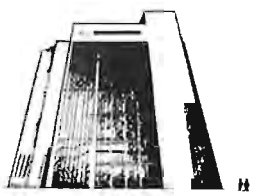
Victorian Bar News

WINTER EDITION 1980



THE COVER:
The cover introduces the New High Court Building and a new cartoonist Lewis King. Both are featured elsewhere in this edition.

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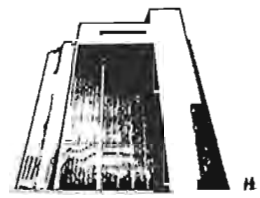
THE OPENING OF THE HIGH COURT



The new High Court Building in Canberra was opened by Her Majesty the Queen on Monday 26th May, 1980. There were present at the opening the Queen and the Duke of Edinburgh, the Prime Minister of Australia, all the Justices of the High Court, the President of the Senate, the Speaker of the House of Representatives, the Deputy Prime Minister, the Attorney-General, the Leader of the Opposition, other Parliamentary Representatives, Judges from all over Australia both from State and Federal, a very large number of Chief Justices and Justices from overseas countries, and many others including a relatively large number of Victorian barristers (about 40 including the Chairman and Vice-Chairman). From a lawyer's point of view, the gathering was probably the most distinguished gathering of lawyers ever to assemble in Australia.

Marking as it did the final settling of the High Court in Canberra – an event not only rich in symbolism but of the highest significance for the ethos of the court– this was no doubt appropriate. The Chief Justice, the Prime Minister, and the Queen all spoke, each emphasizing the significance of what was occurring, in view of the High Court's position in the Australian hierarchy of Courts. In view of current controversies it is perhaps appropriate to record the Prime Minister's reference to the fact that the building was commenced while Mr. Whitlam was Prime Minister.

After the opening, the court building was available for inspection by guests. The building essentially consists of three court rooms and attendant offices including the vast public hall, the judges' chambers and library, and practitioners' facilities including work rooms and library. Of the three courts the largest, Court No. 1, which is 15 metres high and contains the woven tapestry to which some publicity has lately been given. This Court epitomizes the atmosphere of the whole building. It is a cathedral, in the same sense as a European gothic cathedral is a cathedral. Each edifice sees its purpose as that of praising a "deity" at once superhuman majestical and impersonal, greatly to be held in awe. Given this approach to the law, it must be said that the new court building is extremely impressive, indeed awe-inspiring.

After the opening, the Australian Bar Association gave a dinner in honour of the High Court and invited as its guests the membvers of the Court and the visiting jurists who had attended the opening of the Court. Five of the Justices of the High Court attended, as did most of the visiting Judges. The dinner was presided over by Hortog Berkeley in his capacity as President of the A.B.A. The toast to the High Court was proposed by R.P. Meagher the President of the New South Wales Bar Association; and the toast to the overseas guests was proposed by S.E.K. Hulme of the Victorian Bar. Sir Harry Gibbs and the Lord President of the High Court of Malaysia responded in each case.

This was the first dinner ever to be held by the Australian Bar Association and its success heralds, it is hoped, further such occasions. The sense of unity evidenced by members of the Bar from all over Australia who attended the dinner was itself remarkable and was enhanced by the obvious pleasure shown by the members of the High Court in the occasion.

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BAR COUNCIL REPORT

There have been further developments in several of the matters highlighted in previous additions of Bar News.

Clerking
Mr. Richard John Howells has been approved as the New Barristers' Clerk. It is expected that he will commence operations in about August. Mr. Howells is already well known to many members of the Bar. He has been an employee of Mr. Foley for approximately 6½ years and has obtained experience in all facets of clerking. The Bar Council wishes him well in his new position.

Non-Practising List
There is to be a list on the Roll of Counsel entitled "Masters and other Quasi-Judicial Officers". This list is to replace the former Non-Practising List.

Academic Reading Rules
It has been resolved that the reading rules for academics shall be as follows:

(a) The total period of reading to be seven months to be completed in two or three periods within two years of signing the Roll of Counsel;
(b) The academic to complete two months' of the reader's course either at the one time or in two periods of one month. On one occasion to complete the civil part of the course and on the other occasion the criminal part;
(c) The academic to undertake to the Bar Council that if he ceases to be a full-time academic within five years after completing his reading, he will then comply with such other requirements as to reading as the Bar Council sees fit to impose.

Reading Groups
As part of the Bar Council's overall plan to make the period of pupillage for newcomers to the Bar more effective, it recently resolved to institute a system of "Reading Groups". In addition to a Master, each reader will have contact with and access to a group of other Counsel specialising in varied areas of the law. Each group will have a Silk as a Leader and will comprise approximately a dozen members of Counsel. It will be organised on a "floor" basis as far as possible.

Ruling on Part-time Employment
Amidst some controversy, the Bar Council recently made rulings on the range of activities a Barrister may engage in on a part-time basis. It re-affirmed the basic rule that practice as a Barrister must remain the primary occupation. The full text of the rulings has been already circulated. It is set out at page 12. Any Counsel in doubt as to what is open to him as part-time employment should seek the advice of the Ethics Committee.

Chambers for Members of Victorian Bar in Canberra
The increased numbers of Victorian Counsel appearing in cases in the Australian Capital Territory has led the Bar Council to the view that it would be desirable to have Chambers in Canberra. Rooms were available on the 12th floor of the A.M.P. Building in Canberra where members of the Canberra Bar have Chambers. That Bar was keen for us to take up Chambers with them. There were other choices open, but the A.M.P. Building offered the best arrangement. The Bar Council, accordingly, has authorzed the Executive Committee to take a lease of one of these rooms; and this is currently being finalized.

Fees in Criminal Jurisdiction – Crown Solicitor
Following negotiations with the Bar Fees Committee, the Crown Solicitor has agreed to a twenty per cent increase in the fees to be paid to Counsel appearing for the Crown in the County Court on the hearing of criminal trials, on the hearing of pleas and on sentencing and also on the hearing of Crown Appeals. These increased fees operate from the 24th March, 1980.

Bar Dinner
The Annual Bar Dinner was held again at Leonda on the 12th April, 1980. Spry Q.C. who was Mr. Junior Silk gave the speech for the honoured guests. His Honour Mr. Justice Smithers responded in his usual humorous and robust manner along with Judge Kelly, also true to form.

R.C. WEBSTER

WELCOME: KEITH MARKS J.

Keith David Marks was appointed Deputy President of the Conciliation and Arbitration Commission in April 1980.

His Honour was born on the 14th April 1921 and received his education at Scotch College and at the University of Melbourne where he obtained a Bachelor of Commerce degree.

His Honour saw war service in the Pacific theatre and after the war acted as associate . to Mr. Justice Foster for a number of years, including the time of the '40 hour week' decision. In 1950 His Honour commenced to work for the Commonwealth Steamship Owners Association and ultimately became their chief industrial advocate.

In the late 1950's His Honour commenced law, part time, and graduated in 1963. He was articled to Mr. McDonald of the firm of Mallesons and was admitted to practice on 2nd March 1964. His Honour signed the Roll of Counsel in the same month and read with Keely. His Honour was granted Letters Patent on 23rd November 1976.

His Honour acquired a busy industrial practice soon after coming to the Bar and became a skilled industrial advocate, arguing matters of great importance with success.

In 1974, His Honour was junior counsel assisting Mr. Justice Sweeney in the Committee of Inquiry on Co-ordinated Industrial Organisations. Since the early 1970's His Honour appeared for the Commonwealth as a junior or senior counsel in nearly all the National Wage Cases.

His Honour will be remembered for his work for the Bar, as a member of the Bar's Fees Committee and as a Chairman of the Bar's Industrial Law Practice Committee.

The Bar congratulates His Honour and wishes him satisfaction and success in his judicial office.

BERKELEY ON MILLER

The discussion about juries in criminal trials has involved two issues. The failure to discuss those issues separately has led to some confusion in the argument on both sides of the discussion.

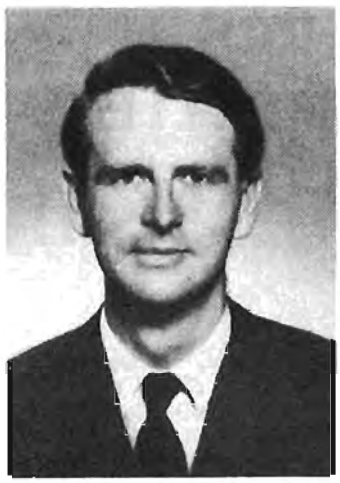
A verdict of not guilty means that none of the 12 jurors is satisfied beyond reasonable doubt as to the guilt of the accused. An argument based on the premise that too many guilty men are acquitted should lead to the conclusion that the jury system ought to be done away with. As a matter of practical politics such a proposal is so unlikely to be adopted as not to be worth discussing.

A law which provides for a majority verdict to be taken in criminal trials is aimed at reducing the number of juries which are discharged because of their inability to agree on a verdict. The mere number of disagreements is not of itself a ground for changing the law. It is not possible to say on the information that is available what proportion of disagreements involve a disagreement by only one or two jurors, and finally, whether the disagreement was based on a reasonable doubt or had some other proper basis.

In England the law was changed of a perceived danger. it was alleged that organised criminals in a number of cases had succeeded in intimidating or bribing one or more jurors. The result was that a long trial was rendered abortive by a disagreement dishonestly procured. As far as I know it is not alleged that disagreements are more frequent than formerly nor have I ever heard it suggested by any member of the criminal bar in the State of Victoria that a jury has failed to disagree because a juror was subomed.

BERKELEY Q.C.

WELCOME: MADDERN J.



On 21st April 1980 Barry James Maddern was appointed a Deputy President of the Australian Conciliation and Arbitration Commission.

His Honour was born at Geelong on 10th September 1937 and was educated at Geelong College. After matriculating he worked for 2 years with Messrs. Price Higgins and Fidge Solicitors of Geelong and for 5 years thereafter worked in Personnel and Industrial Relations Department of Mobil Oil. Whilst at Mobil he served as a member of the Oil Industry Industrial Committee and undertook a study tour of New Guinea under the sponsorship of Melbourne Rotary. During this period he was a keen tennis player, and regularly competed in country tennis tournaments.

Notwithstanding his heavy work load and sporting pursuits His Honour undertook a law course at Melbourne University. He was articled to that "uncommon lawyer" Stephen George Alley of Moule Hamilton & Derham (now Mr. Justice Alley) and remained with Moules until he came to the Victorian Bar in January 1967, where he read with Keely.

His Honour practised almost exclusively in the field of industrial law. From 1967 until his appointment he appeared in every National Wage Case initially as Robinson's junior but later on his own. During the course of his practice he appeared for and advised a wide range of parties involved in the "new province of law and order" as Higgins, J. euphemistically described industrial law. He resigned from the Victorian Bar in 1973 but continued to practise as a barrister until his appointment.

Although the nature of his practice required him to spend significant periods interstate, His Honour is happily married and has two children, of whom he is inordinately proud. For many years he has been a primary producer and currently spends his leisure time, such as it is, on his farm at Inverloch. He has an interest in all things Asian and has a weakness for gourmet Chinese food.

The Bar extends its best wishes to him on his appointment.

LETTER TO THE EDITORS

Dear Sirs,

The report in your last issue of the Senate's new loan scheme does not in fact give the whole picture of the financial support offered to young English Barristers. There has been in existence for some time within the confines of each Inn a system of interest free loans for Pupils and junior Barristers. Up to $1,600 can be borrowed and the sum is repayable in three years, though there can be some repayment flexibility if necessary.

What distinguishes the new scheme is that it is not available to Pupils and only those who have a guaranteed seat in chambers are eligible for consideration. Other factors are also considered such as the applicants academic attainments.

When the Royal Commission on Legal Services reported, there was considerable discussion on all aspects of entry to and practice at the lower echelons of the English Bar. No doubt this report will be aired in a future issue of the Bar News!

B S T V.

ETHICS COMMITTEE REPORT

The Ethics Committee has investigated a number of complaints by lay clients against members of Counsel. In most cases the Committee has informed the complainants that no basis for a complaint was shown or that it was satisfied that there was no misconduct. In two cases, summary hearings have been held involving allegations of settling without instructions or contrary to instructions. In each case, the complaint was unanimously dismissed.

On the invitation of the Committee, Brigadier Purcell, the Lay Observer appointed pursuant to the Legal Profession (Discipline) Act, was in attendance as an observer at almost all of its meetings.

The Committee resolved that a junior briefed with senior Counsel may mark one fee appropriate to the work done for both drawing and settling a document, but may mark a separate fee for settling a document with senior Counsel in an appropriate case. This resolution was adopted as a ruling by the Bar Council.

The Committee has made numerous rulings on ethical problems at the request of members of Counsel. These requests have involved application of established rules or principles to the particular facts and do not call for specific reporting.

From time to time members of Counsel request individual members of the Ethics Committee for advice or assistance on ethical problems. In cases of difficulty, these problems are discussed with other members of the Committee or referred to the full Committee. New members of the Bar, in particular, should not hesitate to approach the committee or a member thereof for such advice or assistance.

MANDIE

READERS PRACTICE COURSE

The Autumn issue of BAR NEWS carried a note on the First Reader's Practice Course which commenced in March 1980. That course has now concluded and a review of it appears elsewhere in this issue.

The next course commences on Monday 9th June. As anticipated in the earlier note, one of the difficulties in maintaining the course is in finding members of the Bar prepared to give a week of their time in instructing.

Those interested in instructing are urged to contact the undersigned and to "negotiate" terms. The current course is divided into three parts as set out below.

Criminal – June 9-27
Civil – July 7 - August 1
Family – August 11-15

It is hoped that the Criminal course will be fully manned by the publication of this, but volunteers may still be required for the other sections. In any event, there is a further course to be conducted in October/November of this year.

