VICTORIAN BAR NEWS

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AUTUMN 1990

Higher Court System — Government Decisions

VLRC Inquiry on Costs

Cricket, Tennis and Golf Reports

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The Budapest Cuban Restaurant Scene

The Readers' Lament

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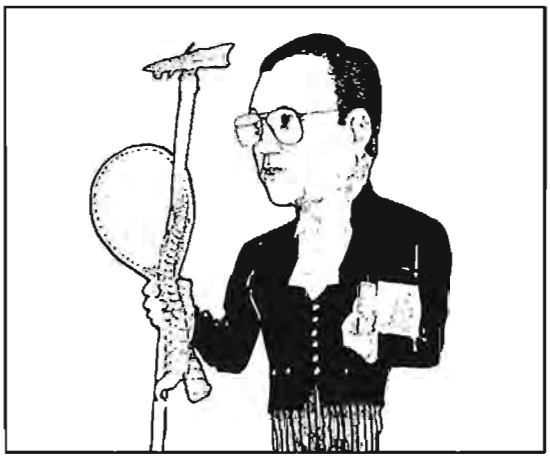
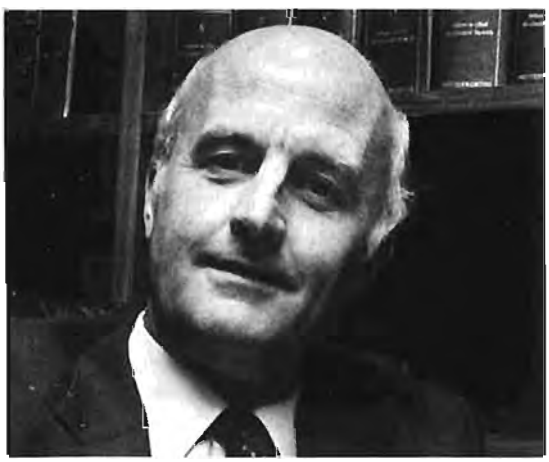
The late Ted Laurie



Personality of the Quarter



Judicial appointments

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Editors:
Peter Heerey Q.C. and Paul Elliott
Editorial Committee:
John Coldrey Q.C., Gerard Nash Q.C., and Graeme Thompson
Editorial Consultant:
David Wilken
Staff:
Julian Burnside QC and Gillianne Tedder (photography), Tony Pagone and Peter Lithgow (book reviews), Ron Clark (artwork), Richard Brear, Graham Devries.

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THE EDITORS' BACKSHEET

HIGHER COURT SYSTEM

IN DECEMBER 1989 THE VICTORIAN government published a Government Response announcing decisions made after public debate on the Discussion Paper released in May. The public response to the Discussion Paper included, in the words of the Attorney-General, "detailed and careful responses . . . (from) the Judiciary, the Law Institute and the Bar Council". Details of the Bar's response were published in Bar News No. 70, Spring 1989.

Some major features of the Government's decisions are:

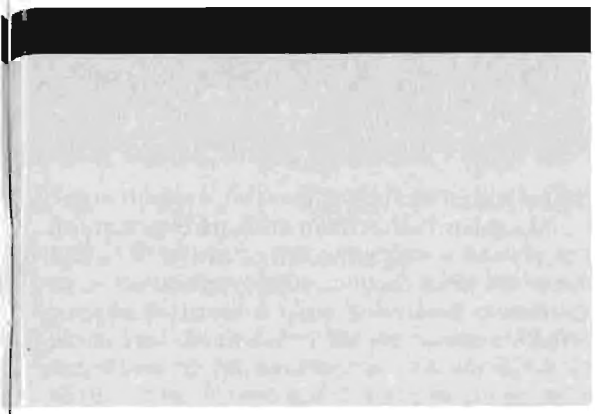
- ☐ two additional Supreme Court appointments
- ☐ further County Court appointments
- ☐ legislation to establish four divisions of the Supreme Court, appellate, general civil, commercial and criminal
- ☐ a new position of Deputy Judge to carry out the more important judicial work of Masters
- ☐ "User pays" in the commercial division — $1,000 per day
- ☐ more money for the Supreme Court library
- ☐ acting Judges to be appointed where leave or illness creates temporary gaps in available Judge power.

The question of a permanent Court of Appeal, as advocated in the Bar Council's submission, has been temporarily pre-empted by the introduction by the Supreme Court itself of an appellate division last year. That system is to be "monitored and reviewed after two to three years" (Response p 6).

The Government has made a commitment to the "best lawyer for the job" philosophy and rejected the notion of judicial appointment "as part of some kind of 'affirmative action' programme or to represent a particular segment of the community" (Response p 11).

THE LATE TED LAURIE QC

Sadly, some of the most memorable writing that it has been our pleasure to publish in recent years have been obituaries of members of the Bench and Bar.



The eloquent tribute by Xavier Connor QC and David Aronson to the late Ted Laurie, appearing in the present issue, is a fine example.

There is perhaps another dimension to the career of Ted Laurie worth mentioning. The Victorian Bar is still sometimes attacked as a bastion of political and social conservatism. Yet long before Equal Opportunity legislation was thought of, Ted Laurie's outstanding professional and personal qualities made him universally liked and respected amongst his colleagues, the vast majority of whom would have been totally opposed to his political beliefs.

THE ENGLISH BAR STRIKES BACK

The Lord Chancellor's Green Paper provoked a violent reaction from the English Bar (and Bench) — see Bar News numbers 68 Autumn 1989 and 69 Winter 1989. There was particular alarm at the proposal to remove the English Bar's monopoly on rights of audience in the superior courts, something that members of the Victorian Bar find hard to see in the same light, that monopoly having been removed here in 1891.

But it would be wrong to think that the English Bar is resisting all change. In some respects it is taking bold steps to meet the challenges of a working environment which has changed for all sorts of reasons, mostly unconnected with Governmental intervention or the threat of it.

For example, the English Bar has been concerned that the top law graduates were preferring careers with solicitors' firms and in commerce and industry. The Financial Times, 20th October 1989, reported that in 1986 of the students with "good degrees" (firsts or upper seconds) 825 chose to become solicitors and 144 barristers. Since 320 graduates went to the Bar that year, less than 50 per cent had good degrees. The Bar's response has been to introduce a salary system for readers. The set of chambers into which a reader is admitted pays the reader a salary for an initial period.

In the spirit of free marketeering deregulation, the English Bar has now relaxed its rules so that members can accept instructions from clients outside the UK without the intervention of any solicitor (either UK or foreign). At a recent convention of the American Bar Association the English Bar had its own stand promoting the Bar's services.

As Herbert Smith, one of the largest commercial litigation firms in the UK, noted in its response to the Green Paper, the traditional role of the Bar as adviser to and collaborator with solicitors was changing to more of a competitive one (Financial Times, 20th October 1989.)

Indeed that competition is not confined to solicitors. Recently a stamp duty expert has created a furore by leaving the English Bar to become a partner in Deloitte Haskins and Sells. In a recent English legal magazine he was quoted as claiming that solicitors and accountants will continue to build up files of Counsel's opinions from their database "and within the next five years they will have exploited the Bar to the limit."

Looking at the local scene, one might hazard a guess that the dramatic change in Australia in recent years to nationwide mega-firms will mean increasingly more specialisation, more advice work done in-house and less opinion work going to the Bar — particularly when the clients are American, Japanese or European and therefore likely to be less familiar with the concept of a separate Bar.

All this suggests that the future of the Bar lies with doing what it does best — advocacy and litigation-related advice, coupled with the development of specialist expertise. This is happening in England with the formation of bodies like the Commercial Bar Association.

Almost 100 years ago solicitors in Victoria won a bitter political and legislative battle to gain a right of audience in the higher Courts. For all practical purposes they have not exercised that right since.

This is a surprising way for history to work. It is as though Lech Walesa were to say "It's nice to be able to hold free elections now if we want to, but we don't think we'll bother." In the same way, the recent emergence of the mega-firm has not resulted in any noticeable increase in solicitor advocacy. The explanation may be that a barrister's job is a stressful and unpredictable one. When things go wrong, they can do so in a public and personally embarrassing way. If you are a solicitor and don't like those sorts of hazards, it makes sense to brief someone who is prepared to put up with them, even if he or she belongs to a profession which may at times seem to have irritating pretensions.

ADVERTISING IN BAR NEWS

Readers will have noticed in recent issues the introduction of advertisements for quality goods and services in the pages of Bar News. We hope our readers will support the advertisers and, where appropriate, perhaps mention the advertisement as a contributing cause to the placing of custom.

Obviously, the more advertising revenue, the less dependent Bar News will be on Bar funds and the sooner such funds can be made available for vital projects such as the Editors' Overseas Fact Finding Study Tour and International Lunch Survey. (As a sample of what is in store, a review of Budapest's leading Cuban restaurant appears elsewhere in this issue!)

CRICKET V. MALLESONS

Bar sport entered a new phase on Sunday 18th February 1990 when the Bar First and Second XIs played corresponding teams from Mallesons Stephen Jaques at Como Oval.

Descriptions of the games appear elsewhere in this issue, but perhaps it is as well to ponder some of the ethical/moral implications. The Bar has of course engaged in sporting contests against the Law Institute for many years, but playing a team from a single firm introduces new elements of tension and sporting/professional *amour propre*. Speaking purely hypothetically of course, imagine the dilemma of an ambitious young member of the Commercial Bar being served up slow medium tripe by the senior litigation partner of Mallesons. Three sixes in a row over square leg may look good in the scorebook, but may result in a directly related deficit in the feebook.

Clearly some new understandings and constraints have to be worked out, for example a rule that short pitched deliveries are only to be bowled at conveyancers.

UNFAIR ADVANTAGE

The Hobart Mercury of 22nd November 1989 reported the appointment of receivers to Qintex Australia Limited. It was said the appointment was made " . . . following an application by QAL representatives before Justice Buchanan in the Victorian Supreme Court earlier yesterday."

The secret of Peter Buchanan's dazzling success in insolvency matters is revealed. How can you miss if you are Judge as well as Counsel?

JUDICIAL REVIEW

The San Jose (California) Mercury News of 17th January 1990 reported a survey of the Judges of Santa Clara County by the County Bar Association. The members of the Bar were asked to score the judiciary on Work Ethic, Impartiality, Knowledge of Law, Settlement Skills, Integrity, Administration, Communication Skills and Judicial Temperament. One Judge scored particularly poorly. More than 50 percent said his temperament needed improvement or was unsatisfactory. "I came across as discourteous", he said, "When you are gruff or abrupt with people, that's how it's interpreted".

Bar News is examining the possibility of a similar Victorian poll. Gruff judges look out!

The Editors

CHAIRMAN'S MESSAGE

THE COST OF JUSTICE

Much has been written and said over the past few years concerning the cost of justice. It is said more and more people are being denied access to the system because of cost. It is true that some litigation can be very costly. But this is not a recent phenomenon. Our system provides the best means of resolving disputes. It has been in operation for hundreds of years. At every stage of the system's history the bulk of the population has not been able to use the judicial process because of lack of means. As was cynically said in 1818 — "In England, justice is open to all — like the London Tavern". (In 1873 repeated but with "the Ritz Hotel" as the expensive hotel.)

Today there is a greater access than in the past due to the unions, insurance companies and Legal Aid. This is not to deny that a great bulk of the population still cannot afford to go to court. Rather than indulging in lawyer bashing, those responsible for looking at the problem should concentrate on increasing Legal Aid funds and streamlining and improving the system, but not at the expense of the attainment and appearance of justice.

At the moment there are two inquiries into the cost of justice: one by the Senate Inquiry and the other by the Victorian Law Reform Commission.

The Bar Council suggested to the Attorney-General and the Chairman of the Victorian Law Reform Commission that the latter's inquiry should be deferred pending the findings of the Senate Inquiry, for the obvious reason, to avoid duplication of work. However the VLRC has continued with the reference. It has complied a draft Discussion Paper. A copy of the Paper was given to the two Bar representatives on the Consultative Committee of the VLRC on a strictly confidential basis, as a result of which the Bar Council has not been apprised of its contents. We have had no input, but we expect that as it is a "discussion paper", we will be given an opportunity later. One would expect the VLRC has an open mind on the issues raised.

Despite the cloak of confidentiality, the VLRC's Chairman, Mr. David Kelly, wrote an article in "The Age" of 2.3.90, in which he revealed some of the views of the VLRC.

The views expressed demonstrate an ignorance on the part of those responsible for the draft paper of the workings of the Bar; they also show a lack of practical experience of the law. Mr. Kelly is to be condemned for his attempt to put the Bar in a poor light. His actions are deplorable bearing in mind his requirement of the Bar's representatives

not to disclose the draft paper. His article hardly demonstrates an open mind to the issues.

His first point is the growing concern over the cost involved in going to Court. The Bar shares his concern. Having made that point, he then refers to the cost in various Courts. He then states — "A few barristers apparently charge as much as $5,000 a day". This totally wrong and mischievous statement has no apparent relevance to the context in which it appears and is aimed at implanting an idea in the reader's mind, antagonistic to the interests of the Bar. No barrister charges $5,000 a day. If any Queens Counsel at this Bar does so, the market forces would determine the quantity of his work.

Some of the more surprising suggestions in the article are the so-called anti-competitive practices of the Bar. He says that self regulation in the form of ethical rules impedes competition. He states the rules with respect to restrictions on advertising fees, requirement that a brief must come from a solicitor, prohibition of forming partnerships with each other or those in related fields and the requirement that barristers must occupy chambers under the control of Barristers' Chambers Limited, are some of the anti-competitive features of a barrister's practice. He concludes by saying — "These restrictions on competition result in an artificial increase in the cost of legal services."

One might be forgiven for thinking that the VLRC has already made up its mind on these important matters. So much for a draft discussion paper!

The Victorian Bar is the most competitive organisation of any profession in this State. 1150 barristers compete against each other for work and in Court. Our work is done in public and under the watchful eye of the Bench, opposition lawyers, litigants and interested observers. Our self regulation ensures the highest standards of conduct and ethics; something of considerable importance if the system in this State is to operate efficiently and effectively. Judicial officers must be able to rely upon word of counsel. It is fundamental that Counsel instinctively appreciates his overriding duty to the Court. These rules do ensure the expeditious completion of work.

