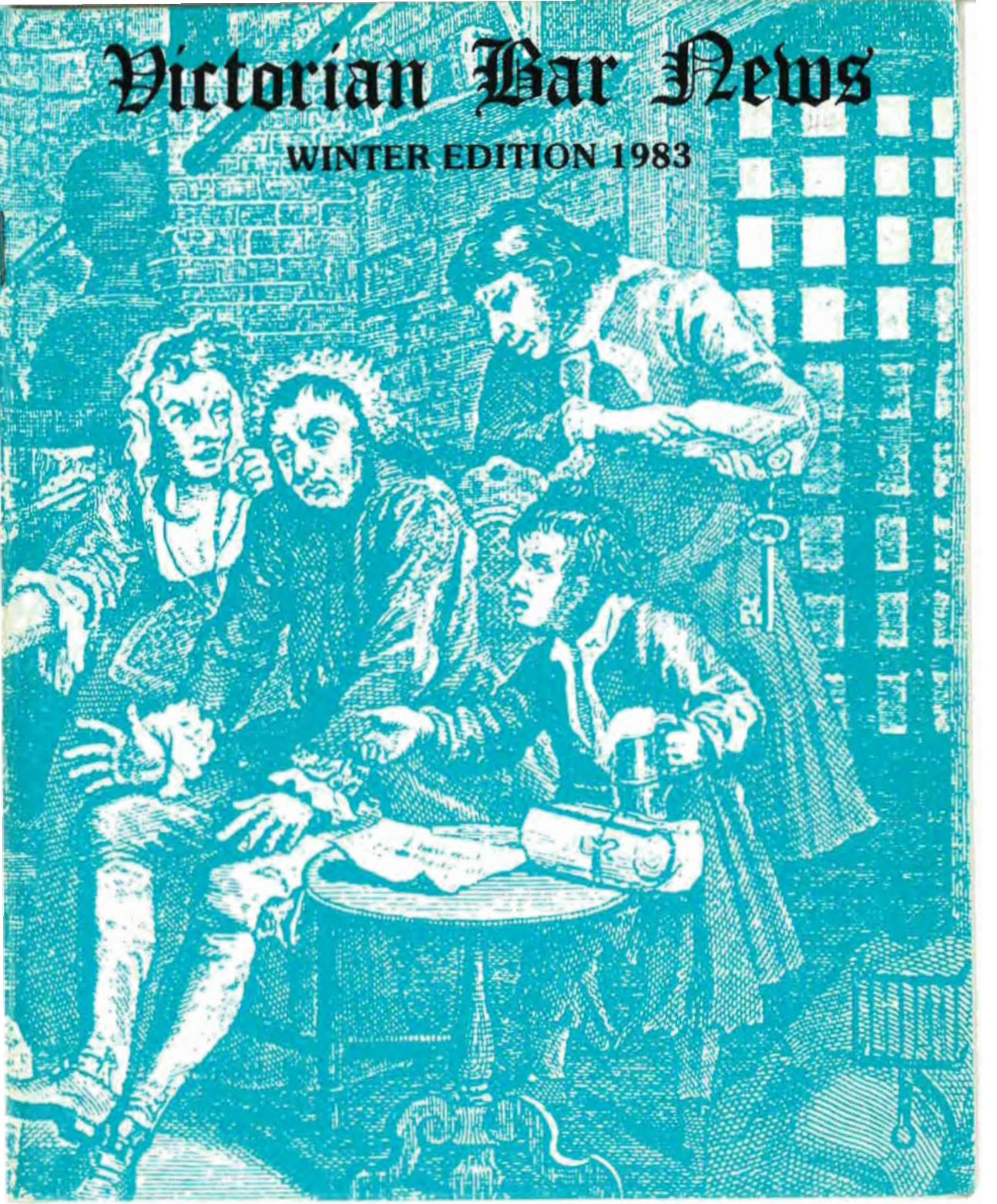
Victorian Bar News

WINTER EDITION 1983



COVER: The Remand Yard at Pentridge has been criticised recently. Compare it with the Prison Scene from Hogarth's "The Rakes Progress"

VICTORIAN BAR NEWS

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BAR COUNCIL REPORT

Election:

McPhee Q.C. has been elected to fill the vacancy on the Bar Council caused by the appointment of Hampel Q.C. to the Supreme Court Bench.

Seabrook House:

The Bar Council has approved in principle the proposal put forward by a group of Junior Barristers, headed by J. Williams and Batten, for them to purchase Seabrook House in Lonsdale Street and for it to be used as Barristers' Chambers.

Four Courts Chambers:

Extensive renovations and construction will take place on the second floior of Four Courts Chambers. These will give the Readers Practice Course a permanent home. It is proposed that provision be made for Counsel's Chambers on the West and North sides of the floor and for the Sir Edmund Herring Library to be accommodated in an internal area.

Roll of Counsel:

The Roll of Counsel is presently divided into a number of lists, such as the Practising List, the Judges List and the Masters and Other Official Appointments List. Some problems have been encountered with the definition of each list, and changes are expected to be adopted in the near future with respect to the various lists.

Ethical Rules in Respect of Counsel's Advice:

The Council has adopted ethical rules in respect of Counsel's advice. These rules have been previously distributed to all members of the Bar on 6th April. At a meeting on 5th May 1983 Rule 3 of these Rules was amended. These Rules, as amended, are set out in the Supplement to this issue of **Bar News.**

Accommodation:

Counsel under 5 years call are now permitted to share chambers in Aickin Chambers.

The Lease held by Barristers' Chambers Ltd. over Hume House expires on 2nd September 1983.

Barristers' Chambers Ltd. is presently negotiating to Lease the 16th and 27th floor of ACI House to become part of Aickin Chambers.

Present Rentals payable by Counsel are as follows –

Owen Dixon Chambers	$19.00 per ft^2 per annum.
Four Courts Chambers	$19.00 per ft^2 per annum.
Latham Chambers	$24.26 per ft^2 per annum.
Aickin Chambers	*$25.27 per ft^2 per annum.
Tait Chambers	$12.00 per ft^2 per annum.
Equity Chambers	$12.00 per ft^2 per annum.

* Counsel keeping Chambers in Aickin Chambers presently enjoy a subsidy of 25%. The Bar Council has resolved that these subsidies be reduced by one half from 1st August 1984 and that they be eliminated entirely from 1st August 1986.

The Bar and the Law Institute:

The Chairman has confirmed with the Law Institute that it is not possible for Counsel to join the Institute's Sections on Specialist Matters. The Bar is anxious to maintain its co-operation with the Law Institute and to share with it the expertise of Counsel in matters of mutual concern. The precise form of this co-operation in the future, is presently being discussed.

New Telephone System:

The Bar Council is considering letting a Contract to Ericsson for the installation in January 1984 of a new telephone system for the whole Bar. With one

instrument, members will be able to contact all Chambers and to dial out without first obtaining a line from the Clerk's switchboard. Incoming calls may be received through the switchboard, as is presently the case, or directly. Each phone may be metered individually. The system is said to be compatible with the attachments presently available for the gadget-minded.

Centenary Dinner:

A Centenary Dinner is to be held at the Moonee Valley Reception Centre on Cup Eve (5th November) 1984. This will be in addition to the annual Bar Dinner which is traditionally held in June.

Computer:

The Bar Council has authorised the purchase of a micro-computer for use by the Bar Administration.

Readers and Readers Dinner:

On 19th May 1983, 51 readers signed the Bar Roll. At a dinner held immediately afterwards in the Essoign Club, Sir Reginald Smithers of the Federal Court entertained all present as guest speaker. Ex tempore speeches by Charles Q.C. and McPhee Q.C. also amused and instructed those present.

Bar Dinner

The Annual Bar Dinner was held at the Moonee Valley Function Centre on Saturday 4th June. Meldrum Q.C., as Mr. Junior Silk proposed the toast to the dozen or so honoured guests. Graceful responses were delivered by Hampel J., Judge Villeneuve-Smith and J. H. Phillips Q.C.

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ETHICS COMMITTEE REPORT

1. A list of ethical rulings since the publication of **Gowans** appears as a supplement to this issue.

2. Since last reporting the Committee has conducted hearings concerning alleged disciplinary offences by Counsel and a number of complaints were dismissed. Two hearings at which the offences were found proved may be briefly summarised as follows: –

   (a) misconduct in a professional respect, namely the use of offensive language by Counsel for the Defendant to a Senior Constable of police in a Magistrates' Court (after the Magistrate had concluded the hearing and left the Court) – fine $100.

   (b) (i) Receiving a number of briefs from a Solicitor and completing the work but subsequently refusing to return those briefs on the basis that Counsel had not been paid for other work done for that Solicitor;

   (ii) Complaining of that Solicitor's failure to give Counsel new work;

   (iii) Touting by – (1) offering not to require payment of Counsel's fees until the Solicitor was on his feet financially;
   (2) offering to provide the Solicitor with documents so prepared that they could be copied filed and served without retyping them, thus transferring overheads normally associated with those matters from the Solicitor to Counsel.
   – fine $1000.

3. The Committee is currently considering whether Clause 31 of Counsel Rules should be amended in relation to the duty to supply information to the Ethics Committee (and in particular when the Law Institute needs information from Counsel in order to deal with a complaint against a Solicitor).

4. The Bar Council, on the recommendation of the Ethics Committee has set up a sub-committee to investigate the various circumstances of and affecting academics practising at the Bar.

WELCOME: JUDGE VILLENEUVE-SMITH

"Witness", inquired the gaunt silver haired barrister solicitously, "is there no small oasis of recollection in the vast desert of your mind?" Cairns Villeneuve-Smith was on his feet. It was bad enough to be burdened with an arid intellect but even worse to be a hapless policeman who, having ventured a particularly unfortunate answer, was psychologically shirt fronted with the courteous query: "May the court use your last answer as a yardstick by which to measure your honesty as a witness?"

I was compulsorily introduced to Villeneuve-Smith in the Renzella (the great ring in) Trial – in retrospect the first of the horse meat substitution cases – where he hatchetted every witness we defence counsel dared to produce.

He was, of course, more subtle in his treatment of instructing solicitors. On one occasion one of that necessary breed failed to pick him up on the steps of Owen Dixon Chambers to transport him to the Supreme Court at Geelong for a running down case. Cairns was forced to take a taxi. At the court an offer of settlement was soon forthcoming. Villeneuve-Smith reported that it was acceptable but before any settlement was announced to the court he would be seeking leave to amend the statement claim. His bemused opponent agreed.

Particular (e) 'Failing to sound any warning device' was duly added. Subsequently the instructing solicitor received the backsheet which included the annotation 'amendment of statement of claim' followed by a figure commensurate with the taxi fare to Geelong together with a generous tip.

In the folklore of our profession a barrister is a fearless advocate of total independence and integrity standing for the rights of the individual against the might of the State . . . The myth and the reality sometime mesh. They meshed in South Australia when Villeneuve-Smith became part of a team, (including the present Mr. Justice Starke) which fought for the rights of a barely literate aboriginal called Max Stuart before a Royal Commission convened to consider his conviction for murder.

That battle has been exhaustively set out in "The Stuart Case" by K.S. Inglis. What has not been publicized is the hostile reaction of the Adelaide establishment to advocacy which challenged both police methods and judicial judgement. Villeneuve-Smith had been unhappy having to practise as an amalgram. He wanted to be a full time barrister. But it was that reaction which ultimately decided him and two other team members to quit the State.

Villeneuve-Smith came to Victoria in 1960. He had no legal network of old cronies upon which to rely for work. He had no cosy familiarity with statutes and case law. These were traumatic times in his legal life. Yet years later Villeneuve-Smith left the comfort of a securely established practice to become embroiled in the inevitable controversy surrounding the Beach Enquiry.

