VICTORIAN BAR NEWS

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The Editors' Backsheet

A permanent Court of Appeal

Last issue of Bar News contained an article by Stephen Charles Q.C. arguing the case for a permanent Court of Appeal for Victoria.

Such a move is already well advanced in Queensland. In the most recent issue of Queensland Bar News (June 1987) the report of the President of the Queensland Bar Association (Ian Callinan Q.C.) includes the following:

> 'To my knowledge it has been the policy of every Bar Association Committee for the last ten years - it could even be longer - that there be a permanent Court of Appeal. We have I believe, I certainly hope so, at last prevailed upon the Government to establish such a Court. We accept that to some such a change may be unpopular. Innovations which destroy entrenched practices and expectations are understandably bound to be controversial. Here is not the place to rehearse the compelling arguments in favour of such a Court. It is sufficient to point out that the three major political parties are in favour of such a Court, the Law Reform Commission recommended it and the Bar has consistently sought it. I hope that we have at last achieved it.'

New South Wales, New Zealand and all the Canadian Provinces have established permanent appellate courts. Queensland, a State with less than half Victoria's population, seems to be firmly set on the same course. Any arguments that Victoria is somehow different and should retain a judicial system without a permanent appellate court will call for close scrutiny.

Blots on the Cityscape

Sacre Bleu!! Can this be so? Is Owen Dixon Chambers West one of 20 buildings that should never have been built? So says designer Ken Cato in the Age Good Weekend Magazine of 17th July 1987. 'Really, the less said the better. It's just a nothing building, with no style of any description. I can't think of anything else to say about it. It's bad enough that the building gets on a list like this' states designer Cato. Ken how can you be so cruel!!?!
If it's bad enough that it shouldn't be on the list of the 20 buildings that should never have been built, does that mean that it should have been built? Does this mean that barristers have no style? Does O.D.C.W. deserve to be on a list with the Gas & Fuel Building, the Old Melbourne Motor Inn and the Navy and Military Club!?! A sub-committee must be set up to investigate these allegations, Mr. Ken Cato and the Age newspaper. Motions must be moved. At least the Age had the good grace to put its own building on the list.

The Gillard Brothers

Following the outstanding success of Bill Gillard's cricket tour of the U.K. and Ireland, plans are afoot for a television series based on his phenomenal exploits. SBS television is basing the series on the very successful 'Leyland Brothers' travel programme. The new show will be called 'Hey Hey IT'S THE GILLARD BROTHERS' and will consist of Bill and brother Rog driving around England in a Land Rover. They will stop at various cricket grounds where Bill will tell an admiring Rog of his great athletic feats. Both will wear Akubra cricket helmets with corks to give the series an Australian flavour. The show will be of three hour's duration and will run daily for ten years.

Crafti by Name Crafti by Nature

Well done Nathan Crafti! As many of you must be aware, Nathan Crafti, criminal lawyer extraordinaire, wrote a stinging letter to well known personality Derryn Hinch. Inter alia, Nathan asked Derryn if he would take the benefit of any remissions on his sentence should Derry's current High Court appeal not be successful. Derryn said he wouldn't dream of taking advantage of remissions. Rumour has it that the 3AW management were so impressed with Nathan's letter that he will replace Derryn in the unfortunate event that Canberra turns his appeal down. Nathan's stunning success on 'Sale of the Century' also prompted his elevation to the media ranks. To quote Tony Barber, 'Crafti by name Crafti by nature!'

Review of Victorian Libraries

Contained in this issue is an article concerning the proposed Review of Victorian Court Libraries. This step is to be much lauded. There must be radical up-grading of the Victorian Supreme Court Library, and very soon.

As the Chief Justice of Australia, Sir Anthony Mason, said in his speech at the opening of Owen Dixon Chambers West - libraries are the basic sources of the law. Anybody who uses the

Supreme Court Library is met by continual frustration. Far from being some hi-tech bank of data, one gets the impression that the lighting has recently been changed from gas to new fangled electricity. Finding the book you want is the exception rather than the norm, and if it is on the shelves there is a presumption it is an out of date edition.

There is a rather neglected computer terminal in the library tucked away in the room which contains the staplers The staff are very helpful but are working against great odds. One of the great magical mystery tours is to find an unreported decision. The 'system' of filing them is a wonder. Much money must be pumped into the library. It is very worthwhile having a complete review of all libraries, but it is not hard to spend more money to buy more copies of more books, and when they 'disappear' to spend more money to replace them quickly.

Social Standing

Public opinion surveys suggesting that barristers rank somewhere between SP bookmakers and politicians in the esteem of the community have been convincingly rebutted by recent evidence - albeit of a sort sociologists would call anecdotal.

A major trading bank seeking more customers (there must be some sort of competition between banks to have the biggest and most flagrantly exceeded overdrafts) wrote to some members of the Bar seeking 'highly selective linkages to upscale professionals such as yourself'.

And a Scotch whisky manufacturer opened its marketing pitch to members of the Bar recently with the proposition that the recipient was ' ... one of a select group of Australians with a taste for the finer things in life'.

Mrs. Joan Smith

Unfortunately the Bar's Executive Officer **Joan Smith** has resigned and will be moving to Queensland.

Joan carried out her demanding duties with cheerful efficiency. She has been particularly helpful in the running of Bar News.
She goes with our grateful thanks and very best wishes for the future.

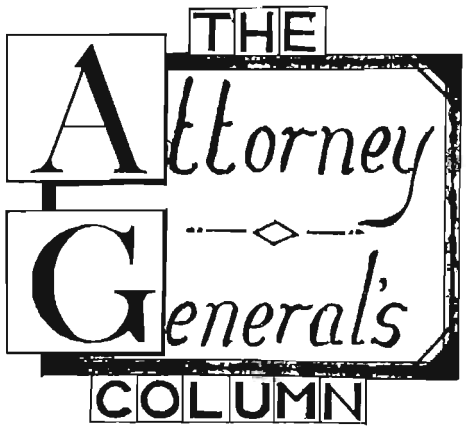
Where Time Stands Still — Or Perhaps Runs Backward

With uncharacteristic obsessiveness, John Phillips Q.C. was pursuing the Australian Government Publishing Service for a receipt (for taxation purposes) for his subscription last January to the Commonwealth Act reprints. Having been sent a receipt with an office stamp 'Received January 1975', he wrote seeking an explanation. The reply commenced:

> 'In reply to your letter of 21 August 1987 I wish to advise you that at the time of receiving your remittance for Series 7 REPRINTED ACTS, a 1987 date stamp was not yet available for our use. We had to use an old 1975 date stamp until our 1987 date stamp arrived.'

When the Australia Card arrives, will John be told 'Sorry, we are still waiting for the M to Z cards. You will have to be Mr. Alan Archibald for a while.'

The Editors



Government to Implement Coldrey Report on Section 460 Crimes Act

The State Government will implement the recommendations of the Coldrey Committee on Section 460 of the Crimes Act in the Spring Session of Parliament.

The Consultative Committee on Police Powers of Investigation, chaired by the Director of Public Prosecutions, Mr. John Coldrey QC, found that the current six hour rule in Section 460 was generally workable and had caused no problem in 99.5% of interrogations. However, the committee considered that a fixed time limit was too inflexible, especially in cases involving complex or multiple offences. The committee recommended permitting police to question suspects in custody, with their consent, for a "reasonable time".

At the same time, the committee recommended the introduction of a number of amendments to protect the rights of individuals being questioned by police. The committee recommended that the six hour rule in Section 460 should not be amended unless a number of safeguards are also introduced. The most important safeguards are that all interviews for indictable offences will be required to be tape recorded, and the police, prior to the commencement of any questioning, must notify a suspected individual of his rights and give him a reasonable opportunity to communicate with a lawyer and a relative or friend.

It should be emphasised that the provisions in the Crimes Act will operate subject to the right to silence, the voluntariness rules of admissibility of confessional material and the discretion of courts to exclude unfairly or illegally obtained evidence.

I believe that the Coldrey Committee recommendations to be implemented by the State Government strike an appropriate balance between the protection of civil liberties and the need for effective law enforcement.

Court Delays

The Government is committed to tackling court delays in the Supreme and County Courts with a range of initiatives.

These delays have largely been caused by the extraordinarily large number of personal injuries cases filed prior to the introduction of the Transport Accident Act. For example 26,458 personal injury actions were commenced in the County Court in the first six months of 1986 compared with 8,667 for the same period in 1985. There are now approximately 14,000 jury cases in the County Court in which a Certificate of Readiness has been filed and which are currently awaiting trial or pretrial conference.

The problem will be partly addressed by the appointment of additional judges, and the provision of additional court facilities.

However, experience in Australia and overseas shows that additional judge power by itself is not enough to solve the problem of court delays. The real secret to making the court system work better and reducing delays is to get a change in a legal culture which for too long has tolerated an antiquated court system and the delays inherent in the system. That change requires a commitment by Government, the judiciary and the legal profession to see that there is improved case flow management.

The consultancy conducted by Ms Maureen Solomon in April on case flow management, together with representations made by the Law Institute and Bar Council, have produced a number of recommendations for appropriate measures to reduce court delays. A fundamental measure required is greater court control of cases. This currently occurs in the Supreme Court commercial causes list which is operating successfully. Other measures include increased

pre-trial conferencing and computerisation of court lists.

I propose to set up a monitoring committee to include members of the Bar and the Law Institute to ensure that the measures taken to reduce court delays and improve the court system are continuously assessed and refined.

State Budget

The State Budget tabled in Parliament in August contained provisions for a number of initiatives to improve the administration of justice, the courts and Corporate Affairs.

These include:-

— an increase in expenditure on the operation of the court system of 15.8% (expenditure on the courts has doubled since 1982/83 in order to improve services and reduce court delays.)

-- funds for the appointment of additional judges, increased pre trial conferencing and additional court facilities to tackle the backlog in the personal injuries lists in the Supreme and County Courts.

— funding for the Court Computerisation programme, including implementation of the criminal case management system at Broadmeadows, and Prahran and Melbourne Magistrates Courts, a computerised case management system for the Crimes Compensation Tribunal; a computer system for the commercial causes list in the Surpreme Court and the development of computerised listing programmes in the County and Supreme Courts.

— funds for the new Coronial Complex and the Victorian Institute of Forensic Pathology.

— extra funds for court support services, including "Network" a semi voluntary court information and support service.

— additional funds for the establishment of a nucleus of a team of solicitors in the Office of the Director of Public Prosecutions, specialising in the prosecution of major drug related offences.

J. H. Kennan

Law Reform Committee Report

Plain English Legislation

Notes in the last edition of Bar News concerning the proposed Companies (Acquisition of Shares) (Victoria) Plain English Code and the response to that article by barristers indicates a keen interest in this form of legislative drafting by members of the Bar. Various requests have been received by the Hon. Secretary of the Committee to borrow a copy of the Code. Some members of the Bar have used the Plain English Code as the basis for talks to learned meetings both in Australia and overseas. In fact the demand for the Plain English Code has been so great that the requests of many members of the Bar to peruse this Code has not been able to be fulfilled. Would the member of the Bar who at present has custody of the copy of the Code please return it to John Hockley.

Jurisdiction of Courts (Cross-vesting)

This Bill has passed through the Commonwealth Parliament.The States have yet to pass complementary legislation. The Queensland Law Society has some objections to the Bill. These proposals have been supported by Committee of the Law Council of Australia.

The opposition to the Bill relates to the following matters:

(i) The Bill proposes that the appellate jurisdiction in tax matters reside solely with the Federal Court;

(ii) Appeals in the Supreme Court in intellectual property matters will be abolished and the Federal Court will be the sole appellate jurisdiction;

(iii) That there should be a right of appeal provided in the legislation against orders remitting a matter from one Supreme Court to another Supreme Court.

A member of the Committee studied the above objections and stated that the matter raised were policy matters and ones which would not affect the Supreme Courts. The Committee resolved that it should not oppose the implementation of the legislation.

New South Wales Law Reform Committee - Criminal Procedure

The proposals by the NSW Law Reform Commission have been studied by the Criminal Bar Association. The proposals were to introduce into New South Wales the following:

(i) A D.P.P.
(ii) A Listing Directorate.

In regard to these matters the situation in N.S.W. was being brought into line with that existing in Victoria.

Another proposal was to abolish committal proceedings. The proposal indicated that there should be full disclosure from the D.P.P. and the matter should then be set down for trial. The Criminal Bar Association indicated that it was in favour of full disclosure from the D.P.P. but that there should be a right to cross-examine selected witnesses if the defendant so desired. If the right to cross-examine selected witnesses was not retained then the legislation would be biased in favour of the prosecution. Members of the Committee indicated that changes to the law in N.S.W. invariably led to pressure for similar reforms (or concessions to the prosecution) in Victoria.

The members of the Criminal Bar Association had completed a questionnaire attached to the Report. The Committee's Chairman (Allan McDonald Q.C.) indicated that he would take this questionnaire to the Bar Council and ask them to forward it to the N.S.W. Law Reform Commission.

Victorian Law Reform Commission - Discussion Paper No. 5 - Rape & Allied Offenses: Procedure & Evidence

Tim Smith Q.C., a member of the Committee, provided detailed comments on the above proposals for reform. He focused on proposals relating to the laws of evidence and in particular in regard to corroboration, recent complaints and evidence of sexual history of the complainant. Tim supported the proposals advanced on corroboration but argued that they should go further. He disagreed with the proposals for reform in regard to the evidence relating to recent complaints. The proposals for reform in regard to evidence of sexual history were supported.

(a) Corroboration

Under the present law **(Crimes Act** s.62(3)**)** the judge is not required by any rule of law or practice to warn a jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim. The discussion paper proposes that the law should be taken further. It should expressly forbid the giving of a corroboration warning as such, although the judge should retain the right to comment on any aspects of the evidence in a particular case which suggests that it may be unreliable.

Since the Discussion Paper was published, the decision has been handed down in **R. v B.**[1987] VR 276. In that case the Court of Criminal Appeal held, inter alia, that 'there is neither rule of law nor binding precedent for the view that the judge's refusal to warn in the present case can be the subject of appeal' (per Fullagar J. at p.279, with whom Murphy and Gobbo JJ agreed). In that case the applicant had argued that the trial Judge in a sexual case had a discretion as to whether or not to give directions to the jury about the evidence of the complaint. This discretion would be one to be exercised in the circumstances of the particular case. Support was sought in a previous Court of Criminal Appeal decision of **R v Kehagias** [1985] VR 107. In commenting on the reasons for judgment Tim Smith suggested that they may well be interpreted as going so far as to prevent an accused on appeal ever being allowed to raise an argument that direction should be given about the possible unreliability of a sexual complainant's evidence (male or female) or the risk of mis-estimation of such evidence where the special circumstances of the case warrants such a direction. From a practical point of view, it will also have a most undersirable result. Faced with a choice of whether to comment on the sexual complainant's evidence or not, the trial judge will be on much safer ground as a result of this decision if he simply says nothing as to the reliability or otherwise of the sexual complainant's evidence. This cannot be in the interests of the proper conduct of criminal trials. Tim also comments that the judgments appear to suggest that an accused can never appeal on the grounds of misdirection by the trial judge in a sexual assault case on the grounds of a failure to give appropriate directions in respect of the complainant's evidence. There remain situations where it is desirable that a jury be alerted to the dangers of particular evidence, for example, where the victim is a child of tender years or where there is an issue of identification and the only evidence is that of the complainant. The Australian Law Reform Commission report on the law of evidence provided a general regime for corroboration.

(b) Recent Complaint

At common law evidence of a recent complaint of the victim of sexual assault is admissible if made voluntarily and at the first reasonable opportunity. The rule enables such evidence to be used as evidence of the consistency of the complainant's account and not as evidence of the fact asserted in it. The VLRC argues that the rules should be abolished for the following reasons:

(i) It is unrealistic to expect a jury to use evidence for a particular purpose but not for a more general purpose.

(ii) The rule is based on the assumption that a person who promptly reports a sexual offence is in general likely to be more trustworthy than a person who delays in making a complaint. It argues that this view is discredited. Reliance is placed on a study about non-reported rapes which pointed to a higher level of non-reporting of sexual offences. Reference is also made to the Mitchell Committee Report which, inter alia, made the point that failure to make an early complaint is not necessarily evidence of unreliability.

Tim Smith disagrees with the above proposal and argues that the present law enables the jury to be informed about whether or not complaints have been made and when. It permits both the prosecution and the defence to give evidence on the matter. The proposal of the VLRC would permit the defence to allege that a late complaint was made but, as presently framed, would prevent the complainant giving further evidence of an earlier complaint.

Tim suggests that another approach to the mental gymnastics proposed by the recent complaint rule is to allow the complaint to be used as evidence of the facts asserted. This approach was adopted in the VLRC Interim Report 26. To explore this path, however,

requires consideration of the policy objectives of the laws of evidence and consideration of the topics of relevance, hearsay, credibility evidence and the exclusionary discretions. The VLRC does not have such a reference but in Tim's view the least satisfactory option is to leave the existing law as it stands.

(c) Sexual History
The VLRC proposes that the existing law (introduced in 1976) should be continued. That law relates to the admissibility of evidence concerning sexual history of the complainant. The VLRC argues that those provisions should apply in relation to all sexual offences rather than the offences to which it applies at present, namely, rape, attempted rape and assault with intent to rape. Tim Smith agreed with the proposition and could see no reason in principle for distinguishing between the offences. This issue was also considered in the VLRC in its Evidence Reference. Tim noted a comment in the discussion paper expressing concern about the trial degenerating into a trial of the complainant rather than that of the accused. Concern in this regard is that the complainant's evidence should not be tested any more than is necessary or appropriate. Criminal trials, of whatever kind, whether sexual assault, fraudulent deception or whatever often become very much a trial of the person who is complaining of the offence. In Tim's view, Victorian Law provides a reasonable balance and should as the VLRC suggests, be retained.

