Victorian Bar News

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LAW INSTITUTE FIRE

Since this edition went to press there has occurred a disastrous fire at the premises of the Law Institute in Little Bourke Street. The extent of the damage is presently unknown.

Readers will be aware that there exists between the Bar and certain members of this Institute fundamental differences of opinion as to the future relationships between the two branches of the legal profession.

Nevertheless, barristers and solicitors are both members of an honourable profession which will continue to exist when these differences are long resolved. The Bar extends its sympathy to the Institute in its loss. It has offered every assistance to enable the reconstitution of its records and every facility possible to assist it to continue to carry out its important functions.

BAR COUNCIL REPORT

Since the publication of the Autumn edition, the Bar Council has met on eight occasions. A great deal of its time has been occupied in considering the recent developments in the relations between the Bar and the present Council of the Law Institute — matters which are considered at p. 10.

Other matters included the following:

1. Accommodation
The problem of providing chambers for an increasing number of members has continued to occupy an important place on the agenda. The negotiations with the National Bank for the lease of a substantial part of the new Capitol Building have now terminated. At a recent General Meeting of the Bar held on 12th June, O'Callaghan Q.C. the newly appointed Chairman of the Accommodation Committee reported on the failure of this proposal. Costigan Q.C. announced that there will be no sale of Owen Dixon Chambers.

O'Callaghan Q.C. told members of the prospect of purchasing the site of the A.B.C. Building in Lonsdale Street at the rear of the County Court Building and of erecting a new building containing some 400 chambers. The General Meeting authorised the Bar Council to pursue this proposal and also to investigate the possibility of the purchase of an alternative building in the vicinity of the Courts.

The negotiations for the purchase and development of the Goldsborough Mort Building are being pursued by Liddell Q.C. on behalf of those who have signified their interest in that proposal.

2. Barristers' Disciplinary Tribunal
Following the iminent establishment of a Disciplinary Tribunal for Solicitors, the Bar Council has approved in principle the establishment of such a Tribunal for Barristers. It is proposed in general terms that the Tribunal should comprise a Chairman, being a Supreme Court Judge or a retired Judge and five members of the Bar nominated by the Chief Justice and a lay member nominated by the Attorney-General. In a series of floor meetings the attitude of the Bar has been sought as to this proposal and a very substantial majority has supported it.

3. Specialization and Advertising
A Committee comprising Berkeley Q.C., Shaw Q.C., Nixon and Rozenes has been appointed to consider these matters and to report to the Bar Council.

4. Broadcasting Rules
Counsel proposing to take part in Lectures or Broadcasts are now required to furnish to the Secretary certain information details of which are set out at p. 7.

5. Retirement of Mr. D.E. Edwards
On 28th April the Bar Council held a cocktail function to mark the retirement of Mr. Edwards as Secretary of Barristers Chambers Ltd. The Bar is grateful for his valued services and wishes him well in his retirement.

6. The Common Room
The installation of a espresso machine in the Lounge has been approved in principle.

The Bar Council has purchased the work of art entitled "Possum Dreaming at Nundja" by Tim Leura Jabalbjari for $600.

7. Bar Dinner
The annual Bar Dinner was held at "Leonda" on 13th May in the presence of His Excellency the Governor-General. Following a spirited address by Mr. Junior Silk, W.M.R. Kelly Q.C., all of the honoured guests were found quilty as charged.

TRIBUTE: R.G. MENZIES Q.C.

On 15th May, 1978 the Bar lost one of its most famous sons. Robert Gordon Menzies was born in Jeparit in 1894. His primary schooling began at the local state school. Scholarships took him to complete his secondary schooling at Wesley College. He was awarded the exhibition in English.

He commenced his LI.B. at the University of Melbourne. At the completion of a memorable academic course he was awarded his degree with first class honours, together with the Dwight Prize in constitutional history, the Sir John Madden Exhibition, the Jessie Leggatt Scholarship, the Bowen Essay Prize and the Supreme Court Judges' Prize.

He signed the Bar roll in 1918. He was the first of Owen Dixon's three readers, the other being James Tait and Henry Baker. He finished his reading in 1919. Soon after, he was admitted to the degree of LL.M. by effluion of time, as the procedure was then. Menzies achieved sudden fame. Within two years of admission he was briefed single handed to act on behalf of the Amalgamated Society of Engineers in the High Court. His case depended upon his ability to persuade the Cour to reverse previous decisions by former members of the Court upon the doctrine of immunity of state governmental instrumentalities from Federal interference. He had to argue that the Arbitration Court could determine disputes between employees of State Railways ad their governments. He was opposed by counsel representing the various States, Mitchell K.C. & Latham, Flannery K.C. and Evatt. His case was supported by counsel for the Commonwealth. He won: (1920) 28 C.L.R. 129.

His practice was not limited to the High Court. Sir Arthur Dean praises in the highest terms his skill as an advocate before juries. He was a cross-examiner of brilliance. His readers were Stretton & Gamble, both of whom were later appointed to the bench.

After a relatively sort period as a junior at a Bar which, in looking back, seems studded with luminaries, he took silk. He was granted his letters patent on February 12th, 1929, the same day as Eugene Gorman (See Bar News Sept. 1973 No. 7). By that time his political career had begun, but at State level. He remained in active practice until he entered Federal Parliament in 1934. He was Chairman of the Bar Council 1932-33. At about that time (1932-34) he was in State Parliament and was variously, Attorney General, Minister of Railways and Deputy Premier.

In 1935 he was made an honorary Master of the Bench at Grays Inn, London. In 1937 he was created a Privy Councillor. By the time of his death he had received honorary LL.D.s from twenty universities.

Even after leaving active practice his influence upon the law in Australia has been profound. For the following High Court appointments were made during his governments.

Chief Justices	Sir Owen Dixon (Apr. 1952)
	Sir Garfield Barwick (Apr. 1964)
Puisne Justices	Sir Dudley Williams (Oct. 1940)
	Sir Wilfred Fullagar (Feb. 1950)
	Sir Frank Kitto (May 1950)
	Sir Alan Taylor (Sept. 1952)
	Sir Douglas Menzies (Sept. 1958)
	Sir Victor Windeyer (Sept. 1958)
	Sir William Owen (Sept. 1961)

The Bar is the less by the passing of one who in such a brief active career made such a mark on the Courts and the law in its practice. In turn the Bar would like to think that any reputation for int-tegrity he had was due in some small way to the influence of the Bar on him.

FAREWELL: OLIVER GILLARD

"Si monumentum requiris circumspice"

Or, to be more precise, look at Owen Dixon Chambers every time you come out of the William Street doors of the Supreme Court, and remember that if it had not been for Gillard's enthusiasm, energy, drive, ingenuity of mind and financial-negotiation persuasiveness and skills, it never would have happened. It was he who conceived the grand idea of an interlocking company-superannuation fund scheme, in which the fund would ultimately be the beneficial holder of all the shares and debentures in the company as a security for the members of the fund. It was scarcely to be his fault that this conception had not been realised. First because of the failure of individual members of the Bar to support and contribute adequately to a fund for their own benefit, and secondly because of amendments of the Income Tax Assessment Act regarding the investments permitted to such a fund.

But the success of his idea in other respects may be measured by the urge of member of the Bar to become tenants in Owen Dixon and the proposals to establish another building to house all its members. The management of the Bank which refused to support us, subsequently confessed it was the worst decision they ever made. On the other hand the Commonwealth Bank gave – within the limits of Bankers' prudence – generous support both to the Company and individual members of the Bar who came to it – though it had to be taught that barristers have rather peculiar overdraft requirements. That Banker can scarcely have regretted its decision and co-operation when you contemplate the way the staff on the ground floor are now falling over one another, though it began in 1961 with only a manager, an accountant, a teller and a girl.

The writer of this note was a junior to Gillard in many cases (other than jury work) including, not least, one of those apparently interminable Commonwealth Committees of Inquiry which ran for 18 months. Gillard was apparently tireless in work – and certainly talkative in conferences; which he would terminate at twenty five past ten, to be in court at ten thirty, striding off from Selbourne for that purpose and leaving his much shorter-legged junior to pant behind and arrive in Court after his leader instead of before (as a good junior should do).

