Victorian Bar News

AUTUMN 1986

VICTORIAN BAR NEWS
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Editor — Paul Elliott

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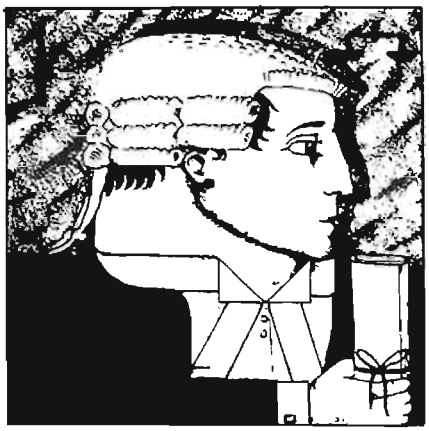
HIGH COURT: INCORRECT MEDIA REPORTS

The media has widely reported that the Chief Justice of the High Court informed the Federal Attorney-General that the High Court Judges, or a majority of them, would not sit on the bench with Mr. Justice Murphy should he return to the court.

There is no factual basis for such reports. It is well known that there are constitutional difficulties in the path of judges seeking to refuse to sit on the bench with a fellow judge who has been properly assigned to the same court and it is unfair to their Honours to suggest that they said that they intended so to act.

It is also well known that by reason of the office which they hold, their Honours cannot enter into any public (political) arena as the other two arms of the Government can and do. Consequently, it is all the more regrettable that the media has published reports about a matter as vital as this clearly is, without first making certain that it accords with the facts.

ALEX CHERNOV
Chairman



BAR COUNCIL REPORT

Vice-Chairman
E.W. Gillard QC was elected as the second Vice-Chairman of the Bar Council.

By-election Results
R.J. Stanley QC and M.G. McInerney were elected as members of the Bar Council to fill the casual vacancies caused by the resignation of N.R. McPhee QC and B. Murphy, respectively. The Council expressed appreciation for the work done on behalf of the Bar by the retiring members.

Honorary Secretary
Peter Hayes resigned as Honorary Secretary as from 6 February, 1986 and been replaced by Ian Sutherland. Robin Brett has been appointed Assistant Honorary Secretary.

Motorcare
Members of the Bar Council recently met with the Premier and other senior ministers to discuss the Government's intention concerning proposed reforms to third party motor accident insurance and in particular, the method of compensation for persons injured in motor vehicle accidents. A subsequent meeting was also held with senior officers of the Government who are involved in formulating Government proposals in this regard.

It is expected that the Government will publish its proposals for reform in the near future for public scrutiny and consequent legislation will not be passed until next October, at the earliest. The Bar Council has kept the situation under review since prior to the end of last year and has discussed its attitudes towards the retention of present rights of the seriously injured party to seek fair compensation from the courts with a number of bodies concerned with and experienced in this area.

Superannuation and Incorporation
The Australian Bar Association, at the request of the Victorian Bar, has decided to approach the Commissioner of Taxation with a view to securing increased deductions for members contributing to the superannuation fund.

A sub-committee of the Bar Council has been appointed to examine the possibility of incorporation of barristers' practices.

Legal Aid Preparation and Reading Fees
The Bar Council made representations to the Legal Aid commission criticising proposals under which (inter alia) a brief fee would be regarded as covering the first 10 hours of reading and preparation as well as the first 6 hours in court. The Bar Council submitted that preparation fees should be paid in all cases where preparation beyond 2-3 hours in required. However the Commission has since adopted interim guidelines under which such fees will only be allowed for preparation beyond the first 8 hours. Numerous related restrictions are imposed. A sub-committee under the chairmanship of Douglas Graham QC is preparing a detailed response in relation to the interim guidelines.

Owen Dixon Chambers West
There has been a delay in the construction of the building because of an industrial dispute. The contractors expect to complete the lower floors by about July with the rest of the building to be handed over in stages between August and December 1986.

Negotiations for the government to take a lease of floors 3, 4 and 5 of Owen Dixon Chambers West for use as judges' chambers are nearing completion and as soon as that position is clarified the Bar

Council will seek to determine which of the outlying chambers in addition to Aickin (except floor 27) and ANZ Chambers it will seek to close by Barristers' Chambers Ltd. surrendering or not renewing the head lease (as the case may be).

Examination of Magistrates' Courts Jurisdiction

The Bar Council resolved to oppose a proposed expansion in the jurisdiction of Magistrates' Courts to $20,000 (as well the conferring of additional equitable jurisdiction) at least until appropriate rules of court and appeal procedures are formulated to accommodate any such an increase in jurisdiction.

Magisterial Services Liaison Committee

The Melbourne Magistrates' Court has established a committee to liaise with bodies concerned with the services provided by the Court. The Bar representatives on the Committee are Cummins QC and C. Ryan.

Duty Lawyer Scheme

It was resolved that members of the Bar be permitted to participate in the Duty Lawyers Scheme proposed by the Monash and Oakleigh Legal Service provided certain guidelines are adhered to.

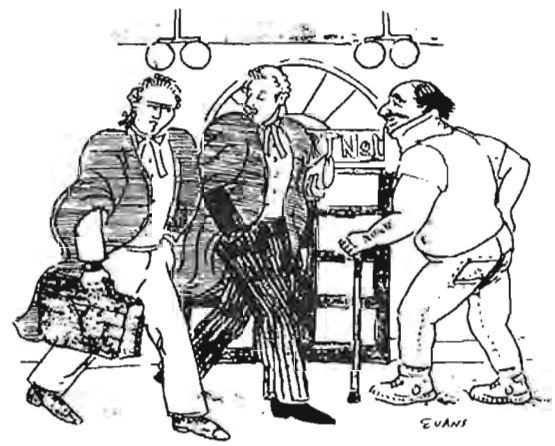
Free Increase

Submissions for a 5% — 6% increase in County Court fees and Magistrate's Court fees have been forwarded to the Chief Judge of the County Court and the Attorney-General respectively.

Sir Owen Dixon Centenary Oration

The University of Melbourne, in conjunction with the Victorian Bar and the Law Institute of Victoria sponsored an oration held on 28th April, 1986 in Wilson Hall to mark the centenary of the birth of Sir Owen Dixon. His Excellency delivered the oration to a capacity audience.

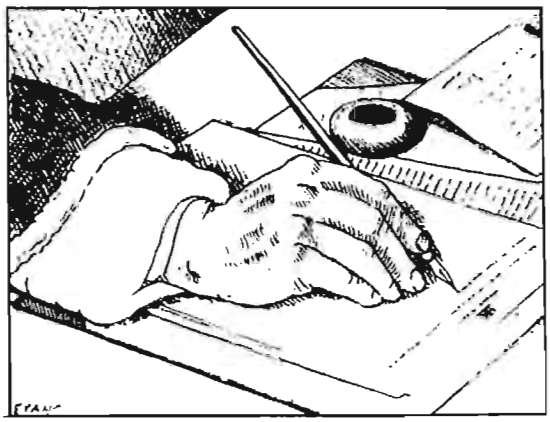
In terms which were of interest to lawyer and layman alike, the oration covered the life and times of Sir Owen Dixon, and the recognition at home and abroad of his great talents and contributions to the law.



Barrister 1: "Have you heard that the Government has brought in a new Scheme?

Barrister 2: "What Motorcare"

Barrister 1: "No Crimecare. It seems that it is cheaper to pay criminals pensions then send them to jail and it will get rid of all the lawyers as well."



WELCOME:

JUDGE HOWDEN

On the 12th of March, 1986, an enormous number of members of the profession welcomed His Honour Judge Howden to the ranks of the County Court Bench.

Jim Howden is a man renowned and respected for his remarkable energy and talent in many spheres. After matriculating from Geelong College His Honour commenced a course as an Articled Clerk at Wighton and McDonald at Geelong. After a year he transferred to Melbourne University as a full time student and after completing his Law course served his Articles with Bob Aitken of Aitken, Walker and Strachan. He signed the Bar Role on the 24th of November, 1960 and read with Bill Paterson, Q.C. His Honour quickly developed an active and buoyant practice in "petty sessions" which included all aspects of civil and criminal work. As His Honour moved into the ranks of County Court advocates he appeared in civil and criminal trials at both ends of the bar table, but it became clear that he relished the challenge of appearing for Plaintiffs before civil juries. In this regard he quickly developed an enormous practice, ultimately finding himself in charge of "Howden's list" in the Supreme Court in the years immediately prior to this appointment. Those who had the opportunity of observing His Honour conducting a jury case could not help but be impressed by his natural flair and obvious rapport with people. His advocacy was characterised by an ability to make difficult issues appear simple, together with integrity and straight forwardness in the presentation of his case. His Honour also had a legendary paperwork practice, the borders of His

Chambers being almost completely covered with briefs to advise on quantum and evidence, draw Interrogatories, Answers to Interrogatories and the like. The light in his Chambers was often seen shining at 5:00 a.m. His Honour was also one of the most popular members of the Bar, and his first order as a Judge was to disband the famous "tall girls' club". One is left to speculate as to the enforceability of this order.

His Honour always possessed outstanding sporting ability, but he particularly developed a hankering for matters aquatic when he was brought up as a child in his beloved Point Lonsdale. He was an outstanding rower, and an active long time member of the Point Lonsdale Surf Life Saving Club where he featured in many rescues. He rowed in the bronze medal winning Australian Eight at the 1956 Olympic Games and was stroke of the Australian Four at the Commonwealth Games in 1962. He was sometime Chairman of Selectors of the Australian Rowing Council which was vested with the responsibility of selecting the Olympic Eight. These official

achievements, of course, do not reflect the "grass roots" contributions made by Jim to the development of both these sports over many years.

His Honour's interests and energies were not, however, satisfied by the demands and responsibilities of his large practice and sporting interests. He turned his talents to local politics and served on the Brighton Council for some years. At one stage, His Honour even turned his hand to becoming a litigant when he sued the Brighton City Council. The fact that the action was lost merely provided an appropriate excuse for costs raising social functions which were well attended and enjoyed by many of the citizens of Brighton.

Notwithstanding this array of outside interests and activities, His Honour's first consideration has always been his wife Elaine and five children, all of whom sat proudly in the Jury Box at his welcome.

His Honour's readers were Brustman, John Murphy, Moulds, Holdsworth and Ian McDonald, all of whom were given great assistance and guidance by His Honour. Although almost always pressed for time, Jim placed great emphasis on nurturing his 'pups'.

His Honour's energy, good humour and earthiness are now the Bench's gain and the Bar's loss. No-one is better qualified to bring common-sense and an understanding of human affairs to the Bench, and the Bar wishes His Honour a long and rewarding career.

JUDGE JONES

The road David Jones followed to the County Court did not follow the normal route. He is the first person who practised as a solicitor to have been appointed to the County Court bench since the establishment of the Court.

Following Articles at Ellison Hewison & Whitehead in 1963, David became a Partner a few years later and practised with them until 1970. He practised mainly in the litigation and media area. While practising as a solicitor, David was heavily involved in the affairs of the Law Institute. He was on the Council of the Institute for eleven years and was President in 1977 — 1978. He was granted honorary life membership of the Institute in 1980. In 1967 he won the Institute's Solicitor's Prize.

David had a special interest in legal aid and was active in negotations both at State and Federal levels which led to the establishment of the Legal Aid Commission. In fact, he was for a short time the Victorian Commission's first Chairman.

David spent countless hours in the planning and implementation of the Institute's professional indemnity insurance scheme. This was largely his brainchild.

In June, 1970, David accepted an invitation from the then Minister for Communications, Mr. Tony Staley, to become Chairman of the Australian Broadcasting Tribunal. He then moved with his wife Jackie and four teenage children to Sydney. David performed this at times very difficult role in a masterly fashion. His capacity for hard work, thorough preparation, fairness and principled approach were no better displayed than in his days on the Tribunal. These qualities will stand David in very good stead on the County Court bench.