Any solicitor, by a mere telephone call to a clerk, can obtain access to over 100 barristers and information as to their fees. The litigant has the choice of engaging through a solicitor any barrister at a negotiated fee. Advertising fees and expertise will not increase competition at all, and may have the effect of misleading rather than informing.

The bulk of barristers' work, and it is ever increasing, is court appearance. It is essential that a solicitor brief and participate in this task. Indeed the system would break down if the client was to brief direct and prepare the case himself. This would involve the barrister having to prepare the case and present it. This would not in the long run decrease the cost at all. I cannot see how forming a partnership with a fellow barrister or indeed with a person from a related profession, would in any way decrease the cost of court appearance. The very fact that we are not in partnership increases competition.

Barristers occupy chambers, to suit their own needs. We have always pursued a policy of having chambers available at different rates of rent from the inexpensive to expensive. If we did not control the availability of chambers, we could end up with the position which applies in England and New South Wales, of own-your-own chambers. The cost of purchasing these chambers is prohibitive. This in itself may have some effect on the cost of litigation. It also means that those who are reasonably well off would be in a far better position to start their careers, than somebody starting out with nothing. We pride ourselves at our Bar that it is open to all. There is no cheaper profession to commence than starting a career at the Victorian Bar. The first 9 months involves next to no outlay at all. Thereafter the only essential expenses are renting a room at rentals varying from $400 upwards, and paying for the telephone. Whether a barrister purchases an expensive library and engages a secretary, are matters very much for him or her to decide.

Another observation made by Mr. Kelly, is that more people should be trained as lawyers. The numbers are kept down because of the requirements of the Law Schools. We agree. But a flooding of the profession will not necessarily increase competition and it may have the effect of lowering standards; the aim is to improve the standards, as a result, an increase in efficiency and productivity and a decrease in the cost of litigation.

One of his final comments is on the legal system itself. He says — "The common law is not a planned coherent body of rules. It is badly structured, often internally inconsistent and appallingly difficult to find. Its 'wisdom' is scattered over thousands of decisions stretching back in some cases for centuries." These observations demonstrate the ignorance of those who are responsible for the article. One of the great attributes of the common law system is that it is forever developing to meet new situations and the times. It is a living body of law. It does achieve justice in the right hands. Indeed if one looks back over the last 30 years, many of the injustices come about because of the wording of legislation. I refer to *Cartledge v. Jopling* [1963]

A.C. 758 as a classic example. Common law does breathe. It does meet new situations. It is rare that it is ever found wanting. And indeed to suggest that it is appallingly difficult to find, is arrant nonsense. The comment demonstrates the lack of practical experience in the law of the writer.

The VLRC should concentrate on more pragmatic matters. First, litigation must be finalised within a reasonable period of time. Litigation that has been around too long means many persons have to pick over it each time something has to be done. This increases the cost. The mere passage of time increases the cost because of increases in scales. Litigation must get to court quickly. This means more Judges. It means Judges of the highest calibre, experience and industry. Good Judges make the system work efficiently and expeditiously. If Judges make errors, there will be appeals. Good Judges assisted by good practitioners will ensure the system works.

More thought has to be given to legislation. Badly drafted legislation increases court time and results in many appeals.

Thought must be given to improving the efficiency of the whole system. More time in preparation by both Bench and Bar and less time in court, should be the aim of the exercise. There has to be more Judges. Judges work under considerable pressure. They cannot be expected to spend their lives working every night of the week and weekends on their cases. They must have back up and efficient services.

A balance has to be struck. The price for efficiency, speed and inexpensive litigation must not be a denial of justice. The most important person in any court is the losing litigant. He must go away with the opinion that he had a fair hearing. To deny him that, means the system fails in its objective, which is to do justice according to law.

The Victorian Bar is concerned about the cost of justice. It will do all it can to co-operate in any inquiry and it expects those responsible for law reform should have an open mind to the issues raised when considering the submissions.

RETIREMENT

At the end of this month I stand down as Chairman of the Victorian Bar Council. I have served in that office for the last 18 months. I am very fortunate to have a dedicated loyal Bar Council who have ably supported me throughout my period of office. In particular, I would like to record my gratitude to my two vice-chairmen, the members of the Executive, and our executive officers, Ed Fieldhouse and Anna Whitney. I am sure that the Bar will prosper under our new Chairman and I wish him and his team much success and enjoyment for the balance of the Council's term.

E.W. Gillard
Chairman

CRIMINAL BAR ASSOCIATION REPORT

CONFERENCES

THERE ARE TWO CONFERENCES DURING this year that will be of interest to members of the Criminal Bar Association. The one nearest to home and therefore perhaps more "cost effective" is to be held at the Wrest Point Casino between Sunday 23rd September and Friday 28th September, 1990. This conference is run by the Australian Criminal Lawyers Association in consultation inter alia with the Criminal Bar Association of Victoria. The major topics for the conference include Police Powers and the forthcoming Federal Criminal Code.

Further details can be obtained from Colin Lovitt QC or Lex Lasry.

The other conference is restricted to members of the Society for the Reform of the Criminal Law. This conference is to be held in Edinburgh between 5th and 9th August 1990 on the topic of "Equality in the Administration of Criminal Justice: Gender, Race and Class". Enquiries about the conference and membership of the Society may also be directed to Lex Lasry — 608 7434.

JUDGE BARNETT

The Association is delighted with the appointment of Judge Barnett to the County Court. At the time of his appointment, his Honour was a member of the Association's committee and had been for a number of years having also served a term as Secretary. His contribution to the interests of the Association in the area of fees and more recently his membership of the Criminal Delay Reduction Programme has been substantial. In accordance with the Association's tradition he has been invited to accept honorary membership of the Association and has been sentenced to a guest spot at the next Association dinner.

RECORDERS AND ACTING JUDGES

At the annual general meeting of the Association during 1989, Aaron Shwartz proposed a motion in favour of the appointment of temporary judges and recorders. That motion was to be debated at a further extraordinary meeting of the Association. It has been suggested to the Committee by the original mover of the motion

that, given the changes and expansion which is occurring in the County Court, the proposed meeting should be deferred. The Committee has accepted the suggestion and members will be advised when and if the issue arises again.

Aaron Shwartz proposed a motion in favour of the appointment of temporary judges and recorders. That motion was to be debated at a further extraordinary meeting of the Association.

ISSUES

In recent months, the Association has made submissions to or corresponded with the appropriate people on the following matters:

(a) Following the matter being drawn to our attention, the delayed and at times non-existent medical services which are or should be available to female prisoners at Fairlie.

(b) The proposal to reduce challenges in criminal trials from eight to three. The committee's view was that if that is to happen then it may be appropriate to provide the accused with more information about jurors so that, if necessary, a juror could be challenged for cause.

(c) The discretion of prosecutors briefed from the Bar to refuse to seek instructions on offers of pleas. The committee takes the view that instructions should always be sought before any such approach is rejected.

(d) Concerns that "pro forma" documents under the *Magistrates Court Act 1989* are resulting in the more automatic imposition of bail conditions which are onerous and unnecessary in many cases. Those concerns have been expressed through the Bar Council.

(e) On 15th November 1989, the Association issued a press release on the *Control of Weapons Bills 1989* criticising the fact that the bill effectively represented a dramatic increase in a "stop and frisk" style of police power. The debate on the Bill has been deferred to the Autumn session of State Parliament. Further submissions are currently being prepared.

(f) In addition, the Association has been examining papers on such areas as Spent Convictions, the Report of the Sentencing Task Force, proposed amendments to the Federal Customs Act and the most recent report of the Coldrey Committee on police powers. Other issues, not necessarily the subject of papers currently under consideration, include the ongoing matters of fees, listings, video link hearings and mental health and certification of prisoners.

SEMINARS

A successful seminar on the Appeals Cost Fund was held on 24th October 1989. Further education seminars are to be held in the near future and those interested in taking part or in suggesting topics for discussion should contact Robert Kent QC, Vice Chairman.

LISTINGS

Members may have seen the article by Liz Porter in the Sunday Age towards the end of 1989 on delays in the criminal jurisdiction. This remains a problem area both for the profession and more importantly for those awaiting trial. Following the appointment of Judge Barnett, Aaron Shwartz has become the Bar's representative on the Criminal Delay Reduction Programme. The Association welcomes suggestions and contributions to the solution of the delay problem. As at 31st October 1989, there were 917 cases outstanding in the County Court criminal list. In the earlier month of September 1989, it was 905. It would seem that the resources required to maintain the current disposition rate as well as reduce the backlog are far in excess of what is currently available.

CRIMINAL BAR DINNER — ANNUAL GENERAL MEETING

Preliminary plans have been made for a "members only" dinner to be held towards the end of June this year. A venue and exact date has not yet been decided but that information will be swiftly disseminated when the arrangements have been made.

The annual general meeting of the Association will be held on Wednesday 1st August 1990. Further details will be circulated closer to the date.

Lex Lasry

OBITUARY

E.A.H. (TED) LAURIE 1912-1989

TED LAURIE DIED ON 29TH OCTOBER 1989. He was a warm and faithful friend to many. His conspicuous ability coupled with his calm but forthright expression of views honestly held, though not always shared, commended him to colleagues throughout Australia.

Something should be said of his family. One grandfather was an Anglican Vicar, the other Professor Henry Laurie, first occupant of the Chair of Philosophy at Melbourne (originally called "Mental and Moral Science", then "Moral Philosophy", then simply "Philosophy"). His father, William Spalding Laurie, was a medical practitioner in general practice. His brass plate read "W.S. Laurie M.A., M.D." (a rare combination, then and now). Monica, his mother, was one of the first women to graduate at Melbourne University. From them he must have inherited moral and mental strength.

While School Captain at Scotch College, Ted Laurie wrote a report in the school magazine of the newly introduced camp at Somers designed to give deprived boys their first beach holiday. This extract illustrates his concern:

"The 'strained' atmosphere which was natural amongst the 80 boys who had no previous knowledge of each other was soon overcome by the gaiety and humour of the scouts and by the second day everything was running as smoothly as possible. The organised sport had great influence in breaking down class barriers."

He was a classics scholar at Scotch and University. He won first class honours in matriculation Latin, Greek, Ancient History, British History and Economics. He and Cliff Menhennitt each won Senior Government Scholarships in 1929. He continued with classics and law at Melbourne University, served articles with Rigby and Fielding, and was admitted to practice in May 1936. However it was depression time, graduates many, jobs few, War and Fascism threatening. He took trade union research jobs, commercial jobs, continued his sporting careers and espoused communism.

As a communist, he stood against Menzies in Kooyong in 1943 and 1946. In 1943, 6,000 voted communist in Kooyong. By then he was a lieutenant, promoted in the field, following the remarkable repulse of Japanese forces at Milne Bay, en route to Port Moresby. It was a turning point in the War — according to the official history — Japan's first defeat on land in the War. At the hands of Australians. Ted Laurie was in an anti-aircraft battery, which used its guns as ground fire to hold and eventually to help push the Japanese back. He and his men were on a ship in Milne Bay which was sunk by the Japanese Navy. They were forced to swim to shore but managed to save two of their guns.

He was a great sportsman, in cricket, football and rugby. In cricket, in which he and his three brothers all excelled, he was opening bat and wicket keeper for first grade clubs in Victoria and Queensland until the war. He was selected for the Queensland State team, but as 12th man, because Don Tallon, like Ted a wicket keeper and one of the greatest of all time, was in the Queensland team. Before that he had been Captain of Cricket at Scotch. In the year '28 to '30, he scored 923 runs in 20 innings, his batting average being 51.27. He was a cricket Blue at Melbourne University. To the end of his days he had a transistor at his side tuned in to the cricket.

Pictured at a Hyland List Dinner (l to r): Sir Ninian Stephen, Jack Hyland, the late Sir Murray McInerney, the late Ted Laurie.

He was in the first XVIII at Scotch in a premiership year. He played rugby for Melbourne University, was fullback in the team which won the Premiership in 1934 and won a second Blue.

He also played social tennis — always he played to win. His sportsmanship — playing to win, according to the rules — was first nature to him. It was characteristic of his court work, whether he had won or lost, he had done his best.

After the war, Ted Laurie returned to Melbourne University, graduated LL.M. and signed the Bar Roll on 6th June 1946. In June 1949, still a novice, he commenced his appearance for the Communist Party in the Royal Commission upon the Party before Sir Charles Lowe. The Commissioner was assisted by a formidable trio: Sholl K.C., S. Lewis K.C. and M. McInerney.

The late Ted Laurie

Originally he was the most junior of a team of four, but after the first couple of months, he was appearing alone and remained to represent the Party until the close of evidence nine months later. The Commission sat continuously every court day until 6th March 1950. Transcript ran for 9,791 pages. Sitting days were 154, witnesses 159, exhibits 1,083. After Laurie's opening address Sholl flicked him a note reading: "Never heard a case better presented", a tribute to Laurie's ability and Sholl's generosity. The Commissioner recorded "my indebtedness to counsel for their assistance in marshalling, presentation and sifting of the evidence" — a compliment clearly intended for all counsel including Laurie.

His next important brief was also for the Party *(Australian Communist Party and Ors v Commonwealth* (1951) 83 CLR1) when the High Court held the Act to dissolve the Party, and authorise "declarations" by the executive with consequent civil disabilities, wholly ultra vires. The principal protagonists were Garfield Barwick QC (leading four Silks and six Juniors) for the Commonwealth, and H.V. Evatt QC, who were probably then the country's leading constitutional advocates. The court itself treated the issues raised as supremely important. Dixon J at p. 187 said:

"History ... shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not

seldom by those holding executive power."

After these two celebrated cases Laurie developed as a junior a busy practice in industrial and common law matters. He appeared often in the Ballarat and Geelong circuits. He was a splendid advocate at nisi prius and equally skilful on appeal where his outstanding ability to analyse issues of fact and law stood him in good stead. For some years before he was appointed a Senior Counsel he was regularly leading Juniors against established Silks.