Encounters with him as an advocate were always, from the writer's point of view, enjoyable. It is not so easy to tell of one's experience before him as a judge, for one cannot be certain whether previous personal relationships affected the attitudes of each to the other. But the writer found him always courteous and patient even when obviously sceptical of dubious propositions of law which it might be the duty of counsel to propound. The trouble was that we each knew too much of how the other's mind worked.

Gillard had a commanding presence and sometimes gave the impression of towering over not only his unfortunate opponent, but a jury and the bench as well. He belonged to that generation which provided the last of the general practitioners at the Bar – men who might be found in one case declaiming to a jury, in the next arguing a constitutional law case before the Socratic inquisitors of the High Court bench, in the next arguing the testamentary mysteries produced by some blundering attorney's clerk, and the next in almost anything you might choose to think of.

His departure from judicial office will be sorely missed by the profession and the public in Victoria. We wish him a long and happy retirement.

R.L.G.

For the record, Gillard signed the Bar Roll on 16th April 1931 and became K.C. on 24th October 1950. He read with Clyne and himself had five readers, S.T. Frost, W. Kaye, Forrest, Webb and L. Lazarus. He was appointed to the Bench of the Supreme Court on 2nd October 1962.

WELCOME: DAVIES J.

Although his parents called him John Daryl, His Honour has long been known by his second, and more distinguishing, Christian name. Whether this dates from his earlier years at Melbourne Grammar

School or in the course of his law studies at Melbourne University is not known.

After some four years of practice as a Solicitor he signed the Bar Roll on 1st August 1956 and commenced reading with Aickin. Then for seven years he practised at the bar as an outstandingly successful plaintiff's counsel in the County Court juries. Wing was his only reader. The next seven years saw him exercising judicial functions as Chairman of the Taxation Board of Review. With an attraction for symmetry and order which has characterised him, he returned to the Bar in 1971 and practised there for yet another seven year period. He took silk on 8th November 1972. Not surprisingly, in this last period he acquired a considerable practice in taxation and allied fields.

His Honour served for many years on the Bar Council bearing his burden of the considerable committee work that this entails. At the time of his appointment to the Bench he was the Chairman of the Special Accommodation Committee and Applications Review Committee. His recent work as Board of Enquiry into the Victorian Liquor Industry has been a particularly valuable contribute to the State.

He takes to his new position as Judge of the Federal Court of the Supreme Court of A.C.T. and Chairman of the Administrative Appeals tribunal a considerable experience in a wide area of the law and an intimate knowledge of commercial and administrative practice.

The Bar wishes him well in his new office. It is a matter of some regret that his appointment requires his removal to the A.C.T. We trust that from time to time his duties, and perhaps his inclination, will bring him back to Melbourne notwithstanding that it is further than Canberra from the Mt. Kosciusko National Park.

JUDICIAL STATISTICS CONSOLIDATED

It was in June 1976 that the first judicial statistics were published in the Victorian Bar News. Since that time there has been a great deal of shifting on the various benches. And so, for those who are interested and for those who have signed the Roll since 30th June 1976 we have consolidated the following information:—

COMMONWEALTH
HIGH COURT

- No maximum number of Justices.
- Age for retirement 70 (for appointees after July 1977).
- Average age at 1/7/78 — 60 years.
- Average age on appointment — 54 years.

	Age at 1/7/78	Date of Birth	Year of Appointment	Year of Retirement
Barwick C.J.	75	22/6/1903	1964	—
Aickin J.	62	1/2/1916	1976	—
Gibbs J.	61	7/2/1917	1970	—
Jacobs J.	59	5/10/1918	1974	—
Murphy J.	55	31/8/1922	1975	—
Stephen J.	55	15/6/1923	1972	—
Mason J.	53	21/4/1925	1972	—

FEDERAL COURT OF AUSTRALIA

(Judges of the Court resident and keeping chambers in Melbourne.)

- No maximum number of Judges.
- Age for retirement 70 (appointees after July 1977).
- Average age 1.7.78 — 60 years.
- Average age on first appointment — 54 years.

Smithers J. (1965)*	75	3/2/1903	1977	—
C.A. Sweeney J. (1969)*	63	27/4/1915	1977	—
Northrop J. (1976)*	53	10/8/1925	1977	—
Keely J. (1976)*	52	2/10/1925	1977	—

* Date of first appointment.

FAMILY COURT

- No maximumnumber of Judges.
- Age for retirement — 70 (for appointees after July 1977).
- Average age of Judges (Melbourne) as at 1/7/78 — 50 years.

– Average age of appointment – 48 years.

Principal registry (Sydney)				
E. Evatt C.J.	44	11/11/1933	1975	–
Melbourne registry				
Strauss J.	57	3/9/1921	1976	–
Lusink J.	56	27/5/1922	1976	–
Emery S.J.	54	9/7/1923	1976	1994
Asche S.J.	52	28/11/1925	1975	–
Walsh J.	53	31/12/1925	1977	–
Treyvaud J.	48	8/7/1929	1977	1999
Frederico J.	47	1/10/1931	1976	–
T.R. Joske J.	45	22/8/1932	1976	–
Fogarty J.	45	9/6/1933	1976	–
Smithers J.	43	14/4/1934	1977	–

VICTORIA

SUPREME COURT JUDGES

– Maximum number of Judges – 21.
– Age for retirement – 72 years.
– Average age on appointment – 52 years.
– Average age at 1/7/78 – 57 years.

McInerney J.	67	11/2/1911	1965	1983
Anderson J.	65	4/9/1912	1969	1984
Lush J.	65	5/10/1912	1966	1984
Menhennitt J.	65	30/10/1912	1966	1984
King J.	65	13/2/1913	1977	1985
Starke J.	64	1/12/1913	1964	1985
Murray J.	61	2/5/1917	1974	1989
Kaye J	59	8/2/1919	1972	1991
Young C.J.	58	17/12/1919	1974	1991
Harris J.	57	22/1/1912	1973	1993
Murphy J.	55	5/5/1912	1973	1995
Crockett J.	54	16/4/1924	1969	1996
Marks J.	54	10/9/1924	1977	1996
Gray J. (1968)	52	6/3/1926	1977	1998
McGarvie J.	52	21/5/1926	1976	1998
Fullagar J.	52	14/7/1926	1975	1998
Jenkinson J.	51	14/11/1927	1975	1999
Brooking J.	48	7/3/1930	1977	2002
O'Bryan J.	47	5/10/1930	1977	2002

MASTERS OF THE SUPREME COURT

– No maximum number of Masters.
– No age for retirement.
– Average age on appointment – 48 years.
– Average age at 1/7/78 – 56 years.

Master				
Jacob	66	3/9/1911	1960	–
Bergere	63	9/2/1915	1963	–
Brett	61	16/9/1916	1967	–
Gawne	52	19/6/1926	1977	–
Barker	51	15/11/1927	1977	–
Bruce	44	7/3/1934	1974	–

COUNTY COURT

– No maximum number of Judges.
– Age of retirement – 72 years.
– Average age at 1/7/78 – 56 years.
– Average age on appointment – 49 years.