He did so because he was gripped by an unshakable notion (regarded as quaint in some quarters) that if our legal system had any meaning it was not sufficient that guilty men be found guilty, but that they must be found guilty according to law. During the tension filled months of the inquiry certain more mundane routines developed. There was for example, the weekly purchase of the Tattslotto ticket ("Winning won't change my way of life it will just enable me to pay for it") and the weekly visit to the restaurant where mine host – apparently overawed by the dignified mien and the barely pronouncable name – would welcome him with the prophetic: "Hello there Judge Smithy."

Whilst not wishing to divulge too much of the private interests of 'Judge Smithy' I think it can be revealed that you will have an advantage in a plea for leniency if you have a client with a pet budgie who barracks for Carlton (either the client or the budgie) and you can demonstrate that in the great steeplechase of life, your client hasn't had a rails run.

And how could one fail to mention the propensity for practical jokes. I still feel a chill of terror when recalling the day upon which David Byrne (as joint Editor of the Bar News) and myself were summoned to Villeneuve-Smith's chambers to be informed that a judge had read one of my 'loosely written articles' in that publication and considered himself defamed. Observing our ashen faces my friend pronounced that he would do all within his power to prevent the issue of a writ. Anxious weeks passed during which we received bulletins detailing his progress in the pacification of the judicial personage. It was not until Cairns announced beamingly that he had settled the case – "His Honour has agreed to accept $500 in used notes to be handed to me as intermediary" – that we realized we had been duped.

There are many other Villeneuve-Smith stories I could relate, but I'm still twitchy about writs . . . and of course no imputation against reputation was intended by that last sentence.

As a barrister Cairns Villeneuve-Smith was a true professional in the very best sense of that term.

He is also a man imbued with humanity and a strong sense of justice. He takes these admirable qualities to the bench. The eight hundred of us he has left behind wish His Honour well.

COLDREY

Editors' Note: Judge Villeneuve-Smith read with Jim Forrest. He had one reader, Julian Leckie.

WELCOME:

JUDGE FRICKE

After being sworn in on the morning of the 31st of May, 1983 the newly created Judge Fricke spent several hours of celebratory bonhomie with his wife Judy and several of his friends at the Bar.

Later that evening, His Honour was struck with a feeling which many accused know well – he realized the enormity of his life sentence. He is still a young man, having been born on the 5th of December 1935, and he had just voluntarily submitted himself to a sentence on the bench which had a maximum term of 25 years.

In a state of panic, His Honour realized that in an age of specialists, only a member of the Criminal Bar could help him, so he consulted Pretender of the Criminal Bar.

Pretender, plumbing the deep reserves of guile for which he was renowned, advised His Honour that although nothing could be done about the maximum sentence, a plea to the Committee for Judicial Wellbeing, (meetings every morning on the 13th floor of O.D.C.) under the chairmanship of Torquemada Q.C., might achieve a minimum term after which he could be eligible for parole.

The next morning, Pretender appeared before the Committee and made a plea for his client. He used the format well beloved by criminal barristers, and one His Honour will learn to expect oyer the years. He began with a plea setting out his client's deprived background.

"In these days when it is fashionable to urge that education should aim at mediocrity, my client had the disadvantage of an elitist education at Melbourne Boys High School. After that, he studied law at the University of Melbourne, where again he was far from mediocre. He rounded off his University studies by becoming a Tutor and then searched the World for Truth. He found it at the University of Pennsylvania. He then returned to Australia and became a Lecturer at the University of Tasmania, where his patience and tact were sorely tried by his students, among them Bennett Q.C. and Heerey.

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"Finding that the groves of academia were not as inviting as they first appeared, and desiring to make a contribution to the law as a barrister, His Honour came to Melbourne and signed the Bar Roll in 1962, reading in the Chambers of McGarvie.

"His Honour not only practised in causes and jury actions but found time to write learned articles on defamation, and texts on the Law of Trusts (together with O.K. Strauss) and on Compulsory Acquisition of Land.

"His Honour's capacity for judicial office was demonstratedf as a part time member of the Liquor Control Commission and the Land Valuation Board of Review. His Honour displayed the courtesy, fairness, impartiality and learning which all who know him have come to expect.

"His readers, Robert Davis, Bell and Stewart Morris were all well educated in the ways of the Bar and exhorted to follow their Master's example. They could do no better.

"My client has not lived his life in a closed world. He has always had a concern for the less advantaged members of the community, and his work in community organisations and on the Council for Civil Liberties illustrates this.

"His Honour always had a wide range of interests, and engaged in farming, sailing, skiing and tennis.

"Appreciation of 'rough red' was imported over many years by Alan Watson, who will no doubt regret that judicial responsibilities will necessitate smoother vintages. However, it must be said that the broad spectrum of people who are habitues of Jimmy Watsons will miss His Honour.

"His Honour took silk in 1979 and went on to practise in a wide range of civil matters including racing disputes, defamation actions, running down actions, and an involved international mining case in Tasmania.

"Mr. Chairman, my client is a devoted family man, and he and his wife have four children, the oldest of whom is 18."

"Yes, yes, Mr. Pretender", said Torquemada. "We have heard this sort of tale before. Don't forget that the County Court hears many criminal trials. Has your client the necessary humility to be trusted to judge his fellow human beings?"

"Most certainly," said Pretender. "His Honour's son as a child, was taught by His Honour to hold a tennis racquet. He now regularly wipes the court with his father. Not only does His Honour accept with dignity, this reminder of the passage of years but bears his lot with stoic humility".

The Committee was deeply touched by this last point, and announced its decision that by reason of His Honour's antecedents and qualities, he could serve a minimum sentence of thirteen years before he was eligible for parole.

Thus re-assured, His Honour was welcomed by the profession on the 2nd of June, 1983.

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LETTER TO THE EDITORS

from Sir John Nimmo

8th April 1983

Dear Sirs,

Forgive me for pointing out that the statement in the excellent article on Murray McInerney in the Autumn Edition of **Victorian Bar News** that "From those who signed the Bar Roll in the years 1933-1935, His Honour and Sir George Lush remained after the war the sole survivors in active practice" is incorrect. The writer signed the Bar Roll on 1st May 1933 and practised at the Victorian Bar until he left for service with the A.I.F. in 1940. He returned to the Bar on 1st February 1946 immediately after demobilisation. I am proud of the fact that if I survive until the first of next month I shall have been a member of the Victorian Bar for 50 years.

Kind Regards,
Yours sincerely,
John Nimmo.

WELCOME: SENIOR MASTER MAHONY

Record of Interview conducted at 210 William Street Melbourne between Master Mahony and a reporter of the **Bar News.** Interview commenced at 4.02 pm.

Q. 1 What is your full name?

A. Kevin J. Mahony.

Q. 2 What does the "J" stand for?

A. None of your business.

Q. 3 What is your address?

A. Ground floor, Law Courts, 210 William Street, Melbourne.

Q. 4 What is your occupation?

A. Senior Master of the Supreme Court.

Q. 5 What is your date of birth?

A. 29.8.41.

Q. 6 You are alleged to have been appointed Senior Master in May 1983. It is my duty to warn you that anything you say will be taken down in writing and may, subject to editorial discretion, appear in the next edition of the **Bar News,** or even worse be given in Meldrum's speech at the Bar Dinner on the 4th June 1983. Do you understand this?

A. I think so, but I'm not too sure about the implications.

Q. 7 Are you prepared to answer my questions?

A. Ask them and we will see.

Q. 8 Very well. Where were you born?

A. Ballarat.

Q. 9 Where were you educated?

A. I don't think I should include primary school in my answer.

Q.10 You probably owe more to your primary teachers than anyone else.

A. That may be so but I don't think I should bring my primary education into this. I was educated at Marcellin College at Camberwell.

Q.11 From which University did you graduate and when?

A. I graduated from Melbourne University with a Bachelor of Laws in 1963.

Q.12 Did you get any honours, prizes or things like that at University?

A. There were some but they are hardly worth discussing. I remember one year I thought I failed Torts when I didn't find my number among the passes. I looked at the results several times until finally I looked among the Honours and found that I got a third. That's the sort of result I got.

Q.13 Where did you do your articles?

A. With W.M. Bourke in Greville Street Prahran. I stayed on with him as an employee solicitor until the end of 1965.

Q.14 It has been alleged that while an articled clerk, after a particular conveyancing transaction in which you acted for a purchaser, you impersonated your principal and rang the vendor's solicitor to obtain the Transfer, and in the course of that telephone conversation you berated your incompetent articled-clerk Mahony, for not picking it up at settlement. What do you say to that?

A. That's not true. What really happened was that I attended at the settlement and dealt with a female law clerk from the vendor's solicitor's office returned to my principal's office and gave him the document headed "Transfer". He looked at the document and said to me "Mahony, this is all very well but this document is not signed. You had better ring the vendor's solicitor and ask him to arrange for his client to attend at our office tomorrow to sign this"

I was very hurt because I thought I had done a pretty good job. It was while still in that state of mind that I telephoned the said female law clerk and pretended that I was my principal. I told her "How dare you take advantage of our Mr. Mahony. He is only an articled clerk. Your client has not signed the Transfer, and if he does not attend at our office first thing tomorrow morning to do so, I will stop payment on the cheque".

Q.15 Do you have anything further to add on this matter?

A. Yes. She told me I wouldn't do that because it was a bank cheque.

Q.16 What did you say?

A. I told her I had ways and means of making such things happen!

Q.17 It has been alleged that you came to the Bar in January 1965 and that you read with Jenkinson.

A. Yes.

Q.18 It is alleged that while you had Chambers on the 4th floor of Owen Dixon you persistently engaged in playing football in the corridor – in particular with one Gorman. What do you say to this?

A. I agree I did play some football while on the 4th floor, but I wouldn't say it was persistently. Anyhow that came to an end one day when Byrne handballed the football into my rubbish bin and I forgot to remove it before going home. Rumour has it that Berkeley Cleaning Services disposed of it.

Q.19 What is your explanation for this extraordinary conduct?

A. I put it down to the fact that at the time I was an idle young barrister with a Magistrates' Court practice. All my conferences were held at the appropriate Court at 9.30 am. and this left my afternoons free.

At 4.22 pm. Inspector Sutherland entered the room and the following conversation occured.

Q. Are you being treated alright?

A. Yes.

Q. Is there anything you would like?

A. Could I have a Mars Bar please?

The Master was given a Mars Bar and the interview resumed at 4.25 pm.

Q.20 In your later years at the Bar what sort of practice did you have?

A. I suppose you would describe it as a commercial practice. The main areas I worked in were Equity, Trusts, T.F.M., Contracts and Company Law.

Q.21 It has been alleged that prior to your appointment you were one of the finest commercial lawyers at the Bar. What do you say to this?

A. That was a rumour started by my clerk in 1971.

Q.22 It has been alleged that while you were at the Bar you had 4 readers. What do you say to that?

A. I deny that.

Q.23 They were Gyorffy, Shand, Hogan and Davies?

A. You've got me bang to rights on that one Guv.

Q.24 There is some suggestion that you had some involvement in the taking of a Commission in Switzerland and Italy.

A. I would like to explain that.

Q.25 What do you wish to say?

A. At the time I was sub-junior counsel to an eminent silk and junior. The silk was too busy to go to Italy and Switzerland. The junior refused to go to that part of the world because it was full of "new Australians". I felt it was in the interests of the client that I should go.

Q.26 Was it necessary to visit Britain and tour the continent for the purpose of that Commission?

A. Why don't we just consider that as an extended view?

Q.27 I put it to you that you are a supporter of the Carlton Football Club and have been seen to attend many of their games in the past few years.

A. So what. Is that a crime?

Q.28 What other interests do you have outside of the law?

A. Generally you could call me a spectator. I like to watch football and cricket. I like to go to films, particularly old ones, I enjoy Chinese Food, good wines and reading.

Q.29 Are you married?

A. Yes. I was married in December 1975.

Q.30 It is my duty to tell you these matters will be reported. I would like you to read this record of Interview over aloud (the last page remained in the typewriter).

A. I only want to read the bit about the date of my marriage. My wife would kill me if I got that wrong.

Q.31 Please read the whole lot.
(The Master then read over the above pages).