The Committee's Chairman (Allan McDonald Q.C.) invites any members of the Bar having an interest in the area of Law Reform to contact him c/- Clerk D or the Hon. Secretary.

John Hockley
Hon. Secretary

"After I've moved your bloody admission do I still have to wear these stupid trousers?"

Criminal Bar Association Report

National Criminal Law Association

On 17th August 1987 the Association was represented at a meeting of the Executive of the Law Council of Australia Criminal Law Section in Canberra which was meeting at the same time as the Executive of the Law Council. The meeting lasted all day and it became apparent at the outset that the Law Council is most dissatisfied with the lack of support which appears to have been given to the National Criminal Law Association. The written poll that I have conducted amongst members of the Criminal Bar Association makes it clear that an overwhelming majority of members disapprove of any compulsory membership of the National Criminal Law Association and I made it clear at the meeting that whilst the Criminal Bar Association was prepared to recommend membership, there was no circumstance in which it would compel it by the imposition of a levy as part of the membership fee.

At an early stage in the meeting, Daryl Williams Q.C., the Chairman of the Law Council of Australia, brought his Executive into our meeting room and made it clear that unless we supported the establishment of a criminal law section of the Law Council of Australia, then we would be, in effect, disconnected from the Law Council and they would find other people to commence their criminal law section and cease the financial support which was currently being made available to the National Criminal Law Association.

Finally it was agreed that we should concentrate on the establishment of the criminal law section of the Law Council since that was the only financially viable option. Each State representative has undertaken to make that recommendation to members of their Association. It should be pointed out that Victoria is in a somewhat unique situation in that we are the only Criminal Bar Association represented on the Law Council Criminal Law Section Executive - that is the only Association of barristers as opposed to an Association of lawyers in the broad sense.

It was reasonably clear that it disappoints both the Law Council Executive and the Law Council Criminal Law Section Executive in distinguishing Victoria and its position from all other States. Victoria is in the unique position of having a reasonably efficient Criminal Bar Association which has been in existence now for nearly ten years which already provides the services that other states are still in the throws of establishing their organisations to provide in the future. Whilst we support a national voice for the criminal lawyers of the country, in terms of the obvious benefits to members, Victorian barristers would be likely to perceive little benefit for themselves in the additional expenditure. The Association however recommends that those who are interested join the Criminal Law Section of the Law Council. Membership details and further particulars can be obtained from me on 608 7434.

International Criminal Law Congress

At the same meeting, we spent some considerable time discussing the next International Criminal Law Congress which is to be held at Surfers Paradise, Queensland, between the 19th and 24th June 1988. Registrations are open, or soon will be, and the National Criminal Law Association now formally exists almost only for the purpose of conducting these conferences.

The topics to be addressed at the conference will be as follows:

1. The role of the media and the law featuring speakers including Chris Masters of Four Corners, Peter Meekin of Channel 9 Management and Justice Mary Gaudron of the High Court.
2. Criminal Trial, with a variety of distinguished Australian lawyers and including Prof. Smith from England, the author of Criminal Law Reports and several criminal law text books and contributed to the drafting of the United Kingdom Theft Act.
3. Inequality before the law.
4. The conspiracy trial.
5. Punishment.
6. Investigation of crime.
7. Plenary session and general discussion.

Any enquiries in relation to this conference can be directed to me or to the Criminal Law Association Congress Office, P.O. Box 29, Parkville, Victoria, 3052.Telephone 387 9955.

Lex Lasry
Secretary

Report Of Victorian Common Law Bar Association

(formerly Victorian Personal Injuries Bar Association)

On the 26th May 1987 the Annual General Meeting of what was the Victorian Personal Injuries Bar Association was held. In the absence of the President, Barry Dove Q.C.; who was out of Melbourne, Hase Ball chaired the meeting. A report of the President was read to the meeting. In his report, the President recounted the role played by various members of the Association in the formulation of the policy of the Bar and materials utilised by the Bar in its stance relating to the Transport Accident Bill in draft form. Barry Dove acknowledged the very great contribution made by the Law Institute to this debate and paid tribute particularly to Messrs. Miles and Dunn.

The President also made reference to the continuing problems members of the Bar practising in the Personal Injuries jurisdiction were experiencing with Listing procedures. Attendances had been made both upon the Listing Master and upon the Chief Judge of the County Court.

In April 1987 a Case Flow Management Study had been conducted, led by an American expert in matters of Court listing and trial management. The study included daily work shops and weekly seminars and amongst those attending were Judges of the Supreme and County Courts, members of the Administrative Appeals Tribunal, the Accident Compensation Commission, Magistrates Court Administrators, academics and representatives of the law department. The ultimate benefit of the study is a matter for the future.

The President expressed confidence in the continuing need for and role to be played by the Association and raised the question of the name of the Association.

Taking up the suggestion of the President, the Association decided, by vote, to change the name of the Association to 'The Common Law Bar Association'

The following office bearers were elected:

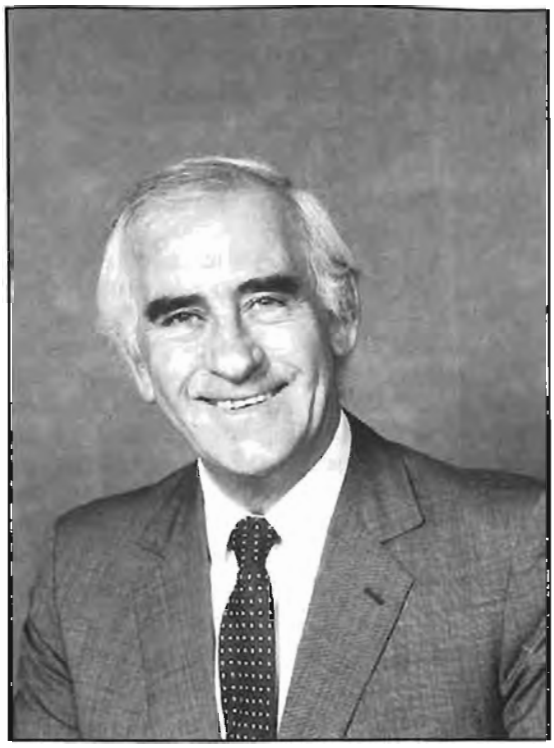
President:	Barry Dove Q.C.
Treasurer:	Colin MacLeod
Secretary:	Tom Wodak
Committee:	Martin Shannon Q.C.
	Hase Ball
	Jack Keenan
	Michael Ruddle
	Jeremy Ruskin

A further General Meeting of the Association was held on the 18th June 1987. At that meeting members were invited to discuss the question of Court Listings. as to which there had been a considerable expression of concern amongst members of the Association. Various alternatives were suggested and discussed. Following some considerable canvassing of a range of issues all related to listing, the meeting expressed a view that the Association should attend upon the Chief Justice in an endeavour to improve the situation in which only a comparatively small number of cases was being listed for trial each month.

Since that time the Committee has continued to meet and deliberate on the vexing question of listing of cases.

Tom Wodak
Secretary

Obituary



THE LATE BILLY SNEDDEN

Billy Mackie Snedden was born in Perth, Western Australia, on 31st December 1926. He was admitted to practice as a barrister of the Supreme Court of Western Australia in 1951 and of the Supreme Court of Victoria in 1955. He signed the Bar Roll on the 19th December 1955. He was appointed Queen's Counsel in July of 1964. In June of 1972 he was appointed to the Queen's Privy Council. He was number 536 on the Victorian Roll of Counsel.

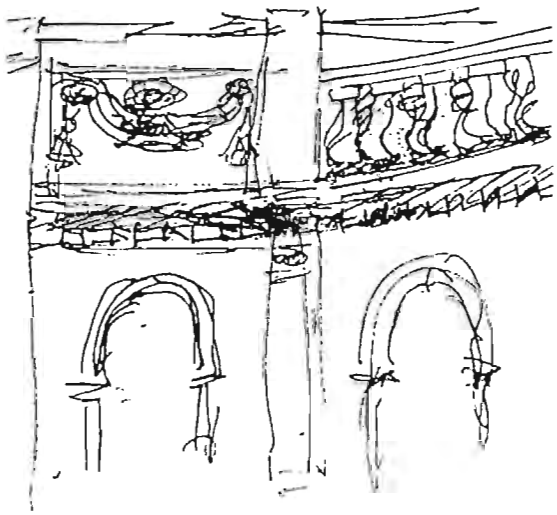
At the time of his death he was the most senior member of the Victorian Bar. He read with Moodie-Heddle. He had chambers first at Saxon House and later on the 5th floor of Owen Dixon Chambers. Regrettably he had no readers. His practice was largely running down and personal injuries. Later in his career he practiced in industrial law including the 1974-75 Wage Indexation Case.

His career was largely political and his time in active practice at the Bar limited. At the County Court sittings at Ballarat in November of 1985 before Judge Spence in a personal injuries action before a jury, Geoff Moore of counsel rose to his feet to object to a question put by Snedden to a witness. Snedden, speaking with the accumulated habits of a lifetime, said to his opponent 'Would the Honourable Member please resume his seat'!

His Clerk Jack Hyland and the colleagues from his early days at the Bar talk of his compassion and good humour. He resigned from Parliament on the 21st April 1983. The Order of Saint Michael and Saint George was conferred on him on the 1st January, 1978 (KCMG). He served in the Royal Australian Air Force in 1945 and subsequently in the Citizen's Air Force.

We note his passing with sadness.

Graeme Thompson



Welcome Graham J.

It is with great pleasure that the Bar welcomes the appointment to the Family Court of Australia of Anthony Graham.

His Honour was admitted to practice on 1st March, 1965 after serving the practice of M.S. & R.M. Williams (formerly McInerney Williams & Curtain) for a number of years with distinction. Under the watchful eye of such distinguished western suburbs lawyers as Pat Cannon and the late Peter Dawson, the young Graham set about building the foundations for a career at the Bar by cultivating relationships with the omnipotent Clerks of the Courts of Petty Sessions. After signing the Roll of Counsel on 17th August 1965, his Honour was rarely sighted by his Master Hubert Frederico, now a brother Judge, principally because his pupil was fully occupied dashing between those Courts with a handful of briefs, somehow avoiding clashes.

His Honour quickly developed a wide and impressive common law practice ranging over such diverse areas as town planning, running down, crime and matrimonial law. Equally at ease before a circuit jury or the Full Court or producing paperwork at a rate few since his Honour Mr. Justice Crockett have equalled, his Honour earned a well deserved reputation for hard work and sound judgment.

Before taking Silk in 1984, his Honour had nine readers - R. Wilson, J.A. O'Brien, J. Lee, D. Curtain, C. Johnson, M. Wood, J. Logan, P. Kovacs and J. Gobbo. His Honour was a generous Master and a good friend but try as one might, he could not be talked into a social game of tennis - that is a game he only plays seriously. His Honour plays frequently and well and was recently rewarded with selection in the State Veterans (over 45) team. His wife Pir is also an excellent player. They are a fearsome mixed doubles combination.

In Court also his Honour was a tough opponent. He asked for no favours and expected none. He had an excellent knowledge of the rules of evidence which one hopes will be put to good use in his new role. As an advocate his Honour was a straight shooter and no doubt will appreciate directness in those appearing before him.

His Honour has appeared in a number of major cases, most recently the trial of James Bazley and the Supreme Court Grand Jury. He was unbeaten in town planning appeals for caravan parks but, fortunately or not, he could not win a brothel case. He was also a better settler than the early pioneers.

His Honour has always enjoyed the fruits of his labours - fine wines, Irish music, fast cars and regular trips to Maui as a member of the American Bar Association advising on difficult planning and environmental problems of international importance. He is a keen Swans supporter having been at one time a Director of the South Melbourne Football Club.

Always a good judge of people, his Honour is indeed a valuable addition to the Family Court bench. We wish him well, confident that his good humour and common sense will bring sound judgment.

Reform Of The Law Of Homicide

An edited version of a paper presented by ***Colin Lovitt*** *at the International Conference on Criminal Law held in London on 29th July 1987*

Is there a need for reform?
The current homicide law encourages trials. In most, the issue is murder or manslaughter, not murder or acquittal. Accused persons and their lawyers are more likely to contest issues of constructive malice and 'reckless' murder. Equally, the prosecution want the sort of objective questions raised by defences of self-defence and provocation to be decided by juries. Despite the disappearance of the ultimate penalty (death), pleas of guilty in homicide cases are uncommon.

The law relating to homicide is complex (e.g. excessive self-defence), artificial (e.g. felony-murder) and confused (e.g. 'reckless' murder). Recently there has been scathing criticism from judges required to instruct juries on the law and from legal academics and teachers. An area of the law which demands simplicity and ease of explanation has become inconsistent and esoteric.

Public notions of culpability in homicide cases differ from the application of the current law to fact situations. It is debatable whether the community expects an unintentional killing occurring during a crime of violence to necessarily amount to murder. Whilst opinions concerning moral culpability have altered, the law lags behind.

Clearly, the law of homicide has developed largely as a result of the death penalty and more recently the mandatory life sentence. Now that the penalty for murder is not fixed the perhaps it is time to reassess the substantive homicide law and its concepts of **moral** justice.

Murder

The common law in Australia lays down **five** forms of 'malice aforethought'.

(i) Killing with an intention to kill;

(ii) Killing with an intention to cause grievous bodily harm;

(iii) Killing with the knowledge that death or grievous bodily harm will probably result ('reckless' murder);

(iv) Killing unintentionally by an act of violence in the course of a serious violent crime (derivative of 'felony murder';

(v) Killing unintentionally by an act of violence in the course of resisting, preventing, or escaping from lawful arrest and custody (the 'escape rule').

Should the distinction between Murder and Manslaughter remain?

Why not a single category of 'unlawful homicide'? The judge could determine the gravity of the offence, so the argument goes. Much time and cost will be saved. Juries will no longer have to wade through various categories of murder, voluntary and involuntary manslaughter and at least some of the complex defences. However, how many judges wish to determine the moral culpability of the prisoner in homicide cases? Is not this the function of the jury? In addition, savings of time and money will be substantially reduced by the need for determinations of fact by the judge. Pleas would last for days, even weeks. Trial by jury would merely be replaced with trial by judge.

In any case, there is a need to retain the nomenclature. The stigma that the public (not to mention police and the media) attach to the word 'murderer' properly reflects the moral condemnation we attach to the deliberate, intentional taking of a human life.

Nevertheless, it is important to restrict 'murder' to those cases which attract the most public disapprobation having regard to the state of mind of the killer ascertained by all the surrounding circumstances. Only the worst cases of homicide should be categorised as murder - the pre-meditated, the cold-blooded, the violent acts certain to cause death. Once we accept this view, it is not difficult to narrow the definition of murderous intent to a relatively simple concept, readily explainable to and understandable by, juries.

Constructive Intent

A. Intention to cause grievous bodily harm

The most recent calls to abolish this head of murderous intent have come from South Australia (1977), England (1980), Victoria (1974 and 1980)

and Canada (1984). In Victoria, as in England, grievous bodily harm has been defined as 'really serious' bodily harm - any attempt to narrow the definition to harm 'clearly dangerous to life' has been rejected - **D.P.P. v Smith** [1961] AC 290; **Miller** [1951] VLR 346 at 355.

In favour of abolition of this head of constructive malice it is said:

(i) if this form of intention is a logical result of the felony-murder rule, then abolition of that rule should lead to abolition of this head of intent;

(ii) murder is commonly understood to involve **intentional killing;**

(iii) raising the maximum sentence for manslaughter (in Victoria it is 15 years imprisonment) will allow those unlawful killings which become manslaughter as a result of abolition to be suitably punished. This ought to in turn satisfy the deterrent argument;

(iv) many violent homicides involve an apparent willingness to kill or at least knowledge of the likelihood of death, as well as an intent to cause grievous bodily harm. Lethal weapons (guns, knives etc.) are common in murder trials;

(v) juries have shown the ability to determine the question of intent. They are unlikely to refuse to reject an accused's assertion that he only intended serious injury where the circumstances clearly indicate otherwise;

(vi) however, the jury ought not to be required to determine not only the accused's state of mind, but whether or not that intent included what they decide constitutes 'really serious harm'. Different people will have vastly different view as to what this expression means and little judicial guidance is given;

(vii) more people will plead guilty to manslaughter where previously they would have contested a murder charge.

If abolition leads to some de facto murderers moving just over the borderline into manslaughter, then that, (with the appropriate maximum penalty allowing adjustment of sentence) is a result the criminal law should be prepared to accept.

B. **Reckless Murder**

Most of the confusion in this area springs from the equation of knowledge of risk with intention. If A does an act **knowing** that a resultant death is **inevitable** but nevertheless not wanting death to occur. most lawyers have little difficulty treating his state of mind as intention. But once you treat dispassionate assessment of consequences as intention (rather than recklessness) then the line between intent (purpose) and knowledge starts to blur. Difficulties arise when it is argued that A is guilty of murder if he does not intend to kill or cause grievous bodily harm, but he knew his actions **would probably** or **were likely** to cause death **or serious injury.**

The law on the subject in Australia is governed by the High Court's decisions in **La Fonatine** (1976) 136 CLR 62 and **Crabbe** (1985) 156 CLR 464. Effectively, knowledge that death or grievous bodily harm will **probably** result is enough. However 'a good chance' has been interpreted by the High Court as 'likely' or 'probable' - **Boughey** 20 A.Crim.R 156. The problem is that the concept under discussion is equated with 'recklessness' and recklessness is equated with taking risks. Judges who have little or no experience in practising criminal law or charging juries readily interpret the concept simply as 'taking unjustifiable risks'. As a result, murder and manslaughter merge together. Almost all unlawful homicides, murder or manslaughter result from either deliberate killings or 'taking unjustifiable risks'.