The controversy over his delayed appointment as Queen's Counsel is described by Robert Coleman in "Above Renown," the biography of the late Chief Justice Sir Henry Winneke, on pages 294-5,

"Soon after Sir Henry Winneke became Chief Justice, Laurie and Mrs Rosanove reapplied. Winneke thought both applications should be granted. Rather than be seen to be summarily overriding Herring's decision so far as Laurie was concerned, however, he wrote to the Lord Chancellor's Department enquiring whether there had been any British precedent. A reply came back saying there had been similar cases in Britain and the Department took the view that professional eminence was the criterion for the granting of Silk and the applicant's political opinions were irrelevant. Sir Henry then informed Mr Laurie his application would be granted."

To no-one's surprise, Laurie blossomed as a Silk. After Hubert Frederico's appointment to the Bench he became the doyen of the Ballarat circuit. He and his wife Bonnie were frequenters of the Ballarat Cup and the other occasions of good cheer for which that circuit was justly famed. His services as an appellate counsel were frequently sought in the Full Court and the High Court. He continued also to be a leading advocate in industrial matters. He also appeared in Aboriginal land claims in Darwin and Alice Springs.

Countless friends and colleagues and their families enjoyed the hospitality of the Lauries at their beloved beach retreat at Anglesea where Ted and Bonnie were among the body surfers farthest from the shore, or walking long distances along the beach, or golfing, or listening to cricket and finishing the day with a congenial barbecue. The unexpected death of Bonnie in 1977 saddened him permanently. They had three children, Robyn, Bayne and Bill. In October 1982 he retired. Illness had impaired his vision. Peripheral vascular disease led to a leg amputation and six months in hospital.

Septuagenarian amputees usually never walk again and spend their lives in wheelchairs. Not Laurie. He learned at age 76 to walk on an artificial limb. To borrow a Victorian Football League expression he will be remembered as one of the "best and fairest" of members of the Victorian Bar.

Xavier Connor
D. Aronson

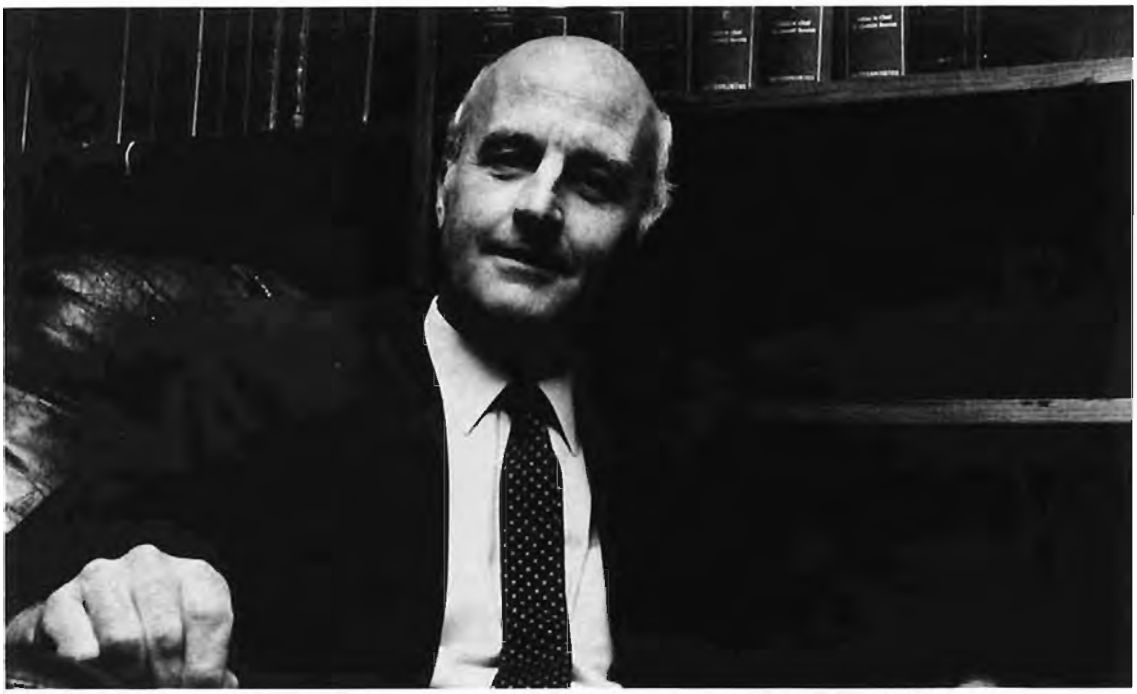
WELCOME

JUDGE RUSSELL LEWIS

RUSSELL PATRICK LLEWELYN LEWIS WAS educated at Christian Brothers College, Parade where he excelled at football and athletics. He is married to Marjorie, a sister of Peter Liddell QC, and they have four children.

His Honour has been a constant racegoer for many years. Such is his concentration on matters in hand at the racecourse, that it does not pay to converse with him as he suffers distraction with little patience. He is to be heard muttering odds and names of horses to himself. He has been the part-owner of racehorses with varying success over the years, one of which won at 66/1 without a wager from his Honour.

For most of his professional life his Honour concentrated his practice in common law. He was rightly acclaimed as a highly competent, but temperamental and volatile cross-examiner. However there was no detail of his brief which was not known by him prior to entering the Court. These qualities were tested fully when cross-examining medical and lay witnesses on the taking of 'evidence on commission' before a Turkish Judge in Instanbul in 1984. The presiding Judge, applying the Napoleonic Code, first questioned each respective witness and then allowed the "observers from Australia" (as he termed his Honour and Keenan, who appeared respectively for Defendant and Plaintiff) to examine and cross-examine each witness. When his Honour started to get the better of a witness, the presiding



Judge Russell Lewis.

Judge would terminate the questioning, stand up and administer the Koran, much to the increasing annoyance of his Honour. At the end of a long and exhausting day of this procedure, his Honour was so distressed by the experience that the reasonable suggestions by Keenan of a sum to settle, led to a change of seating arrangements at dinner.

The day's events confirmed his Honour's fears about the Turkish Judicial system, as the Judge appointed to hear the proceedings had suggested unsuccessfully through channels that a gift of a colour television set to him by the Australian lawyers would be an appropriate gesture!

His Honour will bring to the Bench, much experience of human affairs, wit, basic good humour, well-honed forensic skills and above all a driving capacity for hard work. His elevation to the Bench will be a loss to a dwindling band of common lawyers sprung from an era where the County Court served as a "training" Court for young barristers, a function now performed by the Readers' Course. His Honour was "well-taught", and will also be a helpful "teacher" to young Counsel. The Bar welcomes him as a worthy addition to the Bench.

JUDGE STOTT

BARTON HAROLD STOTT DOESN'T TALK much — least of all about himself. An examination of the paintings on walls of his former Chambers in Owen Dixon Chambers disclosed his interest in sailing. There was also an extraordinarily sunburnt nude by Charles Blackburn, and a monstrous depiction of a sheep by Leo Cossatz, which may be taken to disclose an interest in more arcane matters — maybe the Arts. For the rest we would have had to await the Chairman's encomium at his welcome to the County Court Bench on 14th December 1989.

There we heard of a long standing interest in nautical competition as an energetic student in a rowing shell bearing the colours successively of Geelong College, Ormond College and Melbourne University. In the mid-fifties this interest took him to the Navy and subsequently to serious sailing with the Royal Geelong Yacht Squadron, the Royal Yacht Club of Victoria and, most recently, in the less protected waters which are home to the Flinders Yacht Club.

We heard of his wide experience in the law as a Clerk of Petty Sessions at Richmond, as a General Law Title searcher and with Hedderwick Fookes and Alston successively as articled clerk, employee solicitor and ultimately partner.

We may have known that he read with Alec Southwell, for that judge always had a warm regard for this pupil. We certainly knew that he had five readers: Alan Scott (formerly SM), John Bannister (deceased), Peter Couzens, Jon Klestadt and Brian Walters — because they always spoke proudly of their Master.

Shortly after he took silk in 1983 the Stott family moved from Camberwell to a property near Shoreham. He used to drive up to Melbourne each day arriving at an extraordinarily early hour as he had previously when as a junior he would put in

Judge Stott.

a day's paper work before Court. This meant that he could on most days, and probably still does, avoid the grind of late nights that wears down a less disciplined person.

He is said to be unflappable, displaying a serene calm in the most desperate case. This has been very encouraging for many a client, a solace for the instructing solicitor and somewhat disconcerting for opposing Counsel. Certainly he gave that appearance, although his sometime habit of smoking a pack or more a day suggested some latent tension. But some years ago he quit; shortly before he undertook an all-expenses-paid trip to Newport Rhode Island to watch a series of sorry processions of twelve metre yachts in which the Australian entrant ran second. He never satisfactorily explained how a reformed smoker could in conscience accept this prize for winning a competition sponsored by a cigarette manufacturer.

His extensive common law practice and skill before a jury whether in Melbourne or on circuit means that he brings to the principal trial court in Victoria an abundance of experience to cope with any forensic eventuality. His experience as counsel for the plaintiff over many years ensures that he is aware of the difficulties of ordinary people before the court.

His Honour's elegant reply to the good wishes expressed by the Chairman and the President of the Law Institute and felt by the large number who were present at his welcome gave us good reason to be confident that his personal qualities and experience will add lustre to the County Court Bench.

JUDGE BARNETT

THROUGHOUT THE VACATION THE Criminal Bar grapevine ran hot with the rumour that 'Barney got the nod'. Late January saw the announcement that his Honour Judge Barnett had been appointed to the County Court; an announcement warmly received by the Victorian Bar. The Criminal Bar was proud that one of its most popular and astute 'full timers' had been selected to join the State's most active Criminal Bench. The popularity of his appointment may be measured by the attendance at his welcome on 6th February 1990.

His Honour was born at Ballarat on 19th May 1943. He attended Eureka State School and Ballarat College where he completed his secondary education by Matriculating in 1962.

From his early days his Honour showed an interest in politics, probably because of the influence of his father Harry, who was a very thoughtful, politically aware and well read man with whom his Honour had a very close association until his death in 1973. His Honour's interest in politics continued throughout his University days and beyond. One contemporary from Queen's College said of him "I passed Modern Government by skipping the lectures and just talking with him".

As a resident at Queen's College University of Melbourne, he was active in the 'spirit' of Collegiate life and participated in many of its activities. A rower at Ballarat College, he pursued that interest

Judge Barnett

by representing Queen's. He was elected by the students to the "General Committee" of the College and was active in student Extra-Curricular activities of the non-competitive kind.

His Honour was involved with the College football team and its administration. His first effort as a goal umpire, a Queen's v Trinity match, saw his removal at half-time due to his obvious barracking and gratuitous coaching advice aggravated by his enthusiastic clapping of a Queen's kick for goal. Some Trinity supporters claimed that as a result of his excitement he had failed to ascertain whether the kick had resulted in the ball going through before signalling it as a goal. The Queen's College escorting party ensured no harm came to him, thus ensuring his Honour would live to umpire another day. His interest in football continues and tests his loyalty; a keen supporter of Richmond, he wishfully dreams of an early return to its heady and successful days.

His Honour graduated in 1962 and was articled to Mr. Harold Carter of McIntrye & Carter. His life as a solicitor involved two other firms; Rodda Ballard & Vroland and Maurice Blackburn & Co., where he came under the influence of Messrs. Kevin Travers and John Button (now Senator), before the latter's entry into Federal politics.

He married Nanette Berry in November 1970, having met her whilst still at school; she was then a student at Clarendon PLC, sister school to Ballarat College. They have two daughters; Sarah, who is a student at Monash University, and Mimi, who is in her final year at Merton Hall. His Honour's involvement with his family has been the most important facet of his life. A regular at Torquay, he soon discovered that surf skis and spectacles do not mix and opted for jogging behind his wife and two young daughters on their bikes. It was not long before bike No. 4 was purchased and the Barnetts were seen around the streets of Torquay on their daily rides. Whether at Torquay, shopping in Richmond or on his frequent holidays in South-East Asia, his family is never far away.

A keen interest in Persian rugs and paintings has turned his Honour into an avid collector; however his main commitment in life, after his family, has been to the Law. A fifth floor colleague was heard to say "he reads law like we read newspapers".

He came to the Bar in 1971 and read with Brian Bourke who gave him a good grounding for achieving his ambition of specialising in Criminal Law. In his first year at the Bar he was briefed in a jury trial and made his first appearance before the court of Criminal Appeal. His early success in the Appellate Jurisdiction must have whetted his appetite for it, with the result that he developed a large trial and Appellate practice. His services were in great demand on both sides of the Bar table and he was involved in a number of leading cases in the Court of Criminal Appeal and the High Court. His humour, careful and unflappable personality, together with his open mindedness and capacity for hard work enabled him to serve his clients unselfishly and with distinction.

His Honour was very generous with the time he spent promoting the interests of the Bar. As a

Judge Anthony Felstead Smith.

committee member of the Criminal Bar Association since 1982 he served on a number of its sub-committees, including a period as its Honorary Secretary. He represented the Bar on the Attorney General's Steering Committee for investigating delays in Criminal Trials; and since its foundation in 1986, has been a member of the Council of the Victorian Institute of Forensic Pathology. His Honour had four readers; Dean, Kildea, Sturgess and Thompson. His advice, however, was not limited to them and was regularly sought by fellow barristers regardless of seniority; somehow he always found time to help.

The Victorian Bar congratulates his Honour and wishes him a long, happy and satisfying judicial career.

JUDGE ANTHONY FELSTEAD SMITH

AT HIS WELCOME IN THE COUNTY COURT on Thursday, 1st February this year, His Honour Judge Tony Smith took the first step to a successful judicial career by proffering this view of the Victorian Bar:

"In my view the Victorian Bar is at least the equal of any Bar I have had acquaintance with anywhere in the common law world and possibly beyond. It has indeed been a wonderful experience to work as instructing solicitor and to see in action so many of the great advocates which the Victorian Bar has produced over the years."

With such keen appreciation of the proper position to be enjoyed by those of us who will have the pleasure of appearing before his Honour it is equally appropriate that we have a full appreciation of the background and talents of this solicitor appointed as the 128th Judge of the County Court of Victoria.