Q.32 Do you agree that this is a true and accurate account of our conversation here today?

A. (He nodded).

Q.33 Will you sign it as such?

A. (The Master made some unintelligible comment about non est factum).

Interview concluded 4.45 pm.

ROUND THE TRAPS

Retirements

Mr. W. M. Murray SM formerly at Prahran.
Mr. A.J. Curtain SM formerly at Bendigo.

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Appointment

Mr. Graham Collins SM – Box Hill.

FOR THE NOTER UP

A Consolidated Table of Judicial Statistics last appeared in **Victorian Bar News** Summer 1981.

HIGH COURT

Delete	Aickin J.			
	Jacobs J.			
	Stephen J.			
Insert	Wilson J.	23. 8.1922	1979	1992
	Deane J.	4. 1.1931	1982	2001
	Dawson J.	12.12.1933	1982	2003

FEDERAL COURT

Insert	Jenkinson J. (1975*)	14.11.1927	1982	1997

* Date of appointment as a Judge of the Supreme Court of Victoria.

SUPREME COURT OF VICTORIA

Delete	Jenkinson J.			
	McInerney J.			
Insert	Nicholson J.	19. 8.1938	1982	2010
	Hampel J.	4.10.1933	1983	2005

MASTERS OF THE SUPREME COURT

Delete	Jacobs (Senior Master)			
Insert	Mahony (Senior Master)	29. 8.1941	1983	2013

COUNTY COURT

Insert	Kimm	7. 4.1932	1983	2004
	Villeneuve-Smith	16. 2.1923	1983	1995
	Fricke	5.12.1935	1983	2007

LORD WILBERFORCE CAME TO TOWN

Not long ago Lord Wilberforce came to town. Richard Orme Wilberforce. **The** Lord Wilberforce, ex House of Lords, 1946-1982.

Now when Lord Wilberforce comes to town, it's **big news.** No wonder the Bar Council organized a dinner in his honour. Imagine the flurry of those lobbying to be at the official table.

Perhaps they went so far as to check the curriculum vitae. Those who did must have been impressed. Born 1907. Brilliant Oxford Career studded with Firsts Eldon Law Scholar. To the bar in 1932. Distinguished service career 1939-1946. Q.C. 1954. Judge of High Court of Justice (Ch. D) 1961-1964. Thence to the dizzy heights of the House of Lords for an incredible 18 years. He even married the daughter of a French Judge when he was 40, and that always lends an air of the cosmopolitan.

What a catch for the Bar.

A deep question then arose. Who should attend? Guests must be the right type. It would be appropriate to invite Dawson J., Young C.J., and Nicholson J., for their office proved their standing. But who from the Bar would avoid faux pas and make the right impression. The question answered itself, and the Bar Council decided that the only invitees should be the Bar Council.

The date was fixed for Thursday February 3, 7 for 7.30. Dress was lounge suit (freshly dry cleaned). The self-chosen would have time to go home early for an extra shave, and arrive back at the dining room, shining, right on time

Lord Wilberforce, for those who missed him

By 7.30 the great man had not arrived. By 8 o'clock he had still not arrived and the whole of the assembled company was in panic as to what might have happened to their celebrated guest.

By 9 o'clock when he had still not arrived they finally worked it out. The only person not to have received an invitation was Lord Wilberforce. For some reason Ray Finkelstein was asked to track him down. He did. His Lordship had left Australia and returned home. No, he said from London, I don't think it's possible to come now.
Little wonder that the fine fare the guests sat down to stuck a little in the craw. Even less wonder that the fiasco never appeared in the minutes of the Bar Council, or in the new Bar Council Gazette.

"HAVE YOU SEEN HIS LORDSHIP?"

"HE'S NOT UNDER HERE!!"

JUDGE'S CHARGE MADE EASY

In our last edition (**Bar News** Autumn 1983 p. 10) we reported that English judges had been given guidelines on how to sum up.

The guidelines came from the Judicial Studies Board. They were tabled in Parliament thanks to a question in the House of Commons. We obtained our copy from the Legal Action Group, London.

It is a curious document. Curious in the sense that it is really nothing more than a primer in criminal law; and curious that such a basic set of instructions should be considered necessary. The English barristers are calling the guidelines "Summing Up By Numbers".

How necessary are they? In the foreward Lord Lane, the Lord Chief Justice has this to say. "It is surprising how much of the time of the Court of Appeal Criminal Division is taken up with examining mistakes made by the trial judge in his direction to the jury on questions of law. Most of these mistakes are on straight forward points which one would not expect to cause any difficulty".

The law as stated in the Directions would, as we understand it, appear to be accurate. And it is not biased in favour of the prosecution. On the other hand it would seem that the judges are. "Do not forget to review the case for the defence" they are enjoined on page 3. No such reminder is necessary in respect of the prosecution.

The Specimen Directions are just what they say. Many topics are dealt with and what is presented as a proforma charge for each topic is placed within inverted commas. It looks as if Lord Lane hopes that his trial judges will take the Specimen Directions on to the bench and read from them . There is even an index. There is also a check list so that nothing will be left out.

This guide is not intended merely for those in the lower orders of judicial rank. There are specimen directions in rape and murder, and for provocation.

The next question which might be asked is how necesary are such guidelines in Victoria. A quick scamper through the decisions of the Court of Criminal Appeal shows that the fundamental errors made by trial judges are not as frequent or as widespread as they would seem to be in England.

There may be a number of reasons for this. Most of the serious crime in this State is dealt with by the County Court. A significant number of County Court Judges is assiduous in reading the latest judgments and preparing and refining drafts of their directions. And because of the relatively small numbers on the County Court, and because it is based in one place, and because of its collegiate atmosphere, these drafts are circulated amongst all the judges and probably further refined.

Thus we have not needed Specimen Directions because the judges already get them, albeit informally. We will know that this informal system has broken down when the basic errors in judges' directions increase. Perhaps we need our own Judicial Studies Board against that day.

A copy of the Directions has been placed in the Library.

ISN'T THAT THE LIMIT!

Assiduous readers of the Government Gazette No. 44 would have noticed on page 1145 that Act No. 9884 came into operation on 11th May 1983. Otherwise, the fact that significant changes have occurred to the Limitation of Actions Act 1958 might well have gone unnoticed.

Act No. 9884, called the Limitation of Actions (Personal Injury Claims) Act 1983 –

(a) repeals S.5 (6) of the Limitation of Actions Act 1958 (hereinafter called "the principal Act") which provided a limitation period of three years for personal injury claims (S.3 (c))

(b) provides instead that the limitation period for personal injury claims is six years from the date of accrual of the cause of action. (S.3 (a))

(c) provides that the principal Act shall apply as so amended to a cause of action arising not more than six years before 11th May 1983 and to a cause of action arising on or after 11th May 1983. (S.11)

Accordingly, in respect of personal injury claims a cause of action which as at 11th May 1983 was statute barred because it accrued before 11th May 1980 is no longer so barred if proceedings are brought within six years of the date of accrual of the cause of action. Some old claims may thus be revived and proceedings issued and some previous opinions of Counsel may well require revision.

The Act makes a new provision in respect of a new category of personal injury claim in that by S.3 (b), as from 11th May 1983, an action for damages in respect of personal injuries consisting of a disease or disorder contracted by any person may be brought not more than six years from the date on which the person first knows –

(a) that he has suffered those personal injuries; and

(b) that those personal injuries were caused by the act or omission of some person.

Whilst one can readily see that the section is geared to cater for those cases where the onset of a disease is insidious and occurs over a long period e.g. silicosis and asbestosis cases, it is not as easy to determine the effect of the addition of the words "or disorder".

Personal injuries were defined by S.3 (1) of the principal Act to include "any disease and any impairment of a person's physical or mental condition". No definition of disease or disorder is provided in the principal Act or this Act, but S.3 (1) of the Workers' Compensation Act defines disease to include "any physical or mental ailment disorder defect or morbid condition whether of sudden or gradual development and also includes the aggravation acceleration or recurrence of any pre-existing disease as aforesaid". The Shorter Oxford Dictionary 3rd Edition defines disorder: "(4) disturbance of mind – 1838; (5) ailment, disease. (Usually weaker than disease, and not implying structural change) 1704".

Will an attempt be made to bring some personal injuries under the umbrella of "disorder" in an endeavour to obtain more time within which to bring the action? Will ingenious attempts be made in cases of progressive diseases, such as osteoarthritis where trauma played a part in its onset or progression, to use this provision to avoid a claim being statute barred?

The anomaly which existed in S.23 (1) (e) of the principal Act whereby time ran against an infant if he was in the custody of a parent has been abolished by the repeal of the sub-section. (S.4).

S.23A of the principal Act which received a lot of attention and was the subject of many applications has also been repealed (S.5). Part of the area in which it formerly operated has of course been replaced by the disease or disorder section referred to above, but the new S.23A gives the Court a wide discretion to extend the limitation period in personal injury claims even if an action in respect of the injury has already been commenced e.g. against the wrong person, and lays down new guidelines to assist the Court in the exercise of its discretion. It enables a Judge of the Supreme Court to give leave to bring an action in a lower court if it is appropriate.

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There is no time limit within which an application for extension of the period has to be brought, but the matters which the Court shall have regard to are worth reciting. They are as follows:

" (a) The length of and reasons for the delay on the part of the plaintiff;

(b) The extent to which, having regard to the delay, there is or is likely to be prejudice to the defendant;

(c) The extent, if any, to which the defendant had taken steps to make available to the plaintiff means of ascertaining facts which were or might be relevant to the cause of action of the plaintiff against the defendant;

(d) The duration of any disability of the plaintiff arising on or after the date of the accrual of the cause of action;

(e) The extent to which the plaintiff acted promptly and reasonably once he knew that the act or omission of the defendant, to which the injury of the plaintiff was attributable, might be capable at the time of giving rise to an action for damages;

(f) The steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received."

Applications are to be made by Summons which is to be served on each person against whom a cause of action is said to exist.

The Act also makes consequential amendments to S.20 of the Wrongs Act so as to enable the bringing of an action for damages for the wrongful death of a deceased person within six years after his death (S.6). In disease or disorder cases where a person dies without knowing he had a cause of action against another the limitation period for the bringing of a Wrongs Act claim does not commence to run until the claimant knows that the injury consisting of the contracting of a disease or disorder caused the deceased's death and that some person is responsible (S.7). It also enables applications for extension of time to be brought and repeats the guidelines to assist the Court in the exercise of its discretion referred to above (S.8 & 9).

By S.10 of the Act, an expanded S.29 (3) (b) of the Administration and Probate Act 1958 is provided giving the Court similar discretion to extend the limitation period for the bringing of an action in personal injury claims against the estate of a deceased person and providing the same guidelines. As with the amendments to the principal Act the amendments to the Wrongs Act and the Administration and Probate Act apply to causes of action arising up to six years before or on or after 11th May 1983.

STOTT.

CONTINUING LEGAL EDUCATION

The Faculty of Law is offering the following advanced continuing legal education courses commencing in July, 1983:

Advanced Income Tax
Company Takeovers Regulation
Comparative Labour Law
Current Constitutional Problems
Project Financing Law
Urban & Regional Planning Law

The courses are based on those offered to candidates for the LL.M. by Coursework and will comprise twelve two-hour seminars to be held between July and October. All seminars will be conducted in the evening at the Law School. Assessement will be available in some subjects and where successfully completed, appropriate certification will be given by the University.

Places available in each course are necessarily limited and will be allocated on similar principles to those applying to the LL.M.

The fee for each course will be $300.

Applications close on 8 July, 1983 and enquiries concerning course details and enrolments should be directed to the Administrative Officer, Faculty of Law, University of Melbourne, Parkville, Victoria, 3052.

Telephone: 341-6190 or 341-6164

THE DIRECTOR OF PUBLIC PROSECUTIONS

In our last edition (**Bar News** Autumn 1983 p.5) we reported the appointment of John Harber Phillips as Victoria's first Director of Public Prosecutions We said we would invite him to tell us about his duties and the expectations of the office

By 1 June, 1983 the whole of the Director of Public Prosecutions Act 1982 No. 9848 had come into force (G.G. 44/1983 p 1145 - 1146).