In **Moloney** [1985] AC 905, Lord Bridge held that foresight of consequences does not amount to intention. His reasoning, it is submitted, was sound. Due to the difficulty in defining degrees of probability in precise terms, foresight of consequences should belong to the law of evidence. In other words, there is no separate category of 'reckless murder'. Intention is required. The jury simply uses the probability (as foreseen by the accused) of death or serious injury as evidence tending to prove that the accused actually intended that result.

It is arguable that foresight of certainty of death can be equated with intention or, on the **Moloney** view, would almost inevitably lead to a jury finding an intent to kill. This state of mind is not really recklessness in any real sense. It is a decision to perform an act which (in the actor's mind) will cause death. No one would realistically seek to characterise this mental state as anything other than a murderous intent.

Hancock [1986] 1 All ER 641 and **Nedrick** [1986] 3 All ER 1 have further explained **Maloney. The greater the probability of a consequence, the more likely it was foreseen and therefore intended.** Importantly in **Nedrick** it was held that

> 'The jury should be directed that they are not entitled to infer the necessary intention, unless they feel sure that death or serious bodily harm was a **virtual certainty** as a result of the defendant's actions and that the defendant appreciated that such was the case.' (page 4)

So the law in Australia and England is indeed very different. Whereas the House of Lords has separated intention and recklessness, the High Court has not decided the issue **(La Fontaine and Crabbe).** This is an important distinction, because intention (purpose) can be more easily understood by juries on the **Moloney** view. Second, whereas the degree of risk foreseen by the accused in Australia is perhaps only 'a good chance' and is imprecise, in England the jury must be told that they cannot impute intention unless the risk of death or grievous bodily harm is a virtual certainty.

Both Australia and England recognise that the occasions for a direction on 'recklessness' are rare. If the issue does not squarely arise (**Allwood** 18 A.Crim.R 120), if it would only confuse the jury and render their task more difficult (**Windsor** [1982] VR 89), then the courts positively discourage its introduction 'in the rare cases where the simple direction is not enough' (**Nedrick** page 4 and see **Pemble** 124 CLR 107 at page 118). Moreover, it is incumbent on the trial judge, when leaving the concept to the jury to explain it in the clearest terms and to relate it to the evidence (**Allwood,** per Crockett J. page 125; **Nydam** [1977] VR 430).

It is submitted that

1. Recklessness as to the infliction of grievous bodily harm ought to be abolished as a head of the mental element of murder. As well as the arguments above concerning intention to cause grievous bodily harm, we can add the fact that many not intending to kill or do grievous bodily harm but foreseeing the risk of serious injury may intend little or no harm. This not only cuts across present manslaughter by battery but is outside the parameters of what the public expects to be punished as murder. Both New Zealand and New South Wales have eliminated this form of 'murderous intent'.

2. 'Reckless murder' ought to be confined to knowledge of the virtual certainty that death will result from the action contemplated. This concept ought to be left with and fully explained to juries only in exceptional circumstances and not simply used as 'another string to the Crown's bow'.

3. The term 'recklessness' ought not to as such be used by the trial judge. If a label is required (and it surely is not) then 'knowledge of certain death' will suffice.

4. Temptation to add other judgmental components to this form of malice ought to be avoided, especially questions of social unacceptability or justification for risk-taking. Objective criteria are to be shunned as part of the Crown attempt to prove the requisite state of mind of the accused, and in particular to prove a murderous intent.

Felony - Murder and Escape - Murder

The Australian States have resisted calls to abolish the felony-murder rule. South Australia retains the common law as pronounced in **D.P.P. v Beard** [1920] AC 479. The code states have wide-ranging variants of the common law (Qld. s.302; Tasmania s.157; W.A. s.279). In New South Wales, unintentional killing accompanying an offence punishable by death or life imprisonment is murder. Meanwhile, in 1981, Victoria abolished felony and misdemeanour nomenclature and consequently the felony-murder rule. In its place is s.3A of the Crimes Act labelling as murder unintentional killings caused by acts of violence in furtherance of necessarily violent crimes carrying a maximum penalty of at least 10 years goal.

The escape murder rule was enunciated in Victoria in **Ryan and Walker** [1966] VR 553 at 564.

It is debatable whether many killings during violent crimes would be regarded by juries as unintentional and if the killing **is** unintentional then usually a finding of manslaughter would still be likely, together with a conviction for the serious violent crime (where a separate one exists) so appropriately severe penalties will be available.

Felony-murder was abolished in England in 1957. Its abolition was recommended in Canada in 1984 and South Australia in 1977. The Victorian Law

Reform Commissioner in 1984 recommended the repeal of s.3A together with the abrogation of the escape-murder rule. Variously defined as a 'relic of ancient barbarism' (Howard, Criminal Law page 62) and 'an instance of modern monstrosity' (Lanham, CFLR Page 101) these types of constructive murder lack and principled support. Australia should follow the English example.

Voluntary Manslaughter

A. **Provocation**

There are two basic elements in the defence.

1. **Subjective** - did the accused lose his or her self control due to the provocation conduct of the deceased and if so did the killing occur during this period of loss of self control?

2. **Objective** - could the provocation have caused an ordinary person in the accused's circumstances to have likewise lost his or her self control to the extent of doing the act of killing that the accused did?

It is to be noted that -

(a) There is no separate element of proportionality of retaliation **Johnson** 51 ALJR 57. This is now regarded as a matter bearing upon the ordinary man test.

(b) Words alone can amount to provocation e.g. **Moffa** 51 ALJR 403.

(c) **Camplin's Case** [1978] AC 705 has been followed in Australia e.g. **Dutton** 215 ASR 356 and **Dincer** [1983] VR 460. The jury, in applying the objective test, can take into account any permanent characteristic of the accused which has a direct bearing upon the nature of the provocation offered to him or her, so that its ultimate probable effect can be assessed. Extraordinary excitability or pugnacity is excluded (**Dutton** page 377) as is intoxication (**O'Neill** [1982] VR 150.) A classic example was **Dincer,** a Turkish Moslem who held traditional conservative beliefs on the sexual and social conduct of his teenage daughter. She ran away from home and commenced to live with a young hippy. Upon seeing her living conditions and hearing her abuse her mother, Dincer fatally stabbed her.

Some would argue that the defence of provocation ought to be abolished e.g. Canadian Law Reform Commission and New Zealand Law Reform Committee; but the latter tried its recommendation to the abolition of the distinction between murder and manslaughter. The answer, it is submitted, is a straight-forward one. Cases involving, for example, domestic killing by the wife after a history of violence and mental torture have occasionally led to murder convictions, where the evidence has not thrown up the suddenness of catalyst generally required by the trial judge to leave the issue of provocation to the jury. In such instances, there has been a public outcry. Recently, a South Australian woman (Mrs. R.), convicted of murder after the trial judge withdrew the issue of provication, was given a retrial. Her sole defence on the retrial was provocation. She was acquitted of murder **and of manslaughter!** In short, the community demands such cases not be branded as 'murders'.

The Ordinary Man Test

It is not possible here to set out the many arguments in favour of abolition of the objective element of provocation. However, the jury system ought to be trusted. Weak cases of provocation, outrageous retaliation and fact situations which smack only of cold-bloodedness and premeditation will rarely attract a merciful manslaughter verdict. If a few accused are seen to get a result more lenient than they deserve, this is a small price to pay for ending the confusion and arbitrariness of the present law. As well, a verdict of manslaughter leaves the trial judge to express in borderline cases, the law's view of the sanctity of human life in the sentence pronounced.

Few argue for the retention of the ordinary man test. South Australia's Mitchell Committee, Victoria's Law Reform Commission, the American Model Penal Code and the English Criminal Law Reform Committee have all recommended abolition. The late Murphy J. launched a strong attack on the objective test in **Moffa** (page 412). His views were expressly approved when the Irish Court of Criminal Appeal ruled that the objective element was not part of the law of provocation in Ireland - **MacEoin** 112 Ir.LT 53 at 56. Nearly all commentators share Murphy J.'s view - most recently Yeo - **Provoking Ordinary Ethnic Person: A Juror's Predicament** (1987) 11 Cr.LJ 96.

Meanwhile, the Crimes (Homicide) Amendment Act (NSW) of 1982, whilst amending the law of provocation to bring s.23 of the Crimes Act (NSW) into line with current common law in Australia, retains the objective test despite a complete appraisal of the provocation defence by the

legislature.
Failing the abolition of the ordinary man test, it is submitted that the Australian States should legislate along similar lines to s.3 of the English Homicide Act of 1957 - thus providing that where there is evidence upon which a jury could find that the accused was in fact provoked to lose his self control, the question as to whether an ordinary person could have so reacted be left entirely to the jury; for if the accused is a teenager, a fundamentalist, an Islamic Turk, is impotent or a tribal aboriginal, judges are no better (or perhaps less) equipped than juries to make any sort of objective assessment.

B. **Excessive self-defence**

In **Howe** 100 CLR 448 the High Court held that where self-defence is not available only because the threat did not objectively warrant the force used yet the accused believed it did call for such force, he or she was guilty of manslaughter rather than murder. The Privy Council declined to follow **Howe** in **Palmer** [1971] AC 814. In **Viro** 141 CLR 88, the High Court followed **Howe** in preference to **Palmer.** Excessive self-defence was available to reduce murder to manslaughter. It was felt that where the force which the accused believed necessary exceeded what was reasonably necessary, his or her moral culpability fell short of that ordinarily associated with murder (**Viro** page 139). Many lawyers in Australia applauded the compassion and good sense of the High Court at the time (1978). Events have proved us wrong, or at least a fraction naive.

Mason J. in **Viro** set out six propositions to be considered by the jury in murder trials where self-defence is raised.

Whilst the Mason formulation represents the law on this topic in Australia it is fraught with difficulties. It is complex, expressed in double negatives and involves considerations of subjective and objective assessments (and in one instance a combination of both). For a jury to bring in a verdict of voluntary manslaughter by way of excessive self-defence, it would need to conclude -

(a) that is was **not** satisfied beyond reasonable doubt that the accused did **not reasonably** believe that the unlawful attack threatening him or her with death or serious bodily harm was imminent or occurring;

(b) that it was satisfied beyond reasonable doubt that more force was in fact used than was reasonably proportionable to the danger which the accused believed he or she faced; and

(c) that it was **not** satisfied beyond reasonable doubt that the **accused** did **not** believe that the force he or she used was reasonably proportionate to the danger the accused believed he or she faced.

In **Lane** [1983] 2 VR at page 468, Fullagar J. yearned for the time when (before Viro) 'self-defence seemed a simple concept clear to legal and lay minds alike'. McGarvie J. in **Lawson and Forsythe** [1986] VR 515 called for legislative restatement of the law of self defence in an attempt to simplify what had become 'one of the most daunting and difficult tasks of a trial judge and, no doubt, of a jury' (page 547). He highlighted the vast shortcomings of the **Viro** formulation (pp.546-9).

Invariably the judge gives written instructions to the jury, often redrafted in an attempt to simplify the language of Jason J. and the steps the jury must take. Various reformulations have been attempted, the best perhaps being Street C.J.'s in **McManus** [1985] 2 NSWLR 446 at page 461.

Defence counsel in addressing a jury are forced to grapple with the formulation in putting the defence argument, generally unaided up to that point of the trial by any legal direction from the judge. Different principles apply if the jury are not satisfied of the mental element in murder and go on to consider manslaughter (similarly in wound with intent to murder and wound with intent to cause grievous bodily harm) so the jury receives a different set of propositions for their consideration on alternative counts.

Two related problems have caused controversy.

(a) Can the use of lethal force in self defence only be justified if the accused reasonably believes that the attack in question threatens death of grievous bodily harm? Street C.J.'s formulation in **McManus** is so limited. A wider range of apprehended harm was referred to by Dixon C.J. in **Howe.** Lush J. in **Lane** observed that the **Viro** directions were not to be treated as a code. He felt that the limitation to threats of death or serious injury referred to by Mason J. in paragraph 1 of his formulation arose from the facts of that case, and therefore did not exclude other threats, e.g. rape, or the infliction of continuous acute pain (page 451). This

question is unresolved but in **Walden** 19 A.Crim.R 444, the New South Wales Court of Criminal Appeal decided that the restriction did not exist.

(b) Is self-defence only available in the face of an 'unlawful' attack? Mason J.'s formulation would appear to so restrict the defence, but in **Lawson and Forsyth** the question was considered and largely left unanswered. However the court was clearly of the view that the law ought not to contain such a requirement.

The Mitchell Committee (South Australia) recommended an abolition of the objective component. In Canada, **Viro** has not been followed. It was felt that any reduced culpability of a person using excessive self-defence should be reflected in the sentence. The English CLRC favours a partial defence of excessive self-defence in homicide cases. New Zealand has combined a simplified subjective and objective test and it is said to be operating satisfactorily. Of the many options currently being discussed, the writer favours abolition of excessive self-defence as a form of voluntary manslaughter together with a reliance on the common sense observations expressed in **Palmer** concerning the defence generally. We should trust juries.

Whilst limitations of space prevent an analysis of the varying options and arguments for and against, if a reformulation is necessary, and if some objective component is thought to be required, the New Zealand provision that 'everyone is justified in using, in defence of himself or another, such force, as in the circumstances as he believed them to be, it is reasonable to use' is preferred.

Meanwhile, the High Court has been asked to reconsider **Viro (R v Zecevic).** Now that the mandatory sentence for murder no longer exists in some parts of Australia, the justification for the complex doctrine of excessive self-defence has been reduced. Whether the end comes by means of judicial decision or legislation, the **Viro** formulation days seem numbered.

The Sentence for Unlawful Homicide

The punishment for murder in most States is a mandatory life sentence, although what this means in practice varies from State to State. However calls for discretion in the sentencing process are widespread (e.g. New Zealand, England) and some States have legislated accordingly. Section 421 of the South Australian Prisons Act allows a discretion to fix a minimum non-parole period. In New South Wales, s.19 of the Crimes Act provides a limited discretion to pass a sentence other than life where 'the person's culpability ... is significantly diminished by mitigating circumstances'. Victoria went a stage further and simply fixed life as the maximum term. However remissions for good behaviour (usually one-third) do not apply. Since the legislation came into operation (1.7.86) head sentences have ranged from about 12 years to life imprisonment. Minimums have invariably been set, the lowest being 8.5 years.

Arguments in favour of a discretionary sentence abound - e.g. **The Sentence for Murder** - Victorian Law Reform Commission 1985. The discretion obviates the need for a separate defence of diminished responsibility and separate offence of mercy killing.

It is submitted that the sort of reforms suggested in this paper are dependent, both in logic and in practical reality, on a discretionary sentence for murder together with a maximum for manslaughter high enough to accommodate those cases which might currently be murder (under the law) but ought more justly to be treated as manslaughter. To the latter end, 15 years (the Victorian maximun) is far too low.

Editors' Note: Since preparation of Colin Lovitt's paper, but before its delivery in London, the High Court in **R v Zecevic** overruled **Viro** and effectively followed the Privy Council in **Palmer.** A verdict of manslaughter will no longer be available if the accused acted excessively as objectively assessed by the jury, no matter what the accused's belief.

The High Court, in addition, held that there is no requirement that the attack be unlawful before self-defence becomes available to the person attacked.

Conference Confabulations — ABA London and Dublin 1987

Bar News sent joint editor ***Peter Heerey*** *Q.C. abroad to cover the ABA Conferences in London and Dublin. The following account was pieced together by the devoted Bar News staff from somewhat incoherent scribblings on the back of credit card vouchers, champagne-soaked theatre programmes and documents of a like nature.*

Why London? Why not Surfers? What's Dublin got that Ayer's Rock hasn't?

Anyone who has to ask such questions should proceed no further. The reader is fairly warned that what follows is a totally unobjective, partial and effusive account of the Australian Bar Association Conferences in London 6th to 9th July and Dublin 10th to 15th July 1987.

For a body which hadn't run a conference at all until 1985, the ABA was taking a giant leap forward in running back to back conferences on the other side of the globe. Preliminary planning indicated that the exercise needed 100 participants to be viable. Such was the enthusiasm with which this imaginative concept was greeted by the Australian Bar that at final count some 333 attended the London conference, that figure including barristers, judges, some solicitors, spouses and friends of varying degrees of closeness and permanence. Of that total, 206 went on to Dublin.

London - the Conference

Through the generosity of the Benchers of Lincoln's Inn, the Conference sessions were held in the Old Hall of that Inn. Not that barristers as a class are noted for their humility, but many must have paused, if only briefly, to reflect on the great lawyers who have worked in this same Hall over the centuries - perhaps the most famous of all being Sir Thomas More.

Dominating one end of the Hall is a large painting 'Paul before Felix' which was commissioned by the Benchers from William Hogarth for 300 pounds.

The Conference opened on 6th July, and the calibre of those speaking in the opening session was typical of the extremely distinguished participation which delegates were privileged to enjoy both in London and Dublin. **Peter Scott Q.C.,** Chairman of the General Council of the Bar of England, **Sir Harry Gibbs,** recently retired Chief Justice of Australia and **Sir John Donaldson,** Master of the Rolls, got things off to a flying start.

