m'lud. Now, Mr Chrysler, perhaps you will describe what reason you had to steal 40,000 coat hangers?
Chrysler: Is that a question?
Counsel: Yes.
Chrysler: It doesn't sound like one. It sounds like a proposition which doesn't believe in itself. You know — "Perhaps I will describe the reason I had to steal 40,000 coat hangers . . . Perhaps I won't . . . Perhaps I'll sing a little song instead . . ."
Judge: In fairness to Mr Lovelace, Mr Chrysler, I should remind you that barristers have an innate reluctance to frame a question as a question. Where you and I would say, "Where were you on Tuesday?", they are more likely to say, "Perhaps you could now inform the court of your precise whereabouts on the day after that Monday?". It isn't, strictly, a question, and it is not graceful English but you must pretend that it is a question and then answer it, otherwise we will be here forever. Do you understand?
Chrysler: Yes, m'lud.
Judge: Carry on, Mr Lovelace.
Counsel: Mr Chrysler, why did you steal 40,000 hotel coat hangers, knowing as you must have that hotel coat hangers are designed to be useless outside hotel wardrobes?
Chrysler: Because I build and sell wardrobes which are specially designed to take nothing but hotel coat hangers.

Brazen Plagiarism

Supreme Court of Victoria

10 October 2002
Coram: Gillard J
Johnson Tiles Pty Ltd & Anor v *Esso Australia Pty Ltd & Ors*
Burnside QC, Collins SC and Doyle for Plaintiffs
Middleton QC, Derham QC and Kelly Walker Booth and Harris for the Defendants
Beach QC, Anderson and Garner for first

to sixteenth named third parties
Caleo for seventeenth to twenty-sixth third parties
Macaulay for fourth parties

Burnside cross-examining an engineer giving evidence in relation to a brick kiln.
Burnside: Can I ask you one other question, Mr Kilbourne? What is the co-efficient of the expansion of brass?
Kelly: What's the relevance of this, Your Honour?
His Honour: Do you want an answer?
Burnside: Yes, I do.
His Honour: What's the relevance of brass; is there any brass in this kiln?
Burnside: No, there is no brass, Your Honour; it's just a question I've always wanted to ask.
His Honour: Are you trying to tell me you know it?
Burnside: I can find out.
His Honour: So can I.
Burnside: I think counsel who first famously asked that also didn't know the answer. Thank you, Your Honour, I have no further questions.

Sotto Voce transcribed

Supreme Court of Victoria

16 October 2002
Coram: Gillard J
Johnson Tiles Pty Ltd & Anor v *Esso Australia Pty Ltd & Ors*
Burnside QC, Collins SC and Doyle for Plaintiffs
Middleton QC, Derham QC and Kelly
Walker Booth and Harris for the Defendants
Beach QC, Anderson and Garner for first to sixteenth named third parties
Caleo for seventeenth to twenty-sixth third parties
Macaulay for fourth parties

His Honour: I see the time. I will now have a short adjournment.

Following the short adjournment the hearing resumed with a witness in the box being led by Burnside QC. The real time transcript ceased working momentarily. A few minutes passed. Then this message appeared on the screens of all counsel and the judge:
"This witness is gorgeous. I was talking to him outside. He's so nice."

His Honour then said: Just a minute Mr Burnside, I should indicate that something just appeared on my screen which has nothing to do with this case, and I will not be taking it into account in reaching a decision in the matter.

The real time transcript then recommenced.

The Careful Young Barrister

Supreme Court of Victoria

23 October 2002
Coram: Gillard J
Johnson Tiles Pty Ltd & Anor v *Esso Australia Pty Ltd & Ors*
Burnside QC, Collins SC and Doyle for Plaintiffs
Middleton QC, Derham QC and Kelly
Walker Booth and Harris for the Defendants
Beach QC, Anderson and Garner for first to sixteenth named third parties
Caleo for seventeenth to twenty-sixth third parties
Macaulay for fourth parties

His Honour: Mr Macaulay do you wish to say anything?
Mr Macaulay: Your Honour, many months ago when you directed that the third and fourth parties could participate in this trial, I recall Your Honour cautioning that those parties should not overplay their hand and I have been mindful of that, Your Honour, throughout this case, and also the usual injunction not to ask that one question too many. Consistently with that, Your Honour, I have no evidence to call and, therefore, no further case.
His Honour: Thank you, Mr Macaulay, that's very commendable and I would like you to pass that on to all young budding barristers.