The course is primarily a practical one and includes simulated hearings (moots) on at least the Friday of every week. The Bar has been fortunate enough to obtain the Chief Justice's permission to use two of the courts in the Supreme Court for these moots. To ensure that the moots are successful, it is essential that members of the Bar – who might not be available for a week at a time to instruct – make themselves available to act as magistrates and/or judges on the Fridays. Please therefore indicate whether you are available for this purpose from time to time.

REX WILD.
PAX 50 (LATHAM)
CLERK "H"

FEDERAL COURT OF AUSTRALIA
MELBOURNE
VICTORIA DISTRICT

LOCATION:

1. The Federal Court, Judge's Chambers and Victorian District Registry are now located at 450 Little Bourke Street, Melbourne, formerly the location of the High Court in Melbourne.
2. All matters after 26th May 1980 may be made returnable at that address.
3. Telephone enquiries may be directed as follows:

Judges and Associates:

The Hon. Sir Nigel Bowen
(if no answer telephone Resident Melbourne Judges)

The Hon. Sir Reginald Smithers – 67 4052
The Hon. Mr. Justice C. A. Sweeney – 67 6810
The Hon. Mr. Justice Northrop – 67 4164
The Hon. Mr. Justice Keely – 67 4228

Registry (60 1775)

District Registrar – A. W. Ellis
Deputy District Registrar – M. Zaccharin.

DIRECTIONS, INTERLOCUTORY AND MOTION DATES

Subject to the dates being obtained from the Victoria District Registry, the following dates in 1980 have been allocated for directions hearings, hearings of claims for interlocutory relief, any interlocutory or other applications to the court at Melbourne. If the circumstances require it, the court may sit on dates other than those listed. All these matters are court and not chamber matters, unless the rules provide to the contrary.

Friday	June	6
"	"	20
"	July	4
"	"	18
"	August	1
"	"	15
"	"	29
"	September	12
"	"	26
"	October	10
"	"	24
"	November	7
"	"	21
"	December	5

COMMENT BY JUDGES ON DEFENCE TACTICS

A recent case in England has given rise to strong criticism of the counsel's conduct of a case for an accused where police evidence is challenged.

R. v. CALLAGHAN (1979) 69 Cr. App. R. 88. Court of Appeal (Walter, L.F., Lawson & Jupp J.J.) Callaghan was charged with assaults upon police.

At his trial the police evidence was that he had made full admissions in a voluntary statement. The defence contested its voluntariness. A voir dire was held in which the police gave evidence on oath. The accused and his wife gave evidence and written medical evidence was given. The trial judge concluded that the statement was voluntary and that the accused was telling a pack of lies. At the trial the statement was admitted and the police were again cross examined to suggest that the statement has been taken improperly. No evidence was called on behalf of the accused regarding the taking of the statement

The accused was convicted. On appeal, the Court of Appeal considered the conduct of the case.

> "We think that the Court should express this view now about the possible practice of making a major attack on the honesty of the police in the taking of a voluntary statement and then not calling specific evidence to support that attack. There is a rule approved by the Bar Council which might cover such a situation. It may well cover other situations perfectly properly because the rule says this:
>
> > "In such cross-examination it is not improper for counsel to put questions suggesting fraud, misconduct or the commission of any criminal offence (even though he is not able or does not intend to exercise the right of calling affirmative evidence to support or justify the imputation they convey), if he is satisfied that the matters suggested are part of his client's case and has no reason to believe that they are only put forward for the purpose of impugning the witnesses' character."

"These words taken literally might cover this particular example we are considering. There are clearly cases, as Jupp J. pointed out in the course of argument, where such suggestions would properly have to be made. In a case of fraud, for example, allegations of fraud might well have to be made against witnesses without it being possible to call specific evidence to support them. One knows the variety of inferences which may be drawn in a fraud case. As it seems to us, however, the case of an attack on the police and attacking the admissibility of a statement is rather different. It is one which is directly made as between the defendant and the officers and it ought not to be made unless evidence is going to be called to support it.

"There is a decision of the Court of Criminal Appeal in 1950. It is the case of O'NEILL AND ACKERS (1950) 34 Cr. App. R. 108. Lord Goddard C.J., giving the judgment of the Court, concluded his observation on this particular aspect with these words at p.111: "In this case a violent attack was made on the police. It was suggested that they had done improper things, and indeed, Ackers repeats that suggestion in his notice of appeal. The applicants had the opportunity of going into the box at the trial and explaining and supporting what they had instructed their counsel to say. They did not dare to go into the box and, therefore, counsel, who knew that they were not going into the box, ought not to have made these suggestions against the police. It is one thing to cross-examine properly and temperately with regard to credit, though it is very dangerous to do so unless you have materials on which to cross-examine, and with which you can confront the witness. It is, however, entirely wrong to make suggestions as were made in this case, namely that the police beat "the prisoners until they made confessions," and then, when there is the chance for the prisoners to substantiate what has been said by going into the box, for counsel not to call them. The Court hopes that notice will be taken of this, and that counsel will refrain, if they do not intend to call their client.

from making charges which, if true, form a defence but which, if there is nothing to support them, ought not to be pursued".

"This Court entirely agrees with those observations. It does not seem to us there has been any change in circumstances since that decision was made which would justify some different ruling being made. We would entirely agree with them but, as I have indicated, it does not follow from that I have said that they necessarily apply to what Mr. Poole did in this case because it seemed at least likely that the decision was made at a later stage that the defendants should not be called. However, had it not been so, in our view, it would have been quite wrong. With those observations, this appeal is dismissed and the application for leave to appeal against sentence is refused."

The back-down

Walter L.J. has to some extent resiled from his original position. "The Times" of February 22, 1980 carries the following item:–

"Lord Justice Walter, sitting in the Court of Appeal, Criminal Division, referred to observations he made in his judgment in R. v. Callaghan, which was reported in (1979) 69 Cr. App. R. 88 with the head-note: "It is not a proper practice for counsel for the defence to make a major attack on the honesty of the police in the taking of a voluntary statement and then fail to call the defendant to substantiate the allegations by giving specific evidence to support that attack".

"His Lordship said that it appeared that there was an aspect of the problem which did not occur to him. That had been brought to his attention by the professional conduct committee of the Bar. From time to time there might be a case where a client required a challenge to be made to a police officer but at the same time refused to go into the witness box to support that challenge because of his very bad record. Such a case should be wholy exceptional.

In such circumstances counsel had a difficult decision. He must warn his client that the judge his very bad record. Such a case should be wholly exceptional.

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"In such circumstances counsel had a difficult decision. He must warn his client that the judge would probably make a very strong comment on his client's failure to support the suggestions on oath in the witness box. If nevertheless the client, having been warned, insisted, then counsel must carry out his instructions even though he was aware that his client would support his cross-examination. His client could not complain if a strong comment was made from the Bench.

"His Lordship was making a statement now, but at some future time, when a suitable case occurred, it would be possible to modify the dictum which he made in R. v. Callaghan."

TORTING or TOUTING?

After R. v Mervyn May was completed on May 21, 1980 at Mildura, the following notice appeared in the Sunraysia Daily of May 26, 1980.

THANK YOU

MERVYN MAY of Mildura would like to sincerely thank Mr Paul Duggan, Mr Raymond Lopes, Mr Eddie Slink and Mr Micheal Rozenes for their service and help.

A defence to an allegation of touting would appear to be available to Ramon Lopez alone; in that he would, having learned to do so, be able to spell his own name correctly.

There would be a strong circumstantial case against Rozenes for spelling his own name correctly, and misspelling that of Lopez.

BAR COUNCIL RULING ON PART-TIME EMPLOYMENT

1. It is an ethical rule binding on all counsel that "a barrister should, apart from not practising as a solicitor, be following the practice of a barrister as his primary occupation and should refrain from engaging directly or indirectly in any other occupation, his association with which might adversely affect the reputation of the Bar" (Gowans; The Victorian Bar – Professional Conduct, Practice & Etiquette, p.25).
2. At its meeting held on 10th April 1980, the Bar Council after discussing at length the above ruling, resolved "that, by way of example, the Bar Council does not regard it as incompatible to practice at the Bar for a barrister on the Roll to engage part-time in the occupation of taxi-driver".
3. The rule set out in 1. above remains in full force and effect. The resolution of the Bar Council merely recognises that what is appropriate in this day and age differs from what would have been thought appropriate 50 years ago. Any counsel in doubt as to what it is open for him to do in regard to part-time employment should seek the advice of the Ethics Committee.

"My part-time attendance is required in another place... and I ask Your Honour to hear me unrobed!!"

• • •

MOONLIGHT AND ROSES

The conversation had turned to the early 1980's and the rallying cry of the Junior Bar "Less tax and more taxis". That had started it all.

"On the whole, moonlighting has been a success" murmured FHR Vincent Middle Age Fitness Clinics Limited as he poured himself a libation from a bottle of Legalade (a type of staminade for criminals). I noted the slogan on the bottle: "Thousands of tiny troubles that last the whole case through".

"I'm not sure you're right" I said diffidently and took a bite from my Berkeley-burger – a foodstuff specially manufactured under Bar Council Patronage by the part time Catering King.

"Don't be stupid" replied Vincent warming to this theme. "Phil Dunn Realty gave me a wonderful deal on the block I bought on the 'Macedon Wonder Swamp Estate'. And it can't be denied the kids have benefited marvellously from Maitland Lincoln's elocution lessons".

"But it hasn't all been roses" I remarked cautiously, easing my broken leg into a more comfortable position.

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"It's no good moaning to me Coldrey" replied Vincent callously, "You jumping jockeys know the risks".
He paused reflectively.
"Horse racing has many perils . . ."

I thought I detected a certain bitterness in his voice and I followed his morose gaze to a glossy publication lying on the table "Betting to Win by Villeneuve-Smith Q.C. – The Punter's Friend".
He caught my eye.

"I just hope his legal opinions are sounder" he muttered grimly.

We were joined by Boris Kayser the bouncer from the New Wave Disco. "I can't get any work done" he complained, "people keep knocking on my door and asking for David Bennett's Chambers and Adult Book Shop".

"I suppose it's the price of progress" I ventured.

"Yeah, but some of the women have taken it too far" exclaimed Boris. He leaned forward over me, confidentially.
"I've heard of a certain massage parlour designed exclusively for solicitors and even using Innocent Young Readers. I operates under the motto 'Give a Special, Get a Special' ".

Vincent Clinics recoiled in horror. "Are you morally outraged?" I inquired.

"Morality be blowed" he growled "it's an appalling case of touting".

"Oh you'll never stamp that out" sighed Boris. "Look at that young bloke on the 4th floor, since he graduated from a taxi to an ambulance his running down practice has trebled".

"The real problem, gentlemen, seems to be that it's permeating our whole legal system," interjected Fred James Private Investigator who had been eavesdropping from behind a copy of Playboy. "The other day I actually heard a Judge begin passing sentence with the words: 'In considering this plea I do not take into account your Counsel's failure to rectify his faulty workmanship on my pool' ".

Vincent and Kayser looked stunned.

"And if you think that's bad enough gentlemen", pursued James "one of our female brethren" (he chuckled at the implications of the phrase) "One of our female brethren recently commenced her submission thus: 'Despite the panoply of power presented by Your Honour's robes, I recognise you from that incident in the back bar of the Metropolitan where I serve as a barmaid. I now turn to the second factor upon which I rely' ".
Vincent looked pale.
"Perhaps we should return to the old system where there was only one group of part time barristers".
"Who were they?" I asked diffidently.
"The bloody Crown Prosecutors of course!"

COLDREY

A SENSE OF DEJA VU

Inferior Court Judges

"Lawrence Goulet, chief judge of the provincial court of British Columbia said provincial judges have historically suffered in comparison to other courts because up until about 6 years ago, they were often laymen instead of professionally-trained lawyers.

So it became fashionable amongst lawyers when they met to tell the latest bon of a magistrate of some small community and that is not the way you acquire prestige and honour."

On Plea Bargaining

"Since the British Columbia attorney-general's department won't admit that plea bargaining occurs, its spokesman is not able to state how much money is saved when the defence and the Crown agree to expedite the matter.

Realists within the justice system view plea bargaining as the only way of dealing with an increasing case load. They say the system would collapse if everyone pleaded not guilty. " . . . An experienced defence lawyer, artful in the wily ways of the bargaining process, often has a tactical advantage over a less experienced Crown counsel. If you can show him the gaps in his case, a reasonable prosecutor will drop down to a lower charge; but there are some hard nosed prosecutors who refuse under any circumstances to change a charge."

(From the Vancouver Sun, Saturday April 5th, 1980)

COMPUTER AND LEGAL RESEARCH: THE OVERSEAS SITUATION

The article on the possibilities of computerized legal research in the last edition of **Bar News** (see "The Microchip Revolution" in Autumn 1980 edition) presented a picture of life as it might exist in barristers' Chambers in about 1985. The reaction which I have experienced from fellow members of the Bar since the article appeared has, almost without exception, been one of agreement that computerized retrieval systems must and will be developed in Victoria. The only caveat which is sometimes raised is whether such a system could be in operation within the forseeable future. A brief glance overseas should serve to dispel any lingering doubts; the scenario for the mid 1980's in Victoria is daily legal practice in many other countries.

United States of America

The United States of America leads the world in almost every application of computers and computer-based equipment. The use of computers in legal information retrieval is not exception. The first such operation, now run under the name LEXIS is the most widespread in its operation and the most extensive in its data base. The initial impetus for LEXIS came from a group of Ohio lawyers in 1967 who, after three years' preliminary investigation, contracted with the corporate predecessor of the present operating company, Mead Data Central Inc., to put their research into practical effect. From 1969 a limited service was available to lawyers in Ohio, and the service has increased in size and scope ever since. In each State in which it operates, LEXIS attempts to work in co-operation with the State Bar Association or similar body to ensure that the system is developed to fulfil the needs of the users in that particular State. Often non-profit making corporations have been set up to represent the interests of the local profession: for example OBAR – The Ohio State Bar Association Automated Research Corporation. In some States, for instance New York, Mead Data Central entered into an agreement directly with the State Bar Association.

