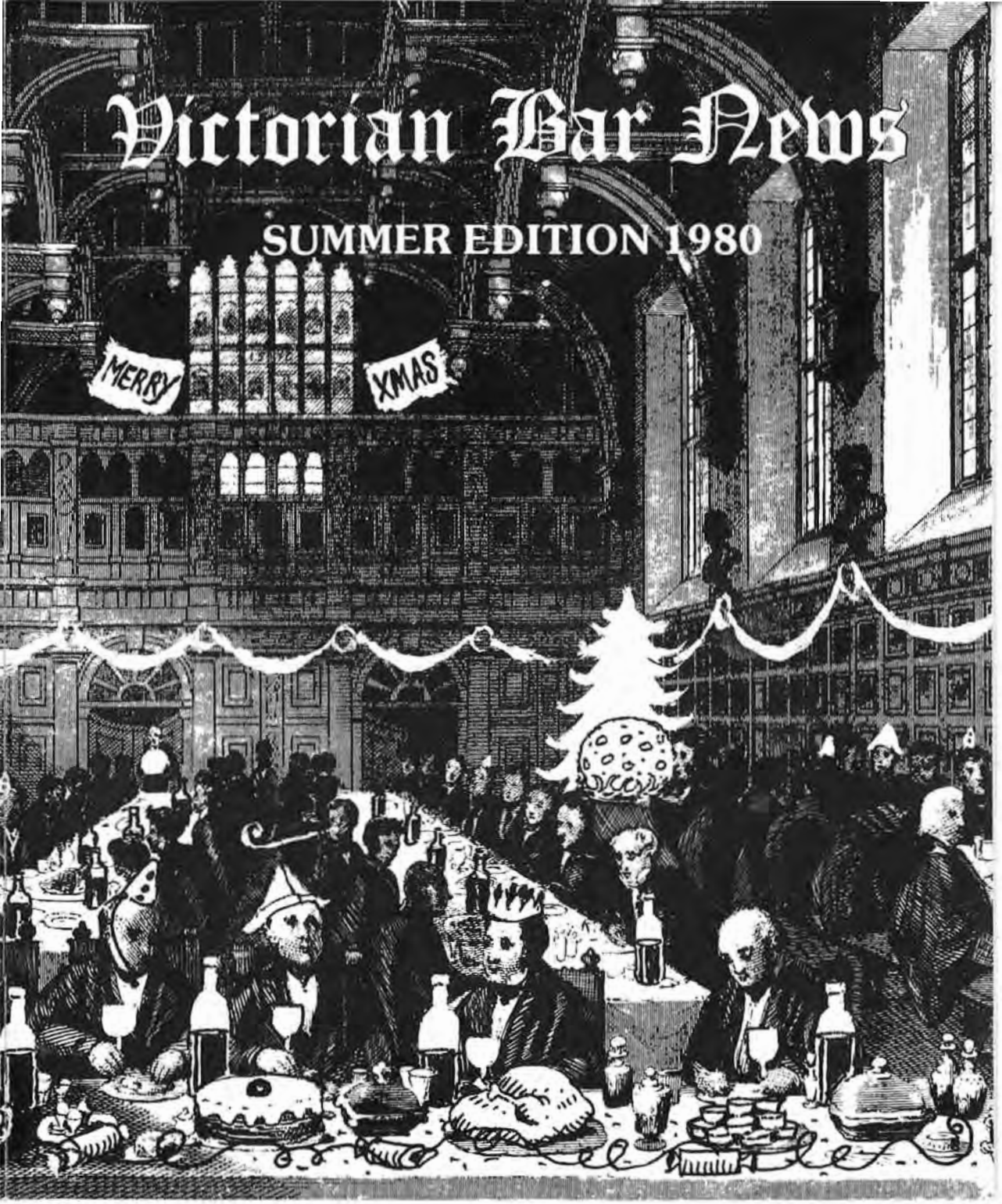
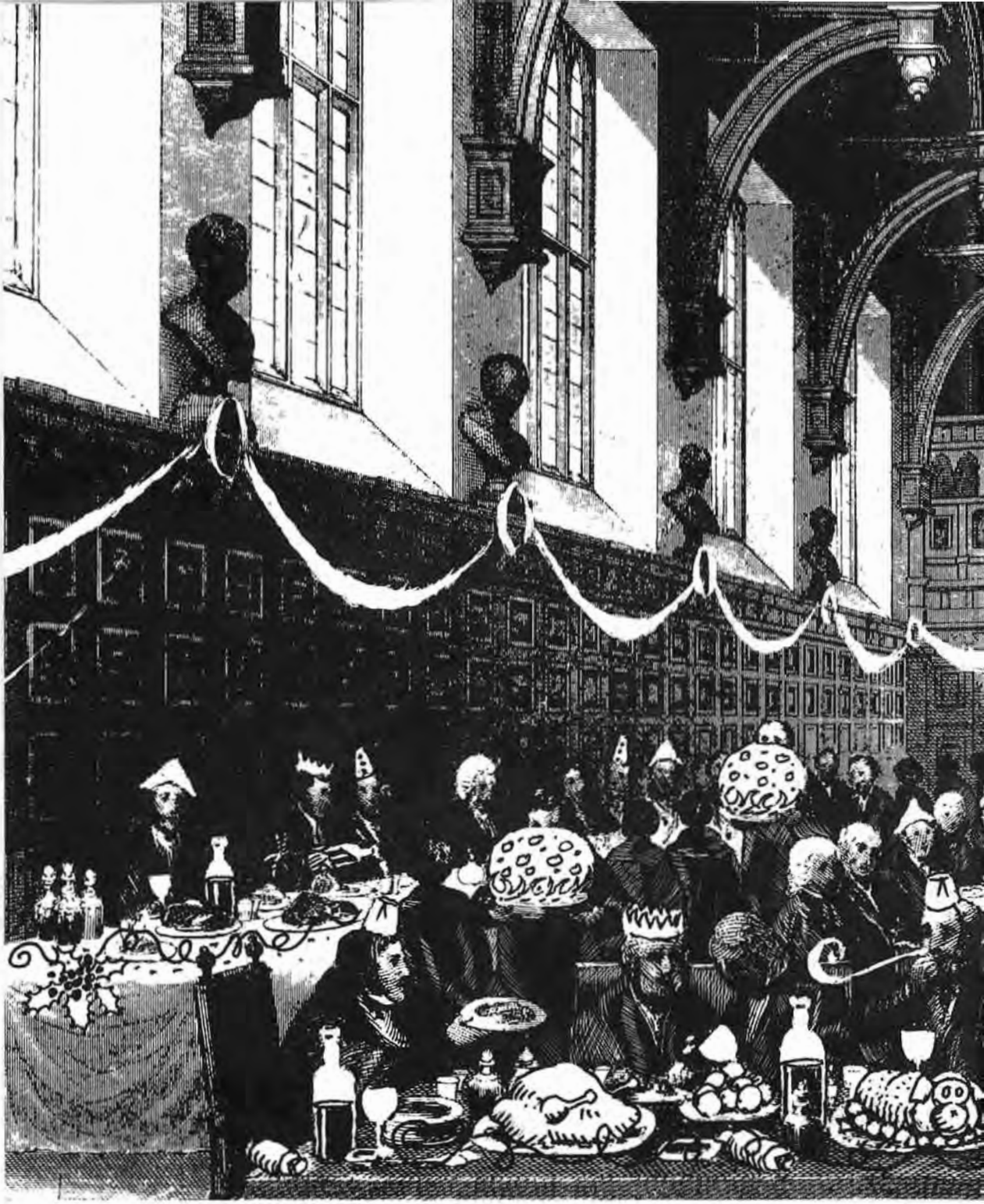
Victorian Bar News

SUMMER EDITION 1980





CONTENTS **PAGE**

COVER:

As part of our continuing endeavour to maintain the tone of this publication we have chosen for the cover a depiction of dining at the Middle Temple circa 1850. Festive additions are by King. As to whether the practice is likely to be continued see Vaughan article on page 20.

BAR COUNCIL REPORT

1. EXECUTIVE COMMITTEE

The following were appointed to the Executive Committee of the Bar Council for the year 1980-1981:

Berkeley Q.C. (Chairman)
Shaw Q.C. (Vice-chairman)
Waldron Q.C.
Barnard Q.C.
Hedigan Q.C.
Walsh Q.C.
D. L. Harper (Honorary Secretary)
D. J. Habersberger (Assistant Honorary Secretary)

2. THE ETHICS COMMITTEE

On the 20th of November the Bar Council resolved that the following Counsel be appointed to the Ethics Committee:

Waldron Q.C. (Chairman)
Barnard Q.C. (Vice-chairman)
Phillips J.H., Q.C.
Castan Q.C.
Mandie
B.A. Murphy
Hinchcliffe

The Bar Council thought it desirable that the membership of this Committee should include Counsel who are not members of the Bar Council, two of whom are included in the Ethics Committee for 1980-1981.

3. FEES

(a) The judgment of Fullargar J. in *Magna Alloys & Research Pty. Ltd. v. Coffee & Ors* (9.9.1980), noted elsewhere in this edition was referred to the Bar Fees Committee;

(b) A report of the Bar Fees Committee suggesting an increase in the fees for Counsel in the Supreme Court was received and considered by the Bar Council. The resulting recommendations of the Council have been circulated and are to operate as and from the 10th of November 1980;

(c) Negotiations are under way to establish an annual review of fees to be paid by the Legal Aid Commission in criminal matters.

4. YOUNG BARRISTERS

(a) Members of the Bar Council have met with members of the Young Lawyer's section of the Law Institute in order to obtain approval of a policy whereby all fees of Counsel under 2 years standing be paid within 30 days;

(b) The Bar Council is aware that from time to time there will be a continuing need for accommodation, especially when Counsel complete their reading period. Further accommodation in the vicinity of Owen Dixon Chambers is presently being considered by Barristers Chambers Ltd.

5. SOCIAL

Because the High Court will no longer visit Melbourne the 1981 Bar Dinner will be held in June. This date has the advantage of not clashing with the school holidays. Alternative venues are to be considered by the Functions and Catering Committee.

On the 9th October the third Readers Dinner was held in the Common Room. His Honour Judge Lazarus of the County Court was the guest speaker.

Sir James Tait's 90th birthday was celebrated with a luncheon party on the 23rd of October attended by a number of Judges and members of the Bar.

NEW SILKS

On 25th November the Governor in Council approved the appointment of eighteen new silks for the State of Victoria.

Name: FRANCIS GERALD FITZ-GERALD
Signed: 16/2/1951
Read with: Mann
Readers: Nil

Name: LEO RICHARD HART
Signed: 21.9.1961
Read with: Connor
Readers: Lopez, Connor, P. O'Dwyer, R. Hayes, D.B. Smith, S. Wilson, N. Robinson, McEachern

Name: HOWARD THOMAS NATHAN
Signed: 28/5/1964
Read with: H. Ball
Readers: Kennan, Bicknell, Prideaux, Joan Miller

Name: FRANK HOLLIS RIVERS VINCENT
Signed: 13/2/1975
Read with: Laurie
Readers: McIvor, Thomas, McIndoe, P. Rosenberg, C. McDonald

Name: BARRY ROBERT DOVE
Signed: 4/2/1964
Read with: Beach
Readers: Bowman, Briglia, G. Moore, D. Reynolds, Daley, Tippett, Colquhoun.