Given David's physical stature (though he is not the tallest Judge on the County bench, Judge Hassett taking this honour) it is surprising to learn that in the mid-1960's David used to hunch behind the wheel of a Volkswagon Beetle. It is not so surprising, however, that in his younger days David was a footballer of note. He played "A" grade amateur football in premiership teams with the Old Paradians and was on the senior list for Fitzroy for three years in the days when they played at the Brunswick Street Oval. He also played in the Melbourne University Law Faculty Team which was unbeatable at the time with a number of League players in its ranks.

David is also a keen tennis player of considerable ability.

His colleagues from EH&W in the mid-1960's tell of a little known interest of David's — he was a very keen scallop fisherman on Port Phillip Bay! They also tell of the days in the building at 421 Bourke Street (now occupied by Kozminsky's) when David would fly down the old wooden stairways, three steps at a time in order to be at Court on time and shake the building to its foundations. The story is still told from the late 1960's when David having a rushed bite of lunch at his desk spilled a milkshake over his trousers. Realising the client's interests were paramount, David interviewed his client with a 2.00 p.m. appointment sitting behind his desk trouserless.

The Bar wishes David Jones well in his new appointment. His personable, courteous and practical approach combined with his different background augurs well for his future on the County Court bench.

MR JUSTICE WILCZEK

John Wilczek, formerly a partner in the firm of Ridgeway Clements was appointed a judge of the Family Court on 1st November 1985. He is the third Melbourne solicitor to be appointed to the Family Court Branch.

The Dandenong Family Court witnessed an extremely large welcome for His Honour, whose ranks included the Deputy Prime Minister and Federal Attoney General Mr Lionel Bowen, the Federal Minister for Communications, Mr Michael Duffy — a schoolmate of His Honour, as well as many members of the Melbourne and Sydney profession.

John Wilczek began his rise to the bench with a great handicap. He could not speak English. That was as an eleven year old arriving in the "new" country of Australia. But it did not take him long to overcome that handicap and by the end of his school education he had topped the Matriculation year at Albury Christian Brothers School.

Law was not his first choice in life. After school he worked as a cadet journalist with the Border Morning Mail, and after graduation from Melbourne University he worked as a court reporter with the Age and later as early morning news editior for the Macquarie Broadcasting Service.

He spent his university days as a resident of Newman College. His student life was full and he supported himself with various part-time jobs including the Titles office by day, the railways at night, some teaching and even manning the switchboard at Newman.

His twenty odd years in the law began with his admission as a Barrister and Solictor in 1962 after serving Articles with the late Frank Corder.

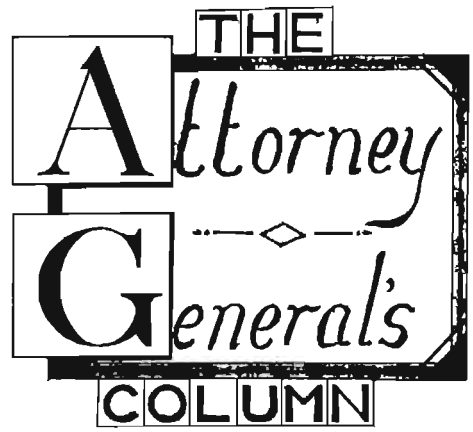
From the day in 1962 when he started practising in the office of Mr Laurie Pentilla in Brunswick, to his becoming a partner in the firm of the then Ridgeway Pearce & Freadman in 1975, His Honour led a varied and active professional life. Family law became his specialisation. He served with distinction on the Executive of the Law Institute's Family Law Section and the Family Law Section of the Law Council of Australia. He was a regular contributor to the Law Institute Journal and News concerning Family Law.

His Honour flirted briefly with the idea of going to the bar. But good sense and the promise of a partnership meant that the Bar's loss was the Solicitors' gain.

His Honour's grasp and deep understanding of the present Family Law system is exemplified by the fact that he holds the distinction of filing the first divorce application in the Family Court on 5 January 1975 — Number M00001.

His Honour's outside interests include involvement with the Port Melbourne Lions Club. For these community services he has been rewarded with an honoray life membership.

Happily married with four children His Honour faces a challenge in his new appointment and in consolidating the Registry and Court at Dandenong. The Bar wishes John Wilczek a long and rewarding career on the Bench.



I am continuing my program of reform and can mention a range of developments which have occurred since my last column. A number of items of legislation have been introduced in the autumn session of Parliament which are of interest to the Bar. These include:

Crimes (Amendment) Bill
This Bill gives accused persons who are legally represented the right to give unsworn evidence but to remove from them the right to make an unsworn statement. It also gives courts a discretion in the sentencing of persons convicted of murder for which a mandatory sentence of life imprisonment must now be imposed. Life imprisonment will now be a maximum. This Bill implements the recommendations in the V.L.R.C. Reports Nos. 1 and 2.

Childrens Court (Amendment) Bill
This Bill substantially implements the recommendations of the Carney Report on Children's Welfare Law and Practice. It provides for the appointment of fully qualified Magistrates to the Childrens Court. It divides the jurisdiction of the Childrens Court into a family law division and a criminal law division. It facilitates the development of pre-trial conferences in the Childrens Court.

Courts Bill
This Bill which I mentioned in my last column has passed through both Houses. The Government decided to add to the bill introduced in the spring session a provision expanding the jurisdiction of the Magistrates Court. The Magistrates Court will now have a jurisdictional limit of $20,000 in all cases except personal injury cases will remain at the limit of $5,000. The Magistrates Court will have a full range of equitable remedies in cases within the monetary jurisdictional limit. These provisions will not be proclaimed until new Court Rules are drawn.

Reports Received
I have received and released for comment three reports of concern to the Bar —

The Hill Committee Report on the future role of the Magistrates Courts
This Report makes three important recommendations:—

— The introduction of a standardized pre-summons procedure involving a standard letter of demand incorporating the offer of conciliation of the demand before a Clerk of Courts or a Neighbourhood Mediation Service (which will be established in the next 12 months in a number of areas). If there is no resolution within a two month period the proceedings may be issued in the normal way.

— The introduction of pre-trial conference facilities in Magistrates Courts for contested cases. These conferences would take place after the issue of proceedings but before the hearing in a manner similar to those conducted in the County Court.

— The introduction of an informal arbitration procedure (with legal representation permitted) in claims under $3,000. Costs would be allowed only in exceptional instances in claims under $500.

The report of the Advisory Committee on Committal Proceedings chaired by John Coldrey, Q.C.
This Report makes two principal recommendations:—

— The introduction of a single test for committal for trial namely, **"Is the evidence sufficient to support a conviction?"**

— The extension of the use of the hand-up brief procedures with the proviso that the Defendant can insist on the attendance of witnesses who the defence have requested be made available for cross-examination.

The report of the Consultative Committee on Police Powers of Investigation on Section 460 of the Crimes Act

This Report makes a number of recommendations relating to s.460 of the Crimes Act including the tape recording of interviews. The Government has accepted the recommendation in respect of tape recording (which confirms the recommendations of the Shorter Trials Committee). The balance of the recommendations are now a matter for further consultation pending Cabinet decision. The recommendations call for a return to a flexible s.460 using a test of reasonableness in respect of interview time having regard to a number of listed criteria. The Committee emphasizes that its recommendations are to be seen as a package. The package includes the giving of appropriate warnings to persons being interviewed including allowing the suspect to consult a lawyer or a friend. I would especially welcome comments from the Bar on this Report.

The Neave Report on Prostitution

The Neave Report recommends:

- repeal of criminal penalties for most prostitution related offences, while retaining penalties for street prostitution
- giving local councils the option of permitting street prostitution in specified areas
- extending the law to provide more protection for young people against sexual abuse and exploitation
- continued regulation of the location of brothels by town planning controls and a suggested ban on brothels in country towns with fewer than 20,000 people
- licensing of brothel operators to exclude people with serious criminal convictions or criminal associations
- a prohibition on 'explicit' advertising for prostitution.

It is expected that the Government will make a decision on these recommendations in mid year. I would welcome any comments of the Bar on these reports. Copies of these Reports have been tabled in Parliament and may be obtained from the State Government bookshop.

Courts Building Program

The Treasurer has approved money for the design of a new building to house a Central Criminal Court on the north west corner of the intersection of Lonsdale and William Streets. The design stage will take approximately 18 months. Criminal trials will be removed from the Supreme Court and the county Court to this new central court which will have at least 30 court rooms. It is intended that on completion, the building will be available for use first by the Supreme Court, so that the Supreme Court building can be vacated for the completion of the renovations. The renovation of the Supreme Court will take about two years. When the Supreme Court returns to its building, the new building will then be used as a Central Criminal Court for both the Supreme Court and the County Court.

I also expect that the feasibility study for a new Melbourne Magistrates Court will be completed in the next few months. The present City Court is inadequate and a new court facility is required.

Perin System

The PERIN system of penalty enforcement by registration of infringement notices will become fully operational by June. The system will greatly streamline the procedures used in the Alternative Procedure or on-the-spot fines in the area of motor traffic penalties. The legislation also now includes some regulatory company offences in the Alternative Procedure category. There will be very considerable time and cost savings to the Police and the Magistracy. It is anticipated that it will free up the equivalent of 5 or 6 Magistrates from Chambers work for open court work. This will enable the Magistrates Courts to deal with the new civil jurisdiction without increasing delays.

Companies and Securities Law

I finished my term as Chairman of the Ministerial Council in March. The period from December 1984 until March 1986 saw a number of important decisions including:—

— the appointment of a new Chairman and Deputy Chairman of the NCSC, Mr. Henry Bosch and Mr. Charles Williams respectively

— the tightening of administrative procedures within the Co-operative Scheme resulting in greater Ministerial control

— the introduction of important legislation including the Partial Takeovers legislation

— the planning and substantial implementation of computerization projects in State Corporate Affairs Offices in Melbourne, Sydney and Brisbane

— the approval of the first Accounting Standards by the A.S.R.B.

— a review of the financial sector regulatory framework

— the establishment of a Corporate Affairs Advisory Board in Victoria, with representatives of the private sector to advise the Victorian Corporate Affairs Commissioner on better service delivery by his office

— the commencement of a general review of the impact of takeovers and legislation affecting takeovers.

— the approval of legislation to regulate the Futures Industry

I should also indicate that the performances of the Victorian Corporate Affairs Office has been very strong in recent times. Turn-around times for prospectuses in the Office is now very low. The Victorian Office is attracting business from interstate because of its expeditious performance.

BYRNE & ROSS DD

After 11 years Byrne & Ross have retired as editors of the Bar News Paul Elliott is the new Editor. Henshall writes of the work of the former Editors.

"Some people are very much their own. They have their own style, they go their own way and they don't care too much what the world thinks about them. Byrne and Ross are like that. It has always surprised me that two men so different, so strong in their own views, could work together so closely for so long as joint editors of the Bar News. But they did. In fact they virtually created it. They tock over after the ninth edition in March 1975 when the paper was a poor thing, just a news sheet of a few cheaply printed pages. Over the years since, they have turned it into an elegant publication of which this Bar would be very proud, if it ever stopped to think about it, and which is the envy of other Bars in this country.

Anyone who simply receives Bar News regularly (well, fairly regularly) once a quarter, shoved into their pigeon hole with the briefs and junk mail, is unlikely to realise what it costs in time and effort to produce. The collecting of material is hard enough. Busy people are not good at providing copy on time and although articles **are** sometimes volunteered, mostly they have to be sought. But also Byrne and Ross have for years written large chunks of the Bar News themselves, contributing important and often deliberately provocative articles and great quantities of smaller bits and pieces. Then almost invariably, and often at a late stage, something cropped up, or was remembered, some welcome or farewell would have to be written, some important event occurred requiring comment. Usually there was no-one else to write it but the editors.