Six Reasons to Love Africa

Youth and Family XVI World Congress

The XVI World Congress of the International Association of Youth and Family Judges and Magistrates was held in Melbourne from 26 to 31 October. The Congress was co-hosted by the Family Court of Australia, the Federal Magistrates' Service, the Children's Court of Victoria, The Magistrates Court of Victoria, the Family Court of New Zealand and the Youth Court of New Zealand.

High Court Justice Michael Kirby, congress keynote speaker, with County Court Judge Jennifer Coate, who chaired the local organising committee.

THE Congress was attended by some 350 delegates from 27 countries and every continent. Among those delegates were judges and a broad range of eminent social scientists from countries including Azerbaijan, China, Thailand, Cameroon, Papua New Guinea, Fiji, Norway, Israel, Argentina and South Africa.

From the opening reception at Parliament House to the final event, the program was packed each day with stimulating and challenging keynote speeches and papers. The topics covered reflected the wide experience of the speakers and delegates and ranged across many aspects of family law, children's rights, child protection, juvenile justice, crime prevention, diversion programs and comparative legal systems. Some sessions were conducted in Spanish and French.

The theme of the Congress was "Forging the Links". The evidence that this was achievable was clear from the wonderful interaction of the delegates, the enthusiastic exchange of ideas and information, and an obvious common purpose of finding solutions to the global issues confronting all professionals working with families and children.

There were many highlights throughout the five days. Chief among them was the moving and memorable keynote address by the Honourable Justice Michael Kirby of the High Court. His Honour challenged judges, magistrates and lawyers to think more as social scientists and technologists at an international level about issues such as the profound changes to the social context upon principles of family law. The overseas delegates were unanimous in their opinion about how fortunate Australia is to have such an outstanding jurist on our High Court.

Conference delegates listen to the opening remarks of Family Court Chief Justice Alistair Nicholson at the welcome reception.

Attorney-General Rob Hulls in the foyer of Parliament House, with students from Grades 3 and 4 of Springvale West Primary School. The students performed a bracket of songs in Spanish for delegates at the welcome reception.

Attorney-General Rob Hulls in the foyer of Parliament House, with students from Grades 3, 4 and 5 of Dandenong South Primary School. The students performed a medley of songs in French for delegates attending the Congress welcome reception on Saturday 26 October 2002.

Professor Jim Dator of the Centre for Future Studies, Hawaii, challenged delegates about the way we might construct future families, communities and courts. Trond Waage, the Ombudsman for Children in Norway described the participation of children in decision making. Dr Danya Glaser, Consultant Child and Adolescent Psychiatrist at Great Ormond Hospital, London, presented an important paper on the recognition and management of emotional abuse in children. The list could go on and on.

Particular mention should be made about the New Zealand youth police and their group, the Hip Hop Cops. Their entertaining presentation of the great work they are doing, which included several hakas dispersed amongst congress events, provided a joyous and moving component to the program.

The efforts of the organising committee, but most particularly the enormous work of Judge Jennifer Coate, her Associate Janet Matthew, Magistrate Wendy Wilmoth and Margaret Harrison of the Family Court of Australia achieved an outstandingly successful and rewarding Congress.

In addition to this intensive learning and information exchange there was plenty of opportunity to meet with delegates, and to form professional and personal friendships. The cocktail party at the Children's Court, which included the National Children's Lawyer of the Year Awards, the Congress dinner, and the dinner at Emu Bottom Homestead were all great opportunities to relax, sample the Australian wines and have fun.

There was overwhelming consensus about the success of the Congress. It did a great deal to "Forge the Links" and to move towards common understandings and strategies to deal with the complex issues.

The efforts of the organising committee, but most particularly the enormous work of Judge Jennifer Coate, her Associate Janet Matthew, Magistrate Wendy Wilmoth and Margaret Harrison of the Family Court of Australia achieved an outstandingly successful and rewarding Congress.

Papers can be found at www.youthandfamily2002.com.

