VICTORIAN BAR NEWS

No. 75
ISSN-0150-3285

SUMMER 1990

The New Silks

A Consumer's Perspective on the Courts
Professor Thomas Church

Malaysian Bar on Trial
Nicholas Cowdery Q.C.

Success at the Bar
Lee J.W. Aitken

Bar Hockey and Golf

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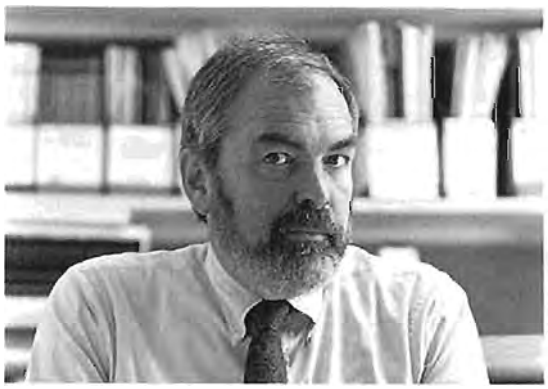
The new Silks announced.



Prof. Thomas W. Church: A consumer's perspective on the Courts.

Theatrical double: A candid report.

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VICTORIAN BAR NEWS

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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 Q.C., Gillianne Tedder and Linda Mae Tanner (Photography), Tony Pagone and Peter Lithgow (book reviews), Ron Clark (artwork), Richard Brear, Graham Devries.

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THE EDITORS' BACKSHEET

ALEX CHERNOV — LAW COUNCIL PRESIDENT

In September Alex Chernov Q.C. became President of the Law Council of Australia.

Alex is the first member of the Victorian Bar to hold office at the head of the Australian legal profession since the late Douglas Menzies Q.C. in 1956–57.

Alex signed the Bar Roll in 1958, took Silk in 1980, and was Chairman of the Bar Council in 1985–86. He is a co-author of *Tenancy Law and Practice (Victoria)*, the leading Australian text on the law of landlord and tenant.

Although for many years a leading commercial Silk, Alex has had wide experience at the Bar, including an appearance for one of ten accused in the famous fraud trial *R. v. Mitchell*, which lasted for six months in 1969–70. At the time it was second only to the trial of the Tichborne Claimant as the longest criminal trial in British or Australian legal history. (Alex's client was acquitted.) He read with Daryl Dawson, as his Honour then was. By all accounts, the scholarly tranquillity of those chambers was occasionally disturbed by intense conferences between Alex and various alleged rapists and drunk drivers.

Times do not get any easier for the Australian legal profession, and Alex's considerable skills will be fully tested in coping with Senate and Trade Practices Commission inquiries and the like.

All members of the Victorian Bar will surely take pride in his election and wish him the best of luck. He will have the benefit of the ability that took him to the top of the Bar and also a modest and affable manner which makes him standing disproof of the theory that "Nice Guys Finish Last".

TRIBUNALS

Richard Tracey's paper at the ABA Convention, published in *Bar News* No. 74, Spring 1990, has struck many a responsive chord. Writing in the New South Wales *Bar News* (Spring edition) D.M.J. Bennett Q.C. says:

> *"... a particularly horrifying account was given of the procedures of the new Victorian Guardianship and Administration Board*

which, applying procedures which would make an old-line Chinese communist proud, makes decisions which read like the script of 'A Streetcar Named Desire' in relation to the less competent members of the community."

CONTINGENCY FEES — FURTHER THOUGHTS

It is said that the introduction of contingency fees in Australia would not lead to extravagant American-style litigation because in Australia, in contrast with the United States, the costs indemnity rule operates as a sanction against unmeritorious claims. Perhaps so, but logically should not the liability to pay a successful defendant's costs also extend to the lawyer who embarks on a joint venture with the plaintiff in contingency fee-funded litigation?

Demands for contingency fees often seem to be made in almost the same breath as complaints about the cost of litigation. Yet contingency fees would substantially increase the cost of litigation to successful plaintiffs.

Demands for contingency fees often seem to be made in almost the same breath as complaints about the cost of litigation. Yet contingency fees would substantially increase the cost of litigation to successful plaintiffs. A contingency cut of, say, 30–40 per cent from a verdict would usually leave a plaintiff far worse off than under the present system.

If it is said that contingency fees increase access to the courts, this can only be because lawyers take on cases they otherwise would not because they can cover the cost of running claims which fail by fees received from claims which succeed. Thus, of all people, successful plaintiffs with meritorious claims are subsidising unsuccessful plaintiffs with claims ranging from the unlucky to the absurd.

. . . BUT ON THE OTHER

F.E. Smith, later Lord Birkenhead, was a towering figure in the British legal and political scene from his election to Parliament in 1906 until his death in 1930 at the early age of 58, having become Lord Chancellor at 46.

He had a unique capacity for generating memorable anecdotes. Some must be apocryphal, such as that attributing to him the invention of the old chestnut "And how high could you raise your arm before the accident?"

Others seem to have the ring of truth, such as the one related by Lord Roskill at our Bar Dinner two years ago. When Guest of Honour at a school speech night, F.E. had to sit through a long and extremely boring speech by the Headmaster, who finally concluded ". . . and now our distinguished Guest of Honour, Mr. F.E. Smith KC, will give us his address". F.E. rose, glared at the audience, said "17 Cadogan Square, SW1" and sat down.

He was a devoted member of Gray's Inn, and a recent issue of *Graya*, the Inn's magazine, contains a brief biographical sketch by Alec Samuels. The author sums up F.E. as ". . . An excellent lawyer, an outstanding advocate, a good judge, a superb orator, real statesmanlike qualities, . . . a loyal friend . . . dynamic personality . . . inexhaustible vitality . . . zest for life . . . dark, handsome, dashing, bold, scintillating, brilliant, sardonic".

But he was also, in Samuels' words "Over-ambitious, opportunist, over-confident, aggressive, overbearing, arrogant, headstrong, sarcastic, contemptuous, cynical, capable of deadly invective, ferocious, ruthless as an opponent, impetuous, reckless, feckless, inconsiderate, intellectually careless, too quick to judgment".

Whew! How would you have liked to share chambers with him?

The Editors

CHAIRMAN'S CUPBOARD

I RECEIVE CONSTANT REMINDERS these days. Do this, do not do that. Mandamus and prohibition. Many more of the former because, regrettably, it is very hard to find the time to be tempted to do that which should not be done; reminders not to do it are therefore rarely warranted.

The Editors of *Bar News* have crafted the art of reminding to a high level of sophistication. It springs, no doubt, from an innate conviction that no barrister will willingly settle, let alone actually draw, any paper work the reward for which does not at least equal the cost of half an hour of the time of a junior partner in Arthur Jacques & Riggall.

I have recently negotiated an exclusive contract with the Editors of *Bar News*. It is worth a good deal less than half-an-hour of the time of the junior partner. Indeed, it is mathematically impossible for its pecuniary rewards to be any lower than the standard of the product for which it is paid. Hence the need for constant reminders.

The last reminder, the third for this (Summer) issue of *Bar News*, came from Heerey Q.C. himself. It came less than 48 hours before the deadline against which I am presently writing. He said he would do anything for copy. Any copy. Even mine. I said that I would respond in 12 hours if he guaranteed me "Personality of the Quarter" in any issue within the next two years; 24 hours for any issue after that, up to five years from now. He refused me flat. So it is not my fault if this edition of the Cupboard is late; and none of its errors of grammar or syntax (etc.) are my fault, either. Put them down to the Editors' malice.

On Thursday, 1 November 1990, the Bar Council held a dinner in honour of some of those who had assisted it over the past 12 months or so. They are among many who have given much honorary time and effort to the Bar. Without them, either the corporate business of the Bar would become impossible to manage, or subscriptions would have to increase to huge (or should I say even huger) amounts. I name them, and nominate the chief area of their assistance; but I do so acutely conscious of the fact that they are only a few of the many more to whom the Bar is greatly indebted:

O'Callaghan Q.C. (Assisting Ethics Committee)
Ashley Q.C. (Ditto)
Campbell (Ditto)
Wilson (Ditto)
Southall (Ditto)
Moshinsky Q.C. (Law Reform Committee)
Brear (Bar Library)

The Honourable F.X. Connor Q.C. (Chairman 1967–69) has been kind enough to accept an invitation to act on a part-time basis as an advisor to the Chairman and the Executive. He will assist in the preparation of the many submissions and responses which the Bar Council is expected to make to matters put before it by governments, law reform bodies, commissions and the like.

The Bar Council also included among its guests of honour on 1 November, Mr. Justice Phillips, the Chairman of the National Crime Authority; and the retiring members of the 1989/90 Bar Council. Of these, I write now only about Francis Q.C., Chairman in 1987/88.

Francis joined the Bar Council in the year in which he became Chairman. That itself presented difficulties. Although (as every barrister knows) it is a job which even Silks can manage with ease, one does need time to adjust to its peculiar demands. Francis adjusted with re-

markable speed. Not only that, but with remarkable generosity of spirit. The election which placed him on the Bar Council displaced all except a few of its former members. One of the survivors was the Chairman in 1986/87, Philip Cummins Q.C. (as he then was), whose graciousness was equal to that of his successor. Between them, a smooth succession was achieved in otherwise adverse circumstances, and in the year which followed, Francis displayed qualities of leadership which won the respect of all who worked with him. He was a Chairman worthy of the occasion.

I must also here mention another former Chairman. The Honourable F.X. Connor Q.C. (Chairman 1967–69) has been kind enough to accept an invitation to act on a part-time basis as an advisor to the Chairman and the Executive. He will assist in the preparation of the many submissions and responses which the Bar Council is expected to make to matters put before it by governments, law reform bodies, commissions and the like. In this, his experience as a former Federal Court judge and Commonwealth Law Reform Commissioner will be invaluable. He is warmly welcomed.

He returns at a critical time. The Victorian Law Reform Commission has recently issued, on a restricted basis, two draft discussion papers. Their tone can, in part, be gauged from that of an article in the November 1990 issue of the *Law Institute Journal* by Richard Wright, the Executive Director of the Commission. He there anticipates the introduction into Victoria of legislation modelled on Part IV of the *Trade Practices Act*. He says, amongst other things, that "if a *Trade Practices Act* were to be enacted in Victoria, the special position of the Bar . . . would be addressed . . . and none of the restrictive rules which acted against the public interest would survive". He continued:

> *"A large number of business and professional practices would be caught, not the least being the unfortunate Law Institute rule on fee advertising for legal services, or, as in the egregiously anti-competitive Bar Rules, the requirement that a barrister must work through a clerk".*

He anticipates the profession's response by noting that those "whose economic livelihood is threatened generally raise the most specious arguments in defence of the prevailing arrangements".

He does not recognise that most if not all Bar rules provide little protection to the economic livelihood of barristers. But in any event the Bar's defence of so much of the prevailing arrangements as must be defended will not be specious.

David Harper

THE ATTORNEY-GENERAL'S COLUMN

THIS PARLIAMENTARY SESSION HAS been paticularly busy with the introduction of many Bills into Parliament, most of which have been foreshadowed in previous columns. The Attorney-General's Department continues to be committed to a programme of reform and while much of this reform is achieved through legislation some of the changes have not involved the parliamentary process.

CRIMES COMPENSATION

Magistrates are to take over the functions of the Crimes Compensation Tribunal enabling significant administrative savings without compromising the level of service to victims of crime. These changes to crimes compensation do not require legislation yet will provide greater access to compensation for victims of crime and significant cost savings.

Hearings will continue to be conducted informally in chambers, not in general court lists. Magistrates are already trained to deal with such matters, but further training will be given prior to the changeover.

These changes, combined with the recent increases in the jurisdiction of the Magistrates' Court, give greater scope for cases to be dealt with through mediation. The comparative speed with which cases are disposed of means that the Magistrates' Court provides the most accessible form of justice in Victoria with less cost to the community.

It is also planned that in the new year the jurisdiction of the Magistrates' Court be further inceased to $40,000 excluding personal injury claims.

NEW CHIEF MAGISTRATE

With the departure of John Dugan as Victoria's Chief Magistrate in September, Sally Brown has been appointed the State's first woman Chief Magistrate. Ms Brown was appointed a magistrate in 1985 and had been a Deputy Chief Magistrate since 1987.

Mr. Dugan presided over fundamental and important changes in the Magistrates' Court, some of which are detailed above. The reforms will continue under the the new chief.

NEW SECRETARY TO ATTORNEY-GENERAL'S DEPARTMENT

Solicitor and former head of Adelaide's Multi Function Polis Project, Colin Neave, is the new secretary of the Attorney-General's Department. Mr. Neave has extensive experience in the law, particularly corporate law, as well as considerable senior management experience within both the public and private sector.

Mr. Neave was the Director-General and Commissioner for Consumer Affairs in South Australia from 1987 before becoming Chief Executive Officer of the Multi Function Polis Project in July this year. Prior to joining the public sector, he held positions of Manager, Legal and Company Secretary with AMI Toyota Ltd. Mr. Neave practised for 12 years as a solicitor in Melbourne.

JURIES

The Juries (Amendment) Bill passed the Lower House in early November. In potentially lengthy trials the trial judge will have the power to order that up to 15 jurors be empanelled. This reform is to overcome the potential problem of a long-running trial being aborted because the number of jurors has fallen below 10 through ill-health of for other reasons.

The minimum number of jurors with which a trial is allowed to continue will remain at 10. If more than 12 jurors remain at the end of the trial, a ballot will be held to decide the 12 who consider the verdict.

The minimum number of jurors with which a trial is allowed to continue will remain at 10. If more than 12 jurors remain at the end of the trial, a ballot will be held to decide the 12 who consider the verdict.

COURTS (AMENDMENT) BILL

A significant change introduced in the Courts (Amendment) Bill will be to give the County Court unlimited jurisdiction in personal injury matters. The Supreme Court will still exercise jurisdiction in personal injury matters where there are issues of a complex and serious nature.

The Bill also allows the prosecution to extend the time limit for the commencement of committal proceedings after the time limits have expired. Previously the time limits had a sudden death effect beyond which time commitals could not proceed. The changes continue to provide an incentive for cases to proceed within specified time limits but allow the prosecution to apply outside those limits in certain circumstnces.

JUDICIAL STUDIES BOARD BILL

The Judicial Studies Board Bill is also of interest to the profession. It arises out of a recommendation of the Starke Committee which recommended that Victoria adopt the Judicial Studies Board model which has been very successful in England. It sets up a Judicial Studies Board to assist judges and magistrates in providing information on sentencing matters. The board of seven comprises four judges, a magistrate and two people appointed by the Attorney-General, one of whom is to be from a tertiary institution.

The board will play a crucial role in future in gathering sentencing information, preparing sentencing guidelines, developing a computerised sentencing database and advising the Attorney-General on sentencing reform.

ENVIRONMENTAL DEFENDER'S OFFICE

Plans for an Environmental Defender's Office in Victoria are well under way with the recent grant of over $6,000 from the Victorian Law Foundation to help establish an organisational

OPENING OF THE LEGAL YEAR

TUESDAY 29 JANUARY, 1991

RELIGIOUS CEREMONIES

9.30am St Paul's Cathedral,
Corner Flinders Street and Swanston Street, Melbourne

9.00am St Patrick's Cathedral
(Red Mass),
Albert Street, East Melbourne

9.30am Temple Beth Israel,
76 - 82 Alma Road, St Kilda

9.30am St Eustathios Cathedral,
221 Dorcas Street, South Melbourne

Attended by the Judges and other members of the legal community in procession.

For further details, please refer to insert in December edition of the Law Institute Journal.

framework for such an office. In recent years environmental and town planning issues have become increasingly important and increasingly complex, and the importance to the public of this area has grown.

The service to be offered by the office will be confined to matters of public interest. It will provide easily-accessible professional assistance in the environmental and town planning field to groups and individuals and will co-ordinate and develop existing community resources and broaden community participation in environmental and planning law policy.

The Environmental Defender's Office movement originated in the United States several decades ago, among the first being the Sierra Club Legal Defense Fund and the Natural Resources Defense Council. The first office of a similar nature established in Australia was in the New South Wales Environmental Defender's Office, which began in 1984. Such an office has been mooted in Victoria for some time.

UNIFORM DEFAMATION LAW UPDATE

As detailed in previous columns, considerable progress has been made in establishing uniform defamation laws for the north-eastern States, Victoria, New South Wales and Queensland. The three States recently distributed a discussion paper for public comment and more recently agreed to produce a further Green Paper on Uniform Defamation Law Reform. The three-State agreement now includes truth alone as a defence with statutory protection for privacy, court-recommended corrections, a new statutory tort of contempt and a six-month limitation period with a maximum of three years if good cause is shown. I believe it strikes the right compromise between reasonable and realistic free speech and the protection of reputation and privacy. It is hoped that legislation will be prepared for introduction in the three States next year.

WHITE-COLLAR CRIME

Victoria will consider abolishing committal proceedings and moving straight to trial in instances where white-collar crime has been the subject of lengthy investigation. Where there has already been long investigation, there seems little point in rehearsing again the evidence and allegations in a committal proceeding. Other States' Attorneys-General will be looking at initiatives to confine the length of committals so that prosecutions can be brought straight to trial without delay. A similar scheme has been operating successfully in the United Kingdom.

Jim Kennan
Attorney-General

STOP PRESS

Member of the Victorian Bar appointed to International Court

A member of the Victorian Bar, Christopher Weeramantry, has just been elected to the International Court of Justice. He signed the Victorian Bar Roll in 1972 and in the same year took up the Sir Hayden Starke Chair of Law at Monash University. He had intended to engage in full-time practice from the beginning of next year.