Once thought up, requested, followed up, pestered about and finally collected, the material has to be assembled, got to the printer, proof read, corrected and finally pasted up in order and in place page by page. This last always was, and no doubt will remain, a job done under pressure, in one session, at night. One learns a lot about people sitting around the Byrnes' dining room table at 2 o'clock in the morning after considerable quantitites of cheese, biscuits, coffee and port.

Byrne has always been good at keeping his eye on what is going on, in fact he rather enjoys it. Being in the centre, with lots of people feeding him information is, I suspect, one of the things that kept him in the job so long. He's a bit of a sticky beak.

He is extremely determined when he has made his mind up about something, like the change in size of the Bar News, which he insisted upon over my somewhat feeble protests. He loves the high country and takes himself off walking there for a week or two whenever he can make the time. He has a remarkable memory for detail. He is the affectionate, if rather old fashioned, father (dare I say head? I am sure he would like me to) of a family which includes a couple of cats. He regards food as a serious manner, choosing and preparing it carefully and consuming the results with evident relish (habits he presumably developed during his days as a student in France). He always makes his coffee from freshly ground beans and he serves a good port. He is, in short, a gutsy character who gives every impression of getting the most out of life.

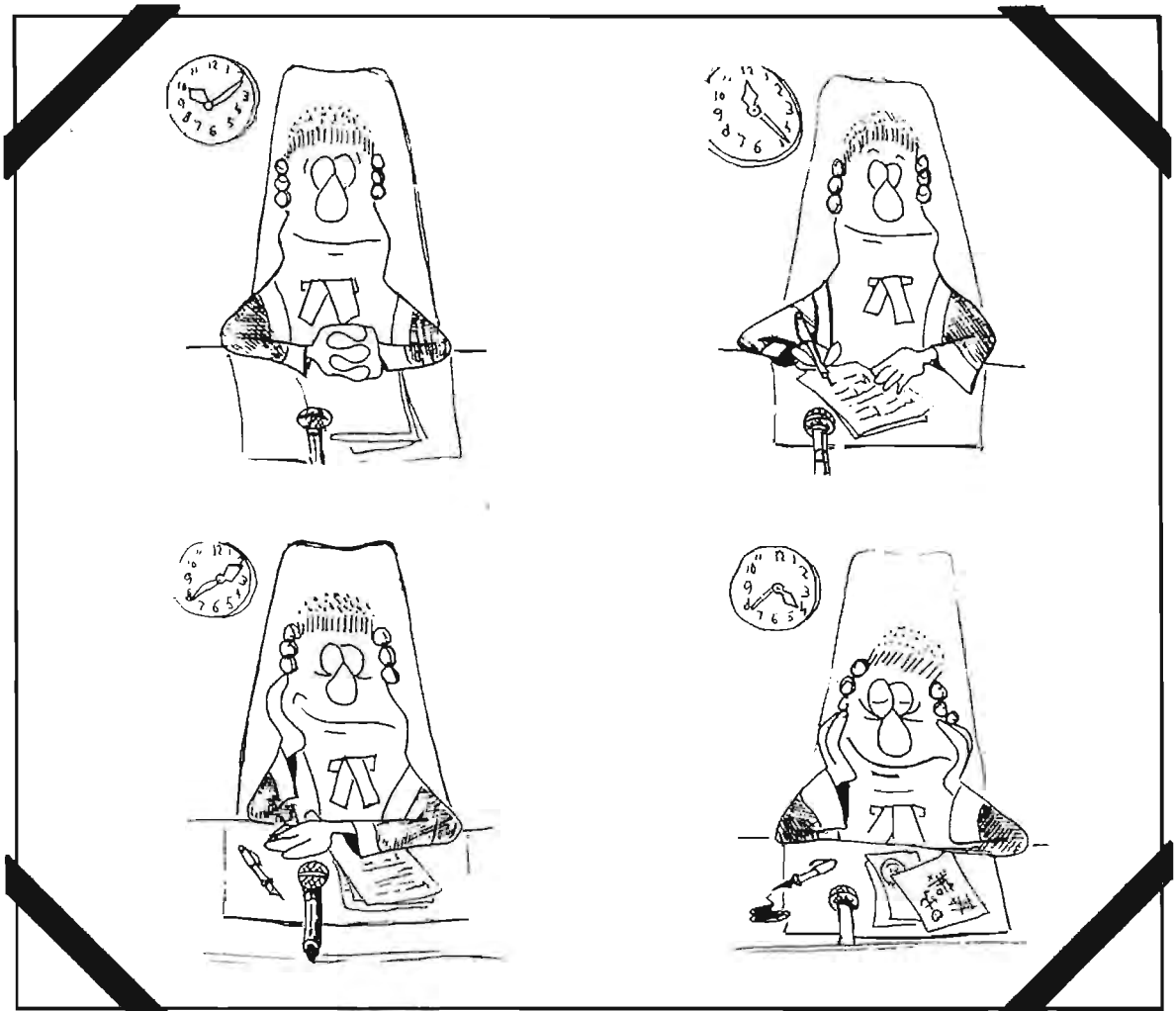
Ross, well Ross is different, different from just about anybody you are ever likely to meet. He too is one for the open air, but his fancy is canoeing. He enters the Murray Marathon every year, and does pretty well. He scours canoeing magazines for new and

remote rivers. He went off to northern Thailand, and, paddling along the rivers there, rapidly learnt the local word for "dunny". This was very necessary having regard to the effects of the local water and food. He told us, as we were pasting up the Bar News one evening, all about rushing into riverside villages clutching a roll of toilet paper, unable to communicate with the startled villagers save for that one vital word. The story appealed very much to his sense of humour.

He prepared, and still prepares, the Captain's Cryptic, edition by edition; a labour of love that takes several hours. He maintains that he has never met anyone who does it. He was, I think, largely instrumental in the introduction of the "jabot" to Melbourne. When it was assumed by the High Court (Lady Aickin having brought the design back from South Africa) Ross wrote to her, obtained the design and published it in the Bar News. But there is something elusive about Ross. He seems to keep a lot of himself hidden. After years of working with him, I don't know what makes him tick. He had a huge black beard for ages that made him look like Ned Kelly. One day he emerged from behind it looking young again. Now at least when he makes some enigmatic remark I can see his face. But I still don't know what he is thinking, not even when he tells me. He would be a good poker player.

"Mounthpiece", like the Bar News, they created together. Sometimes one wrote it and the other made suggestions, sometimes it almost seemed to be like the creation of a joint mind, sometimes it was largely the product of one man. But it always, in an odd way, contained a lot of both of them. It was sly and sardonic, a bit chauvinistic (remember "Flossie"?), a bit provocative, a bit of a dig at barristers including themselves and they always signed it "Byrne and Ross DD." It may be true that no-one is indispensible. But they will be a hard act to follow."

DAVID HENSHALL



The many moods of Judge Fricke during the course of a longish criminal trial as depicted by an attentive prison warder.

CRIMINAL BAR ASSOCIATION REPORT

The Criminal Bar Association held its most recent Annual General Meeting on 20th November, 1985 and the Executive as at the date of that meeting was re-elected. That includes Colin Lovitt (Chairman), Robert Richter, Q.C. (Vice-Chairman), Michael Tovey (Treasurer) and Lex Lasry (Secretary).

Following that meeting a Committee was appointed in addition to the executive and that Committee is as follows —

Charles Francis, Q.C.	Michael Rozenes
Aaron Shwartz	Mark Weinberg
John Barnett	Nick Papas
Robert Kent	Lillian Lieder
Boris Kayser	Robert Langton

Sub-Committees

Since the beginning of 1986 a number of matters have arisen as issues before the Association as well as for the Bar generally in the criminal jurisdiction. The Association has set up a number of sub-committees, some 21 in number. Some of those sub-committees are presently considering reports or topics for discussion. For example the Domestic Violence and Sexual Offences Sub-Committee which comprises His Honour Judge Hassett, Langton, Betty King and Tovey is considering both the Neave Report on prostitution and a proposal by Peter Sallmann, a Commissioner of the Law Reform Commission of Victoria, to review sex offence law in Victoria. The Evidence and Procedure Committee comprising Weinberg, Kayser, Heliotis and McDermott has had referred to it the report of the Legal and Constitutional Committee on the burden of proof in criminal cases and is presently examining that report whilst similar committees are considering reports on topics such as juries and unsworn statements.

Sentencing

Following his retirement from the Supreme Court Bench, Sir John Starke was appointed by the Victorian Government as the Chairman of a Sentencing Committee established for the purpose of reviewing various criteria, procedures and consequences of sentencing in Victoria. The Criminal Bar Association Sub-Committee on Sentencing includes Richter, Q.C., Ray and Hicks. The Association has been requested to contribute substantially to the enquiries by Sir John Starke's committee and proposes to do so.

Further, the Association held a dinner for members only at Mietta's Restaurant on 22nd April 1986 in honour of Sir John Starke. This is the first time that the Association has specifically conducted a dinner in honour of one person. In Sir John's particular case, considering his long career connected with the criminal law, it seemed appropriate. The dinner was a great success.

Honorary Members

The Criminal Bar Association maintains a list of honorary members and has this year invited the new Stipendiary Magistrates, who were members of the Criminal Bar Association, Margaret Rizkalla and Sally Brown, to become honorary members of the Criminal Bar Association as well as congratulating them on their appointment.

Fees

As has been the case now for a lengthy period of time the question of fees in the criminal jurisdiction continues to occupy a great deal of our time. The immediate issue would appear to be the question of the payment, particularly by the Legal Aid Commission, of preparation fees in cases where substantial reading and preparation is required. The Legal Aid Commission purported to adopt a stance on this matter consistent, in their view, with the judgment of Fullagar, J. in the **Magna Alloys** case. Subsequently the Association, in conjunction with the Bar Council made submissions about preparation fees. The issue appears to be two fold, firstly how much of the brief fee automatically includes a certain amount of preparation (and if so how many hours) and secondly, where additional and substantial preparation is required, how its remuneration is fixed. It is important to note that there is a considerable gap between funds made available to counsel for prepartion in cases where thay are briefed by the Crown and funds made available for the same purpose in cases where they are briefed by the Legal Aid Commission or a solicitor on the Commission's behalf. The issue is not by any means settled and members will be kept informed as to progress.

The Legal Aid Commission has established a committee for the purpose of reviewing the current position. The Criminal Bar Association has presented the Commission with a written submission.

Criminal Law Congress

The International Criminal Law Congress was held in Adelaide in October 1985 and for the relatively few Victorians that attended, it was a very successful week. Great credit is due to Kevin Borick of Counsel and Phillip Scales, solicitor, the two Adelaide organisers, who made the conference so successful. The immediate consequence of the conference was that it was proposed that a National Criminal Law Association be established and meetings are being held of the Steering Committee for that Association for the purpose of setting up the machinery as soon as possible. The Association's representative on that Steering Committee is Lovitt although Weinberg attended the last meeting in Sydney as the Association's representative on Friday, 21st March, 1986.

One of the difficulties that arose from the conference was that it made a $10,000 loss and arrangements are presently being made to raise money among delegates and/or the profession to recover that loss.

LEX LASRY.

* * *

COUNTY COURT TRANSCRIPTION SERVICE

The Bar Council has been advised by the Attorney General that as from February, 1986 arrangements have been made for the recording firm, Spark & Cannon Pty. Ltd., to provide a transcription service for parties who desire them in County Court cases.

The service will be provided in respect of civil cases in the County Court at Melbourne at the request of either of the parties. The fees payable for this service will be those prescribed from time to time in the Court Reporting (Fees) Regulations. The parties to an action will bear the cost of the service entirely and will be invoiced directly by Spark & Cannon Pty. Ltd.

The service will be provided on the basis that either two copies of transcript are ordered by the parties in a hearing or, in the case of only one order being received, supply of such transcript will be on the basis of the fee then being the same as for two individually charted copies of transcript.

Completed transcripts of proceedings of morning sessions of Court will be available during the afternoon of the same day and the remainder of the day's proceedings will be available by 6.30 p.m. on the same day.