Greg Levine

Congress Open to All Members of the Legal Profession

THE Congress was organised by the Local Organising Committee of the International Association of Youth and Family Judges and Magistrates, chaired by County Court Judge Jennifer Coate. The Congress is held every four years and, despite its imposing title, it is open to all members of the legal profession, social workers, youth community workers, in fact to any person who is involved in the world of youth and family support. Over 600 international and local delegates attended, with a strong representation from the Victorian Bar. Our members benefited greatly through a substantial reduction in registration fees, arranged by Her Honour.

There was such a great range of topics covered at the Congress that it was impossible to explore them all in the five days allocated to the Congress, 27–31 October 2002.

The Congress proper started with an excellent keynote lecture by His Honour

Family Court Chief Justice Alistair Nicholson at the welcome reception.

Joy Murphy from the Wurrungeri people performs the traditional Koori smoking ceremony in welcome at the opening of the congress on Sunday 27 October 2002.

Conference delegates in the Queens Hall of Parliament House are entertained at the welcome reception. Attorney-General Rob Hulls and Mrs Hulls can be seen to the left; Chief Justice Alistair Nicholson centre.

Koori Will Shakespeare dancers from Northlands Secondary College perform at the opening of the congress.

Justice Michael Kirby, who on taking the lectern, immediately announced that he was not going to give his prepared speech, but instead held the audience spellbound as he talked about how events in his own life led him to be where he was and then onto the recent decision in *U* v *U* [2002] HCA 36 and implications for the family.

The quality of the speakers did not diminish as the Congress continued. Most valuable to the attendees was the exchange of ideas on how to manage young persons in difficulty. Each nation had a different approach and its representative spoke with candour on the success and failures of the programs implemented in an effort to protect the young from negative extra and intra family influences.

There is no doubt that the attendees were most impressed with the State of Victoria's approach to the problems around dysfunctional families and their children, the relatively few young incarcerated, and the support structures that are in place. Being close to the local scene, it is easy to believe that not enough is being done in this area. However, having had the opportunity to meet with those who work in other jurisdictions and to hear their comments, it is clear that Victoria is a world leader in many aspects of youth and family matters.

Robert T. Burns

Bar Hockey

MATCH 1

Vic Bar v NSW Bar; State Hockey Centre Saturday 19 October 2002

Vic Bar 3 Defeated NSW Bar 0

IT was a surprisingly hot and sunny Melbourne day for the annual hockey contest between the NSW Bar and Victorian Bar, which proceeded on the immaculate artificial turf of the State Hockey Centre on Caulfield Cup Day 2002. The NSW Bar were making their second recent trip to our fair city, for the third consecutive annual game in what has developed into a fine tradition of sporting and cultural exchange between the hockey aficionados of the two States.

The Victorian Bar boasted one of its stronger line-ups in recent memory, with Tweedie having returned from his South American wanderings which made him unavailable for last year's game, and the luxury of three reserves.

The trick with social games of this nature is to play hard, enjoy yourself, and not get injured. Unfortunately, Andrew Robinson failed to survive even the gentle warm-up unscathed, which left him as a prime candidate to assume the umpiring duties after the professional whistle blowers failed to show. Tom Lynch was kind enough to take up the other whistle, with an injured Judge Sexton also offering her services for the second half. All performed with admirable fairness and diligence, and their efforts were much appreciated.

The match itself was played in fine spirit, and the NSW team were committed and competitive. In spite of having lost their starting goalkeeper injured during the warm-up, the visitors jumped away to a flying start, catching the Victorian defence somewhat offguard. Gradually, however, the Vic Bar team, playing on their home turf, started to assert control and put sustained pressure on the NSW team, which was disadvantaged by the absence of substitutes on a day where a breather in the shade was a most welcome respite.

Clancy and Wood took control of the midfield, and with Dreyfus, Gordon, Parmenter and Michael Tinney running rampant in the forward line the Big V always looked dangerous (although, in reality, they were not!) The score at half time was 1 nil, with many more chances going missing thanks to rusty finishing by the Vic Bar forwards, and a total inability to convert the numerous penalty corners awarded to the home team, many as a consequence of some "robust" defensive work by the struggling NSW defence. Strangely, the most "robust" tackle (which saw Tweedie's stick snapped in half) was deemed by stand-in umpire Tom Lynch to be not only fair, but good enough to earn the proponent a free hit! The stick itself was then souvenired by the NSW team with the intention of converting it into a memorial trophy (presumably to be awarded to a champion wood chopper at the next Easter show).

