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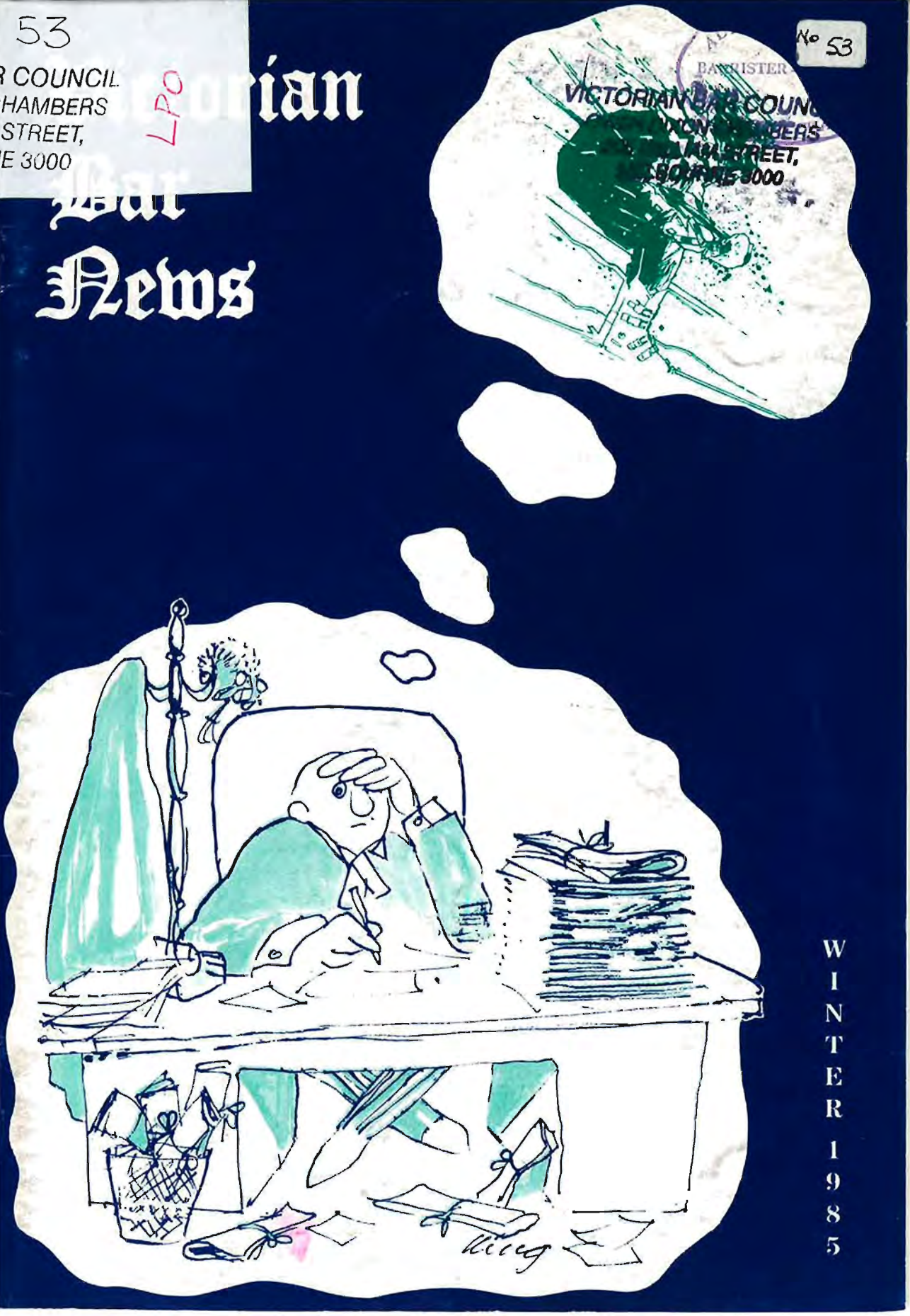
Victorian Bar News

No 53
BARRISTER
VICTORIAN BAR COUNCIL
LONSDALE CHAMBERS
450 LITTLE COLLINS STREET,
MELBOURNE 3000



WINTER 1985

VICTORIAN BAR NEWS
WINTER EDITION 1985

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BAR COUNCIL REPORT

Chairman and Vice Chairman
Charles Q.C. resigned as Chairman of the Bar Council as from the 31st of March 1985 and Chernov Q.C. has been elected Chairman as from the 1st of April 1985. Cummins Q.C. has been elected as Second Vice Chairman.

Workers' Compensation Reform
The Bar Council prepared and submitted a detailed response on behalf of the Bar to the State Government's proposed workers' compensation reforms. Whilst the response applauded the steps being taken by the State Government to reduce accidents and to rehabilitate workers and also supported the State Government's concern to reduce delays in the assessment and delivery of benefits, it detailed the objections to be made to proposals to remove lump sum payments either at common law or pursuant to any workers' compensation legislation. The Report argued strongly for the rentention of lump sum payments because of the efficacy of a lump sum payment to confer financial independence and to encourage rehabilitation neither of which ends might be served by a weekly pension. It was also observed that a public enquiry would be appropriate prior to the introduction of legislation which would have the effect of eliminating choices between continuing weekly payments or a lump sum redemption. There has been actuarial criticism of the costing and financing projections made by the State Government in relation to the servicing of the new proposals and it was further recommended that part of any public enquiry should include a disclosure by the Government of the level and extent of benefit to workers together with a thorough investigation of costing aspects of the scheme. However, since the presentation of that Report the State Government has produced two drafts of proposed legislation. The earlier Bill did not provide for lump sum redemptions of periodical payments and sweepingly abrogated the right to damages for pecuniary loss at common law. The later Bill which is presently under consideration provides for lump sum redemptions in very limited circumstances and has qualified the abrogation of the right to sue for damages for personal loss at common law. This new proposal is being considered by the Bar Council which will pass on comments upon the substance of this second Bill to the State Government.

Chairman Chernov

Telephones
Problems with the new high technology telephone system have been discussed between representatives of the Bar Council and the Managing Director of Ericssons and Telecom. A working committee has been set up consisting of personnel from Ericssons and Telecom and the function of that committee will be to find the *reasons* for the present problems particularly the problem where a person calling a clerk's switchboard hears a ring but without receiving any response from the switchboard. That committee is to report weekly to a meeting between a representative of Barrister's Chambers Ltd. and Ericssons. It is to be hoped that that committee can solve the problems which have been considerable and persistent. If the committee is not able to solve the problems no doubt the Bar Council will further consider the position.

Tapping of Telephones
The Federal Attorney General has written to the Bar Council concerning allegations of the tapping of Barristers' telephones. The single instance of a bugging device being found in the telephone of a member of the Victorian Bar has been referred to the Federal Police who are responsible for investigating any interception of telephone calls.

Fees

Fees continue to receive attention and in particular efforts are being made to co-ordinate Criminal Bar fees with Personal Injuries fees. The difficulties of the Criminal Bar in relation to fees can be graphically illustrated by an example. The scale legal aid brief fee for a criminal matter other than murder in the Supreme Court is $683, from which 20% will be deducted. Refreshers upon such a matter therefore after the 20% deduction once again, are approximately $386 per day. The discrepancy between that fee and fees commanded daily by persons working in other jurisdictions is apparent. Monthly earnings at that rate need to be particularly considered in the light of proposed rentals for the new chambers, which apparently have not yet been fixed but which will need to be monitored carefully in the light of the present Criminal Bar fees.

Naming of the New Building

The Bar Council unanimously resolved to name the new building "Owen Dixon Chambers". It is anticipated that several floors of the new building will be available for occupation by the 1st of April 1986 and the completion date is still projected as the 1st of August 1986. His Excellency the Governor General will unveil the plaque for Owen Dixon Chambers on the 5th of August 1986. If the naming of the new building seems somewhat timid it would doubtless have been impossible to have obtained consensus upon any other of the numerous names canvassed.

* * * *

POLICE LAWYERS' LIAISON COMMITTEE

The attention of the Bar is drawn to the existence of the above Committee whose function is to liaise between the Legal Profession and the Police and to sort out problems that from time to time occur between these two organisations. The Committee has been functioning now for a number of years and has been successful in resolving problems which have arisen and has brought about a number of innovations in court procedure and police procedure which have been of benefit to the profession and to the police.

The Committee meets monthly and deals with complaints or problems that are raised by members of the Police, the Law Institute or the Bar. If any member of counsel feels aggrieved as to his dealings with the police or as to court procedure, contact Philip Dunn (Pax 7305).

* * * *

WHY NOT ATTEND?

AUSTRALIAN INSTITUTE OF JUDICIAL ADMINISTRATION FOURTH ANNUAL SEMINAR

ADELAIDE

The annual seminars of the Australian Institute of Judicial Administration have rapidly become established as a prestigious forum for legal debate in Australia. The 4th Annual Seminar of the Institute will be held in Adelaide on Saturday, 31st August 1985.

The primary aim of the A.I.J.A. is to organise and conduct scientific research into the administration of justice in Australia and to disseminate that information. The Institute will be pursuing these aims at the Adelaide Seminar.

Three sessions will highlight three separate questions of great importance and topical interest. The first paper will be presented by the Honourable Sir John Young, Chief Justice of Victoria, on the topic "The Role of the Judiciary and the Executive in Court Administration". The next papers will be entitled "International Commercial Arbitration" by the Honourable Mr. Justice Priestley, Judge of the Supreme Court of New South Wales and "Arbitration of Small Claims in New South Wales. Good — But How Good?" Arbitration is emerging as a real alternative to a court hearing in many cases large and small.

Given the apparent increase in the number of Royal Commissions and non-judicial tribunals, added impetus has been given to the debate whether judges should chair them. Two different views on this issue will be advanced by the Honourable Sir Murray McInerney, formerly a Judge of the Supreme Court of Victoria, who will contend that they should not, and the Honourable Mr. Justice McGregor, a Judge of the Federal Court of Australia, who will contend that they should.

The Seminar is open to all interested persons, be they members of the Institute or not. This stimulating series of topics should be of lively interest to the legal profession.

Registration forms are available from the Executive Officer of the Law Society of South Australia, 33 Gilbert Place, Adelaide.

WELCOME: MR. JUSTICE VINCENT

Prologue. "Byrne of the News" accosted me in the 13th Floor toilet (a particularly disturbing habit).
"Coldrey", he cried, "I want you to write a welcome for Vincent".
"No, no", I protested, "I'm totally unsuitable. I actually know the man."
"Just write the usual obsequious drivel", pleaded he.
I bridled: "Do you think a writer of my standard would stoop to write that sort of material? Drivel yes, but obsequious. . ."
"But somebody has to write something", groaned Byrne, "we can't enlarge his photo any more — as it is, the head looks decidedly swollen".
"I agree. . ."
"That's marvellous" interjectèd Byrne.
". . . the head does look decidedly swollen".
"Please", cajolled Byrne, "I've got some notes here that may assist".
"Now you're talking," I replied urbanely, "make them $50's."

Pay-Off. After a new Judge has been subjected to the Victorian Bar's version of "This is Your Life" both at his official welcome and the Bar Dinner, it is very difficult to write more about him (or her) without descending to the sordid level of fact. Even then, what usually emerges are some random paragraphs containing the combined flavour of a Women's Weekly profile and an obituary. Nonetheless, some facts ought to be recorded.

At the Bar His Honour always exhibited a passionate commitment to the rights of the individual. That commitment impelled him to take up the cause of hapless aboriginals both in Victoria and the Northern Territory. It drove him to appear in almost 200 murder trials.

Much has been said about his excellence as a cross-examiner and his brilliance as a tactician. It is all true.

Additionally, His Honour contributed greatly to the life of the Bar. He was elected by his peers to the Bar Council and to the Chairmanship of the Criminal Bar Association. In each forum his lucid views were respected.

Throughout his career His Honour has also had wider interests. Politics is one of them. This translated, on one occasion during his student days, to his presence at a Liberal Party Meeting in Broadmeadows where he could be heard discomfitting a former Premier with his interjections. Ultimately the Premier condescendingly said "Would you like to come up here lad and tell us how you would do it better? Naturally His Honour accepted the invitation, but was restrained before he managed to gain access to the platform. The newspaper reporting this incident informed its readers that "a bunch of hooligans" had attempted to disrupt the meeting. Bob Hawke may have charisma, but you can't beat a presence of those dimensions!

Another of His Honour's interests is the attainment of fitness through jogging. What these obsessive high-speed perambulators fail to realise however is that the extra time jogging adds to their lives, has all been used up jogging.

Peroration. In 1895 Coldham Q.C., gave a silver cigarette case to a silk named Bryant. An accompanying card read "In recognition of your readiness to uphold the highest traditions of an advocate and to appear without fee for those unable otherwise to afford your services." In 1924 Bryant presented the cigarette case to Eugene Gorman, Q.C. Its subsequent recipients were John Barry, Q.C., John Nimmo, Q.C., and Richard McGarvie, Q.C. A few years ago His Honour, Mr. Justice McGarvie presented it to Frank Vincent Q.C.

I think that just about says it all.

In 1995, (jogging permitting) when the gift will be 100 years old, His Honour intends to pass it on. Hopefully there will be many barristers whose independence, integrity and basic humanity will make them candidates for this singular honour.

In the meantime His Honour will be ideally positioned to pass judgment.

The Bar wishes him well.

COLDREY

Editor's Note: Mr. Justice Vincent served articles with Messrs. Slater and Gordon. He read with E.A. Laurie. His readers were Ian McIvor, P. Rosenberg, G. Thomas, R.G. McIndoe, Colin McDonald.

YOUNG BARRISTERS' COMMITTEE

More than 30% of the Junior Bar is by definition a Young Barrister, that is to say a Barrister of less than five years call. The Young Barristers' Committee functions to provide input to the Bar Council on matters which are of particular interest and relevance to that group. Sometimes the Committee responds to particular matters which are referred to it by the Bar Council, whilst on other areas it refers to the Bar Council matters which have come to the Committee's notice as a result of the endeavours of its own members or of complaints by Young Barristers.