The transcription serivces will be engaged, at the request of the parties, through the Manager, Reporting Services, Victorian Government Reporting Service (telephone 603 7120). Further information about the service may be obtained from Miss Glenice Thomson, Chief Reporter, Victorian Government Reporting Service.

* * *

YOUNG BARRISTERS COMMITTEE

The Young Barristers' Committee is seeking to have the Bar Council adopt a policy whereby Equity Chambers and Four Courts Chambers are retained to specifically provide low cost accommodation for the junior bar. The Committee, however, at this stage is undecided whether to seek seniority limits on the occupants of those chambers. On the one hand, some members are of the opinion that the imposition of seniority limits would ensure that lower cost accommodation is available for young members of the Bar. On the other hand, some members believe that there are definite advantages for young barristers arising from the presence of more senior and experienced barristers in those chambers. At the present time the Young Barristers' Committee proposes to monitor occupation patterns in the new Barristers' Chambers Building.

You will probably have noted from press reports that a number of changes are being proposed for the Magistrates' Court, both in procedures and jurisdiction. Overall, the Young Barristers' Committee is not opposed to increases in the jurisdiction of the Magistrates' Court but is of the opinion that a number of the rules and appeal provisions should be reconsidered. Members of the Committee would welcome input from young barristers.

A social sub committee of the Young Barristers' Committee is planning a social function to take place later in the year. Current thinking is that the function be in the form of a dinner dance following a very successful dinner dance held several years ago. The sub committee is extremely mindful of cost constraints but believes that something better than a pie and sauce ought to be undertaken. When the form of and date of the function is determined a publicity campaign will be undertaken. We anticipate that the function will be open to all members of the bar.

RANDALL

LAW REFORM COMMITTEE REPORT

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

Administrative Decisions (Judicial Review) Act 1977

The Administrative Review Council has proposed changes to the above Act. The Committee forwarded these proposals to Tracey for comment and report. A prompt reply was received from Tracey and this was forwarded to the Administrative Review Council who have indicated that they found the comments most helpful.

Law Council of Australia

The Law Council of Australia has been very active in lobbying the Commonwealth Government in regard to a range of matters. Various telexes have been received from the Law Council of Australia in regard to the progress of individual items in the last three months. Some of the matters that the Law Council of Australia has been active upon include:

(a) deferment of Trade Practices Bill;

(b) action on Legal Aid;

(c) Bill of Rights;

(d) Road Trauma Policy;

(e) National Identification Scheme Card;

(f) Privacy Bill in regard to the National Identification Scheme and the Australia Card proposal. The Committee resolved that this matter be referred back to the Bar Council for its consideration and formulation of a response.

Pirelli's Case

The Law Reform Committee first wrote to the Attorney-General in or about August 1984 enclosing a submission from Byrne and Golvan proposing changes to the Limitation of Actions in building disputes. It appears that various interest groups all now agree that a change is necessary in this area of the law but they are not yet agreed on what is the most appropriate time limit for the Limitation of Actions in building disputes. The Law Institute has a Committee looking at all aspects of this problem. Copies of submissions by Byrne and Golvan have been forwarded to that Committee. Gillard is about to activate his ad-hoc committee to consider any new proposals.

Law Reform Committee of Victoria

The Chairman of the Law Reform Committee of Victoria, Professor Kelly and the Executive Director, Dr. Clyde Croft attended a recent meeting of the Law Reform Committee. At this meeting the Committee discussed ways in which it could forge close links with the Law Reform Commission particularly in view of the Law Reform Committee's statutory function to monitor and co-ordinate Law Reform activity in Victoria pursuant to Section 6(1)(d) of its Act. The Committee agreed to forward copies of its Minutes to the Law Reform Commission and in turn the Law Reform Commission will provide the Bar with regular reports of its work in hand and information concerning progress upon various projects.

The Law Reform Commission is anxious to have it known to members of the Bar that it is interested in regard to "relatively minor legal issues". If any member of the Bar encounters in their practice any area of the law which they think may be in need of reform then the Law Reform Committee will be pleased to act as a means of bringing any such matters before the Law Reform Commission of Victoria.

Professor Kelly has indicated since the meeting that Peter Sallmann, who is in charge of the references on Homocide and Sexual Offences will contact the Criminal Bar Association in regard to the above references.

Professor Kelly has indicated that he is discussing a proposal to hold seminars with members of the Bar in regard to various reference papers. Many members of the Bar have participated in similar seminars with members of the Australian Law Reform Commission in regard to Evidence and Matrimonial Property Law.

FAMILY LAW CONTEMPT

This matter has been adjourned until the April meeting by which time it is hoped that the Family Law Committee of the Law Council of Australia will have produced a report. A member of the Committee Mr. J.V. Kay is a member of the Law Council Committee.

The Committee was pleased to welcome Mr. B. Kayser as a member of the Committee representing the Crim Bar Association. With considerable emphasis being placed on reform of various aspects of criminal law the Committee heeded the advice of barristers practising in the area of criminal law. Mr. Kayser is the Chairman of Law Reform Committee of the Criminal Bar Association of Victoria.

If any member of the Bar has any submissions relating to reform of relatively minor legal issues the Committee would be pleased to hear from them.

JOHN HOCKLEY

AN ALTERNATIVE TO MOTOR-DRIVE CARE

This proposal has been unanimously adopted by the Bar Council.

PROPOSAL ON REFORM OF THIRD PARTY MOTOR VEHICLE INSURANCE

(A) SUMMARY

1. The proposals of the Government to reform the current third party motor vehicle insurance system are an implementation of its social welfare philosophy at the expense of the seriously injured wage earner. The proposed benefits are of a basal standard only; they do not provide for individual need, individual loss, or individual difference.

   A key plank in its proposal is the abolition of fundamental common law rights presently enjoyed by the innocent victims of motor vehicle accidents. The Government claims that the changes will improve the plight of all injured victims of motor vehicle accidents, including those who have been seriously injured due to the fault of others. In fact, if the Government's scheme is introduced, it will have the consequence of reducing the overall benefits currently payable to the seriously injured wage earner. The changes foreshadowed by the Government are not only undesirable from the point of view of those injured in motor vehicle accidents, but are also unnecessary for the reasons given in this proposal.

   The present method of compensating persons injured in motor vehicle accidents should be retained, but modified in the way suggested below so as to contain the cost of such compensation. The Victorian Bar supports the thrust of the proposals put forward by the Law Institute of Victoria on this issue.

2. The principle underlying the present system of providing compensation to those injured in motor vehicle accidents is that the injured person receives fair compensation for the losses suffered by reason of those injuries. The need for reform does not arise because of any public dissatisfaction with this principle. Rather, reform is needed to contain the cost blow out which has occurred in recent years (expecially in relation to the relatively small claims) and which threatens the continuation of compensation payable in accordance with that principle. Changes should be directed at ensuring that injured persons continue to receive fair compensation. They should not be undertaken with the view to liquidating the accumulated deficit of over $2 billion at the expense of the fair compensation which would otherwise be payable to the injured victim of a motor vehicle accident. Successive Governments have failed to increase third party insurance premiums and registration fees by amounts which reflected cost increases and they have failed to take action to combat the costly inefficiencies and anomalies, including fraud, which have crept into the system.

3. Reforms along the lines particularised below, which include the setting of a realistic premium, will enable persons injured in motor vehicle accidents to receive fair compensation. Those reforms should be introduced forthwith and their effects examined before there is any serious consideration given to dismantling the present system. To do otherwise could only be justified on the basis of a desire to implement a philosophy of perceived wealth redistribution which goes outside the question of compensating injured victims of motor vehicle accidents.

4. One of the great pitfalls of human reasoning is to assume that the adoption of something new is bound to be an improvement on the old. Any new scheme should be fairly tested over a period of time so that its practicality, its effect upon the public and its capacity for expansion may be properly assessed.

5. The conclusion of the last Board of Enquiry into Motor Vehicle Accident Compensation conducted by Sir John Minogue in 1977 was that "until some scheme is propounded and found to operate successfully and which will give equal or better benefits than the system already in existence, that system should not be lightly abandoned or eroded." The Bar agrees with this conclusion and is of the view that until it is satisfied that an alternative no fault system will provide for **fair and adequate** compensation to those who have been injured as a result of **fault** of others, the present system of liability, based as it is on fault, should prevail.

(B) PRESENT SYSTEM OF COMPENSATION

6. Today, the person injured as a result of a motor accident has rights to compensation which are conferred by two systems of law which operate in this State.
   (a) The first is that provided by the Motor Car Accidents Act 1973.
   (b) The second is the common law system based on what is known as the tort (or the civil wrong) of negligence.

7. The two systems are complementary; an injured person can pursue his rights under the Motor Accidents Act without losing his common law rights, although double payment is not permitted. Taken together, they represent probably the fairest system of compensation for motor accident victims to be found in the common law world.

(a) Claims under the Motor Car Accidents Act 1973.

8. The immediate needs of a person injured in a car accident, such as medical and like services, loss of wages, etc., are met by the Motor Accidents Board ("MAB"), established under the Act. A claim so made does not call for any inquiry as to the cause of the accident or as to the blame worthiness of any person. Subject to certain exceptions relating to intoxicated drivers and drivers bent on criminal purposes, the Act provides compensation for all injured persons irrespective of fault, provided only that their injuries arose out of the use of a motor car.

9. Such claims are usually met without undue delay. Hospitals and doctors invoice the MAB directly and the claimant is not involved in the process of payment. If the injured person loses time from work, the MAB will authorise payment to the claimant of a sum equivalent to 80% of his average weekly earnings in the three month period prior to the accident. If incapacity is prolonged and earning capacity substantially impaired, there is provision for the continuation of payments or the making of a lump sum payment up to a limit of $20,800.

10. In the event that the motor accident causes the death of a person who leaves dependants, the Act provides for payment to a dependent spouse of a sum of up to $20,800; to dependent children a sum of up to $10,400 where there is a dependent spouse, and up to $20,800 where there is not. There is also provision for the payment of reasonable funeral expenses to the extent of 80% of cost.

11. The money sums available under the Motor Accidents Act are limited to the amounts mentioned above and there is no provision for any award as solace for pain and suffering or for loss of enjoyment of life.

(b) Claims under the common law system

12. The inability to recover for pain and suffering may be of little consequence where the injury is a relatively minor one and full recovery is expected. Where, however, the injury is a serious one with permanent disability and significant loss of earning capacity, the relief under the Act is plainly inadequate. In such a case the injured person can turn to the common law which allows him to claim damages in court proceedings from the person, usually a driver, who caused the accident by his negligent act. In this respect the law regards the driver in no different position to any other person who has caused an injury to another by perpetrating a civil wrong (a tort). The injured party can seek damages from such a driver for the tort of negligence.

13. Put in simple terms, the common law consists of the historically evolved principles of law extracted from the decisions of judges of the superior courts in the common law countries, including Australia. It reflects many decades of judicial and community wisdom and experience.

    It imposes a duty on the driver of a motor car to take reasonable care do not to cause harm to anybody, such as another user of the highway, whom he might reasonably foresee would suffer injury as a result of want of care of his own part. Breach of that duty causing

injury amounts to the tort of negligence. This tort is the foundation of claims for damages in the courts at common law in motor accident cases.

14. Damages at common law are compensatory, the underlying principle being to restore the accident victim, so far as a money sum can, to the position he would have been in had it not been for the accident. The principal heads of damage are for loss of earning capacity (past and future), future medical and like expenses, and non-pecuniary loss, which includes pain and suffering and loss of enjoyment of life, past and future. Where damages are recoverable, they are assessed either by a judge or, at the option of either party, by a jury.