Phillips Q.C. has responded to our invitation.

Editors.

The Government created the post of Director of Public Prosecutions to achieve two basic aims. The first was to remove the process of criminal prosecution from the political arena. The second was to ensure that a more efficient system for the preparation of such prosecutions was achieved.

The Director of Public Prosecutions Act sets out to achieve these objectives in a variety of ways. The Act provides a position of real independence for the Director. He has the same salary allowances and security of tenure as a Judge of the Supreme Court and, although he is responsible to the Attorney-General for the day to day running of his Directorate, the Act provides that with respect to preparation institution and conduct of proceedings on behalf of the Crown the Director is entirely independent. The Act charges the Director with the general responsibility for criminal proceedings on behalf of the Crown in the superior courts, and further provides that the Director shall have the same power to enter a Bill of Nolle Posequi in criminal proceedings as has previously been had by the Attorney-General although the Attorney-General retains his power to do so. The Act also provides that whenever an authority, sanction or consent of a law officer is required for the commencement of a proceedings for an offence the Director is to be the appropriate law officer for this purpose. Further, the Act empowers the Director to prepare, institute and conduct any preliminary examination before a Magistrate or to take over and conduct any proceedings for a summary offence or for an indictable offence tried summarily or on behalf of the Crown to assist the Coroner or to instruct Counsel assisting the Coroner in any inquest.

I envisage that I will become thus involved in substantial committal proceedings and in inquests where there is an element of public interest and in summary trials where public interest requires the involvement of an independent prosecuting authority. The Act also empowers the Director to furnish guidelines to Prosecutors for the Queen, to members of the Police Force and to other persons with respect to the prosecution of offences, such guidelines to be published in the Government Gazette for the purposes of public perusal and provision is made to ensure the cooperation of the Chief Commissioner of Police and individual police officers with the Director concerning matters the Director has decided to take over and prosecute. The independence of the Director is further guaranteed by the provision in the Act for the making by him of an annual report to Parliament. Because the Act charges me with the overall responsibility for the conduct of Crown proceedings in the superior courts I will be closely involved with the Prosecutors for the Queen and the Bar generally. Furthermore, the staff of what has hitherto been known as the Criminal Law Branch will become my staff. I have appointed Mr. John M. Buckley, to be Solicitor for the Director of Public Prosecutions. Mr. Buckley was previously Officer-in-Charge of the Criminal Law Branch.

On my appointment I found the Criminal Law Branch to be in a far from satisfactory state despite the strong efforts of the Officer-In-Charge. Morale there was very low, brought about by a combination of Dickensian working conditions, inadequate staff numbers and equipment, lack of opportunities for promotion and an administrative arrangement which each day placed up to twelve experienced preparation officers unnecessarily instructing in their own cases in court. This last practice reduced the actual numbers preparing cases for the County Court at Melbourne to 18 to 20 people each day while a backlog of hundreds of unprepared cases existed.

I have moved as quickly as possible to redress this situation. An additional ten legal officers have been appointed and will start work in the next week. The practice of preparation officers instructing in their cases will become the exception rather than the rule and the new legal officers will take over the instructing duties in the courts.

The Attorney-General has approved the employment of an additional 37 people comprising legal officers, administrative officers, clerical assistants and stenographers. These appointments now await Treasury and Cabinet approval. The Attorney-General has also approved in principle, the installation of an appropriate micro-computer to register and monitor files. The effect of these proposed additions to the staff will be to double the number of preparation officers in the Melbourne County Court section and to provide a corps of 14 qualified instructors. There will also be additions to other sections. The Melbourne County Court section had previously been organised into four teams of ten and I propose to change this organisation to eight teams of five and one team of six. Each team will have built into it promotional opportunities and the result will be a considerable expansion of the promotional opportunities within the Branch. Each team will have a clerical assistant to do the work of photocopying and filing and an attached stenographer. The response to these initiatives by members of my staff has been quite remarkable. Already, without a single addition to their ranks they have reduced the backlog of cases to the lowest figure since April, 1978. For far too long the Criminal Law Branch as it has been known was regarded from both inside and outside as the backwater of the Law Department. This notion is already obsolete. My staff have already recovered their professional pride and spirit and as far as I am concerned they will become the elite branch of the Law Department. It will be a mark of distinction to have worked there.

But additions to staff and alterations to procedures will not solve the very grave problems which beset us in the criminal justice system. There is the problem of delay which has existed for as long as I can remember and there is the associated problem of the inordinately long backlog of unresolved cases. The main causes of delay and the consequential backlog are as follows. First, apart from the requirement that the police must bring a person charged before a Justice as soon as practicable, and the time limits which apply to certain events in the course of prosecution of sexual offences and the time limits relating to notices of appeal and alibi notices there are just no other time frames for the performance of work to be done in the criminal justice system. In my view this has led to a general lack of a sense of urgency on behalf of both prosecution and defence. Secondly, there has been no person or persons with sufficient authority to control pending criminal proceedings with a view to preventing delay.

Consequently, I found that in 1980 (the last year for which figures are available, so I am told) the average delay between the laying of indictable informations by the police and the subsequent preliminary enquiry or inquest was 5 – 6 months. Many people remain in custody during this time. I am confident things have not significantly improved since that date. My enquiries at the Criminal Law Branch show that delays of up to four years have occured after the committal papers have been received at that Branch. In my opinion we should be looking as a matter of urgency at the notion of magisterial and judicial control of pending proceedings in both the courts of first instance and in the superior courts.

It is of interest in this connection to see what has been happening in other jurisdictions. At the Old Bailey there exists pursuant to rules made by the Judges of the Crown Court a system of summonses for practice directions in criminal cases. Similar systems exist in a number of American and Canadian jurisdictions. As I understand it, these English rules result from some excellent work by the English Criminal Bar Association and this work has recently been reviewed by a Working Party on the Criminal Trial headed by Lord Justice Watkins. At the Old Bailey a pending criminal case can be listed for practice directions by the court either at the instance of one of the parties or by the court of its own volition. At such hearings the legal representatives of the parties are expected to be able to inform the court among other things, of the pleas to be tendered on trial, of the prosecution witnesses to be called including witnesses additional to those called at the preliminary enquiry, of witnesses known to the prosecution who will not be called by it but be made available to the defence, of facts which can be and are admitted and of any point of law which might arise at the trial including any questions of the sufficiency of the presentment, the admissibility of evidence, and any other significant matter which might affect the proper and convenient trial of the case. At such practice directions hearings the Judge may hear and rule upon any matters of law involved in the proposed trial and he is empowered to make such order or orders as appear to him to be necessary to secure the proper and efficient trial of the case. If the accused indicates he is prepared to plead guilty the matter is immediately prepared as a plea of guilty and no time is wasted preparing it as a trial. The Judges at the Old Bailey are able to make these directions because under the court rules the presentment must be issued and filed in the court within one month of the commital for trial unless the court otherwise gives leave. Similarly, these Rules provide for the trial of the case to take place within a further 8 weeks after the filing of a presentment unless the court gives leave for a later date. Although these requirements are not usually achieved at the Old Bailey and the court invariably gives leave to permit the later performance of the necessary actions the system is still immeasurably better than ours.

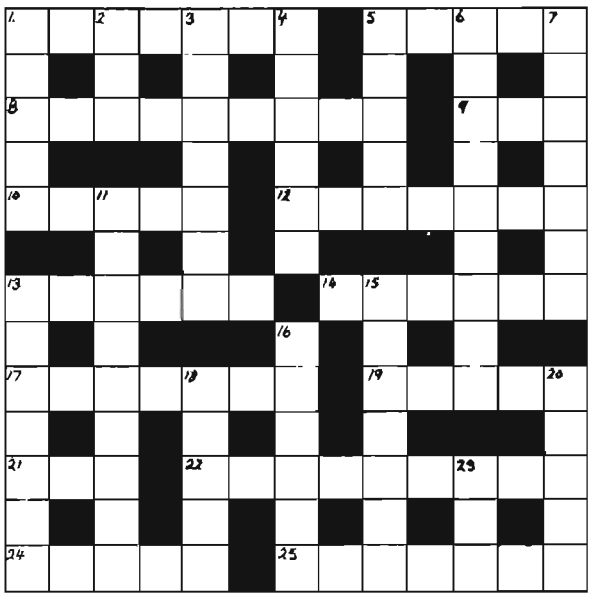
I am in favour of amendments to the Crimes Act and the introduction of rules of court which would require the making of presentment by the Crown within a practical time frame from the date of committal unless the courts give leave and for the trial of accused persons to commence within a further practical time frame from the making of presentment unless the courts give leave. I can see no reason why, in principle, something commensurate with the standard which is presently achieved in sexual offences cases cannot be a standard which is capable of achievement in the majority of cases.

Just as the Judges need to be invested with powers to give them effective control over pending criminal proceedings so also do Magistrates. Magistrates should be able to resolve pre-committal issues such as the use of the hand-up brief system, the number and identity of witnesses to be called and extent of disclosure to be made by the Police to the defendant. I have in mind pre-committal hearings at which all parties can be heard to achieve this.

In my view we should strive for a combination of continuous and effective magisterial and judicial control over pending criminal proceedings together with a prosecution prepartion system which produces among other things the expeditious making of presentment and disclosure by the Crown in the superior courts after committal. Full disclosure should be made unless substantial considerations of public policy suggest otherwise in the individual case. Only thus will we see eradication of the defects in our criminal justice system which have blighted it for so long. If we as a profession do not move to put our own house in order it may be that the pressure of public opinion will force others to do it for us. They may not do it in a way we would find satisfactory. I have spoken of the proposals I have set out in this paper to members of the Law Institute, the Criminal Bar Association, the Magistracy and the Benches of the County Court and the Supreme Court. I believe the overwhelming majority of these people view them favourably and I hope the Bar will do likewise.

JOHN H. PHILLIPS QC

CAPTAIN'S CRYPTIC
No. 44



ACROSS:

1. Application made without the opposition (2,5)
2. In the Country (5)
8. Strong judge for Drinkers (5,4)
9. Government's cut on a tank (1,1,1)
10. Sailing boat (5)
12. Passer of forgery (7)
13. Seats of the professors (6)
14. Transfer property (6)
17. Asserts unproven fact (7)
19. Indian melodies (5)
21. Number for a backward fish gatherer (4)
22. Abolished, Property Law Act s. 51 (1) (9)
24. Possessory rights over others' property (5)
25. News of rises or falls at sea (7)

DOWN:

1. Exercise a legal right (5)
2. Stuff with superfluity (3)
3. Go back in (7)
4. Offspring are the yearly profits (6)
5. Hand back (5)
6. Setting aside a judgment on appeal (9)
7. A general church council (7)
11. Objection to a juror (9)
13. Property other than freehold (7)
15. Bombarded (7)
16. Carry away, as a larcener would (6)
18. Gratuitous grants (5)
20. Locates (5)
23. An age of the universe (3)

Solution to Captain's Cryptic No. 44 on page 35.

COMMUNITY SERVICE ORDERS

The Penalties and Sentences Act (1981) (No. 9554) establishes a new system whereby a convicted offender may be directed to perform unpaid part-time work in lieu of the normal forms of punishment. The Act expressly preserves the power to order costs or damages against a convicted person and the power to order disqualification or suspension of licence in addition to making the Community Service Order (Section 22). The Legislation came into force on 1st September 1981, but it was not until September 1982 that the scheme was implemented on a pilot basis for offenders resident in certain municipalities. These areas are, broadly speaking, the suburbs of Caulfield, Brighton, Malvern, Oakleigh, Moorabbin, Sandringham and Mordialloc.