Accommodation
The scarcity of accommodation and particularly low cost accommodation led to the Young Barristers' Committee making representations to the Bar Council in the result, the Bar Council resolved that Barristers' Chambers Limited ensure that there is accommodation for not less than 25% of Barristers on the Bar Roll which can be described as low rental accommodation, that is to say accommodation of a standard and rental equivalent to Four Courts Chambers. Members of the Junior Bar will also be aware that several new sets of Chambers which might be described as "starter" Chambers have also recently been made available.

Civil Justice Committee Report
Members of the Committee prepared a Position Paper which opposes some of the recommendations of the Civil Justice Committee, in so far as those recommendations recommend a compulsory system of arbitration for minor civil claims in the Magistrates' Court.

Phones in Magistrates' Courts
We undertook a survey of public telephone facilities at suburban Magistrates' Courts and made representations to Telecom to have additional telephones installed at certain Courts.

County Court Chambers
I cannot say that the efforts of the Young Barristers' Committee led to the appointment of a Master in the County Court, however, the Young Barristers' Committee complained about delays in the County Court Chambers and provided details to demonstrate those delays.

Social
Young barristers are very widely distributed in terms of their Chambers and this hampers the development of the camaraderie of the Bar. In 1984 a dinner dance was held at Silvers, which was very successful. The Young Barristers' Committee is at present planning an inexpensive cocktail party to take place at the Essoign Club.

All members of the Committee welcome input from younger members of the Bar, so if you have any problems or suggestions, please do not hesitate to approach a member of the Young Barristers' Committee.

M. RANDALL
Hon. Sec.

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ETHICS COMMITTEE

Since last reporting the Ethics Committee has conducted four summary hearings. Two of those matters were proved.

In one case the Ethics Committee found that a disciplinary offence was proven, constituted by the conduct of a barrister in acting for a client in court proceedings without the intervention of an instructing solicitor. The matter proceeded to a summary hearing and the barrister was fined the sum of $200.

In another case a barrister was found guilty of a disciplinary offence arising from unreasonable delay in the preparation of submissions required for the purposes of a case. The barrister was pressed for several months by his instructing solicitors and by senior counsel with no apparent response. The barrister was reprimanded by the Ethics Committee.

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LEGAL INTERPRETING SERVICE

The Victorian Ethnic Affairs Commission is establishing a legal interpreting service which is available for government departments and services including the courts.

Bookings may be made by telephone (419 0014) at any time between 8.30 am and 5.00 pm from Monday to Friday.

Enquiries:
Mr. Savas Augoustakis
232 Victoria Parade
East Melbourne 3002
Telephone: 419 6700

CRIMINAL BAR ASSOCIATION

Mr. Justice Vincent
His Honour Mr. Justice Vincent was recently welcomed in the Supreme Court upon his appointment to that bench. At the time of his appointment he was the Chairman of the Criminal Bar Association and had contributed greatly to the interests and affairs of those members of the Bar who practice in the criminal jurisdiction. The Association was pleased to offer his Honour honorary membership and trusts that he will maintain a strong and frequent association with both the Bar generally and with the Criminal Bar Association in particular. At a meeting on 6th June, Colin Lovitt was elected Chairman of the Association and Robert Richter Vice Chairman. Michael Tovey remains as Treasurer and Lex Lasry as Secretary.

Preparation and Reading Fees — Criminal Trials
Until recently, the Legal Aid Commission used a formula for calculating reading fees (where deemed appropriate) of 60 pages per hour at the appropriate hourly rate (e.g. County Court $76 per hour) less 1/3 of the brief fee (and less of course the obligatory 20% — see S. 32 (2) *Legal Aid Commission Act* 1978).

The growth of multi-headed, complex trials involving vast preparation has caused concern within the Commission, which has now moved to abrogate this form of calculation when the amount of preparation exceeds 10 hours. Preparation fees is a vexed area involving undignified haggling between Counsel and their Clerks and the Commission. There are points which can be made on both sides. The Association will continue to make representations aimed at amicably settling this difficult problem.

Intoxication
The Victorian Law Reform Commission has reported to the Attorney-General on the alleged need for some sort of offence of "Dangerous Intoxication" to fill the void allegedly created by **O'Connor's Case** 54 ALJR 349. The Association takes the following view:—

1. **O'Connor's Case** merely confirmed the law in Australia as it had existed for many years (see e.g. **Ryan** 121 C.L.R. 205). The expression "O'Connor drunk" is therefore a misnomer. The High Court in **O'Connor** merely declined to follow **Majewski** (House of Lords) (1977) A.C. 443 for sound reasons of logic and precedent.
2. The alleged public disquiet at the current state of the law has been largely engendered by media manipulation and a failure to understand the difficulties associated with successfully raising drunkenness as a "defence".
3. There has been no apparent inclination to absolve from punishment persons who commit crimes whilst in the state of self-induced intoxication (alcohol or drugs). The Commission does not point to *any* jury acquittal as an instance of the need for a new offence. In other words, the floodgates remain closed. The Association adopts in particular the view of Starke J. expressed in **O'Connor** (Vic. Full Court) (1980) V.R. 635 at 647.
4. The difficulties and injustices associated with an offence of "dangerous intoxication" are manifest. The time honoured police evidence viz "had been drinking but was *not* drunk" may, particularly in weak cases, become "had been drinking and was *very* drunk".

The Association will consider the report of the Commission and take steps to ensure its views are expressed to the Attorney-General.

Voire Dires
The Association, mindful of recent criticism, from trial judges, proposes conducting a seminar on this subject in the near future. Barristers and Judges will be invited to participate. Instructive discussion is assured. Watch this space!

Criminal Bar Dinner
A very successful evening of epicurean and oenological indulgence took place at John Smith's Restaurant on April 2nd. Presided over by Vincent Q.C. (as he then was) and organized by Lovitt (as he still is), the dinner provided an opportunity to fete Sir George Lush, Phillips J., Judges Hassett and Fagan and Coldrey Q.C., D.P.P.

The next function, mooted for October at "New Patterns", will be for members and guests.

In-House Counsel
As the Association understands the position now, the Legal Aid Commission have rejected the idea of employing in-house counsel for the purpose of appearing in criminal trials. There were obvious problems with the proposal and it appears that the Commission has seen them and has decided finally against the idea.

County Court Listing
Recently the Committee of the Criminal Bar Association invited to one of its meetings Mr. Brendan Bateman, director of the Criminal Trial Listing Directorate, his associate Mr. Norm Wills and Mr. Mick O'Brien from the Legal Aid Commission. The object of the exercise was to discuss with those gentlemen the problems which arise under the present listing system in the County Court, in particular problems which arise from trials being listed for the "week commencing" and then becoming a "day-to-day" proposition. The various problems associated with that were pointed out to Mr. Bateman and Mr. Wills since they directly affect the Bar and leave Counsel hamstrung while waiting for a trial to get on. It was pointed out to them that one of the difficulties creating this problem was that too many cases were being listed and assurances were generally given by Mr. Bateman and Mr. Wills that where ever possible the utmost assistance would be given to members of the Bar. Mr. Bateman spoke of "fine tuning" the system and Mr. Wills requested that Counsel maintain regular contact with the Directorate so that whenever possible Counsel might be given "not before" date for trials in which they are involved. Mr. Bateman also repeated his regular request that Counsel give *realistic* estimates of the duration of trials so that the lists can work as smoothly as possible.

The Association proposes to continue to liaise with these gentlemen since the problems are still evident particularly in the month of June 1985 where the situation appears to have become chaotic.

Appeal Costs Fund Act 1964
The present system of listing County Court trials for "week commencing..." has led to difficulty in obtaining certificates under the Appeal Costs Fund Act when the case is not listed but "dropped down" day by day. Representations are currently in train for an amendment to S. 18(4) of the Act to facilitate compensation for this type of "waiting time".

Legal Aid Fees in the Magistrates Court
Recently the Association wrote to the Legal Aid Commission seeking an amendment to the wording of the scale of fees payable to Counsel in the criminal jurisdiction in the Magistrates Court. The scale is set out in Fee Schedule 4 of the Legal Aid Hand Book. The amendment which the Association sought was to ensure that in Magistrates Court matters distinction was drawn between drug offences involving using and possession and drug offences of a more serious nature. Having considered the submission we made, the Legal Aid Commission indicated that they proposed to amend Fee Schedule 4 part (b) paragraph (h) so that each sub-paragraph has the following categories:

1. Minor traffic and other minor offences
2. Miscellaneous offences (including .05 and minor drug offences including use and possess).
3. Serious matters (including serious traffic or miscellaneous offences or serious drug offences including sell, cultivate, prepare, traffic and manufacture).

Counsel should therefore ensure that the appropriate fee be marked in those matters.

Advisory Committees on Committal Proceedings and Section 460 of the Crimes Act
The Criminal Bar Association has representatives on Committees considering both of these matters.

(a) **Committals**
Lovitt is the Association's representative on the Committee considering committals and the position is now being discussed with a view to improving the efficiency of the commital's procedure rather than considering whether or not committals should continue to occur. There is apparently no prospect of committals being abolished but it is important that the procedure be improved.

(b) **Section 460**
Richter is the Association's representative on the Committee considering Section 460 of the Crimes Act and there is at present considerable pressure on that matter since the Government is considering alterations to the 6 hour limit or expanding it. The Association will continue to oppose arrest without charge for the purpose of interrogation for any period of time.

Unsworn Statements
There is a private member's bill presently before the State Legislative Council for the abolition of unsworn statements. There has been dialogue between the Association and the present Attorney-General from time to time concerning unsworn statements and whether they should be altered or abolished. Recently the Association was in touch with the Law Institute for the purpose of establishing a joint approach to the matter between the Law Institute and the Criminal Bar Association. The Association understood that the Law Institute's position was that

unsworn statements should be retained with all the present procedures subject to a copy of the unsworn statement being made available to the trial Judge before it was read by the accused. It followed from this that the Law Institute was opposed to the abolition of unsworn statements or the modification of the procedure by, for example, giving the prosecutor the right to comment on the fact that an accused made an unsworn statement. We were informed that the Institute formed a Committee on the matter and was proposing to make a recommendation to the Law Reform Commissioner.

The Association is currently preparing submissions to the Attorney-General.

Legal Aid — Magistrates Court

A Committee comprising Lovitt, Kellam, Foster, Dean and Papas is currently examining the fee scale, which has come under considerable criticism. It is likely that a new scale involving different criteria will be recommended. Submissions or suggestions (in writing) are invited and should be addressed to the Secretary of the Association.

Lump Sum Fees

The Legal Aid Commission has rejected the concept of Lump Sum Fees for criminal trials, although the matter is still under consideration by the Shorter Trials Committee.

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AWARDS FOR COMMONWEALTH LAWYERS

Two new Commonwealth Awards have been announced by the Commonwealth Lawyer's Association. They are available for members of any Bar Association in the British Commonwealth.

CPA Awards for Innovation

Two awards are offered by the Commonwealth Professional Association for 1985. These two awards are to be made for "significant practical work which has demonstrated its value in sustainable development in Third World Commonwealth countries. The development sections chosen for 1985 are technology and communications."

The final date for applications is 1st September 1985.

Commonwealth Foundation Fellowship Scheme

This scheme offers 12 awards annually for carefully selected professionals to undertake a one-month programme on Commonwealth affairs in the United Kingdom.

Enquiries: Commonwealth Lawyers' Association.
Law Society Hall
113 Chancery Lane,
London WC2A 1PL.

"CONSTANT CHANGE IS HERE TO STAY"

Although this may not be the official motto of the Family Law Bar Association, anyone familiar with the jurisdiction will readily identify with the sentiment. The changes which have occurred in this demanding area of law have, in the last 10 years, been the result of suggestions from a wide variety of sources, not the least of which has been the legal profession. Until now, the profession's views have been expressed to the Commonwealth Attorney-General and other policy makers through the Family Law Committee of the Law Council of Australia. This Committee has comprised representatives from each State's professional associations. To date Monester Q.C., Kay and Watt have placed the views of the Victorian Bar before this important body.

In recognition of the need to have the profession's views expressed with the force of a nationwide representative body, the Law Council of Australia has formed the Family Law Section.

As you may have seen from recent publicity, membership of any section of the Law Council of Australia requires individual membership of the Law Council of Australia. Membership of this Section will entitle barristers to elect the Victorian Bar's representative on the Section's executive. The financial advantages of individual membership of the Law Council of Australia in terms of travel and accommodation concessions have been fully described in recent editions of the Australian Law News.

As a member of the Family Law Section, you will receive, without further charge, the Australian Family Lawyer, the first journal to cater for family lawyers in Australia. Published quarterly, this journal will contain articles of relevance to the practice of family law together with news of recent developments in the Family Court and the activities of continuing legal education bodies and practitioners' associations.

If you have not recently received an invitation to join the Family Law Section of the Law Council of Australia, you will find one in the June edition of the Australian Law News or may obtain one by contacting Kay or Watt.

M.R.B. WATT

AUSTRALIAN LIFE TABLES 1980-1982

The Australian Life Tables 1980-1982 are the twelfth in a series of official Australian Life Tables prepared by the Acting Australian Government Actuary and published by the Australian Government Publishing Service.

They are available from AGPS Mail Order Sales or from AGPS Bookshops in each State capital. Price $2.50 plus postage.

PERSONAL INJURIES BAR ASSOCIATION

At a General Meeting of The Victorian Personal Injuries Bar Association held on the 6th May, 1985, the following Office Bearers were elected:—
President: B. Dove Q.C.
Treasurer: C. McLeod.
Secretary: J. Meagher.
Committee Members: H. Ball, J. Williams, M. Shannon, J. Howden, M Ruddle, J. Ruskin, J. Riordan.

Procedural changes in the Personal Injuries Jurisdiction such as the setting up of a Listing Master's Court, the introduction of a Reserve List in the Supreme Court and the introduction of Pre-Trial Conferences are regarded by the Association as a bandaid approach to the backlog of Personal Injuries cases awaiting Trial. Recently, a litigant was overheard to say in the corridors of Owen Dixon Chambers to his Barrister —

> "How come my case will not get on today and will be relisted in another month.
> It didn't get on last time, it was marked with priority today. How is it that it doesn't get on when it's a priority case".

His Barrister was heard to answer —

> "There are six cases in the Reserve List today all with priority."