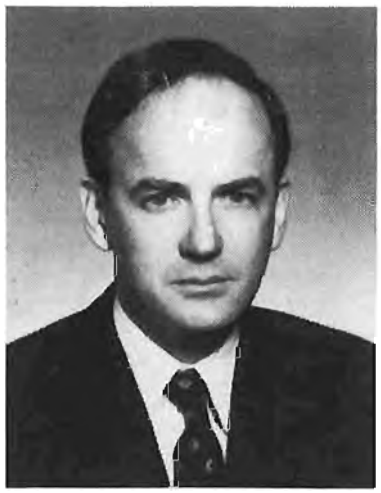
Name: AARON RONALD CASTAN
Signed: 24/3/1966
Read with: Hulme
Readers: Richter, R. Webster, A. Myers, R. Rosenberg, Lewitan, Reicher, N. Young

Name: NEIL ANTHONY BROWN
Signed: 19/3/1964
Read with: Stephen
Readers: Nil

Name: MICHAEL ERIC JOHN BLACK
Signed: 19/3/1964
Read with: Lloyd
Readers: Flatman, van der Weil, Kornblum, Finkelstein, O'Hara, Montgomery, Vassie, Vickery, Middleton, Jopling.

Name: JOHN CHRISTOPHER WALKER
Signed: 19/11/1964
Read with: Gobbo
Readers: Lewin, Lincoln, Parkinson, Morgan-Payler, West, A. Howard, Quinlan, M. McInerney, Mason, Perillo, D. Brown.

Summer 1980



Name: DONNELL MICHAEL RYAN
Signed: 22/7/1965
Read with: Storey
Readers: R.L. Crisp, Cairns, J.A. Riordon, L. Kaufman, Hickey, G. Evans, Collins, A.J. McDonald, Aronson, P.W. McDermott

Name: ALEXIS CHERNOV
Signed: 21/3/1968
Read with: Dawson
Readers: Braun, Duffy, Ray, Boral, G. Davies, Chamings, Croft, T. Ginnane

And from New South Wales:

THOMAS O'LOGHLEN REYNOLDS Q.C.
TREVOR REES MORLING, Q.C.
DAVID MICHAEL JOHN BENNETT, Q.C.
PETER RICHARD CAPELIN, Q.C.
KENNETH JOHN CARRUTHERS, Q.C.
DANIEL EDMUND HORTON, Q.C.
RONALD BRUCE MURPHY, Q.C.

In accordance with our usual policy, we asked the new silks to supply a photo. Unfortunately the printer advises that some of these will not reproduce satisfactorily. This is unfortunate.

Eds.

OBITUARY – RUPERT CROSS

Professor Sir Rupert Cross, formerly Vinerian Professor of Law at the University of Oxford, died on 12th September 1980 at the age of 68. Sir Rupert was regarded as one of the common-law world's foremost authorities in the fields of criminal law and evidence. For many years his writings on these subjects have been widely respected and acclaimed. Furthermore, he has been in great demand throughout the Common Law world as a lecturer and consultant. Members will doubtless recall his visit to Melbourne University in 1969.

For many years Australian Law Schools have been sending some of their best graduates to Oxford for post-graduate training. A number of members of the Victorian Bar have read for the degrees of Bachelor of Civil Law or Doctor of Philosophy, and most of these will have been exposed to the teaching of Sir Rupert. All will attest to his skill as a lecturer and his popularity among his students.

Sir Rupert became totally blind in early childhood. Despite this handicap, he was able to reach the highest pinnacle of any legal scholar's career. He published a prolific number of articles and books, and these were marked by thoroughness of research and lucid style. He was remarkably well informed and up to date with the latest writings in his specialties. As an academic, he bridged the gap between "town and gown", gaining the respect of practitioners and law teachers alike. His death is a sad loss to all who knew him and his works.

M. Weinberg

ACKNOWLEDGEMENT

In the Spring issue of **Victorian Bar News** appeared an article entitled 'Redmond Barry 1813-1880', above the signature 'Gunst'.

This article drew extensively on an entry by Peter Ryan in volume 3 of the **Australian Dictionary of Biography** (General Editor: Douglas Pike, published by Melbourne University Press in 1969). We regret that acknolwedgement of the source was omitted from the article, and now state our indebtedness to the Australian National University, to Melbourne University Press and to Mr. Peter Ryan for material used.

Three further matters require mention:

1. Redmond Barry was not admitted to Lincoln's Inn, as our article said. He simply received a testimonium stating that he had spent certain terms there. The matter is correctly dealt with in the **Australian Dictionary of Biography**.
2. The article stated that Barry was appointed Commissioner of the Court of Bequests. This should, of course, read 'Court of Requests'. Again the detail is conveyed accurately in the **Australian Dictionary of Biography**.
3. Because the article in **Victorian Bar News** drew so extensively on the original material in the **Australian Dictionary of Biography**, the interests of fairness require that attention be drawn to a small portion of the original which was omitted in **Victorian Bar News**. The left-out passage reads: 'Though the Kelly legend continues to excite attention, no substantial criticism of Barry's conduct of that trial can be sustained'.

BARRISTERS' SECURITY

As a result of recent events, the Bar Council has established a Committee to liaise with the Police in relation to all matters concerning barristers' security or court security. Walker Q.C. and Crossley have been appointed to this Committee. If, in the future, any barrister has any problem in this regard he or she is asked to immediately raise the matter with either Walker or Crossley who, should it be felt that that further step is warranted, will then refer it to the Police.

TAXATION OF COUNSEL'S FEES

Magna Alloys and Research Pty. Ltd. v. Kevin Lindsay Coffee & Ors

(Fullagar J. – 9th September 1980)

In this commercial cause the Plaintiff had sought injunctive and other relief. For seven days it contended before Gray J. in the Practice Court that interlocutory injunctions should be granted. It failed. The Plaintiff argued its case for interlocutory relief before the Full Court for a further five days, again without success. Its efforts to carry the matter to the Privy Council met with a similar result.

On each of these occasions the Defendants were represented by Senior Council and two Juniors. In the Practice Court Counsel charged on the basis of daily fees – one day for preparation and seven days for the hearing. Before the Full Court they charged a day's fee for preparation, a brief fee and six refreshers.

On taxation the Taxing Master acceded to the Plaintiff's argument that the fees should be taxed on the traditional basis of a brief fee and refreshers, each equal to two-thirds of the brief fee.

Preparation Fees

In the appeal before Fullagar J. the Plaintiff urged that, in principle, fees for preparation and daily fees should be allowed on party and party taxation in respect of substantial commercial litigation. The case was not concerned with the propriety, as between Counsel and client, of charging such fees.

Fullagar J. clearly thought that in certain cases a preparation fee should be allowed, but that these were exceptional cases. In all other cases the fees for preparation should be included in the brief fee. He therefore upheld the Taxing Master's rejection of the preparation fee as a separate item.

exceptional cases when compared with the vast number of cases making up the usual run of litigation in this State" (p.33).

His Honour saw in this regard no difference between a case involving a lengthy reading of facts and that requiring a lengthy study of facts and law (p.30).

The brief fee has traditionally included an allowance for an indeterminate period of preparation and a charge for the first day. Perhaps an unexpected consequence of the above approach will be that the brief fee will be substantially increased to cater for the preparation. This, in the normal course, will increase the quantum of refreshers. But not inevitably, as refreshers at the rate of two thirds of the brief fee may not be allowed.

Daily Fees

His Honour also rejected daily fees and supported the Taxing Master's ruling that they should be based on a brief fee for six hours and a refresher fee for every period of five working hours thereafter. Although Counsel may charge his client for time spent negotiating or narrowing the issues whilst waiting to start a trial, it seems this cannot be recovered on taxation.

Examples given by His Honour of cases warranting a separate preparation fee (a patent case where the work was done well in advance of the trial, and took many days and often several weeks, or a very substantial quantum meruit claim involving millions of dollars and a great number of items) illustrate His Honour's view that cases "are all unusual,

Furthermore, what is the significance of the period of six or of five working hours. Including the luncheon adjournment, the Court day is 5 hours 45 minutes. Thus the brief fee expires at 10.45 on day 2 of a trial and the second refresher starts at 3.45 on the same day.

In the Federal Court both brief and refresher fees run for 4½ hours excluding the luncheon adjournment. In the High Court and when the Federal Court is sitting on Bankruptcy, different rules apply, the brief fee runs for 5 hours or for the first day whichever is less and refreshers are payable for each 5 hours. In each case luncheon adjournment is included.

Again Fullagar J. thought that the traditional method of charging ought to be followed save in exceptional cases. The daily fee had been charged only in the Practice Court application. In that court contested cases may, of course, be conducted in a series of relatively short periods. If so, it appears that the Taxing Master would be likely to allow daily fee (p.37) Where, on the other hand the magnitude and complexity of the case causes long out-of-court work by Counsel then the fees for this should be reflected in the quantum of the refresher fees rather than by charging on a daily basis.

Junior Counsel's Fees

The amount of junior counsel's fee on brief was two-thirds that of the leader.

Since August 1978 a junior is to charge "a proper fee in the circumstances". This ruling of the Bar Council was passed prior to the Full Court hearing in the present case and was alluded to by Fullagar J. Nevertheless. he held that the junior bore a heavy burden in the preparation and presentation of the case, he was entitled to have the traditional fee paid by the Plaintiff

The principles of long standing applied by the Taxing Master and upheld by His Honour are expressed in terms of prima facie rules, as His Honour observed. It would be unfortunate, however if, in describing the exceptional cases in such extreme terms, His Honour's judgment had the effect of making the rules for taxation unduly rigid.

D.B.

WORLD'S WORST DEATH SENTENCE

"Jose Manuel Miguel Xavier Gonsales, in a few short weeks it will be spring, the snows of winter will flee away, the ice will vanish, and the air will become soft and balmy. In short, Jose Manuel Miguel Xavier Gonzales, the annual miracle of the years will awaken and come to pass, and you won't be there.

The rivulet will run its roaring course to the sea, the timid desert flowers will put forth their tender shoots, the glorious valleys of this imperial domain will blossom as the rose, still, you won't be here to see.

From every tree top some wild woods songster will carol his mating song, butterflies will sport in the sunshine, the busy bee will hum happy as it pursues its accustomed vocation.

The gentle breeze will tease the tassels of the wild grasses, and all nature, Jose Manuel Miguel Xavier Gonzales, will be glad, but you, you won't be here to enjoy it because I command the sheriff or some other officers of the county to lead you out to some remote spot, swing you by the neck from a knotting bush or some sturdy oak, and let you hand until you are dead.

And then, Jose Manuel Miguel Xavier Gonzales, I further command that such officer or officers return quickly from your dangling corpse, that vultures may descend from the heavens upon your filthy body until nothing shall remain but the bare, bleached bones of a cold-blooded, copper-coloured, blood-thirsty, throat-cutting, chili-eating, sheep-herding, murdering, son-of-a-bitch."

United States of America v. Gonzales (1881) United States District Court, New Mexico Territory Sessions, Taos, New Mexico The Honourable Judge Roy Bean United States Judge.

ABC SITE DEVELOPMENTS

On 28th November 1979 the Bar at an Extraordinary General Meeting approved the purchase of the ABC Building in Lonsdale Street. Early this year the purchase was completed with the financial assistance of the Commonwealth Bank.

Since that time Barristers Chambers Ltd. and the Bar Councils' Standing Committee on Accommodation have been investigating a number of proposals presented by builders and developers for the construction of the new Chambers.

THE PROPOSALS

Perhaps the most interesting, and certainly the most ambitious, proposal was that Hooker Commercial Developments Pty. Ltd. Hookers have a very substantial holding of land between the rear of Owen Dixon Chambers and Browns Alley. The new Chambers would be one of four buildings which would occupy this land and would serve as an integrated Legal and Commercial Centre. This Centre would, it was thought, provide accommodation, not only for barristers, but for Judges' Chambers, courts, government offices, solicitors and associated commercial activities.

But in recent discussions with Hookers it was apparent that this proposal would not be pursued. Hookers are now putting forward a proposal for the development of the ABC site alone. In this respect it resembles the other contenders.

Nevertheless the ownership of the land to the west of the ABC site does permit Hookers to include in their package a 6 metre easement of light down the western boundary of the ABC land. Whether this will allow Hookers to provide a superior building layout remains to be seen.

There are two other developers on the list of proposals which are receiving the immediate attention of the Committee. These are Lendlease and Silverton.