Comparisons are indeed odious. The mention of some names should not be taken as the slightest reflection on those not mentioned. Without exception, speakers and commentators presented material that was lucid and thought-provoking. With that caveat, particular mention might be made English High Court Judge **Sir Johan Steyn, Sir Harry Woolf** of the English Court of Appeal, **Sir Ronald Wilson** of our High Court, **Mr. Justice Priestley** of the NSW Court of Appeal, and English Silks **Robert Johnson** Q.C., **Michael Ogden** Q.C., **Robin Jacob** Q.C., **Michael Lyndon-Stanford** Q.C. and **Jeremy Lever** Q.C. The diverse topics covered included insurance, negligence, family law, take-overs and deregulation of banking.

Conferencing is extremely hard work and some relation is necessary, and indeed desirable.

On Friday 3rd a welcoming cocktail party was held

at the Hall of Gray's Inn. A number of representatives of the English Bar were present, including **Gavin Purves** the editor of 'Counsel' which is the English equivalent of Bar News. It publishes quarterly but is shortly to move to twice monthly. Although a 60 page glossy sold to members of the public for 1.50 Pounds, its publication only commenced in 1985 so Bar News (founded 1971) has a proud record as the world's senior Bar publication. Gavin and your correspondent were able to discuss matters of mutual interest relating to Bar journal publication including plans for a World Conference of Bar Journal Editors to be held in Rio de Janiero, St. Tropez, Tahiti or other suitable location (not including the World Trade Centre, Flinders Street). An appropriate adjustment will shortly be made to Bar subscriptions to fund our share of this essential project.

along with the Inn's own French red or white went for 5 pounds, which you may rest assured is good value in London these days.

The whole Temple area, which runs south from Fleet Street opposite the Law Courts down to the Thames, is an absorbing part of London. Especially worth a visit is the superb Temple Church, badly damaged during the Blitz but now restored to its former glory. It is also an ecclesiastical oddity since it is owned by the Inner and Middle Temple and the clergy are appointed not by the Bishop of London but directly by the Sovereign.

The London Conference concluded with a dinner dance at the Mayfair Hotel. There was also some cricket, as to which interminable and self-serving detail appears elsewhere in this issue.

Irish Bar Library.

During the week arrangements were made for conference delegates to lunch at the different Inns of Court. This proved to be a very popular feature as it gave an insight into the working life of English barristers.

Your correspondent's favourite was the Middle Temple where an excellent three course lunch

London - Other Things

One who is tired of London is tired of life, said Dr. Johnson. He would certainly affirm this view today, especially in July where the visitor is presented with such distractions as Wimbledon, Henley, Harrods Sale and London theatre. Some of the greatest hits of recent years, notably Phantom of the Opera and Les Miserables, were playing to packed houses,

including many delegates.
An extra special feature of particular interest to delegates was the **Jeffrey Archer** libel trial. Your correspondent attended one morning. Naturally the Bar News representative was immediately ushered into a privileged position in the press box, between the Daily Telegraph and the Washington Post.

The most fervent Pomophobe would have to admit that they do some things surpassing well, and one such is the cause celebre trial, especially one involving sex and/or politics. Prominent political figure and best-selling author in a sex scandal with characters straight out of racy fiction: ruthless journalists, devious plotters and naive call-girl. Outside bookshops with displays of Archer's latest novel were newspaper posters of the trial: 'All lies, says Archer'. Life imitating art, even merging in a quite surreal way.

The trial took place in Court 13 in the Law Courts which is quite small - about the size of our Tenth Court.

The Plaintiff is upright, dapper, articulate to the point of verbosity. Sometimes he answers questions with admirable terseness. It's put to him that he said something to a journalist which is inconsistent with his story - 'Bunkum' is his only reply. But on occasions questions provoke miniature addresses. Finally the defendant's Counsel puts it to him: 'Mr. Archer, I suggest you are answering these questions with long speeches in the hope that the jury, and even the cross-examiner, will forget what the question was'.

The presiding judge, **Caulfield J.,** interferes very little but runs a tight ship. He has a fondness for sporting metaphors. At the end of one afternoon counsel says he would like another 10 minutes to finish a topic. His Lordship turns to the jury, 'Well, members of the jury, can you stand a little injury time?'

Your correspondent frankly admits he thought at the time that things looked bleak for the plaintiff, largely because of the inherent improbability of his story. But **Jack Winneke** Q.C. made what turned out to be a prescient comment. 'The jury may be so outraged with the conduct of the paper that they'll rely on the defendant having the onus to get the plaintiff home'. This proved to be the case and several weeks later the jury returned a verdict of half a million pounds. The Times reported that after the verdict the plaintiff shook hands with the jury and one of them made his feelings clear. 'It was

Simon "Bones" Wilson and Irish Bar friends.

a pleasure' he volunteered.
Certainly the plaintiff seems to have got a pretty fair run in the judge's charge to the jury. The Times report included this passage:

> '[The plaintiff's] history, you may think, is worthy and healthy and sporting.
>
> What is always a great attribute of the British is their admiration, besides their enjoyment, of good sports like cricket and athletics.
>
> And Jeffrey Archer was president of the Oxford University Athletic Club and ran for his country.

Dublin - King's Inns

One delegate remarked that, however exciting and memorable London was, that part of the venture would turn out to be but pre-season training for Dublin.

And so it happened.

The original programme arranged by the ABA made no provision for the night of Saturday 11th July. A correspondence then ensued, the gist of which was as follows:

> Irish Bar: 'We would like to put on a dinner for you at King's Inns on the Saturday night.

Greg Murphy and Vincent Landy S.C.

> You may think he's fit looking and you may think he's still interested in an athletic life in that he brings his son to London on a Saturday or Sunday morning to take part in a run in Hyde Park.
>
> Is he in need of cold, unloving, rubber-insulated sex in a seedy hotel, round about a quarter to one on a Tuesday morning after an evening at The Caprice with his editor?'

> ABA: 'That's very kind of you, there are about six on the Committee.
>
> Irish Bar: 'No, no, we mean all of you'.
>
> ABA: 'We don't want to insult you, but can we contribute?'
>
> Irish Bar: 'We are not at all insulted, but we insist you are our guests'.

King's Inns as an institution dates from the 16th century. The present building was erected in the early 19th century to the design of James Gandon, who also designed the Four Courts (of which more anon).

The style of the evening was set when the Australian delegates arrived in a double-decker bus, very prudently hired for the occasion. The gateway to King's Inns was clearly not on a regular bus route, but the driver manoeuvered the vehicle with the aplomb, skill and judgment of a Nigel Mansell, finally passing through the gates with no more than three inches leeway on each side, to the applause of all on board.

After drinks in the foyer, delegates were ushered into the stately Dining Hall. We soon got to know our hosts. A representative sample: **Judge Michael Moriarty,** who had played a substantial part in the defeat of the ABA cricket team earlier that day; his enchanting wife **Mary,** also a member of the bar; **Liam Devally,** a celebrated tenor who still conducts an upmarket musical programme on Irish radio; prominent Irish silks **Peter Shanley** S.C. and **Adrian Hardiman** S.C. and Adrian's wife **Yvonne,** also a member of the Bar; leading defamation junior **Paul O'Higgins** and his wife **Fenola** and **Greg Murphy,** affable master of ceremonies.

A flourish from an Irish Army buglar announced the arrival of the roast. In it came, preceded by an Irish piper and born aloft by a gentleman with thoughtfully designed headgear pregnant with symbolism - an Irish tweed hat from the brim of which dangled swaggie's corks.

Any attempt at a chronological account will now be abandoned. What remains is a kaleidoscope of song and spectacle. Liam Devally singing 'Molly Malone'. The Deputy Chief Justice of Ireland and a gorgeous lady member of the Irish bar singing and waltzing to the duet from 'Carmen'. A very senior Irish silk being held up on two chairs while he sang (superbly) arias from Mozart with most of the Irish signing the chorus (in Italian). All the Australians not just singing 'Waltzing Matilda' but standing on their chairs to do so. Your correspondent reciting 'The Geebung Polo Club'.

Indeed a night to treasure. And the attack of hospitality launched on that night never let up until the delegates staggered off to Dublin airport some five days later.

His Honour Judge Michael Moriarty.

Dublin - The Conference

Somewhere and somehow in the midst of all this a most successful conference took place.

Appropriately it was opened by **Sir Gerard Brennan** of our High Court, a most distinguished contemporary examplar of the contribution to Australian law of the Irish and Australians of Irish descent.

Also speaking at the opening were **Patrick McEntee** S.C., deputising for the Chairman of the Irish Bar, and **Anthony Campell** Q.C., the Chairman of the Bar of Northern Ireland.

Again a number of excellent papers were presented. the topics covered including International Crime and Extradition, Personal Injuries and Media Law.

The Irish Bar and Australia

It is generally well known that the Irish were prominent in the establishment of the legal profession in Australia and especially in Victoria. A legal visitor to Dublin soon finds strong corroborative evidence of this.

The Victorian Supreme Court building closely follows the Dublin Four Courts building, which houses the Irish High Court and Supreme Court (the latter being higher than the former - perhaps a more logical nomenclature then the Australian). The Irish building is rather smaller. Underneath the dome there is a foyer from which doors lead directly into four courtrooms. The name however does not derive from this fact but from the four Irish courts which existed before the Judicature Act - the Irish Courts of Chancery, Queen's Bench, Common Pleas and Exchequer.

In the Irish courtroom the instructing solicitors sit facing counsel with their backs to the judge. This unique feature is of course reproduced in Victoria but not elsewhere in Australia.

However the popular belief that the Victorian silk's rosette is Irish in origin proved to be a furphy. Irish silks wear a plain silk gown like those in other Australian States and England.

The Library

The Irish Bar operates from a library, which is in a separate building adjacent to the Four Courts. There are no chambers (or clerks for that matter). After five or six years at the bar you acquire a right to a seat in the library. There you may sit, leave your books, papers, coat, etc. chat, smoke and (quite unbelievably to an observer) even work. Conferences may be held in little adjacent cubicles - hired at the cost of the instructing solicitors.

One of the Irish speakers at the ABA Conference remarked, 'It's said that if you want to publicise something but can't afford an advertisement in the newspapers, you tell a member of the library in the strictest confidence'.

Over the years various proposals for chambers have been floated. One resulted in substantial funds being collected, whereupon the holder departed for Brazil. A more recent proposal, which seems to have involved a Dublin version of the 27th floor who wanted to set up luxury chambers. got the thumbs down from the Bar Council - partly it seems because the rest of the building containing the proposed chambers was packed to the gunwales with prosperous solicitors.

Conclusion

The foregoing is a scanty account of but some of the highlights which your correspondent saw and can remember and which are reasonably fit for publication. Other things happened which do not satisfy all these criteria.

It only remains to say that all who went owe a great debt to the organisers (not to mention American Express, Mastercard, Visa etc etc).

Barristers and judges are not the easiest people to organise. To get some 300 of them to England and Ireland, get them to participate in organised events of an intellectual, sporting and social nature and get them home again is a momentous undertaking. Hannibal crossing the Alps and the voyage of the First Fleet spring to mind as appropriate comparisons.

All the organisation was done virtually on a shoe string by a committee consisting of **Roger Gyles** Q.C. of the Sydney Bar, **Alex Chernov** Q.C., **Bill Gillard** Q.C. and ABA secretary **Dorothy Brennan.** Their work was truly heroic.

Particular gratitude is due to the English and Irish Bars. At their end, most of the organisational burden fell on **John Toulmin** Q.C., a Bencher of the Inner Temple and Chairman of the International Law Committee of the English Bar Council, and **John Dowling,** the Executive Officer of the Irish Bar.

The ABA marked its appreciation with appropriate gifts: a crystal decanter for the English Bar and an antique French clock for the Irish Bar.

Judy Gillard of Trans World Travel, 377 Little Collins Street, Phone 675 705, was the successful tenderer to the ABA for the travel arrangements, and played Qantas, Aer Lingus, the Cumberland Hotel and various other organisations on a break. She assures your correspondent that she'd be delighted to do it again - perhaps after a few decades.

Your correspondent signs off with the haunting lilt of 'Molly Malone', which to all of us will always evoke memories of a truly memorable two weeks.

In Dublin's fair city,
Where the girls are so pretty,
I first set my eyes on sweet Molly Malone
As she wheeled her wheelbarrow
Through streets broad and narrow,
Crying cockles,
And mussels,
Alive, alive - oh.

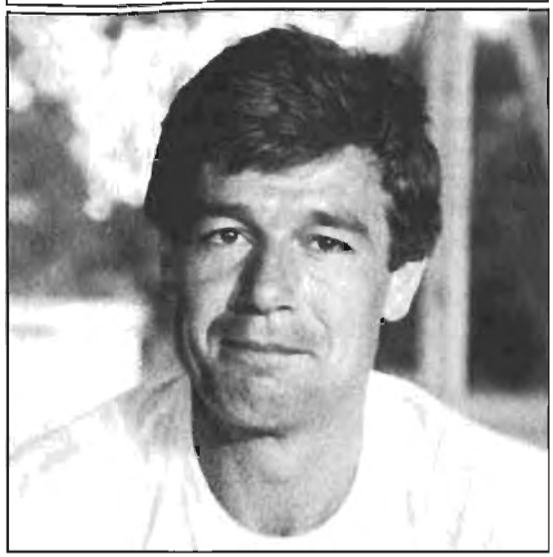
She was a fish monger
And sure 'twas no wonder
For so were her father and mother before,
And they wheeled their wheelbarrow
Through streets broad and narrow
Crying cockles
And mussels
Alive, alive - oh

She died of a fever
For no one could save her
And that was the end of sweet Molly Malone
Still her ghost wheels her barrow
Through streets broad and narrow
Crying cockles
And mussels
Alive, alive - oh.

Alex Chernov in the hands of an Irish barrister.

Hi-Tech At The Bar

If you think that a mega-byte is something which should be discussed in the Lunch Column then this lo-key introduction to hi-tech by ***Julian Burnside*** *is just what you need.*



Typewriters started the whole problem. There are still people at the Bar who can remember sending back opinions in handwriting - not as a matter of expedience, but as a matter of course.

The Hi-Tech rot set in with electric typewriters. As usual, solicitors got them first. Then a few high profile barristers got them. Suddenly, it became a matter of prestige to have opinions (even interrogatories!) which looked better than the memorandum to counsel included with the brief. Suddenly (regrettably) the appearance of the product became almost as important as the content. Now, with the advent of laser printers, the pressure is on for all paperwork to look as though it's been printed by the Oxford University Press.

Before long, electric typewriters were a commonplace at the Bar, and (again following the lead of solicitors) the glitterati began to get word processors.

Frankly, I couldn't see the point of barristers having word processors. Most of us don't produce many repetitive documents. Then I discovered that a word processor can save a lot of time in redrafting documents. Now I couldn't get by without one.

Really there are two ways of doing word processing. You can get a dedicated word processor or a computer with word processing software. The remarkable thing is that a computer can be not only a word processor but can also do quite clever things to help run big cases. 'Litigation support' sounded very American and flashy five years ago. Now, I find it remarkable that people can run big cases without a litigation support system. It can organise literally thousands of documents into chronological order, or numerical order, or alphabetically by the name of the author - in fact, any way you like. In addition, it can select groups of documents which have something in common, like all letters written by the Plaintiff, or all memoranda referring to rent reviews. In large or complex cases, this can be an enormously powerful aid in marshalling the material.

Not so long ago, it became apparent that more and more solicitors were asking 'What's your fax number?' At first, this seemed like cheap showing off. Everyone knows that is a solicitor needs to send a document to a barrister, then a junior from the firm is sent running through the streets and within hours the document is there. It's a little slower from the suburbs or interstate. Well, when a lot of people start using fax machines, you begin to feel there might be something to it. So a few of us though we would follow Goldberg's lead and get a fax. Ken Hayne Q.C. was very dubious about how useful a fax would be, but true to his good nature he clubbed in with the rest of us. Within minutes of the machine being installed Hayne received his first fax. Every now and then, when Hayne isn't using it, the rest of us find the fax tremendously useful.

For anyone thinking of leaping into hi-tech at the deep end, there are many traps. None of this wonderful equipment was designed with the needs of barristers in mind. As a result, it is easy to be talked into paying a lot for flashy features which turn out not to be terribly useful in practice. Here is a list of suggested gets and don't gets (based on the requirements of that mythical character, the normal barrister).

Photocopiers:

Automatic collation - fairly useless, unless you frequently do multiple copies of very lengthy

documents. A very expensive way of sometimes saving time.

Multiple colour facility - utterly useless, except perhaps for doing red copies of please-pay letters to solicitors. Why on earth would people want yellow photocopies?

Enlargement and reduction - absolutely wonderful: every law report can now fit comfortably on A4 paper. Most law reports can be reduced so that a double page opening will fit on a single A4 sheet, and still be comfortably readable.

Word Processors:
Why buy a word processor when you can get a computer with word processing software? This is a vital decision. A word processor does nothing but word processing. A computer does word processing in exactly the same way, but it will also do litigation support, spreadsheets and (for the intelligentsia) Flight Simulator, Zork and Alien.

Computers:
Choosing a printer can be tricky. They range in price from $400 to $8,000. Laser printers are fast, silent, expensive and wonderful. I'm saving up for one. Even Hayne thinks laser printers are a good idea. Cheap dot matrix printers sound like a blowie in a bottle but work nicely enough. It's generally a good idea to get one of the market leader brands of word processing software. They are more expensive, but they have a lot of extra features which really do make life more comfortable and if you have a problem there's usually someone you can speak to who will know what the answer is.

For the initiates, data base software is needed if you are going to do litigation support. The expensive and highly acclaimed dBaseIII, and other relational data base packages, are almost useless for litigation support and range from very to extremely complicated to use. Simple text-oriented data base packages like Notebook II or pfs file are terrific for the job, easy to use and inexpensive.