His Honour was born in 1936 in Newcastle, the son of an industrial engineer, who emigrated to Victoria when Tony was 15 years of age. At Newcastle High School His Honour had a good reputation as a sprinter and later represented Melbourne High School, where he completed his secondary education. At school he was a keen athlete and tennis player, the latter being a sport for which he has retained a passionate love.

His Honour completed his law course at Melbourne University in four years which was exceptional, considering he undertook the first two years on a part-time basis while working as a law clerk at Blake & Riggall.

In 1959 His Honour was articled at Blake & Riggall to Mr. Alan Lobban. He was admitted to practice in 1960, remaining in the employ of Blake & Riggall until 1964. He then joined Gillot Moir & Ahern, and was made a partner in 1966. The firm was the predecessor of Gillots which more recently merged with Minter Simpson of Sydney and Ellison Hewison & Whitehead of Melbourne to form the mega-firm Minter Ellison. At the date of his

Mr. Judicial Registrar Nikakis.

retirement, his Honour was the senior partner in Melbourne. During his practice as a solicitor his Honour had a wide and varied litigation practice. In particular, his Honour became known as an expert in the area of defamation and media law. For many years he represented the publishers of the Melbourne newspaper "The Age".

His Honour has spent a great deal of time in the administration of the legal profession for its betterment. He became a member of the Law Institute Council in 1973 and spent 10 years on the Council, being President during 1980-1981. In 1982 his Honour was the Law Council of Australia's representative on the International Bar Association, with which His Honour has been actively involved since 1976. During the year 1984-1986 his Honour was the Deputy Secretary-General for Australasia and Chairman of the Media Law Committee of the I.B.A. In 1988 his Honour was appointed Secretary-General of the I.B.A. He has the proud distinction of being the first Australian to occupy such high office in that association. It is largely due to his Honour's efforts, and particularly his lobbying at Helsinki in June 1989, that the 1994 Biennial Conference of the I.B.A. will be held in Melbourne.

Apart from his love of tennis, which he has continued to play at high competitive level (notwithstanding a total hip replacement), his Honour is a one-eyed Melbourne Football Club supporter. Counsel should be wary of drawing upon any football metaphor to that Club's disadvantage! His Honour has developed a great love for travel in pursuit of his international commitments with the I.B.A. At a conference in Montreux, Switzerland several years ago, several members of this Bar had the pleasure of his Honour's company together with that of his delightful wife, Beverley.

With the increasing duration of more complicated criminal and civil litigation, the emphasis on judicial capacity for hard work, industry, conscientiousness and affability, is heightened. His Honour has been universally recognised as possessing all these qualities in considerable abundance, which augurs well for the successful, happy and respected career as a Judge of the County Court that we wish for his Honour.

MR. JUDICIAL REGISTRAR NIKAKIS

PRACTITIONERS IN THE FAMILY COURT have already noticed that it is an advantage to be able to properly pronounce Greek names when appearing before Mr. Con Nikakis, the recently appointed second Judicial Registrar of the Court. Mr. Nikakis, a well known Hellenistic Hedonist, was welcomed at a special sitting of the Full Court a few days before Christmas.

Born in January, 1932, Mr. Nikakis's primary schooling took place at Christchurch Grammar School, South Yarra where it has to be said that nothing in particular happened which made him stand out in a crowd. From there he proceeded to Melbourne Grammar School were he covered

(CHAIR)MAN'S BEST FRIEND

YOU WILL HAVE NOTICED THAT BILL Gillard QC scored a mention in the Sunday Age's "Spy" column over his apparently unsuccessful efforts to get access for his pooch to the local foreshore. One wonders whether he had a backsheet when he so ably, albeit unsuccessfully, tried to woo the local aldermen with the sheer weight of his oratory. Did the two Counsel rule apply, or am I barking up the wrong tree?

You could imagine his plea being barked out at the assembled gathering of bemused councillors and containing an unremitting stream of bon mots of the ilk of:

I have a small bone to pick with you.
A mutt must do what a mutt must do.
It is doggone unreasonable of you.
You won't lift a leg to help me.
It hasn't got a sniff of a chance.
It is all in black and white.
Friends, Brightonians, prick up your ears.
It sticks out like . . .
Just a kelpie having a little frolic in the kelp.

Perhaps a contest to draft his plea for him. It sounds like he may need all the help he can get.

Animal Lover

himself in glory, particularly in his sporting endeavours. His first conquest was on the cricket field. Because he did not say no quickly enough and he somehow made it appear that he knew something about the august game, he was appointed captain of the House Third XI. As wicket keeper he was astute enough to position a long stop for the odd ball which escaped his waiting gloves. As a batsman he developed the art of facing left handed, waiting until the opposing captain had set the field and then changing to face right handed as the bowler was running in. His efforts were ultimately declared to be "not cricket" by the coach and he was left to find another sport. Undaunted, he selected rowing. That was also cut short when he had to confess to being unable to swim the requisite 50 yards, a necessary precondition to taking part.

After graduating from Melbourne University and articles with Mr. Irving Plotkin, Mr. Nikakis was admitted to practice in 1961 and immediately signed the Bar roll. He read with Sonnenberg, practising in all fields. In 1965 he left the Bar and went into practice as a solicitor. He remained there until 1975 and early in 1976 returned to the Bar. He had one reader. Several years ago he was appointed as a part time chairman of the Land Valuation Board of Review. Apart from his work on that Board, he practised exclusively in family law, earning a reputaion as a most capable and fair opponent.

Apart from being involved in the reestablishment of the Greek service for the opening of the legal year, Mr. Nikakis conducted a very popular segment of the Readers' Course during which he constituted himself as a Greek Magistrates' Court speaking no English and conducting his Court in a most forthright and aggressive manner. On one occasion Berkeley Q.C. and Black Q.C. were sitting talking in the back of the Court. They probably do not realise to this day that they were dealt with for contempt in the face of the Court and sentenced to a considerable period in the dungeons!

Mr. Nikakis has always been regarded as a gentle man. Few are aware of the lengths he will go to when crossed. On one occasion in the Family Court Heliotis allegedly attempted to be heard by the Court in priority to Mr. Nikakis. During a short adjournment a little later, Heliotis was playing with his very nice silk tie when Nikakis produced a pair of scissors, cut the tie off about half way down and stuffed the loose bit into Heliotis's pocket. The expensive bottle of whisky proffered in mitigation is said to have only partly mollified the situation and feelings remain smouldering just below the surface to this day.

Mr. Nikakis brings compassion, warmth, insight into human behaviour and a real sense of fair play to his new position. The Bar is delighted with his appointment and wishes him well.

PARTICULARS OF OFFENCE

IN THE COUNTY COURT
STATE OF VICTORIA

THE DIRECTOR OF PUBLIC PROSECUTIONS presents that

SIMON KEMP WILSON
also known as THE JOLLY RED GIANT

at SOUTH YARRA in the said State on the 17th day of December, 1989 did masquerade as St. Nicholas with the intention of procuring a ride on a Melbourne City Council vehicle.

Photographs and informant Graham Devries

Second Count: did proffer boiled lollies out of a brown paper bag to innocent young children with lascivious intent.

Third Count: did procure one VICKI NASH, an infant of most tender years and innocent disposition, to sit upon his knee with lascivious intent.

Fourth Count: did importune groups of innocent young children to attend with him behind the bushes with obvious intent.

Fifth Count: did accept a secret commission from one Mark Derham, a person of considerable disrepute, to wit a stubby with straw.

Sixth Count: did feloniously and with malicious intent bring disrepute to the name of "Santa Claus" aka "St Nicholas" aka "Father Christmas" by masquerading as the said Santa Claus and consuming wicked alcoholic beverages in the sight of doting, believing children.

Seventh Count: in adverse weather conditions did bring great pleasure and much enjoyment to a large number of infant children of members of the Victorian Bar and for no reward.

CASE TRANSFER

A brief outline of the preliminary report by The Case Transfer Committee of The Courts Advisory Council

THE CASE TRANSFER SYSTEM EXPLAINED in the recently published preliminary report of the Case Transfer Committee of the Courts Advisory Council will facilitate the transfer of civil cases between the Supreme Court, the County Court and the Magistrates' Courts. It has two compatible objectives. First, to transfer an individual case so that its seriousness as shown by its own characteristics is matched to the skill, experience and authority of the appropriate judicial level. Secondly, to make general transfers from one court to another of groups of cases which lie close to the mutual jurisdictional boundary so as to match case loads to the capacity of the respective courts to handle them.

The underlying premises are that the system should involve a high degree of co-operation between the courts and operate consistently, fairly and efficiently while keeping to a minimum the additional work required of the legal profession, court administrators and the judiciary.

The preliminary report aims to stimulate and encourage comment upon the proposed system and particularly suggestions for improving it. This is requested from all with experience or interest in the courts. Comment as invited by paragraph 1.7 on page 7 of the preliminary report is requested by 31st March 1990.

An extensive overview of the case transfer system is given in Chapter 5, page 56 and there is a summary of recommendations in Chapter 10, page 140. What follows here mentions only the most basic features.

The report proceeds on the basis that as between the Supreme and County Court and between the County and Magistrates' Courts the upper limit of the lower court, in practice, marks out the jurisdictional boundary between it and the higher court. Broadly this is so, although the higher courts generally retain jurisdiction to hear cases within the lower court's jurisdiction and there are some other exceptions.

Monetary jurisdiction will continue to play the predominant role in determining the court in which a particular case proceeds but it will not be an exclusive determinant. The vast majority of cases will be heard in the court in which the proceeding was initiated. Case transfers will be the exception not the rule.

The primary consideration in the individual transfer up or down of particular cases will be its seriousness. As explained in the report, the concept of seriousness which is adopted includes the dimensions of gravity, difficulty and importance. Individual transfers may be initiated by a party or a court. Thus if a case appears to be in the wrong court a judge could refer it for consideration for transfer to the appropriate court. Decisions as to transfer between the Supreme Court and County Court will be made after an oral hearing by a Supreme Court and a County Court Master acting together. Decisions as to transfer between the County Court and a Magistrates' Court will be made similarly by a County Court Master and a Magistrate acting together. In the event of differences, the opinion of the judicial officer of the higher court will prevail.

The primary consideration in the individual transfer up or down of particular cases will be its seriousness (which) includes the dimensions of gravity, difficulty and importance.

Each alteration by statute of the jurisdictional boundaries results in a redistribution of workloads between the courts. When alterations are made there is inadequate information available to allow reliable forecasts of their effects on workload to be predicted. From the day an alteration is made to a monetary limit of jurisdiction, inflation operates to depreciate it in real terms. Other changes of legislation and changes of litigious practice alter the nature and the quantity of cases which are commenced in the respective courts. General transfers are designed to maintain a reasonable equilibrium between the workloads of the respective courts which it is impossible to do in a smooth and continuous way solely by statutory changes.

General transfers up or down can be initiated only by the courts. They are best illustrated by an example given in the report. Assume the Chief Justice and Chief Judge agreed that the Supreme Court was overloaded and this could be offset by transferring 100 cases of particular type or types

to the County Court. The Chief Justice would then instruct the Prothonotary to select approximately 120 cases which appeared to be near the jurisdictional borderline and suitable for transfer. They would be cases in which certificates of readiness had recently been completed. The files of those cases with summaries of their details would then be considered by the same two Masters of the Supreme and County Courts as deal with individual transfers between those courts. They would select the 100 cases most suitable for transfer.

A notice from the Chief Justice would inform the solicitors for the parties in the 100 cases that it was proposed to transfer the cases to the County Court. They would be given the opportunity to make written submissions providing reasons why the case should not be transferred. These submissions would be considered by the Chief Justice and Chief Judge (or two judges of the respective courts nominated by them). If requested and if thought desirable, oral submissions would be heard but usually the decision would be made on the written submissions. In the event of difference, the opinion of the judge of the Supreme Court would prevail.

Then the files of the cases to be transferred would go to the County Court. The cases would become County Court cases but in dealing with them the County Court would have any jurisdiction which the Supreme Court could have exercised. The cases would be "spliced" into the County Court list so that they would reach trial in not more than the time they would have come to trial in the Supreme Court. In the most usual circumstances where a general transfer was justified, transferred cases would in fact come to trial in less time than they would have, had they remained in the Supreme Court.

General transfers are designed to maintain a reasonable equilibrium between the workloads of the respective courts which it is impossible to do in a smooth and continuous way solely by statutory changes.

General transfers between the County and Magistrates' Courts would operate in a similar way.

To counter the continued inflationary erosion of the jurisdiction of the courts with upper monetary limits, there will be provisions which enable the monetary limits to be increased by Order-in-Council so long as they do not exceed in real terms the amounts last fixed by statute.

When there is a general transfer of cases up or down the general rule is that the scale of costs of the court in which the proceeding was initiated will apply to costs incurred both before and after transfer. With the individual transfer of a case the general rule will be that the scale of costs of the transferor court will apply to costs incurred before transfer and the scale of the transferee court to costs incurred after transfer.

The case transfer system will assure a Government that if it increases the judiciary of a court with a heavy workload there is no risk of their being left without work if the workload of that court decreases.

The information obtained and used in the case transfer system will provide data of great value in the operation of the whole court system of Victoria.

There are copies of the preliminary report in the Bar Library and the Supreme Court Library.

The Case Transfer Committee consists of Mr. Justice McGarvie, Chair, Chief Judge Waldron, Chief Magistrate Dugan, Mr. Ross Gillies Q.C., Mr. Austin Parnell, Solicitor, Mr. John Ardlie, Attorney-General's Department and Mr. Bill Byrt, Graduate School of Management. Extensive research was done by Mr. Ted Wright, University of Melbourne, Mr. Judd Epstein, Monash University assisted by Mr. Keith Akers, Monash University. The Victoria Law Foundation has funded the project.