The second half continued much as the first, (but at a more relaxed tempo). The Vic boys managed to increase their penalty conversion rate from 0 to 2%, with Wood and Tweedie finding the net more as a consequence of good luck than good design. Robinson made a brief

Vic Bar v NSW Bar.

The Silks and the Judge/Umpire. Mark Dreyfus QC, John Ireland QC, Peter Callaghan SC, Anna Katzmann SC and Judge Sexton.

Vic Bar attacks.

Judge Sexton on the job..

NSW Bar moves forward.

Nick Tweedie with the J. Rupert Balfe Trophy.

Stephen Parmenter prepares to waltz through the NSW defence.

Mike Tinney with the ball on a string.

cameo appearance, only to immediately injure himself again and return to the relative safety of the umpire's role. As the afternoon wore on, the running game of both sides fell away, and the NSW team's tactic of sending long balls into a packed forward line began to look more like achieving results. Fortunately, Sharpley remained alert and impenetrable in the net, and the Vic boys managed to preserve their clean sheet.

As always, the after-game activities were tackled with equal (if not greater) enthusiasm by both sides, and all concerned retired with unseemly haste to Naughtons on Royal Parade, to celebrate the victories of the Vic Bar and Northerly. From there, festivities moved to the Empress of China restaurant in Chinatown. There, thanks to the much appreciated assistance of the Victorian Bar Council, we were able to treat our visitors to an entertaining evening, which for some of us extended beyond 2 am. Indeed, the proprietors of the restaurant must have despaired of ever prising us out of their upstairs function room. It came as some surprise that in the events of the night, the locals, again, just managed to outlast the visitors. The evening was punctuated by excellent speeches by John Ireland and the irrepressible Peter Callahan on behalf of NSW, and Andrew Tinney, reluctantly, on behalf of the hosts. The NSW team, and connections, were, as usual, very amiable company. We thank them for making the trip, with special appreciation to Andrew Scotting and Patrick Larkin, who organized things at their end. We hope to see them again in Sydney next year as this important tradition continues.

MATCH 2

Vic Bar v Law Institute (Scales of Justice Cup) Thursday 24 October 2002, State Hockey Centre

Law Institute 1 defeated Vic Bar 0

It was immediately apparent that this was to be an entirely different game from the gentle, social meanderings of the contest with our NSW brethren, and not just because the umpires bothered to show up. A vengeful Law Institute squad, stung by last year's shock defeat at the hands of a resurgent Bar combination, had recruited widely from within their profession (and one suspects beyond it) to put together a formidable combination of unfeasibly young, highly skilled and super-keen players, all of whom had been offered handsome pay rises and life-long indemnities from trust account investigations should they return the Scales of Justice Cup to the Law Institute's possession. Their warm-up alone featured more stick work and running than most of the Bar players had managed in the past five years. Personally, I got tired simply watching them stretch.

Not content, however, with fielding a younger, fitter and more skilled team, the Law Institute had also resorted to dirty tricks, arranging for last years best on ground Richard Clancy to be offered a last-minute brief (complete with conference timed to commence at precisely match time). With first-choice centre half Stuart Wood also absent, the Bar was forced to improvise and adapt (thankfully skills which do not diminish with age and excessive red wine consumption) and put its faith in the old adages:

1. A champion team will beat a team of champions; and
2. Age, guile and sledging will always

Mark Dreyfus reluctantly hands over the Scales of Justice Cup to Warwick Newell.

triumph over youth, skill and boundless enthusiasm.

The game started at a furious pace, with both sides creating some genuine scoring chances in the opening minutes. The Bar team, with many players in unfamiliar positions, surprised the Law Institute (and themselves) with the quality of their play. Sensing that their advantage, whilst overwhelming on paper, was, in reality, not translating into goals, the Law Institute again resorted to dirty tricks to overcome the staunch Bar resistance; taking reliable right half Andrew Tinney out of the game with a reckless raised ball to his head. To his credit, Tinney looked like he wanted to continue, but when he expressed the view in response to questioning that he was Justice Balmford, discretion was considered the better part of valour and he was dispatched to the nearest casualty ward to have his head wound glued. Fortunately, a tardy Ragu Appudurai arrived just as the last of Tinney's blood was being mopped from the pitch, so the Bar was able to continue on with a full complement of players.