15. The system has great flexibility, as it takes into account the particular situation of the individual claimant in the assessment of damages. As a result very similar injuries may result in very different awards of damages, depending upon the effect of the injuries upon the individual claimant. For example, a finger injury to a concert pianist is likely to be of much greater consequence than a similar injury to a salesman with the result that a much higher award of damages would be made. Consequently, a seriously injured person can be made financially secure and have solace provided for the disfigurement, disablement pain and loss of amenity associated with the injury. The widow and children would receive a substantial award reflecting the likely expectations of their dependency on the deceased wage earner.

(C) CURRENT PROBLEMS

16. As has been pointed out earlier, the present crisis in the cost of providing compensation has arisen principally because the third party premiums which are to fund the existing dual system of compensation have not risen sufficiently, notwithstanding the significant increase in the cost of services generally in the community and in particular, in the costs associated with compensating the injured party. By way of illustration, over the past ten years average weekly earnings have risen 173% whereas premiums have risen only 107%. If premiums had increased only at the same rate as average weekly earnings over this period, the current premium would be approximately $240.

(D) RESOLUTION OF PROBLEMS

17. There are two principal courses of action that should be taken to meet this.

(I) Reduce the amount being paid in compensation and costs.

(II) Increase the source of revenue.

18. (I) **To reduce the amount paid out and costs the following measures should be introduced:**

(a) On the administrative side, a substantial reduction in administrative costs of the Motor Accidents Board and the Third Party Division of the S.I.O. can be achieved by merging the two bodies. It is estimated that this will produce a saving of over $4m p.a..

(b) Administrative costs and claims expenses can also be reduced by a more efficient verification of claims on the one hand and the exposure of fraud on the other. In that context, provisions can be made where each driver and each injured person is required within a reasonable, but early, time to inform Police of the accident and the general nature of the injury. The Police should be required to provide the reporting driver and reporting injured person and the Board with a certified document verifying the happening of the accident and injury. Any person proposing to make a claim on the MAB should be required to produce the certified document and completed a claim form and present it to the Board within a relatively short period (say, 28 days) of the accident. Such claimant should be required to produce appropriate medical evidence supporting the claim.

These changes will produce, it is estimated, savings of over $2m p.a..

(c) Consideration should be given as to whether the present right to receive superannuation or pension benefits in addition to the damages awarded by the Courts should remain or whether it would be desirable to deduct from the assessed damages the benefit of any superannuation or pension benefits that may accrue to the injured person, thereby ensuring that he does not receive an unfair windfall. If such double benefits were eliminated, the estimated cost saving would amount to almost $14m p.a..

(d) The discount rate should be changed from 3% to 5%, something that has already been achieved in New South Wales and

Queensland by legislation. This will produce a further saving, estimated at over $26m p.a..

(e) Damages in the nature of interest on judgment should not be awarded. This will save over $11m p.a..

(f) Procedural changes can be introduced to induce early settlement of claims. For example, the claimant and the insurer should have the opportunity of making formal offers so that if the insurer's offer is not accepted and the injured person recovers less than the offer, he then pays both his own and the insurer's costs from the date of the offer. A like position would apply in reverse if the insurer does not accept the injured person's offer. Along the same lines, Court procedures, particularly in the documentation stage can be simplified with resultant cost savings. It is estimated that such procedural changes will result in savings of approximately $7m p.a..

19. The amount of estimated premium for the 1985/86 year will vary depending on whether the estimates are made on a fully funded or a pay as you go basis. Without for the present entering into the debate as to which method is to be preferred, set out below are estimated premiums calculated on a full funded basis, with the pay as you go equivalent shown in brackets.

20. On the assumption that compensation is to continue to be funded from premiums but none of the reforms set out earlier are introduced, the premium for 1985/86 year, is estimated to be $368 ($266) per private metropolitan car. If, however, the changes suggested above were to be implemented, this would reduce the premium payable per motor car to $333 ($235). The estimates of savings contained in this document and the consequent estimates of premiums, have been made by independent consulting actuaries.

THE THRESHOLD

21. If such a level of premium be unacceptable to the community, an additional and more radical change is available. A threshold system can be introduced which would have the effect of prohibiting the recovery of damages in certain claims before the courts. It would operate by deterring a claimant who has suffered relatively minor injuries only, from bringing an action in the courts for any damages which are less than a specified amount (called "the judgment threshold"). In such circumstances, he would be limited to a claim against the MAB for loss of income and for medical and like expenses.

22. The claims so excluded would be relatively small claims where the cost of providing compensation is likely to be disproportionately high in comparison to the amount of compensation. They include the majority of non-demonstrable injury cases where fraudulent or exaggerated claims are more difficult to detect.

23. Substantial savings can be achieved in payout and costs if such claims were to be excluded from the courts and the claimant was limited to his right to claim compensation through the MAB. Such a threshold system would not affect the right of the seriously injured person to claim damages in the courts.

24. If the judgment threshold is fixed at **$10,000,** it will probably have the effect of deterring claims in courts for damages under $12,000 to $13,000. In that context, the operation of the judgment threshold can be demonstrated by means of the following example. If a claimant who has claimed damages of, say, $15,000, has his damages assessed at the sum of less than the judgment threshold of $10,000, that claimant would recover nothing and would have to pay his own costs and those of the other party. That would obviously operate to deter claims for that level of damages.

25. Any such judgment threshold would, of necessity, be arbitrary and care will therefore have to be taken to ensure that seriously injured persons are not unfairly kept from claiming damages in courts for pain and suffering and future economic loss beyond that which is compensable by the MAB. For that reason, it is desirable that in certain cases there be an exception to that rule and a claimant whose damages are assessed under the judgment threshold is able to recover those damages and his costs. That exception would operate where the claimant can establish to the satisfaction of the court that he has suffered a **"serious injury"** (as defined). The introduction of such an alternative (verbal) threshold would overcome the possible injustice referred to earlier. For the purposes of the verbal threshold, "serious injury" would be defined in the following terms.

"A personal injury which results in death, loss of a foetus, fracture, permanent disability, permanent significant disfigurement, permanent loss of a body function, permanent loss of use of a body organ, member or system, or loss of a total or a part of a body member or organ."

26. Threshold systems are most commonly used in the United States. In New York, one of the most litigious communities, the use of a verbal threshold has reduced common law claims by between 60% and 70%. (Details of the United States experience are usefully summarised in a paper of the Law Institute of Victoria entitled "A Motor Vehicle Accident Compensation Scheme of Victoria: The Threshold" published in January, 1986.)

27. If a satisfactory threshold system were introduced in Victoria, the general result is likely to be that claimants who have no permanent serious disability arising from an injury sustained in a motor vehicle accident, will not institute proceedings in courts for damages. They will be content with the compensation made available by the MAB. Currently, approximately 64% of claims are for sums of less than $10,000. If they were to be eliminated, the savings will be of the order of $65m. This will have the effect of further reducing the estimated premium to approximately $280 ($185) per car.

28. Further reduction in costs can be achieved if the injured person is precluded (as is the case in Workcare) from claiming against the MAB or from the courts, the first, say, $500-00 of lost wages (which he may well recover by way of sick pay anyway) and the first, say, $250-00 of medical expenses (which may be recovered from Medicare). During 1984/85, 76.2% of all claims accepted were for amounts of less than $500. If a limitation to that effect were introduced, the saving in payout and administration expenses would amount to approximately $12m p.a. further reducing the estimated premium to approximately $274 ($180).

29. If, contrary to these proposals, it is intended to fund the current deficit out of future premiums, each of the estimated premiums calculated in the manner described earlier, would rise by approximately $70 (irrespective of whether it is calculated on a fully funded or pay as you go basis.)

(II) Increasing the source of revenue

30. Revenue collection can be increased in a number of ways, including the following.

    (a) Increasing by a reasonable amount the premium payable as well as relating it to the risk covered. Such increase may be graded having regard to the driving experience of the driver, his age, the engine capacity of the car, and other matters which are known to increase the risk of accident.

(b) Fees may be calculated from all licensed road users whether or not they own a car. These fees would be additional to the insurance premiums paid by the owners.

    (c) Petrol tax.

(E) NO FAULT SCHEME AS REPLACEMENT

31. A no fault system of compensation which aims to provide fair and adequate compensation to **all** persons injured as a result of motor vehicle accidents, irrespective of fault, will necessarily be more expensive than the present system for a number of reasons.

    (a) It will provide compensation outside the Motor Accidents Act to a significantly greater number of persons.

    (b) It will have to meet the whole of the hospital, medical and like costs of persons injured due to their own fault (or where fault cannot be established). Presently the Commonwealth through Medicare meets such costs in a variety of situations where full damages at common law have not been recovered and Motor Accident Board benefits are exhausted.

    (c) Such a scheme will pay pensions to persons who otherwise would receive Invalid Pensions or Sickness Benefits. The person injured as a result of his own fault or the person who has expended any damages he has recovered, after MAB benefits are exhausted, must presently look to the Commonwealth for a Sickness Benefit or Invalid Pension.

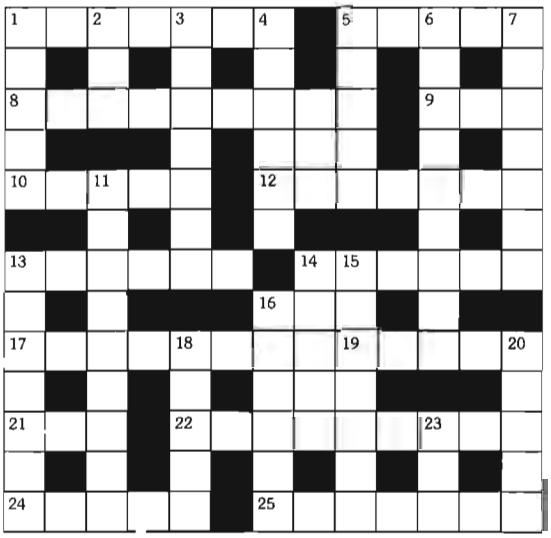
    (d) A no fault scheme will compensate by way of pension. Pensions are not cheaper than lump sums. In a paper delivered in January 1985 Richard Cumpston FIA (now a

Director of the Accident Compensation Commission) estimated that in respect of Workers Compensation it was **four** times more expensive to pay benefits by pensions than by lump-sums. There is no reason why the figures in the motor accident area would be substantially different.

(e) It would not do away with the problem caused by fraudulent or exaggerated claims. If anything a no fault system will encourage such claims.

32. The essential philosophical difference between a no fault scheme and common law damages is that the no fault scheme, by seeking to compensate all persons equally, does not fully compensate the innocent victim who is injured by the negligence of another. The common law is based on the community view that the innocent victim of injury caused by another's negligence should have the right to full and fair compensation and should not be limited to the same rights as the wrongdoer.

CAPTAIN'S CRYPTIC No. 55



Across

1. Chasing after wopersons (7)
5. Pricks that sound like state extortion (5)
8. Soldier for fortune (9)
9. "L'etat c'est _____" (Louis XIV) (3)
10. Spectacular feat which checks growth (5)
12. Shreds of Rags (7)
13. Olive's sailor friend (6)
14. Don't be a borrower either (Hamlet I, iii, 75) (6)
17. Now filii nullius (7)
19. Movements of the sea and time (5)
21. Everything a bootmaker has (3)
22. Statement, especially of a cheque (9)
24. Sounds like old travelling judges liked to give themselves graces too (5)
25. Silky cattle thief (7)

Down

1. Inadequate modern persons (5)
2. Himplement for 1 across (3)
3. Without dexterity (7)
4. Bestows (6)
5. Romantic appointment (5)
6. Applauded with restraint (9)
7. You need more than one to snip (7)
11. No support from hoi poloi (9)
13. This Division used to deal with wives and wrecks too (7)
15. Successfully twists a debtor's arm (7)
16. A lustful woodland deity (1, 5)
18. Adjoins a property (5)
20. Direct a boat, or a bull (5)
23. Not any (3)

A FURTHER MESS OF PUTTAGE

After sending $2 to Tovey the Bar News was lucky enough to obtain the paper by David Ross

The Rule In Browne v Dunn (1893) 6 R 67

The Rule

In the cross examination of a witness any matter on which it is proposed to contradict the evidence-in-the-chief given by the witness must normally be put to him so that he may have an opportunity of explaining the contradiction, and failure to do this may be held to imply acceptance of the evidence in chief.