UNION INTERNATIONALE DES AVOCATS

STRASBOURG IS PRACTICALLY AT THE geographic centre of Europe. It is in easy reach of Switzerland, Germany, Italy, Austria, Holland, Belgium and the remainder of France. It is also the political centre of Europe as the site of the European Parliament. Its European and worldwide influence will inevitably grow as the potential impact of the abolition of all trade barriers within the European Economic Community in 1992 comes to be appreciated. Strasbourg is a famous cathedral city, the capital of Alsace, and the centre of its wine and gastronomy. Strasbourg is also the location for an interesting international legal conference to be held in September 1990. The conference is to be conducted by the International Union of Lawyers or the Union Internationale des Avocats (the UIA).

So what is the UIA? The UIA was formed in 1927 by a group of Paris lawyers. It was orientated to the civil law and the French language. That was so for many years. However, the UIA has recently developed a much more international outlook. English has been introduced and is used at least as much as French. Common law issues are discussed both separately and in comparative law contexts. Its current president is Ian Hunter Q.C. from England. The Australian Bar Association is a constituent member of the UIA.

The UIA recently held its 33rd Congress at Interlaken in Switzerland. I attended the congress as the representative of the Australian Bar Association. It was a memorable experience.

The Congress took place in a spectacular setting, seemingly at the foot of the Jungfrau. The sessions of the Congress were held in the Grand Hotel Victoria Jungfrau and in a nearby convention centre.

Over a period of three days, in large plenary sessions, and in small working groups, a variety of topics were covered. On the first day I listened with interest to a full day's plenary session (with simultaneous translation) on New Trends in Tort. I went to the session with the expectation that I would hear reports about the current authority of *Junior Books Ltd v Veitchi Co Limited* [1983] 1AC 520 and similar matters. However, that was not to be. Instead, I heard an interesting debate about disaster litigation: the Piper Alpha Oil platform fire, the Pan American crash and so forth. What emerged from the debate was a new type of litigation: one that depends, at least from the defendant's point of view, as much upon media merit, as upon legal merit. The idea is that groups of plaintiffs, lead by a small, but very experienced, group of solicitors embarrass defendants and their insurers into making substantial offers of settlement in response to media publicity emphasising the "immorality" of large corporations associated with the disasters forcing plaintiffs to wait a substantial time for the hearing of litigation calculated only to procure their "just and obvious entitlement". I have the feeling that members of the Bar do not play a great role in this kind of litigation. A variation of the litigation occurs when there is some, albeit tenuous, link with the United States of America. In those circumstances the litigation is commenced in the USA. The purpose here is to achieve what was described as a mid-Atlantic settlement, namely, one in which the compensation is half way between European levels of compensation and the damages that might be awarded by a jury in the United States. Recent Australian asbestos litigation and potential AIDS litigation suggests to me that that there may be lessons for us in this European model.

Many other topics were covered at the Congress. I also attended sessions on international arbitration and trial practice, including alternative dispute resolution in the USA, and the use of video links in hearings. There were also sessions on intellectual property, banking and many other topics.

The social programme was first class. It ranged from a pleasant day travelling by the highest railway in Europe to the Jungfraujoch, to a luncheon concert by the celebrated chamber group, I Salonisti.

The Interlaken Congress was one of the best organised and most interesting conferences I have attended. Undoubtedly, English is not as dominant in the UIA as it is in the IBA. Neither is common law thinking. However, the genuine opportunity to experience different systems of law and the cultures in which they operate more than compensates for this.

The UIA has a number of active committees in which members can become active. I am now the Vice-President of the Working Group on International Litigation.

The Strasbourg Conference will be held from 10-13 September, 1990. I have brochures for it for anyone interested. I urge members, however, to

consider joining the UIA, whether or not you are considering attending the 1990 Conference. Joining the UIA will give you an introduction to its activities and enable you to share, from Australia, in the activities of an important international legal body. It will also permit you to attend Conferences of the UIA at a discount about equal to the cost of membership. The UIA has Conferences every year, always at interesting places, and seminars much more frequently.

If you are interested fill in the form below or ring (02-232 1450) or write to me at 7/180 Phillip Street, Sydney (DX 399).

Garry Downes

Editors' Note: Sydney Silk Garry Downes QC is the Regional Secretary for the Pacific Rim Section of the UIA. Alex Chernov QC is the Australian Vice-President.

LAW COUNCIL OF AUSTRA LITIGATION SECTION

MEMBERSHIP OF ONE OR OTHER OF THE various Sections of the Law Council of Australia provides a unique opportunity to practitioners through pro bono work to assist in the development of the Australian legal system and to promote the profession which serves it. The Federal Litigation Section is of particular interest to members of the profession who are involved in practice and litigation in federal jurisdictions (other than the criminal law and family law jurisdictions).

The Section was launched at the 1987 Perth Legal Convention by the Chief Justice of Australia, Sir Anthony Mason. The Federal Litigation Section represents the interests of lawyers practising in the federal jurisdictions (except family and criminal law). It provides a forum in which all members of the legal profession can make their views known.

Section members biennially elect an Executive to head the Section. The current Executive comprises Pat Dalton QC — Melbourne (Chairman), Justice Malcolm Lee — Perth, Tony Templeman QC — Perth, Chris Pullin QC — Perth, Alex Chernov QC — Melbourne, Garry Downes QC — Sydney, John Richards — Melbourne and Ron Ashton — Brisbane.

The Executive considers a wide range of issues

COMPENSATION HISTORY

The Editors,
Victorian Bar News,
Gentlemen,

I recently received a copy of a Commemorative Journal issued by the Workers' Compensation Board of the State of New York in the United States. Last year saw the 75th Anniversary of Workers' Compensation Law in the State of New York. In the Commemorative Journal was an article on the first person to claim workers' compensation in that State on the commencement of the Workers' Compensation Law. The article reads as follows:

"On July 1, 1914, the day the Workers' Compensation Law became effective, a carpenter working at the Equitable Building in Manhattan fell 22 floors to his death. He was survived by a wife who was 24 years old and a daughter who was 5 years old. His average weekly wage was established and payments were made to his widow and dependent daughter.

The claimant-widow returned to Pennsylvania to live with her mother who took care of her

LIA FEDERAL

including questions relating to rules of practice of the High Court and Federal Court; constitutional matters; tenure of appointments; industrial and administrative law legislation; costs; defamation and contempt laws. In addition, the Chairman participates in meetings of the liaison committees established as links between the Law Council and the High and Federal Courts.

Five important specialist committees assist the Executive. These are Administrative Law, Costs (Scales Review), Courts (Federal), Defamation Law and Industrial Law. They are constituted from members of the Section. The Committees have drafted numerous submissions which have been adopted by the Law Council and lodged with Government, the Administrative Review Council and other bodies as appropriate.

Members of the Section are kept informed of the activities of the Executive and Committees through the Section newsletter which is distributed to members quarterly.

The Section Executive invites members of the profession involved in federal practice and litigation to become members of the Section and to lend it their support and expertise.

daughter while she went out to work. Thereafter, she held various jobs at a bakery, caring for a chronically ill woman, caring for her ill mother, and as a housekeeper for a physician. In 1921, her daughter died and the daughter's payments stopped.

In 1960, the claimant-widow was interviewed by the Board's Supervisor of Social Services who reported that 'it is my feeling that she is . . . extraordinarily grateful for this pension. However small we may think this allowance is, to [claimant-widow] it was a great comfort throughout the years.'

She never remarried and, at the writing of this publication, at the age of 99 she was still receiving payments of compensation."

It should be noted that in New York the current minimum weekly rate for a dependent widow is $30 per week. It will be interesting to see on the occasion of the 75th Anniversary of WorkCare in Victoria in the year 2060 whether any of the original claimants are still in receipt of compensation!

Yours faithfully,
B.R. WRIGHT

FEDERAL COURT OF AUSTRALIA – MEDIATION CONFERENCES

THE MELBOURNE-BASED JUDGES OF THE Federal Court have developed a proposal which would provide for matters to be referred for mediation in conferences to be conducted by the District Registrar or the Senior Deputy Registrar of the Court. The proposal, which must at this stage be regarded as being implemented on a trial basis, provides for the Judge taking the general list directions hearing to have the option of referring an appropriate case for mediation in accordance with the following guidelines:

(a) Judges will refer matters to a Registrar for mediation at any stage when they think the process would be useful; but in many cases an early stage — before the case moves from first directions to general directions — would be best. This lessens the likelihood in smaller actions of costs becoming the issue, and provides an opportunity to negotiate before attitudes become entrenched. However, in more complex cases it may be better to wait until after mutual discovery and inspection, when strengths and weaknesses may be better understood.

(b) The order referring the matter may direct the parties to attend the conference in person. The desirability of doing so will depend upon the nature of the case and the expressed attitudes of the parties to that proposal.

(c) Subject to the terms of the order referring the matter, the Registrar should maintain control of the mediation, which may require one or more adjournments, until sent back to the Judge at the request of a party or at the Registrar's direction. If the mediation is unsuccessful, the Registrar should, where appropriate, give directions pursuant to s 35A of the Federal Court Act as well as fixing a date for the resumed directions hearing before the judge.

(d) Many matters would benefit from being

referred to a Registrar for a pre-trial conference before being placed in a callover. This is so from both the mediation and procedural points of view. If, after discussion, settlement proved not possible and the issues were clear, directions could still be given for steps likely to assist in the conduct of the trial, such as the preparation of chronologies and/or books of exhibits, or the exchange of witness statements — particularly in the case of experts. The Registrar could then send the matter to callover.

(e) The procedure should be as informal and flexible as possible to encourage the atmosphere that this is a genuine opportunity to reach agreement rather than simply another formal step in the legal process.

The procedure should be as informal and flexible as possible to encourage the atmosphere that this is a genuine opportunity to reach agreement . . .

(f) It is anticipated that Trade Practices matters will most often lend themselves to the proposed treatment, but there will be no limitation on the judge's discretion as to the type of cases to send to mediation, or to a pre-trial conference for procedural reasons.

(g) The conferences would be conducted, initially at least, by either the District Registrar or the Senior Deputy Registrar, Susan Agnew.

(h) It is suggested that a convenient basic form of order for mediation might be:
"(i) Refer matter to Registrar for further directions hearing on a date to be fixed. Matter referred with a view to reaching a mediated settlement or, failing that, a clarification of issues and appropriate further directions.
(ii) Direct Registrar conducting directions hearing to exercise all necessary powers of the Court set out in s 35A (1) of the *Federal Court Act* and Ord 10 r 2 (a) of the *Federal Court Rules*.
(iii) All discussions before the Registrar are to be on a 'without prejudice' basis."

(i) If the matter is settled before the Registrar, the parties should file consent orders pursuant to Ord 35 r 10. If it is not settled, the Registrar should send it back to the judge who referred it, after necessary directions, or send it to callover.

PERSONALITY OF THE QUARTER

IN 1895 ANTONINO BONGIORNO, THEN A lad of 16, left the tiny island of Salina, in the Aeolian group, thirty kilometres off the west coast of Sicily and headed for Australia, never to return to his native home. It is in part to that emigration that the Victorian Bar can count amongst one of its members one Bernard Daniel Bongiorno QC, affectionately known as "Bonge". Antonino eventually settled in Geelong and ran a fruit business for about forty years. Bonge's father also grew up in Geelong and in 1939 dealt the Irish tradition a loss when, by marrying Molly Fogarty, she became Mrs. Joseph Bongiorno. Bonge arrived on the first day of 1943 and later on attended St. Joseph's Christian Brothers School in Geelong and studied law at Melbourne University and Newman College. He graduated in 1966 and was articled to William R. Hunt. He read with Tom Neesham (now

MONASH ADVOCACY — HELP WANTED

THIS YEAR STUDENTS AT MONASH UNIversity Law School taking the Trial Practice and Advocacy Course will be required to participate in two mock trials. The first will be a Judge alone trial and the second a jury trial presided over by a Supreme Court Judge. The trials will be both civil and criminal. This technique is used in American Law schools and in particular at Washington and Lee University at Lexington, Virginia.

This article is a plea for help from junior members of the Bar who might be interested in providing scripts for the Judge alone trials based upon their experience in the County Court. Each team comprises two students who will be required

Judge Neesham) and signed the Bar Roll in 1968. He married Yvonne Bourke (again robbing the Irish) in 1970.

Bonge is, among other things, a member of the Ethics Committee and has, since 1985, been the Vice President of Comitato Assistenza Italiano (or "CO. AS. IT."), an Australian social welfare organisation for Australians of Italian background.

He has recently emerged from the woodwork to express enthusiastic support for the Geelong Football Club. Yvonne complains that Bonge's principal hobby is muttering into a dictaphone, but although he does confess to doing more of that than is healthy, he does enjoy summers at Point Lonsdale, and tennis and promises more regular attendance at the football. It is not surprising that he is also a keen 'Italophile'.

Having been at the Bar for over twenty years, Bonge has done a case or two, often appearing before juries in Geelong comprised of school friends, who sometimes paid less respect than they should have to the bewigged Bonge. He also spent nine months grappling with the intricacies of NSW poker machines when he was Counsel Assisting Murray Wilcox (now Justice Wilcox) in the Board of inquiry into poker machines in 1983. (At one stage the Inquiry was also ably assisted by a long term inmate of Long Bay Jail!). Bonge acted for the Mackay family in the Royal Commission into the police investigation of Mr. Mackay's notorious disappearance, held before Justice Nagle in 1986. More recently, Bonge acted for the AFAP in the proceedings before Mr. Justice Brooking. Bonge lives in Kew with his wife and four children, Catriona, Lucia, Anna and Daniel.

to make an opening and closing address, lead evidence from two witnesses and cross-examine two witnesses and, if necessary, re-examine. Scripts are needed comprising statements from four witnesses (two each side) (which may include the plaintiff, defendant or accused) and admitted statements to flesh the matter out. Each trial is supposed to take about one hour.

Does anyone care to assist by providing scripts? If so, you are invited to contact me forthwith. The first trial will take place on 9th July 1990 and material must be distributed before that date.