The LEXIS Library (or, more precisely, libraries) is claimed to be the largest commercially available full text data base in the world. In January 1979 it already contained over two thousand million words. By the end of 1981 it is anticipated that State reports from 1965 onwards for each American State will be on its file together with federal reports and statutes. In addition to the data base, LEXIS users can search the Accounting Information Library, hold their own private information securely in a private memory bank and use computer techniques to assist in litigation, for instance by holding complex documentation for a major case on file. It is conducive to high speed search techniques. Many other systems of a similar or more rudimentary type also operate in the United States. The West Publishing Company began marketing its WESTLAW system some years ago, but only recently, by changing to a full text to rather than a headnote system, has it began making inroads into the LEXIS market. The USAF and the US Department of Justice both operate computer based information retrieval systems appropriately named FLITE and JURIS respectively.

Canada

Automated legal research has undergone considerable development and also suffered serious setbacks in recent years in Canada. Perhaps Australia could learn from the mistakes made in Canada, a country whose size and population may well make comparisons relevant. Two major systems are now operated, initially set up for or as the direct result of university research. The DATUM system provides a bi-lingual search facility on a "service centre bureau" method. In this scheme the enquiring lawyer searches the data base by utilizing the resources and skill of an intermediary who works at the service centre. Though there might be some initial advantages in such a system, for example the lawyer need have no computer training at all, the service centre lawyer often finds it difficult to provide the information sought after, as he does not know enough about the particular case or problem he is researching. As a result the scheme made little headway and a few years ago was brought under the auspices of the Provincial Government of Quebec and the Quebec Bar. Though at the present time this scheme appears

to be taking second place to a standard publishing organization to which all members of the Quebec Bar are automatic subscribers, it may well be that in the near future, through DATUM II, a system whereby lawyers can search the data base directly, will be set up.

A second system, originally called QUIC-LAW has been in operation for some years without making dramatic inroads on the life of the average lawyer. However the project has recently received a major boost, and possibly a fundamental change in direction, in that a major shareholding in the scheme has been purchased by the Canada Law Book Company. Now renamed Q-L Systems, with the resources and the copyright in the publications of the largest law publisher in the country at its disposal, it is anticipated that it will begin to market computer systems more aggressively and make much greater impact throughout Canada. From the available figures it would appear that by the mid 1980's, computerized legal research will be cheaper than its manual equivalent. Such systems should enable lawyers in practice away from the major city centres, and so unable to rely on the resources of satisfactory law libraries, to provide a better service.

Europe

By 1979 there were some 28 separate computer-assisted legal information systems in operation in Europe. Of these systems, the major ones operate in France and Italy. Some are privately owned; others, such as the Lyons based CRIDON System are owned and controlled by the local legal profession. Most are nationally based, as language problems and user needs inevitably dictate. Some however are transnational – such as the EEC system, CELEX, initiated in 1971. The complexity and volume of EEC regulations and directives coupled with the multiplicity of languages into which all such legislation had to be immediately available was such that the EEC Commission some time ago concluded that traditional methods of storage material could not cope with its requirements. Computerization is well under way.

United Kingdom

In mid-1978 Mead Data Central entered into a joint venture agreement with Butterworths to bring LEXIS into use in the UK and to include English case law statutes in its data base. In March of this year Butterworths began marketing a system in the UK. The data base is still physically in Dayton, Ohio, but utilising high speed data transmission equipment (not yet available within Australia generally), this physical separation presents no perceived disadvantages to the user. The success of the system as offered by Butterworths cannot yet be measured. However, given the number of lawyers, accountants, and industries with legal interests and departments, it would be surprising if the market research undertaken before Butterworths financed the project proved to be incorrect. It is interesting to note that in the final report of the Royal Commission on Legal Services (Cmd. 7648). (a Royal Commission not noted for its radical findings), a recommendation was made that proposals for legal information retrieval services should be pressed forward without delay. The members of the Royal Commission apparently had no doubts as to the way forward.

The response of the legal profession to the Butterworths proposals to market the LEXIS system was to prompt the establishment of a National Library. A Trust has not been set up by the Law Society of England and Wales, the Law Society of Scotland, the Incorporated Law Society of Northern Ireland, the Bar Council and The Society for Computers in the Law. One of the main purposes of the Trust is "to establish and operate or to assest advise or provide services in connection with the establishment or operation of legal information retrieval systems based on computer techniques so as to improve the availability of the law both to the legal profession and to the public at large throughout the United Kingdom...". Initial funding has been provided to enable a pilot scheme to be set up. It will remain to be seen how successful the National Law Library proves to be in competition with Butterworths. The United Kingdom Parliament can have no doubt as to the likely future course. It has established a system for searching statutes based on IBM software; furthermore HM Stationery Office is currently in the course of preparing a definitive issue of Statutes in Force in computer-readable form.

Australia

Within Australia a limited amount of research has been done and various small systems are in operation at the present time. The Federal Government, at Canberra, has a system operating within the

Attorney-General's Department to assist in the drafting of statutes. The data base at present contains The Constitution, Commonwealth Statutes to 1978 and Commonwealth Law Reports volumes 128-130 High Court Rules to 1977 and some departmental opinions. In New South Wales the New South Wales Law Foundation has a Trade Practices Data Base currently operating. This holds statute law, case law, reference material such as articles from journals and reviews dealing with Trade Practices legislation and case law, and certain other unpublished material, in an attempt to evaluate the broadly based system in operation. The Australian National University also has a project system in operation.

The above survey is not definitive. No doubt there are many other systems operating of which information is lacking. One thing is clear, however: the computer as a tool for legal research is here to stay.

DAVID LEVIN

NOTE:
The Victorian Bar Computer Committee has now been formally established. Its membership is as follows: David Levin (Chairman) (Clerk B), Cummins Q.C. (Clerk H), Sweeney (Clerk H), Burnside (Clerk M), Jolsen (Clerk F), Stuart Morris (Clerk W) and Brendan McCarthy (Clerk C).

Any persons seeking information or wanting to give assistance to the Committee are invited to contact any of the above members.

ODE TO Mr. JUNIOR SILK

My opening was carefully planned
The commotion I can't understand
What's that racket like Hades?
I can't see the ladies
With my head in this bucket of sand.

THE READERS COURSE

"Hamlet Speak the speech, I pray you . . . trippingly on the tongue"

Act III Acene 2.

The "new course" in common with much else under the sun is only new in the context of the Victorian Bar, so it can be judged by two separate and distinct standards; first in comparison with similar courses elsewhere, and secondly as to its fitness for the needs of the Bar, As to the former, suffice it to say that for example, in comparison with the course offered in London by the Council for Legal Education, this course has the great merit that all the lecturers or speakers are currently in practice unlike the London course in which such persons are in a small minority.

Each reader pays $400 for the eight week course and as it is currently costed, the real per capital cost is over $800. With a projected enrolment of ninety in 1980 the non-recoverable outlay by the Bar is likely to be in excess of $36,000. The low water mark of the course was reached by the unfortunate way in which the cost to the readers was announced. Most did not know the terms of payment and some were unsure of the amount payable up to the second or third week of the course. Thanks to enlightened co-operation between all concerned, a system of staggered payments was rapidly negotiated and the sum is now payable as to $100 on 1st September, $100 on 1st December and $200 on 1st March 1981. Understandably most readers would greet with acclamation any offer to waive all payments!

"Nor do not saw the air too much with your hand, thus but use all gently . . ."

Documentation in abundance was the first impression of most readers, though those who had been to the Leo Cussen Institute course could be heard to mutter darkly about "deja vu". It was obvious that the outline of the course had been shaped by those steeped in educational theory as can be evidenced by this extract from the Criminal Practice Course.

OBJECTIVES	PLANNED READER EXPERIENCE/ ACTIVITY	MATERIALS/ EQUIPMENT TO BE PREPARED AVAILABLE	METHOD OF EVALUATION
25. To recall the following aspects of a practitioners role in evidence-in-chief (a) Guiding without leading. (b) retaining control (c) keeping the correct order (d) thoroughness (e) refreshing the memory of a witness. (f) toning down weak points.	– short lectured discussion on these based on reviving reader observation on attending court. – Demonstration by	Demonstration by instructors.	Indirect testing by evaluation of later simulated hearing.

It was a complaint of some of the readers that the guidelines were not rigidly adhered to, though others welcomed this flexibility so that problems could be dealt with as they arose. The willingness of all the lecturers to meet the needs of their students sometimes placed them in conflict with the apparently doctrinaire approach of the course planners so that they had to use their initiative in deciding the business of each session.

With only eight weeks in which to cover a vast ground, inevitably only a limited number of topics could be considered and so there were three weeks devoted to Criminal Procedure, four to Civil Procedure and one to Family matters. Even then a basic knowledge of the substantive law and the rules of Evidence had (often incorrectly) to be assumed.

Though there were many very well produced and helpful handouts, more specimen forms and precedents would have been welcomed. Other aids that could have been more used were the chalkboard and the overhead projector as well as television; all three were used to great effect in those lectures delivered by Graeme Anderson.

"O, it offends me to the soul to hear a rombustious periwig-pated fellow tear a passion to tatters . . ."

There are many views as to the effectiveness or otherwise of the lectures and written work which the readers had to do. They range fro the observation that the period of maximum concentration was regularly exceeded, to "why should an experienced solicitor who comes to the Bar have to do a largely irrelevant course?" But for the mooting part of the course there was almost universal acclaim. It was found to be a most valuable learning experience, even if you had to be a wronged housewife (with beard) on this occasion; next time you know you would be counsel. Due to the kindness of the many barristers who have given their time and skills in acting as judges everyone learnt something. Inevitably the amount gained from the exercises was directly related to how much the reader concerned put into playing his or her role.

The standards of preparation and advocacy varied and this can be seen as a reflection of the differing backgrounds of the participants. Surprisingly, the moots proved to be a great levellor with the unexpected hitting even the experienced speaker; this was a lesson lost on no one.

In order to provide a statistical analysis, all the readers were asked to answer a questionaire covering some eleven different areas of the course and of each lecturer's handling of it.

KEY:

1. Style of Lecturing
2. Law Content of Lectures
3. Practical Content of Lectures
4. Structuring of Lectures
5. Use of Visual Aids
6. Court Visit Follow Up
7. Use of Feedback from Students
8. Lecturing Ability
9. Manipulation of Group Dynamics
10. Answering of Students' Questions
11. Effective Use of Other Barristers
12. Comments (set out below)

LECTURER	1	2	3	4	5	6	7	8	9	10	11	12

RATING: 0 — 2.5 — 5 — 7.5 — 10

Very Poor — Poor — Average — Good — Excellent

General Comments about the Course:

Indicate Reader's Background –

(a) Previous practice.
(b) Articled Clerk.
(c) Leo Cussen.

Many did so. The remainder sent in a written report, so work is now in progress not only to modify future courses, but also to provide data which can apply to the whole reading period.

Already there has emerged a demand for an advocacy training course per se, and a heated debate as to whether the briefless period should be extended. Other aspects of the findings will be discussed by inter alia the Young Barristers Committee and in due course by the Bar Council.

Even though there was some initial resentment at the course, a majority of readers found it very useful, and expressed appreciation for the efforts of all those who had helped usher in this valuable new phase in training for the Victorian Bar.

"And let those who play you clowns speak no more than is set down for them . . .".

VAUGHAN

Mouthpiece

Once a week, I think it was, on a Thursday at school assembly we remembered the war dead:–

Those long departed souls had protected our freedoms, so it was said; though I suspect that was the last thing in their minds at the time.

> "Civilisation is always as near to Barbarism as polished steel is near to rusting . . ."

Strange how the old phrases surface still with power to compel the imagination.

I wonder if they came back to Clive Tadgell's mind when two men were killed near his court just after 12 noon on Wednesday the 22nd of May in the year of Our Lord One thousand nine hundred and eighty? Two people dead, three now, and two injured. The Age reported that no photographs would be allowed inside the building "although the mess of blood and flesh has been cleaned up".

No matter, we have seen enough of pieces of human beings in our newspapers and on our television screens. We have seen children running, screaming, clothes and flesh burned off by napalm; pathetic shrivelled parts of corpses in Kampuchea; bloodied black faces in Miami and Soweto; an Italian Magistrate dead under a sheet the red pool spilling out. Distant images– we put them away from us. But now, this is our grief. This demands our solutions.

Not that we can recover what is lost. The Building will never be the same. That area outside the 11th and 12th courts is no longer comfortable ordinary; familiar in its dingyness. There people died for doing no more than exercising a right to attend before one of Her Majesty's Justices. There are more war dead, more questions to ask and hard decisions to make.

Since then no doubt grave conferences have taken place. What must be done? "Police have been persistently pushing for their members to be armed." There are suggestions they should "have the power to search anyone entering a court" So again said "The Age".

Fortunately most who confer will by nature and training veer away from authoritarian answers. Somehow our social order has withstood severe challenges. Let us hope it does not succumb in an over-reaction to increasing violence.

Rumpole, broken down hack that he was in many ways, hung unto one thing which gave him dignity. It was the one thing which justified his existence as a lawyer and justifies ours – a passionate belief in the Rule of Law.

Henshall D.

SPORTING NEWS

It was Philip Dunn at his best recently, when he convinced the Judge at a murder trial in Ballarat that the Court should sit on a Saturday to com»lete the the Court should sit on a Saturday to complete the case. He was able to make good his hasty trip to Lake Pedder where he anticipated that the fish would be biting at short and regular intervals. Four cold wet days (and one cold wet fish) later he headed back for the mainland. To quote his words:
"It was one step ahead of sheer lunacy".