It is not possible to examine the various merits and demerits of each. The preliminary submissions are available in the Common Room with models of the contemplated buildings. The fact that Hookers, Lendlease and Silverton are on the short list does not mean that any of the other proposals have been excluded. All proposals will be fully considered before a final recommendation is made.

It is worth noting that the Lendlease submission includes a Warranted Price of construction. This means that, at the commencement of the project, a Warranted Price would be fixed. Any construction cost in excess of this Price would be borne by the Builder. Should the construction cost be less than the Warranted Price then this saving would be passed to the Proprietor or shared, depending upon the final negotiated agreement.

DEVELOPMENT STAGES

It is tentatively proposed that when a final recommendation of one of the proposals has been accepted by the Bar in General Meeting the project should proceed in three stages:

Stage I - will involve a feasibility study and sketch planning. The developer will examine the needs and requirements of the Bar. This is the Stage at which Vincent Q.C. will be pressing for a gymnasium. The investigation will comprehend a study of town planning and other constraints and of the financial implications of the project in detail.

Stage II - will be the Design Development Stage. The concepts developed in Stage I will be converted into detailed design drawings and working drawings.

Stage III -is the actual demolition of the ABC building and the construction of the new Chambers.

The Bar Council will convene a general meeting of the Bar to consider each stage before it is undertaken. Although the three stages follow on from one to the next, the Bar will be asked to commit itself only to one at a time. Thus we shall be able to withdraw at the conclusion of any one Stage with no financial committment for the subsequent stages.

TIME ESTIMATES

The existing tenancy of the ABC will permit demolition and construction to commence in April 1982. It is hoped that when the Committee has considered the proposals of all the developers, a Meeting will be called next year to consider Stage I. Both Stages I and II can be undertaken before possession is obtained.

The actual construction time is presently estimated at approximately eighteen months depending upon the final design.

It may be that on 28th July 1984 we will be able to celebrate our centenary in the new Bar building.

FINANCIAL IMPLICATIONS

The purchase of the ABC building was achieved by borrowing $1,550,000. The Bar Council has decided that this debt could be cleared so as to have a substantial unencumbered asset to offer as security for the raising of funds for the development. To achieve this, it is proposed that each tenant make a contribution of $2,000. Arrangements have been made with the Commonwealth Bank for it to make an advance to members unable to make this payment readily out of their own funds.

This advance will be repayable on terms. The proposal will be put to a General Meeting early in 1981.

The Directors of Barristers Chambers Ltd. and the Committee are also considering various methods of financing the construction. Hill Samuel Australia Ltd. has been retained to review the feasibility of the proposed development and the financial implications generally. Under the system presently in operation, the cost of loans for construction would be met from the normal income of Barristers Chambers Ltd., notably from rental of chambers. Consideration is being given to whether income from rental of chambers in the new building, fixed at economic rentals, would cover the cost of servicing the necessary loans. Another method of finance which will come under consideration is the possibility of sub-dividing by strata title, the new building or portion of it, and selling individual chambers to members on terms which will protect the interests of the Bar as a whole and avoid the spectre of trafficking in chambers and that of "key money" for incoming barristers.

The actual cost of developing the site cannot be known at this early stage of planning. The Bar Council is, of course, concerned to avoid an open-ended commitment which might impose an unexpected burden on the Bar. Perhaps the requirement of a Warranted Construction Price referred to above will serve to avoid this risk.

One of the comforting aspects of the proposals under consideration is that some of the developers have expressed a readiness to purchase the site, construct the building to the requirements of the Bar and then lease it back. This runs counter to the decision of the Bar in 1978 not to lease a substantial part of National Bank House for the whole of the Bar. We are committed to owning our own home. Nevertheless, it is encouraging to note that these developers are prepared to back with their own money the commercial viability of the project which the Bar will soon be asked to undertake.

• • •

CHINA AND THE LAW

During the short vacation, the authors were members of a party of Melbourne and Canberra practitioners who visited China and, inter alia, held discussions with members of the Shanghai Bar Association and with representatives of the Ministry of Justice in Peking.

Although such a brief visit is an insufficient basis for forming any firm conclusions, there were signs of a considerable resurgence of interest in the law in modern China.

The *Beijing Review of 14th July, 1980 reported that in 1957, China had 2,800 lawyers and 800 legal advisory officers "but that year, during the struggle against Rightists, defence for the accused was criticised and the lawyers were forced to change their vocation". It emerged from our discussion that the Ministry of Justice ceased to exist at or about the same time its functions being merged with the security or police department. One of the early steps taken by the present leadership following the overthrow of the "Gang of Four" was to recreate this ministry in 1977. In 1979 the People's Congress adopted a code of criminal law and procedure and members of the ministry with whom we held our discussions told us that the ministry was currently engaged in drafting a new civil and commercial code and in the redrafting of the 1951 Marriage Law for presentation to the People's Congress. They pointed out that there were as many as 1,400 individual pieces of legislation in force in China but a number of these provisions were conflicting and many had been ignored during the period of the Cultural Revolution. It was their task to prepare a modern code of law in understandable form which could be applied by the courts. In fact it would appear that the task to be undertaken is the preparation and implementation of an entirely new legal code.

So far as the new criminal code is concerned, interesting features are the retention of the death penalty for crimes such as murder coupled with a curious provision for the imposition of a death penalty subject to a stay of two years, at the end of which time the offender is either repreived or executed depending upon his conduct. The procedural code provides, inter alia, that a court cannot convict an accused person upon the basis of a confession to a policeman uncorroborated by other evidence. It seems that Chinese and Australian experience with police and confessions is not dissimilar.

We were told that the retention of the death penalty is the subject of some opposition from Chinese equivalents of liberals but the Ministry of Justice officials regarded its retention as necessary. They stressed that it was only carried out in extreme cases and each case had to be approved by the Supreme People's Court in Beijing. They were not however prepared to tell us how many executions had in fact been carried out in the six months prior to our visit and it was difficult in the context of the discussion to explore the reason why this information was withheld. Perhaps they were not seised of this information.

One thing that emerged very clearly from our discussions was that China is desperately short of lawyers. The Shanghai Bar Association has 150 members servicing a city with a population exceeding 11 million. The majority of their work is in the area of criminal and family law but it is obvious that many must go unrepresented. The Beijing Review article, referred to previously, claims that of 900 criminal cases handled by Beijing courts in the first four months of 1980, half were defended by lawyers but it seems not unreasonable to speculate that like citizens of Canberra, citizens of Beijing may be better served than the rest of the country.

We were told that the present leadership is extremely anxious to correct the existing situation in relation to lawyers and that in 1977, four law schools opened for the first time in nearly 19 years and that since that time 17 universities have established law faculties. Nevertheless, it is anticipated that only about 2,000 graduates will be produced each year in the im-

** "Beijing" is "Peking" in the more accurate Pinyin system of transliteration.*

mediate future, the first group being due to graduate at the end of 1980. Further, it is anticipated that many of these graduates will be employed by the Public Procurator's Office (roughtly equivalent to the Crown in Australia), others will be appointed directly as Judges to People's Courts and others as advisers in Legal Advisory Offices which are being set up around the country. It thus seems that the number of advocates available to the public will continue to be extremely limited in the immediate future.

Having regard to the eclipse of lawyers since 1958, it seems probable that many judges are not in fact legally trained. Our hosts seemed somewhat bemused by the concept of appointing judges from the ranks of senior members of the profession, and, having regard to the number of lawyers available in China, this is perhaps not surprising. In Shanghai the Bar Association members expressed surprise that people would choose to remain as judges in circumstances where their salaries were less than earnings available to them at the Bar, and one of the Ministry of Justice officials in Peking indicated that he had in fact been a judge and it was obvious that he regarded himself as having gone on to higher things. The fact that new graduates were eligible for appointment to the judiciary, and the general attitude to judicial appointments, suggests that something akin to a continental system of adopting the judiciary as a career is envisaged for the future.

There is a hierarchy of courts in China, there being three levels within each province and the Supreme People's Court in Beijing and no doubt judicial promotion is available within the hierarchy. Normally an appeal lies only to the next level of the court system with a limited right of appeal to Beijing in serious cases. Trials are conducted by a judge and two "people's assessors" who are laymen appointed by the Municipal or Provincial Authorities. One cannot help but speculate that their performance may be comparable to that of our Honorary Justices of the Peace. It appears that an appeal is by way of rehearing if the accused so requires it and this may do something to overcome this problem.

We were impressed with the standard of professionalism of the lawyers with whom we had discussions although we found more common ground with the advocates of Shanghai than we did with the bureaucrats of Beijing. It became obvious during the course of our Shanghai discussions that we were talking to professional advocates who, in a legal sense, talked the same language as ourselves. They told us that their salaries were paid by the State but they nevertheless appeared to have a considerable degree of independence and strongly refuted any suggestion that their employment by the State inhibited their presentation of their clients' cases. It is interesting to note that although the lawyers do not receive fees, clients are called upon to pay for both advice and appearances if they have the means and ability to do so. We were told that the Shanghai Bar Association had been in existence prior to the Cultural Revolution but had thereafter ceased to exist until its reconstitution in 1977. One can only speculate as to what its members have been doing since 1958. We were told that they had been engaged in "other duties". We met no young lawyers, the simple fact being that every lawyer in China today graduated in 1958 or earlier. This gap will present enormous problems to the Chinese in their proposed implementation of a proper legal system and it is obvious that the new graduates will have to be promoted to much higher positions than their experience and, in many cases, their capacity will permit. A visit was also paid to the Beijing Gaol built in 1908 and housing 1,900 prisoners of whom 170 were women. It appears that minor offenders are sent to a prison farm some 200 kilometres from Beijing, this prison being reserved for more serious cases. It was said that 97% of the inmates were criminal offenders, the balance being "counter revolutionaries". The principal crimes were crimes involving dishonesty followed by rape and a limited number were imprisoned for other crimes of violence.

Conditions were spartan but clean. The prison operates two factories making enormous numbers of plastic shoes and socks and a system of silence operates during working hours. Responsibility for external security lies with the army but internal warders come from the police force and the prison is under the general control of a police superintendant.

Prisoners sleep 10 to a cell, the sexes being segregated but the existence of homosexuality as a problem is strenuously denied. This seems hard to accept, particularly having regard to the small size of the cells and to the fact that prisoners could visit between cells within their own cell blocks at night. Vocational and educational training is offered to prisoners and it was claimed that the prison contained only about 4% of recidivists which again seems hard to accept. Physical assault upon prisoners is forbidden and it was said that no punishments such as solitary confinement or deprivation of food are imposed.

There is a room where recalcitrant prisoners are taken for "criticism" which we were assured was purely verbal but we were not able to ascertain what form this criticism took; self criticism is the ultimate aim, and this is a concept by no means new or revolutionary in China.

The prison contained a well equipped and staffed hospital offering both Western and Chinese medicine and limited recreation facilities for basketball, plays, etc. which seemed inadequate.