The Authorities

The rule has two aspects.

1. The first aspect is a rule of practice or procedure designed to achieve fairness to witnesses and a fair trial between the parties.
2. In its second respect it is a rule relating to weight or cogency of evidence. *(Bullstrode v Trimble* (1970) V.R. 840 at 846 — Newton J.)

The first aspect of the rule was emphasized by Lord Herschell and Lord Halsbury in *Browne v. Dunn* itself. Thus Lord Herschell said (at pp. 70, 71): "... it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses."

And Lord Halsbury said (at pp. 76, 77): "To my mind nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have desposed to."

Further rationale by Hunt, J.

"There are many reasons why it should be made clear, prior to final addresses and by way of cross-examination or otherwise, not only that the evidence of the witness is to be challenged but also how it is to be challenged. Firstly, it gives the witness the opportunity to deny the challenge on oath, to show his mettle under attack (so to speak), although this may often be of little value. Secondly, and far more significantly, it gives the party calling the witness the opportunity to call corroborative evidence which in the absence of such a challenge is unlikely to have been called. Thirdly, it gives the witness the opportunity both to explain or to qualify his own evidence in the light of the contradiction of which warning has been given and also, if he can, to explain or to qualify the other evidence upon which he challenge is to be based."

Allied Pastoral Holdings v FCT (1983) 1 NSW LR 1 at 22-23

Effect of non-compliance with the first aspect of the rule.

"Where in the course of a trial there is a breach of the rule in *Browne v. Dunn* in that one party adduces, or seeks to adduce, evidence in contradiction of evidence earlier given by witnesses on behalf of the other party who were not cross-examined, the situation in many cases could be remedied by the recall of those witnesses, who were not cross-examined, on the basis that the trial was unfair. .... But the mere fact that one party has succeeded upon an issue of fact without giving to witnesses for the other party, who gave evidence against him on that issue, an opportunity in cross-examination of explaining their evidence, will certainly not always be a reason for setting the decision aside on appeal; all the circumstances must be taken into account, so as to see whether the conduct of the trial was in fact unfair to the appellant; see, for example, *Browne v. Dunn,* supra, at p. 79, per Lord Morris." *Bullstrode v Trimble* (1970) VR 840 at 847

For an example of the rule in action see *R V Schneidar* (1981) A & Grim R 101, where an accused in person did not comply with the rule and was later stopped from giving evidence because of that non-compliance.

Examples

A series of examples were given by Hunt, J. in the *Allied Pastoral Holdings case* (at 23-24)

An issue between X and Y is whether X was in Melbourne upon a specific date and at a specific time. X bears the onus of proving that he was not in Melbourne. He gives evidence in his case in chief that he spent the whole day in Sydney with A and B. There are then a number of different situations which may arise:

(1) Y does not cross-examine X or give any other warning to suggest that his evidence is challenged; X therefore does not call A or B to corroborate his evidence; and Y leads evidence to contradict the evidence X gave. Clearly, Y cannot in those circumstances ask the tribunal of fact to disbelieve the evidence X.

(2) Y does not cross-examine or give prior warning that the evidence is challenged; X therefore does not call A or B to corroborate his evidence; But Y calls C and D to say that they saw X in Melbourne on the relevant date usually be remedied by allowing X to call A and B in reply (at least, in civil cases: of *Killick v The Queen* (1981) 37 ALR 407) and, if he wishes, to give further evidence himself. Provided that the situtation has been remedied, Y may ask the tribunal of fact to disbelieve the evidence of X.

(3) Y does give fair warning that the evidence of X is challenged; but, apart from putting to X that he was in Melbourne at the time and place where C and D saw him, Y does not specifically put to X any other detail of the evidence he proposes to call from C and D or disclose either their identity or the general nature of the evidence which they are to give. In those circumstances, there is, in my view, no obligation upon Y in fairness to put anything further to X in cross-examination; it is obvious that the evidence of X that he was not in Melbourne is under challenge, and it is for X to call A and B in his case in chief to corroborate him; I see nothing unfair in Y subsequently calling C and D to contradict the evidence of X, and asking the tribunal of fact to disbelieve that evidence.

(4) If, in the circumstances outlined in (3), evidence also fell from another witness called by X (upon some other issue), whether in chief or in cross-examination, that he had seen X in Melbourne at the relevant time, there is, in my view, no obligation upon Y to put anything further to X in cross-examination. It is for X to deal with the situation as best he can.

(5) Y does give fair warning that the evidence of X is challenged, by putting to him simply that he was in Melbourne at the time and place where C and D saw him; there is in evidence (upon some other issue), whether tendered by X or by Y, a diary kept by X in which there is an entry that X had an appointment to see Z in Melbourne on the relevant date and at about the relevant time; Y does not draw any attention to this entry during the course of evidence, but asks the tribunal by reason of the existence of this entry in the diary to disbelieve the evidence of X.

Second aspect of the rule

"In its second aspect of the rule in *Browne v. Dunn* is, in my opinion, as I earlier said, a rule relating to weight or cogency of evidence: compare *R. v. Jawke,* [1957] 2 S.Af.L.R. 187, at p. 190. In this aspect the rule says no more than that if a witness is not cross-examined upon a particular matter, upon which he has given evidence, then that circumstance will often be very good reason for accepting the witness's evidence upon that matter. If I may say so, this is little more than common sense. I have used the word "often" advisedly, because if a witness's evidence upon a particular matter appeared in

his evidence-in-chief to be increadible or unconvincing, or if it was contradicted by other evidence which appeared worthy of credence, the fact that the witness had not been cross-examined would, or might, be of little importance in deciding whether to accept his evidence."
Bullstrode v Trimble (1970) VR 840 at 848

How to put your case to the witness.
Perhaps it is best to commence with an observation by Lord Hewart C.J. on what not to do.

"There is a further matter involved here which goes far beyond the present case, and it may be, beyond criminal cases. One so often hears questions put to witnesses by counsel which are really in the nature on an invitation to an argument. One hears, for instance, such questions as this: "I suggest to you that..." or "Is your evidence to be taken as suggesting that...?" If the witness were a prudent person, he would say, with the highest degree of politeness: "What you suggest is no business of mine. I am not here to make any suggestions at all. I am here only to answer relevant questions. What are the conclusions to be drawn from my ansers is not for me, and as for suggestions, I venture to leave those to others." An answer of that kind requires, no doubt, some sense and self-restraint and experience, and the mischief of it is that, if made, it might very well prejudice the witness with the jury, because the jury, not being aware of the consequence to which such questions might lead, might easily come to the conclusion — as might be true — that the witness had something to conceal. It is right to remember in all such cases that the witness in the box is an amateur and that counsel who is asking questions is, as a rule, a professional conductor of argument, and it is not right that the wits of the one should be pitted against the wits of the other in the field of suggestion and controversy. What is wanted from the witness is answers to questions of fact. One ever hears questions such as: "Do you ask the jury then to believe...?" The witness may very well reply: "I am asking the jury nothing; my business is to tell whatever is relevant that I know and that I am asked to tell, and therefore my answer to your question and to all such questions is: 'No, I do not'." But in practice, both in civil and in criminal cases, one finds this line of cross-examination employed. It is a mischievous line."
R V Baldwin (1925) 18 Cr App R 175 at 178-179

Hunt J. acknowledges that timing and tactics play a part in how and when the contradiction is put to the witness.

"In may cases, of course, counsel for the party calling the witness in question will be alert to the relevance of the other material in the case to be relied upon for the challenge to the truth of the evidence given by his witness or to the credit of that witness, and in those circumstances counsel will be able to give his witness the opportunity to deal with that other material in his own evidence in chief. But sometimes quite properly he may not be aware either of the other material or of its relevance; or for quite legitimate tactical reasons he may prefer his opponent to be the first to raise the matter, and then deal with it in re-examination or (if allowed) in his case in reply. But at some stage during the course of the evidence, the witness must be given a proper opportunity to deal with the material to be relied upon for the challenge. If he has not been given that opportunity during the course of his own evidence, the situation may in some cases be remedied by his recall. Sometimes, particularly in jury trials, a party's failure to give such an opportunity to his opponent at the proper time may in justice require a ruling that a challenge to the evidence of the witness cannot be permitted or, if such a challenge has been made without warning, either the discharge of the jury or an appropriately strong direction to the jury in order to redress the unfairness which results. The various courses open in such a trial and the remedies upon appeal are discussed by the New South Wales Court of Appeal in Seymour v Australian Broadcasting Commission (3 June 1977 unreported).
Allied Pastoral Holdings case p 23.

DAVID ROSS

LUNCH

As a new column it is proposed that members of the bar review their favourite lunch time eateries in the general vicinity of William Street. The Editor will gladly accept reviews — all meals and refreshments will **NOT** be paid for by the Bar News. In line with Mr. Keating's austerity measures our first review is of that well known and convenient lunch spot, — "The Four Courts Cafe".

"My partner and I arrived at the Four Courts Cafe with an air of expectancy and a tingle of excitement. The restaurant had been highly recommended by members of the police-force, hungry Plaintiffs, and convivial jurors. When we arrived on a wet Melbourne lunchtime it was almost full. Strangely many of the patrons wore cervical collars and carried walking sticks. "Not caused by the food I hope!" joked Hortense, my delightful companion, as we showed ourselves to a table. The place certainly has a legal flavour, what with half robed barristers, concerned solicitors and tasteful legal prints splendidly highlighting the large and airy sandwich bar area. The ambience is that of the late sixties with solid brown plastic tables and chairs, plastic palms and deep pile beige nylon carpet. We surveyed the menu with eagerness. The specials of the day could be viewed in a brightly lit bain-marie area at the rear of the premises. Hortense joked that it reminded her of our student days travelling the Greek Islands when friendly hosts would take us into their kitchens to regale us with mousaka, fresh caught calamari, vine leaves and tender kebabs. This day the specials included dim sims, both fried and steamed, chiko roll sweet and sour, and home baked Four and Twenty pies. I opted for the chicken schnitzel as an entree followed by the special hamburger with the lot. Hortense chose the oriental chicken and fried rice followed by mousaka and chips. After sometime the waitress came to our table and cleaned away the old plates and cups, which I must say showed a tasty looking half-eaten pasty, and took our orders. She was a delightful lass who told us that in real life she was an actress, and was working as a waitress in the day while appearing as a walk-on in "Prisoner". Hortense became wistful again, as memories of New York welled up in her throat, of restaurants in Greewich Village all staffed by bright young hopeful actresses. After a small mix up, when toasted cheese sandwiches came instead of our order, our first course arrived. The chicken schnitzel was delightful — large, tender, coated in a very generous batter and garnished with a delicate sprig of dill. A nice touch! It came with a tomato coulis on a bed of raspberry vinaigrette. Hortense commented that the oriental chicken was different. Tender shreds of young capon had been lightly combined with snow peas, okra, baby tomatoes, mixed vege, and as an unusual touch, frozen peas. We shared a delightful bottle of cold duck with our first course. A young wine that could do with being put down. The main courses were "tres formidable!" The hamburger was huge-laden with fried egg, bacon, tomato, circle of pineapple, and as an extra touch, just a hint of truffle. The chef commented later, that he had hit on the idea of combining truffles with hamburgers on a recent visit to France. The mousaka was splendid. The plate literally groaned with the large mass of mince, egg plant and thick grey bechamel sauce. The chips were top flight. Those ones with the crinkles down the side. My favourite! We washed the meal down with a fruity 1986 moselle from Northern Italy. Hortense found it to have an unusual after-palate, but I found it hit the target perfectly.

We topped off a delightful lunch with ice-cream and chocolate sauce and coffee. Prices range from about $1.40 for sandwiches to $3 to $5 for main courses. Now that I can't claim lunch as a tax deduction I'll certainly be back to "The Four Courts". It's just what the Treasurer ordered!!!!