If you get very enthusiastic about using a computer for more than just word processing, consider treating yourself to a spreadsheet like Lotus 1-2-3 or Microsoft Excel. To make much use of these you must either find numbers fascinating or find it necessary to fiddle with large quantities of numbers (bills, overdraft balances etcetera) on a regular basis. If either of these descriptions fits you, then a spreadsheet can provide a great recreational diversion as well as being very useful.

When choosing computer hardware, it is usually safer to choose a name brand rather than an obscure Taiwanese clone. Everything breaks down sometime and well-known brands can be fixed. Get a system with a 20 megabyte or 40 megabyte hard disk and as much memory as the computer will support.

Avoid listening to sales-people - the lack of understanding between barristers and computer sales-people is total and mutual.

Fax Machines:
There may be reasons for buying something better than the least expensive. I don't know what it is.

Venturing into Hi-Tech is hard work at first. The effort is worthwhile. Nowhere is this better seen than in the use of computers. I have only touched on a few of the possibilities for the use of computers in legal practice. The effort involved is worthwhile. The reward is a significant increase in productivity and an indefinable sense of somehow belonging to the century in which we live.

"You're looking a bit depressed old chap. Didn't you get a room in the new building?"

"No. I'm the architect."

Police Powers

An edited version of a paper given to the Seminar on 'Police in our Society' at the Law Institute of Victoria on 8th July 1987 by ***John Coldrey*** *Q.C., Director of Public Prosecutions.*

Mr. Chairman:
I feel I am eminently suited to speak on the topic of police powers having experienced them first hand. When I was a high school student I was standing outside Walter Lindrum's Billiard Salon having just played a 'frame' when a plain clothed policeman said 'Come with me sonny' and I was led back into the depths of the saloon to be confronted with a blonde haired woman. 'Is this the one?' enquired the policeman. 'No', she said, giving me a look of contempt. 'You can go' said the police officer and I exited rapidly. I do not know to this day the nature of the foul deed to which this imperious woman had fallen victim.

Although the attempted identification was not in the best traditions of the police standing orders (even as they existed in 1957), I am not ungrateful for the experience. It created a lasting fear of billiard saloons and thus enabled me to avoid the consequences of a mispent youth.

My second encounter with police powers was when, having just joined the Victorian Bar I was running late for the Footscray Magistrates Court and drove through a red light. Having been intercepted I duly informed the policeman that I was a barrister on my way to court. In the folklore of Owen Dixon Chambers this was supposed to have a beneficial effect upon potential police informants. All I received however was the comment: 'Well this will be another appearance for you'.

As a starting point I can do no better than adopt the remarks of His Honour, Mr. Justice Vincent delivered at an earlier seminar. His Honour said,

> 'One of the consequences of a free and open society in which the rights and privacy of its individual members are carefully guarded, is that that very freedom creates opportunities for those who are minded to take advantage of them to hurt or exploit others and to abuse the freedoms which they possess.
>
> The task is to recognise the problem which exists in the community in relation to criminal behaviour and to commence with an understanding that that criminal behaviour is in a sense part of the price which is paid for freedom. It is important to understand that there is a balance to be struck between these respective interests; that there is a price which will be paid. There is a risk that in an enthusiastic endeavour to prevent particular forms of anti-social behaviour, we may create a situation which threatens the individual liberties to which every man, woman and child of this community is entitled.'

In seeking to strike an appropriate balance it should be recognised that the police play a unique and difficult role in the solving of crime. It follows that the arguments advanced by them, as specialists in the field, for more investigative tools, should be accorded great weight.

The balancing task is no easy one. It is fair to say that those who seek to achieve it will not be assisted by simplistic assertions emanating from protagonists of increased police powers that crime rates will inevitably be reduced by the bestowal upon the police force of much greater powers.

The powers sought by police are investigative. They are necessarily predicted upon the commission of pre-existing crimes. Crime itself will

these are preventative activities exemplified by increased security devices on motor vehicles, homes and buildings, efficient screens in banks, programmes such as Neighbourhood Watch and an increased police presence on the streets.

The effective role of increased police powers in the reduction of crime could only be confidently asserted firstly, if it could be demonstrated that the exercise of increased powers would result in the solving of more crimes and secondly, that by solving more crimes active criminals would be incapacitated (albeit temporarily) and potential criminals would be deterred from engaging in illegal activities.

Each of these assertions may be correct but they cannot be automatically accepted without close evaluation.

It may be that a more cogent argument for increased powers could be mounted on the basis that the solution of certain crimes, regarded by the community as serious, would be facilitated by an increase in specific investigatory powers which could therefore be seen as warranted without reference to the reduction, or otherwise, of general crime rates.

It is equally true to say that those charged with responsibility for the balancing exercise will not be assisted by the proclamation of those antagonistic to any increase in police powers that because such powers may infringe rights against self-incrimination they are necessarily an unwarranted intrusion upon civil liberties.

The community has already accepted the concept of self-incrimination in areas where it has regarded community well-being as the paramount consideration. I refer to the legislation providing for breathalyser tests and the taking of blood samples in hospitals from persons involved in motor accidents.

It may, however, be legitimate to draw a distinction between what may be described as 'real evidence' - produced by the analysis of blood or breath or bodily samples or fingerprints and 'created evidence' produced in an interview situation. The dichotomy being between what is essentially the disclosure of objective evidence and the production of evidence which is subjective and which may be distorted by the relationship between the suspect and the investigator.

Apart from questions of self-incrimination there are however legitimate issues of privacy to be considered.

Would the powers to conduct tests of examinations create an unacceptable invasion of individual privacy or result in the perpetration of indignities upon persons who, in the initial phase of the investigatory process, are not only unconvicted but are merely suspects.

On a macro level, the proper analysis of the issue of police powers requires a consideration of such factors as:

- The identification of crimes that are increasing in the community.
- The identification of offences for which the 'clear-up' rate is unsatisfactory.
- The identification of strategies which may be used to
  (a) reduce such offences occurring in the future;
  (b) increase the clear-up rate for such offences.
- The evaluation of each such strategy by reference to its effectiveness to achieve the objective of crime reduction and solution, its economic cost. its social cost (that is its effect on the quality of life) and where such strategy involves the granting of additional police powers, the need for controls or safeguards on the exercise of such powers.

The Consultative Committee on police powers of investigation is presently examining the adequacy of police powers of identification.

Identification for this purpose includes a vast array of investigative techniques designed to inculpate or exculpate a suspect from involvement in a specific crime.

These techniques include:

Identification parades
Examination for peculiar marks
Photographs
Fingerprinting
Dental impressions
Gunshot residue tests
Hair examination
Fingernail scrapings
Skin washings
Blood tests
Saliva and semen samples
Handwriting comparisons
Voice prints

At the micro level the justification for granting a power to administer a specific forensic test requires the assessment of a number of factors.

What is the inherent reliability of the test itself? Clearly, if the reliability is uncertain there can be no

warrant for giving investigators a power to compulsorily employ it.

It the test is inherently reliable is there a demonstrated need for its utilisation? If it was demonstrated that a test used as an investigative tool resulted in the identification of the alleged offender in a very small number of cases, it could be argued that the bestowing of a power upon investigators to require a suspect to participate in it would be unjustifiable.

At the very least the grant of the power would need to be examined in the context of the seriousness of the crime towards which it may be directed and quality of life implications involving the social costs occasioned by any reduction in individual freedom.

Finally, assuming that the balance clearly falls in favour of the granting of a particular power further issues arise.

At what stage in the investigative process should a suspect be exposed to the exercise of a particular police power?

Should the activation of that power be authorised by a senior police officer, a Magistrate or a judge?

Should the exercise of such power be subject to the enactment of precise procedures and safeguards against abuse?

If so, what should these safeguards entail?

Should a breach of the regulations by investigators render the evidence garnered inadmissible? Or, further, should such breach be an offence in itself?

Should the power to conduct a test carry with it a right to use reasonable force in order to administer it?

If so, what are the implications for and the attitudes of the medical profession towards participation in tests involving the obtaining of intimate body samples?

If forensic testing involves the obtaining of samples from a suspect should a portion of the material collected be made available to the subject to enable independent testing?

If no prosecution is commenced or if a prosecution is terminated or if an accused is acquitted should items such as fingerprints, photographs or bodily samples, obtained during the investigative phase be automatically destroyed.

Should the refusal of the suspect to participate in a compulsory test enable an adverse inference to be drawn against him in any future trial?

Whether or not police powers are ultimately increased it is, in my view, important that the ambit of all powers, current or future, be legislatively defined. It is undesirable that police should be uncertain as to whether their investigatory activities are strictly legal or be forced to resort to bluff to achieve a desired result. It is equally undesirable that suspects should be unaware of their rights and obligations in the investigative process.

Inevitably I have had to simplify the complexity of the tasks the Police Powers Committee must undertake. It is too early to predict whether or not the Committee's ultimate recommendations will be blessed with consensus.

What one can predict however is the production of a comprehensive report which sets out not only the relevant legislation in kindred jurisdictions, but also the arguments advanced by the various Law Reform Commissions for and against the provision of the powers sought. Additionally, the report will contain an analysis of the statistical data relating to the crime rates in this State together with such relevant empirical studies as currently exist.

It is hoped that the provision of this material will at least enable community and Parliamentary Debate upon these vitally important issues to be fully informed.

The Commercial List

***Raymond Johnstone** is unimpressed with the present functioning of the Commercial List and its 'fast track' approach to litigation.*

The jurisprudential rationale of the Commercial List of the Supreme Court has been misconceived in concept and is being misconceived in practice.

As a consequence, more work is being made for barristers and solicitors but the practice of the law is being and will be brought into disrepute.

The initial concept for the creation of the Commercial List was to provide a speedy and efficient forum for the quick determination of commercial disputes so that business could get on with its job, without long delays suffered by cases being referred into the Causes List without speedy trials.

Order 14 of Chapter 11 of the Rules of the Supreme Court primarily defined 'Commercial Cause' as one with reference to a dispute relating to a mercantile document. If the Judges administering the Commercial List had shown the wisdom of considerable judicial reticence in entering cases into the List, then present problems would not have arisen.

If determination of cases in the Commercial List had been reserved primarily to construction of mercantile documents, similar to conveyancing disputes by way of Vendor and Purchaser Summonses under section 49 of the Property Law Act, where determination of the main issues concerning the contract is especially prohibited, then a simple procedure for the speedy resolution of dilemmas of a truly commercially relevant nature would have been established.

However there has been a somewhat indiscriminate tendancy to enter a wide range of complicated causes into the Commercial List, with the consequent necessity to develop a rather harassing judicial approach to setting up very far reaching procedures for the fast resolution of these causes by the application of very wide ranging, discretionary procedural directions which cut across and pay little regard to the well established, tried and trusted procedures now largely administered by the Masters, subject to appeal to the Judge in the Practice Court. Masters, on the whole, have comparatively greater expertise in matters of procedure than Judges who sit occasionally in various Lists. There is, in fact, no effective appeal from procedural directions of the Judge administering the Commercial List from time to time and the pressure on solicitors and Counsel to comply with bizarre and speedy orders is inconvenient and, therefore, very costly to the parties.

This is unsatisfactory, because the untrammelled discretion exercised by such Judge is likely to go wrong about as often as he gets it right, as experience has shown: at least arguably so.

Furthermore, the rationale of the Commercial List is based on the premise that a wide range of commercial disputes need to be judged and judged quickly, for the sake of the commercial community.

Judging is the last thing that is desirable, in most cases, if it can possibly be avoided: for experience has also shown that judges are usually wrong in their decision making about as often as they are right, particularly in difficult commercial causes: at least arguably so.

The most effective way of dispute resolution is by agreement: settling the case. Most big businesses have adopted this technique with considerable success. Most big businesses only use the law for tactical or strategic advantage, to produce a more effective climate for settlement to occur. The Commercial List brings cases to a head too quickly to enable sufficient contemplative reflection at board level to produce effective compromises. Effective decision making involves the application of processes inevitably involving some time lag or lead time. Some settlements are forced upon litigants in the Commercial List but too much judge time is taken up for the ratio involved of settled cases to judge time to be effective: this is an anecdotal comment, based upon observation and discussions around the Bar and not able to be supported by statistics.

Australia is geographically far distant from England, the source of our law.

It is closer to China, where community groups - mediation committees - have been functioning for over 3000 years to produce non judicially-forced settlements of disputes - see **Report of Australian Delegation to China on Criminal Law and Procedure in October 1982,** Law Council of Australia and Australian Universities Law Schools Association, Joint Committee to promote Legal Exchange with China, Section 39.

The Australian tribal aborigines sit in discussions for weeks, if necessary, to produce tribal consensus - **'Aboriginal Customary Law Recognition',** Australia, The Law Reform Commission, Discussion Paper No. 17, November 1980, p.9.

We would do well to learn from our Asian neighbours and Aboriginal brothers and sisters; use the Commercial List with much greater judicial reticence; judicially rush into the decision of cases with much greater reluctance; and allow judicial decision making for commercial causes to be given a speedy trial, this to rest to a greater extent with the Listing Master, subject to appeal to the Judge in the Practice Court - provided that the back-up availability of Judges presently assigned to the Commercial List remained, instead of speedy trials being effectively prevented by the unavailability of Judges, as was the case pre Commercial List.

This article has been kept short purposely for publication in this journal. Lest it be criticised for its broad sweep and lack of attention to detail, let it be said that the great need for judicial reticence has been closely argued in the thesis presented for PhD at Monash University entitled Judicial and Administrative Functions in Australia Companies and Securities Law.

The theme has also been dealt with the unpublished monograph 'Judge Not', available in my chambers.

Loose-Leaf Services Analysis

The Law Foundation of N.S.W. in May 1987 approved a grant to the Australian Law Librarians Group, N.S.W. Section, for the sum of $14,984 to conduct a comparative study of all legal loose-leaf services published by Butterworths, CCH and Methuen Law Book Co.

The Law Librarians approached the Law Foundation because they felt there was a need, due to increasing subscription costs, for an assessment to be made to assist, not only other librarians, but the N.S.W. legal profession generally in evaluating competing services available.

The result will assist lawyers in choosing which service to purchase or quote in any particular subject area. The analysis may also assist publishers in determining the format and content of new services.

The conclusions will be published by the ALLG and, due to the Law Foundation's generous funding, will be made available at a reasonable price.

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Review Of Victorian Court Libraries

In Victoria, all solicitors and barristers pay a fee towards the upkeep of the Supreme Court Library but very little research has been undertaken to evaluate the standard of the service provided and the information requirements of the courts and the Bar.

A grant of $25,000 has been approved by the Victorian Law Foundation for a review of the Court Library System. The review will examine library services to the Supreme, County and Magistrates' Courts in Victoria. It will be led by Beth Wilson, Librarian to the Victoria Law Foundation and the Law Reform Commission of Victoria. An Expert Reference Group, composed of prominent Victorian Law Librarians, has been chosen to assist Ms. Wilson. She will report to a Management Committee chaired by the Chief Justice and also including the Chief Judge of the County Court, the Chief Magistrate, the Secretary of the Attorney-General's Department and representatives of the legal profession. The project will run from 1st June 1987 until the end of November 1987. It is expected that the report will be presented to the Management Committee shortly thereafter. The research methodology chosen for this project has been designed to enable as much consultation and participation as possible.

We do know that by overseas standards library services to the courts and legal profession are relatively poor. In Canada, the largest court library collection is that of the Supreme Court of Canada with some 180,000 volumes: the English Supreme Court library, although only established in 1978, has about 200,000 volumes. By comparison, the Supreme Court Library in Victoria has about 60,000 volumes and, with a staff of only five and some 7,000 potential users, it is hard pressed to meet the demands made upon it. The Canadian legal profession also has the use of substantial Bar libraries. Libraries serving the profession in Victoria have lacked the necessary resources to provide similar services and while a good deal has been done to rebuild the Law Institute Library which was destroyed in the disastrous fire of 1979, it remains a relatively small resource.

In July 1987, all barristers and many solicitors were sent a brief questionnaire seeking their opinions on certain aspects of the present library services. You are urged to respond as this is a unique opportunity to express your views. Data obtained by the survey will be taken into account in the final report to the Management Committee and are needed to assist in formulating recommendations. Follow-up interviews will also be conducted with some respondents. If you wish to participate in the follow-up interviews, please make this clear on your questionnaire. Any barrister who wishes to make a separate submission to the project is urged to do so by contacting Beth Wilson at the Victoria Law Foundation.

Beth Wilson

Professional Indemnity Insurance

Members of the Bar apply on occasions for leave of absence from the Bar for periods up to 12 months. An approach was made to the professional insurance underwriters to refund a portion of the premium for the period during which members are no longer in practice. The underwriters have agreed to a reduction of 50% of the premium for any period in excess of 6 months. Any barrister who does take leave of absence in excess of 6 months and wishes to seek a reduction should approach the brokers, Steeves Lumley Pty. Ltd. and give details of the proposed period of absence.

The Bar Council has taken up with the underwriters the question of a return of a portion of the premium for the present calendar year in the light of the **Giannarelli** ruling by the Full Court. The matter is under consideration. However, the High Court has granted special leave to appeal against the Full Court's judgment. No decision will be made until the outcome of the High Court appeal.

E.W.G.

How To Make Absolutely Sure Your Case Gets On The Front Page Of The Sun

*By **Stuart Neale.** Republished by kind permission of 'Counsel', the journal of the Bar of England and Wales*

In the last edition of Counsel, Barbara Slomnicks and Ian Roberson criticised the Press for their hype of the **Junkie Baby Case** and seemed surprised that the Press were interested in sensationalising what took place. Sadly, an objective view of the facts does not make news and it is a common journalist's maxim: 'Don't let the facts get in the way of the story'.