Jeffrey L. Sher

VERBATIM

R v Pauly and Farrow

Coram: Melbourne County Court
31st March 1989
(WITNESS GIVING CHARACTER EVIDENCE)
Q. What sort of a worker is he?
A. Oh, the best, as strong as a bull, and I need him because I had a heart attack myself about four years ago and he's just been the backbone of me.
Q. Is he reliable?
A. Oh, most reliable, yes.
Q. What about drinking on the job?
A. No, there's no such thing because we have — it's in our clause and contracts that no alcohol to be consumed or no intoxicated person to be on the site. You lose if you're drunk, lose your contract.
Q. Have you ever seen him drunk on the job?
A. Never, never.
Q. You've heard me saying to his Honour this morning that he's managed to chalk up a fair number of prior convictions for drink-related offences; do you know about them?
A. No, not all, only the ones as of late, because he's a very conservative young man and he doesn't like to hassle anybody or get anyone nervous at any time.
Q. When he's sober what's he like; is he noisy and . . .?
A. He can sleep under my roof any time and with my wife — my wife thinks the world of him.

Taim Management Pty. Ltd. v. Texilion

Coram: Ryan J.
7th February 1990
Brian Tamberlin QC and Michael Colbran for Applicant.
David Jackson QC and Julian Burnside QC for Respondents.

RECENT ARTICLES

A note of recent articles of interest in law journals kindly supplied by Supreme Court Librarian *James Butler*

ARBITRATION
Morris, E.E. "Construction industry disputes — use of section 27 *Commercial Arbitration Act 1984*" in (1990) 6 *Building and Construction Law* 25-29.

BUILDING LAW
Lloyd, Humphrey. "Problems of fitness of the product" in (1990) 6 *Building and Construction Law* 10-24.

CRIMINAL LAW
Bailey-Harris, Rebecca. "Sex change in the criminal law and beyond" in (1989) 13 *Criminal Law Journal* 353-367.

Fisse, Brent. "Confiscation of proceeds of crime: funny money, serious legislation" in (1989) 13 *Criminal Law Journal* 368-402.

EVIDENCE
Arnold, C.J. "Use of documents in courts" in (1990) 20 *Queensland Law Society Journal* 35-46.

Lindsay, G.C. "Aspects of the law of evidence: privilege, when available and how lost" in (1989) 5 *Australian Bar Review* 243-261.

Magner, E.J. "Expert evidence as to credibility" in (1989) 5 *Australian Bar Review* 225-242.

FORENSIC SCIENCE
Gunn, Peter R. "Identity testing by DNA profiling" in (1989) 22 *Australian Journal of Forensic Sciences* 27-36.

INSURANCE
Derrington, Mr. Justice. "Liability insurance and the *Insurance Contracts Act*" in (1990) 20 *Queensland Law Society Journal* 5-15.

LABOUR LAW
Furness, Gail. "Injunctions and the contract of employment" in (1989) 2 *Australian Journal of Labour Law* 234-251.

MAREVA INJUNCTIONS
Crawford, Robert. "The extra-territorial effect of mareva injunctions — the sleeping giant in fairyland" in (1990) 18 *Australian Business Law Review.*

PASSING OFF
Corones, S.G. "Basking in reflected glory: recent character merchandising cases" in (1990) 18 *Australian Business Law Review,* 5-27.

SOCIAL SECURITY
Freiberg, Arie. "Social security prosecutions and overpayment recovery" in (1989) 22 *Australian & New Zealand Journal of Criminology* 213-236.

(Trade Practices Act claim over the purchase of a business).

Jackson: You were happy with the purchase too, were not you?

Witness: Yes, we were happy with the purchase. What happened is that I did find myself, compare myself to Jacob, he went after Rachel and he woke up in the morning and Leah was with him. Unfortunately there were no Judges then, no courts, you cannot ask for justice and you are stuck with it. He has got a good excuse he says: "You ask for my daughter, you have got my daughter." I wanted the other one. "You wake again and you will get the other one."

AAT

Coram: R. Ball
26th February 1990

Evidence by former truck driver concerning previous traffic activity in the vicinity of a quarry.

Objector: Were there any accidents involving trucks?

Witness: I know of three accidents, including one fertility.

McWaters v. Day

Coram: High Court

Berkeley QC, S-G: Your Honour, I think it was my learned friend Mr. Hughes who said to me in this Court that, "Really, Hartog", he said, "section 109 cases are the running down jurisdiction of the High Court".

Mason C.J.: Mr. Solicitor, do you have an outline of your submissions?

Berkeley QC: I am so sorry, your Honour, yes, I do.

Brennan J.: A plan of the intersection, perhaps?

INTERNATIONAL BAR ASSOCIATION CONFERENCES

Enquiries: Madeleine May, International Bar Association, 2 Harewood Place, London WIR9HB.
Tel: (01) 629 1206. Fax: (01) 409 0456.

Warsaw, Poland
22-24 April 1990
Eastern Bloc Joint Ventures

Amsterdam, Netherlands
22-27 April 1990
Energy Law

New York, USA
25-28 April 1990
New York, USA
International Law and Practice

Zurich, Switzerland
15-17 May
International Financial & Banking Law

Cannes, France
20-21 May
Film Law

London UK
22 May 1990
Forum shopping

Vienna, Austria
16-18 May 1990
International Finance and Banking Law

Paris, France
24-26 May
Product Liability

Montreal, Canada
1-4 June 1990
SGP Bicentenial Conference

Montreux, Switzerland
9-14 June 1990
Environmental Law

Paris, France
21-22 June
International Finance and the Arab world

Rio De Janiero, Brazil
1-3 July
Latin American Regional Conference

Glasgow, Scotland
12-14 September
Cultural Property

Eldoret, Kenya
14-15 September 1990
Bars in Developing Countries

Nairobi, Kenya
16-21 September 1990
IBA Biennial Conference

Washington DC, USA
November
International Construction Law

Auchterarder, Scotland
5-6 November 1990
Electricity Law

Paris, France
6-7 December
Space Law

Camberwell Shopping Centre Pty. Ltd. v. The Mayor, Councillors and Citizens of the City of Camberwell

Coram: Gray J.
27th February 1990
James Judd for Plaintiff
Jack Hammond for Defendant

(In the Practice Court, during discussion regarding discovery of a certain class of document)

Gray J: "Wasn't there a question of 'discovery' in the *Ananda Marga* case?"

Hammond: "Well, they certainly failed to discover the bomb — with explosive results!"

Letter from Property Developers to Purchaser's Solicitors

Further to your letter of the 28th April 1989 we note the contents therein and although the Vendor admits that a copy of the Transfer of Land between Neville Ivan Miles and Jean Francis Miles and Ayrlie Park Pty. Ltd. was omitted from the Vendors Statement, the Vendor has acted honestly and reasonably and ought fairly to be executed [sic] for such contravention.

Antoniou v. Roper

Coram: Murphy J.
16th November 1989
J.D. Hammond for Plaintiff
S. Morris for First Defendant
J.H. Gobbo for Second and Fourth Defendants
M. Dreyfus for Third Defendant

His Honour: (according to Transcript p.468): Judges frequently say "Look, I have not got time to go through all of this and we would follow one another. For the sake of comedy [sic] I will follow this judgment" and that is the way you do not have to make any decision.

D.P.P. v. Inhelder & Pley

Coram: Judge Lazarus
6th December 1989
P. Hiland for Crown
A. Howard for Accused

Upon pleading guilty to gold smuggling a Dutch National is asked her addresses by the Associate. The prisoner replies. For the transcript Tony Howard spells the following:

"124 ROOSENDAALSEBKALMTHOUT Belgium"

His Honour: "That's what I thought!"

BOOK REVIEWS

GALBALLY! by Frank Galbally (Viking Penguin books, 1989) $29.99 (H.C.) 200 pp. + vii.

A SELF PORTRAIT MAY BE DECEPTIVE. IT may be distorted as much by unconscious self-criticism as by a conscious wish to leave a partial view. It was, therefore, with a guarded view that I picked up Frank Galbally's autobiography recently published by Viking. My reserve was increased by the inevitable effusive praise found on the dust jacket and advertising blurbs describing both the subject and author of the book in terms that differed from the image which had developed in my mind over the years.

Frank Galbally needs no introduction to the readers of this journal. He has developed a presence in Australia, and in particular in Melbourne, which is well known. He has been involved as counsel in celebrated cases and has himself been in the centre of controversy on matters as diverse as the political events of 1975, the Barlow appeal, the Costigan Commission and whether he should be admitted to practice notwithstanding the failure to accompany a signature with a "red wafer" on his Articles of Clerkship.

This book gives us a rare opportunity to look behind the public figure and learn something about, at least, those as aspects of his formative and private life which he has chosen as important and able to be told. It deals with his family life as a child, through the years as a seminarian and in the navy, and then with the lawyer to us in public life.

It is not just the story of his life, however, the book touches upon important issues of principle and liberties that we may all too readily forget. Perhaps the lasting value of the book is to be found in the candid and personal accounts of the strains upon justice and fairness. Galbally's descriptions of his dealings with men like "Bluey" Adams and the violence inflicted upon Billy Longley needs to be told publicly, as has now been done, to remind us all of the strains upon a legal system whose chief imperfection is that it must be made to work by humans with all their frailties.

Galbally's experience with the Royal Commission on the activities of the Federated Ship Painters and Dockers' Union as well as his version of the events around the Barlow trial are two further instances that teach a lesson by the telling of the tale. In both we may concede that the author is merely telling us his story and not the story as might be put against him, yet even so his story puts up a strong case for care and caution when giving power over us to other people.

On the book's dust jacket John Walker QC is quoted as saying of Galbally that: "His keen perception, his uncanny judgment and his magical way with words have no equal. At the same time Frank is a man of fundamental compassion and understanding whose deep-rooted sense of justice and fair play combined with his formidable talents have made him Australia's greatest ever advocate". It is hard to imagine any person who could live up to such a claim. For those of us who do not know Galbally and cannot assess Walker's claim, we are still left with a book that stands as an absorbing tale that well deserves to be told.

G.T. Pagone

COMMERCIAL LEASES by W.D. Duncan The Law Book Company 1989 Pages VII-XXXVIII, 1-218, Index 219-239

COMMERCIAL LEASES BY W.D. DUNCAN IS primarily a work analysing the general law of landlord and tenant in Australia, with emphasis on commercial tenancies. Of course, these general principles underlie all landlord and tenant relationships, however State landlord and tenant legislation often intrudes into residential tenancy situations.

The work has a distinctly Queensland bias, however practitioners in other States will benefit from the cross-referencing of the relevant Queensland statutory provisions with legislation in other States. For the Victorian practitioner, by use of the Comparative Table of Statutes, the various Queensland legislation is cross-referenced to the Victorian *Property Law Act* 1958, the *Transfer of Land Act* 1958 and the *Retail Tenancies Act* 1986.

This work deals with a number of specific issues, including (amongst others) a comprehensive chapter dealing with "rent and rent review" and additional chapters discussing "outgoings" (such as rates, taxes and operating expenses for which a lessee is often liable) and covenants requiring a lessee to maintain premises in good and substantial repair. There are also chapters dealing with covenants allowing sub-leases or "assignment" of a lease, including discussion of covenants that require a lessee to obtain the prior consent of the lessor to an assignment.

"Options" are considered in a separate chapter both as to options to purchase and options to renew leases.

Three chapters are devoted to "default" and "determination of leases". A number of miscellaneous matters are dealt with in the final two chapters including guarantees, powers of attorney and licences.

The comprehensive tables of Cases and Statutes

together with the Comparative Table of Statutes and an excellent index make this a very practical work. The index lists over 100 words and phrases that have been judicially considered and which are separately considered within the text. The author should be commended for achieving one of his aims, that is to provide a text useful to "the legal practitioner, both barrister and solicitor, who must daily come to terms with the principles of commercial leasing".

Peter Lithgow

THE NEW PLANNING SYSTEM IN VICTORIA by Julia Bruce, Law Book Company 1988 RRP $59.60

THE BOOK IS PRIMARILY DIRECTED AT lawyers, but also at government agencies and planners. The *Planning and Environment Act* 1987 has become familiar. It is written in plain English, with strong involvement of Professor Robert Eggleson. As Victorian legislation goes, it is remarkably readable. This is not to say that a guide to the legislation is not necessary. It is, and the one that Julia Bruce has produced is necessary because it is in part aimed at people who are neither lawyers nor trained planners. More importantly, the book is essential because it brings together the legislation and material that is outside its framework. Particularly important in planning are the planning schemes themselves. These form the basis for the decisions of planning agencies in particular cases. The introductory nature of the text makes it vital even to the reader who is already trained in law because the legislative framework in planning law has been reconstructed.

The text operates at two levels. The first part is introductory in nature and readable. The second part, from Chapter 10 onwards, is essentially interesting to lawyers. This part deals with planning schemes and their function in government, compensation, delegation, non-conforming uses, enforcement, discretions and the new jurisdiction of the Administrative Appeals Tribunal.

Given the *Interpretation of Legislation Act*, the text includes the second reading speeches in the Assembly and the Council.

The book includes thorough expositions of the legislation, interpretative case law, and useful illustrations of the working of provisions. One of the best examples is in the discussion of "satisfaction" requirements at page 31. The example deals with the discretion of Health Surveyors and their ability to substitute methods other than the method in the permit application for waste disposal if it is evident that the method in the plan will not work. The text makes it clear that these discretions are both wide, and "must be seen to operate properly and reasonably".

Contentious provisions in the planning legislation and their impact are discussed in detail. The schemes are allowed to make large intrusions on private rights. One obvious example is the power of a planning authority to use a scheme to direct "the creation of, extinguishing of or variation of rights of way or other easements, restrictions or encumbrances on land". The suggestion of the author is that it is more appropriate to close land for a public authority by designating the land for a public purpose under a different head of power (para (c)). This at least attracts compensation for the owner of the land adversely affected.

The text is full of remarks about tactics. It includes some speculations about why some provisions exist; sometimes the author even opines that some provisions were unnecessary. What keeps the reader interested is getting the good advice that is sprinkled throughout.

Like all specialist texts, this one has experienced the problem of legislative change. Despite the considerable changes to the planning legislation made by the recent subdivision legislation, the text remains an essential source of good advice and useful consideration of provisions. It contains a discussion of judicial review of administrative action. Where the decisions of related agencies are concerned, for example of the Registrar of Titles about registration of agreements between owners and planning authorities, the text does not rely on the legislative framework. It goes much further and describes practices of the various offices, and the reasons for these practices. It takes a critical stance in many situations.