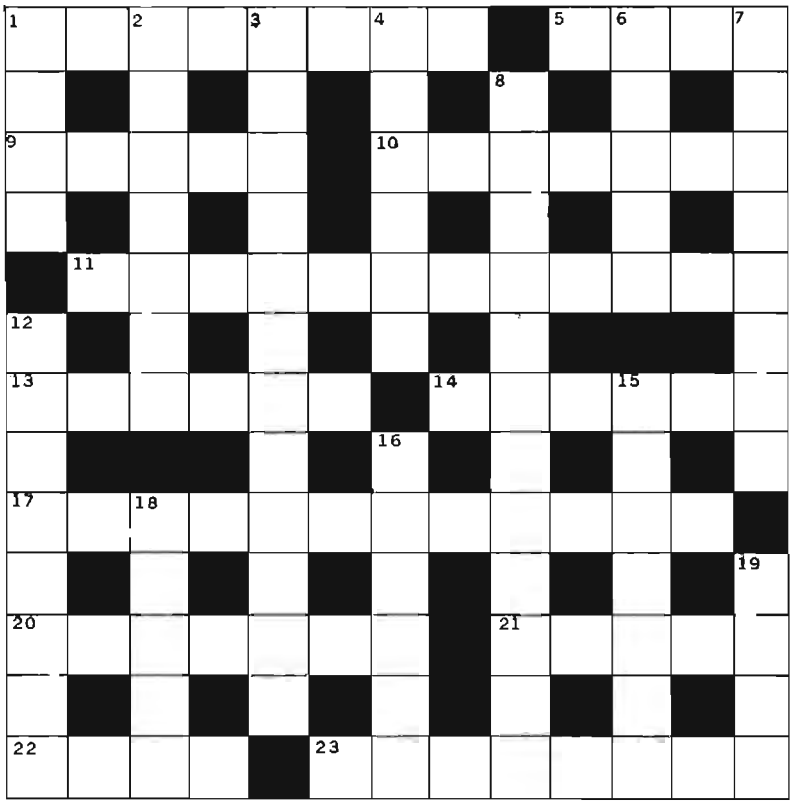
The normal working day is 8 hours, a further 8 hours being available for recreation, study and meals and the remainder for sleep. Food was being prepared in the prison kitchens during the course of ou visit it appeared to be of good quality and it was interesting to note that a special preparation area and special food was offered to Moslems. No westemers were in fact inmates of this prison but it seems inevitable that with the upsurge in tourism in China, this situation might well alter in the future. Chinese attitudes to drugs and drug offenders are harsh and this would seem to be the most likely source of western offenders. The authors have limited experience of Asian prisons but upon the face of it, Australians could be gaoled in worse places than Beijing.

China is presently dedicated to the four "modernizations" namely industry, defence, agriculture and science. It seems likely that the law is regarded by some Chinese as an important adjunct to such progress, if only to control the excesses of the ideologues and to provide some protection for the individual citizens. Further, it appeared to us that Chinese lawyers recognise that increased industrialization will of necessity require greater familiarity on their part with western commercial law. Chinese contract documents follow English form, and insurance contracts and documents are the usual type.

The Chinese lawyers to whom we spoke were sensitive about civil rights and individual liberties issues in different ways. We felt that the advocates of Shanghai were more sympathetic to these questions than the civil service lawyers of Beijing and their respective positions would no doubt do much to account for the difference in attitude. The question of freedom of expression is still a live issue in China despite the demise of the "democracy wall" and the capacity of the Chinese legal system to cope with such problems is likely to be heavily taxed.One of the real difficulties will derive from the new wave of young laywers who may seek more radical solutions than the party hierarchy will accept. However this may be, the present indications are promising and there is, we believe, room for assistance. There are difficulties about offering assistance from this country. There are difficulties about offering assistance without appearing patronising but we feel that the development of communication and correspondence between legal associations in our respective countries would be a useful first step.

Nicholson & Balfe

CAPTAIN'S CRYPTIC No. 34



Across:

1. Liberties of action, sometimes artistic (8)
5. speculative, in short (4)
9. Ill omened black bird (5)
10. Membraneous envelope (7)
11. Stingy (12)
13. Closely examine details again (6)
14. Indian irrigation dam (6)
17. State ruled by esp. Prince (12)
20. Free time (7)
21. Sinew of vigour (5)
22. Be silly from age (4)
23. Homeric hero (8)

Down:

1. The chief e.g. of 15 down (4)
2. Let him bewares (7)
3. not his deed (3, 3, 6)
4. Lodge in tents in the open (6)
6. Planetary beer gun (5)
7. Coal tar distillate (8)
8. First words (7, 5)
12. Came to grips with (8)
15. Select social circle (7)
16. Extend like an eagle (6)
18. Utter fool (5)
19. Tax on night soil (4)

Summer 1980

FERMENT AT THE TITLES OFFICE

Barristers rarely have occasion to see the workings of the Titles Office at first hand, but what takes place there is important in many fields of practice. The Bar will, therefore, be interested in the modernization programme announced by the Attorney-General recently.

Two distinct problems have made the programme necessary – the high volume of dealing and searching, and the deteriorating state of the Register Book and valuable charts and plans.

Volume of Work

471,000 dealings were lodged for registration during the last financial year. Some 3,000 title searches are required each day. These often involve consulting indexes, charts and plans, as well as inspecting registered instruments. A searcher must check whether any unregistered dealing affects the title in which he is interested. There were 82,000 unregistered dealings at the end of October. A quite complex, almost entirely manual, system is used to handle the business of the office. 530 administrative, legal and survey staff, housed in two large city buildings and a typing bureau at Morwell, are involved in its administration. The high levels of demand are imposing great strains on the system.

The Register Book is kept in loose leaf form. It contains some 16,500,000 documents, of which about 3,000,000 are Crown grants and certificates of title and the remainder are instruments of various kinds. They are handled constantly by both staff and public for searching and dealing purposes. So, too, are the various series of charts and plans (including plans of conventional, cluster and strata subdivision) and survey records. Many documents are over a hundred years old. The Register Book documents, in particular, are deteriorating rapidly. Few documents have full duplicates. The cost of replacing original documents of this character is frightening.

These problems led to a comprehensive review of Titles Office procedures conducted over several years. Legislation was passed at the end of 1979 to enable the resulting proposals to be put into effect.

Computer System

The Attorney-General announced that the Government had approved the introduction of a computer system to facilitate the processing and searching of dealings lodged for registration. The project is to be started this financial year.

The present manual system is controlled by a master index (the Progress Book) and a number of lesser indexes. The relevant original title accompanies a dealing during the registration process. Any searches must be carried out where the dealing is being dealt with. Subsequent "follower" dealings are kept aside and fed into the system as the original title becomes available.

The new computer system will create a central file that will be able to be consulted from various points. It will keep track of the whereabouts of titles and unregistered dealings. It will consequently eliminate the necessity to make separate searches of the Register Book and unregistered dealings records.

At present, a complete search must be made before a transaction is entered into, and repeated immediately before settlement. The new system will show whether there is any unregistered dealing affecting a particular certificate of title, and also whether any dealing has been registered within the previous three months. This will greatly simplify final check searches. Title documents will rarely need to be inspected again.

At present, instruments lodged for registration take what might be called a narrative form. They consist of one long sentence incorporating all the relevant particulars. They are difficult to check and would not lend themselves to the fast entry of data that will be required for the computer system. It is therefore proposed that provision be made for the use of printed forms of the fill-in kind in the case of common transactions. Consideration is being given to the possibility of registering "master" forms containing covenants that banks and other bodies dealing frequently might wish to have incorporated by reference in short-form instruments.

The last State Budget makes special provision for commencement during this financial year of both the computer project and a microfilm project. The microfilm project will eliminate access to original charts and plans and certain instruments, such as caveats.

Photocopies

It is also expected that the first stage of a further project referred to by the Attorney-General, namely the supplying of photocopies of titles instead of allowing inspection of the originals, will commence shortly. Photocopy searching will be introduced on a stage basis beginning with recently issued titles. Photocopies have been available for some years on request, and are usually produced when certificates of title are called for on subpoena. The Register Book will, however, require alteration before access to it can be refused in all cases. Appropriate coding will be required so as to enable coloured diagrams on older titles to be interpreted when reproduced. Some early titles are numbered only on the front.

Consideration is also given to the introduction of word-processing equipment to speed up registration of dealings. Much repetition is involved at present in endorsing original and duplicate titles individually.

Automatic Registration

The proposals mentioned above will pave the way for a complete transformation of the registration system. It is expected that all title records will ultimately be converted to computer form, eliminating the problems that arise in the storage and preservation of a paper register. Most dealings will then be registered automatically.

The Attorney-General has pointed out that, before a complete transformation is possible, title records will need to be re-designed to enable title particulars for individual parcels of land to be discovered easily. Work has already begun on a project to secure this result. The parcels index project produces charts from which current title particulars can be discovered.

The Attorney-General suggested that the re-designed records might serve as a basis for the eventual introduction of a general land information system for Victoria. The Premier has since announced that such a system will be introduced. The Surveyor-General has been made responsible for its implementation. The object of the system is to link record systems kept by Government offices, statutory corporations and municipalities so as to enable information available from several sources to be provided at one point. The first stage is to deal with information of importance in dealing with land, while later stages are to deal with land use, works and structures and scientific information. The Premier has made clear that the Government intends the land information system to be developed in such a way as to be compatible with the computer system in the Titles Office.

The modernization programme will not affect the basic principles of the Torrens system, such as those relating to registration of dealings in order of priority according to time of lodging, and to indefeasibility of the certificates of title issued as a result. It will, on the other hand, bring about important changes in procedure. No significant change affecting the Bar will be made, however, until the Bar Council has been consulted.

A. X. LYONS

• • •

BOOKS LOST

Would anyone having or finding these books, belonging to Uren, please return them.

Glanville Williams: Joint Torts and Contributory Negligence.

Elliot: The Artificer's Lien.

AND FOUND

The owner of the undermentioned book may obtain it from the Editors.

Revised Reports. Volume 145.

SENTENCING OF FEDERAL OFFENDERS

Report No. 15 Interim. The Law Reform Commission (Commonwealth) 636 and liv pp. A.G.P.S. $21.80.

This large report should be purchased by every criminal barrister: it is a thorough examination of all aspects of sentencing with particular reference to Federal laws.

The Report is useful in two ways. First, it contains a number of recommendations which will form the basis for public discussion. It is important that the Victorian Bar understand the recommendations and is able to contribute to further discussion and thus influence the final report. Our daily complaints in the corridors can be translated into reform. Secondly, it is a particularly useful reference work for practising criminal barristers in that it collects together the current state of the law on a number of important matters, e.g. the whole process of prosecution for Federal offences (from arrest to parole), parity of sentencing, parole, sentencing options, plea bargaining and victim compensation.

The discussion of plea bargaining and *Bruce's case* (High Court, unreported 21.5.1976) is particularly important. The present practice in Victoria is that plea bargaining is rejected by probably all Supreme Court and most County Court judges yet is frequently used at Magistrates' Courts level. The judges refer to Barwick, C.J.'s condemnation of the practice ("absolutely undesirable") but the unreality of that attitude has not filtered to lower levels. The Report rejects total prohibition of plea bargaining, preferring that it be recorded in open Court. This view has received some judicial support in *Tait v. Bartley* (1979) 24 A.L.R. 473 at 487 (Federal Court).

Another feature of the Report is that it presents some 180 pages of results of its national judicial survey. This received publicity at the time when most of the Victorian Supreme and County Court judges refused to participate. Despite this boycott, over 70% of judicial officers in each State and Territory responded. It is a pity that the value of the survey is reduced in this way, but the fact that 373 of 506 responded probably means that the material can be usefully applied to Victoria.

Although law reform was the matter under discussion it was interesting to note that 26.4% of those surveyed supported whipping, including two judicial officers who supported whipping for vandalism and one for escape! Further, 47.2% were in favour of capital punishment. Fourteen judicial officers believed in execution for large-scale trafficking in heavy drugs.

The Report recommends that the Federal Court be the appellate jurisdiction in Federal matters so that some uniformity of principle can be obtained. As the High Court (as the highest Federal Court) refuses to deal with matters of sentence, this recommendation may be useful.

Another controversial inroad into the autonomy of the Victorian judicial system is the recommendation that a Sentencing Council of Australia should be set up to gather information on sentencing in Federal matters and to issue guidelines for judges and magistrates involved in the sentencing of Federal offenders. It is unlikely that Victorian judges would accept such an intrusion into their sentencing powers.

The Report thus considers a number of issues of current importance and should be required reading for barristers and judges.

FARIS

Some of the matters discussed in this note were the subject of a recent argument before the Full Court in R. v. Marshall. When judgement is delivered, it is hoped that the Victorian position on "plea bargaining" will be clarified. (Eds.)

HOW TO TELL A MALE LAWYER FROM A FEMALE LAWYER!

A male lawyer is aggressive; a female lawyer is pushy.

He is careful about details; she's picky.

He loses his temper because he's so involved in his job; she's bitchy.