Court cases for the journalist are the bread and butter of his life - on an average day at least a quarter and sometimes as many as a third of all stories put up to paper are law-based but because space is at a premium many decent stories have to be spiked. So what makes a case newsworthy?

Anything featuring death, sex, Royalty, religion, television and, nowadays AIDS, commands instant attention. If you are in a case with them all together, you have an absolute winner in:

> *'AIDS vicar is father of my love child - soap star Duchess tell court'.*

After that sort of headline, the Editor of a newspaper isn't really bothered what the story is about and will not be too worried if his story is not actually as objective as a Times Law Report. However, when the editorial chips are down, sex reigns triumphant. On a comparison of days of court to total column inches, Madame Cyn has had proportionally more space than the Broadwater Farm Trial.

Obviously, it would be totally wrong to tout the Press for your own case, but I am regularly asked how to give a decent case a bit of top spin and thus elbow its way onto the news editor's schedule. Remember the golden rules: keep it short, keep it snappy and be up to date. Use 'Brightspeak', that is to say, a phrase of less than eight words, each of which is no more than two syllables in length. In essence you have to do the headline writer's job for him or else you're lost before you start. It is equally important to make your 'Brightspeak' phrase in non-judicial language. It must be annoying to craft a good byeline only to find a judge lifting it verbatim and speaking up and slowing down in case the court reporter missed it first time round from counsel. Once the judge gives a paper a headline, counsel won't have a look in!

I used to complain that court reporters were not alive to the good phrases and in their turn they complained to me that they are invariably faced with boring pedestrian performances which could be reduced to numbered cards held up to judge and jury. Defence No.12B - 'He looked as if he was about to hit me, so instinctively I swung out but forgot I had a pint pot in my hand', or Mitigation No.6 - 'His uncle is a painter and decorator and has a job available starting Monday.'

If the Press get bored it is likely that the judge is too.

Bring your vocabulary up to date. 'Walter Mitty character' is played out - perhaps 'The Singing Detective of Droitwich' is a good substitute. 'Svengalilike' is still all right, but only just. The rhythm of words, alliteration and a television allusion should be the Headline Hunter's watchwords. To refer to a womaniser as 'the Dirty Den of Denton' guarantees you a page lead in the locals and the probability of some space in the nationals, at least until the phrase is flogged to death.

Think in 'Brightspeak': to compare a set of circumstances to a TV soap opera plot - no matter how tenuous the link - is the hallmark of the byeline bandit. A reporter is only likely to take notice of a client's matrimonial difficulties if his advocate somehow likens his anguish to the Tilsley divorce case in Coronation Street. A white collar criminal will merely be a white collar criminal unless you show him as 'no worse than J.R. Ewing'.

Although it is a useful basis, television however is not the final solution. Newspaper men will make do with news in their papers if they have to, but actually what they would prefer to have is a solid diet of sex on their pages, although occasionally they have to make do with second best, that is, love and romance. For that reason the media maniac should

always have a set of ready to use 'Brightspeak' phrases in his armoury: 'Her only crime was to fall in love' or 'Blinded by passion' or 'Cupid was his downfall'.

Timing however is everything. The average court reporter has an attention span of 20 minutes, cumulatively, in the whole day, so it is important to use a 'Brightspeak' phrase in the first four sentences of your speech or cross-examination. With any luck, by the time you have finished, the reporter will have actually written his story around your quotes so that, if the judge comes out with anything better, it will be too much trouble to change it round. If you are in a long case, give the Press a good 'Brightspeak' titbit at around 2.30 in the afternoon. By that time it will be too late for the locals to alter their pages and it will give the nationals a new line.

Sometimes your clients will want no publicity, so whatever you do DO NOT approach the Press to play the story down. A combination of concern for the freedom of the Press and sheer bloody mindedness will ensure a story out of all proportion to its merits. In such a case, invert the golden rule - have your case put back as long as possible, at least until after lunch-time, extend each sentence to the length of the average paragraph, use obscure multi-syllable literary allusions and as much Latin or law French as the judge will permit. It is also important to talk quickly since the reporter's shorthand is unlikely to be able to cope with the combination of speed and syllables.

Of course, the really devious tabloid tout will use the journalist's priorities to his own advantage. Thus the man who threatens the reporter in the most overbearing way possible to report him to his Editor if anything is printed of the case, and who thereafter delivers a 'Brightspeak' phrase slowly, deliberately and loudly in the first two sentences of speech or cross-examination, can guarantee a page lead and may even make the front page!

Fees In The Family Court

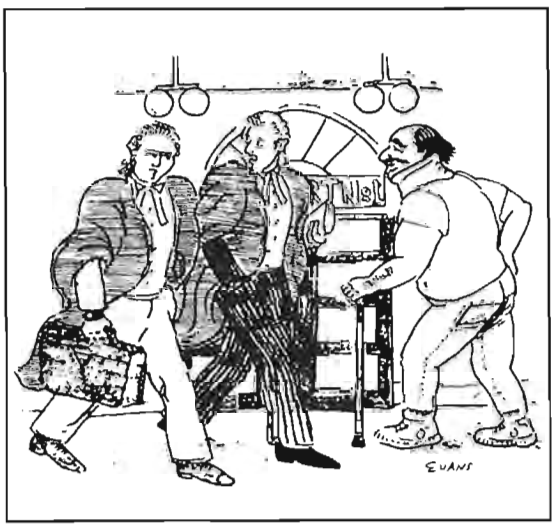
In a recent case before the Full Court of the Family Court Counsel for the successful respondent had marked fees which the members of the Court considered to be well in excess of those which, in their experience, comparable Counsel would be expected to mark in such an appeal. Accordingly the Court made a substantial reduction in the amount of the Respondent's costs that the Appellant was ordered to pay. Further, the Court directed the Registrar to inform the Respondent of her right to have her own costs taxed and to forward a copy of the judgment to the Chairman of the Bar Council.

In their judgment, the Court comprising Fogarty, Joske and Treyvaud JJ., said:

> 'The level of fees at times being charged by Counsel appearing in this jurisdiction has become a matter of increasing concern.'

This note is published for information of Counsel at the direction of the Bar Council.

Douglas Graham
Chairman
Bar Fees Committee



A "No" from the Jury is bad enough, but why did the Judge confiscate the cervical collar?

Touring — A.B.A. Cricket

Regarded by many as the poor man's Richie Benaud, ***Bill Gillard's*** *cricketing skills are only exceeded by his journalistic talent. Here is his account of the 1987 ABA cricket tour of England and Ireland.*

Author Bill Gillard with Sir Oliver Popplewell.

After a successful tour of the West Indies, England was the obvious place for the next triumph. The team left on 25th June, and the Melbourne members found they were sharing the plane with the Australian Women's Cricket Team. Fortunately the English Press were able to differentiate between the teams (they were wearing skirts) and accordingly, we were not pestered on our arrival!

England had been deluged by much rain during the previous month. Fortunately for us, we arrived to a change of weather which brought no rain, much sun, and high temperatures. These conditions persisted for the following two weeks.

Our first port of call was the ancient city of Bath; that splendid Bath-stone city nestling in the lovely valley surrounding the river Avon.

The first game was against Hambrook, played on the Hambrook Common. Hambrook is a small village half way between Bath and Bristol. The touring team at this stage numbered 9 and we scoured the countryside far and wide for additional players. Who did we find? - one of the editors of the Bar News, Peter Heerey Q.C. who was 'free loading' with friends at Malvern. 'Haven't played cricket since I left school, but I do play tennis so I should be alright!'

The Hambrook side were no world beaters; a reasonable standard for the commencement of an English tour. However we could not take advantage of them. Our batting was, to say the least, pitiful as we crawled to 69. Jetlag, English conditions and dull light were the excuses. The

highlight of our innings was the masterly display by our two lesser lights, Heerey and Trigar. The placement of their feet and the swing of their bats would not be found in the coaching manual, but the end result was productive. Coming together at 9/50 they managed 19 runs for the last wicket. Heerey was a proud 8 n.o. Heerey was so wrapped in his effort he gladly paid for a touring cap and has offered the sum of $100 for the video film of his innings. (Sorry Peter, the price is now $200.) Hambrook passed us with 6 down and eventually declared at 8/99. The additional highlights were the good bowling of Bruce McTaggart who took 3/17 and the great catch by Philip Trigar at deep-point. We did much better in the second innings being 1/85 with Stirling Hamman retiring on 30.

batsman. We batted first and were in early trouble at 1/0 and 2/14 mainly due to the very slippery bowling of Doyle.

Doyle got 2/1 off 5 overs. However a number of players got going including Judge Bob Hall of Queensland who made a very good 49 and Tony Smith who hit a number of big six's in his 26. This time the team performed far better and made 151. Heerey again unconquered (1 n.o.). Despite an early wicket, the home side managed to pass our 151 without great difficulty due to an unconquered 71 by Murphy.

The following day we travelled to Stapleton, another suburb of Bristol, where we played at a

Bill Gillard pulling. English Bar skipper Andrew Popplewell behind the stumps.

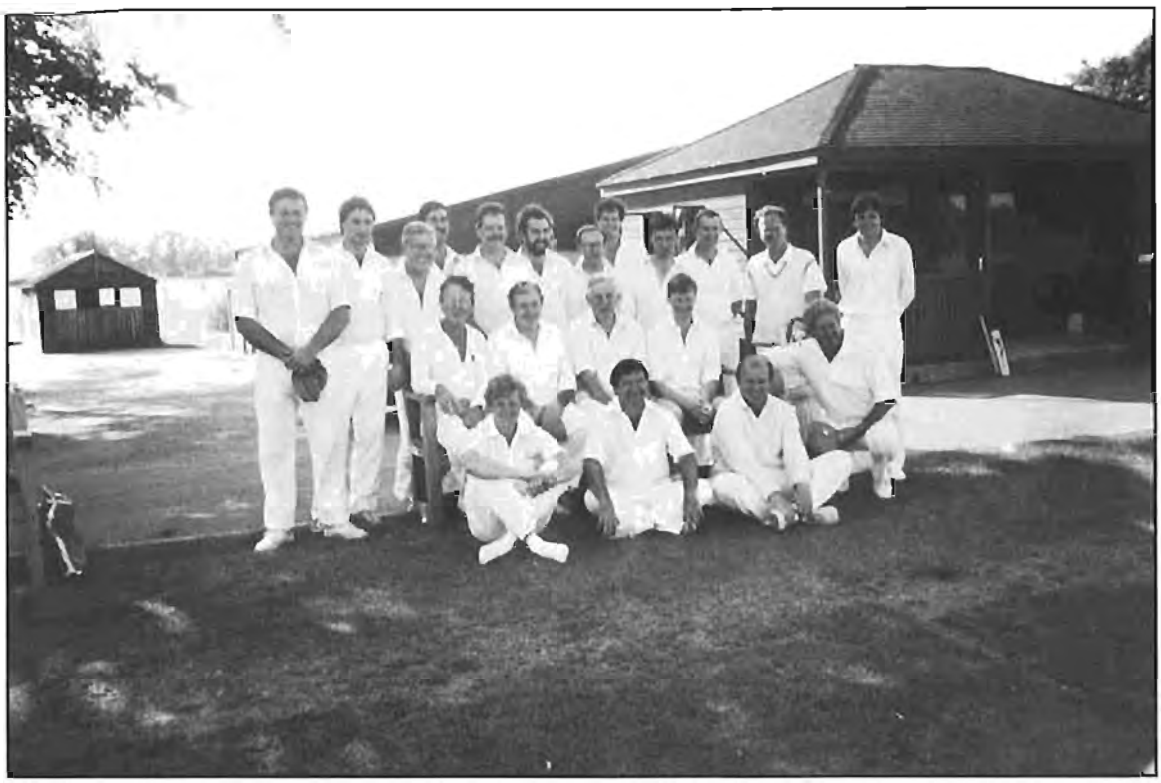
The next day we travelled to Knowle, a suburb of Bristol. The Knowle Cricket Club is one of the stronger cricket clubs in the Bristol area. We were greeted in that typical rounded Somerset accent by news that 'There are a couple of your chaps playing against you today'. Who travelled 12,000 miles to play against other Aussies? We should have banned these two Australians before we started. They turned out to be Messrs. Doyle and Murphy who play First XI at St. Kilda; one, a very fast bowler and the other an exceptionally good

ground called 'Sleepy Hollow'. The Stapleton Cricket Club was also one of the better clubs. Stapleton batted first and made 3.220, with one batsman making 101. The Sleepy Hollow ground is small. Indeed the century maker managed to miss hit a couple of six's over point. Each time the ball went over the fence into the surrounding gardens, another ball was produced by the umpire and the locals were then sent to retrieve the ball. We managed to make only 111. Again Stirling Hamman batted well making 30.

The final match that week was against the Occasionals at Malmesbury which is some 15 miles north east of Bath. At the end of 45 overs the opposition had managed to make 5.223. Again we were confronted by a class player who managed to make 100 n.o. Not to be outdone, we did very well to make 198. Judge Bob Hall and Stirling Hamman again got amongst the runs with 58 and 37 respectively.

Hamman got 4/39 and Bruce McTaggart 3/23. After the game we had a very pleasant drink in the Sixth Former's bar which was located in a cellar underneath the school.

The 5th of July was a great day for Australia. The Australian Bar team beat the English Bar and Patrick Cash managed to win Wimbledon! Our confident editor, P. Heerey, not to be outdone, volunteered to play for the English side who were



Australian Bar v English Bar, Radley College, 5th July, 1987.

Despite a disappointing week the team was running into form, and our main objective was to beat the English Bar in the 'First Test'. The game was played at Radley College at Abingdon near Oxford. Sunday 3rd July produced a warm, lovely day for a game of cricket at one of England's premier schools. We won the toss and in 45 overs made 8/222. A number got amongst the runs namely, Bruce McTaggart 50, Bill Gillard 49, Tony Smith 42 and Roger Gyles 36. The English Bar started off well and the first wicket put on 59 before Philip Trigar took yet another great catch at point. The second wicket went to 94 before an equally brilliant catch was taken by Stirling Hamman off Bill Gillard at deep mid-on. (It was a miss hit due to the flight of the ball!) Eventually the bowlers got on top and the English Bar were all out for 186. Stirling one short. The English hearing about his great efforts of the previous week, moved him from number 11 to number 5 in the batting order. Obviously the promotion was too much; P. Heerey is now eligible to join the primary club.

South Hampstead is an inner suburb of London and it boasts a very attractive ground. It also boasts a very strong cricket team. The team that took us on comprised two West Indians, two Indians, two New Zealanders, one Welsh, one Irish and three English. They batted first, and it was fairly apparent from the beginning that we were facing some class batsmen. However, the bowlers rose to great heights on this day. In 47 overs the opposition made 7/187. John Ireland from the New South Wales Bar who normally keeps, found the Aussie

Australian Bar v Irish Bar, Trinity College, 11th July, 1987.

ball and the atmosphere to his liking and bowling rather large banana bending out-swingers, managed to beat the bat many times.
Our chase started disastrously and at one stage we were 3/21. However Stirling Hamman and Bill Gillard took the score to 92 before the latter was run out for 27. 'Stirling, is it wise to hit the ball to a West Indian in the covers and call for a run?'

Stirling Hamman ably supported by Peter Gray and 'Tosca' Hodgson, managed to make the score to 156. Stirling was bowled for a very well made 79. John Ireland who already had a pretty good day with the ball came into bat at number 8 and proceeded to hit the bowlers all over the field. With one over to go, 4 runs were needed. On came the New Zealand opening bowler who was, to say the least, a very impressive bowler. John Ireland facing the fourth ball of that last over put one foot down the wicket and hit a six right out of the ground to win the game for the A.B.A. Without doubt the most satisfying and best win that any Australian Lawyer's side has had overseas. With success in the last two games, the Irish Bar would be a push-over!

On to Ireland to meet the Irish Bar on the 11th July. Before the game the Irish invited the team to the University Club in Dublin for lunch, the obvious object of the exercise - to fill us with liquor. However we were too smart (well most were) and avoided temptation. Larry King enjoyed himself. The game was played at Trinity College Park right in the centre of Dublin, indeed a marvellous setting for a game of cricket. The Irish won the toss and put us in to bat. The team batted slowly but surely to make 5/149 in 37 overs. It was agreed that there would be 40 overs each, but at the end of the 36th over, the batsmen were then told that the next over was to be the last.

Fortunately with a great flurry, Bill Gillard managed another 15 to take the score to 149. Those who contributed were Bill Gillard 47 n.o., Judge Bob Hall 43 and Peter Gray 20. It was thought by most that the score was a winning one, and when we had the opposition 3/38 with the two then batsmen scratching around, everybody thought the game was in the bag. Captain Gyles decided to try a few different bowlers. The first man came on and 19 came off his over. All of a sudden the two batsmen looked like world beaters. They took the score from 3/38 to 4/132 and the writing was on the wall. In the last over with 3 runs to make, the opposition had no difficulty in winning the game. Beaten by

the Irish? It is hard to believe. Victories against the Trinidadians, Barbardians, Antiguans, Jamaicans, Singaporians and English and to then go down against the Irish. Not surprisingly, the Irish were then feting themselves as the best in the world. However who can begrudge them their success? They were wonderful hosts and delightful people, and if we were to lose to anybody, well why not the Irish?