The book does not cover all information that a planning lawyer needs: it is not intended to be a compendium: the *Historic Buildings Act* is, for instance, not covered.

The text is readable, and pitched at the problems that occur in the planning arena. It has a topicality of approach that relieves the tedium of legislative analysis. It is an essential text for any barrister or solicitor who deals with planning law.

J. Wallace

JUDGING JUDGES, by Simon Lee. Pages i-xii, 1-218, Notes 219-226, Index 227-228. 1988. United Kingdom: Faber and Faber Ltd. Price: $12.99 (limp).

THE SPYCATCHER CONTROVERSY IN England produced some remarkable reactions, and the cover of this book reproduces perhaps the most remarkable of them. It is part of the front page of the London Daily Mirror on the day after the House of Lords had decided to enjoin newspapers from

repeating allegations made in the Spycatcher book, which was at that time freely available overseas. The Daily Mirror headline was "You Fools" accompanied by upside-down photographs of the majority of the House of Lords, namely Lords Ackner, Brandon and Templeman.

Simon Lee is Professor of Jurisprudence in Belfast. The contents of this book do not quite emulate the sensational style of the Daily Mirror, but *Judging Judges* is written in a droll and amusing way and should have quite an impact. Its main subjects are theories of judicial technique, analyses of famous English cases, evaluations of the careers of some recent English judges, and suggestions for improvements in the way judicial decisions are made. The author is a reformer, and perhaps the eagerness to reform has led to some excesses.

Part I is entitled "Theories". Three theories are despatched: Fairy Tales, Noble Dreams and Nightmares. The Fairy Tale is the view that the common law stands waiting quietly to be revealed: "in some Aladdin's cave there is hidden the common law in all its splendour and . . . on a judge's appointment there descends on him knowledge of the magic words 'Open Sesame'" (Lord Reid, quoted on p.3).

The Noble Dream is that which belongs to Professor Dworkin, namely that the principles which underlie the law lead to one single right answer to a legal problem. Does anyone believe that? The Dworkin approach is described in terms that judges should decide on the basis of underlying principles, and leave policy altogether alone. The Nightmare is associated with Professor John Griffith of the London School of Economics. It is that judges have complete freedom to make the law as they think fit. Professor Lee, as might be expected, pokes a considerable amount of fun at these three theories. In Chapter 5 he suggests his own list of major factors which influence judges: past law precedent and statutes; present and future consequences, and judicial perception of their own role. What is meant by the third factor is that judges, consciously or unconsciously, take positions on how they see their role — for example, whether to be bold or cautious in such things as making new law or manipulating old law to achieve a preferred result.

Part II contains analyses of well-known English cases from the 1970's and 1980's, including some of the early Spycatcher hearings.

In Part III, the careers of Lords Denning, Devlin, Hailsham, Mackay and Scarman are considered. The author regards Lord Denning as an enigma. On the whole he seems to approve of Lord Denning, with the rider that a legal system probably could not accommodate too many like him. Lord Devlin is praised for his contribution to legal and moral philosophy. Lord Hailsham is the least approved of — the verdict seems to be that he was more suited to non-judicial activities. Lord Mackay is the most approved of. Lord Scarman is treated with respect and some admiration, but Professor Lee worries about his attraction to the Dworkin school of thought.

"Changes?" is the title of Part IV, and this reviewer at least immediately wondered whether or not judges will be asked to wear track-suits, give press conferences and attend television talk-shows. In Ch.22 the author discusses the possibility of a British Bill of Rights, but is not sanguine about its prospects. In Ch.23 the rejection of Judge Robert Bork as a Justice of the United States Supreme Court is considered in detail, with the author expressing some bewilderment at the way in which the American system works. Concrete suggestions for reform are made in Ch.24: radio and television coverage of appellate courts (this book is mainly about appellate judges); House of Lords press conferences on important cases; non-lawyers on the Privy Council; greater use of *amici curiae* (presumably paid for by litigants); an obligation upon the legislature to consider judges' calls for law reform; use by counsel of 'Brandeis briefs'; research assistance for judges; greater control over judicial appointments; and standard formats for judicial decisions, namely, facts first, law and principles second, policy considerations third, the role of the judge fourth, reason for disagreeing with judges below fifth, and then the decision.

Those who enjoyed Pannick's *Judges* (reviewed 63 ALJ 647) will be entertained by *Judging Judges*. Those who found parts of Pannick irritating or unrealistic will have much the same reaction to some of Professor Lee's ideas.

David Maclean

REGULATED CREDIT: THE CREDIT AND SECURITY ASPECTS by Duggan, Begg and Lanyon. LBC 1989 $127.50

FOR SOMETHING LIKE FIVE YEARS NOW, lawyers, and others have been grappling with the provisions of the Credit Act. It is not an easy Act to read. In many respects its machinery is clumsy, arbitrary and primitive. It over regulates some areas, and under regulates others. But we have to live with it. I suspect most of us think it is here to stay.

The appearance of *Regulated Credit The Credit and Security Aspects* by Duggan, Begg and Lanyon (LBC) is therefore most welcome. Personally, I have found it particularly useful as a commentary on provisions of the Act. It contains a useful table of statutes and comparative table of legislation, and a thorough index. Because there is so little case law of any real standing in this area, much of the commentary consists of observation and opinion,

rather than of authoritative statements of the law. This, however, could hardly be avoided.

This book is the second of a two volume series on the law governing regulated credit transactions in Australia. The first volume, *Regulated Credit: The Sale Aspect* by Duggan is concerned with the sale aspect of credit transactions. The second volume is concerned with the credit and security aspects. The authors use the Credit Act (Vic) as a model when discussing credit Shipping provisions that replace the "old" Part X Overseas Cargo Shipping provision as the result of the *Trade Practices (International Liner Cargo Shipping) Amendment Act* 1989.

Once again, Mr Miller is to be commended for achieving "a comprehensive ready reference . . . to the *Trade Practices Act* with concise annotations explaining the more complex provisions, and providing a digest of the principles which have emerged" since the Act was enacted in 1974. The 1990 edition of this work is of ongoing relevance to all business people, students and lawyers concerned with Trade Practices law in Australia and New Zealand.

P.W. Lithgow

ANNOTATED ADMIRALTY LEGISLATION Stuart Hetherington, The Law Book Company Limited, 1989, i-xxvi, 1-183, Hard Cover, $49.50

I LOVE TEXTBOOKS OF ANNOTATIONS. I know I can count on NOT having to sift through pages of irrelevant information searching for that which I need. This particular textbook has been exceptionally well thought out from the point of view of the user.

Stuart Hetherington's book deals with the long-awaited *Admiralty Act* 1988 (C'th.). It is beautifully bound and presented, as befits one dealing with an area of the law whose ancestry can be traced back to the fourteenth century, as pointed out by Sir Laurence Street in his Foreword. The Act, however, at last, releases Australian maritime lawyers from the anomalous and confusing application in Australia of English admiralty law as at 1890.

The author's Preface very usefully sets out the ambit of the work, which includes the full text of the Bill's Second Reading Speech and its Explanatory Memorandum 1988. Throughout the book, reference is made to the other main source document relevant to the legislation, the Australian Law Reform Commission's Admiralty Jurisdiction Report No. 33.

In addition, Mr Hetherington has included references and extracts from other relevant sources, as far as possible given the size of the work.

For example, for those who will, in order to make sense of sub-section 18(b) of the Act, need to brush up on the law relating to demise charterers, reference is included to the relevant passages of *Scrutton on Charterparties and Bills of Lading*, 19th ed., 1984.

Knowing, perhaps, that his readers may not have them ready to hand, Mr Hetherington sets out the relevant text of *The Constitution* where referred to in section 13 of the Act and of the *Acts Interpretation Act* 1901 (C'th) where referred to in section 39(3) of the Act.

Given the new and revolutionary nature of the legislation with which he deals, Stuart Hetherington's book was always going to be a useful one. He has, however, added considerably to its usefulness by adding features such as those referred to above, which ensure that his reader is given, so far as possible, or referred to, all information necessary to a full analysis. I found the book a pleasure to use.

Helen Symon

ANNOTATED TRADE PRACTICES ACT Russell v. Miller, 11th Edition Law Book Company 1990 Pages V-Lii, 1-488, Index 489-500

RUSSELL V. MILLER'S EXCELLENT *ANNOtated Trade Practices Act* has appeared in its 11th edition. This work has for the past eleven years been the standard reference for all those involved with trade practices regulation in Australia.

While the Act annotated is the Commonwealth *Trade Practices Act* 1974 the text usefully refers to parallel state legislation (the *Fair Trading Acts* in Queensland, Victoria, New South Wales and Western Australia together with the Fair Trading Bill (1989) Tasmania) and the New Zealand *Commerce Act* 1986 and *Fair Trading Act* 1987.

Two cases of particular note are digested in the addition — *Queensland Wire Industries Pty. Ltd. v. BHP* (1989) 63 ALJR 181, a High Court decision concerning the definition of "market" in s.4E and s.46 Misuse of Market Power and the Federal Court decision concerning s.50 Mergers and s.81 Divestiture in *TPC v. Australian Meat Holdings Pty. Ltd.* (1988) ATPR 40-816, although the discussion of the *Australian Meat Holdings* case is particularly limited.

In addition to the two cases noted above, the text digests a number of new cases relating to s.52, 53, 82, 85 and 88 (amongst other sections) and incorporates the "new" Part X International Liner Cargo contracts.

I commend this book to all counsel working in the area.

M. Hines

LUNCH

(In Eastern Europe)

WHEN YOU ARE IN BUDAPEST WHERE DO you go for lunch? A Cuban restaurant of course. The Habana Etterem (or for those not fluent in Hungarian — the "Restaurant Havana") to be exact. Salek and myself found ourselves on holidays in Budapest because all of the best bungalows in Tootgarook had been snapped up by June. (Heerey again having got his hands on that much sought after fibro-cement maisonette "Kia-Ora" to share with the Chernovs and Finkelsteins — naturally).

We were staying at the venerable Hotel Gellert on the banks of the Danube. A huge turn of the century hostellerie redecorated a la 1963. Naturally our thoughts turned to Cuban food. Fidel Castro had set up the "Restaurant Havana" in co-operative with his Communist cousins in Hungary in the later days of 1956. Throbbing Latin American music, brownish belles and hot Carribean food was promised to all.

We got the hotel desk to make a booking, and after a few snorts of Bull's Blood (the local red ned), and Tokay (it actually comes from Hungary, not Rutherglen as most think) in the hotel discotheque (complete with live band singing Cliff Richard, the Monkees, and Helen Shapiro all in Hungarian), we were ready for a proper Friday type lunch.

Our taxi driver turned out to be called "Attilla". He certainly wasn't a Hun and later took us to various obscure mountain retreats. He deposited us outside a large whitish building deep in the heart of Buda (or was it Pest?).

The door opened. A man said words of Hungar to us and we were seated. Restaurant Havana is a while stucco type of establishment complete with round bar and pictures of sugar cane and people in Mexican type hats. It looked authentic. The waiter suggested the authentic apertif — we said yes, then nodded and waved our hands and smiled. He understood "Yes please". We rubbed our hands. Our thoughts turned to Cuban rum, pineapple juice, pina colados etc., a "Cubacan Koktel" to be more exact. Out it came. Bull's blood mixed with Tokay with just a touch of ginger ale. Very tasty but more of a "Mojito Criollo Koktel" really.

Then the menu was delivered. It was very different. "Entrees" included such Cuban delights as "Ham and Eggs", "Fishrolls orly style Tartar sauce", "Between the sheets", "Venetian Sunset", "Banana Bliss" and "Silent Thiro" (hopefully not some female infection). This caused a great deal of head scratching.

After "entrees" came Cuban Drinks (such as

Our men in Havana (the restaurant that is) Douglas Salek and Paul Elliott.

Ananasz likor), Sweets (or Edesseg) with Cuban delights such as Puding Posztobanyi Style, then followed various salads, garnishes such as Vegetable Dish from Black Negro and Brussel Sprouts English Style. Then came poultry (ie. Breaded Liver with chips), meat dishes (Roasted Pigjet with rice and blackbeans), thence soups (ie. Aurora Cream Soup), Fish (ie. Fish Fillets Marshal Style) and to end it all Import Drinks (Malibu Kokusz likov).

Well this order of events was hardly like the Menu at the Essoign Club. But when in Budapest do like

the Cubans do. So we had the lot in the order suggested in the "Lista De Platos".

Phew, it sure was different. We had no idea that the Cubans ate in this manner. Salek remarked that having cabbage salad, followed by vegetables from Black Negro with Pigjet — broth soup, was an experience.

We washed it all down with such typical Cuban wines as Badacsonyi Keknyelu, and Csopaki Olaszrizling (late picked) and a bottle of Soviet Champagne (Vintage 1956).

After returning from the toilet (cleanish), Salek remarked that it all was very exhilarating but that he really missed a good cup of tea.

We then engaged our waiter "Stefan" (a typical Cuban name) in conversation. Alas! Alak! he confessed in broken English (the only torture being watching us eat this lunch). The Cubans had gone.

Bar News cadet reporter Ms Vanessa Elliott ready to tackle her first restaurant review.

When Hungary went Democratic, Fidel pulled the plug on the restaurant. No more Latin Dancers, no more Latin waitresses, no more Cuban Chef. The man in charge of the kitchens was none other than Eles Tibor, an Hungarian through and through. After being revived with a large glass of Tokay and rum, Stefan went on to explain that the Restaurant Havana was in fact Hungarian! Indeed — the menu was a misprint. All that was Cuban was a bunch of rice and blackbeans which was chucked into the goulash. He wept. Salek and I consoled him with many glasses of Banana Bliss. Don't worry, we said, open the restaurant in Tootgarook and it will be a smash hit.

Habana Etterem (Restaurant Havana)
Budapest V. Bajcsy Zsilinszky ut 21
Telephone (Hungary) 121-039
Open: 12-03 Restaurant 12-03 Bar
Lunch with drinks for two expect $8.00 to $10.00 (No joke). Hotel Gellert, Budapest (Excellent).
The Menu may be inspected in my Chambers.