Section 15 empowers any Court to make a Community Service Order wherever the offender is convicted of an offence punishable by imprisonment (except treason or murder), but not where he is serving a custodial sentence or is in custody awaiting trial for some other offence or is on parole (Section 23)

Although the Legislative mandate for this course is doubtful, it seems that the Court has made a Community Service Order in default of payment of a fine, thereby giving the offender the option of two courses of expiating his offence Likewise, where an offender has been sentenced to payment of a fine in default imprisonment, the Act has been construed to enable him to apply for a Community Service Order in lieu of the sentence previously imposed.

The conditions which must be fulfilled before a Court may make a Community Service Order are threefold –

- the offender consents.
- the Director-General of Community Welfare Services has advised that arrangements exist for the implementation of the Order in the area in which the offender resides.
- the offender is a suitable person to perform work under the Order (Section 17)

The appropriate procedure for obtaining a Community Service Order for a client would be the following –

(a) Preliminary inquiry might be made of the Department before or after a conviction has been recorded. An Officer of the Department will give the legal representative of an accused person a general idea as to whether his client satisfies the requirements of the scheme. This is of course, a very preliminary inquiry. More formal examination and assessment of a Defendant could be sought pursuant to Regulation 15 (3) of the Penalties and Sentences (Community Service Order) Regulations 1982.

(b) Following conviction by a Court the Court may request an assessment of an offender if it is persuaded that a Community Service Order may be appropriate. Thereupon the representative of the Department will come to court, interview the offender, the police and any other persons who are available and report to the Court whether in his opinion the offender is a suitable person to perform work under an Order.

(c) Following that report the Court may make an Order specifying the number of hours which are to be served pursuant to the order

It is important for Counsel to be aware of the matters which the officers of the Department take into account in determining the suitability of an offender under the scheme As a matter of practice, the following factors are considered by the Department to be significant ·

- That the offender is a willing consenter to participation in the Scheme rather than being an unwilling or "ambivalent" consenter. Evidence of motivation to perform the community work over and above that of token consent is required.

- That the offender demonstrates some degree of stability in his personal and social situation. This stability includes having a fixed personal addres and being unlikely to change address in the near future. The offender's situation should not be beset by crises which would render him unlikely to perform the hours of work and comply with arrangements

* That the offender demonstrates capacity to perform community service work. The capacity includes a required degree of intelligence; evidence of previous reliability in performing some form of work (e.g., present employment; previous employment; work with a community group; possession of specific practical skills which may be relevant to community service); sufficient time to undertake work without endangering employment and essential family responsibilities. Being employed is not a pre-requisite for suitability – it is anticipated that a significant proportion of persons on the Scheme will be unemployed.
* That the offender is not –
  (a) highly disturbed and/or has a recent or severe history of mental illness;
  (b) heavily dependant on drugs including alcohol;
  (c) a person who has committed a serious sexual offence or an offence involving extreme violence.
* That the offender is assessed as having the capacity to act responsibly when he feels inclined and the circumstances allow.

Community Service Orders have been found to be of value for offenders who possess a history of custodial or non-custodial sentences which have proved ineffective. This is especially the case where there is some indication to point to a change in motivation e.g. a recent stable personal relationship; taking up employment.

Community Service Orders are often relevant to the under-achiever, the individual who feels no purpose or who feels a lack of status and satisfaction. Performing valued work may assist those with low self-esteem and who lack confidence.

Other factors which are considered include the person's medical condition, usual use of leisure time, access to transport, abilities and skills and the availability of work projects preferably in areas which offenders can recognise as their own community.

When an Order is made against an offender the supervision of its implementation is entrusted to a Magistrates Court in the area where he lives – S.20. Furthermore, he is by virtue of S. 27, placed in the legal custody of the Director General or an officer authorised by him during the hours of service specified in the Order. Finally, while performing the work, the offender is obliged to comply with the reasonable direction of the person authorised to give such direction: S. 26 (1)

Section 26 provides that the work is to be performed at a hospital, educational or charitable institution, at the home of any old, infirmed or handicapped person or an institution for such persons or on Crown land. By the order, the Court may direct that the offender serve not less than 20 hours and not more than 360 hours work under the scheme. The work in normal circumstances should be completed within 12 months and at a rate not exceeding 20 hours per week.

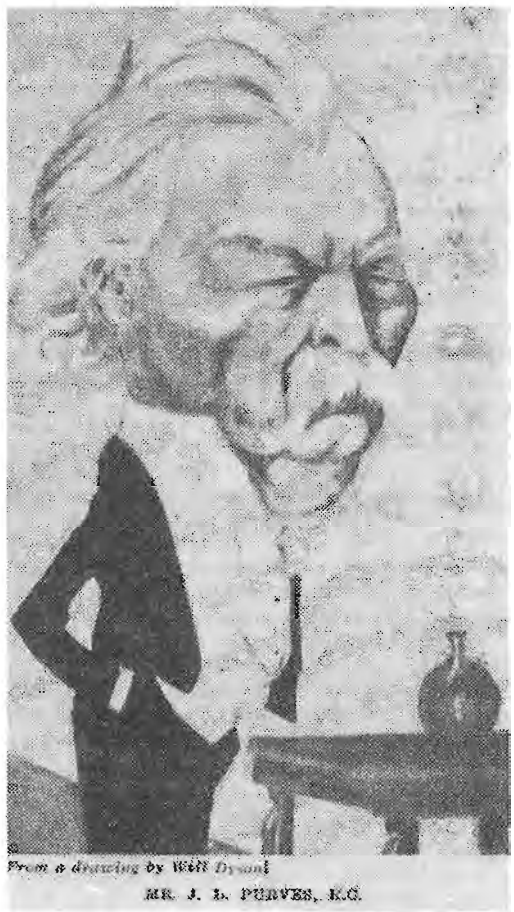
The Community Order Service Scheme has obvious advantages over the alternatives presently available. It is considerably cheaper for the community than imprisonment or attendence at attendence centres. It has the possibility of great benefit for the offender himself. Furthermore, the offender can continue to maintain his normal employment and support his family at the same time as he is serving his sentence.

The Programme has been in operation for less than 12 months on a pilot scheme basis. A total of 46 Orders have been made up to the end of May 1983 and 15 workers have completed their required number of hours. The average age of workers is 26 years. Of those who have received a Community Service Order approximately half are unemployed. There are now seven females on the scheme. The current average length of sentence is 135 hours. The scheme caters for offenders of all types – persons convicted of driving while disqualified, persons convicted of theft and burglary and older women convicted of shoplifting.

Further information may be obtained from Mr. John Mero or Mr. Stephen Kerr of the Department of Community Welfare Services, Southern Regional Centre, 1001 Nepean Highway, Moorabbin 3089 – Telephone 553 0711.

"THE GREAT Q.C."

PURVES 1843 - 1910



From a drawing by Will Dyson

MR. J. L. PURVES, K.C.

When in his poem "A Dream of Fair Judges" Sir Frank Gavan Duffy posed the question – "Prithee friend, how fares the great Q.C.?", those words alone were sufficient to identify immediately J.L. Purves Q.C., described by Sir Arthur Dean as "undoubtedly the greatest advocate the Victorian Bar has produced"

James Liddell Purves was born in 1843 in Swanston Street, Melbourne. His father, a migrant from Berwick-upon-Tweed, was an importer, racehorse breeder and owner of the station Toolgaroop near Western Port. After attending the Diocesan Grammar School, Purves, at the ripe age of twelve, was sent to Europe to complete his education. With remarkable precocity he wrote a diary of the voyage which was published the following year in England. Thereafter Purves studied at King's College School, London, at Trinity College, Cambridge and on the continent. He then read law at Lincoln's Inn to be admitted to the English Bar in 1865, and upon his return to Melbourne the following year was admitted to the Victorian Bar.

For the first six years work came slowly, but Purves' great charm and powerful personality, his fluent and brilliant tongue, and his great skill as a cross-examiner, (not to mention his gifts as an actor) assured him of ultimate success. Beginning in 1871 with the defence of a client accused of stealing a fortune in gold coin, a series of spectacular cases brought him into the limelight, a position Purves never thereafter relinquished. His forensic triumphs were many and in 1886 he took silk and for a number of years was Leader of the Bar. In particular in the 1890's Purves successfully defended "the Age" in some notable libel cases, one of which **Speight** v. **Syme** occupied some 98 days with a further lengthy appeal. (21 VLR 672)

For his results Purves depended but little on a knowledge of the law, freely conceding he was no great lawyer, but as a jury advocate he was superb. He was quick to grasp facts and especially the complexities of technical evidence, leading a colleague to remark somewhat acidly that Purves was "a master of all trades and deficient only in law". As a cross-examiner he was persistent and skilful,swift to bring out any hostility in a witness, and frequently had the Jury laughing with him. So profound was his knowledge of human nature, he seemed instinctively to sense to the correct way to tackle any witness.

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On one occasion, for example, when a young business man in a passing-off action gave his evidence clearly and well and then stood waiting with chest out to be cross examined on his story, Purves began somewhat unnervingly simply by looking him up and down for some seconds.

Purves: Young man, do you belong to a debating society?

Witness: (Nervously) Yes.

Purves: I thought so . . . (looking around the Court as if he had obtained the admission of a serious crime) and I'll be bound that you are the President!

Witness: (Utterly deflated) Yes.

After that the witness seemed unable to defend himself and cut a sorry figure. Purves had had no information concerning the witness, but instinctively "picked the type". Without necessarily being able to show the witness was untruthful, a situation had been created in which the Jury would at least regard his evidence as of little weight, if not positively suspect.

In another action brought by an elderly lady against a medical practitioner, who had written a letter to a third person describing her as "mentally affected", the Defendant (who inter alia relied on the defence that the libel was true) called as a witness a well-known expert in mental diseases. A previous witness had sworn that on one occasion when the Plaintiff had been slightly irritated, he had actually seen the hair on her head rise. The expert testified that not only was this possible, but that it was a symptom of insanity.

Purves in cross-examination had a field-day, finally leading the expert to claim that he knew of a case where a woman's hair, which was about twelve inches long, not merely rose slightly from her scalp, but was fully extended from it in all directions, remaining unchanged in that position for some seven days and nights.

When Purves finally asked "How on earth did she sleep?" the witness's reply was drowned out by the laughter in Court. By this time the Jury must have begun to suspect the sanity of the expert himself. On this occasion Purves's final address was so powerful and eloquent that all who heard him were convinced he really meant what he was saying. Needless to add the Jury awarded the Plaintiff very substantial damages.

Purves was some six feet in height and though of massive build always stood very erect. His personality was magnetic, his manner "dare-devil", and his deep, gruff, but sonorous voice and flashing eye could readily strike terror in the heart of a lying witness. He knew all the tricks – when to attack vigorously, when to flatter, when to wheedle, and when he could bully a witness without losing the sympathy of the Jury. He could also tease or infuriate a witness until the witness lost his head, and without giving the Judge any opportunity to cut in and prevent him, even though the Judge might be well aware of the tactics employed.

On one such occasion, when briefed for the Defendant Executors in a disputed will case, Purves did little to tackle the daughter and niece of the deceased testatrix when they asserted at length their love and kindness to the deceased, but he subtly teased them encouraging them to become ruder and ruder to him. The Judge, who had failed to follow the drift of the cross-examination, was, however, much impressed when in final address Purves said "You see the way these women have treated me here in open court. How do you think they behaved to the old mother at home?"

Sometimes Purves himself was on the receiving end, and, in one instance, when a witness in an aside complained of him, he promptly appealed to the trial judge Sir Thomas A'Beckett – "Did Your Honour hear what the witness said?" His Honour shook his head in denial, apparently looking vaguely into space and demonstrating little interest. "Well, Your Honour, he mumbled something to the effect that I was a rude, bullying barrister."

"Is this true, witness?" asked Sir Thomas, adopting a severe tone.

"Did you – er – mumble something to that effect about Mr. Purves?"

The witness admitted he had and added, with some warmth, that the remark had, in his opinion, been justified.

"Well" said the Judge "You mustn't mumble, witness. You really must not – mumble".