He's depressed (or hung over), so everyone tiptoes past his office: she's moody, so it must be her time of the month.

He follows through; she doesn't know when to quit.

He's firm; she's stubborn.

He makes wise judgements; she reveals her prejudices.

He is a man of the world; she's been around.

He isn't afraid to say what he thinks; she's opinionated.

He exercises authority; she's tyrannical.

He's discreet; she's secretive.

He's a stern taskmaster; she's difficult to work for.

(Reprinted from "The Oracle" 1979)

MORE ON THE UK ROYAL COMMISSION ON LEGAL SERVICES

In 1979 there were 4,412 barristers in practice in England and Wales; relatively a surprisingly small number when compared with the number in practice in Victoria. Yet there is little room for newcomers, and many argue that the Bar is overcrowded. If the size of income is to be the yeardstick, the English Bar is past its optimum capacity. This was the perspective from which the average English barrister viewed the Royal Commission set up "to enquire into the law and practice relating to the provision of legal services in England, Wales and Northern Ireland". It was further to consider "whether any, and if so what, changes are desirable in the public interest in the structure, organisation, training, regulation of and entry to the legal profession including the arrangements for determining its remuneration . . ."

Though superficially there are similarities between both the English and the Victorian Bars, in practice there are quite fundamental differences. In both Bars it is necessary to have a clerk, but in the UK the clerk and his assistants run a set of chambers in which he has his offices. Barristers are linked to a set of chambers under a head barrister, and the clerk serves that group, acting as office manager, organising briefs within those chambers, arranging conferences with clients, vetting prospective pupils, and generally running the professional lives of members of chambers. In some chambers, he has to handle delicate matters for his footloose flock as well!

Clerks

Generally, the clerk receives 10% of the barristers' fees and, apart from his or her administrative duties, this amount is justified on the basis that it is the clerk who obtains the work. It is not usual for solicitors to become barristers under the English system. Indeed, there are rarely transfers either way, so that most junior barristers have virtually no contacts with solicitors and their initial briefs are at the behest of their clerk. Usually a bond between solicitor and counsel develops and soon briefs arrive with a barrister's name thereon; however the clerk may in some circumstances hand the work to someone else in chambers. It is a sad day whenever briefs have to leave chambers.

Simple mathematics indicates that in a chambers of 26 members, 10% of the incomes comes to an amount considerably in excess of the earningfs of the average member. The clerk's only outgoings are his staff, as chambers' expenses are met by the barristers themselves on a sliding scale according to seniority, with the head of chambers carrying the greatest burden. There has been agitation for some reform of the system and in some instances, the clerk is paid a salary rather than a percentage. Needless to say, this is not looked on with great favour by a majority of clerks.

Perhaps the most radical proposal made by the Royal Commission was at Paragraph 34.7 where it is stated "A barrister should not be prevented from having his spouse as a clerk" may be the start of an erosion of the traditional relationship.

With such onerous tasks to perform, it is surprising that the training of clerks has not progressed satisfactorily; there are the Barristers Clerks Association examinations, but it is felt that it is the barrister's duty to ensure that his clerk is fitted by training and experience to his duties. To ensure this aim, it is recommended that there be improved training in accounting and administration.

Victorian Bar News

The Two Counsel Rule

Gowans in his Conduct and Etiquette at the Victorian Bar states that "the practice of the Bar in England is that Queens Counsel does not appear as an advocate in any Court of Law without a junior . . " (p. 56). Under the onslaught of the Monopolies and Mergers Commission, this English rule has been revised. A Queens Counsel may now appear in Court without a Junior, but he is entitled to expect that a Junior will be briefed with him unless the contrary is stated, and he is entitled to decline instructions to appear in a case without a junior if this would prejudice his ability to conduct that case or any other or to fulfil his professional obligations.

A number of submissions, especially that of the Society of Labour Lawyers, used the abolition of the "two counsel rule" as a compromise for the continuation of the Silk system, and all consideration of the modified rule was in this context. Since 1977, Silks have acted alone but there has been resistance from the ranks of counsel, both senior and junior, to the change. The Royal Commission was adamant in its findings that there should be no regression to the old practice and stated that both "the Senate and the Barristers Clerks Association should ensure that their members comply with the new arrangements. The Law Society should impress on its members that they should resist the employment of two counsel unless they are satisfied that it is necessary". It would seem that such an unequivocal directive has been heard in the appropriate quarters, and, as a price paid for the continuance of the Silk system, the two counsel rule is now on the decline.

Continuing Education

The Senate of the Inns of Court and the Bar has as its leading functions:-

"(a) to keep under review and if thought fit amend the Consolidated Regulations of the Inns . . .
(b) to consider and law down general policy with regard to all matters affecting the profession . . .
(c) to raise funds for its general purposes . . ."

In practice, these functions are divided between four standing committees, one of which is the Executive Committee dealing inter alia with qualification for admission to the profession.

There is no provision at all for continuing education, the attitude being "post-qualification education and training is essentially a matter for the practitioner concerned, and not one for which a compulsory policy is desirable". So when the Council for Legal Education proposed to provide post-qualification lectures or courses on specialist topics such as Welfare Law and EEC Law, the Senate limited its potential commitment to making accessable information on the courses which are available.

Clearly, the Royal Commission felt that this was inadequate: "persons practising a profession need to keep abreast of changes and . . . it is the function of the governing body of a profession to ensure that every member is properly equipped with up-to-date and comprehensive knowledge both in his own interests and those of his clients and of the profession. This is particularly true in a profession which deals with a complex and a rapidly changing subject matter." There was some sugar for this pill as it was acknowledged that the Royal Commission had sympathy for the busy practitioner.

Policies for continuing education and training are still in the process of formulation. There is no institution analogous to the Leo Cussen Institute nor is there likely to be if the past record of co-operation between the Bar and the Law Society on Legal Education persists in this field. At present, solicitors are fairly well provided with lectures and seminars, run not only by the national Law Society but also by local Law Societies. Such ventures by the Bar are virtually non-existent.

The establishment of a comprehensive system of continuing education for both branches of the profession is the recommendation of the Royal Commission, and both are urged to study the possibility of making the issue of a practising certificate or of maintaining the right to continued practise conditional upon post-qualification education. Because of the greater gap between solicitors and barristers in the UK, with a very low percentage of persons achieving an exchange of role, there is far less prospect of this recommendation being implemented by a jointly run institution.

Summer 1980

In many respects this is a very minor area of the Report, and one which attracted little comment and attention. But is carries within it the potential for a fairly drastic reappraisal of the functions of the Senate and its relations with the Inns, its members and also the Law Society. It didn't escape the notice of the Royal Commission that the Bar had failed to implement the 1971 Ormrod Committee's Report (Cmnd 4595) insofar as it related to continuing education.

Entry to the Profession

There had already been a review of the training of lawyers in this Committee's Report. Its recommendations had been considered and, in some cases, implemented by the Senate. In this respect the Bar had made greater efforts to change than the Law Society which continued to cling to Articles of Clerkship, even though the Committee's suggestion was that they be abandoned.

A person wishing to be called to the Bar must join one of the Inns of Court as a Bar student. Many a student joins an Inn as an undergraduate in order to start keeping dining terms, and mature age students wishing to come to the Bar can also join for the same reason. There are two stages: the academic and the vocational.

The academic stage consists of either doing a Law degree or a non-Law degree followed by the Bar Part 1 examination, or in the case of mature students a two year Common Professional Examination course. Thereafter, all must do the one year Bar Part II examination or the Bar finals.

Those who pass the Bar Finals are then eligible for call to the Bar of their Inn, providing the requisite number of dining terms have been kept. A student keeps term by dining at his Inn during term of which there are four of 28 days duration each year. To qualify for call, a student must dine on at least 36 occasions spread over not less than eight terms, though 12 of the dinners may be deferred to the year after call.

The purpose of keeping terms is to introduce a student to the collegiate life of the Bar and to enable him to take part in moots, mock trials, and other activities intended to develop his professional interests and abilities. In practice, many students regard dining as a chore and play little if any part in the life of their Inn. The Inn with the best reputation for student activities and enjoyable dining is Grays, but even there, participation is often more the product of coercion and persuasion than enthusiasm.

Repeating the Ormrod Committee's recommendation, the Royal Commission is categorical that there should be an academic stage common to both branches of the profession. But accepting the different functions of the two branches, it was not convinced that there was a need for any subsequent training in common. It did however acknowledge that a greater degree of common training could ease transfer between the branches, enable students to defer a choice between the two branches, and help the two branches to understand each other.

Keeping dining terms has of late been under attack as outmoded and, due to the very small amount of mixing between barristers and students and even less mixing with the Benchers who always dine on high table, failing to promote contact. In 1978 the cost of a student for dining was £45 ($90) per annum and the cost to the Inn considerably more. Grays Inn spent some £100,000 in subsidies for students on food and wine for the same period; wine and port are traditionally served with the food.

The Royal Commission was reluctant to destroy this tradition, stressing its positive advantages and explaining away the small number of barristers dining. But the conclusion was clear: "arrangements for dining should be adopted which make it more likely to serve its main purpose for example by arranging that, on regular occasions, there should be no high table and Benchers and barristers should dine with students one to a mess . . . we suggest that unless these improvements are made and found to work satisfactorily, the compulsory eating of dinners should be abolished".

Only one who has dined and enjoyed evenings in hall when the system was at its sparkling best could gauge such a prospective loss to English legal heritage. Conversely if the system fails, the Bar has no one to blame but itself. If the Victorian Bar continues to keep growing then it cannot be long before some like process to smooth the integration of new Readers will have to be examined.

Citizens Law Centres and the Cab Rank Rule

Legal Aid especially for criminal matters is a very important source and in some cases virtually the only source of income for many English lawyers. It is not surprising to find that it is considered in some details in the Report. One area of its impact and influence is in the growth of Law Centres together with Legal Aid firms of solicitors and with it that modern phenomenon – the "radical bar".

The time honoured principle called "the cab-rank rule", under which Counsel is bound to accept any brief in a court in which he professes to practise except in special circumstances, is being eroded. Just as Law Centres will not act for certain clients, so too are there sets of chambers whose members wish to do only the work with which they are politically in sympathy. Even though the Commission's Report is very much in favour of the retention of the cab-rank rule, it does not comment on the changes at present in evidence.

But there is violent opposition to the growth of Law Centres from a number of quarters. For example a local authority funding a Centre may resent a campaign of vilification and political attack orchestrated from the Centre which it funds. Little work finds its way from these places to the Bar as a whole, for if Counsel is required, it is likely to be Counsel from the sympathetic sets of chambers.

Because the Royal Commission, not surprisingly, endorses Legal Aid work, the English Bar as a whole is unlikely to get much comfort from any expansion in the provision of these services. An area much canvassed as one where Legal Aid funds should be available is that of hearings before specialist Tribunals. If such funding is provided, much will go to the Law Centres, benefitting only those barristers who are prepared to woo them.

It would be said that composition of the Royal Commission is seen at its clearest in this area. It considered it inappropriate for Law Centres, whose prime function was to provide legal service, to import a political attitude to the lawyer-client relationship. But having said this, it did not take the matter further. Indeed it stressed that there can be no objection to the Centres advising on how best to proceed with campaigns against landlords, local authorities or government so long as the Centre itself is not involved as a party in the legal action. It is a pity that an outsider has to read between the lines to get the benefit of the recommendations in this section of the Report.

Conclusion

With its 829 pages of recommendations and its 765 pages of surveys and studies it is obvious that the Royal Commission Report covered a great many more matters than those considered above. The topics briefly discussed here are some of those which the writer considered of relevance to the Victorian experience.

There is much that the English Bar could learn from our own experience and much that we could learn from the English experience. Notable examples of the latter are how to cope with a large membership and why we should plan and prepare for future development and change.