Professor Weeramantry was previously a Justice of the Supreme Court of Sri Lanka. He has written extensively on human rights in the context of international law. He is a Vice-President of the Victorian Branch of the International Commission of Jurists. He recently conducted a Commission of Inquiry into the effect of phosphate mining on the island of Nauru.

CRIMINAL BAR ASSOCIATION REPORT

THIS REPORT IS NECESSARILY SHORT — the new Executive was elected on 10 September 1990, the new committee has had the opportunity of meeting only twice as at the date of writing and the new Secretary of the Association (the writer) is still in the process of coming to grips with the awesome responsibilities of his office of which the most presently relevant is meeting the Editors' deadlines!

NEW EXECUTIVE

At the Annual General Meeting, Kent Q.C. was elected Chairman, Morgan-Payler Vice-Chairman, Webster Secretary and D'Arcy Treasurer — these two latter positions were understandably hotly contested. The committee is yet to be finalised but thus far Dane, Dean, Dunn, Hender, Kayser, Punshon, Ray, Schwarz, Sexton, Silbert and Walmsley have been appointed.

EXIT LOVITT AND LASRY

Lovitt and Lasry did not seek re-election as Chairman and Secretary respectively nor did they seek to remain as committee members. This is understandable as both have rendered tireless service to the Association for many years and deserve a (short) break. It should be noted, however, that Lovitt, has, without consultation, been constituted a permanent standing sub-committee, to be known as Keeper of the Cupboard, with the responsibility for organising the Criminal Bar Dinners. The Executive is looking to find a similar responsibility for Lasry. The only idea thus far is that he could possibly be constituted a Standing Committee and Consultant in Martial Arts to the Readers' Course.

The Association and the Bar are indebted to them and, in recognition of this, the Association has awarded them both the high honour of the 'Gold Bag'.

REFORM OF LAW RELATING TO SEXUAL OFFENCES

A sub-committee comprising Dunn and Kayser is currently considering the Crimes (Sexual Offences) Bill with a view to preparing submissions to the Attorney-General prior to the enactment of changes to the existing law. The topic is an important one because of pressures from various groups to make the proof of sexual offences simpler and less stressful for complainants. The Association considers that while these are matters proper for debate the legislature must proceed with great caution to ensure that the fundamental rights of accused persons are not eroded.

REFORM OF THE LAW OF SENTENCING

A further sub-committee comprising Dane, Dean and Silbert is considering the Sentencing Bill, whick seeks to effect wide-ranging changes to sentencing law. A particular area of concern is the effective abolition of the remission system as we know it, whereby remissions are handled administratively. The proposed legislation places responsibility for the fixing of the actual term served in the hands of the courts. The Association's preliminary view is that while it sees some merit in this, care must be taken not to discard features of the old system that were of positive value; for example, maintaining incentives for good behaviour and rehabilitation during sentence.

OTHER MATTERS

Two Counsel Rule — At a recent meeting the proposed modifications to the rule were discussed. There was general concern about recent decisions by the Legal Aid Commission not to allow Silk in some murder trials, but notwithstanding this the committee was unanimous in its view that the two counsel rule should be retained without modification. Whilst this is a view that can in no way bind members of the Association, it was nonetheless thought appropriate to advise the Bar Council of the committee's view as representing a body of opinion from a particular area of practice.

Prosecutors' Fees — A sub-committee is currently preparing a submission for the Bar Fees Committee addressing anomalies in levels of State prosecutors' fees when compared with other publicly-funded fees for criminal practice.

Sub-Committees — The committee has adopted the approach that, with the possible exception of fees and Lovitt, rather than appoint standing sub-committees it should appoint ad hoc sub-committees — these sub-committees having power to co-opt. Any member of the Association wishing to contribute by becoming a member of a sub-committee or otherwise should contact a member of the Executive.

Robert Webster

LAW COUNCIL OF AUSTRALIA REPORT

NEW EXECUTIVE

Alex Chernov Q.C. (Melbourne) was elected President of the Law Council at the annual general meeting in September, succeeding Mahla Pearlman (Sydney).

The Executive now comprises:

President	Alex Chernov Q.C. (Melbourne)
President-elect	Bruce Debelle Q.C. (Adelaide)
Vice-President	David Miles (Melbourne)
Treasurer	Robert Meadows (Perth)
Immediate Past President	Mahla Pearlman A.M. (Sydney)
Member	Geoffrey Davies Q.C. (Brisbane)
Member	Stuart Fowler (Sydney)
Secretary-General	Peter Levy.

Stuart Fowler comes on to the Executive following the departure of Denis Byrne, who was President in 1988–89.

COST OF JUSTICE INQUIRY

The Senate Standing Committee on Legal and Constitutional Affairs is now visiting capital cities to hold public hearings. Hearings have been held in Melbourne and Sydney, and are planned for Brisbane in October and Adelaide and Perth in November. In the meantime, the Law Council has been responding to requests by the committee for further information on some matters, and has been offering the committee additional information on several issues.

LAW COUNCIL BUILDING

The LCA Executive is continuing to examine options for the development of a permanent home for the Law Council in Canberra. A subcommittee to oversee this project has been established. It comprises the President, Immediate Past President, Secretary-General and Financial Controller (Bruce Timbs).

LEGAL EDUCATION CONFERENCE

With strong support from the law schools and the profession, the Law Council's Legal Education Conference to be held at Bond University from 13–16 February next year is shaping up to be a very important event. A major aim is the publication, drawing on the conference discussions, of a Law Council policy statement on legal education.

Guest speaker at the conference opening will be Sir Zelman Cowen, who spoke at the closing session of the last major legal education conference organised by the Law Council in 1976. Information about the conference is available from Capital Conferences Pty. Ltd., P.O. Box E345, Queen Victoria Terrace, Canberra, A.C.T. 2600, tel. (06) 285 2048, fax (06) 285 2334.

LCA MEMBERSHIP

The Law Council had 4,060 individual members — the great majority of them members also of one or more LCA Sections — at the end of the 1989–90 year. Membership renewals have been strong. Any members who have not renewed are invited to do so. The Law Council's standing and effectiveness will be increased as the strength of membership support grows. Membership information: Mrs Christine Jackson (06) 247 3788.

INVITATION FROM ADELAIDE

A brochure inside *Australian Law News* has brought a very big response from people thinking of attending the 27th Australian Legal Convention in Adelaide next year. The chance to win a worthwhile prize by expressing interest in the convention may have helped, but the attractiveness of Adelaide and of the planned convention programme is the big factor.

The convention will be different in a number of ways from recent ones, and the planning committee at the Law Society of South Australia is enthusiastically arranging a programme of business and social events that will be of interest to practitioners of all kinds.

TRAINING GUARANTEE ACT

Discussions are continuing with government authorities on several matters of concern to the legal profession in relation to the training guarantee scheme. One important issue is the need for Law Societies and Bar Associations to be able to register as training agents under the scheme.

WELCOME

JUSTICE MUSHIN

The appointment of Nahum Mushin to the Family Court of Australia on 25 October 1990 was welcomed by family law practitioners throughout Australia.

His Honour was born on 28 June 1945 and educated at Caulfield North Central School and Melbourne High School. He matriculated in 1962. He attended Monash University, obtaining a Bachelor of Jurisprudence in 1966 and a Bachelor of Laws in 1970.

In 1971, his Honour was articled to Mr. Fred Lester of the Oakleigh firm of solicitors Lester Pearn & Fielden, and was admitted to practice in March 1972. He was made a partner in the firm in July 1975 and practised as a solicitor until January 1980. He undertook work in most areas of litigation and often appeared in court as counsel.

His Honour signed the Victorian Bar Roll in March 1980 and read with Mervyn Kimm, now Judge Kimm of the County Court. Initially, he practised in many areas including running down, commercial, crime, industrial law and local government. However, his main interest was in family law and by 1984 he practised exclusively in that area.

His Honour was known as a hard-working, committed, knowledgeable, enthusiastic, sensitive and "streetwise" advocate and as a lateral thinker. He appeared in many large commercial family law cases, in cases involving jurisdictional issues and in significant cases before the Full Court of the Family Court of Australia. Yet he was always ready to accept a legal aid brief.

He has lectured the Victorian Bar readers on various aspects of family law practice and procedure for many years. For the last four or five years, barely a week went by when his Honour was not delivering a lecture, writing a paper, meeting with a family law committee, or providing commentary on a family law issue. Between 1986 and 1988 he was a member of the Bar's Legal Aid, Fees and Law Reform Committees.

In 1985 and 1986 his Honour acted as an honorary consultant to the Australian Law Reform Commission on its matrimonial property inquiry. Then, in 1988, he was elected to the Executive of the Family Law Section of the Law Council of Australia on which he served with distinction. He was chairman or a member of Family Law Section committees on insolvency, evidence, pleadings, Family Court jurisdiction, cross-vesting and rules. He represented the Section on the Judges' Rules Committee, some meetings of the Family Law Council and on the joint working party with the Family Law Council on the inter-relationship of bankruptcy and family law.

His Honour is an accomplished pianist whose talent has been much sought after and appreciated on social occasions.

He is happily ensconced in his second marriage to Judith Pierce, a family law solicitor, and delights in spending his leisure time with his daughter and step-daughters.

His Honour is a shining example of what is required of a Family Court judge by section 22(2)(b) of the *Family Law Act*, namely a person who "by reason of training, experience and personality ... is a suitable person to deal with matters of family law".

All of those who know his Honour are confident that, as a judge, he will be hard-working, courteous, compassionate and patient. The Bar congratulates the Attorney-General on his choice and wishes his Honour a fulfilling and rewarding career on the Bench blessed with good health.

NEW CHIEF MAGISTRATE — SALLY BROWN C.M.

IF ONE STARTS BY STATING THE obvious that the new Chief Magistrate is petite and feminine, then one can lay to rest all popular press prose and talk of her real attributes and talents. Her Worship is, by the way, and gladly, several inches taller than the dwarfish proportions reported in one daily newspaper. Is it mere coincidence though that the heights of our Chief Magistrate, Chief Judge and Chief Justice are now in perfect ascending order?

Sally was born in 1950, the same year that John Milton Dugan joined the Law Department, a quinella from which the Department might never recover! In 1967 she matriculated from MacRobertson's Girls' High. She was captain of the school, excellent training for her current position! She undertook a combined arts/law course at the University of Melbourne. In 1973 she was articled to Bruce Moore at the firm of Coltman, Wyatt & Anderson. In 1975 she commenced practise as a solicitor in the firm of David Thomas & Frenkel before lecturing in contract and company law at Footscray Institute of Technology and RMIT. In November 1978 Sally signed the Bar Roll and read with Peter Heerey. She had a general practice with an emphasis on criminal and family law.

In October 1985 she became one of the early barristers-turned-magistrates and the second female magistrate, shortly after Margaret Rizkalla's appointment. Her instant success as an intelligent and fair magistrate and, more particularly, her preparedness for extra curial hard work were quickly recognised when she became Deputy Chief Magistrate in April 1987.

In the last three years, Sally has left her mark on many aspects of the court. She has worked energetically on education with the magistracy, through the AIJA (of which she has this year become a Council member) and on the legal "lecture circuit". She has worked particularly in the field of domestic violence, sentencing, the computerisation of the Magistrates' Court, criminal trial delay reduction and the commital mention system.

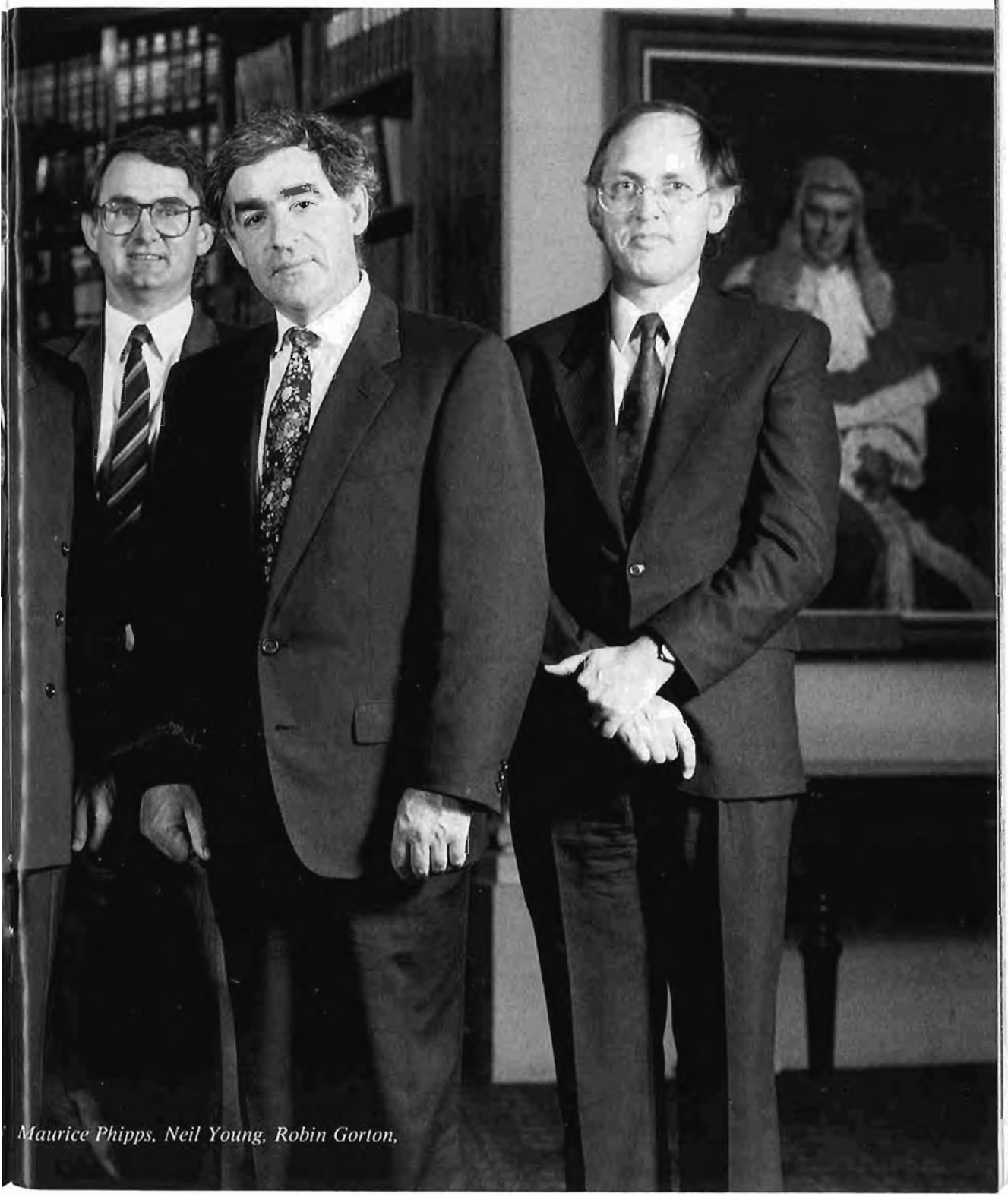
Our new Chief Magistrate has an incisive mind, a ready wit and a ready ear. She is diligent. She is also sensible, erudite and a consummate ambassador and champion for the magistracy in the 1990s. She is ready to acknowledge Darcy's copyright on court-room humour but one should not underestimate her capacity in that (or any other) regard!

When occasionally Sally is not working for the court or the Alfred Hospital Board, of which she is an active member, she reads, gardens and knits. To say she is a swimming enthusiast would be slightly overstating things; she disciplines herself to swim for fitness! Sally enjoys music, art and travel as well as a close and loyal group of friends.

The new Chief Magistrate's appointment is a popular one and everyone wishes her well.

NEW SILKS

Left to right: *Lex Lasry, Peter Rattra*
Peter Murdoch and Ian Sutherland.