But Purves was well able to take a joke against himself and though apt to be quick tempered, had a great sense of humour. Sometimes he tilted at people in Court merely for the fun of it and could make a butt of anybody, even the Judge or Jury. One particular butt was the serious, unworldly, and somewhat emotional Mr. Justice Hodges, whom out of court was invariably referred to by Purves as "His Holiness". It was before "His Holiness" that Purves

called as a witness the Madame of a well known Melbourne establishment who, when she was asked her name and address, coyly replied "Oh, Mr. Purves, you know my address".
"Yes" said Purves, quite unabashed, "But my learned junior wants to know and His Honour..." (then, after a pregnant pause) "... Well, it is necessary for His Honour to have it down on his notes."

Although Purves could set people laughing in Court simply for the sake of merriment, far more often he had a deliberate objective, as for example, when an opposing witness had given some deadly evidence, the weight of which might quickly be reduced by appropriate and diverting humour. It was little wonder Purves soon became recognised as the outstanding Jury advocate of his day and in any Jury action of consequence was invariably briefed on one side or the other. Whenever he appeared in a case of any importance, members of the junior bar flocked to hear the master in action. As a senior junior he attracted a string of readers, the greatest of whom was Walter Coldham. Later the two formed a formidable forensic combination, Coldham being not only an outstanding advocate but also a first class lawyer.

Above all Purves fully realised that a great jury advocate is a great showman who should hold and maintain the attention of the Jury throughout the trial. Not surprisingly his eminence was recognised by a string of retainers from such bodies as the Victorian Railways, the V.R.C. and V.A.T.C., and a host of other public and private institutions.

One of Purves's great triumphs was the acquittal of a good-looking wife charged with wounding her husband with intent to murder him. The details of the trial have been well described at some length by the late Philip Jacobs in his "Famous Australian Trials". The Crown case was that the accused, who was on bad terms with her husband, walked up to him in the street, pointed the gun at his head and deliberately shot him.

Much atmosphere was engendered by Purves in his cross-examination of the husband, which alleged ill-treatment and, at the relevant moment, an imputation of unchastity. In her unsworn statement the Accused said that:

> "the day I met him in the street he said such dreadful things that it made me cry, and when I pulled my handkerchief out of my pocket to dry my eyes, a pistol, that I had got tangled in it, accidentally exploded. That's all I know about the shooting."

In his final address, which appears to have accurately anticipated the statement of the appropriate law by Crockett J. in **Haywood's Case** (1971) VR 755, Purves submitted that a series of acts on the husband's part and culminating with the final allegation of unchastity, led to an irresistible impulse in which the Accused's mind did not control her actions and that the Jury could therefore only convict her of unlawfully wounding. He also raised the defence that the shooting might have been accidental.

It was the alternative defence in particular which led to some ironical comments from the learned trial Judge, Sir Thomas A'Beckett. "Counsel has raised the defence that the whole thing was an accident. What do you think about it gentlemen?" he said "Accidentally, the accused had a revolver in her possession. Accidentally, it was loaded. Accidentally, she presented it at her husband. Accidentally, it went off. And accidentally, the bullet entered his head. All an accident, gentlemen." Sir Thomas added that "a good wife was not allowed the privilege of shooting a bad husband."

When to the Judge's disgust, the Jury acquitted the Accused, he asked the foreman "On what ground. On the ground of insanity?"
"No, Your Honour" replied the foreman, "On the ground of accident.".
I congratulate you, gentlemen," said Sir Thomas scathingly, "You have exceeded even the most sanguine anticipations of the prisoner's own Counsel. The prisoner is discharged."

In an era when most of the more prominent members of the Bar were also active in politics, in 1872 Purves became Member of the Legislative Assembly for Mornington as a free trader and constitutionalist, a set which he held until 1880. Thereafter his chief political activities were conducted within the Australian Natives Association, where he gained the nickname "The Emperor". An ardent nationalist with a consuming vision of Australia's future, he considered Australia's greatness would lie either in complete independence or within a renewed British Empire. In the A.N.A. Purves was a noted orator and President in 1888-90. It was in that capacity he coined the famous words "We will fight to the last man and the last shilling", an expression later used and immortalised by Prime Minister Andrew Fisher during the 1914-18 War.

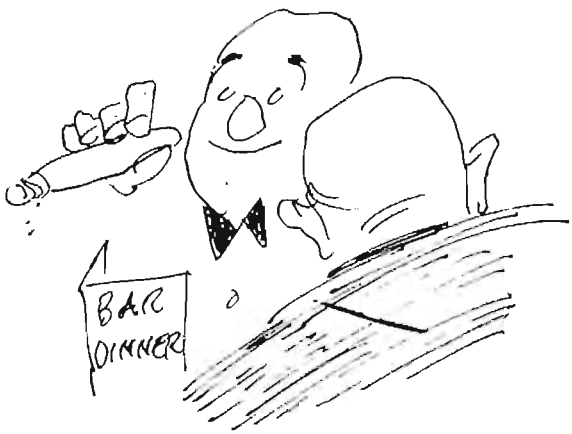
Purves did much to encourage federal union, but, to his considerable disappointment, was unsuccessful in his attempt to become a member of the Federal Convention.

Purves was also a talented sportsman and with Walter Coldham was first doubles pair in the Mosspenoch tennis team, which won the first Victorian Clubs premiership. He was a noted rifle shot, and for a number of years captained the Bar Cricket XI in its annual matches against the Army. He was also the owner of a string of top race horses.

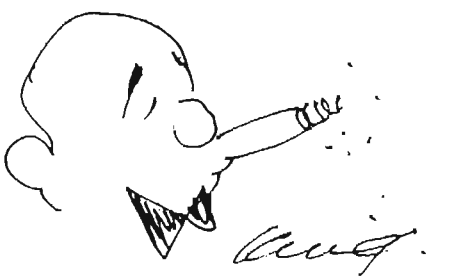
"The great Q.C." was never destined for the Bench, but continued in harness until a few days before his death at his home in Rockley Road, South Yarra, in November 1910. His passing was widely mourned by the Bar, of which he had, for so long, proved a most colourful and talented leader. Chief Justice Sir John Madden took the unusual step of paying a tribute to him in Court on behalf of all the Judges. "I feel it desirable" he said "to express our extreme regret at the loss which the community, and more especially these courts, have sustained by the death of a gentleman who has been a most distinguished and brilliant ornament to the community".

FRANCIS. Q.C.

The author acknowledges his indebtedness to P.A. Jacobs' Famous Australian Trials for much material for this article.



"Y'KNOW . . . WHEN I WAS A JUNIOR . . ."



"I'D HAVE BEEN SCARED TO APPEAR BEFORE ME !!"

For Readers who are disappointed not to find a Misleading Case Note in this edition of **Bar News** we provide the real thing. The following is a transcript of proceedings before His Honour Judge Cross at Cowra on 8th March 1973.

REGINA
v.
DAVID ALLAN LAUNDESS

His Honour:

It has been said that Revenge is a kind of wild Justice. And though the Courts may not approve the infliction of deliberate injury, still one's heart goes out in sympathy to all those who are moved to violence in defence of their family. Circumstances which understandably give rise to a degree of passion may properly be regarded as mitigating factors on the question of sentence for violent conduct.

In the present case Mr. Laundess had been happily married for seven years and has four small sons. The evidence reveals that about a week before 18th February, 1973, his wife informed him that she wanted him to leave the home in Grenfell as she no longer loved him. The surprised Mr. Laundess asked if there was another man. No, lied the wife, she had merely fallen out of love with him. In an understandably bewildered state Mr. Laundess was shortly afterwards informed by a friend that a local milkman name Keys had been carrying on with his wife. Mr. Laundess sought out Keys, who admitted it. Mr. Laundess then confronted his wife with this information, whereupon she confessed her past misconduct with the milkman, said she was madly in love with the milkman, could not live without him, etc. etc. She told Mr. Laundess that he would have to leave home, and he subsequently found his bags had been packed for him. He was understandably confused. Of course, he could have ordered his wife out of the house; but there were four small sons in need of a mother's care. Considerations such as these, added to an understandable bewilderment and confusion led him to accept his wife's direction and he moved out.

He felt, of course, some sense of injustice. He approached Keys and complained of the milkman's intrusion into his marriage. He pointed out the possible disadvantage to the children, and he asked Keys if Keys was really going to take on all the responsibilities that the wife was asking him, Mr. Laundess, to abandon. Keys replied that he would give the situation a week's trial and let Mr. Laundess know!

This statement by Keys that he would take the wife for a week, apparently on appro., no doubt deepened the husband's gloom. He felt that he – at least he – was getting the wrong end of the stick. He brooded over a few drinks with his brother on the night of 17th February. Thoughts turned to resolve and resolution to action; and about 3 a.m. on 18th February Mr. Laundess and his brother arrived at the matrimonial home. They entered the house and Mr. Laundess entered the bedroom. He found the wife and the milkman both naked in bed together. In Mr. Laundess's own words, "I lifted him up and got into him". When he finished getting into the milkman, Mr. Laundess told him to get out. The milkman raised a minor objection to appearing in the Grenfell streets at night totally unclad. The husband, becoming irritated at the thought of the milkman's sense of propriety being offended by these sartorial or thermometric considerations, happened to notice a rifle on the top of the wardrobe which he remembered was loaded, perhaps not inappropriately, with rat-shot. He grabbed the rifle and urged the milkman to leave. The milkman had by then donned some clothes and commenced to move off across the front lawn.

All this time, the wife – as some wives tend to do in these situations – had remained noticeably audible. She had put on a dressing gown and now announced her intention of leaving with the milkman. At this stage the husband, becoming even more irritated at the slow rate of the milkman's departure, at his wife's wailings and at her pursuit of the milkman, decided to fire some rat-shot at or near the milkman's feet to speed him on his way. At that very moment, however, the wife had run up near the milkman; and perhaps by another piece of wild justice (and partly due to the husband's inexperience at shooting from the hip) the pellets hit the wife's legs and not the milkman's. This development did not cause the wife to fall silent. The husband's brother took the rifle from him. The milkman helped the wife into his milk truck which was parked outside and, getting his priorities into an order that may not have instinctively occurred to all persons, drove first to the police station to demand that the

husband be charged and only then to the hospital, where the devoted surgical staff removed eight pellets from the skin of the wife's lower legs before allowing her to leave. Since that night the wife's mother has visited her in Grenfell: I am informed that there is some possibility that the wife with the children may move to the mother's home at Katoomba; and there is a suggestion that the milkman's ardour has cooled.

The current of these dramatic events carried the husband before the Court of Petty Sessions at Cowra on two charges – one, a summary charge of assault on the milkman and the second, an indictable charge of "malicious" wounding of the wife.

On the summary charge the learned Magistrate felt that an appropriate penalty for the husband assaulting, i.e. punching the milkman was one month's imprisonment with hard labour. The affair between the wife and the milkman had been carried on for some time before the husband knew of it. The husband was acting as father, husband and provider while the milkman was clandestinely the wife's lover. When spoken to by the husband the milkman replied in terms which were on any analysis contemptuous of the husband and indeed contemptuous of the wife. It appears to me that if a man elects to intrude into another's marriage, putting the welfare of the children as well as that marriage at peril, he must expect as a natural hazard, at least the possibility of getting a hiding from the husband. On any realistic basis this milkman appeared to have asked for what he got. In my opinion the circumstances surrounding this assault on the milkman are such as to reduce its seriousness below the level which attracts a prison sentence, even one to the rising of the Court.

In lieu of the learned Magistrate's penalty you are fined the sum of twenty cents which you must pay to the Clerk of Petty Sesions, Cowra, within seven days; otherwise imprisonment with hard labour for twenty-four hours. I make formal orders disposing of the appeal accordingly. I make no order as the costs of the appeal.