As a profession any bar is dependant on high standards and camaraderie. The first is the easiest to attain. It may well be that if the 13th floor, or its equivalent in the proposed new building, can became a watering-hole or meeting place, then there can again exist the situation where we find ourselves dealing with an opponent of whatever seniority or juniority whom we know as a person. At least the bar in London is concentrated in only four Centres, the Inns, and within these, the enforced proximity of crowded chambers.

Whatever view is taken of increased legal aid, and the growth of Law Centres, these are a fact in Victoria. The profession here has a wealth of experience in these areas upon which it can draw. Undoubtably English lawyers could gain much from a study of Victoria, ranging from the Legal Services Handbook which has no equal in the UK, to the healthy and representative functioning of the Bar Council and its committees.

Yet for all its use to others, insofar as it is a repository of legal information, the Commission Report was greeted as a damp squib by very many in UK legal circles and its implementation either wholly or in part depends largely, for the present, on the falling or not of Mrs. Thatcher's sharp axe.

VAUGHAN

POLICE SEEK ACCESS TO JURY ROOM

The Chief Commissioner of Police, Mr. Miller was reported in "The Age" of 4th November 1980 as believing that if the secrets of the jury room were revealed, the case for the abolition of juries would be proved beyond reasonable doubt. His view was said to be, that it was about time that the deliberations of juries were investigated. "In the meantime", he said, "we can only speculate upon the logic, the prejudice or the perversity of juries".

The Chief Commissioner's views were based upon what he described as "the disproportion" between acquittal rates in Magistrates Courts compared with those who plead not guilty before a jury in superior courts, and upon information disclosed to him by persons who had served on juries.

As to the latter, little can be said without further information as to what was disclosed to him and who said it. Much research overseas casts doubt upon this information as a firm basis to criticise juries. As to the former, Mr. Miller observed that 40 to 50 percent of those pleading not guilty before a jury were acquitted. He compared this rate with the acquittal rate in the Magistrates' Courts which he estimated at about 10%. It is not known whose statistics provided the basis of this estimate.

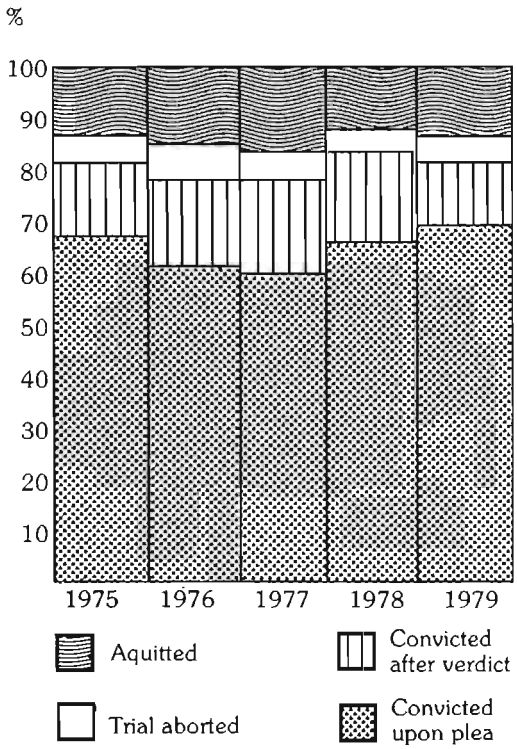
A good deal, however, is known about the acquittal rate before juries. Information on this subject for trials in the County Court is available from no less source than the Law Department.

The figures for the year 1979 are as follows:

Pleaded guilty		710	67.81%
Convicted		154	14.71%
Trial Aborted			
Mistrial	29		
Disagreement	21	50	4.78%
Acquitted		133	12.70%
	TOTAL:	1047	(100.00%)

The total represents the number of persons finally dealt with after facing a County Court Judge in 1979.

These percentages have been remarkably consistent over the past five years as appears from the following chart.



There may be valid reasons for questioning the appropriateness of juries as triers of fact in criminal trials. But these statistics show an average rate of conviction upon plea of guilty or after verdict at approximately 81.08% of those dealt with. The average rate of aquittals is only 13.78%. Having regard to the different standards of proof required for the committing magistrate and for the jury on trial, these figures can hardly be said to support the Chief Commissioner's concern about the jury system.

Mouthpiece

"Seniority's gone by the board", the Waistcoat snorted.
"The Practice Court clogged up with damned Protho's Summonses. Simpering articled clerks whimpering ignorance of the state of play."

"And that's not the worst of it. None of these whippersnappers has ever read (1963) V.R.740. They seem to think that it's first up first served. No respect for standing. What do they teach them in that Reader's Course?". He paused for breath and a sip of coffee.

"But they probably can't tell who,s senior" ventured the Whitewig helpfully.

"Wasn't like that in my day. Now there's just too many of them".

"Why not suggest to Wild Rex that he require all readers to be able to recite the Bar readers to be able to recite the Bar Roll in order of admission dates?"

"How about requiring them to wear their number on the back of their gowns? Seems to do the job okay at Waverley. And then if they step out of line the Judge could flash a yellow card or order them off for fifteen minutes or so."

"I like the idea of distinctive colours" suggested Flossie. "Suppose after five years you changed to a blue gown or, perhaps green, with matching wig. It's about time we brought our image up to date."

"I'm decidedly against it. The English cricketers wouldn't go along with that colour idea. So why should we?"

The argument was irresistable.

And the Whitewig spoke up "Why should the order of business depend upon seniority anyway?"

BYRNE & ROSS D.D.

THE BEST BOOK I READ IN 1980

In October we wrote to a number of members of the Bench and Bar inviting them to write about a book they found interesting during the year. Some ignored the request and some found themselves unable to comply. We publish the remainder:

THE RIGHT STUFF by Tom Wolfe

The R.A.A.F. and R.A.F. called it "moral fibre". In the U.S. apparently it is "the right stuff". As a "have not" I enjoyed this look-in on the "haves". The subject is the astronauts and the N.A.S.A. space programme in the context of political finangling and media hoo-ha.

The author 'Tom' has no connection with 'Thomas' the literary leviathan who died at 38 in 1938, and whose writing has been said to contain "long whirling discharges of words . . raw gobs of emotion . . . claptrap, belches, grunts and Tarzan-like screams". 'Tom' also gets carried away with the word but his phrase punching and innovative writing can be superb. He takes his place among other American sons of that Great Language Liberation Movement fathered by James Joyce!

K.H. MARKS, J.

THE NIGGER OF THE 'NARCISSUS'/ TYPHOON AND OTHER STORIES
by Joseph Conrad. (1897)

These stories have lingering descriptions of nature's beauty and strength and of absorbing characters who, although sometimes larger than life, remain fragments in abysses of sky and sea.

Conrad has the stars watch the haunting voyage of the Narcissus; rather like a silent Greek chorus. As the ship's voyage began, the stars "surrounded the running ship on all sides; more intense than the eyes of a staring crowd and as inscrutable as the souls of men". As the story unfolds, Conrad repeats the refrain. The ship's torment, storm stricken in the black turmoil of icy southern seas, it observed, hard and cold, by stars glinting "more pitiless than the eyes of a triumphant mob and as unapproachable as the hearts of men".

Another story tells of Faulk, whose bearded profile on the bridge of his tug Conrad memorably describes as like a centaur; not a man-horse but a man-boat.

BENNETT, Q.C.

How wonderful of you to include me in your literary expose "The Best Book I read in 1980" (in 100 words or less).

You have heard how I once confessed in 25 words (or less) "I like Palmolive because . . . ." and won a Lady Sunbeam (the sex proved irrelevant).

Might I suggest a follow up series: "What I did on my Bar Vacation"

I have enclosed as a warning to young barristers – two photographs. The first depicts me when I found the Bar, and the second after 14 years in Magistrates' Courts.

And so to my choice: the 1980 Victorian Reports

This is an anthology of short stories with a pronounced legal flavour.

The style is reminiscent od early Patrick White or vintage Dylan Thomas and these tales frequently feature the literary device perfected by Lawrence Durell in the Alexandra Quartet of presenting differing interpretations of the same fact situation.

There is a sprinkling of surprise endings in the O. Henry tradition and those readers who enjoy fantasy will not be too disappointed by the occasional descent to reality.

If I had to recommend one yarn it would be the hymn to Courage enshrined in the poignant *Simons v. Body Corporate Strata Plan No. 5185.*

COLDREY

Summer 1980

PROPOSALS TO ENLARGE THE VICTORIAN REPORTS

Representations have recently been made by the Council of Law Reporting to Butterworths about various problems that have arisen on the reporting of Victorian decisions. These problems involve the failure to include reportable decisions in the Victorian Reports (particularly decisions of the Court of Criminal Appeal) and the growth in the circulation and citation of unreported decisions. Publication of unreported decisions in the Bar News pointed to the urgency of the problem. Discussions between the Council of Law Reporting and Butterworths have included suggestions that the problem might be alleviated by a change in the method by which decisions are selected for reporting or by an increase in the size or the number of volumes of the Victorian Reports.

Negotiations with Butterworths have now been completed and although no formal agreement has as yet been made, it is likely that the form of the Victorian Reports will alter for 1981. These changes will include increasing the monthly volume of the Victorian Reports to 96 pages and the bound volume to approximately 1,104 pages. This is an increase of more than 50 per cent in size in comparison with the recent volumes. The subscription rate would, of course, have to increase, not only because of the greater size, but because there has been no increase since 1978.

In the past Victoria has apparently been unique amongst Australian States and the Commonwealth jurisdictions in that the initial selection of judgments for reporting has been made by the Judges themselves. This practice has resulted in a lack of uniformity in the selection standards that have been applied and some cases worth reporting have therefore not been seen by the editor. To achieve uniformity of approach in the reporting of decisions and to ensure the reporting of those decisions which are currently not being reported but which should be reported it is anticipated that all judgments of the Full Court and the Court of Criminal Appeal will in future be sent to the editor and that he should select such cases for reporting. Because of the amount of material involved it is not suggested that individual Judges send all of their cases to the editor for his consideration but that Judges send for reporting any cases which may possibly be reportable, leaving the final selection to the editor. No final decision has been made on these matters.

The Council of Law Reporting is aware of the increased use of unreported decisions over recent years. The Bar Council Library of unreported decisions has been in great demand and with the co-operation of the Attorney General this Library has been kept up to date. It is, of course, frequently a matter of concern that these unreported judgments are cited in argument without regard to the rule of practice that the other side should be informed in advance of Counsel's intention to cite an unreported decision.

With the implementation of these new proposals it is hoped that the need for recourse to unreported judgments will largely disappear.

REDLICH

LEO CUSSEN INSTITUTE FOR CONTINUING LEGAL EDUCATION

1981 PRACTICAL TRAINING COURSE INSTRUCTORS

Applications are invited from practising members of the legal profession for positions as Instructors in the 1981 Practical Training Course which will be held during the period 10th March to 30th September, 1981. The duties of instructors will be, subject to the direction of the Leo Cussen Institute, to prepare for and to attend at the Course in order to instruct, assist students with practical exercises, assess students and guide them to a knowledge of correct practice. Instruction in each topic is based on a detailed syllabus supplemented by materials which include lecture outlines, practical exercises, suggested answers, forms and precedents. An instructor will be supplied with the syllabus and materials in advance to enable preparation ofd the topic.