Maurice Phipps, Neil Young, Robin Gorton,

Name:	**Robin Peter Gorton**
Age:	49
Date of Admission:	1 March 1965
Date of Signing Bar Roll:	22 May 1969
Master:	J.W.J. Mornane
Readers:	Ann McMahon
Areas of Practice:	Accident Compensation
Reasons for Applying to be Queens Counsel:	To be involved in more interesting cases in a wider area
Reaction on Appointment:	Excitement and trepidation

Name:	**Peter York Rattray**
Age:	47
Date of Admission:	3 March 1969
Date of Signing Bar Roll:	12 March 1970
Master:	John Mornane
Readers:	M. Gray Neil Rattray
Areas of Practice:	Common Law

Name:	**Peter Bardsley Murdoch**
Age:	43
Date of Admission:	1 October 1970
Date of Signing Bar Roll:	28 March 1972
Master:	Stephen Charles
Readers:	Richard Manly, Peter Searle, Joseph Tsalanidis, Georgina Grigoriou, Roger Young, Anthony Brown, Alastair McNab, Caroline Kirton
Areas of Practice:	Commercial
Reasons for Applying to be Queens Counsel:	To answer the challenge of the more difficult cases
Reaction on Appointment:	Delighted

Name:	**Maurice Beaumont Phipps**
Age:	44
Date of Admission:	1 March 1971
Date of Signing Bar Roll:	3 February 1972
Master:	J.V. Kaufman
Readers:	Alan Shaw, Alex Richards, Tim Falkiner, Elspeth Strong, Bryan Dwyer
Areas of Practice:	Building and construction disputes and general commercial work
Reasons for Applying to be Queens Counsel:	It seemed the right thing to do
Reaction on Appointment:	Very pleased

Name:	**Ian Geoffrey Sutherland**
Age:	43
Date of Admission:	1 March 1973

Date of Signing Bar Roll:	8 March 1973
Master:	T.H. Smith
Readers:	Helen Symon, John Thwaites, Russell Moore, Nichole Feely, Justin Bourke, Lita Gyfteas, Daryl Brown
Areas of Practice:	Commercial (particularly insolvency law) property, commercial arbitrations and industrial
Reasons for Applying to be Queens Counsel:	Felt it was time to apply after 17 years as a junior
Reaction on Appointment:	Very honoured and excited

Name:	**Lex Lasry**
Age:	42
Date of Admission:	2 April 1973
Date of Signing Bar Roll:	13 September 1973
Master:	David M. Bennett
Readers:	Jim Dounias, Russell Mitchell, John Trapp, and Gail Thompson
Areas of Practice:	Criminal law
Reasons for Applying to be Queens Counsel:	Our chambers needed a silk apart from Tom Hughes!
Reaction on Appointment:	Absolutely delighted

Name:	**Neil John Young**
Age:	38
Date of Admission:	3 March 1975
Date of Signing Bar Roll:	31 May 1979
Master:	A.R. Castan and J.I. Fajgenbaum
Readers:	Colin Howard, Caroline Coburn, Debbie Mortimer, Emma Williamson and Timothy Lindsey
Areas of Practice:	Commercial law
Reasons for Applying to be Queens Counsel:	The burden of work as a junior, coupled with a desire to move to the inner bar
Reaction on Appointment:	Very pleased

Name:	**Paul Christopher Dane**
Age:	
Date of Admission:	1 March 1971
Date of Signing Bar Roll:	1 June 1973
Master:	Neil Forsyth
Readers:	Andrew Halse, Steven Martin, Anna Sango
Areas of Practice:	Criminal and some commercial

SOME STATISTICS ON SILK (UPDATED)

	1982	1983	1984	1985	1986	1987	1988	1989	1990
Commercial	5	3	4	5	3	4	4	6	4
Common Law	1	3	2	2	2	—	1	2	1
Crime	1	2	3	1	3	1	4	—	2
Family Law	—	1	1	—	—	—	—	—	—
Industrial Law	—	—	—	—	—	1	—	1	—
Local Govt.	—	—	—	—	1	1	—	1	—
Intellectual Property	—	—	—	1	1	—	—	1	—
Politics	—	1	—	—	—	1	—	—	—
Compensation	—	—	—	—	—	—	—	—	1
Average years since signing Bar Roll	16.5	17	18	17	15	16	20	15	17

MALAYSIAN BAR ON TRIAL

Nicholas Cowdery Q.C. of the Sydney Bar attended the trial in June 1990 of the Vice-President of the Malaysian Bar, Manjeet Singh Dhillon.

THE MALAYSIAN BAR

The Malaysian Bar differs from ours in that it is a statutory body corporate pursuant to the *Legal Profession Act* 1976 having a statutory Bar Council, office-holders, rights and duties. It comprises every advocate and solicitor in the country (where there is a fused profession); in all about 2,600 members.

The letter had been approved by a meeting of 20 Supreme Court and High Court judges. It was couched in respectful terms.

The Malaysian Bar has been singularly courageous in its defence of basic principles which we in Australia take for granted:

- ☐ the doctrine of separation of powers;
- ☐ the rule of law;
- ☐ the independence of the judiciary;
- ☐ the independence of the Bar;

phrases which roll off our tongues like the unthinking recitation of a liturgy, but which to our Malaysian neighbours and brothers and sisters in law are ideals to be kept daily to the fore in the face of constant threat from politicians.

The events giving rise to the proceedings against Manjeet Singh Dhillon illustrate the added difficulties facing practitioners in such an environment.

DISMISSAL OF THE JUDGES

On 26 March 1988 the Lord President of the Supreme Court (equivalent to our Chief Justice of the High Court) wrote a letter to the King with copies to the nine hereditary Rulers and all Supreme Court and High Court judges. The letter had been approved by a meeting of 20 Supreme Court and High Court judges. It was couched in respectful terms and drew to the King's attention the judges' concern at continuing public criticism of the judiciary by the Prime Minister. It gave rise to the following events:

- ☐ the King, on the advice of the Prime Minister, suspended the Lord President and appointed a tribunal to investigate and report upon what were to become five allegations of misconduct against him. (The Attorney-General framed the allegations and assisted the tribunal which was chaired by the next senior judge, Tan Sri Abdul Hamid Omar);
- ☐ upon the recommendation of the tribunal the Lord President was dismissed;
- ☐ Tan Sri Abdul Hamid Omar became Lord President.

In the meantime, however, on 2 July 1988 (while the tribunal was still sitting) Tan Sri Abdul Hamid Omar, then Acting Lord President and chairman of the tribunal, on notice that an urgent application was about to be made for an order for Prohibition against the tribunal, directed the Supreme Court staff:

- ☐ to keep the courtrooms closed;
- ☐ not to assist in convening any court sitting;
- ☐ not to sign any order that might be made;
- ☐ to keep the Seal of the Court under lock and key.

Despite this action a bench of five judges did sit and ordered the tribunal not to report to the King until further order. The order was served on the tribunal which complied with it.

On the representation of the Acting Lord President to the King the five judges were then suspended and a second tribunal was appointed to hear allegations against them said to have arisen out of the convening of the special sitting.

Another full court (including the chairman of the second tribunal — who later disqualified himself from sitting on it) then set aside the order of 2 July 1988.

Upon the recommendation of the second tribunal two of the five judges (including Tan Sri Wan Suleiman, who had presided on 2 July 1988) were dismissed.

IMPLICATIONS

It is clear even from this cursory account that there are significant questions about:

- ☐ the Prime Minister's motives for recommending to the King the suspension of the former Lord President and the establishment of the first tribunal merely on the basis of the letter;

The Malaysian Bar has for many years, in a consistent and principled fashion, resisted assaults by politicians upon the foundations of a true democracy. At considerable cost to its members it has spoken and acted fearlessly, as a corporation and individually, in constant defence of basic principles.

- ☐ the propriety of the present Lord President's refusal to disqualify himself from sitting on the first tribunal, considering that he had been at the judges' meeting which approved the sending of the letter, and that if the former Lord President were dismissed he, as the next senior judge, could expect to succeed to that office. (The Lord President had insisted he was appointed to the tribunal by a Royal Command which he was not at liberty to disobey: surely a mediaeval notion, out of place in a modern constitutional monarchy and democracy operating under the rule of law);
- ☐ the motives of the Lord President for and the propriety of his actions on 2 July 1988, particularly since he was a party to the intended application;
- ☐ the Lord President's motives for recommending the suspension of the five judges and the establishment of the second tribunal.

THE BAR'S ROLE

The Malaysian Bar has for many years, in a consistent and principled fashion, resisted assaults by politicians upon the foundations of a true democracy. At considerable cost to its members it has spoken and acted fearlessly, as a corporation and individually, in constant defence of basic principles.

It came forward without reward in defence of the former Lord President, the suspended (and

Manjeet Singh Dhillon

dismissed) judges and the independence of the judiciary. Such is its commitment to integrity in practice that certain senior advocates, whose appellate work was the mainstay of their practices, have refused to appear in the Supreme Court while the Lord President remains in office. The professional and financial costs can be imagined.

Dato' Param Cumaraswamy, a past president of the Malaysian Bar and a human rights lawyer of world stature, has been tried and acquitted on a charge of sedition for a moderate criticism of action by the local equivalent of the Parole Board. The government sought to deal with him under the *Internal Security Act*. In sympathy, Singapore has barred him from entry, even in transit.

At general meetings of the Bar on 9 July 1988, 18 March 1989 and 22 April 1989 it was resolved (almost unanimously) that contempt proceedings be instituted by the Bar in the Supreme Court against the (now) Lord President for his actions on 2 July 1988. Manjeet Sing Dhillon on 25 April 1989 affirmed an affidavit which was filed in support of the application, expressly as (then) Secretary of the Malaysian Bar and on its behalf. It was the Bar's application, not his. In the affidavit Manjeet Singh Dhillon recited the relevant events of mid-1988 and of 2 July 1988 and stated the way in which it was alleged those actions of the Lord President amounted to contempt of the Supreme Court.

The paragraphs later complained of were:

"7. The Respondent on the 2nd day of July 1988 did commit contempt of the Supreme Court by attempting to prevent, frustrate and interfere with the sitting of the Supreme Court in connec-

tion with the application by the Lord President for the abovesaid Injunction as follows: ..." (there followed a recitation of factual allegations).

"9. The facts in paragraph 6 [sic — it should be 7] above disclose that the Respondent being a party to the proceedings initiated by the Lord President and any appeal or application therefrom to the Supreme Court abused his official position as Acting Lord President of the Supreme Court by taking the actions particularly described in paragraph 6(a) and (e) [sic] to prevent, frustrate and to interfere with a sitting of the Supreme Court to hear a matter in which the Respondent himself was a party thereto. As such the aforesaid action of the Respondent constitute [sic] contempt of court of the grossest imaginable. [sic] Contempt apart, the aforesaid conduct of the Respondent also constitutes misbehaviour within the meaning of Article 125 of the Federal Constitution deserving his removal from office.

I attended the trial from 4–7 June 1990 as observer for LawAsia, the International Commission of Jurists, Australian Section, the International Bar Association and the Commonwealth Lawyers' Association. I also carried motions from our Bar Council which were delivered to the Malaysian Bar Council and placed in its records.

"11(c) I further verily believe that, if the allegations set out above are established as a fact, the abovenamed Respondent has sought to deny justice and the recourse to legal reliefs and remedies available to all persons under the law as enshrined in the Federal Constitution and his conduct as aforesaid is therefore an affront to the dignity and impartially [sic] of the Courts.

(d) These acts of the abovenamed Respondent, constitute the most flagrant and gross contempt of Court in that they amount to an exercise of powers for improper motives and an interference with the course of justice. I verily believe that they were intended to deny access for and to prejudice the rightful remedies to Tun Dato' Haji Mohammed Salleh bin Abas in this Honourable Court."

It was alleged that these paragraphs scandalised the Lord President. The paragraphs quoted were said to be improper expressions of conclusions and opinions by the respondent going beyond legitimate and permissible criticism and expressed with malice.

The application against the Lord President was made and argued and eventually dismissed on 29 April 1989 on "technical grounds" — the merits were not decided. A similar fate befell a similar application by Tan Sri Wan Suleiman (who had presided on 2 July 1988).

On 18 May 1989 the application was made against Manjeet Singh Dhillon, but it was in reality a move against the Malaysian Bar.

THE TRIAL

I attended the trial from 4–7 June 1990 as observer for LawAsia, the International Commission of Jurists, Australian Section, the International Bar Association and the Commonwealth Lawyers' Association. I also carried motions from our Bar Council which were delivered to the Malaysian Bar Council and placed in its records. They read:

"This Council deplores any action on the part of the Government of Malaysia which in any way prejudices or subverts the independence of the Malaysian judiciary, the Bar of Malaysia or the rule of law in Malaysia; and supports the said Secretary, the Malaysian Bar Council and the Bar of Malaysia in resisting, in accordance with law, any attempt on the part of the Government of Malaysia to in any way prejudice or subvert the independence of the Malaysian judiciary, the Bar of Malaysia, or the role of law in Malaysia."

There were three other observers at the trial, Margrit Benton for the American Bar Association, Makhdoom Ali Khan for the International Commission of Jurists, Geneva, and J.B. Jeyaretnam for the Regional Council for Human Rights in Asia. Ms Benton is a lawyer and the wife of an American lawyer practising in Singapore, Mr. Khan is a lawyer practising in Karachi, and Mr. Jeyaretnam is a former lawyer and politician from Singapore.

The Attorney-General, Malaysia (Tan Sri Abu Talib Othman) argued the application himself. He appeared with a junior (T.S. Nathan) but had no other obvious support.

The respondent was represented by:

Raja Aziz Addruse, immediate Past President of the Malaysian Bar (who had acted for the former Lord President in 1988 and for Dato' Param Cumaraswamy in 1985/6);

Cyrus V. Das, member of the Bar Council (who had also appeared in the earlier proceedings);

It is a unique case — neither side was able to produce a precedent which even approached the context in which the statements were made, the nature, form and purpose of the statements, or the capacity in which the maker was acting.

Darryl Goon, a member of the Bar Council; Jagjit Singh, a member of the Bar Council; Tara Sidhu, a past President of the Malaysian Bar, member of the Bar Council and Immediate Past President of LawAsia.

The argument was divided between the quietly-spoken and scholarly Raja Aziz and Cyrus Das, an articulate and forceful advocate. The standard of advocacy on that side of the record was extraordinarily high.

The President of the Bar (S. Theivanthiran), Ghazi Ishak (who argued an unsuccessful application by 307 lawyer would-be interveners) and others lent assistance.

The press gallery was full. The public gallery was full for most of the time. Security outside of the court, initially strict, was relaxed as the hearing proceeded — and after the observers had been photographed.

The trial was heard by Tan Sri Harun Hashim (who had once declared UMNO, the Prime Minister's political party, illegal); Datuk Mohamed Yusof and Datuk Gunn Chit Tuan. The trial to all appearances was conducted with fairness, propriety and impartiality, as all agreed. However, in a unique case the test for justice and the rule of law will be in the final decision.

It is a unique case — neither side was able to produce a precedent which even approached the context in which the statements were made, the nature, form and purpose of the statements, or the capacity in which the maker was acting.

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STOP PRESS: On 5th November 1988 the court, by a majority, found the charge of contempt proved and imposed a fine of M$5,000 (about A$1,250).

A CONSUMER'S PERSPECTIVE ON THE COURTS

An edited version of the Australian Institute of Judicial Administration's Second Annual Oration by *Professor Thomas W. Church*

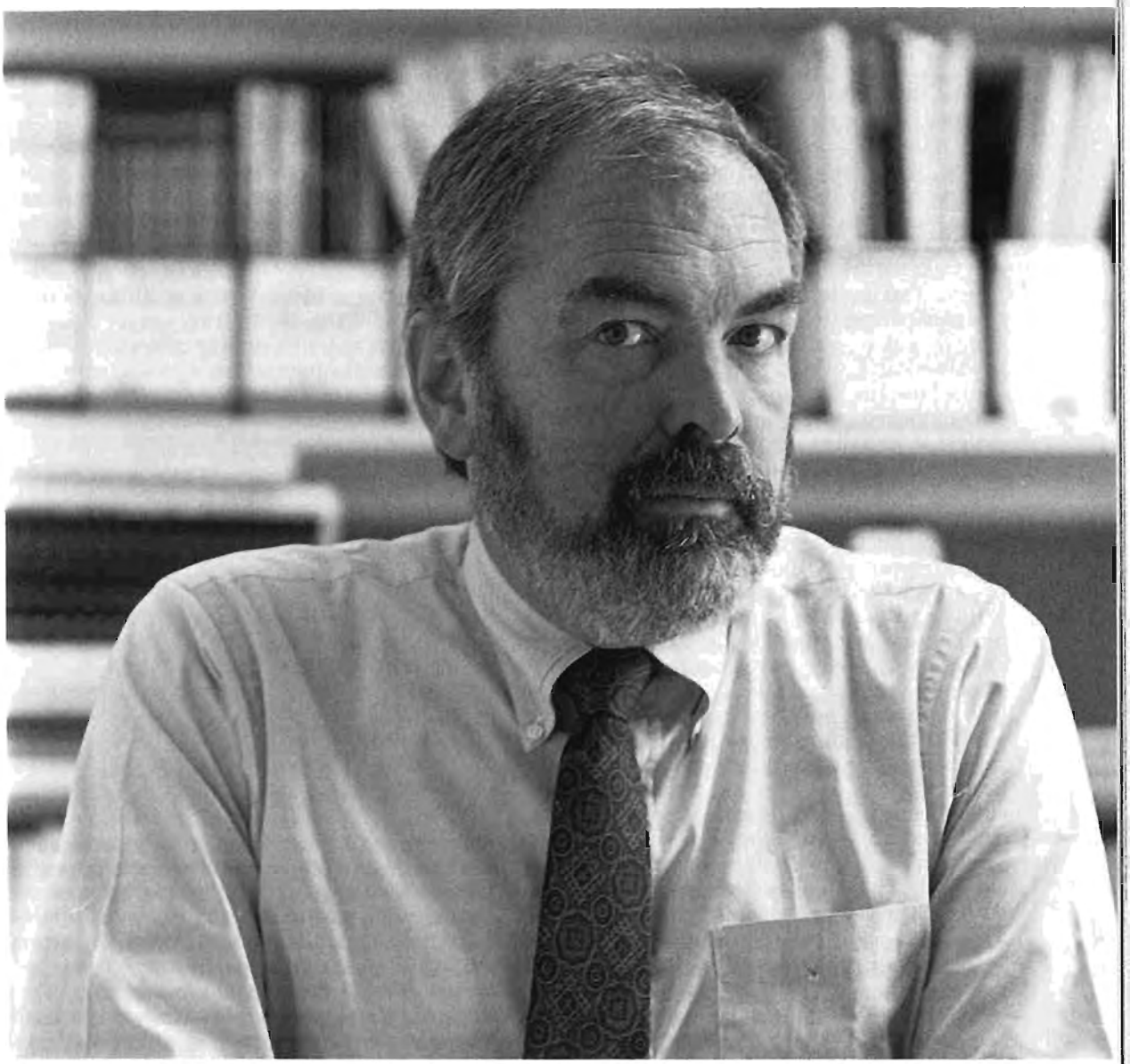
I AM INDEED HONOURED TO BE AT THIS podium tonight. I accepted the invitation to deliver this Second Annual Oration on Judicial Administration with great pleasure, but — I must admit — with a few misgivings as well. As you will note in your program, the inaugural AIJA oration was delivered last year by Sir Ninian Stephen. Most Americans find knighthoods and titles of nobility somewhat disorienting. My native discomfort in following a Knight of the Realm in this series, however, is compounded by Sir Ninian's other extraordinary accomplishments: Queen's Counsel, former Justice of the Supreme Court of Victoria, former Judge of the High Court of Australia, and former Governor-General of Australia. Ninian Stephen can speak with great authority on government, on courts, and on administration, based on a lifetime of experience at the highest levels.