• • •

The thought of trying to sleep in a hammock strung up over a cargo of dried fish on a mosquito infested barge does not compare favourably with Jack Dyer in the Captain Snooze advertisement. Heaton, however, having already done a trip up the Amazon in such conditions is about to depart for more adventure. He will head for the Galapagos Islands and then travel over the Andes and evantually to Brazil. This trip was a far cry from a holiday to the Warburton Chalet. He assures the writer that it was not uncommon to face machine guns and be searched in the middle of the night as he travelled through Bolivia and Peru. On one occasion, he left Peru without having got his passport stamped and was not able to have it stamped in Bolivia due to the absence of an "Exit Pass" from Peru. In Bolivia, his attempt to use a "borrowed" stamp to cure the defects on his passport failed when it was discovered that he had used the wrong stamp. We trust that his trip will not be made the basis for a film called "Midnight Express II".

• • •

Frank Walsh has a trotter named Sherwood's Advice. When making application to the Trotting Control Board for a name for the colt sired by Welcome Advice, he is alleged to have submitted the following names: "Fee Declined", "Not Guilty" and "Beat Payment In". Apparently none of the proposed names was acceptable and it is not clear how the colt (as yet unsuccessful) was eventually named.

• • •

Is Lasry a budding Alan Jones? Motor car racing enthusiasts might well be asking this question in the light of his recent efforts in the Australian Sports Car Championship Series. Whilst Moffat has been dominating in his Porche Turbo, Lasry has been part of the team which finished fourth in its class (up to two litres) at Sandown in February. Lasry has been driving a fuel injected Triumph GT6 at present as a number two car to a similarly prepared TR-7. He was promoted to third in his class following a night meeting at Calder Raceway in March. Mechanical trouble prevented the anticipated success at Hobart in April – these problems will be overcome when he competes at Amaroo Park at Sydney in July. He is looking forward to a clash with Jones in November when the Australian Grand Prix Meeting is held in November of this year.

FOUR EYES

LETTER TO THE EDITORS

Dear Sirs,

I must protest at the biased nature of the reporting contained in your Journal. In the Autumn 1980 Edition, in a section laughingly referred to as "Sporting News" the fact that I finished 7,287th in the fun run, and was "just pipped" by Jack Faigenbaum are examples of selective reference worthy only of prosecutors for the Queen.

In my defence, I offer the following salient facts:

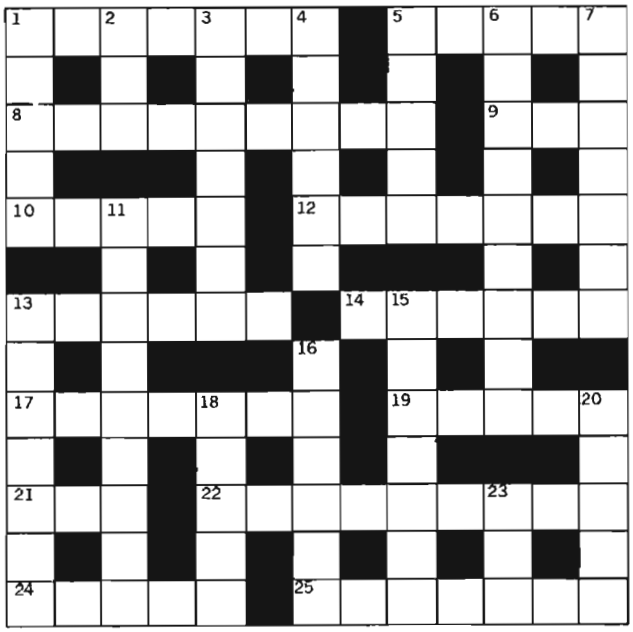
(i) 6,213 competitors finished after me;
(ii) I shaved 23 minutes off my "performance" for the preceding year (an incredible reduction, especially if the details of the "base" from which the reduction was effected are disregarded);
(iii) I did not have the assistance of a junior;
(iv) On a weight for age basis I have and am entitled to a considerable handicap;
(v) Most of my friends (or should I say both of them) and all of my numerous enemies were astonished to learn that I finished the distance at all.

I hope that in future you will engage in more balanced reporting.

Yours in distress,

GRAHAM L. FRICKE

CAPTAIN'S CRYPTIC No. 32



Across:

1. Blood relationship (7)
5. Recently elevated judge, something in Mason's line (5)
8. Givers of possession of realty by lease (9)
9. The taking or distraining of another's goods (3)
10. Small freshwater cray (5)
12. Anor. (7)
13. Of canis (6)
14. Relating to wrist bones (6)
17. As a kitten (7)
19. Officer or steward eg. sheriff (5)
21. Extra-sensory perception (1,1,1)
22. Flooded (9)
24. Sample esp. of imprisonment (5)
25. Impregnated with (7)

Down:

1. Celtic incumbent of position similar to 5 across (5)
2. Negative latin (3)
3. Kingfisher in peaceful days (7)
4. Gateway (6)
5. Gathering at which short records played (5)
6. Shrewish wife of Socrates or of anyone (9)
7. Figure denoting a number (7)
11. Proves insolvent (9)
13. Rape defence (7)
15. Shorten under R.S.C. O.64 r.6 (7)
16. Bases of contest between lineal descendents (6)
18. Hold an opinion (5)
20. Finished (5)
23. Acme (3)

(Solution page 42)

THE HIGH COURT BUILDING

From afar, the High Court Building – known by the media as 'Gar's Mahal' and by Canberra taxidrivers as 'the powerhouse' – is muscularly beautiful. From within, its main building blocks are light and space. In its use of both, as well as of local stone, metal and timber, it is distinctively Australian. It is an exciting building, and whether it excites admiration or antipathy, it will leave only a soulless few unaffected.

The massive pile stands on the southern shore of Lake Burley Griffin, within the Parliamentary Triangle. Conceptually, it complements the nearby houses of the other two arms of government. Visually, it complements the adjoining National Gallery and adjacent National Library. The Sydney architects for the Court Building – Edwards, Madigan, Torzillo & Briggs Pty. Ltd. – are also those for the National Gallery, and a similarity of style though not of form is evident in the two structures.

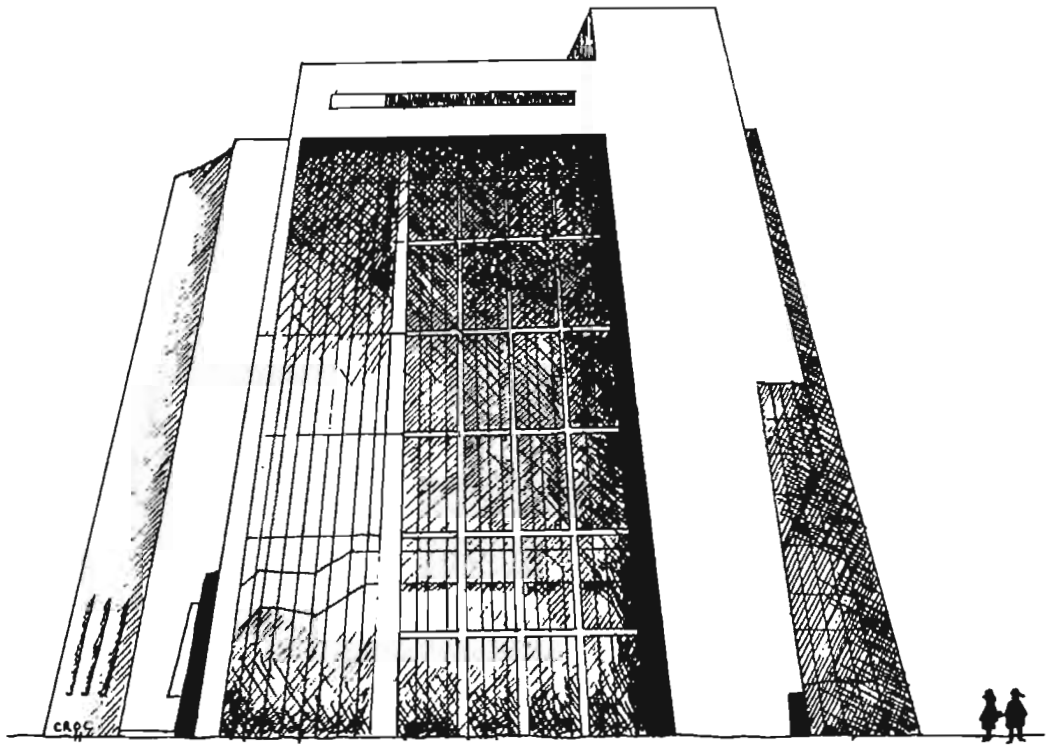
Upon entering the building one is uplifted by a cathedral-like Public Hall rising 24 metres to an ornamented ceiling. The Number One Court is situated on this level and is the Court to be used for ceremonial purposes and for sittings of a seven-member bench. Immediately outside this Court is a gift of the Australian Bar Association, a panel reproduction by Bea Maddox of the report and scene of the original opening of the High Court in Melbourne's Banco Court in 1903. The panel harmonises particularly well with the wall face of its surrounds. From the Number One Court level, a system of ramps rising through the Public Hall gives access to the Number Two Court – for sittings of a Full Bench of less than seven justices – and The Number Three Court – for single justice cases (with provision for a jury). As the levels rise so privacy increases. The justices' chambers, library, conference room and dining area are on the top levels. Midway between the low public areas and the high judicial areas is situated the practitioners' level, six.

Facilities for practitioners are excellent. There are 9 workrooms, 2 large conference rooms, a substantial lounge area and male and female robing rooms. All rooms are exceptionally well furnished and equipped. Robe cupboards are lockable. From the workrooms will operate an automatic S.T.D. meter system whereby practitioners will be billed upon completion of their sojourn. Closed circuit T.V. monitors Courts One and Two below. (Within the Courts, electronic recording procedures operate : counsel at the lecterns will notice small microphones peering curiously at them, the sound being relayed to a central transcription centre within the building, but not, counsel will be relieved to hear, to the practitioners' level). On level seven is the practitioners' library, with a 25,000 volume capacity, and which will be housed the former Melbourne and Sydney libraries of the Court, presently being consolidated for that purpose.

Because of security requirements and staff ceilings, access to the Court building will not, at least initially, be available at night or weekends. However the Victorian Bar has taken one chamber in those retained by the Canberra Bar, for use of Victorian counsel appearing in Canberra (in the High Court or elsewhere). This is situated on the twelfth floor of the A.M.P. building, London Circuit, Civic immediately opposite the Federal Court, A.C.T. Supreme Court and other Courts and Tribunals, and some four kilometres from the High Court. Usage of the Victorian Bar chamber may be arranged through Miss Brennan (67 4298) or Mrs. Smyth (062 47 5040) clerk to all Canberra counsel.

These arrangements, appropriate as they are for the present, are not in my view sufficient for the future. I think the Australian Bar Association should investigate the reservation of land in close proximity to the High Court itself, for development of chambers in the future. Suitable land for reservation is rapidly being taken up. There is still available for reservation part of what is known as the "Barton area", less than 1 kilometre south-east of the Court. By the end of this century the Australian profession will need such premises: for the presence of the High Court building on Lake Burley Griffin represents, amongst many other facets, an important perception for all Victorian counsel – that we are members of a national profession.

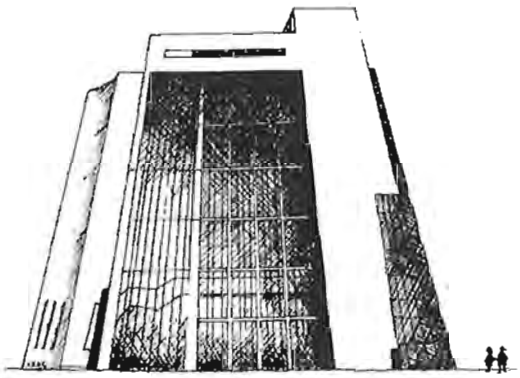
CUMMINS Q.C.



DE MINIMIS NON CURAT LEX

Winter 1980

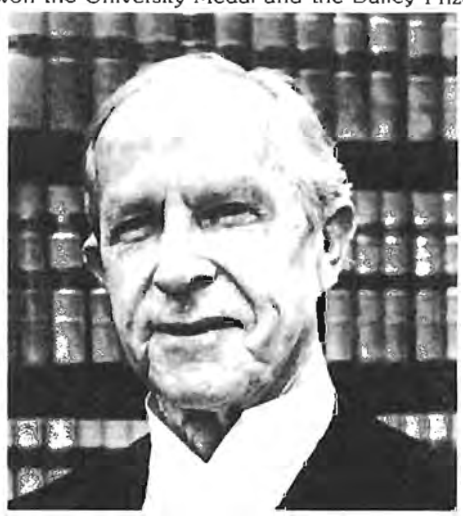
MEET THE COURT



The High Court of Australia is a jurisdiction in which few of us practise, but it is one of which consideration is merited. In 1976 (the last year in which figures are readily available) 170 actions were commenced in the High Court, compared with 6,439 actions commenced in the same period in the Supreme Court of Victoria. The Court sat for a total of 163 sitting days, and heard a total of 57 cases. This compares with a total of 218 sitting days and 312 actions in the Supreme Court. More than the Supreme Court however, the history of the High Court has been of one of personalities. The following is a brief exposition of the lives and careers of the seven men who presently constitute the Bench of the High Court of Australia.

BARWICK C. J.

The Right Honourable Sir Garfield Edward John Barwick P.C., G.C.M.G., B.A., LL.B., LL.D. (Hon Syd), the present Chief Justice of the High Court of Australia was born on 22 June, 1903 at Stanmore in New South Wales. He was educated at Fort Street High School and at the University of Sydney, at which latter institution he won the University Medal and the Dalley Prize in 1926. He was admitted to the New South Wales Bar in 1927 and took silk in 1941. He signed the Victorian Bar Roll in 1945, and the Queensland Bar Roll in 1958, His practice was a mixed one, without any Constitutional cases, until 1947. After the Bank Nationalisation Case he developed a Constitutional practice with particular emphasis on Section 92. He appeared extensively before the Privy Council. President of the New South Wales Bar Association from 1950 to 1952 and from 1955 to 1956, he was also President of the Law Council of Australia from 1952 to 1954. Leaving what was reputedly then the most lucrative practice in Australia, he entered Federal politics in 1958. From 1958 until 1964 he was Federal Attorney-General, and from 1961 to 1964 he was also Minister for External Affairs. In 1964, he was appointed Chief Justice. Since then he has been patron of the Australian National Council for the Blind, the President of the Royal New South Wales Institute for Deaf and Blind Children, the President of the Australian Institute of International Affairs, and the President of the Australian Conservation Foundation. His recent championship of the new High Court building in Canberra has made him the target of attacks in the Press.