After the conference in Ireland the team travelled back to England and up north to Carlisle. We travelled across the border to play Dumfries. Again we were confronted by two Australians, this time from Newcastle. Dumfries is obviously in a rain-belt. Next to the turn area in the centre of the ground was located an all weather cricket pitch. True to form, the weather was against us and we played on a hard wicket. We won the toss and invited the opposition to bat. They made 138. The pick of the bowlers were Stirling Hamman, 2/23 and Larry King, 3/29. In keeping with our benevolent attitude towards the lesser teams, we let Dumfries beat us. We failed by 2 runs in the last over to pass them. Bill Gillard made 31 and Stirling Hamman made 22.

The Carlisle Cricket team is another top class side. We played on the lovely ground on the side of the river Eden at Carlisle. Carlisle made 4/226 with one of their openers making an unconquered 100. The wicket had a little moisture in it and was generally slow and unpredictable. However because it was so slow, the unpredictable balls did not take the wickets. This time the side did put it all together, and we managed to win in the last over after losing 6 wickets. Stirling Hamman top scored with 56, Judge Bob Hall contributing an excellent 40 (run-out yet again!) and Peter Maiden made a steady 30. All round it was a good effort.

At this stage of the tour questions were being asked as to Stirling's ability to judge a run. The Judge was convinced he had not ability!

The team moved across country via Yorkshire to Lincoln. Unfortunately the weather turned against us and both games in the Lincoln area had to be abandoned.

The side then moved south to Stratford-on-Avon. The first game was against Captain Hawkin's XI at Everdon Hall. This place without doubt is the Mecca of cricket. Everdon Hall is a Manor house located in beautiful grounds. A little sign tells you to go down a lane to the cricket ground. You go down the lane and there it is. A vivid green billiard table on a plateau surrounded by trees and mountains in the distance and a lovely pavilion surrounded by roses - a marvellous sight. Unfortunately the weather was somewhat overcast, but we were able to play the match. Captain Hawkins had managed to find two Australians. (Everybody wants to leave Newcastle!) Captain Hawkin's XI managed to make 8/155 off 40 overs. Unfortunately the opposition proved too good and we were all out for 106. Bill Gillard top scored with 26.

Our final match was against Wellesbourne, a small town some 6 miles from Stratford-on-Avon. We bowled first and the opposition made 8/156 after 45 overs. At 4/43 Stirling Hamman and Bill Gillard came together and they managed to put on 54 before Hamman was caught for 30. Gillard followed very shortly thereafter when caught on the long-on boundary also for 30. The tail did its best to wag, but unfortunately we failed by some 20 runs.

Playing in England is vastly different to playing in Australia.The grounds are flat and even, soft under foot and the wickets play very slowly. Any bowling that dropped short, was despatched with ease. The opposition players are polite and to say the least compared with Australians, very quiet.

Rarely, if ever, was there a shout for LBW and only polite appeals for caught-behind. There were exceptions, but these tended to be players from the colonies. All games commenced at 2.00 p.m. with a break for a substantial afternoon tea at around 5.15 p.m. The game then went through to 8.30-9.00 and the day was finished off with a number of pints in the club house. All very civilised. The games were not tiring and the older members of the team (**Editors' Note:** Presumably including the writer) managed to keep going despite having three games on the trot. Batsmen dominated the games. It was hard to get wickets. The clear lesson was - forget outswingers and attack the stumps. We did not come across many outstanding bowlers but we did come up against a number of very good batsmen. As most bowlers will tell you - it is a batsmen's game. This is especially so in England.

All told the tour was great fun and a great success. The editor, after his 'primary' at Radley College was not seen again on the cricket field, but we have little doubt he has fond memories plus the touring cap to remind him of the very pleasant games of cricket in England.

Those who played in the team were -

His Honour Judge Bob Hall (Qld.) (11 games), Cal Callaway Q.C. (NSW) (2), E.W. Gillard Q.C. (Vic) (10), Roger Gyles Q.C. (NSW) (2), Peter Heerey Q.C. (Vic) (3), Larry King (NSW) (9), Stirling Hamman (NSW) (11), Bruce McTaggart (Vic) (5), Thos Hodgson (NSW) (10), Philip Trigar (Vic) (7), Tony Smith (Qld) (6), John Ireland (NSW) (2), Alan Parker (NSW) (1), Peter Maiden (NSW) (6), Peter Gray (NSW) (2), Clarrie Stevens (NSW) (2).

Jack Callaway, a solicitor from Sydney helped out on occasions and Peter Newlinds, a young Australian in England, joined the touring party and was a valuable contributor to a memorable tour.

The A.B.A. team at Little Everdon — England batting.

Bicentennial Run — Bar Team

There is no doubt Liz Murphy has a wonderful sense of humour. Why else would she commit 10 barristers to run all the way around Port Phillip Bay in the heat of summer. Let me hasten to add those 10 do not, repeat, do not include Murphy - she is obviously far too clever for that.

It gets better than that, completely without authority, ostensible or otherwise, from these 10 runners Murphy has obtained the imprimatur of the Victorian Bar Council to raise the $5,000 to underwrite the team, so that the ten (lucky?) participants are presented with a fait accompli - run or else the Bar does its dough.

Murphy's 'derring-do' continues; she caught me completely unawares one Sunday morning. There I was, minding my own business, indulging in my Sunday morning constitutional, totally oblivious to my surroundings, (as one would expect the morning after the night before) when Murphy came upon me and said -

> 'You'll organise ten runners from the Bar to support Doxa in the Bicentennial Run?'
>
> I grunted, 'Charity, sure barristers are well known for their charity'.
>
> 'Good, fine, I'll be in touch, many thanks, so long' Murphy said as she disappeared into the sanctity of one of those holy places.

Talk about taking advantage of a man when he is down and out, and not in touch with reality.

Little did I know what I had let myself and nine other ne'er-do-wells into. Melbourne to Geelong to Queenscliff - across by ferry to Portsea (some are keen to walk across) then to Frankston and finally, at last back to Melbourne. Fortunately, I can tell you Melbourne/Queenscliff is on Saturday and Portsea/Melbourne on the Sunday.

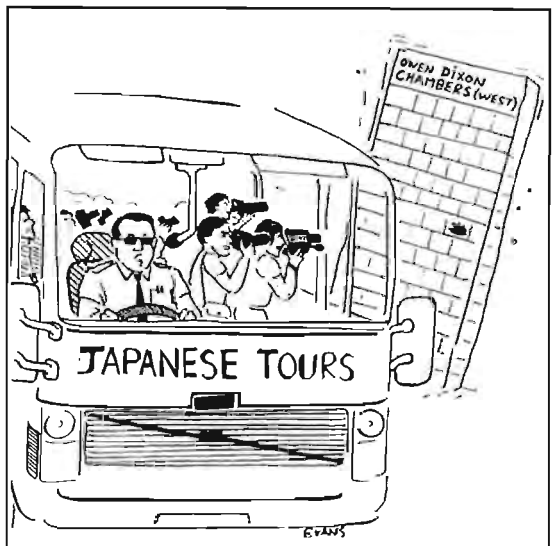
There are 100 teams entered - the maximum number - and the competition is fierce. Doxa should benefit from the run by a minimum sum of $100,000 and other nominated charities will receive, at least, $400,000 through sponsorship. The run is part of the official Bicentennial Celebration for 1988.

So the Bar will be seen to be part of this official celebration of Australia's 200th birthday.

The runners are looking for further sponsors from individuals at the Bar. All donations are tax deductible. Apart from supporting Doxa the Bar runners have also nominated Windana as their charity to support.

If there are any runners with the same masochistic tendency as those who have already indicated their willingness (that cannot be the right word) to participate and believe they may be greater masochists, please let the writer know and arrangements will be made with Marquis de Sade for the appropriate tests to be conducted.

Tom F. Danos



"And on your left is the famous Melbourne landmark — the Leaning Tower of Lonsdale Street."

Travels With His Honour

John Coldrey *Q.C. loose among the unsuspecting citizens of Italy and England*

Being easily impressed by small things (and at my size you need to be), I was immensely flattered when the Editors of the Bar News requested that I keep a diary in the Paul Eddington and Graham Kennedy tradition of my recent overseas ~~junket~~ study tour upon which His Honour, Mr. Justice Vincent had the good fortune to accompany me.

Tuesday 21st July 1987

Clutching our duty free copies of Archbold (1) and looking forward to a good read we rushed on board our Alitalia flight to Rome (or Roma as we world travellers call it). Alitalia had thoughtfully provided us with seats next to the aircraft galley so that we did not miss any of the action. This was particularly kind since from this position it was quite impossible to view the in-flight movie. (Even standing on our Archbolds.)

When the aircraft landed in Singapore all our fellow passengers applauded. 'Do they know something about this airline that we don't?' I wondered. Any fears were allayed by the ingestion of medicinal Chianti.

(1) If you believe this you'd believe anything in this Diary. **Editors**

Wednesday 22nd July 1987

(Roma) Wednesday is the traditional day for Papal audiences but unfortunately His Honour and I were too busy inspecting the sights to grant one to His Holiness.

Visit to the Sistine Chapel. 'I find it to be excellent' His Honour remarked judiciously, 'and imagine how much better it would be if they hadn't drawn all over the walls and ceiling'.

Our visit to St. Peter's was marred by a regrettable incident. We were asked to leave after His Honour had gratuitously ruled three confessions to be inadmissible.

Thursday 23rd July 1987

Journey to the Coliseum. It is in poor shape, almost as if Sir Joh Bjelke Petersen's Town Planners had recently visited.

Pursuing the Private International Law aspect of our study tour His Honour and I then examined the Roman and Imperial Fora. During the day a considerable quantity of photographic documentation was assembled by His Honour. The conceptual principle appeared to be - if it moved, photograph it; if it didn't move, photograph it twice. Will this material be passed around beneath the Bench in the Full Court during particularly boring submissions in Civil appeals? I certainly hope not. In my view this would be merely fighting fire with fire, but I digress...

Ate dinner at an open air cafe. Unfortunately there was a minor international incident when an Italian pigeon deposited upon the shoulder of the Gloweave Drip Dry Casual Shirt my wife had bought me for the trip. 'Look on the bright side,' said Mr. Justice (Polyanna) Vincent, 'it could have missed your shirt and hit the pizza and you would never have noticed it'.

Friday 24th July 1987

Given the well known love of culture with which His Honour and I are imbued, it was inevitable that we should visit various museums. It is interesting to reflect on the contribution to the Arts of such talented families as the Medicis. (For the benefit of your readers the Medicis are the Italian equivalent of the Galballys.) (2)

(2) It's a bit late for touting isn't it? **Editors**

After dinner in the Piazza Navona and having taken a little Chianti for his stomach's sake, His Honour agreed to sit for one of the many street artists anxious to draw his portrait for 20,000 lira. The result was a medical breakthrough - a complete face lift done with a pencil.

Indeed after observing His Honour closely it suddenly dawned on me that the artists in the Piazza Navona had created a reverse Dorian Gray portrait.
Having myself consumed sufficient wine not only to satisfy St. Paul but to indicate my enthusiastic support of the concept of preventative medicine, I elected to have a caricature drawn. I will not trouble your readers with a description of the act of gratuitous cruelty thereafter perpetrated, but I must admit that despite the irrationality of it all, I am running my nose under a cold tap at every opportunity.

Saturday 25th July 1987
Visit to the Trevi Fountain. His Honour tossed a number of coins into the water. A youth with a magnet attached to the end of a piece of string 'caught' a number of coins and fled into the crowd. His Honour opined that no offence had been committed since the moneys had been abandoned. It is apparent that the duty free Archbolds have already been of some benefit.

The day was spoiled slightly by an incident which occurred shortly after the coin tossing. His Honour, possibly affected by the sun, removed his shirt in order to increase his bodily supply of Vitamin 'D'. A patrolling policeman immediately blew his whistle and ordered him to replace it. The Italians certainly have a finely honed sense of obscenity. Meantime the portrait of the Judge is looking better and better.

Sunday 26th July 1987
(London) I feel more confident in London as I have a partial grasp of the language. I directed His Honour to the changing of the Guard where he graciously mingled with commoners outside Buckingham Palace whilst taking a mere 23 photographs.

Our trip to St. Paul's was very disappointing. We could not climb up to the dome as the Church was being temporarily used for a religious purpose. Naturally we did not make any contribution to the donations box.

Speakers Corner in Hyde Park was more interesting. The constant interruption of the Speakers by professional hecklers was comfortingly reminiscent of the Full Court.

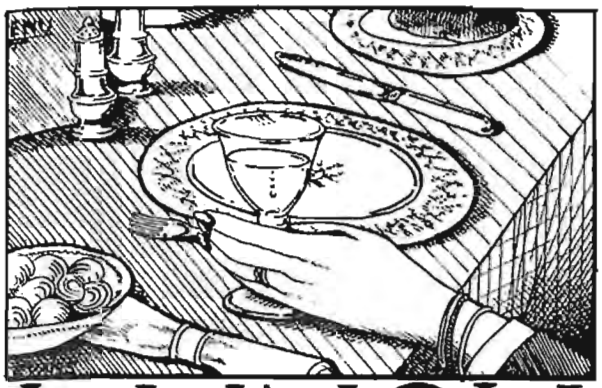
We registered for the Reform of the Criminal Law Conference and were issued with identical genuine vinyl satchels heavy with learned papers. Sadly, there was no room for our Archbolds.

Monday 27th to Wednesday 29th July 1987
Travelling to Lincoln's Inn in our new lounge suits and with identical satchels we were accosted by an irate local who snarled 'Why don't you Mormons go back to America and pester your own people?' If only he'd seen His Honour's portrait he would have known what clean living can do for a person.

Thereafter we were immersed in 3 days of stimulating intellectual ferment which the taxpayer may be assured was absolutely essential for the good order and government of this State and which all of my Victorian colleagues present at the Conference would wish me to say, was a necessary adjunct to the earning of assessable income.

Thursday 30th July 1987
His Honour wished to go shopping at Harrods. I informed him that during the years of the Wilson Labour Government great fear was expressed that this Department Store would be nationalised and renamed 'Harolds'. He seemed sceptical but I happen to know about this having had access to secret excerpts of Peter Wright's book 'Spycatcher'.

The weather has been appalling but we realise this is the English summer because the rain is much



L·U·N·C·H

Q.C.'s

Q.C.'s, in Goldie Place, is a good example of the benefits of knowing one's own city. Few visitors from interstate have ever heard of it, it is hard to find and the name (for differing reasons) may repel rather than attract the custom of lawyers.

In fact, Q.C.'s offers lunch of reliably good quality, well presented and courteously served.

At about $20.00 for three courses, and about $15.00 without a dessert, it is also excellent value. Q.C.'s is B.Y.O., so add the cost of drinks.

It is no doubt for these reasons that Q.C.'s has a regular clientele of members of the Bar. The entirely mythical Red Faces Club, invented by an earlier contributor to this column, is said to eat there. All factions of this supposed club are catered for, including the group known as the 2.15 Puritans.

The menu changes with reasonable regularity. It follows no particular national style but the characteristic style of the dishes is that they are light, fresh and very well prepared.

There is nothing pretentious about this restaurant. Despite the name, there is no self-conscious decor, no attempt to follow a legal theme and no consequential irritation and high prices.

Q.C.'s came under new management earlier this year and, if anything, the quality has improved. This restaurant deserves its good reputation.

For the less robust, who like to leave at 2.10 and wish to avoid paperwork-demanding solicitors and certain Bar food writers who are prepared to name names, there is a discrete if somewhat circuitous route which will bring one back to chambers at 2.15, ostensibly returning from the Supreme Court Library.

Q.C.'s has recently re-opened its ground floor bistro. Here too excellent value is to be had.

Michael Black

Q.C.'s at 12 Goldie Place (off Little Bourke Street, east of Queen Street), 67 7317, B.Y.O., seats about 50 upstairs. Bookings advisable, especially Thursdays and Fridays.

Lawyers Bookshelf

DRUG USERS AND THE LAW IN AUSTRALIA
by Associate Professor T Carney
(Faculty of Law, Monash University)
Pps. 743 + index 375-390. RRP. $42.
Published by Law Book Company Ltd. (1987)

While the use of licit and illicit drugs has prevailed for some four thousand years, their relationship with the law is relatively recent.

The author begins with an historical overview of the fragmented approaches initiated by private individuals and legislatures to combat alcoholism and drug abuse.

Entry into drug and alcohol treatment schemes is tabled, with particular examination of civil liberties in the areas of voluntary admission, third party admission and judicial committal.

Furthermore, post admission treatment controls are shown to be discretionary, with inadequate accountability. Attention is then turned to an evaluation of the present sentencing options available to the Courts. Rationalisation of the administration of the numerous sentencing options is advocated, so as to guide in the exercise of sentencing discretions. This would produce greater consistency and certainty in the law.

An analysis of judicial sentencing techniques is submitted in the form of two models. Firstly, the Thomas model suggests the sentencer employ a two handed approach; punishment and deterrence on the one hand and rehabilitation on the other. The model also accounts for the notion of proportionality between the offence and the sentence, with mitigation or aggravation as an added variable on the punitive side.

Secondly, consideration is given to a model which acknowledges a multiplicity of personal factors. It enables practitioners and sentencers to hang their hat (or wig) on a particular factor during the sentencing process of drug offenders.

This second model, although conceptually unsatisfactory, has the approval of the Victorian and N.S.W. Supreme Courts. It provides greater latitude for practitioners and sentencers to consider the idiomatic aspects of a given case. It is this analysis which will be of most assistance to the practitioner when dealing with drug offences. Nevertheless, the Thomas model is a useful guide in sentencing principles.

A discussion of detoxification services on a socio-legal level, with references to international experiences, will be of less practical assistance to practitioners.

Similarly, two chapters are devoted to types of income support available to drug and alcohol users. Such welfare benefits are advocated on rehabilitation and humanitarian bases.