Wright	65	5/8/1912	1971	1984
Corson	62	24/8/1915	1963	1987
Belson	62	18/9/1915	1976	1987
Mornane	61	12/7/1916	1975	1988
Ogden	61	27/12/1916	1972	1988
Vickery	60	28/7/1917	1962	1989
Hewitt	60	4/11/1917	1964	1989
Leckie	60	30/12/1917	1965	1989
Gorman	60	4/1/1918	1971	1990
Forrest	60	28/1/1918	1964	1990
Franich	60	14/6/1918	1966	1990
Harris	59	13/11/1918	1964	1990
Somerville	58	27/1261919	1968	1991
Stabey	57	5/9/1920	1972	1992
Hogg	57	3/5/1921	1975	1993
Lazarus	56	20/5/1922	1976	1994
Martin	56	11/10/1921	1968	1993
Ravech	56	6///1922	1975	1994
Shillito	55	25/12/1922	1967	1994
Just	53	4/8/1924	1965	1996
Howse	53	24/4/1925	1976	1997
McNab	53	2/6/1925	1972	1997
Byrne	52	22/10/1925	1972	1997

Whelan (Chief Judge)	52	30/11/1925	1975	1997
Southwell	51	1/11/1926	1969	1998
O'Shea	51	4/4/1927	1969	1999
Spence	50	3/8/1927	1973	1999
Cullity	50	10/2/1928	1977	2000
Rendit	49	11/6/1929	1977	2001
Read	46	11/7/1931	1977	2003

BROADCASTING AND LECTURING RULES

Over the past few years there has been a marked growth in continuing legal education particularly in circumstances where the courses and those taking part in them as lecturers and course leaders have received widespread publicity from its non-institutional organizers. Not surprisingly, senior members of the legal profession have taken part, sometimes for reward, in providing this much needed service.

Counsel who take part or who intend to take part in the future in such teaching activity are reminded of the existence of the Broadcasting and Lectures Rules and of the need to comply with the standards referred to in them and to ethical standards generally.

In particular, attention of Counsel is drawn to Rule (C) (i) which provides, inter alia, "A barrister who proposes to broadcast, lecture or address . . . shall before making such broadcast or giving such lecture and address give to the Secretary of the Council such details of the broadcast lecture or address as the Council may from time to time require . . ."

The Bar Council has resolved that the following details should be supplied under the above Rules by each member of the Bar who intends to make any broadcast or give any lecture or address.

> The place of the broadcast, lecture or address, its proposed date, its title, its sponsors, its intended audience, its proposed publicity, the substance thereof, the nature of Counsel's participation therein and the number of broadcasts, lectures or addresses given by such Counsel since the first of January last preceding.

This resolution of the Bar Council also provides that the Ethics Committee may, on application of any Counsel, waive this requirement.

It should be borne in mind that the Secretary must be furnished with the relevant particulars before the broadcast, lecture or address is made or given, except where it is impracticable to give prior notice in which event details should be given as soon as possible thereafter.

Copies of the Broadcasting and Lectures Rules can be obtained from the Administrative Officer, 12th Floor, Owen Dixon Chambers.

A PARTHIAN SHOT

The following is the address pronounced by Gillard J. upon the farewell given by the profession to him upon his recent retirement.

Mr. Solicitor, Mr. Costigan, Mr. Teague, ladies and gentlemen. I thank all of you for your presence here this morning and I thank the speakers for their extremely generous if somewhat flattering remarks about myself.

I have enjoyed my life in the law, first as a solicitor, secondly as junior counsel, thirdly as a leader, and then finally as a judge. I have found satisfaction in what I have done because I have always been surrounded by people who trusted me, who co-operated with me and gave me a great deal of friendship. Those enduring relationships are really the foundation of a happy existence, and as I look around the Court and see some of my former colleagues present, I get great enjoyment from the fact that I can still say they are my friends. And also as I look around again, further, there are many of you of course who have come into the law long after I left the Bar. But I can truthfully say that I have received the co-operation of those who appeared before me. At times I have rather suspected they have not done all the work they should have done, but other than that I do not believe I have been dishonourably misled by anybody, and in this I find great satisfaction.

The reasons I found enjoyment in the profession of the law might be said to be based upon two reasons, one somewhat shallow, the other, I trust, more profound. I am a great believer in robust advocacy. Nothing gives me greater joy than to see a really good barrister pertinaciously putting his submissions to the Bench and attempting to remove the preconceptions that the judge might possess. In order that there be no misapprehension as to what I am referring to, I do not mean discourtesy, I do not mean abrasive insolence. What I mean is a mastery of the facts and a retrieval of the law, and, armed with confidence based upon that knowledge, counsel gets up and with pertinacity presses his submissions, and even when I overrule them I still admire the efforts.

Now that is rather superficial reasoning. The more profound reasoning is that I am a devotee of the doctrine of individualism. It is my belief that anybody who practices the law at the Bar and finally becomes a judge relies upon his own individual capacities, talents and qualities. The opinion you give at the Bar is your opinion, however correct it might be. The submissions you make to the Bench are your submissions. The decision you give as a judge is your decision. And, therefore, I am a devotee of the view that irrespective of your educational and economic handicaps, these can be overcome by industry, pertinacity and your own individual quality, and — if I might inject a personal note — I believe I am evidence of that individualism. To be educated at a country High School with not a great width of learning, not very good teachers, to have a parent who had retired living on a pension, there are educational and economic handicaps, but it is my firm belief that despite those handicaps anybody can succeed in the law if he is prepared to work hard, if he has a modicum of ability, and, above all, remains honest.

Therefore, I rather deplore the erosion of the doctrines of individualism by the sublimation of collectivism. Anybody who has lived in my generation during the thirties will realise the dangers of collectivism. The symbol of collectivism of course is the fasces, and anybody who cares to look at the history of the thirties will see the dangers of demagoguery and the dangers of absolute dictatorship, based upon a backing from an ill-informed but so-called loyal group.

Unfortunately, although a war was fought to combat such doctrines, one can discern in the present community, groups clamouring with zeal for the views they put, and unfortunately you will find pusillanimous governments submitting to the clamour.

It is here that I believe the legal profession should closely scrutinise the legislation that is being churned out at three levels, Federal, State and municipal, whereby, slowly but surely, the citizen is being enmeshed in inhibitions and prohibitions of all kinds of character and the interests of the unfortunate individual are completely overlooked.

It is always dangerous to argue from single instances, but judicially I had to consider the Environment Protection Act. That Act has a policy with which I am in complete agreement, but I do not see why one hundred per cent of the community should suffer for the antisocial behaviour of less than ten per cent. If anybody cares to look at that Act, you will see that Parliament has abdicated its capacity to legislate and has imposed upon the Executive the privilege and right determining what the citizen's obligations shall be. I believe it to be, to me, a horrible piece of legislation which should be reconsidered, and the obligation undertaken by the Parliamentarians to determine what the rights and obligations of the citizens are, not the Executive Government.

The result of this move, of course, has had some extraordinary effects. I have just jotted down one or two quickly. Where formerly we had a few battalions of civil servants, we have not got corps; we have got armies at the various levels. Where formerly, when I first came to the Bar, we had law enforcement in the hands of the police, the unfortunate object of everybody's criticism, now we have hordes of inspectors who have no "Brown Bombers", no Judges' Rules, and who are armed with powers under the various Acts which are denied to the policeman in the

pursuit of the investigation of serious crime. And anybody says anything about it. I invite you, gentlemen of the Bar, and the solicitors, to look at the Environment Protection Act and look at the powers of inspectors under that Act, and compare them with the views expressed in regard to police officers investigating really serious crimes. From enquiries I have made from a Minister of the Crown, I understand the number of inspectors is approximately equivalent now to the number of policemen; that is inspectors at various levels, Federal, State and municipal. We now have, therefore, all kinds of people zealously enforcing the law, and if you want some evidence about how zealously it is done, and how unfortunately it is done, I suggest the next time you see Sir Alistair Adam you ask him.

Then, finally, if you want to start business in a certain region, I have been reliably informed by a Minister of the Crown that you have to get the permission of between thirty and forty departments and governmental authorities — thirty to forty government bodies. If ever there was a brake on human initiative and an invitation to disregard the law, that kind of executive administration is a means of doing so. If we need, thirty or forty factory to be determined before a person shall set up business, that person, the applicant, should be able to go to one man and say, "Now look, would you please allow me to go into business?" and that one man should consider the thirty or forty factors and say, "I am sorry, but you may not". But to ask him to move from one to the other, I think, is outrageous. Who is doing anything about it? I understand from the Minister of the Crown, who is my informant, that the Government is trying to do something about it. I hope that is correct, because I believe that if we are to succeed as a community, we have to rely, as we did in the past, upon the initiative and individualism that presented us with the sophisticated society that you and I were fortunate enough to inherit.