The Barrister was then left with the thankless task of trying to explain to the client that the word 'priority' meant next to nothing. Over the last twenty years or so, there have been various studies undertaken by the Bar and others concerning delays in the hearing of cases in the Personal Injuries Jurisdiction. Repeated studies have continually come up with the same answer for the major cause of the backlog, namely, a shortage of Judges to hear Personal Injuries Cases. Never has the shortage of Judges been so well illustrated as in the 1980s. The Personal Injuries Bar is the victim of the system whereby cases wait in Lists for days on end without getting on or are marked 'not reached' in a Reserve List. For example, in the months of March and April, 1985, one Barrister who practised in the Jurisdiction attended the Listing Master's Court on fifteen days in respect of fifteen different cases at 10.30a.m. each day and at different hours as required such as at 12noon, 2.15p.m. with none of the cases being settled and all of them marked 'not reached'. This particular Barrister estimates that he spent at least six hours per case on reading and preparing Briefs, conferring with the client and witnesses, attending Views and discussing the matter with the Instructing Solicitor. Costed out at $80.00 per hour, that wasted time cost that Barrister in the vicinity of $7,200.00. Solicitors are disadvantaged also and the client often "caves in" out of sheer desperation.

It is common for Barristers to wait around in running Lists for days waiting to get on. It is against the foregoing background that The Victorian Personal Injuries Bar Association will continue to attempt to sell the notion that the major solution to the delay crisis in Personal Injuries Cases, is the assigning of more Judges to hear such Cases.

Since its inception, the Association has been active in many areas, some of which include the following:–

1. Preparing Submissions relating to the proposed amendment to Workers' Compensation Legislation.
2. Making Submissions regarding Pre-Trial Conferences and complaints in relation to the operation thereof.
3. Promoting a test case regarding Counsel's fees for Interrogatories and other paper work.
4. Developing guidelines for the proposed introduction of daily "not reached" fees in the Supreme Court and County Court.
5. Arranging amendments to the County Court "Pre-Trial" notice to Solicitors to include reference to Counsel's attendance at same.
6. Advising the Bar Council in relation to exchange of Medical reports and the listing together of Juries and Causes.
7. Making recommendations in relation to the Civil Justice Committee Report.
8. Liaising with the Medical Profession Insurance Council of Australia, Law Institute, Bar Council and Government MP's in relation to Workers' Compensation Amendments.
9. Making recommendations to attempt to overcome present listing difficulties in the Supreme Court and County Court.
10. Suggestions of what additional texts should be included in the Supreme Court Library.
11. Submissions as to fees in the Supreme Court to Fees Committee .

The Association welcomes new Members and its Treasurer, Colin McLeod, will gladly accept the Annual Fee of $15.00 of Members of the Bar wishing to join. The Association will be holding a Dinner on Wednesday, the 24th July, 1985.

J.G. Meagher

REPORT OF THE LAW REFORM COMMITTEE

The following matters have been discussed by the Law Reform Committee over the last three months:

Family Law — Reference of Powers

(1) *Reference of certain matters relating to children.*

Clause 3(1) of the Commonwealth Powers (Family Law) Bill refers to the Commonwealth Parliament the following matters, which are not otherwise included in its legislative powers;

(a) The maintenance of children and the payment of expenses in relation to children or child bearing;

(b) The custody and guardianship of children.

Sub-clause (2) excludes from the reference: The matter of authorizing the making by a court of an order or the taking of any other action, that would prevent or interfere with the application to a child of any law of a State providing for—

(a) The custody, guardianship, care and control of children by a Minister of the Crown or Officer of the State or an officer of an adoption agency approved under a law of the State; or

(b) The payment of maintenance in respect of children who are in such custody, guardianship care or control.

(2) *Reference of certain matters relating to property of husbands and wives.*

Clause 4(1) of the Bill, refers to the Parliament of the Commonwealth the following matters, to the extent to which they are not otherwise included in its legislative powers.

(a) The declaration or alteration of interest in property, being property of the parties to a marriage (including a marriage that has been dissolved) or either of them, in proceedings between the parties to the marriage arising out of a maridial relationship;

(b) The property of the parties to a marriage (including a marriage that has been dissolved) or either of them, whether acquired before, during or after the subsistence of the marriage or by virtue of the solemnization of marriage, and the creation, declaration or alteration of rights and liabilities in relation to such property as between—

(i) the parties to the marriage;

(ii) either party or both parties to the marriage and a child of the marriage;

(iii) either party or both parties to the marriage and any other person; or

(iv) a child of the marriage and any other person.

The Law Reform Committee referred the above Bill to two members of the Bar. One member is a senior counsel with considerable experience in appeals relating to family law matters. The other counsel is a senior member of the Bar practising exclusively in the area of Family Law.

After receiving submissions from both counsel and after considering the content of both submissions the Law Reform Committee requested the senior junior member of the Bar to compile a composite submission. This submission has been forwarded to the State Attorney-General. Its significant recommendations include the following:

Clause 3

The submission stated that the reference of power is desirable, first because it will reduce the incidents of jurisdictional disputes and secondly because it will enable the Commonwealth to make its existing laws

apply to all children, except those the subject of the exclusion. It has long been the policy of the Law Council of Australia, the Family Law Council and of the former Attorney-General for the State of Victoria, Storey QC to have a reference of State power concerning questions relating to custody, guardianship and maintenance for children to the Commonwealth irrespective of the status of the children of the marital status of their parents.

The submission stated that the frequency of any jurisdictional disputes would increase if the Commonwealth decided to expand its power by repealing or watering down section 10 of the Family Law Act.

The Submission stated that if the Family Court of Australia is to be invested with powers concerning custody and guardianship of all children then the inherent powers of the Supreme Court should probably also be transferred to the Family Court. In this regard special mention was made of the position of State Wards.

Clause 4

In regard to the reference of certain matters relating to property of husbands and wives. the Submission stated that Clause 4(1)(a) should be drawn so as to make it clear what is intended. Does it merely reflect the definition of "Matrimonial cause" in the 1975 Family Law Act, and therefore involves no referral of State power? Or does it contemplate that, so long as proceedings exist between husband and wife arising out of their marital relationship, orders may be made relating to what might be called non-matrimonial property. This would result in an enlargement if existing Commonwealth power.

Third Parties

The Submission stated that the intention of the Bill seems to put beyond doubt the power of the Parliament to authorize the Family Court to make orders affecting Third Parties. There is a very real question as to the desirability of permitting a Family Court, the expertise of which is in the adjustment of the rights of spouses and members of a family, to make orders affecting third parties simply because the order sought may enable an appropriate adjustment to be made to the financial or other position of members of the family. The Submission further stated that perhaps it would be more appropriate to empower the Commonwealth Government to legislate so that where a question arises between husband and wife involving a declaration of interest in or alteration of interest in property of either of them, any third party claiming interest in such property should be entitled to intervene in such proceedings and to have the Family Court declare the existence or non-existence of such claimed interests. Any power so given to the Commonwealth should be sufficiently wide to enable the Family Court compulsorily to join any third party to an action where it would appear that a Third Party ought properly be before the court (see O. 16 R. 4 of the High Court Rules).

Liaison with Persons interested in Law Reform

The Law Reform Committee has held discussions with the following persons.

Professor Sandford Clark,
Executive Director, Victoria Law Foundation;

Dr. Clyde Croft,
Senior Adviser to the Secretary, Law Department;

Mr. K. O'Connor,
Director Policy Research, Attorney-General's Department, 221 Queen Street, Melbourne.

In discussions with Professor Clark, the Committee discussed the role of the Law Foundation and its future directions. Members of the Committee raised with Professor Clark the desirability and possibility of merging the Law Foundation with the Victorian Law Reform Commission.

The result of the discussions with Professor Clark indicate that the legal profession in general may have to consider the future role and direction of the Victoria Law Foundation. The nature of the Law Foundation and its funding indicate that the Solicitor's branch of the profession may be better placed than the Bar to contribute to any such discussion.

Dr. Croft discussed the proposal for an International Arbitration Centre to be based in the World Trade Centre. Members of the Committee expressed great interest in this proposal and a willingness to cooperate with the State Government on this matter in any way possible.

Mr. K. O'Connor discussed the State Government's proposals for Law Reform in its second term of office.

Members of the Committee found all of the above discussions to be beneficial and it is proposed to continue such discussions in the future.

Abolition of Unsworn Statement

The Committee has responded to the Shadow Attorney-General, Mr. Chamberlain M.L.C., indicating that it would be desirable to wait until the reports of Professor Waller and the A.L.R.C. on the above topic are at hand before any action is taken on this matter.

Admiralty Jurisdiction Discussion Paper from the A.L.R.C.

A member of the Bar who read the last report of the Law Reform Committee in the Victorian Bar News has contacted the Committee indicating his willingness to be involved in any consideration of the above paper. The Secretary has written to the A.L.R.C. requesting further details and copies of all papers on this reference to be forwarded to the Bar. In addition, the Secretary included some comments made by the member of the Bar in regard to certain aspects of the proposals mentioned in the Admiralty Jurisdiction Discussion Paper No. 21.

The Committee is grateful for the members interest and enthusiasm in this area of the law and it is hoped that the Bar can make a contribution to the reform of this area of the law.

Ministerial Statement on Plain English

The Attorney-General has announced in a Ministerial Statement that in the next twelve months he intends to ensure that one or more plain English experts are appointed to work in the office of Parliamentary Counsel as part of the Parliamentary Counsel's team working on legislation. It is hoped that this will ensure that in a collaborative way the art of plain English writing is developed in the drafting of legislation. In the Ministerial Statement, reference is made to the readability formula of Rudolf Flesch. The Flesch scale is a formula devised by correlating the number of words per sentence with the number of syllables per word. Essentially, an acceptable plain English score of 60 on the Flesch scale is not more than 20 words per sentence, not more than 1½ syllables per word.

In a study by Lyons and Tonner (1977) Legal Services Bulletin at p. 283 an application of the Flesch scale locally resulted in the following:

90-100	Comics and children's books
80-90	Some popular fiction
60-70	"The Herald", "The Sun"
50-60	"Time" magazine, Small Claims Tribunal Information Pamphlet
40-50	Ordinary Default Summons, Bertrand Russell, *The History of the Western Philosophy*
30-40	"The Age" editorials, "The Bulletin"
20-30	Police Standing Orders
10-20	Cross on Evidence
20-10	Small Claims Tribunal Act 1973
10-0	Bail Act 1977

The Flesch formula has been criticized (not by the Victorian Police Association) as measuring reader sophistication rather than document readability but it is at least a useful and consistent grade (Stephen M. Ross (1981) 30 *Buffalo Law Review 317*). If any member of the Bar has time to apply the Flesch scale to the Victorian Bar News please inform the editors of the result.

The above matters represent a segment of some of the matters that have come before the Law Reform Committee in the last three months. Any member of the Bar who wishes to become involved in any aspect of Law Reform should contact the Secretary. Any suggestions that counsel have in regard to Law Reform should also be sent to the Secretary.

John Hockley
Hon. Secretary to the Law Reform Committee of the Victorian Bar.

ACICA

NATIONAL ARBITRATION CENTRE

On 2nd May 1985 a company, Australian Centre for International Commercial Arbitration was incorporated to establish a new National Arbitration Centre. The project is the brain child of the Institute of Arbitrators Australia which has for some years now been trying to obtain acceptance of arbitration as a procedure for resolving commercial disputes other than building disputes. Furthermore, it has been concerned to promote Australia as an appropriate venue for major international arbitrations. Now all of this has come to pass. With the support, financial and moral, of the Victorian Government the ACICA has been established in Melbourne.

The realisation of the project has been the task of a committee chaired by Mr. R.D. Fitch, Architect and comprising Messrs. de Fina, Engineer; Shelton, Solicitor; Byrne QC and Colbran, Barristers and Dr. Clyde Croft, Assistant Secretary of the Law Department. ACICA has leased premises at the World Trade Centre in Flinders Street Extension and has commenced to fit them out. Provision is being made for four hearing rooms with ten retiring rooms for arbitrators, legal representatives and witnesses. The facilities have been designed with the particular requirements of Arbitrators and arbitration in mind.

Notwithstanding its name, ACICA will be available for domestic arbitrations. It is hoped that, with its central location and its considerable facilities it will prove an attractive venue for arbitrations.

The project is a national one. The Institute of Arbitrators is supporting it at a national level. In addition the two national organisations of lawyers, the Law Council of Australia and the Australian Bar Association have lent their support and each has a member on the Board of Directors of ACICA. Disputes with an interstate flavour are expected to be arbitrated at the new centre.

ACICA is looking overseas for international work. Arrangements have already been made with the London Court of International Arbitration and with the ICC Court of Arbitration in Paris to list the ACICA as the Australian venue for arbitrations conducted under their auspices. At the forthcoming Institute of Arbitrators Australia conference in Singapore this aspect of the new Centre will be stressed.

Members are urged to be aware of and support this exciting new venture. Enquiries regarding the Centre and reservations of hearing rooms may be made to the Secretary-General, Mr Howard Ambrose, telephone 614 1800.

ATTORNEY-GENERAL'S COLUMN

Since my last column I have undertaken a number of initiatives of interest to Members of the Bar and which continue my program to ensure that the legal system is relevant to contemporary needs

Plain English

In recent years there has been a growing concern in this country and elsewhere about the inability of legislators, bureaucracies and large corporations to tell their stories simply and without frills. A plain language movement has also developed as an outgrowth of the consumer movement and in the United States more than 30 State legislatures have enacted plain English legislation specifying standards and procedures for the readability of consumer contracts. There has also been the development of reading ease indexes such as the Flesch test and the Fog index.

Efforts so far in Australia have been sporadic, particularly in seeing that legislation is drafted simply and clearly.

It is the policy of the present Government that legislation be drafted as clearly as possible. Some very important work has been done by a committee drafting a plain English Residential Tenancies Bill. I have been concerned to investigate ways in which all Victorian Bills may be drafted more clearly. Some improvements have already been made with the encouragement of the Legal and Constitutional Committee of the Victorian Parliament in its **Report on the Interpretation Bill 1982.** Clearer rules of interpretation are now set out in the Interpretation of Legislation Act. Bills and Acts appear in a clearer format with a clear table of provisions and bold headings.