As to the shooting, it must be said that rat-shot from a .22 rifle from some distance away is scarcely lethal. There was clearly no intention to do serious injury to any person nor was any serious injury done. The incident occurred at a time when your mind was cursed by domestic affliction. And it must also be remembered that it was the milkman and your wife who created this explosive situation which you in an understandable excitement merely detonated. You do not present any threat to society; you are conceded by the police to be an honest and hard worker; and you have already spent fourteen days in Bathurst Gaol as the result of the Magistrate's order. Compassion blends with responsibility inducing me to defer passing sentence on you entering into a recognizance yourself in the sum of $400 to be of good behaviour for a period of two years and to be liable to be called up at any time for sentence for any breach committed within that period. That recognizance may be taken before a Magistrate.

AFTER ADELAIDE: CONSTITUTIONAL LAW REFORM REVISITED.

TO CONSTITUTIONAL ANGELS

When Sir Ninian Stephen launched the interesting new book **'Australia's Constitution: Time For Change?"** by John McMillan, Gareth Evans and Haddon Storey, he drew a sharply worded rebuke from Melbourne Professors of Politics, S. R. Davis and D.A. Kemp. Many verbal champions sprang to the defence of the Governor-General. But the professorial correspondence indicates the controversy that attends discussion in Australia of constitutional reform. It is, after all, about power. And therefore it is controversial. Treading where constitutional angels might avoid, I want to suggest that the time has come for careful reassessment of Australia's machinery for constitutional law reform. In fact, the closing paragraph of the new book points the way:

> The way of the constitutional reformer is always going to be hard in Australia, but it should not prove impossible if the task is tackled with the right machinery, in the right spirit of co-operation and with the right degree of optimism.

Many Australians were rather depressed about the recent Constitutional Convention in Adelaide. True it is, some achievements were made. But the degree of politicisation, doubtless aggravated by a number of circumstances current in Federal/State attention, conspired to make the reports from Adelaide depressing for people waiting for the signs of the 'the right spirit of co-operation and the right degree of optimism'. Another politics professor, Don Aitkin, writing in the **Canberra Times** drew two conclusions which seem sensible:

> First, take a lesson from Adelaide. Competing politicians are not the stuff of which consensus is made. If there are to be further Constitutional Conventions, make sure they are not dominated by politicians.
>
> Second, avoid the besetting sin of Australian politics – trying to rush things through while the power is available. People need time to think about difficult questions. If they don't get the time, they are propably more likely to to oppose a change than to support it.

To these conclusions one can probably add the sensible paragraph in the otherwise querulous letter of Professors Davis and Kemp. Boringly enough, for the bright-eyed constitutional reformers, it must be acknowledged that there is no significant movement for **fundamental** change of Australia's Constitution. Short of a national catastrophe, it is unlikely that such a movement will gather a head of steam in the forseeable future. The grand vision of a totally revamped Australian Constitution by 1988 seems almost certainly outside the reformer's grasp. He would probably be better advised to concentrate his energies at the margin: proceeding in stages, educating our people in the process of orderly, democratic constitutional reform. Not for nothing did Professor Geoffrey Sawer call Australia, constitutionally speaking, the 'frozen continent'.

Assuming, as seems sensible after the better part of a century, that some readjustment of the Constitution is necessary, and assuming that a preferred methodology involves the democratic rather than the judicial path, what is the 'right machinery' to which McMillan, Evans and Storey refer in the last paragraph of their book?

A POPULAR ASSEMBLY?

Various possibilities are now being offered to assist and stimulate the process of constitutional reform in Australia:

- The use of parliamentary committees, despite their inevitable factionalism on issues of power.
- Persisting with the Constitutional Convention, despite the relatively low achievements and the disappointments of late.
- Grafting on to the Constitutional Convention a series of popularly elected non-political representatives.
- Developing a new institution that can search for the consensus and for a program of action, before submitting proposals and priorities to the bracing air of political controversy.

The first two possibilities I put to one side, although more in sorrow than in anger. The third possibility (grafting a proportion of non politicians on to the Convention) I doubt:

- It would be expensive to arrange the election.
- People who run for election by popular vote would tend to be would-be politicians and possibly

failed or rejected politicians.

* Parties, perhaps naturally, would tend to run 'tickets', thereby politicising the non political.
* Many of the best potential candidates would not or could not offer themselves for election.
* The whole system tends to diminish the authority of the parliamentary process and to undermine the legitimate popular element for constitutional change which already exists in the amendment provisions of s 128 of the Australian Constitution.
* Because elected politicians of different parties would continue to outnumber the non-politicians and, because of their experience in the parliamentary forum, it is likely that they would continue to dominate the Convention, introducing into it politics and factions, so well beloved of Australian politicians and of the media that at once lives off and generates the politics of division.

For these and other reasons, I do not favour the third proposal, although I acknowledge the high motives and idealism that have led to the suggestion. Unsurprisingly, the proposal was rejected by the recent Adelaide Convention.

AN INDEPENDENT COMMISSION?

The best chance of success for constitutional renewal would appear to lie in a more low-key approach. At least in the first instance, this would get the issues of constitutional reform away from factional politics. It is perhaps notable that the major constitutional changes achieved in OECD countries in recent years (in Sweden in 1975 and in Canada in 1978) were achieved not through parliamentary committees, nor through political conventions, nor through popular assemblies, but through independent commissions. Not to labour the point, what we need is a national constitutional law reform commission. It is needed not to exclude government and parliamentary initiatives, nor even to exclude the newly suggested possibility of popular initiatives, but as a routine, more low-key institutional endeavour to search for matters upon which agreement can be secured by an orderly process of consultation, debate and consensus. Such a commission could also participate in the process of constitutional education. If it could build up a track record of success, it could venture upon increasingly larger projects. I know this is depressing news to the Jacksonian popular democrats. But the fact is that bureaucratic machinery of this kind probably offers the best hope of securing an orderly program of constitutional reform through the democratic process. The Constitution is, after all, simply another law.

True it is, a special law, hoped to be stable and specially difficult to change. But the techniques that are now being developed throughout the English-speaking world for law reform generally, through independent, multidisciplinary law reform commissions, are techniques with relevancy to the process of constitutional law reform as well.

NEED WE BE DEPRESSED?

The batting average for democratic constitutional change in Australia makes sobering reading. Of 36 Referenda questions so far put to the people, eight only have succeeded. The lesson of the eight is perhaps more important than the lesson of the failed 28. But some comfort can be taken from the results of the successful Referendum in 1977:

* Three of the four proposals put in that year succeeded.
* The three that succeeded were on topics less controversial than the one that failed.
* Even the one that failed (simultaneous elections) carried three States and had a majority of 62% in the electorate.

The 1977 experience suggests that Australians can discriminate in Referenda questions. Perhaps they need more opportunities to build up a track record of orderly constitutional reform. Thirdly six opportunities in 82 years is scarcely a flood of lost chances. A record of success in our nay-saying country might overcome the phenomenon of psychological hesitation about the Referendum process. But to succeed, a new, improved instrument for development constitutional reform proposals seems to be needed. After Adelaide, many are doubting the value of Constitutional Conventions – at least as presently organised.

The book, **Australia's Constitution: Time for Change?,** is in the 'best seller lists' – not normally the fate of books on such a sober topic. Perhaps this fact says something about the mood of the time. But the great thaw in the constitutionally frozen continent seems a long way off.

The Hon. Mr. Justice M.D. Kirby CMG.
Chairman of the
Australian Law Reform Commission.

LAWYERS' BOOKSHELF

AUSTRALIA'S CONSTITUTION: TIME FOR CHANGE?

by John McMillan, Gareth Evans and Haddon Storey QC;
George Allen and Unwin Australia 1983; xv and 422 pages; hardback $19.95, paperback $9.95

Gareth Evans and Haddon Storey, familiar figures to members of the Victorian Bar, have joined with John McMillan, a lecturer at the University of New South Wales to produce this topical work. The book followed a proposal of Senator Evans, then Shadow Attorney-General, to the Law Foundation of New South Wales, suggesting that it support such a project. In August 1981 the Foundation appointed John McMillan as a full time researcher with the task of producing a book in about a year, in sufficient time to enable a planned series of seminars to follow its publication before the April 1983 Constitutional Convention in Adelaide. When, however it became apparent that the job could not be done by one man in the time alloted, Evans and Storey in the latter part of 1982 joined McMillan as co-authors.

The book is set out in five parts, comprising seventeen chapters. The layout is clear and logical and the authors address themselves admirably to numerous aspects of the Constitution, clearly spelling out various problems and detailing the arguments for and against proposed specific changes. They have also in a chapter entitled the Referendum Record provided an interesting account of the history of the attempts, both successful and unsuccessful, to change the Constitution.

Given the undoubted talents and backgrounds of its authors, this book had the potential to be a definitive work. However, it has failed to achieve its potential; in fact it is fundamentally flawed. Explicit in the title is the question whether the Constitution should be changed at all. One could expect this to be the basic issue of the book. Yet, the writers dispose of this aspect in one sentence on page 13 when they say "Virtually everyone who has publicly commented on the issue has suggested that it would at the least be worthwhile for Australia to review the Constitution and to reform some or other aspect of it". Can this really be so? Has no one spoken up for the existing Constitution? And even if it be so, is it not incumbent in the circumstances upon the authors themselves, lawyers all, to accept the brief to be the Devil's Advocate and make a case for its defence: Stability; proven effectiveness; lack of divisiveness which proposed changes might bring; or whatever? The authors have begged the very question they purportedly set out to answer.

Another perceived failing of the book is the absence of any real discussion of the nature and purpose of constitutions generally. The authors devote considerable attention to describing how the Australian Constitution affects the way we are governed and why it matters. Yet, if the Constitution is to be understood at all, it is necessary to have some understanding of the constitutional ideologies which underlie any constitution including our own. The conflicting concepts of sovereignty, to total governmental power on the one hand, and constitutionalism, which is rather the denial of governmental power on the other, are both present in the Australian Constitution and must perforce be reconciled. Admittedly to formulate and express such ideas in terms explicable and of interest on a broad scale is a difficult task but to attempt to assess the desirability of specific changes as the authors do, without such a discussion and understanding, is of dubious value at best.

On a more pragmatic level is the question of accuracy of detail. The book was prepared, it would seem, under the pressure of a tight timetable and typographical errors are always a possibility. But the presence of error always raises concern about the overall accuracy of detail in a book. What, then is one to make of the opening line of chapter 3: "On the first day of the twentieth century the Commonwealth of Australia joined the United States, Switzerland, West Germany (sic.), and Canada to become the fifth federation of the world".

The book then is somewhat of a disappointment. Rather than establishing any new ground it can be seen perhaps as another in a number of books which have appeared in recent times, such as, E.G. Whitlam's 1977 book "On Australia's Constitution" and S. Encel and others' book of the same year "Change the Rules!"

SHARP

Victorian Bar News

Mouthpiece

- I hear you've taken a new reader.
- Yes that's right. They told me that there were fifty-one of the poor kids. I didn't want a reader but I suppose it's my duty. Lord, fifty-one! They're overrunning us.
- There's nothing wrong with readers. Fifty-one dinners, fifty-one copies of **Gowans,** fifty-one sets of rent on chambers, fifty-one subscriptions. Fifty-one lots of 5% to the clerks. All of them contributing to the super fund and subscribing to debentures. And for the first time ever, "A Multitude Of Counsellors" is beginning to move.
- But what am I going to teach him?
- You don't have to teach him anything. The Readers' Course does all that.
- I'd forgotten about that course. Is it any good?
- Is it any good? They learn everything there. They turn up at court to watch cases when the Magistrate is not sitting. At other times the fifty of them will sit round for days on end listening to each other doing pleas. And if that isn't enough, they go down to the Coroner's Court and watch Dr. McNamara getting his knife and fork into some cadaver.
- But being at the Bar is more than just learning how to practise. Don't they learn any of our social graces and traditions?
- Oh yes, they are included too. The Readers can get skilled tuition on how to look busy when they have nothing to do.

Byrne & Ross D.D.

COMMITTEE OF INQUIRY – VICTORIA POLICE FARCE

INVITATION TO ATTEND PUBLIC HEARINGS

This Committee, which is currently inquiring into certain aspects of the functions, organisation, operations and resources of the Victoria Police Force, is to hold nine public hearings over June and July.