The organizing theme of my remarks this evening is a plea for judges, lawyers, and court administrators to engage in some hard thinking about legal institutions and professional practices . . .

In contrast, I stand before you as an itinerant labourer in the fields of judicial administration research and education, with no comparable bona fides, and burdened with an American accent as well! If the upstairs/ downstairs dichotomy applies in courts as in television manor houses, then it is fair to say my work in judicial institutions has been concentrated downstairs. I have done research on delay and how it affects litigants, and on plea bargaining practices in American courts. I have also spent some time working with courts in the U.S., England, and Australia on a range of administrative improvements relating to such prosaic matters as case listing procedures, fines collection, and the treatment of jurors. From necessity, then, my remarks this evening will have — to borrow a term used by management consultants and go-go dancers to describe rather different phenomena — a "bottom-up" perspective.

My attempt tonight is to be provocative in a friendly way — something I hope is not a contradiction in terms. I should also indicate that my comments are not directed specifically at the legal system of this country. I draw some of my examples from Australia, but most of my experience has been in the courts of the United States. If there is any merit to my provocations this evening, their thrust is at least as applicable to courts in North America and England as to those of Australia.

The upstairs/downstairs analogy brings to mind a metaphor of Yale Kamisar, Dean of the University of Michigan Law School and one of America's leading experts in criminal law. Professor Kamisar once painted an evocative image of legal institutions in terms of what he called "the law of the mansion" and "the law of the gatehouse".[1] The law of the mansion exists in the panelled courtrooms of superior courts, in the chambers of appellate judges, and in libraries where law reports spell out in measured prose the substance of our legal rights and duties. The law of the gatehouse, on the other hand, exists in the rough and tumble of police stations, in the corridors, cells and docks of magistrates courts, in the back rooms of lawyers' offices. Professor Kamisar's point was that the view of the law from the gatehouse is seldom the same as the outlook from the mansion, and that how one sees the law and legal institutions is strongly affected by which perspective is being taken.



Tom Church

Yale Kamisar was speaking of criminal procedure, using his mansion/ gatehouse metaphor to argue for a narrowing of the gap between what he termed, "the nobility of the principles we purport to cherish and the meanness of the . . . proceedings we permit to continue".[2] The imagery is also useful for thinking about the whole range of situations in which ordinary people typically come into contact with courts — as litigants in civil disputes, as defendants in traffic or minor criminal cases, as participants in family matters involving the courts, as jurors, crime victims, or as potential witnesses in cases involving others. Most citizens have their limited experience with courts and the law in one or another of these contexts, and thus see more of the gatehouse than the mansion. Yet practitioners working in the courts are usually preoccupied with the law of the mansion, with the legal doctrine that is their stock and trade.

The organizing theme of my remarks this evening is a plea for judges, lawyers, and court administrators to engage in some hard thinking about legal institutions and professional practices from a decidedly downstairs perspective, from the viewpoint of the consumers of their services. Such introspection does not come easily for high status professionals. Barristers and solicitors are reluctant to consider themselves to be "providers of legal services", it sounds a bit too much like the work of a tradesman. Judges, for their part, are seldom keen to view the courts on

which they serve as governmental agencies dispensing the public service of dispute resolution.

Like their brothers and sisters in other professions, legal practitioners prefer to focus on their more lofty responsibilities, such as vindicating rights, expounding the meaning of our laws, or preserving the rule of law. These duties, while clearly important, are only performed in the context of a court's most basic and irreducible task: the resolution of individual disputes. I believe that neglect of this elemental, service-oriented perspective is a leading cause of an erosion of public confidence in legal institutions in America; I suspect the same may be true throughout the English-speaking world.

Diminished public confidence in the legal system is apparent on a number of levels. On perhaps the most episodic of these dimensions, it is evident in popular culture. "LA Law" may depict the practice of law in glamorous and exciting terms, but the legal profession is certainly not portrayed as the bastion of moral rectitude implied by, say, the "Perry Mason Show" of an earlier generation. Similarly, Tom Wolfe's blockbuster novel, *The Bonfire of the Vanities*, is outrageously funny, but is hardly calculated to improve public confidence in courts and lawyers, at least not those in New York City.

While this kind of impressionistic analysis is suggestive at best, more systematic data on public perceptions of American courts point to a similar conclusion. A recent nation-wide survey conducted for the National Center for State Courts by a leading polling organization indicated particularly disturbing results.[3] Its most basic finding was that public confidence in American courts is remarkably low. Of 15 major American institutions rated by respondents in this national survey, state and local courts ranked near the bottom in public confidence, behind business, police, public schools, the media, even behind the beleaguered federal executive branch and Congress. More than a third of the respondents indicated little or no confidence in the courts; a dubious distinction shared only with organised labour and state prisons. Even more alarming, the data revealed that the more experience people had with the courts — as litigants, witnesses or jurors — the less confidence they expressed in the judicial system.

I should indicate here that these data reflect opinions held by the general public. Judges and lawyers polled in the survey indicated much higher levels of confidence in the courts. For example, 63 percent of judges and 45 percent of the lawyers indicated high levels of confidence in state and local courts. Only 22 percent of the general public indicated such confidence. These divergent figures suggest the crux of the problem: lawyers and judges working in the courts continue to regard their institutions quite positively; it is only the consuming public whose perspective on the legal system has soured.

It might be comforting for an Australian audience to view this diminished confidence in law and legal institutions as a peculiarly American phenomenon. Admittedly, many social pathologies seem to exist in their most virulent strains in the United States. Although I know of no Australian analogies to the American studies of public support for the courts, fragmentary evidence suggests that a similar decline of popular confidence in legal institutions may be occurring here in Australia.

Like their brothers and sisters in other professions, legal practitioners prefer to focus on their more lofty responsibilities, such as vindicating rights, expounding the meaning of our laws, or preserving the rule of law.

At present, no less than three governmental and quasi-governmental bodies are engaged in high profile enquiries into the operation of the legal system and the legal profession in this country.[4] These investigations, like several others that proceeded them by only a few years, appear to be grounded in the view that courts are becoming the exclusive enclave of wealthy individuals and corporations, and their all-too-affluent lawyers. Some investigators report uncovering a deep vein of popular discontent with legal institutions here in Australia. Whether or not this is so, these enquiries have certainly put the organized legal profession on the defensive, at least if viewed in terms of the energy and resources that have been committed to responding to the investigations.

Yet another indication of growing popular disenchantment with the courts can be seen in the burgeoning Alternative Dispute Resolution — or ADR — movement. ADR has become a "buzzword" in legal discussions from Paris to Pasadena to Perth. It is an amorphous concept that has been applied to everything from local centres dispensing rough justice in neighbourhood squabbles, to mediation in family law dis-

putes, to arbitration among corporate disputants. About the only element unifying these disparate programs is that they are seen by proponents as different from, and somehow superior to, court-based dispute resolution conducted in the context of traditional litigation.[5]

For their part, lawyers and judges have made heroic efforts to absorb the ADR movement and incorporate it within the confines of existing legal institutions. For example, a noted Australian jurist and ADR proponent has suggested that the initials ADR should stand for "additional", rather than "alternative", dispute resolution, and that ADR should not be seen as a substitute for litigation, but rather as a set of procedures which merely supplement traditional litigation processes.[6]

Despite these diversionary tactics, the fact remains that the animating force of the ADR movement is its promise of an *alternative* to litigation and all the costs, delays, and legalistic mumbo-jumbo that the public often associates with it. I am not arguing for or against an increased reliance on ADR. My point is simply that the enthusiastic response to ADR is yet another indication of a growing malaise with existing legal institutions here in Australia, as elsewhere.

If I am correct that there is a decline in popular confidence in courts and legal professionals, the immediate questions become, "Why?" and "What, if anything, should be done about it?" We have little empirical data on the first of these issues, but at least three explanations for decreased confidence in courts come immediately to mind: the lengthy *delays* often associated with litigation, the high *costs* of legal proceedings, and an *attitude toward lay persons* in the courts that is frequently insensitive, if not cavalier.

Delay in the courts, of course, is an ageless problem. In America, there are jurisdictions in which the typical personal injury case consumes four to five years from filing in court to final disposition. Throughout this period the injured plaintiff waits, uncompensated, for an uncertain outcome. It is difficult to overestimate the hardships such delays impose on those of modest means who have suffered debilitating injuries. We do not have comparable data on disposition time in Australian courts, but anecdotal and fragmentary empirical evidence suggests that similar delays exist here as well, particularly in the higher courts in some of the capital cities.

Contrary to what many legal practitioners may think, the public does not appear to regard court delay as an esoteric or insignificant problem. The American survey of public attitudes toward the courts that I spoke of earlier indicates that a majority of citizens regard court inefficiencies and delays to be acute social ills, more serious than pollution, racial problems, difficulties in the educational system, even the "threat of war".[7]

Public perceptions of the high *cost* of justice, is undoubtedly another factor in the decline of citizen support for the courts. There is a general recognition among lawyers and judges that our legal system has evolved into a very expensive method of dispute resolution. Beyond nervous hand-wringing, however, there has been little consideration of the implications of this situation for the role of courts in society, or for the continuation of their public respect and support. Nor is there much serious discussion within the legal profession — here or in America — of what might be done, beyond tinkering around the edges of the problem.

Mr Justice McGarvie of the Supreme Court of Victoria recently surveyed this situation and concluded, "It is apparent that many courts today are unable to provide justice with despatch and for a cost that makes it available to ordinary citizens".[8] This is a troubling indictment of the judicial system from a prominent participant in it, but the seriousness of the problem was brought home to me most directly by a comment made by another State Supreme Court Justice in a formal paper presented at a conference earlier this year. This judge, at the highest level of his very prestigious profession, candidly admitted that as an individual, he could not now afford to bring a case before his own court. In a democratic polity with decidedly finite resources, one must wonder how long the public will continue to support courts that are inaccessible to all but the very rich, and a carefully screened and shrinking segment of the very poor. There are, in fact, indications of increasing reluctance of publicly elected officials to provide the financial resources the courts demand — a point to which I will return at the conclusion of my remarks.

Finally, I believe that some of the current public disenchantment with the legal system can be attributed to an unreflective, even heedless attitude in many courts toward the ordinary citizen who, for whatever reason, finds himself on the courthouse steps. Courts, to borrow an overused term from the computer industry, are not "user friendly" institutions. It is not so much that they are intentionally impersonal or arrogant in their dealings with the public; rather, I suspect that today's courts have simply inherited a mindset that had its origins in a judiciary of a different day. As a result, the tendency is to perpetuate a perspective on the relationship of courts to the citizenry that is ultimately damaging to the continuance of public support for our judicial system.

Most courts in which I have spent any time are organized for the convenience of judges, of court staff, and of lawyers; usually in that order. If the convenience of the public is considered at all, it comes well behind these courthouse "regulars". This implicit ranking of priorities is seldom examined, or even discussed. If it were, it would probably be justified as merely a recognition that judge time is the most precious resource a court dispenses, that court staff are overworked in these days of budget cutting, and that lawyers must be minimally accommodated if the courts are to function at all. Yet no *consumer-oriented* establishment could set its priorities in this way. Department stores and airlines and accounting firms, and even other professionalized bureaucracies such as hospitals and universities, must pay attention to the consuming public. With the exception of the prison service and perhaps a few unrepentant social welfare agencies, I know of no organizations, in or out of the public sector, which appear to be quite as cavalier about their clientele as are the courts of the English speaking world.

These are strong words, and before the judges and court administrators in the audience begin to fire missiles at the podium or depart from the auditorium, I should qualify what I just said by a clear statement that my point is not that the judges and other officials who work in the courts are an uncaring and self-serving lot. To the contrary — and, I might add, contrary to the perception in some circles that judges do not work hard enough and need enforced "productivity quotas" — the vast majority of judges and court officials I have met in this country and elsewhere are diligent and dedicated public servants.

The problem is one of focus. The hard work and dedication of judges and court staff is directed almost exclusively toward doing justice in the specific case presently before the court. Yet the vast majority of a court's clientele — its "consuming public" in the sense that I am discussing tonight — are not physically before the court as litigants at any particular moment. Only a tiny minority of them will ever be so situated. Most of a court's consumers are virtually invisible to judges and other court officials. And therein lies much of the problem.

These consumers and potential consumers of court services are litigants waiting years to have their cases heard, or those who decided not to pursue their claim in court at all, because they could not afford the legal fees or delays. They are crime victims or other witnesses summoned time and again to leave their homes or work places and come to court, only to receive, after hours spent in the hallway or at the back of a courtroom, yet another postponement. They are jurors who are asked — indeed, ordered — to take weeks away from their jobs, at scandalously low compensation, when much of this time is spent in endless, seemingly wasted hours in shabby jury lounges.

Since the general public is most often exposed to the legal system in these decidedly "downstairs" contexts, it is hardly surprising that citizen confidence in the courts declines as familiarity increases. But even "upstairs", in the sombre courtrooms with their formal legal proceedings, courts are not hospitable places for the layman. All the major actors are separated from the public by a physical barrier, and the acoustics and sight lines are frequently poor for all but the active participants. The closest analogy — and it really is remarkably apt — is to the medieval cathedrals of Europe, where the worshippers were separated from the nave, the scene of all the action, by an ornate but largely opaque carved screen. The cathedrals were designed so that the ordinary folk heard lovely sounds emanating from behind the screen — in an ancient and indecipherable language — but they were not permitted access to the mysteries occurring out of sight.

The major objective in traditional courtroom architecture would seem to be the symbolic representation of the majesty of the law. Hence the quasi-religious imagery of high ceilings, the elevated, altar-like bench, and the formal ornamentation. To be sure, courtrooms are places where important decisions are made, and few would dispute that the surroundings should encourage decorum and seriousness. There are also obvious security concerns, especially in criminal courts. But an overemphasis on formality can lead courts to avoid changes in both court design and legal procedure that would make proceedings more accessible and understandable for those citizens involved in them, without diminishing their essential dignity.

In this context, I suspect that Americans are ill-advised to comment publicly on the Eighteenth Century wigs and gowns that are mandatory for judges and lawyers in most English jurisdictions, and in the higher courts of the Australian States. Whatever this apparel adds to the majesty of the law in the eyes of ordinary Australians, it is reasonably clear that it also conveys an image of eccentricity and remoteness. This is undoubtedly by design; but I wonder whether Australian courts approaching the Twenty-first Century have the same need to create distance from the public as the aristocratic courts of another continent and a bygone era. I am surely not the first to note the irony of the recent decision of the judges of Australia's High Court in Canberra to "de-wig", while almost simul-

taneously the Commonwealth Family Court — the court that grew out of an international movement to give courts a more human face in domestic disputes — saw fit to reinstate wigs and gowns as mandatory judicial garb.

I am surely not the first to note the irony of the recent decision of the judges of Australia's High Court in Canberra to "de-wig", while almost simultaneously the Commonwealth Family Court — the court that grew out of an international movement to give courts a more human face in domestic disputes — saw fit to reinstate wigs and gowns as mandatory judicial garb.

Rather than engage in further heresies, I would now like to move on to a brief discussion of remedies, of tentative answers to the question "Where should we go from here?" You will not be surprised, if you have stayed with me this long, that I believe the key to resolving many of the present difficulties lies in adoption of a consumer-oriented perspective in all of the relationships of courts and lawyers to the public. Such a change in orientation would promote a healthy reexamination of all aspects of the legal system, from the formal rules and informal practices of the legal profession, to treatment of witnesses and jurors in court, to court rules and procedures, even to courtroom design and courthouse architecture. Significantly, there is reason to believe that a heightened and active attention to the interests of litigants would also go a long way toward alleviation of the seemingly intractable problems of the delays and costs of litigation.

In the area of case delay, for example, we have clear evidence that changes in practitioner attitudes are essential to any long-term amelioration of the problem. The conventional wisdom of judges and lawyers has always been that delay is caused by the inadequacy of justice system resources, by too few judges being chased by too many cases. This common sense understanding of the problem has been proved wrong by a number of empirical studies of court delay both in America and elsewhere. Research has demonstrated, almost beyond question, that while an insufficient number of judges may contribute to a slow pace of litigation in some courts, delay is more a problem of entrenched attitudes and informal practices of judges and lawyers, than of inadequate judicial resources.[9]

Studies that compared trial courts in cities across the United States found that the only factor which consistently differentiated faster from slower courts was the level of active concern evinced by judges and court staff over the speed at which cases move to disposition. The belief that individual case progress is the sole responsibility of lawyers, not judges, characterized courts where delays were lengthy and litigation slow; a conviction that courts have an independent responsibility to ensure the expeditious disposition of all cases was most frequently encountered in the speedier courts. It is not too much of an oversimplication to say that when judges and court staff care about individual case delay, and follow up that consumer-oriented concern with some basic management techniques for monitoring and shepherding cases through the court, the result is a much faster pace of litigation. It should be noted that this case management philosophy is making inroads into some Australian courts, due in large part to efforts by the AIJA.

I wish there were as clear a solution to the problem of the escalating costs of litigation. Unfortunately, no "magic bullet" exists. The high cost of litigation is a result of an interlocking web of factors. Among them: its increasing complexity; procedural requirements imposed by courts and legislatures; changing economics of the practice of law and associated professional restrictions upon it; and — very probably — an all-too-human tendency for some men and women operating in a largely unregulated environment to engage in good, old-fashioned price gouging. An assessment of how much each of these factors contributes to the cost of litigation is both beyond my competence and, happily, outside the scope of my remarks for this evening. I would, however, like to make some general observations regarding costs.