The Law Department has now obtained the services of a consultant to assist it in its plain English drafting endeavours. In particular, considerable work has been done on the drafting of a new Coroners Act in clear English. As a result of the work done so far, Parliamentary Counsel has been instructed to adopt a new format for the drafting of Bills. This format will apply to Bills introduced from the next session of Parliament onwards. I have referred to the format as the process of Kennanization. These changes are as follows:—

1. Titles

There will no longer be a long title, nor will there be a provision concerning the citation of the Bill by a short title. There will simply be a title of the Bill at the top of the Bill in a short form, e.g. Coroners Bill or Coroners Act.

2. Obsolete Forms

The use of Latin in Bills will be discontinued. There will be no reference to regnal years. Acts will be numbered following the growth model in annual and numerical sequence alone, e.g. No.31 of 1985.

3. The Enacting Words

As Parliament is defined in Section 15, Constitution Act, as the Queen, the Council and the Assembly, the enacting words will simply be: "The Parliament of Victoria enacts as follow:"

4. Purposes/Objects

The very first section of any Bill will be a statement of the purposes/objects of the Bill.

5. Commencement

Wherever possible, there will be a set commencement date. Where that is not possible, the Act should commence on a day or days to be proclaimed. There will be no reference to "several provisions" or to "by proclamation or proclamations."

6. Numbering

There will be an attempt to avoid the use of Roman numerals and an endeavour to see that Bills are numbered decimally.

7. Definitions

The term "Definitions" will replace "Interpretation" (as a heading). Definitions in the form of "Reference in this Act. . ." should be rephrased as ordinary definitions. The phrase "in this Act, unless inconsistent with the context or subject matter", will be deleted.

8. Terms

The term "must" will replace the term "shall" (as consistent with Section 45 Interpretation of Legislation Act) wherever "shall" is used to impose an obligation. The term "where" or "in circumstances where" should not be used as a synonym for "if".

9. And/Or
Where a set of criteria or conditions are set out in successive paragraphs, whether they are cumulative or alternative, they will be made clear by the use of "and" or "or" between each of the paragraphs.

10. Unnecessary Qualifications
The phrases such as "notwithstanding anything in this Act", "subject to this Act" and "subject to Section . . ." will only be used if absolutely essential.

In a Ministerial Statement on 7 May 1985 I released the first 18 clauses of a new draft Coroners Bill together with, for comparison, some clauses done in the old style. The impact of the changes is very substantial. The wording is easy to follow and the number of words is very substantially reduced.

It is argued from time to time that one must treat language used in statutes differently and that legal language has evolved through generations of case law and that certainty is to be gained from retention of the same phrases. It is said that chaos would result in rewriting statutes in plain English. I do not subscribe to this view and believe that much legalese is inserted in legislation out of an abundance of caution. Specific problems of interpretation can be addressed through amendments to the **Interpretation of Legislation Act.** Much has already been achieved by the **Interpretation of Legislation Act** which requires courts to look at the underlying purpose of an Act and to make reference to extrinsic materials in order to ascertain the underlying purpose or object of the Act.

The actions taken already are only the beginning and in the future I would like to see a radical departure from tradition and provide that all Acts are to be drafted at the outset in plain English. With the assistance of consultants and exciting developments in the computer software area, I believe that this can be achieved. I would encourage Members of the Bar to obtain copies of the Ministerial Statement and I would welcome feedback on the material contained therein as I believe there is a common determination among all concerned to see improvements made.

Sentencing Discussion Paper
In recent times criticism has been levelled at the corrections and sentencing laws of the State of Victoria. This has come from many quarters including the judiciary, members of the police force, the media and members of the community. Sentencing laws have been described as "labyrinthine" and concern has been expressed as to the operation of administrative discretions and the fact that the length of time for a person serving a sentence often varies markedly from the sentence handed down by the courts.

I have therefore released a Discussion Paper which poses various options for change with a view to reviewing anomalies in the sentencing process and restoring confidence in the authority of the courts.

The Discussion Paper is intended to be used as a basis for consultation. The options for change are options only and the Government will not make a decision on the issues until there has been consultation in relation to the matters raised.

The principal options canvassed in the Discussion Paper are:

- Amendments to the **Community Welfare Services Act** to provide that sentences commence on the day on which they are imposed
- Tightening up the Act in relation to temporary leave for prisoners and transfers to attendance centres
- Modification of the pre-release program, perhaps limiting it to longer sentences or for shorter periods.
- The courts be given power to wholly or partially suspend a sentence of imprisonment
- Remissions be credited at the outset of a sentence and courts be allowed to take into account remissions when fixing sentences
- Courts be able to combine prison sentences and community service or attendance centre orders
- The Adult Parole Board be given power to fix release dates and order release for persons serving indeterminate sentences without reference to Cabinet; the Paper also discusses appeal mechanisms in such cases with an appeal to the Court of Criminal Appeal by either the prisoner or the D.P.P.
- Giving prisoners the right to be heard before the Parole Board and if necessary have legal representation
- Possible expansion of the Parole Board to include County Court judges as additional deputy chairmen
- A detailed study of sentencing laws should be made by an expert committee which includes members of the judiciary and other interested parties.

I have circulated copies of the Sentencing Discussion Paper to the Bar Council and the Criminal Bar Association and I would welcome comments on the options raised in it from any interested Members of the Bar.

Corporate Affairs Advisory Board
In response to widespread public concern about the regulatory burden imposed on Victorian businesses and the complexity of corporate law, I have established a Corporate Affairs Advisory Board. The Board will be chaired by the Commissioner and includes a number of business leaders. It will also include the Secretary of the Law Department and the head of the Regulation Review Unit of the Department of Industry, Commerce and Technology. The function of the Board is to make recommendations to me and to the Commissioner on the following matters:

- Identifying regulatory requirements which are outdated or no longer achieve relevant objectives
- Identifying reforms which are needed to improve business efficiency and enhance investor protection
- Improving the operation of the office, particularly in relation to the processing of market related documents and the investigation of insolvency offences
- Responding to technological developments relevant to the operation of the office and on the direction of corporate regulation

The establishment of this Board reflects the high priority that I give to the operations of the Corporate Affairs Office and its central role in the Government's economic strategy to promote efficiency in the capital markets as well as providing protection to investors.

Ministerial Council on Companies and Securities

At its quarterly meeting in Hobart in early May the Ministerial Council on Companies and Securities, of which I am the Chairman, took a number of decisions which indicated a desire on the part of the Council to maintain the deregulatory momentum. The major decisions were:

- Include in the next exposure draft of the Companies and Securities Legislation (Miscellaneous Amendments) Bill 1985 a proposal to give the National Companies and Securities Commission (NCSC) discretion over the conditions which can be included in take over offers. The NCSC will prepare guidelines setting out the manner in which it will exercise the discretion conferred upon it by the Bill.

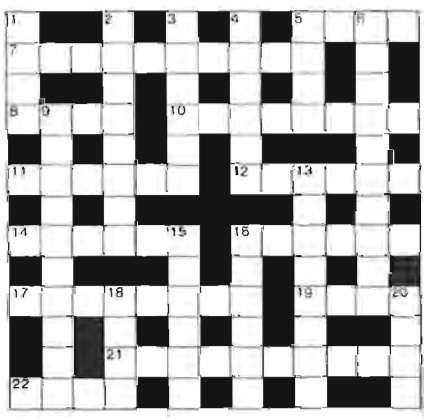
These guidelines will be available to the public when the Bill is released for exposure in June.

- Approve the NCSC proposal to allow groups of companies to prepare one set of accounts and exempt wholly owned subsidiaries (whose debts are guaranteed by their parent companies) from filing separate accounts with Corporate Affairs Offices.
- Approve the enactment of legislation in relation to short form annual returns. The legislation will not include any provision requiring audited exempt proprietary companies to disclose key financial data.
- Increase the permissable size of legal partnerships to 200 persons.
- Deal with the issue of the liability of unit holders in public trusts by administrative action rather than legislative amendment.
- Pursue an amendment to the Securities Industry Code to redefine "stock market" to include screen trading facilities that display quotations which are indicative of offers to buy or sell securities.

CAPTAIN'S CRYPTIC
No. 52

Across

5. County Court stage (4)
7. In danger of being convicted (2, 8)
8. In the matter of (2, 2)
10. You can take his judgments with confidence (7, 1)
11. Situated in the middle (6)
12. Old mowing implement (6)
14. Byrne D or Ross D (6)
16. Right instincts (6)
17. A cheat (8)
19. A gown becomes a South African (4)
21. London home of barristers (3, 2, 5)
22. Symbol of musical pitch (4)



Down

1. Unless (4)
2. An abandoned ship (8)
3. Disease of horse's hock (6)
4. Transfers of ownership (6)
5. To boost a product or excite a customer (4)
6. Topic of Property Law Act s 125 (10)
9. A good for nothing (4, 2, 4)
13. Early report in Anglo-Norman (4, 4)
15. Yield to compassion (6)
16. At a considerable distance (3, 3)
18. Artless and innocent (4)
20. Form of procedure (4)

an order that the additions be demolished. It is unlikely that in the circumstances of that case the Court would have ordered the Wades to pull down the additions if all that the residents established was a wrongful issue of the permit by the City. In fact, their claim was more extensive as Counsel for the residents said in August 1982 and as **The Age** reports him as having said, "the basis of the case is alleged non-disclosure, misrepresentation and fraud."

The evidence before the Court in support of those allegations of deceit was found not to support the allegations, and the trial judge totally rejected them. To accuse a person of fraud is a serious matter. The residents failed in those accusations, the examination of which contributed materially to the length of the case.

The article implies that the trial judge allowed the barristers who appeared before him to waste time upon irrelevant argument and otherwise. That implication would beggar the truth and betrays ignorance of the large body of evidence and issues which had to be, and were considered by His Honour.

Once the conclusion was reached, that the Wades were innocent of fraud or misrepresentation and had acted bona fide, having built their extensions in accordance with the permit, the Court had to decide whether it should order the Wades to demolish them, or whether the innocent nearby residents should suffer the continued existence of the Wades' extensions. (The residents did not claim, nor could they have claimed, that the Melbourne City Council must, by reason of the wrongful issue of the permit, compensate them for any depreciation in their properties as a result of the additions constructed by the Wades.)

The trial judge had to make this difficult decision, weighing up relevant considerations, including the respective parties' position. His Honour came to the conclusion that he should not order the Wades to pull down their extensions. The implication in the article that in coming to that conclusion the trial judge was concerned to be fair to the Wades, but not to the residents, is unfair and groundless. His Honour acted fairly to both sides and considered all relevant matters before he came to his decision. This was recognised by the Full Court in its Judgment. It observed on appeal —

> "The learned trial judge's task involved doing equity between the parties by making a comparison between the detriment and damage suffered by (the neighbours) including any harm to the public resulting from the invalid permit and the extension illegally made with the hardship and damage which would be suffered by the Wades. . ."

The article seeks to summarise the effect of the case in most unfortunate language. It says that "the Courts have ruled that (the Planning System) gives no protection to anyone once a neighbouring development has been permitted without their knowledge." This is a misleading summary of the legal position as declared by the Court. The Court did no more than state that on the particular facts of the Wade case, it was not appropriate to order that a building constructed in good faith in reliance upon a planning permit which was subsequently held to be invalid, should be demolished. The case does not stand for the proposition that householders are now free to disregard planning legislation with impunity.

The article makes the further baseless and cynical assertion that "the Courts are . . .museums of old values in which time and costs to clients are disregarded in a drawn out gladiatorial combat of wits and learning". It goes on to advocate a "private dispute settlement body" (whatever that may mean) as an alternative to courts.

There is nothing constructive in those remarks which, at best, highlight the difficulty of suggesting in tangible terms an alternative to the present system of resolving legal and factual disputes between the parties. It is the fact that many private dispute settlement procedures, such as private arbitrations, do not necessarily provide a speedier or cheaper method of resolving disputes. Very often they are more expensive and take longer to resolve the dispute than do the Courts.

The fact is that there is no convenient shortcut to an investigation of the truth of a matter. The ascertainment of what the law is and its application to a unique set of facts is often difficult and, in many circumstances, necessarily time consuming. To suggest that a "private dispute settlement body" is a proper alternative where the validity of a permit granted by a governmental authority is in issue, is to demonstrate an insufficient appreciation of the role of the courts in supervising the application of legislation and in the resolution of disputes between parties. It also disregards the importance of open courts which provide citizens of this State with effective remedies, equally against other citizens and government itself.

The courts, however imperfect, are the best system yet devised for the resolution of legal and factual disputes between citizen and the Crown or between citizen and citizen, particularly when one impugns the honesty and integrity of another.

To discourage them on false premises from having recourse to courts is not in the public interest. Legitimate criticism of courts and the judicial system based upon fact is not inconsistent with the achievement of greater justice. Criticism based on error can only work to undermine it.

ALEX CHERNOV
Chairman, Victorian Bar Council

THE GREAT CRICKETER

On the 4th April 1978, during the first over of the touring Australian Lawyers' team, Desmond Haynes, opening batsman for the Carlton Club, Barbados, twice despatched the ball swiftly and elegantly to the boundary. At the end of the over when a bye enabled their hero to retain the strike, the large crowd applauded loudly. Plainly, it was "a tide in the affairs of men which taken on the flood" would lead on to fortune. Nonchalantly, the Australian skipper tossed the ball to the man whom he had been advised by his counsel, Eugene William Gillard, was the team's finest and fastest bowler, and who, coincidentally, was Gillard himself.

The atmosphere was crystal clear, the wicket unresponsive, as Haynes looking more than confident faced Gillard's first ball. When, however, with difficulty he kept it out, an unaccustomed hush descended over the ground. A second ball, even faster and more vicious than the first, wiped any last vestige of confidence from the batsman's face, now a study in deep and dark concern. Our learned friend Gillard's third ball convinced Haynes, a man who was accustomed to playing Lillee, Thompson, Hogg and Garner with disdain, that his only chance of survival was to assert his supremacy by despatching the next ball through the covers for four.

It was not, however to be. As the bowler walked back to deliver the fourth ball, a pre-arranged signal had already gone out to alert both 'keeper and slips that Gillard was about to deliver his dreaded cutter. Playing forward desperately, the batsman recognised as one of the Indies finest openers, acquired a thick edge and Mr. Huon Walker fielding at second slip, moved swiftly to snap up a brilliant left handed catch. Thus, in four balls, Gillard, whose cricketing ability is only exceeded by his modesty, won an immortal place in the Victorian Bar's hall of cricketing fame. It is even rumoured that it may have played no small part in his elevation to "silk" which occurred the following year.