Finally, I would like to expatiate on one another subject. I would like to get on to the subject of taxation. Nothing would be closer to my heart, and I can see nothing would be more popular with my listeners. But apparently now you are a villain if you go along to Dr. Spry, or some lawyer, and he tells you how you can avoid the incidence of taxation. It is a terrible thing, it seems, to seek legal advice. You are a real villain. And if you act upon it, you are a worse villain. The consequence is that the only way that you can avoid tax apparently is not to do it lawfully, but do it illegally and evade, and hope that the inspector will never catch up with you.

I would have liked, when I examined the mass media, to obtain the information; but was there a shortfall in the revenue from income tax as a result of the Curran decision, or was the return from income tax in accordance with the estimates given by the Treasury? Possibly the income tax was greater because of the incidence of inflation. That has been the history in recent years. But nowhere did I see in the newspaper or hear over the air that there had been a shortfall. But it is brought forward as a terrible thing, that you order your affairs within the law, on legal advice, to avoid the incidence of taxation. And the other day we had a police inspector telling us it is a terrible thing to go along and get an expensive lawyer to beat the breathalyser test. That also is a shocking state of affairs; according to him it should not be allowed.

What is the legal profession doing about that kind of criticism? Are you prepared to accept all this legislation brough down binding your clientele in terms that you will not understand — I certainly do not — and be unable to advise your clients precisely what they can or cannot do? This, I believe, is the unfortunate trend in our community today, and I look forward to the year 2000 A.D., by which time, thank God, I will not be here, the individual will be so encased and enmeshed by legislation he will be like a little larva inside a cocoon, unable to do anything.

I am reminded of a caricature that appeared in the daily press in this State in the thirties, long before many of you were born, but it has left evergreen memory with me. It is a caricature on Nazism. We in this community in the thirties made derisive comments upon the collectivism that gave rise to Fascism and Nazism. This particular caricature was of the gentleman,

Hermann Goering. Again many of you, because of your youth, will not know anything about Hermann, but he was always portrayed as being an obese character in uniform, covered in medals from his shoulder right down below his abdomen. And here he is, standing outside a gentlemen's convenience. Now in the thirties conveniences in this State were usually designated by a board carrying the word "Gentlemen" (they were thought to be "gentlemen" in those days, not merely "men") and instead of the word "Gentlemen" being on the board, the word facing Hermann Goering was "Verboten" — forbidden.

This is the destiny of members of this community unless something is done at the present time to stop that spate of legislation. Because somebody says, "This is wrong, let us pass a law to stop it," in the ultimate analysis, you will find that you are dealing with less than ten per cent of the community who did the wrong thing, but you are imposing the legislation on the other ninety per cent. I believe there is a heavy responsibility placed upon your institution, Mr. Teague, and yours, Mr. Chairman, to raise voices, saying, "Let us know the law as it is today; let us apply that law as it exists today before we dare to bring down any new legislation."

A concluding word from my own experience, I know there are statutory provisions in this State which are a dead letter. And yet if it were the policy of governments to enforce the present laws, it would be a great reason why they would not need any further legislation with regard to the matter. I say that, Mr. Solicitor, fully conscious that I might be regarded as being critical of the Parliamentary Draftsman, and those advising the government on the law. But I do believe, and I strongly believe, that too little attention is paid to how the law operates for the great majority of the people and how it affects those people in that much used phrase. "Quality of life".

Ladies and gentlemen, I thank you for your patience. You may very well go away and say, "It's about time he retired from the Bench," after that outburst. However, I do thank you for your attendance here today.

BLOOD BROTHERS-IN-LAW

Historical Perspective

The Victorian Legislative Assembly adjourned at 10.55 p.m. on the 10th November, 1891. After some 16 years of intermittent debate, both in Parliament and by the public, the Legal Profession Practice Bill was passed.

The Assembly had previously passed the Bill in 1875, 1878, 1881, 1883, 1884 and in 1886, on the last occasion unanimously. The Legislative Council, described by one Honourable Member as being Victoria's House of Lords, voted against the legislation until 1891, although on one occasion the Bill was defeated by only one vote.

The Act, provided that from 1st January, 1892 all persons should be admitted to practice as Barristers and Solicitors and all Barristers previously admitted should thenceforth be entitled to practice as solicitors and vice versa. The object of the legislation was to amalgamate both branches of the profession.

Parliamentary debate on the amalgamation issue reached a peak in mid 1884. On 25th June, 1884 the House of Assembly unanimously resolved "that in the opinion of this House, an amalgamation of the two branches of the legal profession in Victoria would be advantageous to the Community".

In commending the Bill to the House, Mr. Mason who introduced the Bill into the Lower House said:

> "By this reform barristers will be entitled to communicate direct with their clients, and the public when they wish to secure the services of a barrister will be able to do so without being put to the double expense of consulting the barrister through a solicitor . . . It will likewise, I believe, help to cheapen law. Many persons, I understand, give up the idea of going to the Supreme Court in order to establish what they conceive to be their rights, or to seek redress for injuries, in consequence of the enormous expense of litigation before that tribunal.

> I think that the Bill will considerably reduce the cost of litigation."

Mr. Davies who also supported the Bill said "it will allow a barrister to initiate legal proceedings, and carry them right through in the same way as a solicitor. A client will thus have the opportunity of choosing whether he will go to a solicitor or to a barrister in the first instance."

Prior to 1884, solicitors generally opposed the Act. Although he voted in favour of amalgamation Mr. Zox ( ) said: "The moment this measure was proposed, the solicitors rose from all sides, and argued that the amalgamation would be almost ruinous to them. I do not know what has caused their present change of front, but I have no doubt that they are actuated by the most honourable and straightforward motives, and I suppose that on this occasion they are studying the interests of the general public and not their own".

Such sentiments may, at least in part be justified if the explanation of Mr. Kerferd, who was in the 1880's a prominent member of the Lower House, is correct. In the 1884 debate he is reported as saying "I know on this occasion the Bill is receiving considerable support from the solicitor's branch of the profession and that support, I regret to say, is based on a matter of feeling. Under the Judicature Act the fees of solicitors have cut down in a way that they did not expect . . . and they seek to secure an amalgamation of the two branches of the profession, in the hope that by that means they will recoup themselves for any loss they may sustain by the reduction of fees under the Judicature Act . . . In my opinion, if the amalgamation takes place, the public will not derive the advantage which they are led to expect will flow from it."

The late Dr. Coppel Q.C. in a paper read at the Commonwealth and Empire Law Conference in 1955 expressed a view not inconsistent with that of Messrs. Zox and Kerferd in explanation of the apparent change in attitude by solicitors.

It is perhaps interesting to note that in a letter dated 15th July 1884 Rebecca Isaacs wrote to her son Isaac (who was then a practising barrister)

> "Now supposing the Bill passes the Upper House and people like to go for advice to a Barrister in preference to a lawyer. Would a barrister be compelled to charge according to a scale of fees marked out for lawyers or could they make their own charges (I believe the lawyers fees are much reduced)? I think all this has been brought about by members of the profession who get but little to do. Were you at the meeting of barristers the other day? I saw an account in the paper where Webb was the chairman. I did not think Webb would propose such a thing as he brought forward because he gets such large fees and I think it looked mean on his part."

Curiously, a major complaint made about barristers in the 1884 debates on amalgamation, was that popular barristers accepted too many briefs, and thus were unable to attend all of the courts where they were briefed to appear. In the 1880's, solicitors had no right of appearance before the Supreme Court, even on circuit, and certain members of the house made quite scathing attacks on barristers for abusing their exclusive right of practise before that court.

Attacks were made in Parliament on the barristers' rule that silks appear with a junior, but save for the overall scheme for amalgamation, this matter is not referred to in the Act.

Apart from the criticism that sometimes popular barristers did not arrive at court when briefed to do so, and apart from a few generalized criticisms as to the cost of litigation, in general, neither the supporters nor the opponents of the Act criticised the ethical standards of either branch of the profession.