Victorian Bar News

GIBBS J.

The Right Honourable Sir Harry Talbot Gibbs P.C., K.B.E., B.A., LL.M. was born on 7 February, 1917, in Sydney. Educated at Ipswich Grammar School and at the University of Queensland, he was admitted to the Queensland Bar in 1939. He served with the Australian Military Forces from 1939 until 1945, attaining the rank of Major. He was mentioned in despatches in New Guinea. He lectured at the University of Queensland from 1948 until 1959, in Evidence and Personal Property, and at the same time developed a very extensive practice. He took silk in 1957 and appeared before the Privy Council. He was appointed to the Bench of the Supreme Court of Queensland in 1961. He was Chairman of the Committee of Enquiry into the expansion of the Sugar Industry in 1963, and of the Royal Commission on Police from 1963 to 1964. He was appointed Judge of the Federal Court of Bankruptcy and of the Supreme Court of the A.C.T. in 1967, and remained there until his elevation to the High Court in 1970.

STEPHEN J.

The Honourable Sir Ninian Martin Stephen K.B.E., LL.B. was born on 15 June, 1923 at Perthshire, Scotland. He was educated at the Edinburgh Academy, St. Pauls School (London), and later at Scotch College Melbourne. He gained his law degree at Melbourne University. He served in the A.I.F. from 1941 until 1946. He was admitted and signed the Victorian Bar Roll in 1951. He read with Little, and later specialised in commercial matters, and in particular company law and taxation. He appeared before both the High Court and Privy Council, and shared a suite of Chambers with the late Ivor Greenwood Q.C.. He took silk in 1966. He was appointed to the Victorian Supreme Court in 1970. In March, 1972, he was elevated to the High Court by the McMahon Liberal-Country Party Coalition Government, the Attorney General of which was Senator Ivor Greenwood Q.C..

MASON J.

The Honourable Sir Anthony Frank Mason K.B.E., B.A., LL.B., was born on 21 April, 1925 in Sydney. He was educated at Sydney Grammar School and the University of Sydney. He served as a flying officer with the RAAF from 1944 until 1945. After the War he was Associate to Mr. Justice Roper of the New South Wales Court.

He was admitted to the New South Wales Bar in 1951. His practice was chiefly in equity and commercial matters, but included taxation bankruptcy and constitutional law. From 1962 until 1965 he was the Challis lecturer in Equity at the University of Sydney. He appeared for the Commonwealth in a number of cases before the High Court up until the time he took silk in 1964. He was appointed Commonwealth Solicitor General in 1964, a post he held until 1969. In those years as Commonwealth Solicitor General he was involved in Constitutional cases before both the High Court and the Privy Council, including those concerned with the then controversial National Service legislation. Whilst he was Solicitor-General he led the Australian delegation to both the first and second sessions of the United Nations commission on International Trade law in 1968 and 1969 respectively, and was the Vice Chairman of the 1968 session. He was a member of the Council of the Australian National University from 1969 until 1975, and was Pro-Chancellor of that University from 1972 until 1975. He was appointed to the Court of Appeal of the Supreme Court of New South Wales in 1969 and remained there until his elevation to the High Court in 1972.

MURPHY J.

The Honourable Lionel Keith Murphy B.Sc., LL.B. was born on 30 August 1922. He was educated at Sydney High School and at Sydney University. He was admitted to the New South Wales Bar in 1947. He took silk in 1960. He was a member of the Executive of the Australian section of the International Commission of Jurists from 1963 onwards, and a delegate to the United Nations Conference on Human Rights in Teheran in 1968. He was a Senator for New South Wales from 1962 until 1975 and was leader of the Opposition in the Senate from 1967 until 1972. He became leader of the Government in the Senate from 1972 until 1975 and was also Attorney-General of Australia and Minister for Customs and Excise during that period. He represented Australia before the International Court of Justice in the Nuclear Tests Case from 1973 until 1974. He initiated reforms in Federal law in such diverse areas as Family Law and Trade Practices. He was appointed to the High Court of Australia in 1975 amid some controversy. His practice at the Bar had been largely in the field of industrial law.

AICKIN J.

The Honourable Sir Keith Arthur Aickin, K.B.E., LL.M., was born on 1 February 1916 in Melbourne. He was educated at Melbourne Church of Grammar School. Later at the University of Melbourne, he graduated with the degree of LL.M. He was Associate to Dixon J., from 1939 until 1941. From 1942 until 1944 (when Dixon was Australian Ambassador to the United States) he was third secretary of the Australian Legation. He was the legal adviser to the European Regional Office of the United Nations Relief and Rehabilitation Administration from 1944 until 1948. He signed the Victorian Bar Roll in 1949. He read with Adam, and took silk in 1957 on the same day as Lush. His practice both as a junior and as a silk was primarily in commercial, constitutional and patent work, but in his early days as a silk he appeared in the Court of Criminal Appeal. On one occasion he was pressed by a now retired member of that Bench who said "But Mr. Aickin it is as plain as a pike staff that your client is guilty". "That" replied Aickin "is not the exercise. It is whether he had a proper trial".

From 1951 until 1956 he was the independent lecturer in company law at the University of Melbourne, and was succeeded in that position in 1957 by Young. In 1966 he was appointed a member of the Council of LaTrobe University. He held directorships in a number of large public companies. He is one of the few Australian Barristers to have appeared before the House of Lords. He was one of the joint authors (together with Gleeson Q.C. and Professor Lane) of the famous opinion "Ex parte Rothery" of 1975 advising that a Governor General may in appropriate circumstances dismiss Ministers who could not obtain supply. He was appointed to the High Court in 1976.

WILSON J.

The Honourable Sir Ronald Darling Wilson, C.M.G., LL.B. LL.M. (Penn.) was born on 23 August, 1922 at Geraldton in Western Australia. He was educated at Geraldton High School. At the University of Western Australia, he graduated LL.B. with First Class Honours and subsequently obtained the degree of LL.M. from the University of Pennsylvania. He was appointed an assistant Crown Prosecutor in Western Australia in 1954. He was elevated to permanent Crown Prosecutor in 1959 and to Crown Counsel in 1961, a position he held until 1969. He took silk in 1963. In 1969 he became Solicitor-General of Western Australia, the position he held until his appointment to the High Court in 1979. As Solicitor-General for Western Australia he appeared in many constitutional cases before the High Court, and played an active role in Constitutional discussions in the standing committee of Attorneys General. He is a former Moderator of the Presbyterian Church in Western Australia, and is at present the Moderator of the Western Australian Synod of the Uniting Church. His appointment is the first to the High Court since Federation of a Judge not from Queensland, New South Wales or Victoria. The Attorney-General at the time of his appointment was Senator Durack Q.C. of Western Australia.

THE VICTORIAN BAR IN THE HIGH COURT

For a group of advocates which prides itself on its courage in defending others, it is indeed surprising that no member of the Bar (nor the Bar Council) has sought to take up cudgels against what amounts to a charge of cowardice levelled at us all.

The editor of the Australian Law Journal last year suggested (53 ALJ 291) that one of the reasons for the decrease in the size of the Melbourne lists of the High Court was a dislike among Victorian barristers for the vigorous exchange between Bench and Bar which characterises argument in that Court. The editor claimed that "it believed that most counsel" prefer a system of uninterrupted presentation of argument with "questions" put at the end of the argument, as occurs in the International Court of Justice at The Hague. The reasons given include the suggestion that verbal cross-fire from the Bench can be both "unfair and upsetting".

Can it truly be that members of the Victorian Bar, the Bar of Chief Justices Isaacs, Gavan Duffy, Latham and Dixon, now complain of verbal cross-fire, and seek uninterrupted hearings?

The suggestion that life is getting a bit rough in the High Court is not at all new. Sir Owen Dixon first appeared in the Court in 1911, and frequently thereafter until the end of 1928. In describing the methods used in the Court during that time, Sir Owen later said ". . . its methods were entirely dialectical, the minds of all the judges were actively expressed in support or in criticism of arguments. Cross-examination of counsel was indulged in as part of the common course of argument." (85 CLR xiv)

Of course, Sir Owen Dixon himself was well aware that, as he modestly put it ". . . I was endowed with a greater degree of endurance or lack of sensibility than most people", and he found that the system of rigorous cross-examination established by the High Court of Sir Samuel Griffith was "advantageous" for him. (ibid)

However, he also acknowledged that there was a large body of counsel who disliked that procedure, and later claimed that he decided he would not follow that method and would dissuade others from it. ". . . so far as I was able to restrain my impetuosity . . ." (ibid at xv)

There is room for considerable doubt as to how successful he was in such dissuasion. Nevertheless, in the years that follow it could less often be said that ". . . arguments were torn to shreds before they were fully admitted to the mind which led to a lack of coherence in the presentation of a case and to a failure of the Bench to understand the complete and full cases of the parties." (ibid at xiv)

During the period when Sir Frank Gavan Duffy presided as Chief Justice, (1931-1935) he was said by Dixon C.J. to have brought to the Court the gift of humour. (110 CLR xiii). Careful observers of the court in recent years will be aware that that gift has not been lost, and can be relatively easily unearthed with only meagre encouragement.

In Sir John Latham's time his model of good-natured patience had its influence, but it would be a mistake to think that the Court was a less testing place before which to appear. Even he was moved to offer the following wry apology on his retirement in 1952:

> "There have been occasions when I have quite fully understood the proposition at its third statement, and when it was quite unnecessary to state it six times, but I hope I have not been impatient on the Bench . . ." (85 CLR viii)

The rigors of appearing in the Court did not abate during the period of Dixon's twelve year reign. However, it was not he who induced the greatest trepidation, notwithstanding his intellectual ascendancy. There were those on this Court who perhaps dwelt longingly on the days when they themselves had been the objects of "rigorous cross-examination", and stretched the wit and fortitude of counsel while subjecting them to testing times, personally and professionally. And yet, can one imagine P.D. Phillips or Douglas Menzies contemplating the adoption of the system of The Hague: uninterrupted monologues, polite questions at the end, and the like? They would have treated such a suggestion with contempt.

The views of the present Chief Justice are well-known. He has said on a number of occasions that he

believes in a great deal of exchange with counsel, and has given reasons:

> "The hearing of argument . . . excites the mind of the Judge, making it work on the facts and upon the law as it is brought forward by the barrister and by the references to authority which he gives. Exchange with the Bar, testing, no doubt in a tentative way, the proposition submitted, has its part not only in the clarification of the judge's mind but often in the enlargement of counsel's concept of the matter and, on occasions, prompts new lines of submission. For that essential stimulation of mind in judge and counsel alike, I can find no substitute for oral argument, well presented by counsel who are well prepared and capable of the exchange of ideas with the bench which is itself capable, not merely of listening, but of working in the presence of counsel." (51 ALJ 493)

Is it true, then, that most counsel at the Victorian Bar disagree with this viewpoint, and are reluctant to enter the lists where the implementation of that viewpoint takes place?

If so, then they are denying themselves a chance to participate in an experience which can be a high point of intellectual and professional stimulation in careers which inevitably involve also long periods of hard work, dull cases and dreary paperwork.

Arguing matters of importance before a Bench of three, five or seven of the best legal minds of the nation, upon the assumption of a common background of knowledge of the law and comprehension of principle, is a privilege to be keenly sought. Refining and analysing ideas to a point where they can be put succinctly and clearly, and with the force of good logic as well as good authority, is both the most testing and yet the most rewarding of tasks that we can undertake as advocates. And ultimately perhaps the greatest challenge is to isolate and articulate a problem, convey it to the Bench, and provide the answer which clearly resolves it. (see too Dixon, *Jesting Pilate* at 250) There is no greater satisfaction to be had than to watch the minds of members of the High Court Bench light up as they perceive where a line of argument is leading, especially if it is a line they had not thought of for themselves.

Most of the work at our very best when under fire, and we are not stimulated to our highest by the prospect of presentation of argument before a silent and non-responsive Tribunal.

While some venom may have been felt emanating from the Bench in years gone by, it is seldom encountered now, except when well-deserved. Those counsel who let their personal or political predilections govern their conduct towards individual Judges are likely to pay a heavy price.

Generally, the Court is, if anything, quite indulgent of counsel. Thus juniors making their early appearances there are invariably given special encouragement. Humor is always well received. And it is also well known that in its visits to States where there are small lists and infrequent opportunities for counsel to appear in the High Court, applications for leave or special leave which might be given short shrift when made by experienced counsel in Sydney or Melbourne, are heard out at unnecessary length by a patient Court, considerate of the significance of the occasion to counsel and litigants alike.

It may be that one of the factors that does incline Victorian counsel against the High Court is the strong influence of the Supreme Court, which, not being an ultimate court of appeal, has paid and demanded very high respect for received authority. It has thus engendered conservative attitudes at the Bar which are perhaps less appropriate in the High Court.

We tend to be reluctant simply to argue that a proposition is wrong, and then to argue that if it is supported by authority, that authority should no longer be followed. We also seem inhibited in developing arguments of originality that depend for their acceptance on different perspectives of interpretation or principle than those with which we are familiar. The High Court invites such arguments and from time to time it also accepts them. Perhaps we should be more alert for opportunities to present them.