Our Bar has had more than its share of cricketers, whose relative merits remain a subject of joyous recollection, comparison and discussion. Sir Edmund Herring once made 201 n.o. when playing for Oxford against Cirencester and 55 for the Gentlemen of Ballarat against England during the 1911-12 test tour. In 1925, Norman Mitchell (later elevated to the County Court Bench), in the absence of Woodfull, opened for Victoria with Bill Ponsford to bear the brunt of the South Australian speedsters. More recently in 1949, Alec Southwell (now Mr. Justice Southwell) playing as a district cricketer with the University First XI, scored a glorious 91 n.o. in 67 minutes thereby eclipsing Neil Harvey in the Monday headlines. Peter Coldham (now Mr. Justice Coldham) won a coveted and prestigious M.C.C. ticket as a schoolboy before his cricketing career was abandoned for service in the R.A.A.F. Who, however, can forget Coldham's 95 n.o. for the Bar against Flinders Naval Depot in 1951, robbed only of his century by McGavin's untimely declaration — a matter His Honour still remembers and which may account for McGavin's preference for litigation in the Victorian Supreme Court.

Ian Gray (now Mr. Justice Gray) no mean performer with the ball, was also a rollicking performer with the bat, scoring 92 n.o. for the Melburnian Club XI and 62 for the Bar against the Governors XI in 1951, an occasion on which one of our lesser batsmen had the misfortune to be caught on the boundary by Sir Dallas Brooks's butler. More recently, in 1962, John

Winneke in his first year at the Bar, by a devastating performance with the ball, converted the Solicitors XI into a Personal Injuries List. Last, but by no means least, in our galaxy of stars is Elizabeth Murphy, who has played interstate cricket for the Victorian Ladies XI.

Pride of place however must be reserved for our one and only Test cricketer, William Henry Moule, who was born on the 31st January 1858. In 1866 Moule entered Melbourne Grammar under that great headmaster Dr. John Bromby. He proved not only a good scholar but learned to excel at cricket and football. At Melbourne University, whilst studying law, Moule won his cricket blue and was also selected to play in the Victorian XI against England. In 1879 he gained his LL.B. and was admitted to the Bar. In the following year, Moule became a Test player when he was invited to join W.L. Murdoch's Australian Eleven, which was the first Test tour of England.

In those days, all the Australian team were professionals and any profits were shared amongst them. "Billy" (as he was universally known) insisted however, on retaining his amateur status and refused to take more than his bare expenses. As a member of the touring team, Moule had the honour of being selected in the first Test match ever played in England. The match was played at the Oval, Kennington, interest centring in particular, on the respective batting performances of Dr. W.G. Grace, the English Captain, and the Australian skipper, W.L. Murdoch. In the first innings, in an English total of 477, the good doctor made 152, the first Test century for England, whilst Murdoch made a duck. Moule, batting at eleven, secured six runs only.

Billy was only brought on to bowl late in England's first innings when Australia was already in serious trouble. Murdoch then ordered him to bowl underarm, but Billy refused. Murdoch, not a captain to brook disobedience, then threatened to send Billy off the field if he did not do as he was told, but Moule (also a strong man) again refused. Fortunately, at this stage H.F. Boyle interceded saying "Let the boy bowl as he likes, and if he does not get a wicket, he'll have to do as he is told." whereupon Moule bowling overarm promptly broke the partnership and finished with 3 for 23. As this was Moule's only Test, his bowling average long remained the best ever by an Australian bowler.

In Australia's second innings, when, with nine wickets down, Moule came in to bat, Australia faced an innings defeat. However, Billy stayed with his skipper in a partnership of 88 to which he contributed some 34 runs, lifting the Australians to a total of 327. Perhaps even more important he enabled Murdoch to reach 153 not out, thus finally eclipsing Grace. The match was also notable for the fact that all three Grace brothers played for England, whilst G.F. Grace obtained the first "pair of spectacles" in Test cricket.

Returning to the Bar, Moule was one of the first barristers to move into Selborne Chambers when it was completed in 1882, and for some 24 years occupied Room 52 on the first floor. He practised mainly in the Supreme Court and County Court and was also Editor of the Victorian Law Reports. An enthusiastic Anglican, in order to maintain the standard of his shorthand, Moule used a book of Common Prayer written in shorthand. He continued to play cricket for Victoria until 1885 and was for many years a committee member of the Melbourne Cricket Club. His association as a player with the Victorian Bar XI extended for more than three decades and he appears as a trim upright figure in the photograph of our 1905 Bar Team in the Supreme Court Library.

Moule also served for a long time as a Warden of St. Andrew's Brighton and later became Chancellor of the Diocese of Wangaratta. Moule married Jessica Osborne and had two sons and a daughter. One son Humphrey served in the 4th Light Horse with the first A.I.F. and was killed at Gallipoli in August 1915. His other son William became a partner in the firm of Moule, Hamilton and Derham as it then was.

In 1894 Moule stood for the seat of Brighton in the Victorian Legislative Assembly defeating the sitting member and speaker Sir Thomas Bent. Bent, who had previously duplicated the Brighton Railway line to enhance the value of his own subdivisions, had been somewhat discredited by various parliamentary revelations, but Moule's victory nevertheless caused a political sensation. He was able to retain the seat against the wily Bent until 1900.

In 1907 Moule was appointed a County Court Judge where he soon emerged as one of the characters of the bench. He was reputed to be the only Judge of the County Court who could regularly fill the gallery of the Court even when hearing a civil case.

His two great foibles cricket and Melbourne Grammar became well known to the profession. Invariably, any cricket prowess of a litigant or witness was somehow or other introduced as a matter highly relevant to the case, not always successfully. On one occasion a witness denied that a conversation occurred on a particular day and gave as his reason that it could not have occurred on the day in question because on that day, he was playing interstate cricket.
"Oh" said His Honour "For whom were you playing?"
"The Victorian Chemists against the New South Wales Chemists" said the witness.
"Do you call that interstate cricket?" said Billy (and turning to counsel) "It's useless calling this man. I wouldn't believe a word he said".

In the difficult task of determining where truth lay, the Old Melburnian's tie often proved a sure guide

for His Honour, and Old Melburnian's ties were frequently spotted before him by instructing solicitors, their clerks, and witnesses. On one occasion, when Mr. A.L. Reed (later the first Judge Read) himself an old Melburnian, was presenting a defendant's case in the running down jurisdiction, Read called a thirteen year old boy who gave as his occupation "student at Melbourne Grammar".

"An excellent school" commented His Honour. "I am sure everyone agrees with Your Honour. . ." said Read looking at the almost continuous line of Old Melburnian's ties on the other side of the Bar table "Except, perhaps, my learned friend's instructing solicitor" who happened to be the one odd man out.

In his early days as a Judge, Billy conducted all cases under the State Insolvency Act and later, when the Federal Jurisdiction first came into operation, acted as Federal Bankruptcy judge until the appointment of Judge Lukin. He was a punctilious judge who always insisted his own notes were infallible. On one occasion when he commenced to sit at 10.25am, he soundly berated Mr. Grattan Gunson when he arrived shortly before 10.30.
"But" said Grattan, "my watch indicates it is not yet 10.30 and so does the Court clock".
"Never mind your watch or the Court clock" said His Honour, "I always set my watch by my dining room clock and it's always right".

During the 1932-33 bodyline series, much to his chagrin, Billy Moule was on occasions required to actually sit when Test matches were in progress. Invariably, a tipstaff was directed to listen to a radio in close proximity to the Court, from whence he relayed to His Honour regular notes indicating the progress scores.
On one such occasion when the demon bowler Harold Larwood contributed to an Australian collapse by three swift wickets, in the midst of an earnest cross-examination, a note containing the appalling news was duly passed up to His Honour. Counsel, realising something must be seriously wrong, paused. After a prolonged and deadly silence, Billy finally spoke. "Gentlemen" he said "I have some very distressing news" and he announced the score, adding after a further prolonged silence "But I suppose. . .we will have to go on with the case".

In 1935 at the ripe age of 77, Billy Moule retired from the Bench. His last years were devoted to gardening and in particular growing daffodils, at which he achieved great success by hybridising. His Honour died in his eighty-second year at his home in Queen's Road, Melbourne on 24 August 1939, and was buried in the Brighton Cemetery.

FRANCIS

Note: The author is indebted to Mr. E.W. Gillard Q.C. who kindly made his papers on the Hayne's dismissal available.

AUSTRALIAN LAW JOURNAL ACCOLADE

The Bar's recent acquisition of Johnsoniana was given some publicity in the March edition of the **Australian Law Journal** (59 ALJ 129). The authors of the comments therein contained will be interested to learn that the trustees of the Samuel Johnson Diptych (Gift) Trust after consultation with the Syndics of the Oxford University Press have authorized the editors of the **Victorian Bar News** to print a further entry from the recently discovered holograph.

EDITOR: (Sb.) from the Provencal 'Aidetour', originally a keeper of Manuscripts. The term fell into opprobrium after the Albigensian extirpations, as used on one associated with heterodox views or fabulous relics.

1. A purveyor of apocrypha
   "Why! Though the very editors do cry it in the market place still it may be true."
   Shakespeare

   "A tale told by an editor, full of sound and fury, signifying nothing."
   Shakespeare

2. As adjective: Editorial: a generous suspension of disbelief in the fabrications of social inferiors; thus, editor: a gull, one overly credulous.
   "This nonsense got into all the editions by a mistake of the editors".
   Alexander Pope 1725

   "The simplicity of the gulled editor".
   Charles Lamb Guy Faux 1811

   "It is as well to believe that we are good natured editors who will easily swallow".
   Duke of Wellington Despatches VII, 511.

   Cassandra "Farewell, Yes, soft! Editor, I take my leave
   Thou dost thyself and all our Troy deceive"
   Shakespeare

MICHAEL CRENNAN

Editors' Note

Attentive students of Johnsoniana will have noticed the discovery of a previously unpublished letter of Samuel Johnson in the National Library in Canberra (**The Age** 5th June 1985 p.9). We await with interest any topical comment in a future edition of the A.L.J.

LAWYERS' BOOKSHELF

INCEST, A CRIME AGAINST CHILDREN, BY IAN W. HEATH. PUBLISHED BY THE VICTORIAN GOVERNMENT PRINTING OFFICE 1985. 65 PAGES — $12.00

The study of 100 incest cases resulting in convictions in Victoria is the basis of an examination of the crime of incest which the author hopes will make the public more aware of and alert to a problem within the community. The author views the material obtained through the case studies as assisting in the recognizing and stopping of instances of this crime as early as possible.

As the cases cover the period from April 1976 to April 1984, an examination of the law prior to and after the introduction of the Crimes (Sexual Offences) Act 1980, is reviewed. The most significant aspect of the change in legislation has been the broadening of the definition of an act of sexual penetration. Apart from the introduction of the penis into the vagina, anus or mouth of another person of either sex, sexual penetration also encompasses the introduction of an object not being part of the body, manipulated by a person of either sex into the vagina or anus of another person of either sex. The variety of objects used by the offenders in some of the cases upon the victims can only be described as imaginative.

The offenders' social background and characteristics are investigated to a limited extent in terms of age, work history and racial origins. In most cases the offenders pleaded guilty and a detailed break-down of the type of sentences handed down in court, could be extremely useful to those engaged in the criminal law area. What becomes apparent is the ready willingness of the offender to admit to the molestation of a child or children over a number of years, coupled with genuine remorse for what had happened. However, that behaviour can continue, if not with the same victim, with another sibling, and that aspect may never reach the attention of the Court. It also becomes apparent that the ready availability of a child for sexual gratification in the privacy of a home makes detection all the more difficult. One wonders, in this day and age, with the variety of material and sexual services provided for sexual gratification, that the offenders should feel the necessity to ignore them and turn to a child or children for sexual satisfaction.

Perhaps the most disturbing aspect of the material is the manner in which the offender keeps the child in check in order to continue the sexual molestation. Threats of physical harm against the victim, or other members in the household, were often sufficient to terrify the child to comply with the offender's demands. If a complaint was made the offender conjured up the fact that the child could be responsible for the break-up of the family, and thereby instilled within the child an overwhelming sense of guilt.

Another ploy used by the offender was to indicate to the child if he didn't comply with the offender's demands, then sexual demands would be made of other children within the family unit.

The saddest aspect of some cases was the removal of the child from the family unit for his or her protection. The offender, whether receiving a short custodial sentence or a non-custodial sentence, often returns to live with his wife and family. The hardship on the family during the term of imprisonment, and the relationship between him and his wife and children thereafter, creates such a difficult domestic situation that it could almost be seen as a punishment on the child and a disincentive for reporting further incidents to the Police. The realisation by the mother of what has happened in the family invariably presents her with a dreadful dilemma. Often the issue forces her to decide whether to place her loyalty behind her spouse or the child. In some instances she is unable to make this decision. She allows the situation to continue until the child or another person makes a complaint to the Police. This complicity in the husband's crime imposes considerable strain on her own self-esteem and on her relationship with the child whose complaints she must ignore.

There appears to be an overwhelming necessity for counselling of victims, to assist them in coming to terms with what has happened to them, and also to assist in their future development as adolescents and adults. Publicity and awareness of the problem of incest within the community is strongly advocated, so that the "traditional helpers" like teachers, parents, siblings or a concerned friend can understand what course of action should be undertaken if the problem comes to their attention. The education of children to understand what is proper body touching and what is not, is seen as assisting the child to cope with the fact that certain adverse behaviour is wrong and so to be confident in making a complaint to an appropriate person. Alerting the Police is strongly emphasized and encouraged throughout the book as being the proper and only effective way of stopping incestuous behaviour.

The author's style is clear, straight-forward, and written with concern and sensitivity. The book will be of interest not only to lawyers, but to parents, teachers, social workers and all those who are involved with children in a professional sense. In the light of recent publicity of the crime of incest and the community's growing awareness of this social problem, this study can serve only to add to our knowledge and understanding of this, aptly described, crime against children.