A Mr. Saunson a M.L.A. was a notable exception. Although professing not to care a "brass button" as to whether or not the Act was passed, he commented "Did any honourable member ever know a lawyer, attorney or barrister refuse anything he could get? . . . Laws were never intended to make lawyers rich, but to afford the lay members of the community — the general public — the means of justice. Unfortunately, however, people but too frequently, simply because they will not exercise their

common sense, allow the lawyers to get their hands on them."

It is probable that public sentiment in the 1880's was strongly in favour of amalgamation. Indeed the popular poet "Banjo" Paterson wrote a poem "Gilhooley's Estate" sub titled "A ballad concerning the amalgamation of the legal profession" at the time. By 1892 there seemed to be little interest in the question, due perhaps in part to the effect of the land boom which Victoria was then experiencing.

The Act has not of course greatly affected members of the Bar, as upon the passing of the Act, they agreed voluntarily to refrain from practising as solicitors, which restraint continues to the present time. The restraints on solicitors appearing in superior courts were of course eliminated, but by and large, the words of Mr. Wrixon, who opposed amalgamation, appear quite prophetic — "There is no doubt that, whatever legislation you carry for the purpose of amalgamating barristers with attorneys, you will never succeed in amalgamating the work respectively done by them".

THE WRIXON PROPHECY

Experience has demonstrated the need in a sophisticated legal system for the existence of a separate body of practitioners of the law performing the function of advocates.

New South Wales and Queensland

Here there is a divided profession recognised by law. There is no present prospect that this will be abolished in either place, notwithstanding the very comprehensive examination by the Law Commission of N.S.W. into all aspects of the profession in that State.

South Australia

On 26th November 1964 four barristers practising as such inaugurated the South Australian Bar Association. The Bar now stands at some 30 members and appears to be well established and growing.

Western Australia

An independent Bar has existed since 1960 and now has some 40 members.

Tasmania

An independent Bar of 5 practitioners has now developed.

Territories

In each of the territories an independent Bar has been established by practitioners. The members are small by Victorian standards but each is established and its contribution is recognised. A.C.T. — 10 members, Northern Territory — 5 members, New Guinea — 10 members.

New Zealand

Here, again, the profession is fused and barristers and solicitors have been permitted to practise in partnership. Q.C.'s however, have been barred from partnership in firms for some 50 years. Nevertheless in each of the major cities a process of rediffusion has taken place and groups of lawyers, voluntarily electing to practise as barristers only, have grown up.

Elsewhere

In each of the four main European legal systems the profession is divided rather than fused; this, notwithstanding the great differences in procedure between them and the common law systems.

In Singapore the profession is fused in theory but divided in practice.

THE PRESENT SYSTEM (by the Chairman)

Readers of the Bar News might well be puzzled to understand why it is, in 1978, a fresh attempt has been made to destroy the independence of the Bar, particularly when that attempt has occurred in the framework of a proposed meeting of the Law Institute called for a quite different purpose.

The puzzlement might be increased when one looks at the generally good relations which have existed between the Bar Council and the Law Institute Council for some years.

I believe it to be undoubtedly true that the great majority of solicitors, city, suburban and country, are in favour of the existence of an independent Bar. This view is held despite the irritations felt by many solicitors with some Bar practices such as the two counsel rule, the two-thirds rule (even in its present truncated state) and "wigs and gowns". These matters, of course, are currently the subject of substantial enquiry in the United Kingdom and New South Wales.

Perhaps the trouble started late in 1970 when the Law Institute Council of its own initiative, and without consultation with the Bar Council, determined to set up a large board of enquiry to look into the legal profession in Victoria. The Bar Council was first appraised of this decision from the Law Institute inviting it to nominate some representatives to this Board. Close investigation by the joint standing committee of the Bar Council and the Law Institute made it clear that such an enquiry would not only take many years to complete but would also substantially duplicate the work being done in other places and particularly in N.S.W.

For some eighteen months a monthly meeting has taken place between the Executive of the Law Institute Council and senior members of the Bar Council. This has been a particularly useful vehicle for frank exchange of views. After discussions at these meetings had led to the abandonment of the enquiry it was decided that on a more limited basis a number of bar practices and traditions in respect of which criticism had come over the years from the Law Institute would properly be explored in depth by both bodies. For this purpose the following joint committees were set up:

Group 1
(a) Rule that Solicitors must attend Barristers' chambers.
(b) The retainer rules.
(c) Should wigs and gowns be retained.
(d) Use of Solicitors names in firms after they have gone to the Bar.

Bar Delegates: Costigan Q.C. and Hedigan Q.C.

Group 2
(a) Rule that Barristers can only appear in Court with another member of the Bar.
(b) Rule that a Queen's Counsel can only appear with a junior.
(c) Specialization in the profession and recognition, designation or certification of specialties.
(d) Membership by Barristers of the Law Institute.
(e) Partnership by Barristers with other Lawyers.
(f) Sections.

Bar Delegates: Gobbo Q.C. and Berkeley Q.C.

Group 3
(a) Discipline generally.
(b) Competence of both Solicitors and Barristers to ensure the proper standards of competence are maintained by both.
(c) Discipline of Barristers for earlier misconduct as Solicitors.

Bar Delegates: Charles Q.C. and Hampel Q.C.

Group 5
(a) The two-thirds rule insofar as it still applies
(b) Fees of Barristers.
(c) Should it be misconduct for a Solicitor to unreasonably hold on to Counsel fees after they have been paid to him by his client.
(d) Payment of the same amount under County Court scales where a solicitor appears in Court as when a Barrister appears in Court.
(e) Fees of Counsel on County Court briefs particularly for a hearing where the amount claimed is the limit of the jurisdiction.

Bar Delegates: Davies Q.C. and Waldron Q.C.

Group 5

Legal Education: Joint involvement of the Institute and the Bar.
Bar Delegates: Phillips Q.C. and Goldberg.

The Law Institute were anxious to have as one of the topics the question of fusion or a single governing body for both barristers and solicitors. It was informed however that although the Bar Council was prepared to discuss almost any topic suggested by the Law Institute the question of the Bars' own destruction did not fall into that category and was non-negotiable.

Group 1 has already completed its discussions and has recommended, inter alia, the retention of wigs and gowns. The other groups are still exchanging position papers: the work being done is valuable and may well result in some changes. At the very least it will improve on both sides an understanding of the rationale of the bar's position.

The Law Institute Council has for a long time been concerned to amend its disciplinary procedures. It was widely recognised by the Council that the former procedures were cumbersome and extremely time consuming. Draft amendments were prepared by it to the Legal Professional Practice Act on that subject and other matters. Although it was not the intention of the Law Institute Council to alter the position of barristers, it became clear on consideration of the draft bill that a very significant change had occurred with the result that all complaints against barristers would henceforth be dealt with by the solicitors cisciplinary tribunal. Once the effect of the draft bill was recognised a joint drafting committee of the Bar Council and the Law Institute Council made fuller amendments to produce the present result.

Unfortunately for the Law Institute Council some solicitors opposed vehemently the results produced in the Bill (and later the Act). A general meeting of the Law Institute was called on a petition signed by some hundreds of solicitors. So far so good. However one of the arguments advanced by the opponents to the Act was that barristers should also be subject to it. The basis for this contention was supported by attacks on the bar intemperate, extravagant and disgraceful language.

Following upon this (as a matter of chronology and not necessarily cause and effect) the Law Institute Council resolved that it would at the General Meeting of its own motion put the following resolutions:

> "That barristers be treated by the Legal Profession Practice Act, as amended by the Legal Profession Practice (Solicitors' Disciplinary Tribunal) Act in the same manner as solicitors and that the Council should:—
>
> (a) press the Government to amend the Legal Profession Practice Act so as to make all practising lawyers subject to the same disciplinary processes;
> (b) adopt the view, and take appropriate action to ensure, in the interests of the legal profession and the public, that both barristers and solicitors be members of the one professional organisation and that all its members should be subject to the same statutes, regulations and ethical standards."

In a letter addressed to all members of the Law Institute Mr. David Jones (past President), whilst supporting the resolution has frankly concluded that the effect of the resolution, if acted on, would mean the end of the independence of the Bar.

It is extraordinary that this attempt to take over the Bar should occur in Victoria at a time when the question of fusion is being investigated in the greatest depth in N.S.W. and the United Kingdom.