With the Court ceasing to sit in Melbourne, the Bar must take steps to maintain an active and strong link with it, and to avoid withdrawing into the relatively insular world which enables the editor of the A.L.J. to allege with confidence that "some Victorian practitioners have made no secret of their preference for a final appellate decision by the Full Court of the Supreme Court of Victoria". (53 ALJ 291)

Finally, it should not be thought that the imputations cast against the Victorian Bar went totally unanswered. Byers Q.C. the Solicitor-General (a New South Welshman who practises almost exclusively in the High Court, and with brevity, brilliance and good humour) has sprung to our defence. In his view, Victorian counsel are not "wanting in courage or deficient in address". (53 ALJ 795) One hopes that he is right.

CASTAN

MISLEADING CASE NOTE No. 10

R. v. R. & Ors

A.C.T. Court of Petty Sessions

Special Magistrate Miss Jamtin read the following reserved judgment:

Until 25 May this year I was disappointed at being the only junior tutor in the A.N.U. Law Faculty not invited to the opening of the new High Court building in Canberra. On 26 May, the day of the opening, I began to see the wisdom of that course of events.

On the morning of that day, acting upon information received, Inspector Goering and Sgt. Mengele of the Federal Police Force made application to this Court under the Gaming Ordinance, for a quarantine order in respect of the new building as a common gaming house. That order was made and when the Defendants later that day attended at the premises, which Inspector Goering described as "the alleged High Court", they were arrested and charged accordingly for being in breach of that quarantine order. Bail was refused, and the Defendants applied to this Court for bail.

Before proceeding to the substance of the applications, it is important to note that the Defendants are numerous, comprising as they do the substantial number of guests invited to the opening of what they thought to be the new High Court building. They include of course Her Majesty the Queen, the Governors of the States and the Governor-General of the Commonwealth, all of the Federal judiciary, including the High Court Justices themselves, those Federal and Family Court Judges not already in custody, and of course all of the Stipendiary Magistrates, Parliamentarians and socialites of all persuasians, and all of my colleagues at the A.N.U.

My appointment was rendered necessary by the lack of any person in Canberra with any greater legal training to undertake the task now before me.

It was argued by the applicants (and I interpolate here that although there were some Federal Judges for whom no one would appear, they having inflicted their ire upon the legal profession for so long, I have considered all of the bail applications as one) that the Defendants' entry upon the quarantined premises was innocent. They have therefore committed no offence and bail ought to be granted. I cannot accept that argument. It is common knolwedge that the High Court is open to all who can afford it, and although that class of persons may be limited to double murderers and corporate tax evaders, it is not an argument in support of the submission that the Court is not "common" within the meaning of the Gaming Ordinance. That it is a gaming house within the meaning of the Ordinance is equally clear. Where cases depend upon the caprice of the occupants of the Bench for the time being, and where no one is sure of a result until it is handed down, then surely to proceed with an appeal as far as the High Court is a proceeding in the nature of a wager or bet. The new High Court building being a building where such wagers or bets will be carried on, it must be therefore a gaming house.

It was argued on behalf of the Federal judiciary that they are all men of good character and therefore unlikely to be convicted. Indeed it was put forward in respect of the High Court Justices themselves, that they are men whose principal occupation before elevation to the Bench was as Attorney-General for a State or of the Commonwealth. In my view it is only necessary to state that proposition to reject it. I cannot accept that men whose principal occupation was in the drafting of laws, and in particular in respect of the Commonwealth Attorneys-General, the drafting of laws designed to circumvent the provisions of the Constitution, would be appointed to the High Court where their principal occupation would be in the interpretation of those very laws. It would be as if permanent Crown Prosecutors were appointed to the Bench of a Court with an extensive criminal jurisdiction.

It was argued on behalf of the firstnamed Defendant, Mrs. Windsor, that she appears on not one nor two, but three sides of the record. She appears, of course, as a Defendant. Proceedings in this Court are of course also taken in her name, and any occupant of this or any other Bench (including myself) sits not as a representative of the State or of the people but of that woman who is the first named Defendant. It is quite clear therefore that insofar as the charges against Mrs. Windsor are concerned they cannot proceed to their ultimate resolution. It is unfortunately a different matter as far as bail is concerned. Because she has been charged she must be bailed before she can be released. Because any member of this Bench is, in the final analysis, an employee of hers, any such person (including myself) must disqualify him or herself from hearing any bail application. Sadly therefore, Mrs. Windor's application must be refused.

The other members of the judiciary will be released upon their own undertaking, but as to the Justices of the High Court, their application will be refused. In my view it will do them no harm, to see at first hand the conditions under which those people live whose applications for special leave to appeal they refuse with frightening regularity.

Gunst.

NOTANDA

COUNCIL OF PROFESSIONS SEMINAR

The Victorian Council of the Professions will conduct its annual seminar for 1980 on Tuesday evening September 16 at Clunies Ross House. The subject of the seminar will be 'Professionalism– the end of the road' and will discuss the changing role of the professional in todays world. Speakers will include Mr. R. M. Bannerman, Chairman of the Trade Practices Commission and Professor Lance Endersbee, President of the Institute of Engineers. Further information and registration forms will be included in subsequent issues of Newsletter.

AUSTRALIAN COMMERCIAL TAX-LAW CONFERENCE

The Hyatt Hotel, Bali has been selected as the venue of this conference from 5th to 13th July.

Four main topics will be covered:

1. Legal obligations of professional Practitioners and Advisers in view of recent developments.
2. Liquidations of Companies and Trusts.
3. Commercial structuring of business with particular attention to the concept of limited liability including responsibilities of directors, trustees, beneficiaries and unit holders.
4. Superannuation and other business benefits for professionals, including the future of service trusts in view of current legislation.

Enquiries to Travel Bag Pty. Ltd., 860 Nepean Highway, Moorabbin, Tel. 95 2733.

VERBATIM

Before His Honour Mr. Justice Lush November 1979 (shortly before announcement of new silks.)
First case is called.
Kendall, "I appear with my learned friend Mr. Keon-Cohen."
Second case is called.
Hedigan, "I appear with my learned junior Mr. Kendall."
Third case is called.
Kendal, "I appear."
Solicitor (instructing one of Kendall's opponents) –

You have really made it Dave, Father, Son and Holy Ghost."

• • •

Tadgell J. in the course of his first Criminal Trial, explaining luncheon arrangements to the Jury –

"You will be taken to lunch at the expense of the estate – I mean to say, State.

R. v. Edwards
14.4.80

• • •

Goldberg Q.C. cross examining:

Where does a Chairman usually sit at a meeting?

Interpreter:
Wenem ap tru ol sermen i save sindaun tain bilong miting?

Sir Tei Abal:
Em ol save sindaun long front long you mi.

Interpreter:
Usually sits in the front . . . in front.

Goldberg:
Does he sit at the top of the table?

Interpreter:
Emi save sindaun ontap long tebel?

Sir Tei Abel:
No, chairman on chair.

(LAUGHTER IN THE COURT)

Goldberg:
Would you tell Sir Tei that everyone laughed at me, Mr. Interpreter, not at Sir Tei.

His Honour:
Yes, do that please.

Interpreter:
Emi took ol i lap long mi, no long yu, emi tok olsem.

Goldberg:
Sir Tei, I asked a silly question! I want to ask you another one.

His Honour:
No, please don't!

Morris v. PNG Associated Industries
National Court of Justice PNG
February 1980

• • •

"Hartog Berkeley. Court 5 please" was heard announced several times over the loudspeaker system at the Prahran Magistrates Court, just recently.

It is reliably reported that the florid gentleman who pleaded "Guilty" before three Honorary Justices, and appeared unrepresented, was not our learned Chairman. All members of the Bar will be much relieved.

● ● ●

The Defendant's ex-employer is called as a character witness. He asserts that the defendant (who is charged with assault) is a man of calm disposition. By way of example he describes an incident at work when a fellow employee threw the Defendant's Richmond beanie into a fire . .

Tribe:
"What did the Defendant do?"

Witness:
"He didn't get upset he just walked away."

Tribe:
Would you say he was an honest person?

Gerkens S.M.: "If he's a Richmond supporter, Mr. Tribe, he must be . . .!

● ● ●

From a recently sighted set of particulars of negligence –

"(c) Driving his said motor cycle in an erotic manner".

● ● ●

"The main impact of Roman Law on the law relating to Wills appears to be that most of it is written in a language that Judges don't understand".

McGarvie J.
In the Estate of V.J. Allen
Dec'd, 29/4/80

● ● ●

Dowling cross examining –

"I put it to you that Christmas day fell on December 25 that year."

Housing Commission Inquiry
March 26, 1980

● ● ●

Kayser in full flight, cross-examining Young Constable coram Judge Ravech.

"The scene was one of a large group of people shouting out in loud voices?"

Y.C.:
"Yes"

"The noise was probably akin to the cheer of the Collingwood stand when they win the grand final?"

His Honour:
"That is so long ago he probably wasn't born then."

Frankston Riot Trial

● ● ●

The Justices sitting at The Kimberley Court of Petty Sessions lined up the morning's defendants and asked how they intended to plead.
Three aborigines said they were pleading Not Guilty.
The Chairman:

"What do you mean 'Not Guilty'? If you were not guilty, you wouldn't be here."

● ● ●

Brooking J:
"Is this really a building case?"

Golvan:
"It might not have the flavour of a building case, Your Honour, but it certainly has the colour of one."

Redec v. Berger Paints
February 29, 1980.

● ● ●

Elsternwick Court, Cor Lynch S.M.:
Young Counsel:

"The information being dismissed, Your Worship, I apply for costs against the Police."

Lynch S.M.:
Are you serious?"

Young Counsel:
"Yes".

Lynch S.M.:
"Look, I said I had a reasonable doubt, but I could change my mind".

● ● ●

LEGGE'S LAW LEXICON

A

Abandoning the Excess	Making a virtue of necessity
Abet	See "Amicus curiae"
Abuse of process	A debtor's acknowledgement of service
Acceptance of service	See **Russell v. Russell** (1924) A.C. 687.
Accessory	A barrister's bag, wig or bands
Accommodation bill	Circuit fees
Accord and satisfaction	The relationship between a barrister and his clerk
Accumulation	The continual increase of wealth by the non-payment of Counsel's fees Accumulation is restricted to the period ending with:– (a) The death, retirement or appointment to higher office of the barrister. (b) The bankruptcy of the instructing solicitor. (c) The expiration of 6 years from the giving of judgment in favour of the barrister's client; or (d) The giving of judgment in favour of the other party.
Accused	A lay-client who pays in advance.
Act of bankruptcy	Leaving Foley's list
Act of God	Getting onto Foley's list
Action	Solicitor's jargon for inaction
Admission	The entrance to Pentridge stockade, thus (and more usually) the document by which means of which the entrance is opened

Victorian Bar News

Adverse possession	The borrowing of a law book
Advice on evidence	A statement in writing by a barrister of the legal principles which his instructing solicitor is to explain to potential witnesses
Affidavit	See "Whispering", "Perjury"
Affiliation order	The right to succession vested in the eldest son of each barrister's clerk.
Affirm	The act of lying without incurring the danger of spiritual consequences.
A fortiori	A double Scotch
Agent	A person who is paid commission by both vendor and purchaser
Alibi	An accused with friends
Allocatur	A marriage certificate
Amendment	A proceeding made necessary by a successful advice on evidence (q.v.)
Amicus curiae	A barrister appearing in the County Court who asks for an adjournment at noon on Wednesday
Animal	The self description of an accused who makes an admission
A posteriori	An invitation to treat amongst sailors
Appeal	A proceeding made necessary by an unsuccessful advice on evidence.
Appearance	An activity of a barrister which is begun by his saying, "If Your Honour Pleases". He continues with the expressions, "I am indebted to Your Honour for that information" and "I know that my learned friend means when he says that" and concludes with the words, "It is not for me to question the inscrutable workings of providence."
Arbitration	A proceeding between two parties in which a layman makes an order binding upon one of the parties such that is wholly inconsistent with the submissions of all the counsel appearing in the proceeding.
Arm's length	The distance between opposing counsel, but see "Whispering"
Arrest	A proceeding preliminary to the making of an admission
Articles	A period of time in which the unteachable is educated by the unspeakable
Assault	A further preliminary to the making of an admission
Attachment	A relationship between two solicitors
Attachment of debt	A relationship between a barrister and a solicitor
Attempt	A course of last resort for Crown Prosecutors
Attornment	Barbecued solicitors
Australia	An island in the South Pacific part of the British Dominions
Author	The chief crown witness against an accused who has made an admission
Azaldus	Azaldus??

(To be continued)

A LAWYER'S BOOKSHELF

BARWICK by David Marr,
George Allen & Unwin ($16.95

This is a very good book, and I think that all lawyers should read it. Our profession is one in which the lives and exploits of its leading lights are not generally such as to make interesting reading. Consequently, their example rarely persists for the instruction of later generations, beyond the term and a rapidly fading memory. In the case of the subject of this book, circumstances of time, place and ability enabled him to take a prime part in cases which surpassed merely legal interest. They were cases which had political and social ramifications, momentous in their day, and still having effect in the present. This book is therefore interesting not only as a portrayal of the life of a great advocate, but as a portrayal of law as a field upon which social and political forces did battle, in an attempt to change the face of Australian life. Such circumstances may never occur again to such a degree.

The book was not written with Sir Garfield's approval; and apparently with his discouragement. He may have feared that the author's Labor Party bias (apparent in his treatment of each political issue in the book) would have resulted in an unfairly unflattering picture being drawn. Such has, however, not turned out to be the case. There are areas where one may differ from the conclusion drawn by the author concerning the motives for or inferences to be drawn from events, but his treatment of his subject in person appears to be quite fair, and not at all unflattering. Who indeed could be against a man who shows loyalty to family and friends, is an expert in his field, who is or was a yachtsman, skier, gardener and conservationist, the author of one of the country's most impressive buildings and a proponent of divorce reform and trade practices legislation?

The author found it necessary to have a theme for the book, namely that of a journey or struggle, with no achievement at the end, save the effort itself undergone to reach that end. Those of literary inclination will no doubt see the sting in the quotation which heads the last chapter. I consider the theme to be both unnecessary and unfair. To say that a judge has been a solver of problems, rather than an author of a body of doctrine, is not, in the context of our legal system, necessarily a valid criticism. The view of the judge as a problem solver has found favour with Lord Devlin, in his recent book "The Judge", and I expect that most litigants would prefer that their problems be solved in a practical way, rather than by the subject of some philosophical study.