KOMINOS

MOUTHPIECE

Report of the Better Trials Committee
We release this interim report on criminal trials because of the urgency of the matter. The administration of criminal justice has become slow, expensive, inefficient and chancy. Convicted persons grieve. Untried accuseds fume. Judges champ. Jurors whine.

We began by considering the present defects of the system.

The running of a criminal trial has become scandalously expensive.

The cost is of people and money. On a typical day in a Supreme Court criminal trial the following people will be involved:

1. Judge, his Associate and Tipstaff (3 persons).
2. A minimum of two counsel, their instructors and clerks (an average of 7 persons).
3. A jury in their room during legal argument. To this add two jury keepers, the sheriff and his officers, those who feed and minister to the jury (an average of 17 persons).
4. Witnesses in court and those waiting to give their evidence. To this cost add the loss of their services to their employers and their loss to community of their gainful endeavour (an average of 10 persons).
5. Prison officers, guards, and security police, drivers of prison vans and the policeman on the door of the court, maintenance men (an average of 8 per accused).
6. The accused himself (who doesn't count for much).

This is upwards of 45 people at an average of $100 per day. $4500! (For the purposes of this report we have attributed to counsel a real daily value).

Of course, other matters concerned us. We analysed trials with special reference to verdict. Without being specific, we were impressed by the fact that particular judges invariably had trials resulting in convictions. On the other hand, two judges between them presided over nearly all the acquittals. The only variable which appeared to upset these judges having a perfect striking rate was the quality of the counsel in the trial.

We considered that this state of affairs denigrated the role of the jury. Why have a jury if it would be putty in the judge's hands? In any event, the acquittal/conviction rate is 50% and hardly varies from year to year.

We also noted with alarm the increasing number of long trials. Long trials adversely affect the court's throughput. The list of cases waiting to be heard increases.

Taking all these matters into account we make the following recommendations:

1. Commitals
   (a) Witnesses to read their statements before the magistrate. Such reading to be videotaped.
   (b) Cross examination (videotaped) by leave, and never in any circumstance to last longer than 15 mins.
   (c) Exhibits to be photographed.
2. Magistrate at the end of the committal to settle the presentment.

3. The Sheriff to require the attendance of jurors to sit for a week, Monday to Friday.

4. Eight trials to be listed each week. The trials will be heard in the following way:
   (a) Accused to be present and arraigned.
   (b) Videotapes of evidence to be played and photos shown.
   (c) Accused to stand mute at any time without leave. May make statement like any witness and be cross examined for no longer than 15 mins.

5. Judge to charge on the law only. Counsel's addresses abolished.

6. By Thursday evening the same jury will have heard eight cases. They will retire on Friday and choose four accused to convict and four to acquit.

The advantages of this system are self evident. From any possible disadvantages of trial by jury are removed the possibility of inconsistent verdicts and the ordinary risks of litigation. The 50% of acquittal verdicts will be embodied in the system.

7. Special rules for commercial frauds, conspiracies and other long cases. The rules are as follows:
   (a) trials for these matters to be abolished.
   (b) committals to be conducted as per paragraph 1 and 2.
   (c) on the magistrate finding a strong and probable presumption of guilt, the accused has the following choices:
      (i) 10 years with an 8 year minimum; OR
      (ii) pension of $100 per day (with cost of living adjustments) for life provided that he does not seek or gain remuneration from any source other than
      *police informer
      *adviser to Deputy Commissioner of Taxation!

8. Sentencing
   (a) Prison Sentences to be for fixed terms subject to the following variations:
      (i) subtract 10% for good character for past 5 years.
      (ii) add 10% for prior convictions.
   (b) Where an accused after being committed for trial indicates he will plead guilty, the fixed term to be reduced by half. Bond to be given for all first offenders on a plea of guilty.
   (c) Other sentencing options according to the following formula. Of the four convicted in any one week, one to be fined and three to be imprisoned.

Byrne & Ross DD

JUSTIN'S STORY

The police were out in some force, a bit edgey, half expecting trouble. The President of the Irish Republic was to visit the Supreme Court. It was to be a gracious gesture on all sides to mark the century-long association between the Court and its pattern in Dublin. But there was an old man on the footpath who didn't fit the spirit of things. He was shabby, confused looking; maybe he'd taken a couple too many, although it was quite early in the day. He had a cardboard sign. It was clutched to his chest and the visible side read "Please Excuse Obstruction". The police did not like the look of him. They wanted him to move on, and made that very clear. But he would not go.

A barrister crossed to him, seeking, as is the way of barristers, to mediate between man and authority. Maybe the old man mistook the motive. In answer to enquiry he said little, mostly shaking or nodding his head. He seemed to become more confused and nervous. When he did speak the accent was Irish.
The barrister:
"Are you in trouble?"
The police sergeant saw he had yet another mischief-maker.
He demanded to know who the barrister was.
"Never mind, I am talking to this gentleman".

The police sergeant recognised the tone of one secure in the knowledge of his legal rights and said no more. "You know the President is a guest in our country, you wouldn't want to embarrass him?" No response.
"What do you have on the sign?" He clutched it closer to his chest. He seemed harmless enough and the barrister left him to it.

The President arrived in a shiny black Rolls Royce. As it stopped he was surrounded by pomp and officialdom. The old man was forced back, more by the press of people than by anyone's conscious action. He stood with one foot in the gutter and reversed the sign to display his message. The President swept on past him and up the carpeted steps. Maybe he saw the sign. It was in green. It had a shamrock. It read "God Bless the President of Ireland".

LETTER TO THE EDITORS

Dear Sirs,

All those connected with the editing and production of the **Historical Records of Victoria** series were gratified by the large amount of space devoted to the project in your Autumn 1984 issue, in a review signed Whitehead. It is not often that a reviewer goes to such lengths to explain the background, purpose and ambit of a series of volumes.

I feel however that one point should be clarified. Whitehead regretted that 'the flavour of some original documents has been lost in the "sanitized" reproduction which has edited out the plethora of nineteenth century capital letters and standardized much punctuation and spelling, particularly of place names.'

These comments raise one of the greatest problems we faced in deciding how to reproduce the documents. Foremost in our minds was the consideration that the volumes should be made as straightforward and readable as possible, within the confines of accuracy, for the benefit of ordinary educated readers. Professional historians and archivists can find the documents themselves, and make whatever deductions they wish from the vagaries of handwritten correspondence. Our task, as we saw it, was to make the historical record accessible to the general public, in some logical and interesting manner.

Consider therefore the following difficulties:—

(1) Often there exist several copies of each official document, transcribed by different clerks for various purposes. Each clerk often superimposed his own idea of spelling, punctuation and capitalization upon the dictation or text. Which variant, all bearing the same date, should be accepted as 'authentic'? The question is usually impossible to answer.

(2) New place-names in Port Phillip, particularly when based on Aboriginal or other oral versions, or when rendered for instance in Captain Foster Fyan's almost illegible scrawl, took on a bewildering variety of forms. I have often seen Corio Bay, for example, written as 'Caryeio Bay' and other strange versions. Even letters from the Colonial Office in London frequently spelt Port Phillip as 'Port Philip'. John Batman often became Bateman; John Fawkner became Faulkner. Such examples could be multiplied endlessly.

(3) With letters written sometimes in appalling conditions in the field, no one today can be completely certain of some of the wording. In a few cases, letters we have shown to six different people have produced six different transcriptions. I hope you will feel a slight sympathy for the editors who have to decide which version finally to print! Had we attempted to annotate, the annotations could have doubled the size and cost (but not the usefulness) of the volumes.

(4) We envisaged as one of the project's greatest benefits the cumulative index volume to the Foundation Series, which we hope to publish in the Bicentennial Year, 1988. But there is no point to an index unless it is usable by modern readers. Half a dozen different entries for the spelling of 'Corio Bay', for instance, where it is patently obvious that the correspondent meant today's Corio Bay, would be worse than useless, and highly misleading to any user of the index, who might well assume they refer to several different places — and look for them in vain on the map.

I should emphasise that the documents have been edited as infrequently and sparingly as possible, consistent with modern editorial style, and solely for the purpose of making them readily comprehensible. I cannot agree that the documents have in any way been 'sanitized', a word which carries undertones of censorship. Nothing at all has been censored. Quite the reverse: our aim has been to find relevant documents wherever they may now be located, and open the entire official record of our early days to the general public.

Yours sincerely,
MICHAEL CANNON.
Editor-in-chief,
Historical Records of Victoria.

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IDENTIFICATION OF BARRISTERS

The Bar Council and the Criminal Bar Association have received correspondence from the Secretary of the Police Association concerning identification of Law Clerks, Solicitors and Barristers. It is the belief of that Association that when Lawyers are not personally known to members of the Police Force at a particular station there is a real danger of conflict arising where a Policeman refuses to permit a person claiming to be a Lawyer from interviewing a suspect or prisoner. Police are becoming more security minded and are seeking identification from those who wish to visit persons in custody or police cells. The Bar Council has therefore been asked to ensure that proper identification of Barristers is undertaken. There are Victorian Bar identity cards issued and Barristers practising in the criminal jurisdiction particularly are urged to ensure that they can be adequately identified for the purpose of visiting their clients in custody.

INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

The Association Internationale des Jeunes Avocats ("AIJA" or the International Association of Young Lawyers) was founded in 1962. The objects of the Association are to study advanced problems of law and questions facing young lawyers; to help in the formation of groups of young lawyers in countries where they do not yet exist; to further the interests of young lawyers; to take an active part in the development of the legal profession and in the harmonisation of its professional rules; to intervene when the right of lawyers to practise freely or the rights of persons to be legally represented and to receive a fair trial are threatened; to defend those principles common to and indivisable from the notion of justice and law.

These ends are achieved by the following means, among others:—

1. An annual Conference lasting one week and which is usually held between the end of August and the beginning of September.
2. Two or three meetings each year of the Executive Committee.
3. Regional meetings between young lawyers of neighbouring countries.
4. Permanent commissions.
5. Introductory courses to the main legal systems of the world.
6. The publication of an annual directory.
7. A quarterly magazine.

The annual Conference considers three or four topics, usually divided between commercial law, family law, criminal law and problems of the profession. The topics are discussed in working sessions based upon national reports prepared in the year before the Conference by Association members or international experts.

At present the Association has nine permanent commissions carrying out studies in the following areas:—

— Independence of the lawyer
— Computers and the law
— International business law
— Future of the legal profession
— Family law
— Labour law
— Tax law
— International arbitration
— E.E.C. law

The commissions study, in more detail than the annual Conference permits, specific problems in their own fields and publish their results. The commission on international business law has recently published a work on the recovery of commercial debts and will shortly publish a work on international bankruptcy. The commission on international arbitration issues to its members quarterly the "AIJA Arbitration Gazette".

Introductory courses have been conducted in French, English, German, American, European Community and Swiss banking law.

The Secretariat Permanent pour le change des Stagiaires (SPES) promotes an exchange programme for young lawyers wishing to gain professional experience abroad.

The Association's age limit for membership is 45. The annual membership fee is 2,000 Belgian francs. The official languages of the Association are French and English. The more recent annual Conferences have been held in Lausanne (1982), Helsinki (1983) and Bordeaux (1984). The 1986 Conference is to be held in Vancouver.

The 1985 Conference will be held in Lisbon, Portugal from 24th to 28th September inclusive. The topics are:—

1. Legal protection of software.
2. The removal of minors from one jurisdiction to another.
3. The legal status of company directors, their civil and criminal responsibility.
4. Free movement of goods in the E.E.C.

A very friendly atmosphere pervades the Conference. There is also an opportunity to dine in the homes of local lawyers. These, and the social programme, are features of the Conference which set it apart from those of other organisations.

Membership and Conference information may be obtained from the Association Internationale des Jeunes Avocats, Avenue Louis Le Poutre 59, Bte 20, B-1060 Bruxelles, Belgium.

EAST ASIAN LAW CENTRE PROPOSED FOR MELBOURNE

The Victoria Law Foundation has funded a feasibility study on the establishment of a new East Asian Law Centre in Melbourne. The project will allow Melbourne Law School to pursue a proposal prepared by Professor Michael Crommelin which has received the support of the Federal Attorney-General's Department. The proposal envisages the establishment of a Centre located at Melbourne University Law School which will coordinate work on Asian Law at Melbourne Law School and the Monash Law Faculty, with the cooperation of members of the legal profession in research projects.

The Victoria Law Foundation's grant is its second major contribution to the establishment of Asian legal studies in Melbourne. A similar grant in 1974 resulted in the introduction of teaching and research on Japanese law at the Monash Law Faculty. Melbourne Law School has invited Dr. Malcolm Smith, who is presently Professor of Law and Director of Japanese Legal Studies at the University of British Columbia in Vancouver, Canada, to join the Faculty between March and August to assist in the development of the proposal. Dr. Smith is a graduate of the Melbourne Faculty who has specialised in Japanese Law since 1969. He taught at Monash between 1974 and 1981 and has extensive experience in Japan, principally at the University of Tokyo.

Dr. Smith says that the Melbourne Law School proposal has several exciting implications. "In the first place the decision by the Federal Attorney-General's Department to contribute $25,000 to the budget of the Centre I think is the first direct support by the Federal Government for university work on Asian Law".

The expanding links between Australia and the region, coupled with steady immigration and the influx of overseas students, should give rise to increasing interest in private law matters concerning personal legal problems. According to Dr. Smith, institutions like the proposed Centre are too readily identified solely with the interests of large firms and companies, whereas there is significant scope for developing expertise in areas like family law, personal property law, succession law, and personal taxation.

The Centre's Melbourne location will give it access to the expertise of over one hundred full-time legal academics at Melbourne, Monash, and La Trobe Universities. The Centre complements the more general activities envisaged by the Melbourne Law School Foundation and the Monash Centre for Commercial Law and Applied Legal Research. The University of Melbourne Council has approved a fundraising appeal to add to the contribution already made by the Federal Government. Major donors will be welcomed on the Advisory Board of the Centre and the Centre will also be inviting practitioners with specialist expertise to work on advisory panels for individual research projects.

Dr. Smith would like to meet as many practitioners as possible during his visit to discuss the Centre proposal. He is available to talk to firms or to any interested professional organisations and can be contacted at the Law School, University of Melbourne, on 341 7302.