On a most basic level, it is obvious that nearly all court rules carry cost implications in the form of attorney fees for appearances and hearings, preparation of documents, and the like. A court concerned about its consumers would attempt to assess all its procedures by weighing their estimated costs to litigants against their net benefits to the court and to the litigation process.

For such an assessment to have any validity, of course, the legal profession should be fully consulted. More important than the structure of any consultative process is simply a court's commit-

ment to an informed consideration of litigant cost when procedural issues are being examined. My experience with courts in America suggests that judges seldom concern themselves with such matters. As a result, their sins of both omission and commission when establishing rules of court and other procedures add substantial costs to litigants, often without real countervailing benefits to the court.

An example of just such a situation lies in the scheduling of trials and hearings. Many courts appear to have adopted a canon which states: "Better to waste hours of the time of litigants, lawyers and witnesses, than to risk one lost moment of bench time for a judge". Pursuit to this unspoken precept, many more cases are scheduled for a particular court sitting than can ever be accommodated, so as to ensure that last minute postponements and negotiated settlements do not leave a judge without any cases to hear. Those scheduled cases that are not reached by the court are simply postponed to another day — with the attendant inconvenience for participants who came to court expecting their case to go forward.

Is it, in other words, only *outside* the courts that an ordinary consumer will ever find affordable and "user friendly" justice?

A barrister friend of mine refers to this court practice as the "bum on the bench syndrome", a delightful turn of phrase which I will not be able to take home with me. Americans would interpret it as a commentary on the character, rather than the anatomical placement, of judicial officers. I might suggest that courts using this scheduing strategy take notice of recent research from America. It demonstrates that this practice can add significantly to the cost of litigation; at the same time, it frequently decreases, rather than increases, judicial productivity.[10]

The legal profession could also fruitfully apply the same consumer-oriented perspective to some of its rules and practices.

The presence of several public enquiries into the legal profession and the costs of justice here in Australia suggests that the time may be ripe for such an exercise. The experience in other common law jurisdictions may be instructive in this regard. In the absence of serious efforts by the legal profession to put its own house in order, governmental supervision is beginning to supplement, if not supplant, professional self-regulation in both England and America. The Supreme Court of the United States, for example, has nullified several aspects of professional ethics that had the effect of restricting access to legal services, or which were held to be analogous to monopolistic trade practices.[11]

Alternative Dispute Resolution also holds promise for reducing the costs of litigation; indeed, ADR is sometimes put forward as something of a panacea for the entire problem. It is reasonably clear that many disputes either do not require the whole panoply of procedures and protections of the formal adversary process, or are unsuited to adversarial procedures. In such circumstances, and perhaps others as well, ADR techniques are surely worthy of investigation. I believe a note of caution is in order, however. My concern is that the current fascination with alternatives to litigation threatens to direct attention away from more fundamental issues regarding our legal system.

At the recent Annual Conference of the Australian Institute of Judicial Administration, Mr. Justice French of the Federal Court of Australia delivered a paper on Alternative Dispute Resolution with the disarming title, "Hands On Judges; User Friendly Justice".[12] Justice French's talk was a very helpful discussion of various ADR techniques, but I wonder if its title is not suggestive of a more global issue. I would pose it in the following terms: Must we continue to take the traditions, structures and practices of our legal system as given, and thus concentrate reform efforts on self-styled alternatives to courts as we know them? Is it, in other words, only *outside* the courts that an ordinary consumer will ever find affordable and "user friendly" justice?

The answer to that question may be Yes. Perhaps the weight of tradition, the rigidity of entrenched interests, the demand for ever more formal and ever more perfect justice mandates a continuation of the status quo. I hope this is not the case, for I believe that the risks of this course of action are substantial, not only for courts, but for the confident continuation of the rule of law here and in a progressively more democratic world.

It is frequently said that the major prerequisite for the preservation of the rule of law in western

democracies is the maintenance of judicial independence. In fact, this proposition was the focus of Sir Ninian Stephen's comprehensive AIJA oration last year.[13] Judicial independence has certainly been on the minds of Australian judges in the past year or so, with major addresses and papers on the subject by a number of prominent jurists.[14] Their central postulate is that judicial independence — the absolute freedom of judges from outside pressure on their decisions — is the bedrock on which our legal and political order is founded. Many of these judicial commentators detect erosion in this essential element, and prescribe various remedies to restore the system to good health.

Judicial independence may require that courts and judges maintain a certain aloofneww, but it surely does not require the remote, even imperious institutions that some of our courts have allowed themselves to become.

Judicial independence is certainly a critical component of any legal system worthy of the name. However, it should be recognised that the independence of the judiciary exists in a kind of tension in a democratic political order. All governmental organs, including courts, must have popular support if they are to thrive in a democracy. This is obviously not to say that judges should trim their decisional sails to the prevailing political wind. But democratic institutions, particularly those that, in Alexander Hamilton's pregnant phrase, possess "Neither the Sword nor the Purse",[15] are ill-advised to disregard the public entirely. Judicial independence may require that courts and judges maintain a certain aloofness, but it surely does not require the remote, even imperious institutions that some of our courts have allowed themselves to become.

With the growth of ADR, ordinary citizens and commercial concerns alike are moving their disputes out of the courts. The multiplication in Australia of quasi-judicial tribunals is closely allied to this trend, as is the increasing popularity of commercially operated dispute resolution establishments. These institutions are consciously designed to be more consumer-oriented than courts. The brand of dispute resolution they mete out is held to be more accessible, quicker, and less costly.

Given the expenses and delays currently endemic in traditional, court-based adjudication, these claims are probably correct. But this trend away from the courts is accompanied by a downside that is often ignored in the rush to adopt the newest, most fashionable ADR devices. Alternative processes of dispute resolution contain fewer protections for the independence of decisionmakers, and for the rights of disputants, than courts. And while these alternatives are supported by many judges because of a hoped-for decrease in court workload, the growing utilisation of these organisations will inevitably be accompanied by a decrease in the centrality of the court system in fulfilling the central governmental duty of dispute resolution. There is a danger, in other words, that courts may find that they have maintained their cherished independence, and decreased their workloads, but only at the expense of growing irrelevance to the life of the community.

I suspect that some in the audience will regard this danger as academic and hypothetical rather than real, and will point to the burgeoning caseloads of courts in Australia and around the world as incontrovertible evidence of their continuing centrality to dispute resolution. It should be said, however, that public support for a governmental institution is evidenced in other, perhaps more telling ways than the length of the queue outside the office door.

I have heard frequently over my ten months here in Australia that courts are underfunded, and judges underpaid. The reason usually put forward for this unfortunate state of affairs is a political one: "There are no votes in the courts", it is said. Politicians allegedly know that they do not win elections by spending more money on the judicial system, or by raising judicial salaries, or by increasing court staff. In times of financial stringency, politicians spend scarce tax dollars on programs likely to increase their political capital and help win them the next election.

This analysis is plausible, even persuasive; its proponents merely fail to take the last critical step. It is seldom asked *why* politicians seem to have so few incentives for spending money on the courts, why there appear to be so few political rewards in legislating for higher judicial salaries, better court facilities, increased staff support for the judiciary.

These queries bring us full circle, to the beginning of my remarks this evening, for they suggest that the much-bemoaned lack of legislative support for courts in Australia, and in America, may be in part a reflection of diminished public con-

fidence in the legal system. Views of the electorate are expected to influence public policy in a democracy. If popular confidence in legal institutions is indeed eroding, we should not be surprised to find the impact of that erosion in parliaments that are niggardly toward the courts, and in politicians who seem bent on frequent public exercises in lawyer- and judge-bashing.

Even modest efforts to improve the lot of witnesses, jurors and other lay participants could pay handsome rewards in increased popular support for the courts. More comprehensive attempts by judges, lawyers, and court administrators to deal with the seemingly intractable problems of delay and costs might be expected to have a more profound impact.

The good news in all this is that efforts by the courts and the legal profession to improve their public image, and — more importantly — to focus squarely on the needs and interests of the consumers of their services, can be expected to increase their standing in the legislative and the executive branches of government. Even modest efforts to improve the lot of witnesses, jurors and other lay participants could pay handsome rewards in increased popular support for the courts. More comprehensive attempts by judges, lawyers, and court administrators to deal with the seemingly intractable problems of delay and costs might be expected to have a more profound impact.

Adoption of such a consumer-oriented perspective thus will not only serve the interests of the public that uses the legal system, but may also provide courts a means to combat the benign — and not so benign — neglect of politicians in the lean years ahead. Relatedly, serious efforts on the part of the legal profession to respond to the legitimate concerns of consumers might be expected to reduce considerably the political dividends that currently appear to accompany attacks on lawyers.

I began my remarks this evening with the admission that they were designed to be provocative, though in a friendly and constructive way. I tried to strike a balance between comforting sentiments that induce drowsiness at this hour of the day, and the kind of pronouncements likely to bring offence. Whether or not I achieved that objective, I shall be pleased if my ruminations provide some food for thought as the courts of Australia prepare for the challenges of the next century.

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1. Yale Kamisar, "Equal Justice in the Gatehouses and Mansions of American Criminal Procedure: From Powell to Gideon, From Escobedo to . . .", in A. E. Howard (ed.). Criminal Justice in Our Time (Charlottesville, Virginia: The University Press of Virginia, 1965).
2. Id., p. 25.
3. Yankelovich, Skelly and White, Inc., The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders (Williamsburg, Virginia: National Center for State Courts).
4. The investigations are being conducted by the Senate Standing Committee on Legal and Constitutional Affairs, the Trade Practices Commission, and the Law Reform Commission of Victoria.
5. For a particularly insightful discussion of the ADR movement in Australia and elsewhere, see Richard Ingleby, "Why Not Toss a Coin? Issues of Quality and Efficiency in Alternative Dispute Resolution", in Australian Institute of Judicial Administration, Papers Presented at the Ninth Annual AIJA Conference, 1990 (Melbourne: AIJA, forthcoming).
6. Sir Lawrence Street, "The Court System and Alternative Dispute Resolution Procedures", 1 Australian Dispute Resolution Journal 5 (1990).
7. Yankelovich, Skelly and White, Inc., id., Table III.6, p. 25.
8. Mr Justice McGarvie, "Judicial Responsibility for the Operation of the Court System", 63 ALJ 779 (1989).
9. See, e.g., John Goerdt, Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts, 1987 (Williamsburg, Virginia: National Center for State Courts, 1989); Barry Mahoney, Changing Times in Trial Courts (Williamsburg, Virginia: National Center for State Courts, 1988). Earlier American research on court delay is summarized in Thomas Church, "The Old and the New Conventional Wisdom of Court Delay", 4 The Justice System Journal 395 (1982).
10. See Goerdt, id., pp. 32–35; Mahoney, id., pp. 81–83.
11. The major cases have dealt with ethical restraints on attorney advertising, and "advisory" fee setting procedures of state bar associations. See Bates v. State Bar of Arizona, 433 U.S. 350 (1977); Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985); Shapero v. Kentucky Bar Association, 486 U.S. ?? (1988). See also In Re Primus, 436 U.S. 412 (1978), limiting application of ethical restraints on solicitation.
12. Mr Justice French, "Hands On Judges, User Friendly Justice," in Australian Institute of Judicial Administration, Papers Presented at the Ninth Annual AIJA Conference, 1990 (Melbourne: AIJA, forthcoming).
13. Sir Ninian Stephen, "Judicial Independence", The Inaugural Annual Oration in Judicial Administration (Melbourne: AIJA, 1989).
14. See, e.g., Mr Justice McGarvie, "The Foundations of Judicial Independence in a Modern Democracy," paper presented to Australian Bar Association Conference, Darwin, 1990; Mr Chief Justice King, Speech to Members of Australian Institute of Judicial Administration at Perth, 25 January, 1989.
15. Alexander Hamilton, The Federalist, No. 78.

SUCCESS AT THE BAR

How to succeed by really trying. A glimpse at some of the giants of the past by Sydney solicitor *Lee J.W. Aitken.*

Nemo repente fuit turpissimus.[1]
"Muir[2] for facts, Avory[3] for law, Gill[4] for brass."[5]

According to Dickens, "while Mr Stryver[6] was a glib man, and an unscrupulous, and a ready, and a bold, he had not that faculty of extracting the essence from a heap of statements, which is among the most striking and necessary of the advocate's accomplishments".[7] Certainly, such a power of synthesis and selection is vital to success at the Bar. So, too, is the ability to seek out the underlying principle in any matter and bring it to the attention of the court.[8]

Perhaps, however, mere physical attributes may count for more.[9] Good looks will go a long way: Sir Edward Marshall Hall[10] "was a very handsome man, with a noble head and a most expressive face, and F.E. Smith's comment is not to be bettered: "Nobody could have been as wonderful as Marshall Hall then looked."[11] On the other hand, Viscount Haldane had a singularly undistinguished and portly frame and a thin voice illsuited to advocacy. The explanation for the apparent paradox may be that Marshall Hall argued predominantly before juries, while Viscount Haldane specialised in elucidating "great questions before supreme tribunals". A small build and insignificant appearance need not preclude success in a *nisi prius* practice since psychological forces often compensate. Horace Avory K.C. was physically unprepossessing but he compensated for this, as Sir Patrick Hastings records, by "a personality which was infinitely forbidding".[12]

Stamina[13] and a good digestion[14] are indispensable. So, too, is the capacity for unremitting hard work. Lord Denning without immodesty baldly recalls: "I was called to the Bar and worked as hard as anyone ever has done".[15] Lord Kilmuir could be in conference from 9a.m. to 10.30a.m., in court until 5.15p.m., on the London train from Manchester by 5.45, in the House of Commons from 9p.m. until 11.30 and "then back on the midnight train to the North".[16] It is important to keep up your health. Sir Isaac Isaacs, no trencherman, was devoted to cups of tea[17] and continued to run long distances late into middle age.[18] At the age of 47, when Lord Chancellor, the Earl of Birkenhead, after dinner and still in his dinner jacket, won a handicap race around Tom Quad at Christchurch, Oxford against a Blue more than 20 years his junior.[19] Very great intelligence may be more a hindrance than a help. Lord Hailsham has noted that "of all the Lord Chancellors in history. . . only Lord Birkenhead got a first class in law; and the others who did study law as their first degree did not, in fact, achieve first class honours".[20] Horace Avory obtained a third, as did Lord Halsbury. Sir Patrick Hastings was largely self-taught. Marshall Hall, without affectation, insisted on his junior arguing any point of law.[21] Hebetude enables the advocate to withstand the inevitable tedium which any great practice entails. As Mr. Micawber once rightly observed: "to a name possessed of the higher imaginative powers the objection to legal studies is the amount of detail which they involve".

Of course, one can take devotion to duty so far as to be unpleasant. At the end of *Re Boundary Between Canada and Newfoundland*[22] which had lasted fourteen days in the Privy Council, Walter Monckton and the other juniors were about to go off and have a celebratory lunch.

"We were debating whether to ask [Sir John] Simon to join us when we heard him say to his clerk: "What is the next thing, Ronald?" and we were deterred."[23]

Equally useful is *"l' abilite de fixer les objets distants longtemps,"*[24] a particular trait Churchill ascribed to F.E. Smith K.C. who, when summoned to London in the Leverhulme libel action, found a stack of papers nearly four feet high awaiting him at the Savoy. "He ordered a bottle of champagne and two dozen oysters and

began to read the papers. They were of great length and complexity, and he worked on them for eleven hours, all through the night." His terse, unequivocal opinion[25] and its subsequent vindication by the largest damages award made to that date[26] are well-known.[27]

An "artificial" memory helps.[28] In 1906 Lord Halsbury's son was shown a brief of his father's delivered in 1855 by a Chester solicitor. There was nothing on it except that on the last page "there was written, in my father's handwriting, the times of three trains to London". Upon his return to the capital, his son asked Lord Halsbury about the case.

"He remembered every single witness, he told me what they said, he told me which broke down and which were believed, he told me of the two important letters which won the case; he remembered the judge and every detail of the case."

Perhaps Hardinge Giffard was an exception; Lord Alverstone once said that to succeed at the Bar you must have a mind which can remember and a mind which can forget. Lord Macmillan has remarked, "as a case was concluded it was wiped off the slate to make way for its successor. . .".[29]

A certain insouciance under pressure undoubtedly helps. Lord Halsbury "never read a brief a second time, and rarely a first". Such an approach accords with that of Sir Patrick Hastings, who made a point of never making a note upon his brief. When F.E. Smith K.C. argued before Mr. Justice Darling it was wonderful to see "which of two great minds *coming entirely afresh* to the consideration of the question at issue would be the first to grasp the points".[30] Examples of *sang froid* and even impertinence are legion. Who now would respond as Danckwerts K.C. did in reply to Lord Alverstone C.J.'s comment, "I would have put that somewhat differently, Mr. Danckwerts" with a simple and enigmatic: "*You* would"?[31]

For appellate work, an understanding of judicial psychology is especially useful. Owen Dixon K.C. would often play one member of the High Court off against another.[32] In *Afternoon Light* Sir Robert Menzies records an illuminating incident. Dixon, opposed by Latham K.C. in the High Court, was being pressed on a particularly difficult point. Rather than respond immediately, he gave a laugh[33] "which chilled [Menzies'] blood" and said that he would wait to hear what Sir John had to say. Sir John began to lecture the Bench with his usual didacticism, speedily put it offside, and allowed Dixon to win almost by default.

Similarly, Viscount Haldane "knew the judges in the House of Lords and Privy Council so well that he could follow the workings of their individual minds".[34]

Above all, a good advocate possesses his own style, In Galsworthy's *The Silver Spoon*[35] Soames briefs Sir James Goskisson K.C. on Fleur's behalf in a libel action brought against her by Marjorie Ferrars.