Four Courts Cafe,
180 William Street,
Open early unitl 5 p.m. : 5 days a week
B.Y.O.

ELLIOTT

LAWYERS BOOKSHELF

Williams C.R. and Weinberg M.S. Property Offences 2nd ed. Law Book Co. 1986 445 pages Cloth $65, Soft $45.

In 1974 Professor John Smith came from England to Victoria to preside over the celebrations accompanying our new Theft Act. Our Act was modelled on the English Act. What could be simpler than for us to key into all the English interpretations. Not for us the Tasmanian mistake of trying to codify the common law. By using the English Act we would be spared the growing pains. And if that were not enough the English academics like the good Professor would chip in and help with their learned articles on how the Act should work.

The first rift came in 1980 when our Court of Criminal Appeal chose not to follow the English interpretation of "dishonestly". It was an important divergence, for we were now on our own for the mental element. (Salvo, Brow, Bonollo).

A curiosity came when the mental element in conspiracy with intent to defraud arose for decision. Because the word "dishonestly" did not appear in the statute, it was not to be imported into this offence. yet insofar as concepts of "fraudulently" involved "dishonestly", the English authorities were to be followed! (See R v Walsh and Harney ([1984] VR 474).

Our adoption of the Theft Act added a third tier to that aspect of property offences in Australia. New South Wales and South Australia still hold the common law. The Griffith code introduced in Queensland, adopted in Western Australia and strangely adapted in Tasmania was the second rung. The English Theft Act rules in Victoria, Northern Territory and A.C.T.

Williams and Weinberg produced "The Australian Law of Theft" in 1977. It was a great success amongst the practitioners and most of us have it on our shelves. This book is the second edition. The title was changed to indicate that more than just theft was included, for there are also chapters on robbery, burglary, blackmail, handling, and conspiracy to defraud.

This edition has the same features as the last. Careful research, all the cases you want, and a fairly relaxed style which enables principles to be understood at first reading. The layout is not eye straining and the index is fairly comprehensive. Victorian and A.C.T. practitioners are given a bonus by a concordance at the back of the book which relates our provisions to the English provisions.

The authors have been ambitious. They want all the Australian law on this subject to be in one book. They have done well.

DAVID ROSS

With the release of "THE LAW OF TORTS IN AUSTRALIA", co-authored by Francis Trindade and Peter Cane comes an indispensable text for all those barristers practising in any area of torts law.

One can not do better than quote from the opening page of the work itself:— "(The textbook) is written primarily for the Australian law student, but practitioners also will find it useful to have a book which describes and explains the law of torts essentially through the medium of Australian decisions and legislation. References to material from other jurisdictions are used only when they serve the purpose of exposition much better than the available Australian material."

Pausing there, the emphasis on, inter alia, Victorian Supreme Court decisions is commendable and shows a realistic understanding of precedent.

The opening page continues:— "The authors have not been content merely to describe and explain the law of torts as it exists at the present time. There is a constant appraisal of existing law and suggestions for its improvement are made where that is necessary and appropriate. An extensive section of the book is devoted to an examination of the alternatives to the tort system, including Motor Accident Compensation schemes, civil injuries compensation schemes (etc.) ... A further innovation is an economic analysis of the law of torts, particularly negligence and strict liability."

Perhaps the chief reservation I have is the absence of a section on Defamation law in Australia. I am assured that this will be rectified in the next edition.

However, again to quote from the first page; "(It) is a comprehensive and authoritative work which will become an indispensible reference for students and practitioners alike."

HARBER

CONFERENCES

For those with the folding stuff, tax problem or burn-out herewith is a list of the latest escapes. Just talking about the possibility of leaving Melbourne in the Winter may cheer up some needy souls. Book early and enjoy, before "wealth redistribution" strikes home!

1. **AUSTRALIAN BAR ASSOCIATION 2ND BIENNIAL CONFERENCE**
   Ayers Rock and Alice Springs
   2nd — 9th July 1986
   Inquiries: David Bennett,
   180 Phillip Street,
   Sydney 2000
   Phone: (02) 232 8658

2. **THE 2ND LAWYERS IN PARADISE LAW CONGRESS**
   "UPDATE FOR THE LEGAL PRACTITIONER"
   Papeete, Tahiti
   4th — 13th July 1986
   Inquiries: Unconventional Conventions,
   P.O. Box 116,
   Spit Junction NSW 2088
   Phone: (02) 969 5460

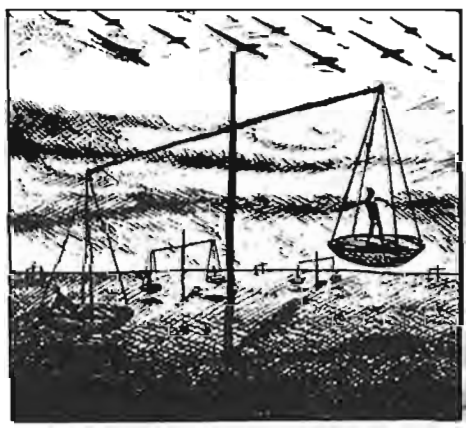
3. **FIRST SOUTH PACIFIC LAW CONFERENCE**
   Apia Western Samoa
   25th — 29th August 1986
   Inquiries: Peter Askin Diners World
   Travel Ltd.,
   P.O. Box 1533,
   Auckland New Zealand
   Phone: (09) 79 2450

4. **SOCIETY FOR COMPUTERS AND LAW**
   7th BIENNIAL CONFERENCE
   Warwick University, Near Coventry England
   3rd — 6th July 1986

5. **III INTERNATIONAL BUSINESS LAW CONFERENCE**
   Shangri-La Hotel
   Singapore
   1st — 3rd September 1986

6. **8TH COMMONWEALTH LAW CONFERENCE**
   Ocho Rios, Jamaica
   7th — 13th September 1986

7. **INTERNATIONAL BAR ASSOCIATION 21ST BIENNIAL CONFERENCE**
   New York USA
   14th — 19th September 1986
   Inquiries: Compass Travel,
   90 Bridport Street,
   Albert Park 3206
   Phone: 699 9766



A FEW HISTORICALS

THE LEGAL PROFESSION PRACTICE ACT

Speech of Sir W.J. Clarke in the Legislative Council August 1891 concerning the merits of amalgamating the Legal Profession.

"Turn to the mallee, a perfect brotherhood of shrubs "sweating to make themselves trees," but doomed to everlasting equality and fraternity — hundreds of square miles and millions of acres of dull solitude. But come for a moment to the Gippsland mountains and gorges, full of giant trees, drawing all the surrounding shrubs upwards and upwards to the sun. Trees 36 feet in girth and hundreds of feet high, and forests of beautiful and noble fern trees. But these may be all ringed, to leave us nothing but miles of tree skeletons — a melancholy reflection of a great and noble past. This somewhat despised man of the wig and gown is typical of these forest giants. He is with us to-day as of old. Say "Aye" if you will, and destroy his individuality and reduce us to a dreadful mallee level. I warn honorable members not to hastily break in upon a system which has done such good service."

What would the solicitors from the Mallee say to all that?!

* * *

THE ARGUS 1861

Sittings in Banco in Hilary Term. (Last Day.)

Old Court House — Tuesday, Dec. 10. (Before their Honours the Chief Justice, Mr. Justice Barry, and Mr Justice Williams).

New Attorneys

The Court ordered that each of the following gentlemen be admitted to practise as an attorney, solicitor, and proctor in the Supreme Court of the colony of Victoria, and be entered on the roll of the Court:—

On motion of Mr. J. W. Stephen, Charles Chapman Napoleon Green, student, Melbourne.

On motion of Mr. Billing, John Yates Prosswell, student, Melbourne.

On motion of Mr. J. W. Stephen, William Patten, student, Melbourne.

The court refused a motion by Mr. Higin Botham, for the admission of Edmond Macarty (or Macarthy), an admitted Irish attorney, on the ground that the notice of application for admission had not been served three times in the same newspapers, but only twice in The Argus and Herald, and once in the Economist and Christian Times.

Apart from the fact that the number of admittees is slightly up on 1861 it seems that not much else has changed. Perhaps by 1991 the numbers will be the same?

Queen v. X
Morwell County Court March Sittings
Coram Judge Murdoch
Plea to Charges of Incest
Elliott Prosecuting
Brett Young for Prisoner
"Your Honour my clients occupation is that of a F---Dixer. Whoops! I mean Duct Fixer, seems like I got that one around the wrong way....."

• • •

Prahran Magistrates Court
February 1986
Coram Lynch S.M.
Heavily contested Special
Hurley ferociously
cross-examining "independent" witness.
Question: "And why did you cross the road?"
Answer: "To get to the other side."
Hurley is said to have chickened out after that.

• • •

Prahran Magistrates Court
March 1986
Charges of using indecent language and insulting words. The Defendant was alleged to have called the informant a f------ copper c--- pig.
The language was used within the confines of the watch house. Deborah Wiener for the Defendant cross examining informant.
"Surely constable you have heard words like that before?"
"Yes."
"And that type of language is used regularly in the watch house?"
"Most of it, yes."
"And you were not insulted by the bad language at all."
"Oh, I didn't mind the swearing but no-one calls me a pig!!!!"

• • •

Melbourne Magistrates Court
November 1985 —
Coram B. Clothier S.M.
During 9.15 call over of Civil Matters.
"Gentlemen I have some bad news. I'm afraid I will have to disqualify myself from hearing crash and bash cases as my wife was recently involved in a motor vehicle accident".

• • •

Courtroom No. 1
Melbourne Magistrates Court
Coram Dugan C.S.M.
His Worship's clerk called over a matter in which the Defendant was named as "Wanka Longa". No one came forward. To the joy of all in the Court, His Worship insisted that the duty constable repeat the name 3 times outside in the normal fashion. The constable announced that there was no appearance. Mr Dugan observed: "With a name like that I am not surprised." He paused, dramatically, so it seemed, and then added: "There is an explanation for the name. The Defendant was found in a common gaming house. I suspect that he was having a lend of somebody."

• • •

Coram Strauss J
Family Court of Australia
13th December 1988
Byrne Q.C. making his virgin appearance in the Family Court in an interim custody and maintenance case.
Strauss J:
"I order that the husband pay to the wife maintenance of $300 weekly."
Then turning to the stenographer, His Honour said: "Would you make sure that is spelt with a double 'ee'".
Byrne Q.C. (in loud sotto voice):
"It's better than per annum with one 'n'".

• • •

County Court Chambers
April 1986
The County Court Master was taking consent orders:
Solicitor: I appear for the Deputy Commissioner of Taxation. My client and the Defendant have entered into a gentleman's agreement with respect to this matter. We would like the summons adjourned sine die.
Master Lewis: "Does your client have the ability to enter into such an agreement?"

• • •

Queen v Connolly, Gibbons & Wilson
Coram Judge Byrne
22nd May 1986
A.R. Lewis cross-examining senior member of the Corroborating Squad:
"How on earth can you corroborate something you didn't see and you weren't aware of?-- I believe it's true and correct, what he did.
What, because he told you?---Yes.
So far as you're concerned, you're prepared to corroborate what he tells you, despite the fact that you didn't see it occur?---Yes."

• • •

SOLUTIONS TO CAPTAIN'S CRYPTIC No. 55

1 W	H	2 O	R	3 I	N	4 G	■	5 T	A	6 C	K	7 S
I	■	A	■	N	■	R	■	R	■	O	■	C
8 M	E	R	C	E	N	A	R	Y	■	9 M	O	I
P	■	■	■	P	■	N	■	S	■	M	■	S
10 S	T	11 U	N	T	■	12 T	A	T	T	E	R	S
■	■	N	■	L	■	S	■	■	■	N	■	O
13 P	O	P	E	Y	E	■	14 L	15 E	N	D	E	R
R	■	O	■	■	■	16 A	■	X	■	E	■	■
17 O	R	P	H	18 A	N	S	■	19 T	I	D	E	20 S
B	■	U	■	B	■	A	■	O	■	■	■	T
21 A	W	L	■	22 U	T	T	E	R	A	23 N	C	E
T	■	A	■	T	■	Y	■	T	■	I	■	E
24 E	Y	R	E	S	■	25 R	U	S	T	L	E	R

Scene: Crowded party somewhere in Armadale. Plenty of exposed bricks. Pink and Peach colour scheme. Much talk of renovations and babies.