Topics covered are:

- Commercial Basics, March 10-March 17 (6 days)
- Wills, March 25-March 27 (3 days)
- Conveyancing I, March 30-April 7 (7 days)
- Civil Litigation I, April 8-April 9 (2 days)
- Family Law I, April 10-April 16 (5 days)
- Civil Litigation II, April 27 (1 day)
- Company Law I, April 28-April 30 (3 days)
- Civil Litigation III, May 1-May 7 (5 days)
- Deceased Estates, May 8-May 14 (5 days)
- Crime I, May 25-May 29 (5 days)
- Civil Litigation IV, June 1-June 3 (3 days)
- Landlord & Tenant, June 4-June 5 (2 days)
- Costing, June 9 (1 day)
- Company Law II, June 10-June 12 (3 days)
- Workers Compensation, June 15-June 19 (5 (5 days)
- Conveyancing II, June 22-June 25 (4 days)
- Costing II, June 26 to June 29 (2 days)
- Workers Compensation, June 30 (1 day)
- Family Law II, July 2-July 8 (5 days)
- Civil Litigation Appearances, July 9-July 10 (2 days)
- Criminal Procedure II, July 27-July 31 (5 days)
- Company Law III, August 3-August 4 (2 days)
- Trade Practices Law I, August 5-August 6 (2 days)
- Enforcement, August 17-August 18 (2 days)
- Bankruptcy & Liquidation, August 19-August 21 (3 days)
- Conveyancing III, August 24-August 28 (5 days)
- Family Law Appearances, August 31 (1 day)
- Conveyancing III, September 1-September 2 (2 days)
- Costing III, September 3 (1 day)
- Trusts & Taxation Planning, September 7-September 9 (3 days)
- Consumer Protection, September 10-September 16 (5 days)
- Trade Practices II, September 17-September 18 (2 days)
- Advocacy I, September 21-September 22 (2 (2 days)
- Commercial Basics Exercise, September 23-September 25 (2 days)
- Advocacy II, September 28-September 30 (3 (3 days)

An instructor attends full-time during the instruction periods in each topic with which he is concerned. Some of the time will be spent on instruction and some time on assessment. A student will spend a great deal of time working on his own with guidance from instructors. The Course is essentially practical in nature, involving considerable active student participation in practical work.

Instructors fees will be at the rate of $125 per day inclusive of preparation time (or pro rata for a half day). Application forms may be obtained from:

The Director of Practical Training,
Leo Cussen Institute for Continuing Legal Education,
408 La Trobe Street,
MELBOURNE. 3000
(DX 460)
Telephone: 329 0633

PHOTOGRAPHER

Bar News is looking for someone with the equipment and expertise necessary to take photographic portraits.

Any member interested should contact Byrne D. on Pax 199.

MISLEADING CASE NOTE No. 12

Fabian v. Judge Shillelagh

Bulleager J.:

The applicant in this matter (and I interpolate here to say that his name is Mark Fabian) seeks an order directed to the respondent (and I interpolate here to say that he is Judge Shillelagh of the County Court) to show cause why a writ of prohibition should not issue. The facts of this case are somewhat curious, and it will be convenient to set them out shortly before considering the conclusions to be drawn from them.

The applicant was prosecuted on information in the Melbourne Magistrates Court for a breach of S.161 of the Income Tax Assessment Act, in that he did fail to lodge the required return for his income of the last financial year. He pleaded not guilty and raised three novel grounds of argument in support of that plea. The first of these was the constitutional non-existence of the Commonwealth of Australia, based on changed circumstances. The gist of this argument was that the Commonwealth can only exist while the conditions precedent to its existence set out in the preamble to the Constitution continue to be satisfied. Since there is little or no reliance on Almighty God in government today, the argument goes, the Commonwealth may well be in danger of losing its existence. The second argument was that, because the applicant was drunk for the whole of the last financial year, he did not have the required intent under the rule in *O'Connor's Case* (1980) 54 A.L.J.R. 349. The third argument was that, because he has never paid tax, he is not a "taxpayer" within the meaning of the Act and is not liable to lodge a return. Notwithstanding those arguments, or perhaps because of the penultimate one, the Chief Stipendiary Magistrate convicted the applicant and fined him $100. From that conviction the applicant appealed to the County Court at Melbourne.

The appeal was brought on before His Honour Judge Shillelagh yesterday morning, but the applicant did not there rely upon all of the arguments he had advanced before the Chief Stipendiary Magistrate. Instead he put forward only the third argument that, because he has never paid income tax, he is not a "taxpayer" within the meaning of the Act, and is therefore not obliged to lodge a return of income. Such an argument may well seem technical and unmeritorious in a society dominated by newspaper opinions which hold tax avoidance to be a great social evil. Now I take judicial notice that Judge Shillelagh, like any Judge of the County Court, is a man dependant to a large extent (indeed of recent days to an even larger extent) upon the fiscus for his support and maintenance and that of his family. To such a man, who has no reasonable opportunity of avoiding his taxation responsibilities, such an argument seems to have appeared offensive and threatening. So threatening indeed, that he called upon the State Government to protect him, and his family too, from the applicant. He asked the Commonwealth Government to declare martial law in and around the County Court to ensure that the (perceived) threats were not carried out. He further ordered the applicant to be arrested, bound and gagged to prevent any repetition of such threats.

It is that conduct of Judge Shillelagh that the applicant seeks to prohibit, and I am of the view that, prima facie, such conduct would justify me in making the order absolute in the first instance, under R.S.C. O.53 R.1(3). Any court has of course the power to order its own affairs and regulate proceedings therein, but such power must always be exercised with restraint and circumspection. Orders such as those made by the learned Appeal Judge should in my view be made only upon the strongest evidence and in the most extreme circumstances. The right to eccentricity is under serious attack in many places. In my view, rather than attack that right, courts should defend it as a cardinal freedom.

The difficulty faced by the applicant is, however, this. His argument on appeal is both the basis of his assertion of innocence, and also the cause of his present incarceration. His argument goes beyond a defence simpliciter; the gist of it being that the court has no power over him because the Act does not apply to him. If that is right, he has no need to appeal, and indeed no locus standi so to do. If he had no standing in the County Court, he has no right to come to this Court seeking to prohibit Judge Shillelagh. I must therefore refuse the application for a writ of prohibition.

Different considerations apply to Judge Shillelagh, however. From what I have already said, the applicant had no locus standi in the County Court, and must therefore be considered as no more than a spectator. For a judge to lock up a spectator for such words as were used by the applicant, is in my view an affront to the dignity of the County Court. In my capacity as keeper of the dignity of lower courts, I find that Judge Shillelagh was in contempt of the County Court yesterday morning. I order that he be committed to a goal until he purges his contempt by ordering the release of the applicant.

GUNST

SUPREME COURT CIVIL PROCEDURE RULES REVISION

Responsibility and authority for making and amending Rules of Procedure for civil proceedings in the Supreme Court of Victoria is vested in the Judges of the Court. A committee of the Judges, the Rules Committee, is now making a comprehensive review of the practice and procedure of the Court with the object of introducing a new set of Rules. By invitation, the Victorian Bar and the Law Institute of Victoria each have a representative on the Committee, and the Committee is being assisted in its work by Mr. N. J. Williams of the Bar. The project is being funded by the Victoria Law Foundation.

The following are among the topics the Committee will examine:–
initiating and interlocutory process; service of process, including service out of Victoria; summary judgment and judgment in default; joinder of parties and causes of action, including third parties; pleadings; discovery, including privilege, discovery before action and of third parties, the pre-trial exchange of expert evidence and oral examination of the parties in addition to or in lieu of written interrogatories; payment into Court; costs; appeals; execution on judgments.

Members of the legal profession and the public generally are invited to express their views on these topics or on any other topics relating to the procedure of the Supreme Court that it is felt the Rules Committee ought to examine. The Committee will consider these comments when drafting the new Rules. The comments should be in writing and be addressed to Mr. N. J. Williams, 205 William Street, Melbourne.

LAWYER'S BOOKSHELF

Brooking on Building Contracts
by David M. Bennett. 2nd Ed.
Butterworths; Melbourne 1980, XXIV,
243 pp. $27.50

Committal for Trial by John Seymour.
Australian Institute of Criminology 1978,
IX, 118 pp. $4.35.

The continuing trend towards and need for specialization on the part of practitioners should ensure a ready market for these recently published books.

Specialization manifests itself in two ways; firstly geographical with Australian law moving often on a different path than the rest of the Common Law world and often differently between the various states and territories. The second aspect is the fragmentation of traditional jurisdictions into smaller elements.

Both books focus on both of these aspects, setting out to consider the law in Australasia on what is prima facie an area of contract law with respect to the one and on an area of criminal law with respect to the other. That each adopts a basically different approach ultimately does not detract from the usefulness of either to the practitioner.

The 2nd edition of Brooking on Building Contracts comes six years after the first. The author, Bennett, Q.C., has obviously borne in mind the practical needs of the profession. The book contains a system of chapters and numbered paragraphs. Footnotes have been avoided and the text is clearly if somewhat crowdedly set out. The hard cover, binding, and pages of the copy reviewed all looked capable of standing up to some reasonably solid work.

The Table of Cases at the front of the book covers 12 pages. Perhaps for reasons of economy, listing is generally under plaintiff or appellant only. In this way something is lost as anyone who has been in a position of only remembering the name of the defendant or respondent in a case can probably confirm. The index and Table of Statutes are adequate rather than full.

The major virtue of a book of this nature lies as much in what is left out as in what is included. In a reasonably small volume the author has to attempt to set out the law as applied in Australia and New Zealand and also such differences in approach as exist in the six states and two territories. The paragraphs then must be pertinent up-to-date and accurate without overwhelming with the mass of material available from so many sources. To this extent the author has succeeded well. It would have been of assistance if the contents page had listed each of the paragraph headings in addition to chapter titles. This would obviate the need to scan through the chapter itself to locate a desired paragraph.

As he makes clear in his preface, the author has expanded considerably on the first edition. This has mainly been caused by the considerable changes in the law over the last few years. These include the introduction of two new standard building contracts. As well there is the whole area of negligence spawned by the decision in Dutton v Bognor Regis U.D.C. (1972) 1 Q.B.373; (1972) 1 All E.R.462.

The effect of this and other changes such as the conservation aspects of the N.S.W. Heritage Act 1977 has virtually been to create a whole new jurisdiction rather than a branch of contract law so that henceforward a more appropriate name for the book might be the Law of Building.

Given the singular nature of this work in Australia, it is clear that the libraries of those who practise in the jurisdiction will require a copy. With our system of states it is inevitable perhaps that some preference is given to one state's position over that of the others. Victorian practitioners should be glad that given its inevitability Victoria is the State so favoured in this case. Thus of the three appendices in the book, one is a reprint of the Victorian Arbitration Act and the second the Victorian R.S.C. relating to the Building Cases List. The author does attempt to redress the balance somewhat however in the 3rd Appendix which is a comparative table of the Arbitration Act of the remaining states and N.Z.

Committal for Trial deals with a surprisingly neglected field. It is subtitled as an analysis of the Australian law together with an outline of British and American procedures. A Table of Cases is included but there is no Index or Table of Statutes. Their lack detracts from its usefulness.

The book is printed on what used to be called foolscap size paper or the present equivalent thereof and the print is clearly set out with wide spacing. The text is divided into 8 chapters and there are copious footnotes at the end of each chapter.

In essence the approach is that of 7 essays together with a final concluding chapter. The headings of the various chapters give some indication of the ground covered and include the following:
The statutes; functions of committal proceedings; criteria determining the decision to commit or discharge; the nature of committal proceedings and the possibility of review; role of the Attorney General; and procedures overseas.
Countries covered by the last include England, N.Z., the U.S.A., Canada and Scotland.

Unlike the earlier book a practitioner would be likely to obtain the maximum benefit from this book by sitting down and reading it rather than using it as a reference tool. After having done so he would be aware of some of the complexities involved in the area. He would be on the look-out for traps which can befall anyone who approaches a committal without proper appreciation and respect for what is involved. Thus for example in the author's first chapter he notes that the Victorian Act prohibits the publication of the prosecution opening statements. However the author also points out in a footnote that the relevant provisions of the particular act have not yet been gazetted. Anyone assuming that the Magistrates (Summary Proceedings) Act 1975 must surely by now have been gazetted could obviously make a serious mistake. Given the likely opposition of the Press to such a provision it may well be that it will never be gazetted. Counsel wishing to avoid publication of unwelcome details alleged against his client prior to his trial should thus know that objection will need to be taken prior to the opening statement.