"Since selecting him Soames had been keeping his eye on the great advocate; had watched him veiling his appeals to a jury with an air of scrupulous equity; very few — he was convinced — and those not on juries, could see Sir James Foskisson coming round a corner."[36]

This is the same quality Sir Owen Dixon lauded in Sir Frank Gavan Duffy. "He had the odd and forgotten theory that what mattered most in courts was advocacy, and he had thought about it a lot and he had practised it with extraordinary success. I had a room in Selborne Chambers at that time which fortunately was almost the last room before you got on to Bourke Street, and in the niceness of his disposition he used to come in to me and say, 'Dixon, come up and see what I am going to do in such-and-such a court'. And it was worth going up to see what he did, I can assure you. If ever there was a man who could make bricks without straw in open court, it was Sir Frank Gavan Duffy."[37] This ability not to be seen coming round a corner, to make bricks without straw, exists and is easily recognisable but cannot be defined.

To succeed it is also vital to perceive and seize the main chance. Lord Haldane did so when briefed overnight to appear in an important Privy Council case on behalf of the Canadian government, Sir Patrick Hastings when left by Lord Carson to conduct an important fraud trial on his own,[38] Lord Goddard by being able to advise in a banking matter late on a Saturday morning when there was no other counsel in the Temple.[39]

Equally, it is vital to be able to withstand the vicissitudes of the first few years at the Bar. Viscount Maugham remembered that "The necessity of getting briefs, especially if one has a wife and child to support, is of a very poignant kind . . . the waiting for work is a terrible drawback to a young barrister's life and tends to sour his whole existence. I shall never forget those unhappy days."[40] Sir John Rolt often complains in his autobiography of his straitened financial circumstances, "*res angustae domi*". Sir Garfield Barwick was bankrupted on a guarantee given for his brother's petrol station and left with nothing but his chair! Rufus Isaacs had been "hammered" on the Stock Exchange. Sir Patrick Hastings found that brown paper was a satisfactory substitute for shoe leather. Despite these difficulties all ultimately succeeded because they were prepared to take a risk. Hastings once had to pawn his watch to raise the train fare to go on circuit but he "never like a game that is played

for safety". Dr. Evatt's astringent comment to Sir John Kerr is completely in point. When the latter hesitated on risking the Bar, Dr. Evatt replied: "What do you want me to do? Make out a deed poll guaranteeing you six hundred pounds a year?"[41]

Relationships with solicitors, and the appropriate professional treatment of them, count for much. Lord Denning urged the neophyte to demonstrate "good sense and a pleasing manner".[42] Lord Simon put it simply:

"You must cultivate the faculty, in your early days, of giving professional advice, when consulted by people older than yourself, with firmness and without either pomposity or apologies".

It is possible, within bounds to publicise: "To get his name on the title-page of a useful law book has always been recognised as one of the few legitimate methods of publicity open to an aspiring member of the Bar".[43] Sir Patrick Hastings took this method to extremes by writing a turgid monograph on money-lending over the Summer Vacation in order to secure a seat in Charles Gill's chambers by dedicating to work to him!

Of course, it is no disadvantage to be the scion of a great legal house or have other legal connections. As the odious clerk in C.P. Snow's *Time of Hope*[44] observes to the hero, a newly-called barrister, about to commence pupillage: "I want to know what strings you can pull, sir . . . Some of our young gentlemen have uncles or connexions who are solicitors. It turns out very useful sometimes. It's wonderful how the jobs come in." Certainly, it must have assisted Sir Henry Winneke's career to be the son of a judge and the son-in-law of a prominent solicitor. Examples could be multiplied.

In the end, however success flows from enjoyment of practice. In *Time of Hope* the smug hero spends many hours excoriating his puil-master, Herbert Getliffe, but recognises in the end that:

"Getliffe's mind was muddy, but he was a more effective lawyer than men far cleverer, because he was tricky and resilient, because he was expansive with all men, because nothing restrained his emotions, and because he had a simple, humble, tenacious love for his job."[45]

This devotion to the law is amply demonstrated when Getliffe decides to take silk in the very middle of the Great Depression. Getliffe is a miserly specimen "so mean that, having screwed himself to taking one to lunch, he would arrive late so that he need not buy a drink beforehand".[46] Why then does he seek advancement?

He does so because of "his delight in his profession, his love of the legal honours not only for their cash value but for themselves. If ever the chance came . . . he would renounce the most lucrative of practices in order to become Getliffe J., to revel in the glory of being a judge."[47] It is a sad testimony on the times, and the esteem and respect now accorded to judicial officers generally, that such worthy motives are insufficient in the present economy to attract barristers onto the Bench or to dissuade them, once appointed, from leaving it.

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1. "No-one becomes an absolute rogue overnight," the apocryphal explanation, in Scotland, for the long period of time involved in the novitiate of a Writer to the Signet, as quoted by Lord Macmillan, *A Man of Law's Tale* (1952) p. 33.
2. Sir Richard Muir, Senior Treasury Counsel and the most formidable of prosecutors because of his gradgrind attention to detail. In his autobiography he records with regret the acquittal of a murderer whom he was prosecuting because of his failure to take his customary view of the scene of the crime due to rain. A good example of his masterly exposition in opening a case may be seen in the Crippen murder, his notes for which are in Blom-Cooper, *Law as Literature* p. 14. He is the model for the Crown Prosecutor, Sir Heyman Drewer in Ernest Raymond's novel, *We, The Accused* (1934). For a less than flattering description of his methods, see *Stinie, The Murder on the Heath* (1988) which describes his approach in the Stinie Morrison murder.
3. Sir Horace Avory, famous prosecutor and subsequently the pre-eminent criminal judge in England. For an encomiastic biogrpahy, see Jackson, *Mr Justice Avory* (1935).
4. Charles Gill Q.C., a leading counsel in controversial cases and Sir Patrick Hastings' pupil-master.
5. The proverbial recommendation on the choice of counsel at the English Common Law Bar at the end of the nineteenth century; see Jackson *op.cit.*, p. 91. The successful counsel would display all the characteristics and abilities of this trinity.
6. A happy choice of name of the character, rivalled, perhaps, in appropriateness only by the real life Lord Braxfield, the famous Scottish hanging judge (1721–1799) who was himself the subject of R.L. Stevenson's *Weir of Hermiston* (1896).
7. Charles Dickens, *A Tale of Two Cities* Chapter 5, "The Jackal".
8. Viscount Haldane of Cloan, *Autobiography.*
9. ". . . Success at the Common Law Bar depends largely on the impression made on solicitors who see a man in court or moving about the halls and corridors of the Law Courts. . . . a man of insignificant appearance has always a hard battle to fight": (1921) 66 Sol. J. 135 quoted in R.F.V. Heuston *Lives of the Lord Chancellors 1885–1940* Vol. I. p. 12 (Hereinafter Heuston Vol. 1 or *Lives of the Lord Chancellors 1940–1970* vol.II).
10. Sir Henry Dickens noted, however, that "he had not that gift of far-seeing discretion which is required of a great advocate": Dickens, *The Recollections of Sir Henry Dickens* (1934) p. 244.
11. Norman Birkett, *Six Great Advocates* (1961) p. 12 quoted in H. Montgomery Hyde, *Norman Birkett* (1964) p. 87.
12. "It is no exaggeration to say that he could sentence a man to death with a little display of emotion as a magistrate fining a drunk half a crown": Jackson *op.cit.* p. 16. Avory

was also, however, a man of great generosity. When appointed to the Bench he allowed Hastings to use his chambers rent-free for a long period of time when Hastings took them over, along with Sir Harry Poland's chair. Characteristically, he would not allow Hastings to take his library as well.

13. For a good example of what can be accomplished over lunch, see the effort of the Attorney-General, Sir Reginald Manningham-Buller, in analysing completely new evidence in the lunch break and re-examining upon it immediately thereafter: Devlin, *Easing the Passing* (1986) p. 70 giving an "insider's view" of the Bodkin Adams murder trial.
14. "It was well said of him [Lord Campbell], in explanation of his success, that he lived eighty years and preserved his digestion unimpaired." Lord Russell of Liverpool, *The Royal Conscience* (1961) p.115.
15. Denning, *Family Story* (1981) p. 84.
16. R.F.V. Heuston, *Lives of the Lord Chancellors* Vol. II p. 164. Viscount Dilhorne. "was known to have left the House at 3a.m. and by 9a.m. to be ready for a conference with devils, at which he showed a detailed knowledge of his brief".
17. One may usefully contrast his abstemiousness with the bibulous behaviour of other great advocates. Dickens, for example, says of Stryver and Carton that they "drank enough to float a king's ship": *Tale of Two Cities*. The Earl of Birkenhead was often worse for wear for drink; see, Campbell, *F.E. Smith, First Earl of Birkenhead* (1983) *passim*.
18. Z. Cowen, *Isaac Isaacs*.
19. The incident is recorded in Campbell, *F.E. Smith, First Earl of Birkenhead* (1983) pp. 705–706. Birkenhead bet Milligan, the Olympic miler, fifteen pounds to five pounds that he could run four laps of Tom Quad, Christchurch before Milligan could run eight. Before they began F.E. made one more condition. "The bets are laid" the witnesses protested. "The one condition is," F.E. insisted solemnly, "that I have one more whisky and soda".
20. Lord Hailsham in Bos and Brownlie, *Liber Amicorum for Lord Wilberforce* (1987) p. 4.
21. Perhaps it might better be said that it is most useful not to *seem* too intelligent. Lord Birkett once expressed surprise at the lack of success at the Bar of Phillip Guedella, a brilliant Cambridge contemporary. "It is one of the fascinating questions why men succeed or fail at the Bar. Guedella with every gift – brilliant in speech, highly intelligent, industrious – and yet he failed. My own view is that he was *too* clever and gave the impression of being a little superior to the ordinary run of men": *Lord Birkett of Ulverstone*. Lord Diplock was advised not to mention certain high academic achievements when he commenced in practice. In this, as in many other things, *ars est celare artem*. The different respect accorded to purely academic achievement may be noted in the number of Melbourne advocates who rejoice in an academic doctorate and the similar number of their Sydney counterparts, similarly qualified, who do all they can to suppress mention of their degrees for fear it will be bad for business. I once gently reproved the judge to whom I was Associate for failing to recognise the Ph.D. of a barrister before him, to be told that only an LL.D. would receive any accolade in his court! On this restricted basis, only Dr. Spry would be recognised.
22. 137 L.T. 157 (P.C.)
23. Birkenhead, *Walter Monckton* (1969) p. 78. This lack of humanity, perhaps, led to the famous couplet concerning Sir John:
    "Sir John Simon isn't like Timon,
    Timon hated mankind, Sir John doesn't mind".
    On the other hand, when Simon became Lord Chancellor he left his extensive library to his Inn to replace books destroyed in the bombing during the early part of World War II.
24. W.S. Churchill, *Great Contemporaries* describing F.E. Smith.
25. "There is no answer to this action for libel, and the damages must be enormous."
26. Fifty thousand pounds, since surpassed by several recent awards such as that to Mrs. Sutcliffe against *Private Eye*; but see now the decision of the Court of Appeal in *Sutcliffe v. Pressdram Ltd.* [1990] 2 W.L.R. 271, which greatly reduced the jury award and laid down rules as to the assessment.
27. Heuston Vol. I p. 363. And see H. Montgomery Hyde, *Their Good Names* (1970) p. 195, "The Soap Trust Libel".
28. Viscount Haldane could remember facts and legal principles without effort but "by some curious mental freak he had a poor memory for verse or prose." Heuston Vol. I. p. 168.
29. Lord Macmillian *op.cit.*, p. 115.
30. Lord Macmillan *op.cit.*, p. 126.
31. Dickens notes: "Unfortunately both for himself and the profession, he [Danckwerts] had a violent and uncontrollable temper, which quite unfitted him for the position of a judge." *The Recollections of Sir Henry Dickens* (1934) p. 245.
32. "He would with diabolical skill set one judge against another in dialectical combat in the course of persuading the majority to decide in his favour." Sir Douglas Menzies's memoir in (1973–1974) 9 *M.U.L.R* 1.
33. Sir Owen Dixon's laughter was, apparently, a feature which people always noted. For example, in his note, "Sir Owen Dixon: An Intellectual Man of Passion" (1986) 15 *M.U.L.R.* 579, 581 Peter Ryan describes it as "harsh cackling laughter".
34. Heuston *op.cit.*, Vol.I. p. 189.
35. (1929) Book II of *A Modern Comedy*.
36. One can only regret that Galsworthy does not give more details of another great lawyer, Bobstay Q.C., employed by Soames's uncle Swithin in an earlier slander action brought against him by a member of the Walpole Club. "Swithin had called him in public 'a little touting whipper-snapper of a parson'. He remembered how he had whittled the charge down to the word 'whipper-snapper,' by proving the plaintiff's height to be five feet four, his profession the church, his habit the collection of money for the purpose of small-clothing the Fiji islanders. The Jury had assessed 'whipper-snapper' at ten pounds – Soames always believed the small clothes had done it. His counsel had made great game of them – Bobstay Q.C. . . . Bobstay would have gone clean through this 'baggage' and come out on the other side."
37. (1963) 110 C.L.R. xiii.
38. He had been briefed with Carson to defend a libel action brought by Robert Siever and Carson was called away to Ireland on political business. Hasting said: "When Carson went to Ulster he brought me fortune": H. Montgomery Hyde, *Carson* (1953) pp. 45.46.
39. F. Bresler, *Lord Goddard* (1977) pp. 50–51.
40. Lord Maugham, *At the End of the Day*, p. 59.
41. Kerr, *Matters for Judgment* (1978) p. 46.
42. *Family Story*, p. 92.
43. Lord Macmillian *op.cit.*, p. 55. I once propounded this theory to the judge to whom I was Associate, suggesting a book on company law. He looked at me sardonically and said: "Yes, and they will send you nothing but cases on the *Dog Act*"!
44. (1949) Penguin p. 241.
45. C.P. Snow *op.cit.*, p. 247.
46. C.P. Snow *op.cit.*, p. 314.
47. *Ibid.*

SUNDOWN AND MOONRISE ON THE GULF OF CARPENTARIA

To Peoppel's north six hundred miles and more,
Full-nourished by the Carpentarian sands,
And guarding title to a gulf-bathed shore,
A stately bank of casuarinas stands.

A gnarled enigma fashioned by this place
Reflects its simple, unexplained mystique:
A monument in fretted mangrove lace,
Erected near the mouth of Running Creek.

Few hints of man save scattered flotsam blown
Despoil this sun-stroked wilderness sublime:
Conceived by nature, treasured for her own,
Matured by distance, lulled by tide and time.

A balmy winter's day dwells on its close,
But slowly fades the unpolluted view:
A veil descends on tidal undertows,
Enshrouds a silhouetted jabiru.

Behold, a theatre setting formed of these:
Low dunes and waves for backdrop as of yore,
A spangled canopy atop the trees,
Dried equistifolia for the floor.

With dumb diminuendo pales the glow:
The light is spent, so now put out the light;
But eastward, look! And keep your whispers low
To mark with awe this memorable sight.

The sea is gone, become a limpid pool
Whose farthest rim projects a tiny gleam
To lift, at first, the darkening crepuscule;
Then, upward-piercing, bursts a blood-red beam.

The rising crescent forms a crimson bow,
And soon a hemispheric torch to probe
The crannies of the Running Creek below;
Then forward floats a huge flamingo globe.

A thousand years ago they saw the same,
Who hunched about their fires along the beach,
Who marvelled at the mesmerising flame
And wondered at the sky they could not reach.

They owed no tax to savour nature's pride:
No bureaucrat controlled the moon's ascent;
No statute ruled the ebb and flow of tide;
Today, as then, these gifts are heaven-sent.