The purpose of the hearings is to give persons or organisations the opportunity of contributing information which may assist the Committee.

(etc.)

From "The Weekend Australian" 28th May, 1983

AVIATION LAW ASSOCIATION

Papers on "Operational Aspects of Chartering Aircraft" by Mrs. S. Robey and on "Regulatory Requirements for Chartering Aircraft" by a Department Officer will be delivered at a dinner of the Association to be held at Noah's Hotel, Melbourne on the 4th August 1983. The cost to members will be $25.00 and non-members $30.00. Further information can be obtained from Julian Ireland (Clerk M).

CENTENARY BAR REVUE 1984

As part of Centenary celebrations in 1984 the Bar is producing a theatrical revue.

Would all persons who are interested in writing scripts of a comical or satirical nature please submit such material to Graeme Thompson (Clerk F, Pax 173) the Executive Producer of the revue without delay.

LEGGE'S LAW LEXICON
"M"

Mafia. The bogeyman used by the credulous to frighten the simple into foregoing their hard-won liberties.

Magic. The process by which Royal Commissions make fact out of speculation and gossip.

Magna Carta. A corrupt agreement made in 1215 between the authorities and The Organisation whereby the latter was empowered to oppress the common people without hindrance. In the whole of English history this was the only authentic victory of organised crime.

Maiming. It used to be more expensive than killing. (1937) A.C. 826, 846.

Maintenance. An easement of support.

Majority. That section of a general meeting of the Bar which annually supports the Chairman.

Mala Praxis. It is reasonable that a patient should be told what is about to be done to him. A surgeon who acts rashly acts negligently. Slater v. Baker (1767) 2 Wils, 359.

Malice. The state of mind of a victim who lingers for less than a year and a day.

Manslaughter. If a master corrects his servant it ought to be with a proper instrument such as a cudgel. If such blow causes death this is only manslaughter. R v. Keite 1 Ld. Raym. 138, 144.

Marginal Note. A statement of what the draftsman really intended.

Marriage. An agreement in consideration of marriage is within s. 4 of the Statute of Frauds. Quaere if part performance will take the place of the writing.

Master of the Supreme Court. The minor genius who at the one time fills the place of the Masters of the Common Law Courts, Queen's Coroner and Attorney, Master of the Crown Office, two Record and Writ Clerks, and three Associates, the Chief Clerks in Chancery, Master in Lunacy, Master of Reports and Entries, Master of the Court of Protection, Queen's Remembrancer and Registrar of Judgments.

Matrimonial Cause. Any one or more of lust, an anxious mother, a nervous daughter, boredom, good cooking and dirty socks.

Mayhem. Deprivation of a member proper for defence in fight such as a finger or a woman's tongue. Not a nose because it is of no use in fighting.

Victorian Bar News

McNaughton's Rules. The idea peculiar to lawyers that twelve reasonable men do not know a lunatic when they see one.

Meagher's Bar. A pocket-size computer said to be capable of detecting conspiracy at a distance of two hundred metres.

Meat. Is not ice-cream, (1916) 2 K.B. 403.

Merger. The joining of one estate in another. It differs from suspension, thus demonstrating the metaphysical qualities of property law.

Merits. That part of litigation which is of interest only to those counsel who are old enough to have forgotten the rules of procedure and to those incompetents who are young enough never to have learnt them.

Minimum Fee. Formerly £ 1-3-6 (1 guinea for the barrister and half a crown for his clerk). It is unethical to accept less than the minimum fee. One junior so charged successfully defended himself by pleading that he had upheld the finest traditions of his profession in taking from his client every penny that he had.

Minister. The nominal head of a department of State.

Mint. A soubriquet for the Workers' Compensation Board.

Misdirection. A summing-up in the County Court.

Misjoinder of Parties. see Marriage.

Money. It stinketh not, (1924) A.C. 958, 978.

Monogamy. see next entry.

Monopoly. A privilege of the sole making, working and using of anything whereby the subject is restrained from that liberty of trading which he had before.

Murder. Killing a servant with a sword rather than a cudgel may be an accident. (1924) A.C. 431, 464.

Mushrooms. There is no malice in gathering primroses, blackberries or mushrooms. Aliter a cultivated root. (1887) 19 Q.B.D. 217, 222.

Mytacism ????

SOLUTION TO CAPTAIN'S CRYPTIC No. 44

Winter 1983

VERBATIM

Thompson S.M. dealing with a possession of marijuana charge –

> The evidence doesn't allow me to say whether he had sole use of these seeds or whether he was excercising joint control – That's an unfortunate expression isn't it?"

Moonee Ponds
4th May, 1983.

● ● ●

Elizabeth Curtain for Complainant in a Crash and Bash claim –

Curtain: And on what Road were you travelling?
Complainant: On Dandenong Road.
Curtain: Where were you going?
Complainant: To my girlfriend's.
Curtain: Is that a route you're familiar with?
Complainant hesitates and maintains an embarrassed silence during chortles from on-lookers.

Dandenong Magistrates Court
Cor. Gerkens S.M.
22nd April, 1983.

● ● ●

Squirell was making a plea in a "fail to give way at a stop sign" case.

Counsel: "My main submision is that Your Worship not affect my client's licence".
S.M: "I have no intention of doing that in these circumstances."
Counsel: "In that case I will just tell Your Worship something about my client's background".
S.M. (interrupting): "Unless I am persuaded by a long plea."

Cor. Dugan S.M.,
Melbourne Magistrates' Court
28th April 1983.

In the course of a winding up hearing –

Witness (Sydney stockbroker): "When the $1.4 million became due by the buyer in the shares we had to pay it".
Sher, Q.C: "Where did you get the money?"
Witness: "We simply met it within the existing terms of our overdraft".
Sher, Q.C: "Your overdraft would be the envy of every member of the Victorian Bar."

And Later . . .

Auditor Witness (Chartered Accountant): I'm sorry Mr. Shaw, I don't I understand the question".
Shaw, Q.C.: "I'm not surprised. I barely understand it myself."

re Brinds Ltd.
Cor. Tadgell J.

● ● ●

In the Full Court, assessing the List –

Young C.J: How long will your case take Mr. Balfe. It's only a short point is it not?
Balfe Q.C: It is a short point, Your Honour, but it may take some time to get to it.

27th April, 1983.

● ● ●

Houlihan Cross-examining Police Witness – "This bar the Defendant is holding is a bit like Pinocchio's nose. Every time a lie is told, it grows a foot."

City Court,
Cor. Golden S.M.
27th May, 1983

Daryl Wraith in the course of a plea examining Dr. Barnes.

Wraith: Even with counselling, would my client have difficulty in making his way in the community?

Witness: Put it this way, in racing parlance, he is behind scratch.

Wraith: I thought behind scratch was athletics parlance.

Witness: Perhaps my track is better than my field.

Cor. Judge Nixon
30th May 1983

• • •

A minor traffic matter had been determined, in which the Informant had been a policewoman with a Dutch surname, and the Defendant one Harry O'Kelly, a man with a broad Irish brogue. The next case was called. The Informant was the same, but the Defendant was a Kelly McCarthy. Dugan S.M., as the Informant entered the witness box. "You're not against the Irish at all, are you?"

Melbourne Magistrates' Court
28th April, 1983.

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SPORTING NEWS

It was the 1st June 1983 at Southport, Queensland. Most racehorse trainers from the southern State had taken their charges north in anticipation of securing the big stakes on firm going, and leaving the heavy tracks down here to the mudlarks. One was entitled to question the wisdom of Dove and Bowman in taking "Rakes Pride" up north as it had shown a liking for the rain-affected going. As fate had it, the track was heavy for the running of the appropriately named "Gold Lager Cup". Number 17 in the capacity field duly saluted and a percentage of the first prize of approximately $10,000 was spent on the amber fluid.

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Whilst on the topic of the King of Sports, Spicer was opposed to Young in a matrimonial case of "Hawes v. Hawes" when Spicer suggested that it would be worthwhile investing some hard earned collateral on his Bacchanalia Begun. This steed, disliked by all race horse "callers", was named after the Greek God Bacchus famous for his love of wine and festivities. Young decided against supporting the horse and was disappointed, to put it mildly, when it greeted the Judge at Tatuta at odds of 16/1. The horse has since been placed at the Valley but failed to stay at its recent run at Caulfield.

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Fay Daly may be able to provide some expert evidence relating to the matrimonial laws applying in the USSR and other parts of the eastern areas of Europe. She travelled on the Trans-Siberian Railway after having visited Hong Kong, China and Japan. The train stopped approximately 90 times on the trip between Kharbarovk and Moscow. During the ten day trip the Australian groups on the train joined with the various other nationalities and the Russian guides in the one compartment – similar to the theme from Agatha Christie's novel "The Personalities". Further travels took her to Leningrad, Poland, East Germany, Belgium and then to the U.K. She finally flew to Boston for a Law Conference on taxation deductions.

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"FOUR EYES"

MOVEMENT AT THE BAR

Members who have signed the Roll since the Autumn 1983 Edition

Colin Anthony WHITE	Dane/Muir
Rodney Stuart RANDALL	Habersberger/Spurr
John Edward GOETZ	Kirkham/Spurr
Lawrence Andrew DENT	McGrath/Hyland
Timothy John NORTH	Heerey/Foley
Jennifer DAVIES	Mahony/Mandie/Dever
Robert Logan DEAN	Alston/Foley
George PHILLIPS	Blackburn/Dever
Alan Joseph SHAW	Phipp/Spurr
Paul Anthony D'ARCY	Keenan/Foley
Graham Bruce POWELL	Pinner/Hyland
Colin Charles HAM	Ackman/Dever
Peter Gregory RICHARDS	Robson/Foley
John Aloysius O'BRIEN	Lewis, G.A./Hyland
Malcolm GRAY	Rattray/Dever
Julie Ann NICHOLSON	Dunn/Foley
David Ross CORDY	Casey, T.J./Foley
Brent Maxwell YOUNG	Bryant/Hyland
Paul Marvin FOLEY	Duggan/Hyland
Mark Edward DEAN	Barnett/Muir
John Francis CARMODY	Hayden/Duncan
Kurt William ESSER	Fajgenbaum/Muir
Jillian Mary CROWE	Rozenes/Duncan
Janet FUST	Shwartz/Stone
Peter John DUFFY	Monohan/Duncan
Richard Berian PHILLIPS	Wikrama/Duncan
Peter Reginald BEST	Golombek/Stone
Henry Douglas GILLESPIE	Buchanan, P./Muir
Shane Leslie STONE	Stanley/Muir
David John TRICKETT	Lopez/Muir
Sally-Ann WOOD	Bell/Howells
Jack David HAMMOND	Porter/Muir
Samuel Louis TATARKA	Lincoln/Stone
Julie Rivers DAVIS	Canavan/Howells
Ronald James HOLDSWORTH	Howden/Howells
John Michael CLOHESY	Robertson, I.C./Stone
Mary Louise EXELL	Kay, J.V./Bloomfield
Frank Robert GUCCIARDO	Kent/Bloomfield
Alexander Maitland ELLIOTT	Flatman/Bloomfield
Jennifer Anne DRAKE	Crossley/Bloomfield
Stephen Guy Russell WILMOTH	Gibson, G. McD./Bloomfield
Olyvia NIKOU	Ramsden/Bloomfield
Peter John HARRIS	Byard/Bloomfield
John Francis Patrick Cyril Colclough WALSH	Milte/Bloomfield
Thomas Alan MUNRO	Moshinsky, N.A./Bloomfield
D. Christine BLANKSBY	Bingeman/Bloomfield
David Mark MACLEAN	Sharp/Bloomfield
Peter Roy Philip GIBBONS	McTaggart/Bloomfield
Donald Gene DOANE	Shatin/Bloomfield
John Joseph GOODMAN	Murley/Bloomfield

Anthony Philip WHITLAM (N.S.W.)

Member who has had his name removed from the Roll of Counsel at his own request

H.A.J. Ford

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