Finally, on philosophical and sociological planes, Associate Professor Carney advocates the need for an integrated welfare system, administered by an independent statutory commission.

Stephen Smith

WRITERS AND THE LAW

by C. Golvan and M. McDonald 1986,
Law Book Company pps. 262

The author, the publisher and those involved in the visual or performing arts are as much a part of the law nowdays as it the snail, the bottle and ginger beer. Implications of taxation, defamation, copyright and the use and abuse of confidential information represent a burgeoning field encroaching upon those who practice in the glitter of backstage contracts in the entertainment industry.

'Writers and the Law' has been written by two practising solicitors intended for the lawyer and for those involved in the writing industry. Traditionally the province of a book in this field is limited solely to matters of intellectual property, but in over 12 chapters of this book the authors canvass such issues as film contracts, agents, defamation, tax, television and radio contracts, obscenity together with an overview of the intrinsic elements of a publishing contract. The several appendices to the book confirm precedent contract in publishing, film, stage play and television series. As well, appendix H lists 32 organisations related to the publishing and film industries - of use to the entertainer and lawyer alike.

Where applicable, the more important legislative provisions and leading cases are reviewed at a level which will be of immediate practical use.

This book should be a welcomed addition to the libraries of the entertainer and entertainment adviser.

J.D. Wilson

ANNOTATED TRADE PRACTICES ACT

by Russell V. Miller, Eighth Edition, 1987,
The Law Book Company Limited.
pps. 355 + 52 (Act amendments)

No doubt practitioners in the field of trade practices will be familiar with the earlier editions of this work, and will warmly receive this, the latest edition.

Ever since the publication of its first edition, this short book has proved itself invaluable to practitioners in the area. It contains the **Trade Practices Act** 1974, together with the various regulations, a table of cases and a most useful index. Commentary on each provision of the Act is to be found at the end of each section of the Act, as set out in the text. The commentary contains up-to-date references to most of the important decided cases.

The eighth edition covers the 1986 amendments, the most extensive since 1977. The amendments include new provisions dealing with misleading and deceptive conduct in relation to predictions on future matters, unconscionable conduct, overseas mergers, misuse of market power, recall of goods, linked credit providers, and an amendment to overcome the limitation placed on s.87 of the Act by the High Court in **Sent v Jet Corporation of Australia Ltd.** The edition includes case law available to 30th November, 1986 and amendments to the Act and to the Regulations up to 31st December, 1986.

The author states that as a result of the amendments substantial portions of the commentary have been rewritten or expanded. He describes his aim as being 'to provide lawyers, businessmen and students with a comprehensive work expressing trade practices law as it stands today and providing explanations of the more difficult sections'.

These are ambitious aims indeed, for a work of such conciseness. Nevertheless, in the writer's opinion, the author is to be commended for the extent to which he has achieved those aims.

Michael Hines

LANE'S COMMENTARY ON THE AUSTRALIAN CONSTITUTION

by P.H. Lane, with a foreward by Sir Garfield Barwick. The Law Book Company Limited 1986. RRP $110 hardback, pps. 766 + Index xxviii

This comprehensive and up-to-date book on the Australian Constitution will be a most useful addition to the lawyer's library. The publisher states that cumulative supplements to the book are planned for publication.

The main part of the work is organised so that the commentary is set out under sections of the Constitution. These appear in the same order as in the Constitution itself. Each chapter dealing with specific sections of the Constitution begins with a useful list of associated sections. In addition, there are excerpts from the Judiciary Act and an index and table of cases.

Professor Lane's writing style may not be to everyone's taste, but there can be no doubt that the book will prove a very useful reference work indeed.

In his Preface, Professor Lane speaks of the High Court's setting out 'to adapt the Constitution to new currents of time and circumstances, to interpret the Constitution as an organic instrument'. But in his Foreward to the book, Sir Garfield Barwick disavows any change in approach by the Court. He says:

> 'The centripetal political activities [of the Commonwealth legislatures] has produced legislative situations which being contraverted raise legal questions for the Court's decision, but its decision is not affected by that impulse. In deciding, the Court educes what was always present, though perhaps latent, in the constitutional text. As new Federal legislation is found to be covered by the constitutional text, State powers, because of the terms of the text, appear to recede, though again in truth that power was from the outset no larger than by the Court's decision it has proves to be.'

The body of Professor Lane's work is not an exposition of the constitutional theories of the author; in that respect it is utterly unlike a work such as Dicey's **The Law of the Constitution** or Colin Howard's **Australian Federal Constitutional Law.** Professor Lane's books consists more of description than of argument.

One expects the odd mistake in the first impression of a reference book as large as this. I found mistaken references to pages in the text in footnote 40 on page 204. This was in reference to the assertion that the States are not international persons and have no standing in international law. This kind of mistake can be frustrating and time-consuming in a reference work where accuracy is of prime importance. Nevertheless, the book is warmly recommended.

Michael Hines

Probate, Wills and Administration — Unreported Cases

A collection of unreported cases is being compiled in the area of wills, probate and administration for possible publication. If you have been involved in a case in this area which has not been reported, but which you consider determined a significant issue of law, then please send a copy of the judgment or a Supreme Court Library reference to it to Noel Jackling, 16 Elphin Grove, Hawthorn, 3122. The case of **Re Pridgeon,** the subject of the article by Brian Bayston entitled 'In time may yet be to late'. LIJ, April 1987, 364 is an excellent example of such a case.

COMMERCIAL EXPLOITATION OF PERSONALITY

by S.K. Murumba, Law Book Company Limited, 1986

This work is concerned with the law on unauthorised commercial appropriation of a person's personality, likeness and reputation.

In his Preface, the author states that he has attempted 'not only to discuss the law as it is, but also to suggest, in the light of that, what form the emerging principles ought to take'. He describes his work as being 'a statement as well of a critique of the rather disparate strands of the law' in the area.

Part I of the book consists of an introduction and a chapter on early developments in the relevant English Law. Mr. Murumba identifies two main goals of the law: the protection of proprietary interests in personality, likeness and reputation, and the protection of personality or privacy against unwanted and often deleterious publicity.

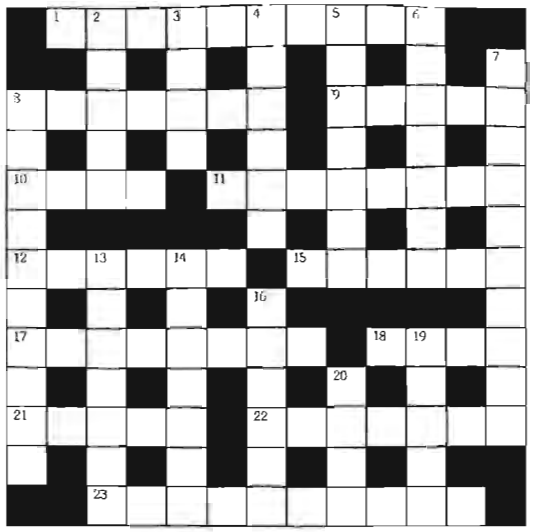
Part II of the book deals with the proprietary aspects of personality, likeness and reputation, including the so-called classic and the more extended actions for passing off. Part II deals with the non-proprietary approaches including the concepts of defamation and privacy, and the protection which may be available for personality, likeness and reputation under the consumer protection provisions of the Trade Practices Act.

Chapter 7 of the book is devoted to a discussion of the Australian Law Reform Commission's proposed Bill (reproduced in an Appendix) relating to commercial appropriation of personality, likeness and reputation. Mr. Murumba says that there are indications that the present government will soon introduce into Parliament a Bill to give effect to the Commission's recommendations.

Mr. Murumba expounds the law and puts his arguments forward both with vigour and with clarity. His book deserves to be well received.

M. Hines

Captain's Cryptic No. 59



Across

1. Eighteenth Century Commentator (10)
8. Action for return of goods (7)
9. Brimless hat from Tocumwal, we hear (5)
10. Terse, like a German (4)
11. The act of pulling (8)
12. Pay money against risk (6)
16. French arm cover for Channel (6)
17. Birth (8)
18. Hashish pipe (4)
21. Trench on the face of the moon (5)
22. Obscure in meaning, captain (7)
23. Offspring (10)

Down

2. Enjoy yourself, it's not sooner than you think (5)
3. Thieves' language (4)
4. Assegais (6)
5. Visual (7)
6. Gentlemanly title (7)
7. Junior Silk, 1987 (8, 1, 1)
8. Last resort of a baffled Judge: Jorden v De George 341 US 227 at 234 (1957), (10)
13. Compromised (7)
14. Looks again (7)
16. Et acts becomes sweet spice for incense (6)
19. Frequently (5)
20. Deceased, under another hue (4)

(Solution page 53)

Competition No. 5

You have been retained by the State Government as a consultant to advise on ways of reducing court backlogs without appointing more judges.

Provide one brilliant idea, together with a suitably snappy title. For example:

AlphaJudge: Each week one letter of the alphabet is picked out of the Tattslotto barrel by the Chairperson of a Panel of Social Workers. All plaintiffs whose surnames commence with that letter have their actions struck out.

Prize: A bottle of reasonably good wine from the Essoign Club.

Entries close 15th November 1987

Bar Tie Competition

The Bar Council has set up a sub-committee to advise on the design of a Bar Tie and Cravat. It has been decided to hold a competition amongst members of the Bar, and to that end suggestions (with illustrations) are called for from those who consider their originality combines with good taste and style.

Superb prizes (yet to be determined) will be won by the successful entrant and the runner up.

Entries should be submitted to the Secretary of the sub-committee, David Curtain, Clerk B, by Friday October 30th.

Magistrates' Court Victoria

MAGISTRATES — $61,560

Opportunities will exist during 1987 and 1988 for the appointment of appropriately qualified men and women to positions of Magistrate in the State of Victoria.

The Magistracy is an independent branch of the Judiciary and Magistrates are appointed by the Governor in Council. The Chief Magistrate assigns the duties to be carried out by them, including their deployment at Magistrates' Courts throughout the State of Victoria.

Intending applicants should have a knowledge of recent changes and developments in the criminal and civil jurisdictions of the Magistrates' Courts. Successful applicants are expected to have an interest and to participate in judicial administration including the continuing computerization of the Victorian Court system.

Qualifications

- The Magistrates' Courts (Appointment of Magistrates) Act 1984 provides for the appointment of people who are admitted or are entitled to be admitted to practice as a Barrister and Solicitor of the Supreme Court of Victoria or the High Court of Australia.
- Applicants should possess appropriate qualifications and personal attributes for appointment to judicial office, including considerable experience in the practice of the Courts, high intellectual ability and a capacity for sound decision making.

Information about salary, allowances, superannuation and other entitlements is available from the Attorney-General's Department, telephone Mr. Ted Johnson, on (03) 603 4325.

Applications, which must be in writing, should include details of qualifications and experience, and provide the names of at least two referees. All applications will be treated as confidential. They should be addressed to the Attorney-General, Attorney-General's Department, 20th Floor, 200 Queen Street, Melbourne, Victoria, 3000.

WINNER OF COMPETITION NO. 4

Photographed last month in the Flagstaff Gardens, Melbourne are the Judge (the Honourable Mr. Justice Nathan), the jury, and opposing Senior Counsel (Messrs. Goldberg Q.C. and Dowling Q.C.) involved in the celebrated "building defamation" case of **Barristers Chambers Ltd. sub nom. Hulme, & O'Callaghan & Ors** v **David Syme & Co. Ltd.** They are viewing the external appearance of the upper storeys of "Owen Dixon Chambers West", a building containing a large number of barristers' chambers.

David Syme & Co. Ltd., publishers of "The Age", are being sued by Barristers Chambers Ltd. "The Age" included the barristers' building in a list of "20 Buildings That Never Should Have Been Built". "The Age" said of the building's design -

> "Really, the less said the better. It's just a nothing building, with no style of any description. I can't think of anything else to say about it. It's bad enough that the building gets on a list like this".

Unfortunately, "The Age" did not heed its own words. "The Age" would have been better to have said much less that it did. It is now the Defendant in Australia's largest defamation case. Each barrister occupant of the building is a co-plaintiff.

The case will probably break the Costigan time-barrier with ease. It should last 10 years.

Reliable sources say that if successful, each co-plaintiff will receive damages calculated on the **Spry/Fancis** scale; namely "floor area of chambers, multiplied by cost plus all appropriate administrative expenses properly attributable to the provision of those Chambers".

In that way, each barrister will receive in damages a sum less than he pays in rent, but a sum far greater than the Defendant can afford.

Jack D. Hammond

Solution to Captain's Cryptic

■	B	L	A	C	K	S	T	O	N	E	■	■
■	■	A	■	A	■	P	■	P	■	S	■	W
D	E	T	I	N	U	E	■	T	O	Q	U	E
I	■	E	■	T	■	A	■	I	■	U	■	I
C	U	R	T	■	T	R	A	C	T	I	O	N
T	■	■	■	■	■	S	■	A	■	R	■	B
I	N	S	U	R	E	■	S	L	E	E	V	E
O	■	E	■	E	■	S	■	■	■	■	■	R
N	A	T	I	V	I	T	Y	■	B	O	N	G
A	■	T	■	I	■	A	■	D	■	F	■	Q
R	I	L	L	E	■	C	R	Y	P	T	I	C
Y	■	E	■	W	■	T	■	E	■	E	■	■
■	■	D	E	S	C	E	N	D	E	N	T	■

Queen v Coumvoulidis
Coram Judge Villeneuve-Smith
16th April 1984
Plea of Guilty to charges of theft and going equipped for theft

L.A. Harris (for prisoner)
D Maguire (prosecuting)

Mr. Harris: The penalty for going equipped to steal is incredibly substantial; it could put one away for the best part of his life. I have serious reservations. The only reason my instructor and I pleaded guilty to that charge is because our client begged us 'Get me out of Pentridge. I can't stand it. I've been in here for three months and I'm going crazy. Get me out.' In my estimation, he was certainly before the Court with good reason, but I have reservations about the extent of that legislation in relation to a jerry-can and a piece of hose.

His Honour: I should have thought your reservations would disappear, Mr. Harris, if you read the accused's answers as to why he was carrying that equipment which happens to be standard equipment for syphoning petrol from one car to another.

Mr. Harris: Well, it comes back to the same thing. It comes back to his macho whoopee-doopee.

His Honour: His macho whoopee-doopee?

Mr. Harris: Yes, Your Honour.

His Honour: That is a doctrine I think unknown to the criminal law.

(TO BE CONTINUTED)

. . .

D.P.P. v Wilde
Coram Judge Nixon
9th July 1987

Rape Trial

Miss E. Curtain (prosecuting)
Salek for the prisoner

Miss Curtain: What was the name of the video, Your Honour, was it 'Dirty Tricks, Part I'?

Judge Nixon: 'Talk Dirty to Me, Part II,' Miss Curtain - that was the name of the video, and I advise you not to watch it.

. . .

D.P.P. v Allen
Coram Judge Hewitt
30th June 1987

Hollis Bee (prosecuting)
Elliott for prisoner

(His Honour was sentencing the accused on carnal knowledge and buggery twenty years after he had remanded him in custody for a pre-sentence psychiatric report, the prisoner having been certified under the Mental Health Act in the meantime)

'This man first came before me in 1967 at the Court of General Session. You're lucky to still find me alive and still sitting as a judge'.

. . .

Bendigo County Court
Coram Judge Fagan
Call over of Civil List December 1986
(Large assembled throng of local solicitors and circuit barristers)

Barrister: I appear for the Plaintiff in this matter, ...

Judge Fagan: I'm sorry I don't know your name, I'm not up with the names of the local Ballarat solicitors.

Barrister: Your Honour I appear as counsel and this is Bendigo, not Ballarat.

Judge Fagan: Bendigo, Ballarat, its all the same to me, I've never been to either of them before.

CROC'S CORNER

"Fetch me *'The Law for the Rich'.* "

Milestones 1987

During the year past the following milestones were attained

Judges

	Date of Admission	Date of Signing Roll
20 Years:		
Judge Boulter	1939	1967
Judge Ostrowski	1959	1967
Judge Schiftan	1967	1967
25 Years:		
Judge Fagan	1962	1962
Judge Fricke	1961	1962
Mr Justice Hunt	1962	1962
Mr Justice Toose	1962	1962
30 Years:		
Sir Daryl Dawson, KBE, CB,	1957	1957
Mr Justice Emery	1950	1957
Sir James Gobbo	1956	1957
Mr Justice Joske	1956	1957
Judge Tolhurst	1956	1957
35 Years:		
Judge Mullaly	1952	1952
Mr Justice Northrop	1951	1952

Judges

	Date of Admission	Date of Signing Roll
40 Years:		
Mr Justice Coldham	1946	1947
Judge Ogden	1940	1947

Counsel

20 Years:		
Fajgenbaum J.I.	1963	1967
Hansen H.R.	1966	1967
Heerey P.C.	1963	1967
Kirkham A.J.	1965	1967
Meldrum R.K.J.	1967	1967
Pannam C.L. Dr.	1964	1967
Stott B.H.	1963	1967
Alston, R.K.R.	1965	1967
Campbell, E.C.S.	1963	1967
Finlay H.A.	1966	1967
Gillies, R.H.	1966	1967
Hore-Lacy, D.F.	1967	1967
Radford, A.E.	1966	1967
Ross, David	1967	1967
Shatin, M.R.	1967	1967
Willee, Paul	1966	1967
25 Years:		
Shannon M.	1959	1962
Winneke J.	1962	1962
Cross, D.R.	1953	1962
Perry, J.R.	1962	1962
Phillips, Julian	1960	1962
30 Years:		
Costigan F.X.	1953	1957
Searby R.H.	1956	1957
Lazarus, J.M.	1940	1957