R.C. Tadgell
August 1990

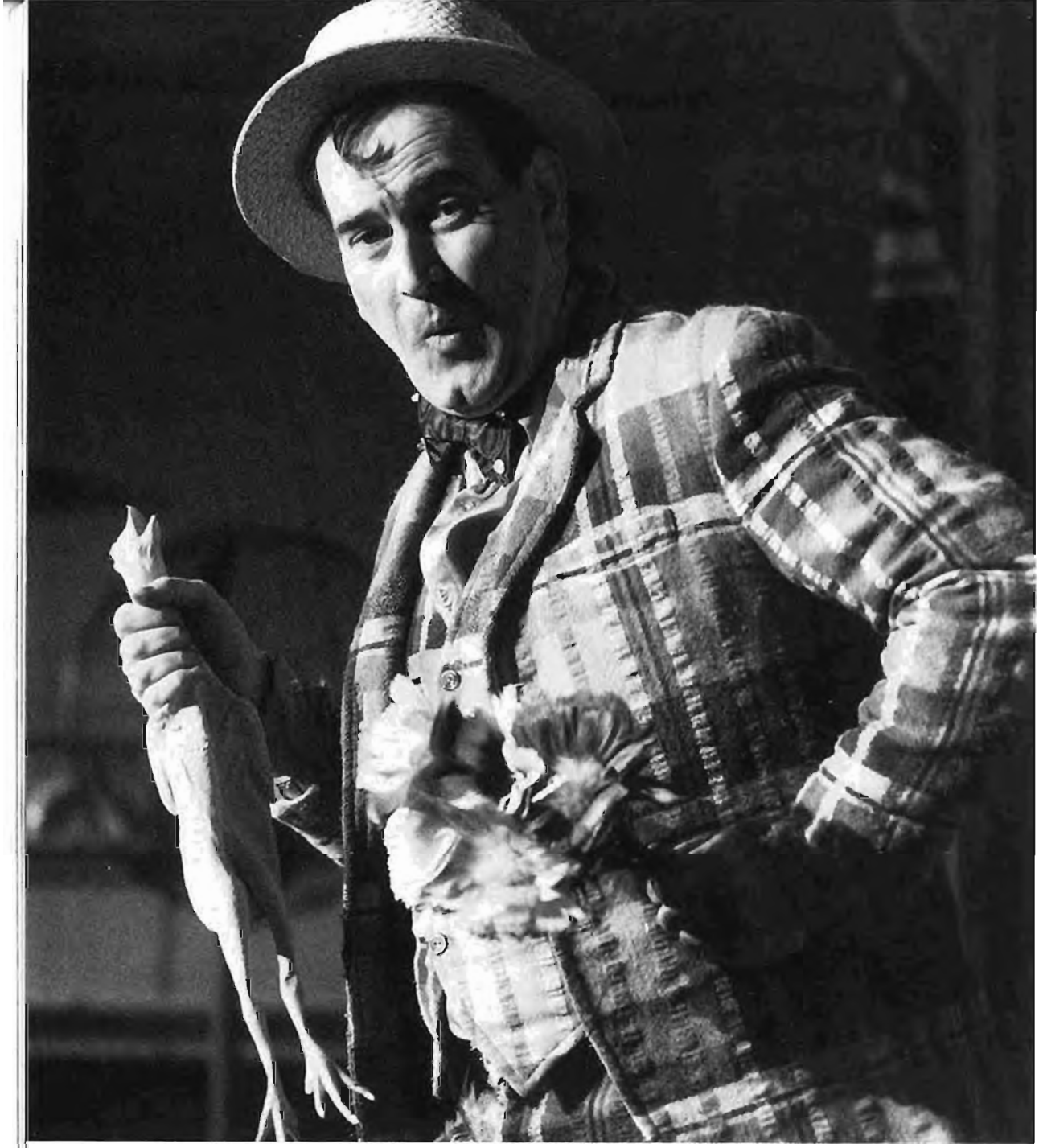
THEATRICAL DOUBLE AT THE MAGISTRATES' COURT

Insight into the Law by Paul Elliott. Trial by Jury — by Gilbert & Sullivan

A THEATRE CRITIC, I REFLECTED ON BEing assigned the reviewer's role, is almost as powerful as a Supreme Court judge, and more people take notice of his judgments. This is not surprising given the capacity of the critic to dismiss a production or performance with a single felicitous phrase. Some comments came readily to mind (well, actually, I looked them up):

- ☐ It was greatly to Ms A's credit that, bad as the play was, her acting was worse.
- ☐ Watch Katharine Hepburn run the gamut of emotion from A to B.
- ☐ Mr. Grainger played Mr. Darcy in *Pride and Prejudice* with all the flexibility of a telegraph pole.
- ☐ I've knocked everything but the knees of the

The Cast. *Chairperson Jack Nixon.*



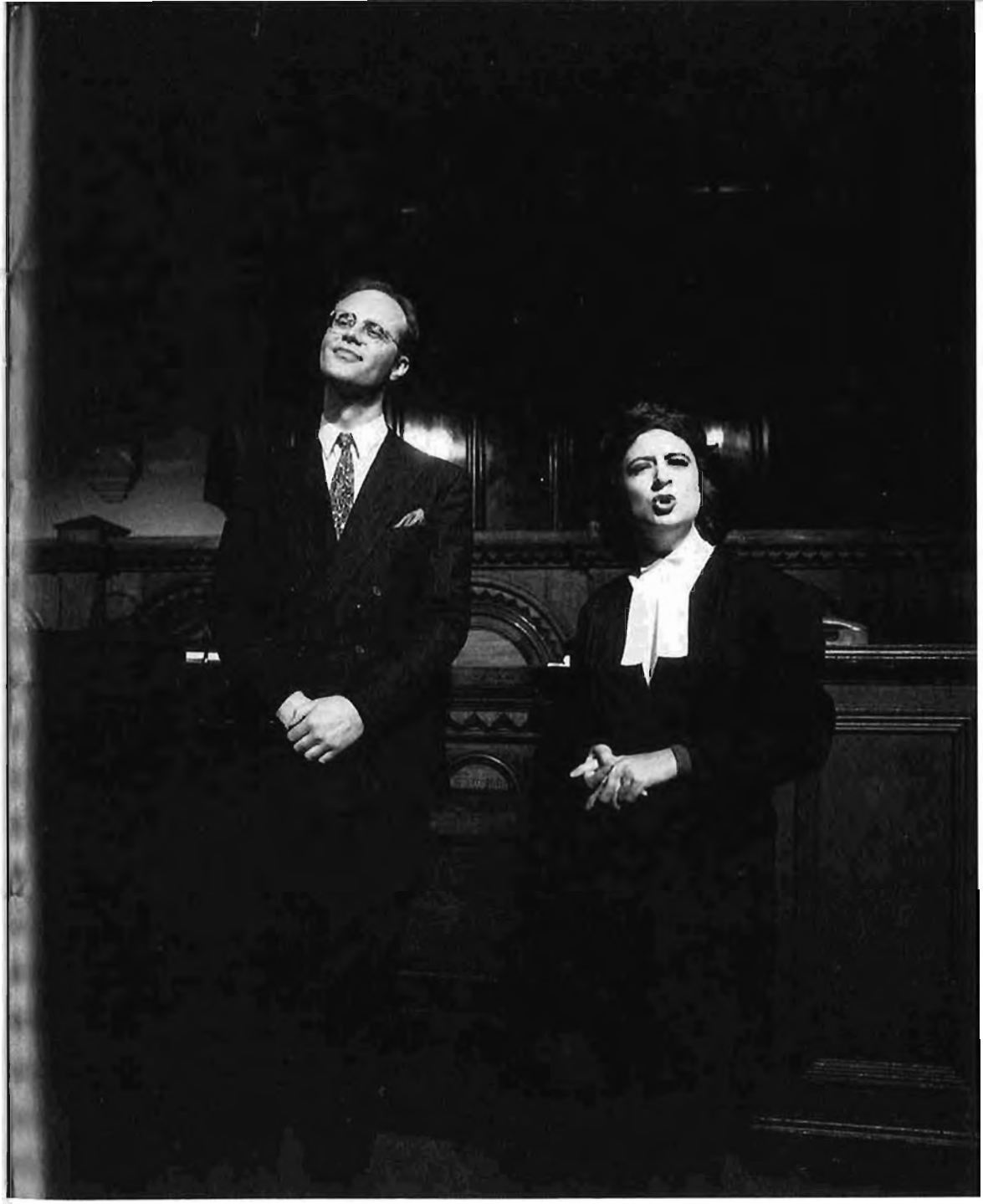
Darcy Dugan III "The Cheeky Chappy."

chorus girls and nature has anticipated me there.

- ☐ The plot was designed in a light vein which somehow became varicose.
- ☐ Ms Dianna Rigg is built like a brick mausoleum with insufficient flying buttresses.
- ☐ Mr. Peter O'Toole's performance in *Macbeth* suggests he was taking some form of personal revenge on the play.

Presented with the opportunity to try and emulate this dazzling prose it is with considerable disappointment that I must confess to having witnessed two very fine pieces of theatre.

In fact the whole evening was a theatrical experience. I entered the courtyard of the Melbourne Magistrates' Court, scene of so many of my forensic humiliations, to the appropriately wistful music of the Victoria Police wind quin-



Bob Buttocks. *Jana Ventolin.*

tet. Thereafter I obtained the programme designed as a brief addressed to a Mr. Allan Sundry, enjoyed the pleasantly-timed interval with its smoked salmon and free champagne (it's amazing how much champagne one can drink in 25 minutes of dedicated effort) and ultimately journeyed to the atmospheric Old Melbourne Gaol for an after-show port.

In between were the two performances.

INSIGHT INTO THE LAW

Insight into the Law is a review written and directed by Mr. Paul Elliott. Investigative journalists Jana Ventalin and Bob Buttocks pose the question "Lawyers, do we need them?"

The script is excellent and the cast members described in the programme as "performing barristers" (surely a tautology), are uniformly good.

The fast-moving production deserves a wider audience — perhaps as a welcome innovation at a Victorian Bar dinner. Apart from a cameo appearance by Mr. John Milton (Darcy) Dugan, applying for the restoration of his driving licence (and with unfortunate consequences), we observe the new Computer Court in action and the operation of the Accident Compensation Caring or Sharing Tribunal (ACCOST) featuring members of the recently abolished County Court. (This reform coincides with the amalgamation of the various law faculties into the Joan Kirner College of Education and Hairdressing!)

The ACCOST members attempt to construe s 100(3) of the *Accident Compensation Act* 1985 — "prescribed proportion" — with about as much success as their judicial predecessors.

The former judges on this tribunal are Nixon, Barnett, Dee, Hanlon, and Hassett and Ostrowski JJ. — I leave it to you to pick the odd men out.

There is a similar post-judicial flavour in the final scene which takes place before the Commercial Time Share Dispute Resolution Centre and Guardianship Board and features Tribunalperson Tadge Brook-Ormington.

All in all one cannot help reflecting that script writer Elliott is a man prepared, in the coming months, to spend most of his time in the Federal Court.

The last scene also heralds the welcome return of Dingle-Suck-Foot, described in the stage directions as "a snivelling equity junior". I have never encountered this genre but, speaking as a common lawyer, I am prepared to accept that the characterisation was perfectly accurate.

Dingle-Suck-Foot is led by Merralarkinbatt Q.C. in a manner suggestive that Mr. Elliott also has no ambition to receive a junior brief in the black-letter areas of legal practice.

Jana Ventalin is played by Meryl Sexton, fresh from her triumph on the half-line in the Bar Hockey team — a truly versatile performer. Her colleague, Bob Buttocks, is played by Trevor McLean (who also plays Merralarkinbatt Q.C.) I am unaware whether Mr. McLean knows much law but he certainly has the voice and bearing of a Chief Justice.

Doug Salek's John Cain (yes, he's in the show too) is as good as Max Gillies' Bob Hawke and, demonstrating the truism that one man's bad luck is another's good fortune, Simon Wilson replaces Mr. Salek as Premier in the role of Joan

Joan Kirner.

Chairperson Anne-Marie Roper-Crabb.

Kirner. Whatever other indignities Mr. Wilson may have perpetrated (figuratively speaking) upon the new Premier, at least he had the courtesy to shave his beard off before the performance.

Doug Salek as Chairperson Nixon is a tour de force. It was clear that someone had to play "Chairperson Jack" because of the logistical impossibility of Simon Wilson playing that role as well as those of Barnett, Dee and Hanlon, all of which he manages superbly.

The frenetic Paul Elliott manages not only to play John "Darcy" Dugan III but Tribunalpersons Hassett and Ostrowski. Consequently it is not surprising that he should also appear in the role of Tadge Brook-Ormington, which enables him to assume the persona of three supreme judicial entities at once.

The ubiquitous Mr. Wilson lends great weight to the Commercial Tribunal scene as the litigious builder Norm Costain, while Mr. Salek bobs up again (but only as a preliminary to bowing low) as Dingle-Suck-Foot.

As Anne-Marie Roper-Crabb, the "caring and sharing" social worker (and Tribunalperson), Jeanette Morrish gained the "empathy" of the whole audience. She is a fine actress who adapts easily to the review format.

Other barristers in the cast who deserve mention are Graeme Thompson and Thracy Vinga.

With all that talent why do they bother with law?

TRIAL BY JURY

Filled with bonhomie and champagne the audience returned to the Magistrates' Court Theatre, Melbourne (surely our answer to the Royal Court Theatre, London) for the Second Annual Performance of Gilbert and Sullivan's *Trial by Jury*, which was once again produced by Peter Moon.

In a piece of inspired casting, his Honour Judge Michael Strong played the Judge.

If judges were required to sing their judgments, Michael Strong would have to be appointed to the High Court, which is one way of saying he has a very fine voice indeed.

His Honour's obvious enjoyment of the role

The Judge.

Defendant, Friend, and Jury.

overcame all discretion — let alone judicial discretion — and he amply demonstrated the old theatrical truth that, given the position of the Bench in the courtroom, a judge can easily upstage every other performer in the proceedings.

Not content with the role itself his Honour introduced the Mikado's "Little List" into the proceedings and thereby pronounced upon a number of features of contemporary society with a forthrightness hitherto denied him by judicial office.

The Judge was well supported by the other major players, Genevieve Overell and Margaret Fielding (alternating as the Plaintiff Angelina), Bill Collopy, as the Defendant, Graeme Gregory as Counsel and John Marum as the Usher. The Bridesmaids and Members of the Public were all in good voice as were the Gentlemen of the Jury, where Paul Bennett, Julian Ireland and Mark Robins of Counsel were sighted masquerading as jurors.

A special mention to Robert Charles John Chappell, The Bumbling Associate, if only to indicate that the technique he has perfected so well was not acquired during his previous sojourn with the Office of the Director of Public Prosecutions.

The orchestra, under the direction of Basil Hawkins, provided a first-class accompaniment and the pace of the production, directed by Brett Lloyd Jones (who also observed proceedings from the jury box), never flagged.

The programme summary of *Trial by Jury* concludes:

"Finally the judge, disgusted at the objections and eager to get away, marries Angelina himself. Oh! That modern law could be so simple!"

But it is! Today they call it Alternative Dispute Resolution.

John Coldrey

PERSONALITY OF THE QUARTER

RUPERT BALFE Q.C. WILL BE FAMILIAR to Bar News readers as a senior member of the Bar Hockey Team. He has been, as the saying goes, around for quite a while, having signed the Bar Roll in 1961, the year the Berlin Wall went up.

Rupert worked as a solicitor for some time with Herbert Turner & Co. He read with Hasey Ball. He took Silk in 1981 and has a wide Common Law practice. "Rupy" (how do you spell it exactly?), as he is affectionately known to many of his colleagues, was dubbed "The Red Baron" after engaging in aeronautical exploits of the most complicated and finely-tuned nature, designed to ensure that he could appear before juries in Wangaratta and Sale on the same day!

Sometimes Rupy's obsession with the need to be in at least two places at once got him into strife. On the third occasion that he was late to

VERBATIM

Attaxim Pty. Ltd. v. Gordon Pacific Developments Pty. Ltd.

Coram: Nathan J.
9 October 1990
[Town planner giving evidence about a building in East Melbourne]

His Honour: What a shocking outrage — what a perfectly unspeakable horror the Masons have perpetrated upon this State by that living day scare centre mortuary that they have built right to the head, next to the Eye and Ear Hospital, which I think is really the most pornographic phallic thing, thrusting a red tip right up all over Melbourne — it is too late. You are there too late?

Witness: I'm not involved in that particular — that particular building Your Honour.

P.Q. v. Australian Red Cross Society

Coram: McGarvie J.
16 October 1990
[His Honour questioning juror on non-attendance]

His Honour: Why didn't you attend on the third day, Mr. Genis?

Juror: Well, I was in the festive spirit after the Grand Final and I had too many to eat and too much to drink and my stomach did not agree with me at all and I was seriously or violently ill.

His Honour: What team did you support?

Juror: Collingwood, naturally.

His Honour: Well, I suppose you'd say if you only failed to serve in a jury when Collingwood wins a Grand Final, it won't affect you very often?

Juror: Well, it's a long time coming. What made it even worse, I'd neglected to call the jury service to advise I was ill also — apparently.

His Honour: Mr. Genis, it's necessary to impose a penalty to indicate the importance of

appear before McInerney J, his Honour asked: "Mr Balfe, do you deliberately stand me up?" He was often on circuit with Martin Shannon, David Kendall and Arthur Adams and, in the words of Diane, his wife, would "leave home every Monday and come every Friday with a load of dirty washing and a hangover".

Over the years, initially through hockey contacts, he has developed a particular interest in Pakistan and is a frequent visitor to that country. His firm "Joruba Rugs", [193 Canterbury Road, Canterbury] imports antique rugs from that region. Recently he was appointed Honorary Counsel for Pakistan in Victoria.

His other great sporting interest is skiing and he has been a regular visitor to Mt. Buller since the days of lace-up boots and cable bindings. He has four children Michael, Lisa, Louise and Kate. He lives in Mont Albert.

turning up, but I accept what you say and I think it's the most original excuse I've heard since I've been hearing these applications and you'll be find $45.

Juror: Thank you.

8 November 1990

[Expert witness from Switzerland giving evidence about the screening of blood donors and the identification of high-risk groups].

Witness: We have some difficulties sometimes to explain what is a bi-sexual. Some people thought that they have a girlfriend beside of my wife, I'm a bi-sexual.

R. v. Moosek

Coram: Judge Crossley
18 October 1990
Betty King for Prosecution
Martin Dean for Defence

King: Were you, in fact, on duties relating to that area of the bank when you were approached by a gentleman?

Witness: That's correct.

King: Can you describe the gentleman who approached you?

Witness: Oh, . . .

King: You can refer to your statement if you . . . ?

Witness: Actually, I don't have the statement because I — I did not expect to come here today, you know, in fact, I came to the courts with my cricket bat — I am on my way to cricket practices.

Dean: Your Honour, we have no objection if the witness refreshes his memory from his cricket bat.

His Honour: He will be back in the pavilion before long.

Camberwell Shopping Centre Pty. Ltd. v. City of Camberwell

Coram: Teague J.
25 October 1990
Alex Chernov Q.C., Peter Jopling and Paul Santamaria for Plaintiff.
Peter O'Callaghan Q.C., Jack Hammond and Melanie Sloss for Defendant.

O'Callaghan: Mr. Arnold, in addition there was a tape recording of the proceedings?

Witness: I saw a tape operating in the room.