In addition to its description of this life and work of Sir Garfield, the book contains many interesting snippets of information some of which, if true, contain lessons for Victorian barristers. It is said that the High Court relies mainly on its own research, and little on Counsel's argument. If so, our efforts are mere window dressing, but is this a reflection on the bench, or on the bar? It is also said that the High Court dislikes the "mannered" approach of the Victorian Bar, considering that its members "scratch every hair of the dog except the one that counts". If this is right, then it may indicate that we are failing in the most important task of the advocate; that of persuasion. In the execution of that task, form is as important as content. On the other hand, the comment, if translated into less perjorative words, may explain why Sydney produced this country's greatest advocate, whilst Melbourne produced its greatest lawyer.

UREN

ARBITRATION (COMMERCIAL) IN AUSTRALIA-LAW AND PRACTICE
by J.B. Dorter and G.K. Widmer, The Law Book Company (Sydney) 1979, 282 pages $29.50.

The timely appearance of this book should fill a large gap in the library of Australian lawyers involved or wishing to participate in the field of arbitration. Previously recourse had to be made to the standard English text on arbitration viz. Russell, to the Australian Pilot edition of Halsbury, or to some older or non specialist texts. For the first time a comprehensive volume is now available covering the Australian scene.

In recent years there has been a surge of interest and activity in arbitration as a method of resolving disputes and improving efficiency in the industrial financial and commercial world. This is evidenced particularly by the activity engaged in by the various law reform committee with respect to the topic. Thus, we have had reports from the A.C.T. Law Reform Committee (1974), the New South Wales Law Reform Committee (1976), the Western Australian Law Reform Committee (1974), and the Chief Justice's Law Reform Committee in Victoria (1977). In 1977 a major Seminar was held in Melbourne which was opened by the Attorney-General, Storey Q.C., who commented on the substantial examination of the law of arbitration being conducted by the Standing Committee of State and Commonwealth Attorneys-General with a view to producing a nationwide Arbitration Act. The Seminar was conducted under the auspices of the Institute of Arbitrators Australia which was founded in 1975 modelled on the U.K. Institute and which has since undertaken a number of Seminars and other activities. The uniform statute has yet to be prepared.

The present text is essentially a law book, but it is noteworthy the authors do not appear to have written with the lawyers' market primarily in mind. In fact the book addresses itself to arbitrators as such, as well as to the parties and their representatives. Given this stated aim, it is perhaps beside the point to indicate that there is a somewhat basic approach throughout the book which many lawyers will find irritating and much explanation has been included which might otherwise have been thought unnecessary.

The book itself is well presented on good quality paper with the text clearly set out in large legible print. The index provided is adequate and there are tables of statutes and of cases also. The Table of Cases is generally good, giving an alphabetical listing of both plaintiff and defendant as well as the full reference. However the task of finding some cases included could provide troublesome. Although a case such as F.J. Bloeman Pty. Ltd. v. Council of the City of Gold Coast is listed under "Bloeman" "Council" and "Gold, cases beginning "Re an Arbitration" are listed only under "Arbitration", and cases such as "Re Davis and Brown's Arbitration (No. 2)" are listed only under the first surname.

The relevant statute of each of the States is set out at the back in separate appendices (six, not five, as stated in the Foreword of Meares J.) which makes for handy reference. Also the rules for the conduct of arbitration of both the Institute of Arbitrators Australia and that of the U.K. are included together with the proposed relevant Eanons of Ethics of the American Bar Association and American Arbitration Association.

A disturbing feature is that the text is sometimes vague and confusing and the link with the footnotes not always clear. As an example on pages 35 and 176, in identical paragraphs, the case of Re an Arbitration between Higgins and the Victorian Railways Commissioners (1885) 11 V.L.R. 140 (F.C.) is referred to an authority for the proposition that "Wide terms will give an arbitrator jurisdiction in respect of such disputes or differences as not only general questions of law but even: ... (b) whether the agreement itself is still on foot". A reading of the case suggests rather the contrary. The question as to the continued existence of an agreement is a matter that cannot be submitted to arbitration but must be determined by the Court. In the recent decision of Van Dyk v. Atlantic Pool (Vic.) Pty. Ltd. and Masel (unreported 31/7/79) Young C.J. declined to follow Higgins' case, preferring the decision of the House of Lords in Heyman v. Darwins Ltd. (1942) A.C. 356, and Building and Engineering Constructions (Aust.) Ltd. v. Property Securities No. 1 Pty. Ltd. (1960) V.R. 673. These decisions in fact support the proposition stated in the book. This last case in which Pape J. canvassed the law on the subject is not mentioned in the book. It is perhaps an unfortunate feature of the work that emphasis is placed upon the New South Wales authorities and that important interstate decisions are omitted.

Given the large number of Acts and the like which have been reprinted in the book and which in fact comprise almost 25% of its contents, the recom-

mended price of $29.50 seems somewhat high,even in this day of astronomical prices. Perhaps the publishers felt it justified by the pioneering nature of the work and the present absence of any real competitor. Ultimately perhaps this is the book's major virtue.

In a real sense, arbitration amounts to a supply of justice by the private sector in addition to that supplied publicly by the courts. Insofar as there has been a growth recently in the area it can perhaps be seen partly as a response to dissatisfaction, for whatever reason, in the supply of justice by the courts. It is perhaps worth noting that in the six years from 1973 to 1979 the number of Judges in the Supreme and County Courts, the jurisdictions most relevant to matters suitable for arbitration, increased from 45 to 56 (17.8%) – Supreme Court from 20 to 21 (5%) and County Court from 25 to 32 (28%). On the other hand the number of barristers has risen from 504 to 785 (55.8%) in the same period.

It would seem that the Bar is singularly well placed both to facilitate and to benefit from any expanded recourse to arbitration. With its central location it offers a very convenient meeting room with recording facilities where hearings can and do take place. Those responsible for the design of the new building have an opportunity to enlarge these facilities and to extend them. In any event, of course, the Bar as a great reservoir of people capable of properly filling the role not only of counsel representing the parties but also, and perhaps more importantly, that of the arbitrator as well. As the authors make clear, parties having recourse to arbitration do not desire the arbitrator to act arbitrarily. Rather they expect him to act judicially. Barristers, first and foremost, could be expected to understand and apply this concept, sitting alone or with a technical expert appropriate to the matter in dispute.

As a convenient handbook, barristers engaged in any aspect of arbitration will find the book well worth purchasing.

SHARP

NEW PROSECUTOR

Esteemed Editor Ross D. has been appointed a Prosecutor for the Queen. The other members of the Editorial Committee wish him well.

OLD BOND IN NEW CLOTHES

Edward III became King in 1327. He was then not quite 15 years old. He ruled for over 50 years. He was prone to wage war. He presided over the commencement of the Hundred Years' war in 1338. He regularly invaded Scotland.

As may be expected, his troops were a rather rough lot. When they were demobilised they were prone to stand over good citizens, and the peace had to be preserved.

In 1361 the Justices of the Peace Act was enacted; (34 Edw. 3 c.1).

The terms of the Act were:–

Primement q̄ en chescun Countee Dengletre soient assignez, p^r la garde de la pees, un Seign^r, & oveşq, lui trois ou quatre des meultz vauez du Countee, ensemblement ove aseuns sages de la ley, & eient poer de restreindre les mesfesours, riotors, & touz auls barettors, & de les p^rsuir, aresier, ꝑndre, chastier, selonc leur ẏspas ou mesprision; & de faire emprisoner, & duement punir selonc la ley & custumes du Roialme, & selonc ce qils v̈ront mieltz affaire p lor^r discrescions & bon avisement; . . . & de ꝑndre & aresier touz ceux qils p^rront trov̈ p enditement, ou p suspecion & les mettre en prisone & de ꝑndre de touz ceux [qi sont[1]] de bone fame, ou ils ſront trovez, souffisant securete & meinprise de lor bon port, devs le Roi & son poeple, & les auls duement punir; au fin q̄ le poeple ne soit p tieux riotors troble nendamage ne la pees enblemy, ne marchantz nauls passantz p les hautes chemyns du Roialme destourbez ne abaiez du pil q̄ p^ra avenir de tieux meffesours . . .

First, that in every county of England shall be assigned for the keeping of the peace, one lord, and with him three or four of the most worthy in the county, with some learned in the law, and they shall have power to restrain the offenders, rioters, and all other barators and to pursue, arrest, take, and chastise them according their trespass or offence; and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; . . . and to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; and to take of all them that be [not[1]] of good fame, where they shall be found, sufficient surety and mainprise of their good behaviour towards the King and his people, and the other duly to punish; to the intent that the people be not by such rioters or rebels troubled nor endamaged, nor the peace blemished, nor merchants nor other passing by the highways of the realm disturbed, nor [put in the peril which may happen[2]] of such offenders . . .

A Century Ago

One hundred years ago the extent of the power was described by Sergeant Stephen.

"First, then, the justices are empowered by the statute, 34 Edward III. c. 1, to bind over to the good behaviour towards the sovereign and his people, all them *that be not of good fame*, wherever they are found: to the intent that the people be not troubled or endamaged; nor the peace diminished : nor merchants and others passing by the highways of the realm, disturbed or put in the peril which may happen by such offenders. Under the general words of this expression, *that be not of good fame*, it is holden that a man may be bound to his good behaviour for causes of scandal, *contra bonos mores*, as well as *contra pacem* ; as for haunting bawdy houses with women of bad fame, or for keeping such women in his own home; or for words tending to scandalize the government; or in abuse of the officers of justice, especially in the execution of their office. Thus also a justice may bind over all night walkers; eaves-droppers; such as keep suspicious company, or are reported to be pilferers or robbers; such as sleep in the day and wake in the night; common drunkards; whore masters; cheats; idle vagabonds; and other persons whose misbehaviour may reasonably bring them within the general words of the statute, – as persons not of good fame; an expression, it must be owned, of so great a latitude, as leaves much to be determined by the discretion of the magistrate himself. But if he commits a man for want of sureties, he must express the cause thereof with convenient certainty, and take care that such cause be a good one. And there is a similar limitation as to the period of detention in prison under the warrant of a single justice, as we mentioned in reference to a binding over to keep the peace."
(Commentaries on the Law of England (8th ed. 1880) iv, 289-90)

More Recent Applications

By 1914 it was decided that Justices could bind over a person whether he was or was not of good fame: *Lansbury v. Riley* (1914) 3 K.B. 229.

For our purposes, the next event of importance was the passing of the Imperial Acts Application Act No. 3270 of 1922. By that Act Parliament made certain English Acts applicable in Victoria. Part II Division 14 of the Act made the Justices of the Peace Act 1361 applicable here.

So the 1361 Act is in force in Victoria. Incidentally, it would not now matter if the England Parliament repealed the 1361 Act. In Victoria it would continue in force: *Ukley v. Ukley* (1977) V.R. 121.

Most recently the 1361 Act has been applied in England to bind over defendants who have been found not guilty: *R. v. Woking Justices* (1973) 1 Q.B. 448; and even to witnesses: *Sheldon v. Bromfield Justices* (1964) 2 Q.B. 573.

Justices in Victoria are not allowed to release a defendant on a "common law" bond after conviction: *Cromb v. Warne* (1958) V.R. 468. Judges, it is commonly believed, are not allowed to release an accused on a common law bond without first convicting. The purpose of this is to investigate the validity of this belief.

Griffiths v. R.

It would seem though that a binding over under the 1361 Act is different from a common law bond. In *Griffiths v. R.* (1977) 137 CLR 293, Jacobs J. made a close examination of the difference between a 1361 binding over, and a common law bond.
In *Griffiths v. R.* (1977) 137 CLR 293, Jacobs J. made a close examination of the difference between a 1361 binding over, and a common law bond.

He observed (137 CLR 321) that a justice in sessions following a conviction had power to bind over an accused to appear for sentence when called upon. Essentially this is deferment of the final act in the curial process, the imposition of a sentence. In the meantime the Court had the usual power to admit the convicted person to bail on his own recognizances: *R. v Spratling* (1911) 1 KB 77.

This power is distinct historically from a justice's power to require a person to enter into a recognizance to be of good behaviour. This is the power conferred by the Statute of 1361. It may be exercised against any person of evil fame whether he be convicted of an offence or not. It may be exercised in association with bail, that is a surety to appear at the nominated court, or it may be imposed for a specific period with or without any requirement that he later appear (137 CLR 320). It is a final order of the Court in exercise of statutory jurisdiction unlike an adjournment which is an exercise of a procedural power.

The common law bond therefore represents an amalgam of these powers. Inasmuch as it is a deferment of sentence, it is an interlocutory step. Inasmuch as it requires the convicted person to give surety to ensure his re-appearance, it is an exercise of the normal bail power. Inasmuch as the recognizance requires that the convicted person be of

good behaviour, it is an exercise of the statutory power conferred upon the justices in 1361.

There is one further complicating factor. The justices have power in the case of a conviction for a misdemeanour to impose as part of the sentence "a lien to the good behaviour for a certain time". (137 CLR 320). If the bond is imposed pursuant to this power it is an exercise of this sentencing power. The consequence is that a person so sentenced cannot be further sentenced upon the expiry of the term of the bond. The position is otherwise in the case of a convicted felon in respect of whom no such power exists. In the case of a misdemeanour, then, this consequence will depend upon how the order is framed.

Powers of Justices (& Judges)

Justices of the Peace are of course required to act according to law. Magistrates Courts Act 1971 S.22A. Thus they would have the power to bind over a defendant under the 1361 Act.