The Bar Council has in its files submissions made to these Enquiries on this question. Perhaps the finest defence of an independent Bar which has appeared in our times is to be found in the "Memorandum by the Judges of the High Court of Justice" in England. Any person who advocates fusion without having read this document can be accused of failure to give proper consideration to the issues involved.

I put on one side the submission made by the N.S.W. Bar Association. It is a fine document but for the purposes of the present dispute cannot carry the same weight as the submission of the Law Society of N.S.W. At great length the Law Society has examined, and set out, the arguments for and against fusion. It concluded, that the present system has, subject to certain acknowledged deficiencies, served the community well since its inception and it would be a serious mistake to abolish such system in favour of an untried fused or unified profession.

In the light of this kind of conclusion one can only regret that the Law Institute Council has chosen to launch an attack on the independence of the Bar in an arena which one suspects will

be highly charged with emotion and not productive of the kind of clear investigation which is occurring in other jurisdictions.

The Bar has an immensely powerful case for retaining its independence. The quality of advocacy and appointment to the judiciary would undoubtedly, in due course, suffer as it has suffered in America where Chief Justice Burger of the United States Supreme Court regrets the lack in America of a specialised bar along English (and Victorian) lines.

It is not for me to probe the motives of those on the Law Institute Council who would wish to destroy the Bar. I do not dispute the sincerity of the views held by many of them. But I would ask them to consider seriously the matters raised by the Judges of the High Court of England, the Bar Association of N.S.W., Chief Justice Burger of the U.S. Supreme Court and last, but by no means least, the Law Society of N.S.W. before opting for a course of action which can only harm the profession as a whole with no benefit to the public.

Frank Costigan
Chairman

MISLEADING CASE NOTE No. 2

FEDERAL COURT

LOSTAGAIN v TEADIUM

Gillcup J. read the following judgment:

This is an action for misleading advertising under the Trade Practices Act. It has received considerable attention in the daily press, and has been bitterly fought. It is not good that the parties, by their resort to this tribunal, have given the masses such titillation; but resort they have and a judgment there must be.

The defendant Bernard Teadium is a doctor of great skill and learning, and is currently the President of that august body, the General Practitioners Society of this State. It is common ground between the parties that that society represents at least all of those hardworking professional men and women who conduct their medical practices as general practices. The plaintiff, on the other hand, is one of those odius medical men who describe themselves as specialists; whose intellectual paternalism in the courts and, indeed towards all who understand not their mysteries, is resented by the common man.

The plaintiff has alleged that the defendent has misled the public, by representing the General Practitioners Society to be the body controlling all doctors in this State. The defendant, while admitting that the representations were made, asserts that they were true, or that at least they ought to be true.

The plaintiff in his evidence has told the Court of an association which he called the Medical Specialists Association, and of which he said he was the Chairman. When challenged to prove its incorporation or establishment by Parliament he could not, and I find his evidence unreliable. However, I am prepared to accept that there exists a small fringe group of doctors so little concerned with the welfare of the community and so self-centred that they act only as specialists upon the referral of a general practitioner. What purpose they serve, and why the community has both loathed and tolerated them for so long, it is not for me to say. The point in issue here is whether Dr. Teadium is entitled to say that he represents all doctors, or whether he can only speak for the general practitioners.

Evidence was given, and I accept it, that a general practitioner is legally entitled to perform all of the operations performed by these specialists, and that many do so. Those that do so regularly are known as "amalgams", after that costly, shiny, but impure metal used by dentists to remedy decay. Evidence was also given that the specialists are qualified by almost the same training as any general practitioner, and in general are younger and have less experience. What is important however is not whether the public, in suffering this curious and seemingly pointless dichotomy for so long, has been sensible and justified, but whether it

in fact has done so at all. I find that is has. Accordingly to succeed in this case the defendant must show some justification for saying that he can or should be able to speak for all doctors, and this he has failed to do. I should say at this stage that he did his case no good by his repeated outbursts of "It's not good enough!" and "What's all this then?", like some comic constable. Like most people I am suspicious that loud assertions cloak a lack of logical argument.

The defendant and his witness Dr. Kamikazioff expressed the view that the fees charged by the specialists are unreasonable, and constitute a drain on the public purse. Yet their professional brethren continue to defraud Medibank on a huge scale, causing great strain on the General Practitioners' Guarantee Fund.

The defendant says that he will abolish the surgical masks and gowns worn by the specialists. For the sake of change for its own sake and a marginal increase in cost efficiency, he would destroy a costume in which the public, or rightly or wrongly, has great faith. Surely, I do not detect a hint of jealousy in the Defendant, a little envy of those able to dress in women's clothing and be paid for it?

The most serious matter for the consideration of this Court, and the one which seemed to cause the most dispute, is that of disciplinary control of doctors. The defendant's society has a body called the General Practitioners' Disciplinary Tribunal, which controls its members. One of the representations on which this action is based is that the defendant has repeatedly referred to that Tribunal as the Doctors' Disciplinary Tribunal, claiming that it ought to control all medical practitioners. In my view that would be a grave mistake. To put it bluntly, Dr. Teadium should clean up his own backyard before looking for rubbish in others. The specialists regulate themselves and do it tolerably well, but the same cannot be said of the general practitioners. Although most general practitioners are honest and hardworking, there have been some notable rogues, and they have obviously not been controlled by the defendant or his society. The Medibank misdoings of Mrs. Brain, Dr. Glickstein, and their ilk casts a grave doubt on the ability of the defendant to control those doctors already under his control, let alone any more.

I make no comment on the fact that the initials of the Tribunal as the defendant would have it are the same as those of an infamous pesticide which also caused more harm than good.

On the facts before me the plaintiff should have his judgment, with costs to be paid from that fortunately inexhaustible well, the General Practitioners Guarantee Fund.

Order Accordingly.

Gunst

A MATTER OF PRIVILEGE

What is a practitioner, holding documents or articles on behalf of a client, to do when confronted by a police officer with a search warrant? A solicitor or barrister in this situation will require lucid and precise rules to guide him. A recent decision of the Queens Bench Division of the High Court, Truman (Frank) Export Ltd. v Metropolitan Police Commissioner [1977] 3 ALL E.R. 431, explores the question, dealing with two main issues, the nature of the material covered by legal professional privilege, and the relationship of privilege to the power conferred by a warrant to search and seize. For the practitioner, anxious to understand his rights, the case presents a paradox: at once it extends the ambit of privilege and severely delimits its field of operation.

The case concerned certain documents held by a solicitor in connection with contemplated civil litigation, and which were sought to be obtained by police pursuant to a warrant issued under the English equivalent of section 467 of the Crimes Act 1958. The section empowered a justice to issue a warrant for the seizure of among other things, forged documents. The documents in the case fell into three categories: documents which were alleged to be forgeries,

one document alleged to be evidence material to the proof of the alleged forgeries, and documents alleged to be material evidence relating to a different charge, one of conspiracy.

Swanwick J. held that all the documents could properly be seized by police pursuant to warrant. The first category of documents were clearly covered by the statute because they were alleged to be "forged documents"; and the lone document in the second category was held to be properly seized under the statute because it was material to the proof of the forgery. In both cases, because the special warrant had been issued under statutory provision, the doctrine of privilege had no operation or relevance. The third category of documents was held to be privileged in the hands of the solicitor; but these documents were still properly obtained because they had been voluntarily handed over by the solicitor. In any case they were relevant to a charge of conspiracy at that time being investigated by the police officers and in respect of which charges had already been laid.

The judgment in the case gives reason to believe that the ambit of legal professional privilege is broader than hitherto supposed. Readers may recall the recent decision of the High Court of Australia in Grant v Downs (1976 51 ALJR 198 in which it was clearly held that privilege applied only to documents brought into existence for the sole purpose of giving advice or for use in legal proceedings. But in Truman the learned judge drew a distinction between the ambit of privilege in civil cases and that where the privilege is invoked in the context of contemplated criminal proceedings or in the course of a criminal investigation. In the latter case privilege is much broader, and includes not only documents brought into existence pending proceedings but also documents and articles which exist independently of legal proceedings and which are the subject matter of legal advice.