Paul Elliott
Eastern Corespondent

THE BAR READERS' LAMENT

Yes there's a crowded old bar down in
Melbourne I hear,
Where barros are cheap at this time of the year.
Well I've run out briefs and I can't afford cheer,
So I read at the Bar with no briefs and no beer.

I saw Psycho Kenny concerning my fears —
He thought my body language the worst case
for years.
With a positive laugh at my empty fee book,
He said "You might afford me when things
aren't so crook".

Cheerful Charles gave me a boot in the rear,
and bushy Byrne's book was a big cross to bear.
My robes from Wild Walmsley were terribly
dear —
Bankruptcy Practice is starting up here.

I clocked on with Barbara, I gave George my
ears,
Made merry Max Perry just burst into tears,
Tried pleading with Burnside my commercial
fears,
And devilled for Hayes but without what he
clears.

If the cops brick my client I'll be on the job —
Felicity coached me and so did bold Bob.
With the criminal knowledge they passed on to
me.
I'll crusade for justice at a moderate fee.

When young Michael Kelly told Barrister Bubs,
They checked names and addresses on watches
in pubs.
But his recent possession is hard to explain —
I saw his initials on the Broadmeadows train.

That trying Judge Perry took years off my
life —
I misled his Honour and got into strife.
I was tempted to tender a punch in his ear,
But I hate bread and water, I love pies and beer.

Young George Hampel's pleas were a long,
tragic show —
That Dapper Aussie pleader would make your
tears flow.
But now he must listen to Phil Dunn and Co.
Who play on his heart strings to let their crims
go.

Frank Vincent's sharp nose for justice drew
near,
And lengthy addresses the juries did hear.
When he stopped to draw breath it was crystal
clear —
With no notes at all he could talk till next year.

So please tell us, Barbara just where we went
wrong —
Each day we woke up and staggered along.
If we weren't broke from shouting solicitors too,
We'd buy the Bar Council a William Street
view —
Yes, buy Gillard's Council a William Street view.

Michael Quinlan

HOW WEARY DOES ONE'S WRITING HAND feel as one seeks to write about yet another loss! The team had a new look for the annual match against the solicitors in December 1989. We had a transfusion of youth. Three bowlers were added to the side; Geoff McArthur, Andrew Donald and Con Kilias. The bowling looked good on paper. The batting looked solid without being very special. However it was another year, another match, and we were forever hopeful!

It was a lovely day and the Albert Ground looked a picture. The Law Institute won the toss and decided to bat. They started off well making 36 for the opening stand with the next wicket falling at 99. The bowlers bowled well and at no stage did the opposition get away. However they were steady in their climb to 99. At that stage we were at the turning point as Peter Watkins, a century maker from last year, was 60 runs not out. We were fortunate to get Peter Watkins for 74, bowled Chancellor with the score 126, and thereafter the Law Institute lost 5 wickets for a mere 47 runs. All the bowlers bowled well, but the success story was Andrew Donald on his debut, getting 3/41 off 8 overs. Ross Middleton, markedly slowing down with age, managed to chip in with two late wickets, ending up with the figures of 2/10. 173 in 40 overs appeared achievable.

The skipper, who had to go to Canberra, decided to open. He did with a degree of trepidation bearing in mind the opening fast bowler for the Law Institute also opened for University Firsts. Some how or other the first wicket put on 33, Gillard making 20 before he was caught. Despite this good

VICTORIAN BAR FIRST XI v. LAW INSTITUTE

L to r: Charlie Brydon (Law Institute captain), Andrew Donald, Peter Lithgow, Ross Middleton.

start, it was all downhill from there on and the Bar only managed to make 110. The only bright spot was Geoff Chancellor who batted well for 26. Ian Dallas made 14, and Michael Cosgrave was run out for 11. David Harper put up a rear guard action and managed to make 10 not out.

The batting was very disappointing.

We congratulate the Law Institute on their well deserved win. The margin was the biggest for some years. To echo an often made cry, where are all the Bar's cricketers?

The Bar's side was — E.W. Gillard Q.C., David Harper Q.C., Bruce McTaggart, Ross Middleton, Geoff Chancellor, Geoff McArthur, Peter Lithgow, Ian Dallas, Michael Cosgrave, Andrew Donald and Con Kilias.

E.W. Gillard

Ross Middleton hooking.

AFTER OUR DRUBBING BY THE LAW Institute in our annual game, the thought of taking on a small but well known group of solicitors was something to send the boys into a state of ecstasy. The suggested game against the firm, Mallesons Stephen Jaques, aroused considerable interest among the members of the Bar. Many a game in the past had withered in the planning stages because of lack of numbers. This time we were over subscribed. What were the reasons? A golden opportunity to mix with members of the illustrious firm with untold opportunities to tout? Success against solicitors at last? It could not have been the chance to play against pretty girls — we didn't know they were playing before we got there! In any event the girls didn't play in the "A" side.

The "A" side looked strong on paper and the

Gordon Ritter QC driving.

VICTORIAN BAR "A" TEAM v. MALLESONS STEPHEN JAQUES

David Kendall QC going for the doctor.

Team Conference.

The Crowd on the Hill.

events of the day proved that to be so. We won the toss and invited the opposition to bat.

Thoughts of an easy game were quickly dispelled when the skipper of the opposition, Tony Gramma, proceeded to smash Geoff McArthur's first two balls for 4 and 3 respectively. The other opener, Haddrick, took 3 overs to get off the mark, but when he did, he did so with a towering six. Tony Gramma's aggression came to a halt at 19, when he was adjudged LBW. His partner Haddrick made 20, and the opposition were 2/42. The next five wickets fell for 33 runs, and at 7/75 the opposition were in trouble. They batted 12 and were 11/111 at the close.

The fielding and bowling were excellent. The wickets were shared. Geoff McArthur 3/27, Andrew Donald 2/20, Chris Connor 2/10 off 6 overs, Peter Couzens 2/19, Geoff Chancellor 1/12, and Tony Radford one ball for one wicket.

Our batting proved much too strong. We only lost 2 wickets in making 231. Five batsmen retired. The pick of the batsmen were Ross Middleton 53 retired, Peter Walton 53 retired, and Chris Connor 56 retired.

All round we thoroughly enjoyed ourselves. It was an excellent outing for the next big game against the New South Wales Bar. It was an enjoyable day with perfect sunny weather, a lovely setting at Como Park, and pleasant company.

To the organisers, Shatin and Connor, and to those at Mallesons Stephen Jaques, we say thanks for a pleasant day's cricket.

E.W.G.

BAR CRICKET
2ND XI v. LAW INSTITUTE

THE LAW INSTITUTE SECOND XI DEFEATED the Bar Second XI by 28 runs in their annual cricket match which took place on 18th December 1989 at the Old Xaverians' Ground.

Although beaten the Bar team was far from disgraced in what proved to be a highly competitive match.

The Solicitors batted first and scored 7 for 196 in their 40 overs.

Successful bowlers for the Bar were Myers 3/28, Couzens 2/20 and Burnett 1/20. Jordan, although finishing without a wicket, also bowled well.

Generally the Bar's fielding was good with Tinney, in particular, deserving special praise for a top class display of wicket keeping in what was his first game of cricket for the Bar.

The Bar scored 7 for 168 in its innings with the highlight being an opening partnership of 97 between Walton (56) and Radford (27). Both batted splendidly in very hot and trying conditions.

Unfortunately, the openers' efforts were not matched to any significant extent by their fellow batsmen although some useful minor contributions were made by Couzens (17), Burnett (12) and Jordan (11).

Congratulations to the Solicitors on a well deserved win. May the result be reversed in December 1990.

Peter Couzens

VICTORIAN BAR "B" TEAM v. MALLESONS STEPHEN JAQUES

OFFERED PERFECT SUNNY WEATHER AND the picturesque setting of Como Park (on 18th February) the Bar's "B" Team managed to overcome their formidable opponents, the Mallesons Stephen Jaques' cricketers, to win outright.

Given confidence by a steady opening stand by Shatin and Ramsey, the early batsmen showed their class with Dyer (50 n.o.), Cavanough (25), Southall (15) and Kendall QC (15) relishing what was thought to be a perfect batting wicket.

That myth was, however, dispelled when the Bar was called on to field. First class bowling performances were returned by Damien Maguire (with four wickets in the first innings), Cavanough (with 3½) and Matthews. They were supported by bowling 'finds', Strang and Shatin.

In the field Craig Harrison was simply brilliant, wearing the right sunglasses for the catches he amazingly took. Ignoring irrelevant cricketing statistics, of balls faced or runs obtained, let it be recorded that Craig was an unconquered batsman.

As for the walking wounded, Kendall QC was resilient. He complained of pulling every muscle, suffering hamstring injury and bowling strain (he was called on to bowl two overs) and was humiliated when hit by a ball from the other field whilst merely asleep on ours. He offers the reminder that the ball did not get past him.

Scores: Bar 9/168 def. Mallesons Stephen Jaques 68 and 93 outright.

Our thanks go to the organisers, Shatin and Connor, and to those at Mallesons Stephen Jaques (including that man Opas) for a marvellous day's cricket, enjoyed by all players and spectators.

Gordon Ritter

TENNIS

ON MONDAY 18TH DECEMBER 1989 THE Annual Match of Bench and Bar against the solicitors for the O'Driscoll Cup took place at the Albert Ground. Conditions started off pretty warm but the Bar as usual fancied their chances. Our team was improved by playing a young German lawyer, Ranier Hottestott, who was made an Honorary Barrister for the day. Ranier was taking time off from practice in Germany to play the satellite circuit in Australia.

An idea of the present day skills of the solicitors on the tennis courts was shown by the fact that Judge Stott partnered by Howard Mason could only win three out of five sets losing the other two very narrowly.

The depth of the solicitors' team was remarkable and the result was the worst drubbing the Bar has received since the tournament started. The final score was solicitors 36 sets to the Bar 11. The "B" Team was overwhelmed, being thrashed 39 sets to 4. The "A" Division at least put up some fight going down 16 sets to 7 and losing a significant number of those sets on the tie-break.

A number of good players unfortunately were trapped in various professional commitments and it was disappointing that some others rang in late on Friday to cancel their engagement for tennis, being tempted to the Magistrates Courts for a late brief. The selectors must take a long and hard look at the formation of the team and would welcome any top class players they can lay their hands on. The standard this year particularly in "A" Division was probably the best quality tennis seen for many years and did the participants proud.

B.K.C. Thomson

GOLF

ON DECEMBER 18TH 1989 AT THE HUNTingdale Golf Club the Bench and Bar Golf Team convincingly defeated the Law Institute to regain the Sir Edmund Herring Trophy.

A total of over 70 participated in the event.

Exceptional scoring was the order of the day with several members of the Bench and Bar team performing at an outstanding level. Their scores were such as would almost be worthy of a place in the Australian Masters also played recently at Huntingdale. His Honour Judge Croyle fired a 77 off the stick and combined with Allan Middleton for a fourball score of 10 up. Stephen O'Bryan had 38 off the stick for his second nine holes and together with Tim Tobin recorded a fourball score of 12 up to lead the field. Naturally each of these pairs was among the Bench and Bar's winners on the day.

Overall the Bench and Bar won 9 matches and the Law Institute 5 with the remainder halved. Among the other Bench and Bar winning combinations were Rice and Lovitt, Judge Harris and Mick Casey, Mr. Justice Smithers and Richard Smith and Wischusen and Kozicki.

This year's event has been scheduled for Royal Melbourne Golf Club on Monday December 17th, 1990. Further details will be circulated in due course.

Gavan Rice

Tennis v. Law Institute. John Tebbutt and Tim Walker congratulate opponents.

INAUGURAL WEST COAST TENNIS CLASSIC

L to R (Top): *Watkins, Jens, Brookes, Judge Meagher, Judge Cullity, Hicks (half of him but a full glass of red).*
(Bottom): *Giudice, McInerney.*

ON THE 18TH DAY OF JANUARY 1990 THE above Classic took place in a fiercely competitive atmosphere between teams from Lorne and Torquay. This followed a challenge issued by a super confident Jens to Hicks, the Lorne Captain, indicating that he would come up with legal talent holidaying at Torquay which would be the match of any combination which could be scraped up at Lorne.

Hicks then went about assembling a team comprised of Brookes, Watkins and McInerney and battle lines were set. Jens brought his team comprising Judge Meagher, Judge Cullity and Giudice around the Great Ocean Road, pumping them up all the way with loud aggressive tapes of songs such as "Eye of the Tiger" and "Land Downunder". By the time they arrived in Lorne they literally burst out of the car.

Fortunately, the ever relaxed Watkins saw the demeanour of the opposition and immediately spoke of the environmental wonders of the Lorne Country Club, such conversation subsequently leading himself and the Torquay party into the bar. Captain Hicks of the Lorne side was not too impressed when he saw the challengers coming up towards the tennis courts pots in hand.

The tennis proceeded at a pace with the first pair Hicks and Brookes winning the first rubber against Judge Meagher and Giudice 2-0. This victory was achieved despite the effervescent serve of Judge Meagher and court craft of Giudice. The parties then adjourned to the alternate Court where the rubber between McInerney and Watkins and Jens and Judge Cullity was neatly poised at 1-1. Jens and Cullity ran to a lead of 5-1 in the deciding set and then there was a fight back to 5-5. The Torquay boys were victorious taking that rubber 2-1, as a result of the uncharacteristic consistency of Jens and the deft touch of Cullity.

The alternate rubbers went 2-0 to Judge Meagher and Giudice against McInerney and Watkins and the consistent team of Hicks and Brookes 2-0 against Jens and Judge Cullity.

The result of this titanic contest was that the first inaugural classic was won by one set by the Lorne contingent. This victory was discussed post match in the bar of the Lorne Country Club, and subsequently at Kosta's Restaurant in Lorne where the respective ladies of the participants joined us for dinner. You will see in the photograph attached the merriment of all after all the rivalry had dissipated by about 11.30 p.m.

M.G. McInerney