The bonding power of a magistrate was recently considered by Lush J. in *Bakker v. Stewart* 1980 V. R. 17. A Magistrate had been hearing a .05 case. At the conclusion of the evidence the magistrate found difficulty in construing S.89 A Motor Car Act. S.89 A prevented a bond adjournment under Magistrates (Summary Proceedings) Act 1975 S.80 being given in certain .05 cases. The magistrate had found in construing the sections that he was not in that case prevented from admitting the defendant to a S.80 bond and adjourning the matter.

On review Lush J. said the Magistrate was wrong. On a narrow construction of that decision it may be argued that while a S.80 bond was not open in certain .05 cases, a bond pursuant to the 1361 Act could be, if the magistrate expressly used his 1361 Act power.

Magistrates (and Justices) do have powers to bind over. Two of those powers are given by the Magisrates (Summary Proceedings) Act sections 80 and 150. From the cases it can be concluded that they cannot admit a defendant to a "common law" bond, but they can give a 1361 bond.

The 1361 power is not used by Magistrates. Or for that matter by Judges, even though they too may have the power available to them. The Magistrates Courts Act S.17 gives Judges and Magistrates all the power of justices. The decision in *Griffiths v. R.* 137 C.L.R. 393 is to the effect that Judges can exercise the 1361 bonding power.

New Acts

The express application of the 1361 Act in its terms is now about to be removed. When it receives assent the Imperial Acts Application Act will repeal the 1361 Act. The effect of the 1361 Act will however be reinstated by the Imperial Law Re-enactment Act (when it in turn receives assent. S.4 of that last mentioned Act says:–

"4. After section 150 of the Magistrates (Summary Proceedings) Act 1975 there shall be inserted the following section:–

'150A. A Magistrates' Court or a justice shall have power to require a person to give an undertaking to keep the peace or to be of good behaviour".

Bond without conviction?

(a) Accused found guilty after trial

Where an accused stands trial and is found guilty by jury verdict, he is by mint of that verdict convicted unless for some reason the verdict is set aside. Any subsequent admission to a bond will not avoid that conviction.

(b) Accused pleading guilty

Where an accused pleads guilty before a judge, he is not convicted simply by reason of his plea. In the past, judges who admit an accused to a common law bond felt that by doing so the accused was convicted. The decision in *Griffiths* supports that view.

It may also be open to a Judge to admit an accused to a 1361 bond. Where this is done if an accused pleads guilty, there would be no need first to convict the accused.

Conclusions

1. By reason of the 1361 Act or the 1980 Acts an accused or a witness can be placed on a bond. The bond does not require the consent of the person bonded.
2. Where an accused pleads guilty to an indictable offence, a Judge has the power to place the accused on a bond without first convicting him.

David Ross

VENEREAL DELIGHTS

Venery is a word with two more-or-less distinct meanings. As derived from the goddess Venus, it connotes love, pleasure and (more recently) lust. In its other (less ancient but still proper) meaning, it derives from the Latin venari, to hunt. In this application, it has come to be attached to a branch of verbal gems which may be regarded as first cousin to synecdoche.

The sport of hunting has generated a wealth of collective nouns whose descriptive powers justified their etymological bastardy. Conservationists, and the decay of the feudal structure, have conspired to reduce the sport of hunting to a shadow of its former self. With it, venereal collectives have also fallen into disuse and, thence, to oblivion.

Some venereal terms are still familiar:

A litter of pups, a gaggle of geese, a flock of sheep (or of parishioners). Others are merely an echo of the past glories of our language: a sloth of bears, a skulk of foxes, a hover of trout, a singular of boars, a shrewdness of apes and (perhaps the most charming of all) an exaltation of larks.

While history condemns the pastimes of our ancestors, it is nevertheless possible to rescue the innocent pleasures of venereal collectives. In medicine one may speak of a rash of dermatologists, a flutter of cardiologists, a goggle of oculists and a pile of proctologists. Where none appear is there a void of urologists? Or if but a few, perhaps a squirt of them?

As Hammurabi's code pre-dates Hippocrates by a comfortable margin, so the Law's sense of antiquity exceeds Medicine's.

It is not surprising, then, that venery's ancient verbal treats can be found in the Law. Thus, a lick of equity lawyers, a contortion of tax lawyers, a clutch of solicitors, a bumble of barristers and a purse of silks.

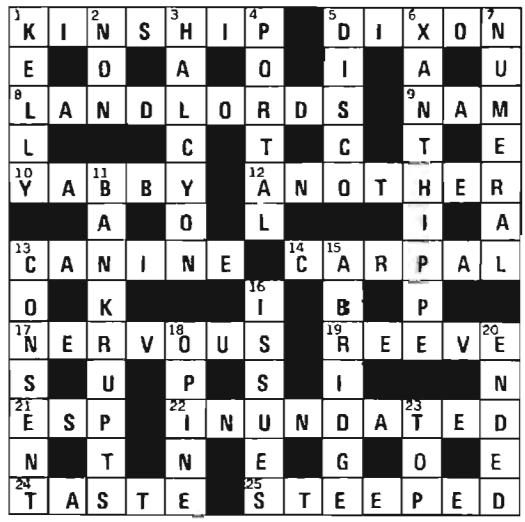
In the curial hierarchy we find a pride of Judges, a piddle of Magistrates, a muddle of Masters. Inside the Court there is a rattle of associates, a tremble of tipstaves, a dodge of defendants and a slumber of jurors.

In the stone vaulted corridors of powers there idles a rubber of clerks, a wriggle of witnesses and a contradiction of experts: a brace of orthopods, a jitter of neurologists and a hysteria of psychiatrists.

Also waiting outside the halls of mercy is a lurk of litigants: a poverty of pensioners, a slouch of labourers, a throttle of car salesmen and (to go full circle) a venery of pimps.

Burnside

SOLUTION TO CAPTAIN'S CRYPTIC No. 32



Published by:
The Victorian Bar Council,
Owen Dixon Chambers, 205 William Street,
Melbourne 3000

Editors:
David Byrne, David Ross

Editorial Committee:
Max Cashmore, John Coldrey, Charles Gunst,
David Henshall, Tony Howard, Robert Webster

Cartoons by:
Crossley and King

Phototypeset and Printed by: Active Offset Pty. Ltd.

MOVEMENT AT THE BAR

Member who has signed the Roll (since 13/3/80)

	Date of Admission
BRIGLIA, Carlo Roland (re-signed)	1/12/60

The following who have commenced reading are to sign the Bar Roll on 19th June 1980.

	Date of Admission	Master
CAVANOUGH, Anthony Lewis	2/ 4/79	P.C. Heerey
WHITEHEAD, Janet Dods	1/11/79	H.R. Hansen
BASSETT, Edward George	1/11/79	W.B. Zichy-Woinarski
JOPLING, Peter John	3/ 4/78	M.E.J. Black
MURPHY, Terrence Patrick	4/ 3/78	J. Fajgenbaum
FREDERICO, Ramon Hugh	1/ 3/61	B.J. Bourke
MAXTED, Ross Graeme	1/ 4/80	G.R.G. Crossley
COLQUHOUN, Guy Peter	1/ 3/79	B.R. Dove
BUCHANAN, Sue Ann	4/ 4/72	E.C.S. Campbell
GRANT, Paul Douglas	1/ 3/79	G.W. Morrish
OPAS, Clare Elizabeth	1/ 5/80	L.R. Opas
WILKINSON, Kenneth Donald	1/ 4/80	A.E. Radford
MARIN, Paul	2/ 9/74	S.G. Langslow
BATTEN, John Leonard	3/ 4/75	R.J. Stanley
McDERMOTT, Paul William	1/11/79	D.M. Ryan
WEYMAN, Brian John	1/ 4/68	R.K. Alston
MARTINI Rainer-Maria	1/11/79	R.J. Johnston
GAUDION, James Thomas	1/11/79	T.M. O'Dwyer
HOULIHAN, Michael William	1/ 4/80	J.P. Keenan
McNAMARA, Gregory Laurence	1/ 3/76	O.K. Strauss

Members who have had their names removed from the Roll of Counsel at their own request.

BERMAN P.J.
GRAEME G. (U.K.)
MILLER Ian R.
PAPALEO L.A.
LUSINK T.J.C.
O'KELLY J.A.
FITZSIMMONS M.
GLICK L.

Members in active practice: 715

UNREPORTED JUDGMENTS OF THE COURT OF CRIMINAL APPEAL

(Avaialable from Redlich ODC Room 151)

ARRAIGNMENT

Appellant refused leave by the trial Judge to change plea to not guilty shortly after being arraigned – conviction quashed – circumstances in which substitution of plea of not guilty will be allowed.
R. v. Bamford – 13th February 1980

BIAS

Evidence allowed of a general bias by the accused against a class of persons of whom the victim was one – motive or hostility evidence – comparison made to the inadmissibility of evidence as to general disposition of the accused.
R. v. Galway – 27th March 1980

CASE STATED

County Court Appeal – Appeal against sentence – error in sentencing process by County Court Judge – Section 73, Section 85, Section 87 Magistrates Court Act 1971 considered – sentence must be related to seriousness of offence – cannot impose jail sentence for rehabilitative purposes alone – power of Supreme Court by way of Case Stated to review sentence imposed by County Court Judge hearing Magistrates Court Appeal.
Freeman v. Harris – 29th November 1979

CHANGE OF PLEA

R. v. Bamford – 13th February 1980.

CHARGE

Duty of trial Judge to put all defences open on the evidence – duty overrides course which defence or Crown invites Judge to follow.
R. v. Knowles – 20th February 1980

CIRCUMSTANTIAL EVIDENCE

Competing inferences – whether jury can exclude one beyond reasonable doubt – use of a series of inferences on the balance of probabilities to reach a state of satisfaction beyond reasonable doubt.
R. v. Saccu – 13th February 1980

COUNTY COURT APPEAL

Freeman v. Harris – 29th November 1979.
(Case Stated)

CREDIT

Adequacy of direction by trial Judge as to variations and inconsistencies between various Crown witnesses.
R. v. Hughes – 12th February 1980

DEFENCE

R. v. Knowles – 20th February 1980 (Charge)

UNREPORTED JUDGMENTS OF THE COURT OF CRIMINAL APPEAL

DRUGS

Sale of cannabis – Section 3 of Poisons Act – "possession for sale" considered.
R. v. Tsesmetzis – 28th April 1980

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Prosecutor opening matters to the jury which are subsequently not proved in evidence – no ground for discharge of jury.
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R. v. Ewen – 15th April 1980

R. v. Galway – 27th March 1980 (Bias)

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R. v. Saccu – 13th February 1980

GUILTY PLEA

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(Arraignment)

IDENTIFICATION

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R. v. Piggott – 7th March 1980

INFERENCES

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(Circumstantial Evidence)

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R. v. McKittrick – 26th March 1980

JURY

Policeman unconnected with case speaks to juror – innocent conversation – no ground for discharge of jury.
R. v. Curtis – 12th February 1980

Accused observed by jury in custody – no ground for discharge.
R. v. Curtis – 12th February 1980

Oppressive conditions in which to consider verdict – jury allowed to deliberate within court room – no ground for discharge.
R. v. Lawrence – 22nd April 1980

Use of written direction to the jury – the desirability of thise course considered.
R. v. Hughes – 12th February 1980

Length of time jury considered verdict not considered a ground for setting conviction aside.
R. v. Fraser – 15th February 1980

MANSLAUGHTER

Misdirection as to the elements of self-defence applicable to manslaughter by an unlawful and dangerous act – not necessary that accused contemplated threat of death or serious bodily harm.
R. v. Hughes – 12th February 1980

MOTOR CAR

Consideration of period of disqualification from obtaining a license and its relationship to the period of imprisonment of the accused.
R. v. Stewart – 4th February 1980

Disqualification period from obtaining a license considered where car used in commission of more serious crime – Section 96(3) Crimes Act.
R. v. Wilson – 5th March 1980

PROSECUTOR

R. v. Curtis – 12th February 1980 (Evidence)

UNREPORTED JUDGMENTS OF THE COURT OF CRIMINAL APPEAL

RAPE

R v. Ewen – 15th April 1980 (Evidence)

SELF DEFENCE

R v. Hughes – 12th February 1980 (Manslaughter)

SENTENCE

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R v. Combey – 5th February 1980

Concurrency – principles of concurrency considered.
R v. Tutchell – 6th February 1980

Community Welfare Services Act S. 191 (i) – **concurrency** of sentences – term of imprisonment to be served with earlier sentence already being served – order of the sentence to be served.
R v. Falzon – 26th March 1980

County Court Appeal – Case Stated –
Freeman v. Harris – 29th November 1979
(County Court Appeal)

Culpable Driving – gross negligence – principles of sentencing when the mind of the offender is irrelevant.
R v. Baker – 10th April 1980

Drugs – trafficking in cannabis – not trafficking in usual sense – accused buying it on behalf of others – no profit – drug being smoked amongst mature adults – bond substituted for term of imprisonment.
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Importing heroin – penalty to be imposed on a courier.
R v. Combey – 5th February 1980

Sale of drug of addiction – special significance of general deterrent.
R v. Hill – 5th February 1980

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Injuries suffered by accused in commission of offence – injury to be taken into account in fixing sentence.
R v. Fletcher – 14th February 1980

Judge may sentence on any view of the facts not inconsistent with verdict – view of facts shared by Crown and defence need not be accepted by sentencing Judge.
R v. Zerey – 6th February 1980

Homosexual sentenced to prison – varied to probation – rehabilitation considered.
R v. Gunn – 14th February 1980

Minimum term – refusal of trial Judge to fix minimum term – proper grounds for refusing to do so.
R v. Willoughby – 14th February 1980

Mental defective – probation substituted for imprisonment on finding of rape with mitigating circumstances.
R v. Fraser – 15th February 1980

Probation – breach of probation order – appropriate sentence for breach of probation.
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Trial Judge's view of facts – a view of facts which leads to more severe punishment must be capable of being shown to be the more probable view of the facts.
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SUMMING UP

R v. Hughes – 12th February 1980 (Jury)

VERDICT

R v. Fraser – 15th February 1980 (Jury)