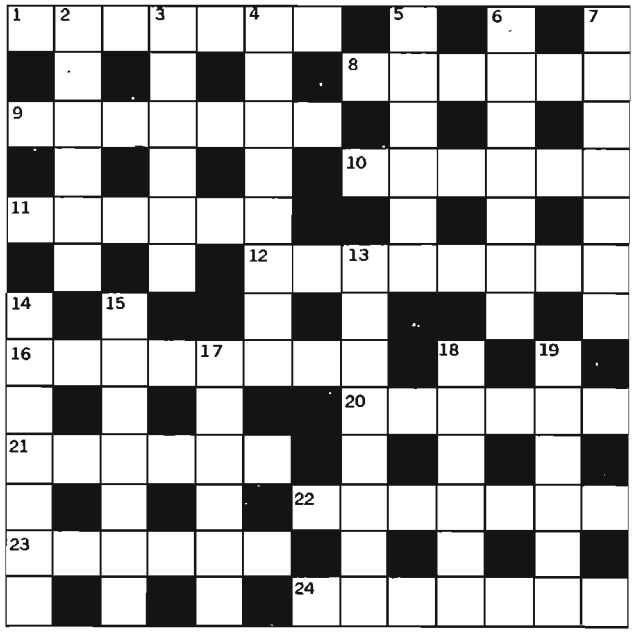
This decision may lead a practitioner to form the view that many more documents and things are privileged than he formerly supposed. The privilege evoked in a criminal investigation might include reports, narrative accounts, correspondence, and articles, on which his advice had genuinely been sought. But there are obvious difficulties with this view. A solicitor cannot be used as a safe repository for incriminating evidence; such objects as a dagger or an article stained with blood would not be privileged. And although one view might be that common sense would enable a solicitor to discriminate in favour of articles he could keep without embarrassment, the distinction between privileged and unprivileged items is obviously deeply blurred. In any case it is not immediately clear what there is in the notion of privilege and its underlying rationale that would require that a decision be drawn between civil and criminal proceedings.

Be that as it may, the decision in Truman is clear authority for the proposition that where a practitioner is confronted with a warrant issued under legislation providing for the search for and seizure of specified items, that warrant overrides legal professional privilege. For example, in Victoria there are provisions for the issue of warrants for the seizure of forged documents and implements of forgery (section 467, Crimes Act 1958), suspected stolen goods (section 464), articles reasonably believed to be obscene (section 165 (2) Police Offences Act 1958), and other similar provisions. There is a general provision in section 465 for the issue of warrants for the seizure of "anything upon or in respect of which any indictable offence . . . is suspected of to have been committed; or anything which . . . will afford evidence of the commission of any such offence; or anything which . . . is intended to be used for the purpose of committing any indictable offence against the person . . ." According to the reasoning in Truman the power conferred upon police by special warrants issued under sections such as these overrides professional privilege because compliance with a statute cannot be contrary to public policy; and it is public policy which is, of course, the rationale of privilege. If this doctrine applies, not only to particular statutory provisions such as that relating to forgeries but also to general ones such as section 465, then it is apparent that it works a deep incursion into the field of operation of privilege.

The loss of significance of privilege is even more marked than this, however, because Truman

CAPTAIN'S CRYPTIC

No. 24



ACROSS:

1. Gives Elvis a pain in the cuts? (7)
8. From before Latin (6)
9. Ivan the judical (7)
10. The judge + 1 makes a cocktail (6)
11. Pungent plant root (6)
12. Election proceedings (8)
16. Pulled up short (8)
20. Sullied (6)
21. Prodigal (6)
22. Flora in Man from Snowy River (7)
23. Isma (6)
34. In court (2,5)

DOWN:

2. Singularly beind in payments (6)
3. Year books (6)
4. Bounce off (8)
5. Bosom (6)
6. Omen (7)
7. Attester (7)
13. Treason (8)
14. From town of barristers to Chief Justice (7)
15. Re-rejuvenation in fees (7)
17. Expeditions (6)
18. Pandemoniom (6)
19. Flotilla (6)

suggests that the words in these kinds of statutory enactments be given a very wide interpretation. It might have been expected that a provision dealing with forged documents would be strictly construed, as a penal statute and one restrictive of common law rights. Indeed the learned judge in Truman indicated a personal preference for that view. But he felt himself bound by principles to be found in contemporary Court of Appeal decisions, which defined the powers of police upon a warrant in broad terms. On this view a police officer entering a man's house upon a warrant has the power to seize anything he reasonably believes to be material evidence to the crime for which he enters. Thus Truman would allow an officer armed with a warrant to seize suspected forgeries to take documents or articles believed to be evidence of forgery; or in the case of a warrant to seize obscene articles, it would allow him to take material not itself obscene but merely evidence of the obscenity charge. And a claim of privilege could not prevail against this authority.

Bleechmore

MOUTHPIECE

"Of course you wouldn't remember that, Flossie", said Big Wig benignly. "That was before your time."

The other flutterd her eyelashes. Her eyes shone with the innocence of the newly admitted.

"But that accommodation meeting was a perfectly charming get-together" she trilled. "Mr. Costigan. ."

"Costigan" corrected Bigwig.

". . . was so nice and so fair about it all. That's what I like about the Bar. The gentlemen are all such proper gentlemen".

"So are some of the ladies" though Whitewig.

"Proper gentlemen oh m'dear" smiled Bigwig. "It's a pity that you haven't had the chance to see a Bar meeting in full hue and cry. Those proper gentlemen you speak of. More like baying hounds closing in on a quarry".

"You're not talking about our Bar surely", said Flossie. "Anyway that meeting the other night had everything. Proper conduct, measured tones and even a few pointers on the breadth of his practice and the depth of his knowledge by that charming little whitehaired . . ."

"That wasn't what I'd call a meeting" said Bigwig. "In the old days they would never have got away with it. It was more like a parlour maid's tea party. Now in my day, a meeting like that really sorted the men from the boys".

"And the women too" ventured Whitewig.

"Why there's hardly a well known name that didn't cop a fair towelling in those halcyon days". He leaned back to reminisce. " '65 to '75 was the period of full flower. Let me give you some highlights. Young brought to his knees after drafting an amendment to remove disciplinary appeals from the full bar. McGarvie denounced to one and all. Kaye under pressure. Harris having to throw a damper on a hostile crowd by turning on free grog. And the darts: forged in malice, honed in secret and hurled in the heat of the moment. Ah, those were the days". His eyes were shining just to relive the memory. "And by the way, did you hear how Gillespie-Jones of fond memory was given that poisoned cake?" He ambled off.

"It's amazing how wrong one can be" said Flossie quietly, biting her lower lip. "And at the meeting I took him for a gentleman".

Byrne & Ross D.D.

LETTER TO THE EDITOR

Dear Sirs,

The Willee and Walker article on the duty of prosecutors to disclose evidence was a most welcome contribution. I have not in recent times seen an article written by a practitioner on that subject.

Your readers may be interested in the High Court decision of Findlay (1976) 50 ALJR 637.

In refusing special leave to appeal the Chief Justice had no "sufficient doubt" of the propriety of the judgment of the Supreme Court which decided the following propositions:

1. That statements of persons, made as persons who would or might be called as witnesses in a preliminary enquiry brought before a Magistrate can be subpoenaed, or called for when the statements are in court, and must, in either case be produced to the magistrate. Notwithstanding the use before the Magistrate and in argument before the Supreme Court of such inappropriate expression as "the police brief", the Supreme Court clearly treated the call in fact made in this case before the Magistrate limited to such statements of witnesses.
2. That, subject to the establishment of a claim of privilege, such statements of a claim of privilege, such statements may in the discretion of the presiding Magistrate, be made available in whole or in part, according to his discretion, for inspection by the Defendant or his advisors; the time at which the inspection is allowed is a matter for the Magistrates.
3. That such statements of witnesses are not as a class subject to professional privilege.