Again the author makes clear the strange situation that exists in Victoria where two tests are available to a magistrate in determining, first at the close of the prosecution case whether the hearing should proceed; and secondly, after the defendant has had an opportunity to present his case, whether he should be committed. The twofold test is first whether the evidence is sufficient or alternatively whether the evidence raises a strong and probable presumption of guilt. The author's discussion of how in practice these alternative tests work is interesting and informative.

Apart from a critical examination of the procedures employed and the rationale therefor, the book contains a good exposition of the rules and of the cases dealing with various aspects of committal proceedings. Any lawyer embarking on a committal and who has not done one previously or for some time could certainly spend his time profitably in a prior reading or re-reading of this book.

Sharp

MILESTONES:

This year has witnessed the following anniversaries -

Ruby: (40 years)	Jack Lazarus admitted to practice. Tait Q.C. took silk.
Coral: (35 years)	Thomson Q.C. admitted to practice.
Pearl: (30 years)	G. Colman, McGavin and G. Fitzgerald admitted to practice. Paterson Q.C. and Barton signed the Bar Roll.
Silver: (25 years)	Sneddon Q.C., Walsh Q.C., Barnard Q.C. Ednie, Moorhead, Balfe and B. Hooper admitted to practice. Sneddon Q.C. and Waldron Q.C. signed the Bar Roll.

SPORTING NEWS

Nobody likes losing a tennis match, particularly Tony Graham. However, the Bar and Bench can gain some solace from his recent defeat in the sami-finals of the Victorian Over 40's Tennis Championships. Graham was defeated by an experienced campaigner by the name of Froelich, who himself had been beaten by Marty Reissen in the United States Over 35's Titles. We believe that Graham's form should certainly be good enough to establish him as a winning link in our side to play the Law Institute in the forthcoming weeks.

● ● ●

Sometime ago we wrote an article on the epic struggle of Hart in running across the Little Desert That feat was equivalent to shelling peas when compared with the efforts of David Ross in successfully completing the dreaded 100 mile non-stop race on the Nepean River at Penrith, New South Wales. Paddling a single Canadian canoe for 29 hours may well be a sign of madness – akin for example to someone leaving Owen Dixon Chambers and heading for Newbrik House. A short lap of twelve miles was followed by four laps at 22 miles per lap. Stopping only once per lap to fill up his drink bottle and tucker box, he forged ahead notwithstanding problems necessitating warding off eels charging his boat and flailing at fruit bats at 3.00 a.m. We are told that he was rewarded with a medal for his achievement. On the basis of his performance, we regard him as a short price favourite to win the River Murray Classic which will be held between Christmas and New Year.

● ● ●

On the racing scene, Cashmore and Les Ross landed the Ararat Cup with "Rubicon" – a neddy having its first start in Australia after leaving the "Shakey Isles". Another win in the country would not be surprising. This win was hardly comparable to the brilliant win of "Watney" in a major sprint at Flemington over the Cup Carnival. We believe that this horse has won almost $100,000 in prize money for Merralls and Lennon and another co-owner. Dove, meantime has a horse named "Tremendo" which was racing at a time when Dove was in Court. We believe that Les Ross came back into Court and handed Dove a note which read –

"Reagan by a landslide, Tremendo by a head".

"Saltmine", owned by Jack Forrest, after failing once more was last seen as part of a consignment on a ship bound for the U.S.S.R. We hope it was a one way ticket.

● ● ●

Bob "Adonis" Johnson took place on an aerial safari of Northern Territory, Queensland and Cape York a month or so ago. He made an in-depth study of the plight of the Aboriginals during his holiday. Included in his trip was a visit to Lizard Island some 100 miles or so north-east of Cairns. He bulging biceps were responsible for the successful landing of a 350lb. marlin which he claimed he would use for bait.

FOUR EYES

VERBATIM

A witness, called by Phillips Q.C. and Rozenes, giving character evidence about their client.

"I know nothing derogative about him and he is known as a real Gentile."

● ● ●

His Honour was taking exceptions to the charge.

Accused (in person) dealing with how His Honour had put the prosecution case to the jury.

"You've taken a dirty old lolly shop and made it look like Darrell Lea's . . ."

R. v. Brazel
Cor Judge Leckie
July 19, 1978

● ● ●

Cor Brown S.M. –
A Defendant in person, charged with "wilfully and obscenely exposing his person", is asked by the SM:

"Is there anything more you would like to bring out?"

Preston Court
10 September 1980

● ● ●

Article: Tales from the Frontier:
White laws – black people
by John Coldrey and Frank Vincent.

"The Alice Springs Drive-In is screening an 'Adult Western'. White cowboys are systematically massacring Red Indians amidst a growing murmur of anger from black patrons. A figure clambers onto the bonnet of a battered Holden and shouts: 'Send for legal aid!' A raucous cheer erupts and the tension disappears."

Legal Service Bulletin
Vol. 5 No. 5
October 1980

● ● ●

Q. Write brief notes on the "best evidence" rule.
A. The "best evidence" rule is that the informant is correct if there is a situation of "word against word".

From an examination paper
in Procedure and Evidence
RMIT 1980

"Divorce. £5 – Leading Barrister takes cases through Divorce Court; advice free on any matter. Unknown, 430 Bourke Street".

The Age
8 September 1904

● ● ●

"Natural Life Health and Vitamin Centre v. Bland 1980/3175".

Master's Practice Court
25 June 1980

● ● ●

Sharp cross-examining a policeman:

"Are you not taught as part of your detective training how to conduct an interview?"
"How do you mean – physically or verbally?"

Cor Judge Byrne
Shepparton Riot Trial
15 September 1980

● ● ●

Judge Spence:

"You must have done a fantastic job in the Magistrates Court for your client to receive a sentence of 9 months only."

Drake:

"My instructing solicitors sometimes tell me that I walk on water and I don't attempt to dissuade them."

County Court Appeals
October 1980

● ● ●

Lord Denning MR: "When I was young, a sandwich-man wearing a top-hat used to parade outside these courts with his boards back and front, proclaiming 'Arbitrate, don't litigate'. It was very good advice so long as arbitrations were conducted speedily: as many still are in the City of London. But it is not so good when arbitrations drag on for ever."

Bremer Vulkan v. South India Shipping
(1980) 1 All ER 420 at 425.

LEGGE'S LAW LEXICON

"C"

C.I.F. (Curia in Furore). These letters in a Notice of Appeal denote that the Appeal is taken from a Judgment given with indignation.

Capital Punishment. A suspended sentence. Now obsolete save for parking in the Chairman's parking spot (a highly anti-social offence in respect of which it undoubtedly exercises a deterrent effect).

Certificate of Readiness. A decree absolute.

Chance Medley. The aftermath of a Bar dinner.

Charge. The term of art which traditionally welcomes into counsel's chambers a client who has expressed a preference for the assertion of a question of principle rather than the sensible compromise of the action.

Charging Order. The practice of the Bar is for senior counsel to charge before junior counsel and at the Equity Bar for counsel appearing for the trustees to charge before counsel appearing for the beneficiaries.

Cheque. A Bill of Exchange drawn on a banker and allegedly payable on demand.

Child Bearing. There is no legal impossibility in a woman 100 years' old bearing a child. (Unless she has been married more than 3 years (1878) 9 Ch. D. 388).

Chose in Action. The motto of solicitors who find it difficult to obtain insurance against liability for professional negligence.

Circumstantial Evidence. The evidence led against a member of the Painters and Dockers Union.

Civil Liberty. The art of politely returning a brief at 5.30 the night before an action is listed for trial.

Clapham Omnibus. The conveyance of a man who lacks the courage of Achilles, the wisdom of Ulysses and the strength of Hercules although Lord Bramwell did attribute to him the agility of an acrobat and the foresight of a Hebrew prophet.

Client. In Roman Law a person dependent on a rich powerful man to whom he looks for protection, advice and assistance.

Clog on the Equity of Redemption. An 18th century treatise on the rights of mortgagors.

Common Employment. Four or more debt collecting briefs in the one Magistrate's Court on the one day.

Confession and Avoidance. A succesful voir dire.

Constructive Trust. A building contract.

Contempt of Court. Whatever principle can be elicited from the following wilderness of single instances:

1. Pleading with prolixity, *Milward v. Welden* (1565, 1566) Tot. 101.
2. Inviting the Master of the Rolls to "kiss my arse". *Witham v. Witham* (1669) 3 Rep. Ch. 41.
3. Presenting a petition to dissolve a partnership between two highwaymen. *Everett v. Williams* 9 L.Q.R. 197. (The defendant was executed in 1727 and the plaintiff in 1730).
4. Compelling a process server to eat a sub-poena. *Williams v. Johns* (1773) Dick 477.

5. Putting laughing gas into the Court ventilating system. *Balogh v. Crown Court* (1975) Q.B. 73.
6. Publishing scurrilous abuse of Mr. Justice Darling – "No newspaper can exist except upon its merits a condition from which the Bench happily for Mr. Justice Darling is exempt. There is not a journalist who has anything to learn from the impudent little man in horsehair . . . one is almost sorry for on the day that he selected a new judge from among the larrikins of the law." 82 L.T. 534.

Contingency with a Double Aspect. A brief delivered to very junior counsel to appear in the Practice Court on the day before the long vacation.

Contract. Described in the Royal Commission on the Painters and Dockers Union as "Chitty Chitty Bang Bang".

Contributory Negligence. The signature by which junior counsel is driven to undertake some responsibility for the giving of a joint advice.

Corroboration. The corroboration squad is a body of policemen of the rank of sergeant at least formed so that its members may became skilled in giving an aura of verisimilitude to what might otherwise be a bald and unconvincing narrative.

Court of Last Report. A sitting of the County Court in which no shorthand note is taken of the evidence.

Credit. The involuntary courtesy extended by a barrister's clerk to counsel's professional client.

Criminal Conversation. A conference between counsel and his client which traditionally starts off by the client saying – "Tell me what the law is Mr. Rumpole and I'll tell you what the facts are."

Cyricbryce. Cyricbryce ? ?

• • • • •

LETTER TO THE EDITORS

Dear Sirs,

In the Spring edition, your very concerned reader Joseph V. Kay was appalled at the misuse of English in the Winter Edition. As the progenitor of the female member of the Bar under discussion, I deplore the misspelling of her married name and the error in "occurrance".

The retention of the maiden name for professional purposes is not only common and accepted, but is less confusing in "occurrance" than the necessity to trace the identity of a female through one or more marriages each of which involved a change of name. The subjugation of a female by the bestowal of the family name of her spouse is an anachronism we could well do without, as it brands her indelibly as property.

Your correspondent's ignorance of classical language is equalled by his lack of taste. However, I am saddened at the similar lack of knowledge of the editors. My surname is a town in Portugal and in no way could "Opi" be either the genitive or plural in Latin. The editors' suggestion of "opera" would only apply if the singular were "opus", which word is neuter. Having from time to time observed the comely readers in my daughter's chambers, there is no doubt that they have not been neutered.

In the Dutch language, the name is the plural of Grandpa. In classical Greek, TTag is a masculine adjective meaning "all" and with the prefix omicron aspirated as "the", or unaspirated it becomes a meaningless vocative.

Puns are never funny to their subject. I have lived with "Opus No. 1" most of my life. The only genuinely witty pun I can recall was from a well-oiled medico who, upon being introduced to Phil Opas, exclaimed, "Ah! the guy who invented the fallopian tube!"

A completely unconcerned reader.

Philip Opas.

MOVEMENT AT THE BAR

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

J.A. Campton (Miss)
R.M. Dessau
S.N. Allston
J.H. Greenwell
H. Segal
J.S. Goldstein (N.S.W.)

Number in active practice — 704

VICTORIAN BAR NEWS

ISSN - 0159 - 3285

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

Editors:
David Byrne, David Ross, David Henshall

Editorial Committee:
Max Cashmore, John Coldrey, Charles Gunst,
Tony Howard, John McArdle, Rose Weinberg

Cartoons by:
Crossley and L. King

Phototypeset and Printed by:
Active Instant Printing

SOLUTION TO CAPTAIN'S CRYPTIC No. 34