The first half continued as a lively and highly skilled contest, dominated by each forward line. The Bar's three key forwards, Peter Collinson, Michael Tinney and Steve Parmenter, were showing tremendous ball control, carving through the fragile Law Institute defensive lines seemingly at will. Makeshift fullbacks Mark Dreyfus QC and Tim Luxton, and star goalkeeper Stephen Sharpley were defending stoutly under enormous pressure. Veteran forward Tommy "The Panther" Lynch had assumed his favourite position lurking deep behind enemy lines, which was stretching the opposition defence, and Andrew Robinson's raw aggression at right wing was clearly unsettling the timid young lady assigned to mark him.

Regrettably, however, a brief lapse in concentration in the final minutes of the half allowed the Law Institute's danger man and right wing to sneak into the circle, whereupon a lucky deflection found its way into the net. The whistle blew seconds later, and so the Bar went in at half time, unlucky to be 1 goal down from a half where honours were otherwise even.

A quiet confidence was just discernable in the Bar ranks during the half–time break, despite the gasping, wheezing, hacking coughs and the sound of aged hamstrings tearing. A tactic of trying not to run around very much was suggested, and enthusiastically endorsed, and the second half began.

The second half featured wave after wave of relentless, eager young solicitors bearing down upon the indefatigable Bar defence. Sharpely in goals confirmed his reputation as the legal profession's foremost custodian with some stunning saves, while Appudurai (having been switched to left half) was playing the game of his life and shutting their star right wing completely out of the match with his close marking tactics.. Richard Brear gave his usual lionhearted display at right half, and Ross Gordon was constantly finding space and opportunity in the forward line. There were frequent Bar counter-attacks, thanks to the skills of Tinney and Collinson, but, regrettably, some golden opportunities missed. Tinney passed unselfishly, but ultimately unwisely, with just a very nervous goalie to beat, while Tweedie shot well wide with the goal at his mercy after finally managing to trap a short corner. Both misses were to prove costly, as the game ended with the Law Institute winners by the narrowest of margins.

The Law Institute certainly had more chances, but one would suspect would be ultimately disappointed with a game where they could, at best, claim to have broken even on all but the scoreboard, against a depleted opposition. However, history will record that their one goal was good enough, and the Scales of Justice Trophy departs the 13th floor library cabinet for the ivory tower of the Law Institute once again.

It was some comfort to the Bar that Nick Tweedie received his second J. Rupert Balfe Award for best on ground after what was described by the umpires as a "hard running game". One can only assume that this meant that he made running look hard, which indeed he did. This marks the fourth time in as many years that a member of the Bar team has taken the award, with previous winners including Sharpley, and Clancy. Stephen Parmenter, who earlier won as a solicitor, has since had the good sense to come to the Bar.

We look forward to next year's match, and the possibility that, after going through the rigours of puberty, the Law Institute team may slow down a little, or (better still) some of them may decide to get a life and come to the Bar.

In conclusion, it is noted with some sadness that one of the stalwarts of Bar Hockey for many years, Phillip Burchardt, was unfortunately absent from both matches due to a serious illness to a family member overseas. We wish him well. His organizational skills were sorely missed, and he will assume the mantle again next year, it is hoped. We also again express our gratitude to the Victorian Bar Council for their assistance to us in providing an appropriate level of hospitality to our visitors from NSW.

The players who proudly represented the Bar at one or other or both of the matches were: Ragu Appudurai, Richard Brear, Richard Clancy, Peter Collinson, Mark Dreyfus, Ross Gordon, Tom Lynch, Tim Luxton, Stephen Parmenter, Andrew Robinson, Meryl Sexton, (umpire) Stephen Sharpley, Andrew Tinney, Michael Tinney, Stuart Wood, and Nick Tweedie.

Insolvency: Personal and Corporate Law Practice (4th edn)

By Andrew Keay and Michael Murray
Law Book Co (Thomson Legal and Regulatory)
pp. i–lix, 1–522, Index 553–573

PROFESSOR Keay is the current author of *McPherson's Law of Company Liquidation*. That volume, like this insolvency text, is presently in its fourth edition. The work on insolvency provides a more generalised text on the area covered by the law of company liquidation. In addition to the area of corporate liquidation the insolvency text deals with both personal insolvency and personal and corporate arrangements as an alternative to liquidation or bankruptcy.

Whilst the text might be general, it is far from a mere introduction to insolvency law. The text appears to be written primarily for law students but that should not deter general commercial practitioners from relying upon the text as a guide into insolvency issues that will frequently arise in general practice.