Yours sincerely,

LEX CRIMINALIS

NOTANDA

Daniel Mannix Memorial Lecture

On Thursday 29th June 1978 at 8 p.m. in the Wilson Hall, University of Melbourne the second Daniel Mannix Memorial Lecture will be delivered.

The speaker, Sir Zelman Cowan Q.C. has as his topic, his distinguished predecessor Sir Isaac Isaacs.

Admission is free but tickets should be obtained from Newman College.

Australian Law News

The first issues of this journal have already appeared. Editor, Bennett Q.C., invites members to contribute articles, news and information generally for inclusion in future issues. Whilst there is need to be topical any contribution which may be of interest to the profession nationally will be gratefully received.

Comments likewise are invited from readers of the journal as to its formal style or content are welcome.

INTERNATIONAL LAW ASSOCIATION CONFERENCE

MANILA

The 1978 conference will be held in Manila, Philippines. It starts on August 28 and finishes September 2.

List of Subjects

Human Rights
Water resources
International Monetary Law
Law of Sea
International Criminal Law
Landlocked States
International Medical and Humanitarian Law
Space Law
International Terrorism
Air Law
International Commercial Arbitration
Environment
Collision at Sea
Sovereign Immunity

This conference will also provide many members with an opportunity to visit South East Asia. Such conferences are ordinarily tax deductible.

There are a number of ways of getting there.

By organised tour

There are some advantages in joining a tour organised by a travel agent. IATA regulations demand that accommodation for each night be arranged and that pre-paid tours be available for a specified proportion of the time away. Because of their bargaining power, travel agents are likely to get far better rates for air fares, accommodation and tours than an individual.

Bearing in mind that the going nightly rate for a single room in a first class international hotel will be not less than $30, the tour charges look very good indeed. If however you want to arrange your own at an economic local level, you might break even with the tour prices or even better them.

A number of tours are being offered.

1. Jetset Tours

   Jetset offers a simple package. Leave Melbourne Tuesday 22 for Singapore. Accommodation at the Oberoi Hotel. Friday August 25 to Manila. Accommodation at the Manila Hilton. Total of 15 days $895.00. (Mrs. Cherye Beilken, Jetset Tours, 203 Collins Street, Melbourne, Phone 62 0041).

2. Monahan Tours

   Offer a few choices. Accommodation in Manila is at the Plaza. Their fares range from $1616 for 6 nights Japan 2 nights Hong Kong 10 nights Manila, down to $837 for 9 nights in Manila only.

Private visit

You can arrange to visit the conference yourself. The cheapest carrier is Philippine Airlines going Melbourne to Manila direct on Mondays and Fridays.

The prices are

1. First class $1546 return.
2. Tourist $1114 return.
3. Economy, where you are away more than 14 days and less than 28 days $725 return.

(Mr. Coppel, Philippine Airlines, AMP Building, 62 6101).

SPORTING NEWS

Mr. Justice Treyvaud was given the unpleasant task of presenting the Sir Edmund Herring trophy to Mr. John Richards at the conclusion of the annual Golf match between the Bar and Bench verses the Law Institute held at Royal Melbourne. The Law Institute won eleven matches to seven and rubbed salt into the wounds by having the best and second best pairs in the individual pairs event. One of the wives of the successful solicitors was heard to say that her husband had foot and mouth disease — "he walks all day and talks all night".

Despite the fact the the sire of Bowman's mare Sorelle is Buck's King, she remained a maiden until the 27th May, 1978 when she saluted at Avoca. She had been running in all races except the Melbourne to Warrnambool bike race in an attempt to throw off the stigma of a maiden and no-one can begrudge the horse her initial success. From all accounts she is better suited over a bit of ground and more wins are expected.

Spicer is on the crest of a wave with the wins of Open Play and Bella Muchacha recently. The former is a very promising hurdler winning at Pakenham and Moonee Valley. A fall at Geelong recently had put the horse out of calculations for this years Grand National. The latter horse started at a short price when it greeted the judge in the bush. Of course, as a reader he needs some form of income to supplement his meagre earnings; unlike Hore-Lacy whose Roughneck win at short odds at Sandown merely added success to success.

Four Eyes

MOVEMENT AT THE BAR

Members who have signed the Roll (since March 1978)

M.J. Halliday (Qld)	N.T. Robinson
P.A. Tribe	E.J. Read
G.P. Thompson	M.J. Stiffe
T. Komesaroff, (Mrs.)	J.H. Karkar
I.H. Gibson	B.R. Geddes
S.G.S. Collins	G.L. Davies (Qld Q.C.)
A. Garantziotis	A.J. McQuillen (NSW)
M.J.L. Preston	E.F. Stuart (Mrs.)
A.R.S.A. Lovejoy	C.R. McKenzie (Miss)
P. Luke	G.E.M. Morgan (Miss)
J.M. Salamanca	C.D. Johnson
D. Shavin	C.J. Price
S.N. Allston	P.G. McGuinness

Members who have transferred from the Non-Practising List to the Practising List

N.J. Williams (effective from 1/1/79)
G.D. Johnstone

Members who have transferred to the Non-Practising List

M. Munz
D.J. Bartlett

Deaths

E.H. Wilson
R.G. Menzies Q.C.

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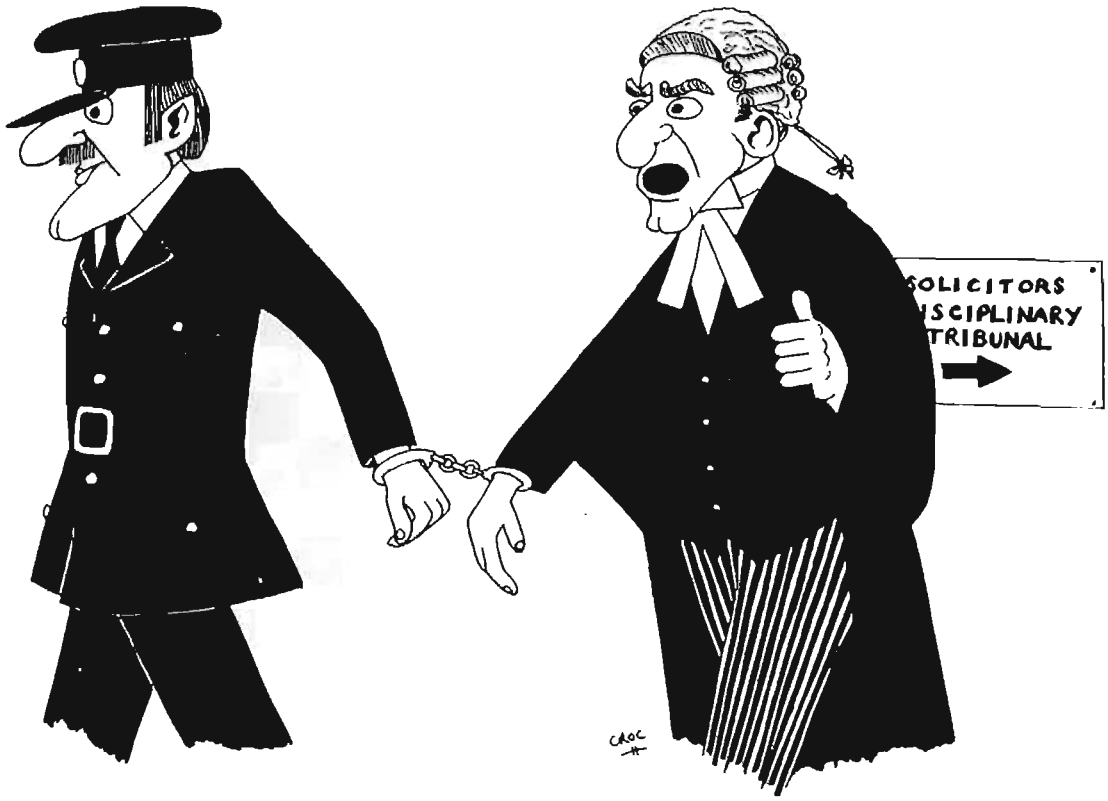

". . . and on the charge of practising solely as a barrister, they refused me representation."