CONTINUING LEGAL EDUCATION PROGRAMME

The Faculty of Law is offering the following Advanced Continuing Legal Education courses for the second semester of 1985:

Company Take-Overs Regulation
Comparative Labour Law
International Contract
International Law of the Sea
Petroleum Law

The courses are based on those offered to candidates for the LL.M. by coursework and comprise twelve two-hour seminars. All seminars will be conducted in the evening at the Law School. Assessment 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 the course will be $300.

Applications for enrolment in the subjects close on 30th June 1985. Enquiries regarding enrolment should be directed to the Administrative Officer, Faculty of Law, University of Melbourne, Parkville, Victoria, 3052. Telephone: 341 6190.

VOIR DIRE BY A MAGISTRATE

The case concerned the failure of a magistrate properly to hold a voir dire. The convicted defendants obtained orders nisi, returned before Beach J. His Honour said:

> "The conclusion I have arrived at in the matter is that no distinction should be made between the procedure to be adopted in a trial before a judge and jury and a hearing before a magistrate. Once there is a real question as to the voluntariness of a confession sought to be tendered by the prosecution, it is necessary that the Magistrate satisfy himself that the confession was made voluntarily. To do this he must hold a voir dire, for, if he does not, the defendant will be prejudiced in the manner pointed out by the Full Court in **Smithers' case,** that is, he will be called upon to decide whether or not he will give evidence on the hearing before the question of admissibility of the alleged confession has been determined, and, if he does find himself placed in that situation and elects to give evidence, he will be liable to cross-examination at large. In my opinion it would be quite wrong to place a defendant in such a situation.
>
> Lest it be suggested that if a magistrate adopted such a course and rejected a confession on the ground that it was not voluntary or had been unfairly or illegally obtained, he might thereafter feel inhibited or uneasy in proceeding to deal with the matter, may I quote the following passage from the judgment of Wells, J. in **Furnell v. Betts.** At page 302 His Honour said:
>
> > "Magistrates are, by the nature of their qualifications, training and experience, both competent and entitled to listen to information or evidence that, for reasons subsequently found to be valid, ought to be and is discarded, and thereafter to dismiss it from their minds and to decide a case or make an adjudication as if that information or evidence had never come to their notice."
>
> I agree with those observations.
>
> It follows from the conclusions I have reached that a number of the grounds in each order nisi has been made out and that each order nisi should be made absolute."

Cases referred to:
Dixon v. McCarthy [1975] 1 NSWLR 617
Furnell v. Betts [1978] 20 SASR 300
Smithers v. Andrews [1978] Qd. R. 65
McPherson v. R [1981] 55 ALJR 594; 37 ALR 81
Fry v. Jennings [1983] 25 NTR 19
McKellar v. Smith [1982] 2 NSWLR 950

Egan v. Bott
15th February 1985

9TH LAWASIA CONFERENCE — NEW DELHI

The 9th biennial LAWASIA Conference will be held in New Delhi during the period 7th-12th October, 1985. Papers will be presented in the areas of Commercial Law, Social Law, Criminal Law, and the Legal Profession. There will also be a specialised LAWASIA/Licensing Executives Society Licensing Session. For further details and brochures contact your local bar association/law society or LAWASIA Councillor, or write direct to LAWASIA, 170 Phillip Street, Sydney, 2000. Australia.

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AUSTRALIAN INSURANCE LAW ASSOCIATION SEMINAR

Strategic Directions in the Insurance Industry

The A.I.L.A. (Victorian Branch) will be holding its next meeting on the topic 'Strategic Directions in the Insurance Industry'. Speakers will consider this topic with particular reference to the effects of the Commonwealth Insurance Contracts Act and the Insurance (Agents and Brokers) Act and the Victorian Accident Compensation Bill on both the life and general insurance industries.

Venue:
Noah's Hotel,
Cnr. Little Bourke & Exhibition Streets, Melbourne.
Monday, September 9th 1985, 4.30 pm – 9.30 pm.
Registration Fee — $45.00
($50.00 for non members)

Enquiries:
Australian Insurance Law Association
C/- Mr. P. Rowell
Telephone: 63 0231

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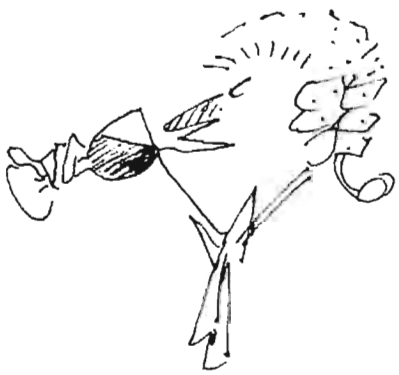
JOHN BARRY MEMORIAL LECTURE 1985

Since 1972, the University of Melbourne has held an annual lecture to commemorate the outstanding services rendered to the University, the study of criminology and the community in general, by the late the Honourable Sir John Barry.

The 1985 John Barry Memorial Lecture will be delivered by Professor G. Hawkins of the Institute of Criminology, University of Sydney. The title of his lecture is "Prisoner Rights".

The lecture will be held on Wednesday, 28 August, 1985 at 8.00 p.m. The venue for this year's lecture has yet to be finalised but a notice of venue will be provided nearer to the time of the lecture.



Pretentious buffs are prone to make
Speeches about the wine they take.

All such boors I'd gladly throttle;

Cut the talk and pass the bottle.

VERBATIM

The police witness was shown two statuettes.

Toal:
Now one appears to be the bust of a female and one the bust of a male. That would be a fair description?

Det S/C Luck:
I don't know about the bust but from the head one looks like a male and one like a female.

R v Saultana & Ors
Cor. Judge O'Shea & Jury
9th May 1985

• • •

After a particularly vigorous exchange between Lloyd QC and Francis QC:

Nathan J:
I feel like a cook in a brothel; competent in my own right, but quite irrelevant to the real business of the management.

Automatic Ticket Research Pty Ltd v Yarra Falls & Ors
April 1985

• • •

Drake:
His father was working as an itinerant labourer.

His Honour:
What is that?

Drake:
A person who travels around the country looking for work — trying to earn as much money as possible, and drinks too much.

Jones:
His father must have been a barrister — Your Honour.

Cor. Judge Walsh
Mildura Circuit
May 1985

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The case concerned an allegedly mental defective inmate of an institution who sought information as to her medical file pursuant to the Freedom of Information Act 1982. The Health Commission said that her mental incapacity meant that she was unable to perform the conscious voluntary acts involved in making a valid application for information. Her argument in reply was that such a result would deny every such inmate any prospect of relief under the Act.

The Full Court, rejecting this argument.

> That is of course quite true in a sense. But the alternative needs consideration. The alternative would be, e.g. that a 3-weeks old baby could apply by making its mark on the paper of a request, and if the documents were not forthcoming it could conduct an appeal from its crib placed near the Bar Table. Perhaps its arguments would not be less persuasive than some that are heard in this place.

Wallace v Health Commission
Cor. Starke, Fullagar and Marks JJ
17th December 1984

• • •

F.C. James (prosecuting):
What is your full name please? — My full name is Dorothy Lynette Grace Brayshaw, but if you call me that I will hit you. I am commonly known as Lynette. Would you settle for Miss Brayshaw? — Lynette.

Throughout the witness's evidence in chief James used neither the title he had suggested nor the one required by the witness. "You" figured prominently.

R v Nylander
Cor. Judge Duggan and jury
20th March 1985

• • •

"Anyone inclined to think that life was a dreary affair would be confirmed in that view by the sight of William Street on a day like this."

Fred James
28th June 1985

• • •

We all know how seductive acronyms seem to be, especially for economists and bureaucrats. But the disease appears to have penetrated the Australian Conciliation and Arbitration Commission.

The Application was for the abolition of an over-award payment to clerks employed by BP Australia Ltd at its Kwinana Refinery. The payment was called in the decision of the Commission the Kwinana Refinery Additional Payment allowance and was referred to as the "KRAP allowance". This led to the following passages in the Commission's decision:

> In summary, the payment of KRAP is inconsistent with the paid rates concept of the industry based on the Unions' and Companies' commitment to the integrated wage structure exercise, the underlying principle of which is like pay for like work.

Cor. Mr. Commissioner Sweeney
BP Australia Ltd v Federated Clerks Union
17th January 1985

• • •

Tim North had just made a lengthy submission during a civil call-over of cases at the District Court.

Almond:
There are a number of matters to which I would seek to reply, but it would perhaps be better if I did that before a magistrate.

Cor. Clothier SM
14th May 1985

• • •

Chris Johnson was taking his witness, the painter, through his evidence in chief on the second day of a building case.

Johnson:
If counsel for the complainant puts it to you in cross-examination that the painting work you undertook on the house in question was worthless, what would your answer be?

Witness, in a broad English accent, turning towards the Magistrate: Bullshit!

Stunned Silence. . .

Manley:
(for the complainant) in cross-examination did. So did the witness.

Cor. Walker SM
Ringwood Magistrates' Court
30th April 1985

To visit Camelot, the legendary capital of King Arthur's Kingdom, was reputed to be a joyful and rewarding experience and to be conducive, in the lyrics of the well-known musical, to happily ever-aftering". The association which the applicants in the present proceedings had with Camelot in the guise of Camelot Real Estate at Broadbeach on the Gold Coast of Queensland led to no such experience. On the contrary, that association has for them resulted only in concern, worry and financial loss. Their Mordred was one John Patrick Ord (known as Patrick Ord) and, unfortunately for them, there was no Merlin on whom they could call to retrieve the situation in which they found themselves.

Cor. Neaves J.
Maisey v. Mudgeeraba Village Estates
22nd May 1985

• • •

'anine Garner had a mixed day at the Preston Magistrates Court in February this year. Her client had been acquitted of sundry street offences. So far so good.

But the bad news was that she called a character witness. The evidence of this witness was such that he found himself charged for being drunk and disorderly in a public place, to wit the witness box. He was remanded in custody to await his hearing.

Rumour has it that the former Defendant will herself be giving character evidence for her former character witness.

• • •

SOLUTION TO CAPTAIN'S CRYPTIC NO. 52

LEGGE'S LAW LEXICON
"T"

tabula in naufragio — Being named in the V.R. as appearing for the defendant after in fact appearing for the unsuccessful plaintiff.

takeover — Corporate cannibalism.

tally — Tallies used in the Exchequer were ordered to be destroyed by 4 & 5 Wm. 4 c. 15, and destroyed they were in a fire which led to the burning down of the Houses of Parliament.

tapes — Trial by newspaper.

tax — Traditionally taxation ought to be certain. The time of payment the manner of payment and the quantity to be paid ought all to be clear and plain to the contributor and to every other person. In fact, according to Professor Walker, taxation even in nominally democratic countries is the major weapon of class warfare. Designed to rob some people of their earnings and property in the interests of redistribution of wealth. In effect some individuals work gratuitously receiving a small percentage commission from the State for their efforts. The tax system is the greatest inhibitor of effort, ingenuity and the exercise of ability. Its other features are the army of unproductive public servants concerned with the assessing and collecting of taxes, the enormous volume and constantly changing details of the chaotic and largely incomprehensible verbiage called The Law of Taxation, the incomprehensible and frequently incorrect assessments, and the irrational nature of the whole topic.

telephone tapping — The electronic verbal.

tenure — A hold on realty.

terminating building society — One which offers depositors 18% p.a.

testimony — The categories of testimony in descending order of reliability are: reconstructed, manufactured, identification, statements from the dock and expert opinions.

third party insurance — The foundation stone of the 20th Century bar.

tory — An Irish hooligan. There was an Irish Act of Parliament "for better suppressing tories robbers and rapparees". 7 Wm. 3 c. 21.

trade union — The gravest threat to democracy, liberty and economic progress yet known to an Irish hooligan.

transcript — The cost of a transcript of the argument will be disallowed. If it cannot be remembered it was not worth listening to.

transportation — The punishment for the offence of commuting.

traverse — The means by which a pleader calls his opponent a liar.

trial at bar — The Essoign Club.

trustee — A solicitor who has drafted a Will.

twyhindi — ???

JUDICIAL STATISTICS CONSOLIDATED

Victorian Bar News last published a consolidated judicial statistics in December 1981. Since then, 307 have signed the Bar Roll. For these, and for those few who have not kept the last consolidation up to date, we provide the following information:

HIGH COURT

No maximum number of Justices

Age for retirement 70 (appointees after July 1977)
Average age at 1/7/85 — 59 years
Average age on appointment — 52 years

	Age at 1.7.85	Date of Birth	Year of App'mt	Year of Ret'mt
Gibbs C.J. (1970)	68	7. 2.1917	1981	1987
Mason J.	60	21. 4.1925	1972	—
Murphy J.	62	30. 8.1922	1975	—
Brennar. J.	57	22. 5.1928	1981	1998
Wilson J.	62	23. 8.1922	1979	1992
Deane J.	54	4. 1.1931	1982	2001
Dawson J.	51	12.12.1933	1982	2003

*Date of first appointment.

FEDERAL COURT OF AUSTRALIA

(Judges of the Court resident and keeping chambers in Melbourne).
— No maximum of Judges.
— Age for retirement 70 (appointees after July 1977)
— Average age 1.7.85 — 61 years.
— Average age on first appointment — 50 years.

	Age at 1.7.85	Date of Birth	Year of App'mt	Year of Ret'mt
R. Smithers J (1965)*	82	3. 2.1903	1977	—
C.A. Sweeney J. (1963)*	70	27. 4.1915	1977	—
Northrop J. (1967)*	59	10. 8.1925	1977	—
Keely J. (1976)*	59	2.10.1925	1977	—
Jenkinson J.	57	14.11.1927	1982	1997
P. Gray J.	39	9. 5.1946	1984	2016

*Date of first appointment.

FAMILY COURT OF AUSTRALIA

(Judges of the Court resident and keeping chambers in Melbourne)
— No maximum number of Judges.
— Ages for retirement 70 (appointees after July 1977)
— Average age 1.7.85 — 56 years.
— Average age on first appointment 47 years.