The discussion of case law in the book is both up to date and thorough. The text is divided into easy-to-use chapters with an extensive index covering all of those issues that arise both in practice and in procedural matters. The obvious experience of Professor Keay and his co-author means that the text can be relied upon as being both accurate and well informed. There is an extensive bibliography that directs the reader to further and more detailed materials in relation to most topics. Where there is uncertainty in the law, for example, in the area of preference actions, the authors helpfully set out the competing decisions.

In general, *Insolvency: Personal and Corporate Law Practice* is an extremely useful text for all general commercial practitioners. As the authors note in the preface the greater availability of judgments and reports of cases, particularly via the internet, means that one can easily become swamped with authority in particular areas at law. A general text such as this one, with its useful index and well-defined chapters, provides an easy direction to the relevant points of interest. For practitioners who infrequently visit the area of insolvency, this is a recommended text.

S.R. Horgan

Oxford Companion to the High Court of Australia

Eds Blackshield, Coper and Williams
Oxford University Press

OXFORD University Press has published this excellent and most comprehensive work on the High Court of Australia.

The scope and depth of the work is truly commendable. It has been edited by Tony Blackshield (Macquarie University), Michael Coper (ANU) and George Williams (UNSW) and the list of contributors include many Victorian barristers including Caleo, Freckelton, Griffith, Heath, Horan, Keon-Cohen, Maher and Ricketson.

The work's utility in practice is probably limited, unless for some reason you need a thumbnail sketch of celebrated cases such as the *Bank Nationalisation Case*, the *Boilermakers Case*, or *Mabo* (it does give you the "vibe" of that decision there is an entry "Castle, the" for those who miss that allusion).

The Oxford Companion to the High Court of Australia is primarily a work of general interest. Of course lawyers will be more interested in it than others. There are biographies of all the judges, most of which are fairly bland and factual but some of which can fairly be described as "warts and all" (see, for example, the entry contributed by Zelman Cowen on Isaac Isaacs). The biographies are testament to the extraordinary careers of some of the High Court judges. The career of Herbert Vere "Doc" Evatt warrants perusal. He must surely have compiled the greatest curriculum vitae in Australian history.

There are interesting entries on an array of subjects. I can recommend "Appointments that might have been" and "History, Court's use of". Entries which appear likely to be dull ("Citation of cases" for example) often are quite the opposite.

The book has 435 entries by 225 authors. Its publication has been reviewed favourably by the serving chief justices of both the High Court and the Supreme Court of Victoria.

I found it a fascinating publication which, in general, confines itself to the uncontroversial facts of the matters which it addresses, leaving judgments and opinions for other works of a different kind.

S.P. Whelan

Conference Update

17–18 January 2003: Kuala Lumpur. Commonwealth Medico-Legal Conference. Contact Tel: +03 4041 1375. Fax: +03 4043 4444. E-mail: mma@tm.net.my

13–14 February 2003: Sydney. Sixth International Arbitration Day Conference — "International Commercial Arbitration and Globalization. Contact Caroline Renton, Conference Marketing Executive. Tel: +44(0) 2076291206; E-mail: Caroline.Renton@int-bar.aug

21 February 2003: Sydney. Constitutional Law Conference and Dinner. Contact Belinda McDonald. Tel: (02) 9385 2257. Fax: (02) 9385 1175. E-mail: gtcentre@unsw.edu.au

13–17 April 2003: Melbourne. 13th Commonwealth Law Conference. Contact: www.mcigroup.com/commonwealthlaw2003.htm

24–27 April 2003: Cairns. Bar Association of Queensland Centenary Conference. Contact Helen Breene, Bar Association of Queensland. Tel: (07) 3236 2477. Fax. (07) 3217 9484. E-mail: helen@qldbar.asn.au

12 May 2003: Melbourne. Tenth Annual Wills and Probate Conference organised by Ken Collins and Leo Cussen Institute. Contact Patricia Palman. Tel: (03) 9602 3111. Fax: (03) 9670 3242. E-mail: ppalman@leocussion.vic.edu.au

29 June–5 July 2003: Bali. 9th Biennial Conference, Criminal Lawyers Association of Northern Territory. Tel: (08) 8981 1875. Fax: (08) 8941 1639.

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