Semi-Intoxicated Male: (Clutching glass of pink Yellowglen as he sways.) "So you're a barrister, Eh."

Barrister: "That's right"

Semi-Intoxicated Male: "All barristers are crooks. I read the papers. You're all earning over 300 grand a year. What do we need you for anyway? My de facto is a social worker, she says it's all a matter of common sense. The lawyers only create the disputes. They don't solve them. She says that all you've got to do is be reasonable to people and that will fix things. We don't need all this technical mumbo-jumbo that you blokes go on about. Society would be much happier without the lot of you. You see what I mean?"

Barrister: (Looking for somewhere else to go in the room.) "I suppose that you have got a point there. I think I'll get myself another beer."

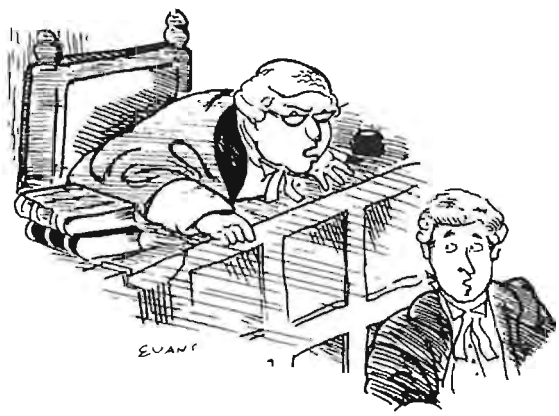
Semi-Intoxicated Male: (Grasping Barrister's arm) "Hold on! Hold on! I'm right aren't I. I mean how can you represent all those guilty criminals. I mean you know they did it. I know they did it. How can you cook up all those stories to get them off. You know underneath it all that I'm right don't you, — I mean you're only in it for the dough."

Barrister: "You seem to be sure that you're right."

Semi-Intoxicated Male: "I'm glad that you agree with me. (Pause. Fills glass. Sways some more.) Look by the way have you got a moment.....you see I've got a little problem. See what you think of this. Actually my de facto — thats the one who is the social worker — she's told me that it's all over. She said I was selfish and inconsiderate. Bloody women. So you know what — she wants me to move out of **my** house. I mean it's in my name. I know we've been shacked up for 10 years — but can she kick me out? Can she claim half the house or get any money from me? Come on give us your professional opinion".

Barrister: "You've just told me I'm a crook so you don't really want my opinion. In any case its all a matter of common sense so just be reasonable and you can fix it all yourself. I mean I wouldn't want to help you cook up some story to help you win. But if you really want my advice, get yourself a Solicitor who will give me a brief, and then come into my chambers for a conference. After all if I'm going to keep on earning 300 grand a year I've got to change you as well. I promise a lot of mumbo-jumbo".

ELLIOTT



Judge: (Having just seated himself): All right then, no-one leaves this court until I get the name of the person who put this "funny noise" cushion on my chair."

SPORTING NEWS — "FOUR EYES"

The Annual Cricket Match between the Bar and Bench and the Law Institute held at the Albert Ground on the 29th January 1986, has been compared with the slaughter of the English team by the West Indies. Our 40 overs produced a meagre 155 runs, with Chancellor, Jeremy Gobbo and McTaggart each scoring in the 30's. The opposition reached 2 for 174 from 25 overs before adjourning to the bar. One solicitor, Craig Henderson, scored 100 not out and, to our chagrin, Brian Nettlefold's son made 44. Connor, who was run out first ball and took no wickets, maintains he should have been "man of the match" because he had three catches dropped off his bowling. Bill Gillard is anxious to point out that he was overseas at the time and thereby is exonerated from any blame for the debacle.

Radford of the Bar and Bob Burdeau, of Wisewoulds, are the respective Captains of the Bench and Bar/Law Institute second XI cricket sides. They have had crafted a magnificent silver trophy known as "The Grafter's Goblet" — it features a cricket pitch superimposed over the Scales of Justice. A wig is placed on one scale and a bat and ball placed on the other. We have not won a match since at least 1982 and were heading for a probable defeat when the match was washed out on the 20th December 1985. Before the rains came, our bowling was being treated with absolute disdain. Incidentally, Radford purchased a Gray and Nicholl "David Gower super 5 Power Spot" cricket bat in England before attending the Privy Council. It cost a fortune. It is belived that similar bats are now at bargain prices and "can't be given away" following the West Indies Tour by Gower and his team.

Noel Ross and his wife have a farm at Lethbridge and breed thoroughbred horses as a hobby. At the Dalgety's Yearling Sales in March 1986, they sold a Sharp Edge colt for $23,000.00 and were pleasanlty surprised when their Tattenham filly fetched $20,000.00. A two year old which they bred has won over $100,000.00 to date and it was the intention of Ross and his wife to see the colt, Breakfast Creek, run in the Golden Slipper at Rosehill. Providence dictated that an airlines strike prevented them from leaving Tullamarine — the colt ran down the track.

The Bar and Bench successfully defended the Sir Edmund Herring Trophy at the annual Golf match against the Law Institute held at Victoria Golf Club in January 1986. The Bar and Bench will play a further match against the Combined Services later in the year and as numbers have been down in recent years, members of the Bar and Bench are encourged to participate. Max Cashmore, who has been organising both events for about twelve years, is anxious for a replacement and anyone prepared to take over such a task should contact him.

The Bar hockey team has been active but not successful. It played two matches in 1985. Unfortunately it lost 5-1 to the Law Institute of Victoria. Coldrey's claims that the Solicitors' cheated cannot be corroborated. RMIT also did the dirty and beat the Bar 5-2. New stars in the team were Dallas, Beach, "Stewey" Campbell, the D.P.P., and Meryl Sexton. Of course the driving force behind the whole show was Richard L. Brear.

LAW COUNCIL'S FUTURE UNDER STUDY

A General Meeting of the Law Council in Adelaide on 19 April was adjourned to Canberra on 21 June to allow a working party to thoroughly consider the Council's future and possible structures for an alternative body to represent the legal profession nationally.

The Council established the working party when it became clear that there was insufficient support from constituent bodies to change the constitution to give individual members representation on the Council through the appointment of delegates from the Council's Sections.

A motion to provide for representation in that way was carried by seven votes to five — but at least an 8-4 vote would be needed to approve the necessary constitutional changes. It had been proposed that Section representatives would be limited to four, and that they would limited voting rights, being ineligible to vote on, for example, constitutional changes and the setting of the capitation fees.

The president of the Law Council, Mr Michael Gill, has invited all constituent bodies and Sections to participate in the working party, which will report to the resumed General Meeting on 21 June.

He said: "What we must now aim for is a body that will have the unqualified support of the whole legal profession so that the profession can continue to speak on national affairs and federal laws with a clear and respected voice."

The motion put to the Adelaide meeting by the Law Society of Western Australia represented the view of the Law Council Executive following a close study of the views of all constituent bodies, and was thought by the Executive to be acceptable to sufficient constituent bodies to enable the necessary constitutional changes to be made to give effect to the motion.

Those voting for the motion were:
- Law Society of NSW
- Law Institute of Victoria
- Law Society of Tasmania
- Law Society of WA
- Law Society of SA
- Law Society of the ACT
- Law Society of Western Australia

Those opposed were:
- NSW Bar Association
- Victorian Bar
- Bar Association of Queensland
- Queensland Law Society
- ACT Bar Association

Following an adjournment to allow constituent bodies to consider the implications of this vote, it was resolved to establish the working party. The working party met immediately after the General Meeting and arranged to meet again in Sydney on 11 May.

The General Meeting disposed of all other business before it except for the 1986/87 Law Council budget. Consideration of the budget will take place on 21 June.

It was clear at the meeting that some constituent bodies see the question of voting rights in some form for individual members as fundamental to their continued membership of the Law Council. Without significant change, it is clear that at least the two largest bodies — the Law Society of New South Wales and the Law Institute of Victoria — will seriously consider withdrawing from the Law Council.

The Executive of the Law Council is unanimous in its desire to see that all constituent bodies, and barristers and lawyers, continue to be part of a strong national legal body, and that the basic structure built on Sections and individual members is not dismantled, whatever shape the Law Council or any successor organisation might take.

In a comment on the efforts now under way to find acceptable solutions to the current difficulties, Mr Gill said: "Whatever the result of the present tensions and deliberations it is absolutely critical that there continue to be a strong national body of lawyers".

AIJA AFFILIATES WITH MELBOURNE UNIVERSITY

On 23rd January 1986, Melbourne University, the Australian Institute of Judicial Administration and the Victoria Law Foundation signed an agreement which will affiliate the Institute with the University.

Under arrangements concluded in 1985 for joint composite funding of the AIJA by Federal and State Governments, the Institute will now be able to establish a full time secretariat consisting of an Executive Director and Administrative staff.

The affiliation with Melbourne University means that the Executive Director will have the title and status of a Professor and be a member of the Law Faculty. The University will provide rent free premises in Barry Street.

The affiliation will help the Institute to carry out the following objectives:

— to arrange and foster continuing education for judges, magistrates, court officials, practising members of the legal profession, members of the legal professions employed in government and those engaged in teaching of law;

— to undertake and foster research designed to improve the administration of justice in Australia; and

— to promote improvement in the administration of justice throughout Australia.

Pictured at the signing ceremony are (1. to r.) Mr. Lindsay Collins, a member of the Council of the Institute; Mr. Justice McGarvie, Chairman of the Institute; Professor Harold Luntz, Dean of the Faculty of Law; Professor Caro, Vice-Chancellor; Mr. Potter, Registrar; Professor Sandford Clark, Executive Director of the Victoria Law Foundation and Mr. Finemore Q.C., member for the Executive Committee of the Victoria Law Foundation.

MOVEMENT AT THE BAR

Members returned to active practice.
P.H. CLARK
G.D. JOHNSTONE
(MISS) M.L. WARREN

Members who have transferred to the Magistrates & Full Time Members of Statutory Bodies List.
I.T. WEST
R. BARBERIO
(MRS.) M. SLADE

Members whose names have been removed at their own request.
W.S. JOHNSON
M.A. HAMMET
C. DUNCAN
J. McD CROWTHER
G.B. POWELL
S. DALEY
G.R. ALLWOOD
G.J. FOSTER
D.H. DENTON
M.J.F. SWEENEY
S.L. STONE
H.W. POULTON

Member who has been transferred to the Solicitors-General and DPP List.
R.C. WEBSTER

Members who have been granted leave of absence
R.C. MACAW
D.G. GARNET-THOMAS
P. WILKINSON
M.J.G. WAUGH
(MISS) F. MILLANE

Member who has been transferred to the Retired List of Counsel
R.L. GILBERT

MILESTONES

Patrick Hogan Kearney
Kearney is retiring from the Bar after 50 years as a member of the Legal Profession. He was admitted to practice as a Solicitor on 2nd March, 1936. He established the firm of Kearney and Kearney which he successfully operated until he came to the Bar in 1978.

We wish him well in his retirement.

F. Maxwell Bradshaw
On the 6th May 1986 Bradshaw will celebrate 50 years as a member of the Victorian Bar. We wish him well and trust that he will continue on as a practising member.

Barrister (leading witness): "And your occupation is that of conciliator and mediator....."

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Max Cashmore, the Crennans,
Graham De Vries

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Paul Elliott

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Andrew Evans

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David Henshall

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