	Age at 1.7.85	Date of Birth	Year of App'mt	Year of Ret'mt
Principal Registry (Sydney)				
E. Evatt C.J.	51	11 11.1933	1975	—
Melbourne Registry				
Strauss J.	63	3. 9.1921	1976	—
Lusink J.	63	27. 5.1922	1976	—
Emery S.J.	61	9. 7.1923	1976	1994
Asche S.J.	59	28.11.1925	1975	—
Walsh J.	59	31.12.1925	1977	—
Treyvaud J.	55	8. 7.1929	1977	1999
Frederico J.	53	1.10.1931	1976	—
Hase J.	52	22. 8.1932	1976	—
T.R. Joske J.	52	22. 8.1932	1976	—
Fogarty J.	52	9. 6.1933	1976	—
A.A. Smithers J	51	14. 4.1934	1977	—

VICTORIA
SUPREME COURT JUDGES

— No maximum number of Judges.
— Age for retirement — 72
— Average age at 1.7.85 — 57 years.
— Average age on appointment — 49 years.

	Age at 1.7.85	Date of Birth	Year of App'mt	Year of Ret'mt
Starke J.	71	1.12.1913	1964	1985
Murray J.	68	2. 5.1917	1974	1989
Kaye J.	66	8. 2.1919	1972	1991
King J.	66	13. 2.1919	1977	1991
Young C.J.	65	17.12.1919	1974	1991
Murphy J.	62	5. 5.1923	1973	1995
Crockett J.	61	16. 4.1924	1969	1996
Marks J.	59	10. 9.1925	1977	1996
Gray J. (1968)*	59	6. 3.1926	1977	1998
McGarvie J.	59	21. 5.1926	1976	1998
Fullagar J.	58	14. 7.1926	1975	1998
Southwell J. (1969)*	58	1.11.1926	1979	1998
Brooking J	55	7. 3.1930	1977	2002
O'Bryan J.	54	5.10 1930	1977	2002
Beach J.	54	16. 2.1931	1978	2002
Gobbo J.	54	23. 3.1931	1978	2002
Hampel J.	51	4.10.1933	1983	2005
Tadgell J.	51	15. 3.1934	1980	2006
Ormiston J.	49	6.10.1935	1983	2007
Phillips J.	48	18.10.1936	1984	2008
Nathan J.	48	14.11.1936	1983	2008
Nicholson J.	48	19. 8.1938	1982	2010
Vincent J.	48	3.10.1937	1985	2012

*Date of first appointment

MASTERS OF THE SUPREME COURT

— No maximum number of Masters.
— Age for retirement — 72 years.
— Average age on appointment — 53 years.

	Age at 1.7.85	Date of Birth	Year of App'mt	Year of Ret'mt
Brett	68	16. 9.1916	1967	1988
Gawne	59	19. 6.1926	1977	1989
Barker	57	15.11.1927	1977	1989
Bruce	51	7. 3.1934	1974	2004
Mahony (Senior Master)	43	29. 8.1941	1983	2013
Evans	42	20. 3.1943	1983	2015

COUNTY COURT

— No maximum number of Judges.
— Age for retirement — 72 years.
— Average age at 1.7.85 — 56 years.
— Average age on appointment — 48 years.

	Age at 1.7.85	Date of Birth	Year of App'mt	Year of Ret'mt
Ogden	68	27.12.1916	1972	1988
Hewitt	67	4.11.1917	1964	1989
Leckie	67	30.12.1917	1965	1989
Gorman	67	4. 1.1918	1971	1990
Franich	67	14. 6.1918	1966	1990
Harris	66	13.11.1918	1964	1990
Stabey	64	5. 9.1920	1972	1992
Hogg	64	3. 5.1921	1975	1993
Ravech	63	6. 1.1922	1975	1994
Lazarus	63	20. 5.1922	1976	1994
Shillito	62	25.12.1922	1967	1994
Villeneuve-Smith	62	16. 2.1923	1983	1995
Just	60	4. 8.1924	1965	1996
Howse	60	24. 4.1925	1976	1997
McNab	60	2. 6.1925	1972	1997
Byrne	59	22.10.1925	1975	1997
O'Shea	58	4. 4.1927	1969	1999
Spence	57	3 8.1927	1973	1999
Bland	57	13. 8.1927	1978	1999
Cullity	57	10. 2.1928	1977	2000
Dixon	56	13.11.1928	1980	2000
Rendit	56	11. 6.1929	1977	2001
Mullaly	55	9. 7.1929	1979	2001
Waldron (Chief Judge)	54	25.11.1930	1982	2002
Walsh	54	1. 2.1931	1982	2003
Read	53	22.10.1931	1977	2003
Kimm	53	7. 4.1932	1983	2004
Murdoch	53	28. 6.1932	1979	2004
Tolhurst	52	6. 9.1932	1981	2004
Dyett	52	6. 4.1933	1978	2005
Kelly	51	14. 5.1934	1980	2006
Nixon	47	18. 7.1935	1980	2007
Ostrowski	49	9. 9.1935	1983	2007
Fricke	49	5.12.1935	1983	2007
Hart	48	12.10.1936	1985	2008
Hassett	48	17. 5.1937	1984	2009
Rowlands	47	26. 9.1937	1983	2009
Crossley	44	21.10.1940	1985	2012
Schiftan	43	6. 3.1942	1985	2014
Duggan	42	24. 8.1942	1985	2014

MOVEMENT AT THE BAR

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VICTORIAN BAR NEWS
ISSN-0150-3285

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

Editorial Committee
Max Cashmore, Susan Crennan,
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Editors
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Cartoons
King

Layout and Cover
David Henshall

Photos by
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Phototypeset and Printed by
Printeam Pty. Ltd.
Phone: 62 2372

UNREPORTED JUDGMENTS OF COURT OF CRIMINAL APPEAL

September 1984 to May 1985

APPEAL

Evidence by appellant of his rehabilitation both before and after sentence, received and acted on. Minimum term reduced.

R v Swift
10 May 1985

Appeal against conviction after plea of guilty. Extensive review of reported and unreported decisions. Application for leave to appeal dismissed.

R v Vella
19 December 1984

ALTERNATIVES

Common assault not an alternative to Crimes Act s.17 or s.19A. **R v Salisbury** 1976 VR 452 affirmed.

R v Caple
2 November 1984

CAUSATION

Charge of manslaughter. After conviction and before the plea a nursing sister's report was found showing that deceased had hit his head in the hospital shower 4 days after the assault on him by the accused. Trial judge and Crown conceding that the verdict was unsafe and unsatisfactory. Conviction quashed and verdict of acquittal entered.

R v Wynd
23 October 1984

CONSPIRACY

(see Verdict)

COUNSEL

"Where there are two or more co-accused convicted of an offence, it is obviously desirable, if possible, that the pleas on behalf of each of them should be heard consecutively and where counsel has any reason to suppose that what is said on behalf of one co-accused may bear upon the position of his own client, I would regard it as counsel's responsibility to ensure either that he is present when the pleas are made on behalf of the co-accused or that he takes steps to ensure that anything that might adversely affect his own client is answered satisfactorily before his own client is sentenced."
Young C.J. p 6.

R v Franklin
12 November 1984

Affidavit by counsel to C.C.A. on advice to client to plead guilty. "Counsel's affidavit states that he gave the advice referred to with disquiet and that he now regrets having done so. Both statements are irrelevant and improper. Counsel's personal views are seldom, if ever, admissible". (Young C.J. at p 5).

R v Vella
19 December 1984

CORROBORATION

R v Kehagias & Ors (1985) VR 107 explained. Rape Case. "A trial judge is not required to give the jury a warning that it is unsafe to convict without corroboration in cases involving allegations of sexual assault, but he may do so if he considers it appropriate. Where a judge decides to do so he must, of course, avoid error but he is not obliged in my opinion to go any further than he considers necessary for the purpose of acquainting the jury with their task and assisting them to come to a proper conclusion on the evidence". (per Young C.J. p 7).
Extensive review of the authorities by Young CJ, Murray and Ormiston JJ. Application for leave to appeal dismissed.

R v Rosemeyer
19 December 1984

IDENTITY OF STOLEN GOODS

Where property positively identified as coming from one theft is found with property similar to that taken in another theft:

(a) it is not open to infer that the similar property was stolen.

(b) a judge must tell a jury that they must be satisfied beyond reasonable doubt that the property was stolen.

R v Beljajev
13 December 1984

JUDGE'S CHARGE

Crown's failure to lead evidence from witness whose evidence might have been favourable to it. Jury would have understood the phrase "in camp of the Crown" in the Judge's charge.

R v Komornick
26 November 1984 (on appeal to High Court)

JURY

Attempted approach made to relative of juror. **R v Stretton & Storey** (1982) VR 251 applied. Appeal dismissed.

R v Dunn & McNamara
4 December 1984

Judge told jury that if they did not reach a verdict they would be locked up for the night. No miscarriage.

R v Caple
2 November 1984

MURDER

Murderous intent. It is for the jury to determine whether the accused intended grevious bodily harm. **Ross v R** [1922] VLR 329 at 336 followed. **R v Weeding** [1959] VR 298 not followed.

R v Rhodes
14 November 1984

PROSECUTOR

Calling but not leading evidence from a witness named on the presentment.

"In withholding at the outset of the trial and continuing thereafter to withhold from informing the accused or his legal advisers not to lead evidence from Peysack, the prosecutor failed to follow the procedure described in the . . . judgment of Deane J in **Whitchorn v The Queen** (1983) 57 ALJR 809 at 811. This was an omission which rendered the course taken by the prosecutor wrong and which, in our opinion, fell far short of what was required of him in the discharge of his function" (pp 14-15) (per Kaye & Beach J.J.) Appeal dismissed because of no miscarriage of justice.

R v Komornick
26 November 1984 (on 19 June 1985 High Court refused special leave to appeal)

— see also **Sentence — R v McCaul & Ridgeway**

SENTENCE

Shooting at police with intent to prevent lawful apprehension. Fine young man of good character. Imprisonment varied to bond.

R v Knorpp
8 February 1985

Manslaughter of 46 year old man by four accused aged between 17 and 19 generally below average intelligence and with deprived backgrounds. Death by kicking time without number. Sentence of 12 years with 10 left undisturbed on appeal.

R v Collins & Ors.
26 November 1984

Concurrency. A sudden indulgence in one outburst of criminality is possibly enough to attract the grant of concurrency provisions.

R v Lawrence
8 March 1985

Resulting in manifest inadequacy

DPP v Clarke
12 March 1985

Date of Commencement.

"At the conclusion of His Honour's remarks when passing sentence His Honour directed that all of the sentences should commence upon and be reckoned from the date on which His Honour passed them. In so ordering His Honour was "otherwise ordering" within s. 122 of the Community Welfare Services Act. If the Court does not otherwise order, a sentence imposed at a sitting of the Supreme Court commences on the first day of the sittings at which the offender is convicted or pleads guilty. Where the Court otherwise orders, the sentence commences where the offender is in custody at the time of the passing of sentence upon the day on which sentence is imposed, and I would read His Honour's remarks as being an order to that effect under that section. I would not understand those remarks as intending to have any operation or effect upon the operation of s. 202A of the Community Welfare Services Act 1970 under which time during which an offender is held in custody before trial may be deducted administratively from the sentence to be served." (Young C.J. at p 7).

R v Heaney, Mizzi and Michael
6 February 1985

Taking the Childrens Court prior convictions into account contrary to Crimes Act s 376 vitiates the sentence. **R v Castano** (Feb '78) followed.

R v De La Fontaine
7 & 8 March 1985

On burglary charges the sentencing judge rejected the expert evidence led to support an A & DDP Act s 13 application. He imposed imprisonment. On appeal **R v Robinson** 1975 VR 816 at 828-829 restated and imprisonment left undisturbed.

R v Lindsey
6 September 1984

Negligently driving a motor car causing grievous bodily injury (Crimes Act s. 26) Sentencing Judge gave a bond. On appeal by DPP accused imprisoned for 1 year with 9 months.

R v Solmer
22 October 1984

Parity. One accused placed on bond, the other given 3 with a 2. **Pecora** 1980 VR 499 applied. Held that the disparity was manifestly excessive. Sentence reduced to 2 years with 18 months.

R v Franklin
12 November 1984

Where one judge sentences both accused his view is entitled to great weight. Application dismissed.

R v Sheean
3 December 1984

Incest. Custodial sentence improper where no chance of reoffence, it was an isolated act between invalid father of 52 and sexually aware daughter of 19. Good behaviour bond for 3 years.

R v Low
13 December 1984

Two years 6 months with a minimum of two years (No details of offence given).

R v Lawrence
8 March 1985

Duty of Prosecutor to acquaint sentencing Judge of the time owed by the accused to the Parole Board.

"In His Honour's remarks made when passing sentence it is plain that His Honour took into account the applicant's very bad record as well as his participation in these two armed robberies. But it is also clear, I think, that the learned Judge did not have before him any statement of the applicant's position in relation to prison sentences. No doubt that was in part due to the fact that the applicant had withdrawn his instructions to counsel. But I think that in such a case the Crown Prosecutor ought to be instructed with information which is relevant to the sentencing Judge's task. I see no reason why a Crown Prosecutor in a case such as that, and indeed, in almost every case, should not have supplied to him up-to-date information which the Judge will require for sentencing purposes in the event of conviction. It is plain that in sentencing this applicant it was a highly relevant consideration that he owed the Parole Board thirteen years and some months. Because the learned Judge was not given that information, I think that the conclusion must be arrived at that the sentencing discretion miscarried". Young CJ 10-11

R v McCaul & Ridgeway
21 November 1984

Armed Robbery and other theft count total of 10 with 7 (re Ridgeway)

R v McCaul & Ridgeway
21 November 1984

Selling heroin. 2 year bond

R v Wyndham-Westwood
6 & 8 March 1985

THEFT

See Identity of Stolen Goods.

TRAFFICKING

Conveying drugs together with evidence that he travelled to buy drugs, bought them, carried them from Mildura to Melbourne and an attempt to disguise them amounted to evidence of trafficking. **R v Trani** 18.6.1984 explained.

R v Kloufetos
13 February 1985

VERDICT

Inconsistent verdicts.

Accused charged with conspiracy to enter a building (count 1) and attempt to enter the same building as trespasser with intent to steal therein (count 2). Acquitted on count 1 and convicted on count 2. **R v Nanette** (1982) VR 81 applied. Conviction on count 2 quashed. No retrial ordered.

R v Downs & Marijancevic
14 November 1984