O'Callaghan: And a tape operator?

Witness: Yes.

O'Callaghan: Was he a male or female, do you recall?

Witness: He? It was he —a male or female?

O'Callaghan: Was the operator of the tape, to the best of your recollection, male or female?

Witness: I'm sorry, I can't be sure.

D.P.P. v. Bishop

Coram: Judge Dixon
30 October 1990
Peter Billings for Crown.
Bruce Walmsley for Appellant.

[Walmsley having called one Peter Robert Moore, solicitor and Brownlow Medallist, to give character evidence for the Appellant]

Billings (in cross-examination): Just one more question Mr. Moore. Do you still barrack for Collingwood?

Witness: Yes.

Billings to Walmsley: That's fixed his credit.

Overheard in Dominos

"Did you hear that 100 barristers applied to be a magistrate in the latest round? Did you apply?"

"No, I'm waiting for Mason to retire . . . Tony that is, not Kevin."

A FAIRY TALE (CONT)

NOW GATHER AROUND ME MY DEARS whilst I tell you more of VicBees. I am sure that you want to hear the latest about the site of the VicBee's next hive. It is still a bomb site although there are plans to turn it into a car park (circa 1970s). It is believed that the income from the car park will not be quite enough to cover the interest on the moneys borrowed to purchase the site. It probably would not even be sufficient to cover the gradual depreciation in the value of the site as it sinks along with the value of all other Victorian hives and hive sites. I believe that the VicBees are considering a proposal to cover the site with bitumen, dump a heap of bluestone pitchers at one end, bring in a few large tubs of bamboo and then lease the site for large sums of money to the Melbourne City Council calling it "City Square West".

Although the VicBees have not been especially busy building their new hive or even deciding what sort of hive it will be or even when it will be built, they have been turning their minds to weightier matters.

You will probably notice that some VicBees are bigger, sleeker and covered in more ornate plumage. They are the older, wiser and more experienced VicBees. As a result of their accumulated wisdom they have learnt to forage in the fields with the bigger blossoms and the richer pollen. Traditionally these SlickBees have always allowed younger VicBees to accompany them to these more productive fields on the understanding that the ordinary VicBees would not plunder the blossoms for as much pollen as the SlickBees and that the SlickBees would always have first taste of each blossom. For years this tradition has worked to the convenience and satisfaction of all. The SlickBees have enjoyed sharing the pollen and teaching the younger VicBees how to find and harvest the better pollen. They have always been reassured that should they damage a wing en route to the fields the younger VicBees would step in and harvest the pollen for both of them. The younger VicBees were happy with the system because they learned to find and harvest the better fields and they felt more secure with the presence of older wiser SlickBees. The flowers were happy. Some of them were made to feel more important by having the attention of two VicBees and especially when one of them was older, wiser and more ornately adorned. The flowers were also happier because it meant that their pollen was more effectively harvested.

The only ones not happy were those Bees who were jealous of the VicBees. Although they were incapable of finding and harvesting pollen themselves they considered that they knew better how it should be done and how the younger VicBees should be taught the finer secrets of the art. Unfortunately, these so-called experts were not very good at explaining their systems. It seemed that all they wanted to do was to ensure that each SlickBee and especially each VicBee gathered less pollen. That was supposed to ensure that the VicBee hives slowly began to disintegrate until no Bee hankered after becoming a VicBee. That was all very well. But the so-called experts, who liked to listen to (they called it "rap with") SocWorkBees, forgot to develop means to ensure that the interests of the flowers were best catered for. Some VicBees, labelled cynicBees, suggested that the SocWorkBees did not like the bigger, brighter and more pollen-producing flowers and hoped that with neglect by the VicBees they would wither away, allowing the scrawnier duller flowers to prosper, or at least appear to prosper in the absence of obvious competition. Some cynicBees even thought that the SocWorkBees wanted all flowers to become identical to the scrawniest, dullest flowers.

Notwithstanding the pressures from those that listened most attentively to the SocWorkBees, the VicBees actually made a courageous decision and decided that the SlickBees shouldn't be made to take younger VicBees when they foraged but should be encouraged to continue the older tried and more traditional ways. The VicBees felt good about having made a decision but decided that one decision at a time was enough. They have put off some other decisions such as whether VicBees should be allowed to keep more of the pollen they harvest when they do an especialy good job and none if things go wrong even if it wasn't their fault. One wonders just how good the motivation would be for a VicBee contemplating a near-barren field if he could only get some pollen if he achieved the impossible.

It is too late in the night for such philosophising. Tuck yourselves in my dears, sleep well and I will tell you more about the VicBees on another night.

(To be continued)

COMPETITIONS

The Chairman's solution for Caseflow Management. Please send an appropriate caption for this photograph. **Prize: A bottle of wine from the Chairman's Cupboard.**

SELECTION OF ARTICLES

Prepared by James Butler, Supreme Court Librarian

ADMINISTRATIVE LAW

Allars, M. "The Australian Administrative Appeals Tribunal: procedure and review" [1990] *Public Law* 172–180.

BREACH OF CONFIDENCE

Butler, D.A., "Is there a public interest defence to a breach of confidence?" (1990) 20 *Queensland Law Society Journal*, 363–368.

COMPANY LAW

Carroll, R, *et al.* "Interlocking directorships and the law in Australia" (1990) 8 *Company and Securities Law Journal* 290–302

CRIMINAL LAW

Colvin, E. "Exculpatory defences in criminal law" (1990) 10 *Oxford Journal of Legal Studies*, 381–407.

Corns, Christopher, "Destructuring sentencing decision making in Victoria" (1990) 23 *ANZ Journal of Criminology*, 145–157.

Fox, R. & Freiberg, A., "Ranking offence seriousness in reviewing statutory maximum penalties" (1990) 23 *ANZ Journal of Criminology* 165–191.

EVIDENCE

Marcus, G. "Secret witnesses" (1990) *Public Law* 207–223.

INSURANCE

Yeo Hwee Ying, "Criminal law materiality — an Australian alternative" (1990) *Journal of Business Law* 97–109.

LABOUR LAW

Arup, C. "WorkCare: administrative rationality, legal process and political reform" (1990) 3 *Australian Journal of Labour Law* 159–185.

Collins, H., "Independent contractors and the challenge to vertical disintegration of employment protection laws" (1990) 10 *Oxford Journal of Legal Studies*, 353–380.

McEvoy, K. *et al.*, "The flight of Icarus: legal aspects of the pilots' dispute" (1990) 3 *Australian Journal of Labour Law* 87–129.

Stern, E., " 'Industrial disputes' and the jurisdiction of the Federal Industrial Tribunal: an analysis of recent developments" (1990) 3 *Australian Journal of Labour Law* 130–158.

TRUSTS

Brewster, D., "Fiduciary obligations of trust managers and the takeover of unit trusts" (1990) 8 *Company and Securities Law Journal* 303–318.

BAR HOCKEY

Michael Tinney in control, brother Andrew looks on.

UNBEATEN IN THE PAST TWO YEARS in matches against the RMIT, L.I.V. and a combined N.S.W. Bar and Solicitors' Eleven, the Bar Team was entitled to enter the State Hockey Centre arena on 18 October 1990 as favourites[1] to win the annual *Bar v. Solicitors Challenge* for the Scales of Justice Cup.

However the Solicitors commenced proceedings at a furious pace, reminiscent of the opening gambit of the Mighty Bombers in their premiership tussle with that Mob whose name escapes me — no matter, they figure so rarely in Grand Finals.[2]

After ten minutes the Law Institute led two-nil, having twice slipped the ball past keeper Tom Lynch into the back of the goal — no easy task given the relative dimensions of each.

Clearly, desperate measures were needed. With Meryl Sexton, that creative comely counsel[3] moving to right half, Richard Brear to left half, and the back line of Peter Burke and Roger Young settling to the pace of the game, the defence tightened and the Law Institute was kept goalless for the remainder of the half. Meanwhile the forward line found its feet (to coin a cliche) and Ian Dallas hit a superb angled goal from right wing whilst John Coldrey, accepting a perfectly-timed Michael Tinney cross, clipped the ball past the floundering goalkeeper to register the Bar's second score.[4]

Moments later Michael Tinney himself found the net to give the Bar a 3–2 advantage at the interval.

The break came just in time for Ken Sparks who, playing his first game for two years, was looking for a respirator, and John Bryson, a hockey veteran also known for his occasional writings, who was complaining that all the action was aggravating his hangover. However, in the finest traditions of the Bar, they did not allow such common disabilities to impede their performances.

Back Row (left to right): *Gordon Smith, Ken Sparks, Peter Burke, Roger Young, Ganasan Narianasamy (VHUA umpire), Tom Lynch, Richard Brear, Ian Dallas, Philip Burchardt and John Bryson.*
Front Row (left to right): *Meryl Sexton, David Beach, Andrew Tinney, Michael Tinney, John Coldrey QC DPP and Rupert Balfe QC.*

During the interval Mrs. Karin Coldrey arrived with Oscar the family rottweiler. She was directed to the Solicitors' dugout and instructed that upon reaching this destination she should let Oscar off the lead. Her disinclination to embark on this mission demonstrated a regrettable lack of commitment to the cause of the Bar.[5]

Meanwhile master tactician Rupert Balfe Q.C. (Queen's Counsel and Quality Carpets) was formulating a tactical approach designed to subject the Solicitors to a form of Alvin Toffler Future Shock. This appeared to work and, shortly after the resumption of the game, Ian Dallas, receiving a pass from the defence, careered half the length of the ground before slamming the ball into the net. At 4–2 the Bar was looking good. Indeed, some of the moves made by the Solicitors were so fraught with risk that they suggested the onset of a contingency fee mentality.

However, as the half progressed Ken Starke and John Howie frustrated the Bar's forward forays while Sally Wansborough, Andrew Tulloch and the McNab brothers, Alistair and Ian, were using their skills to open up the Solicitors' forward line. Other Solicitors also lifted their game but since they do not have litigation practices it seems pointless to mention their names.

At the 55-minute mark the Solicitors suddenly got their act together[6] and in a devastating 10 minute burst scored three times. (For those of you avidly following the nip and tuck of the game, this gave the Law Institute a 5–4 lead.)

In an endeavour to counter this onslaught the Bar swung Philip Burchardt and Roger Young back into the game and the team steadied. Rupert Balfe continued, figuratively speaking, to pull the rug out from under the feet of advancing forwards, while Andrew Tinney worked hard as a sweeper across the half line.

Spot the ball. Bar forwards Richard Brear, Ian Dallas (right wing) Andrew Tinney watch the efforts of Michael Tinney (partially obscured).

David Beach and Gordon Smith were combining well with the other forwards but it was Michael Tinney, exhibiting the strength and stamina of a man prepared to prosecute for the Crown, who twice beat the goalie to give the Bar a 6–5 lead in the dying minutes of the game.[7]

With barely 60 seconds remaining the Solicitors "taking advantage of a momentary disarray in the Bar's defence" (I quote hockey historian Richard Brear) scored the equaliser.

It had been an exciting match played in fine spirit and ably umpired by Ganasan Narianasamy (V.H.U.A.) and David Sonenberg.

Utilising the Two-counsel Rule, while it still exists, the Bar advised the Solicitors that, in accordance with the precedent of *Australia v. England* (*the Ashes case*) the Scales of Justice Cup should remain with the current holders — the

Victorian Bar. Despite this weighty authority some barristers, with what can only be described as a wimpish concern about the source of future briefs, have since suggested that the Cup be transferred to the Law Institute for six months of next year. However, a ruling will need to be obtained from the Ethics Committee as to whether this constitutes touting.

The multi-skilled Bar Team was Rupert Balfe, David Beach, Richard Brear, John Bryson, Philip Burchardt, Peter Burke, John Coldrey, Ian Dallas, Tom Lynch, Meryl Sexton, Gordon Smith, Ken Sparks, Andrew Tinney, Michael Tinney and Roger Young.

John Coldrey

Richard Brear tackling.

1 This assertion is not made with the authority of Judge McNab.
2 I believe they have some association with the Gould League of Bird Tatooists.
3 This is not male chauvinism but the all-embracing allure of alliteration.
4 This did not compare with last year's goal by Coldrey — see *Bar News*, Summer Edition p. 40.
5 Although the propriety of such behaviour may be questioned it does not appear to have been specifically proscribed in Gowans *Professional Conduct Practice and Etiquette.*
6 This is not a reference to the *Legal Profession Practice Act* 1958.
7 These will not be described as "Tinney goals" — an article of this quality eschews the use of the pun.

BAR WINS AT GOLF

ON MONDAY, 8 OCTOBER 1990 THE BAR team was victorious in the Victorian Council of Professions Golf Shield. The team comprised Gavan Rice (Captain), Mick Casey, Brian Keon-Cohen and Colin Moyle. The event was held at Yarra Yarra Golf Club.

The weather forecast was for late showers but unfortunately for the golfers the showers arrived at noon and continued for the rest of the day. By mid-afternoon many of the greens were awash and playing conditions were difficult. Under strong urging from the Captain the Bar Team put up a fine wet-weather performance and once again displayed the Bar's ability to adapt to adverse conditions.

The Bar defeated a large field including teams from 13 professions.

The best three scores from each team were totalled and gave the Bar victory over the Quantity Surveyors by a comfortable margin of 5 points. The scores counted were Rice 41 Stableford points, Casey 34 and Keon-Cohen 31. Moyle's score was not counted, which was fortunate as it was not up to his usual standard.

The Captain's 41 points set a fine example for the team and was sufficient to also result in the trophy for the best individual score.

Reports that Rice is shortly to join the professional golf tour have been denied.

The team is in strict training to defend the title in 1991.

"The Shark"

Gavan Rice (R) Checks the Winning Card

MOUTHPIECE

A SMALL CONSPIRACY OF BARRISTERS gathered in the small internal chambers of one of their number in Four Courts. Each of them has a sandwich, a cake and a small bottle of fruit juice. Having exhausted the topic of Melbourne's weather, they turn to matters of greater importance.

Eric: Times are pretty tough, aren't they?

Eloise: Yeah, I reckon that things are worse than the newspapers are suggesting; even for the legal profession!

Edward: People are saying things are getting pretty tough at the Bar. How are things with you?

Eric: Yeah, I've heard that, too. Things aren't too bad for me.

Eloise: Yeah, I'm going okay, too. What about you, Edward?

Edward: I don't think the crunch has come yet. I seem to be getting a fair amount of work.

Eloise: So am I!

Eric: Me too!

Edward: I've heard that things are fairly bad on some lists. That a lot of barristers are getting little or no work.

Eloise: My list's okay!

Eric: So is mine!

Edward: Yeah, my list seems to be doing alright, too.

Eloise: The scuttlebutt is persistent that things are bad at the Bar, particularly for junior barristers.

Edward: I've heard that even counsel who have been around for twenty years or more are struggling.

Eloise: But I'm doing alright.

Eric: So am I!

Edward: Me too!

Eloise: Do you know anyone who is struggling, who is not getting much work?

Edward: I can't think of anyone off-hand.

Eric: Nor can I.

Edward: I don't know anyone. I'm certainly doing alright.

Eric: I am.

Eloise: So am I!

Eric: Then it must be somebody else if we're doing alright and everyone that we know is doing alright.

Edward: Is your list having its end-of-year cocktail party shortly?

Eloise: Yes, but I'm not going.

Eric: Neither am I.

Edward: Yeah, I think it's a bit expensive.

Eloise: I don't really think I can afford to waste money on a Christmas function.

Eric: Nor do I.

Eloise: Are you going to the Bar cocktail party this year?

Edward: Well, I've been every other year. I think it's time to have a break.

Eric: So do I.

Edward: Yeah, I'm not going this year. It's a bit expensive, too, isn't it?

Eloise: Oh, not a lot more than last year.

Edward: Yeah, but it's not money all that well spent, is it?

Eric: Where are you going for your holidays this year?

Eloise: Nowhere special.

Edward: I'm staying home to do a few things around the house. What about you?

Eric: We thought we'd take a break from going away this year. I thought I might work right through the break.

Eloise: So did I.

Edward: Me, too.

Eric: I think I might give going away for the holidays a miss next year.

Eloise: Yeah, we'll do the same thing.

Edward: Us, too.

Eloise: Just to change the subject. I thought I might rationalise some of my loose-leaf services.

Edward: Yeah, it's not a bad idea. They're getting quite expensive, aren' they?

Eric: You're not really getting value for money these days, are you?

Eloise: I thought that may be we should get together and set up a common set of loose-leaf services.

Eric: That's a good idea. We don't really need to duplicate all the services amongst ourselves, do we?

Eloise: That's what I was thinking all along.

Eric: Save a bit of money.

Edward: Yeah, the money saved would well and truly overcome any incon-

venience that may arise if we all need the same service at the same time.

Eloise: Well, if that's the case, we can always borrow from somebody else on the floor.

Eric: Yeah, I don't use all my services all that much, anyway.

Eloise: Well, I reckon we could always muddle through if each of us had one servcie. How about it if I get Nash?

Eric: I'll go for Williams.

Edward: I'll get Vickery.

Eloise: Well, that's a good idea. That will save us all a bit of money. Not, not that I need to save money. I'm doing alright.

Eric: So am I.

Edward: Me, too!

Eloise: Are you going up to the Essoign Club tomorrrow for Friday lunch as usual?

Eric: No, I think sandwiches and fruit juice are a lot healthier.

Edward: So do I.

Eloise: I agree. It's not because I can't afford to go to the Essoign Club.

Eric: Me neither.

Edward: Or me.

Eric: I am doing alright, you know.

Eloise: So am I.

Edward: Me, too.

It is now 2 p.m. and all three barristers repair to the offices of their respective clerks to ascertain if something has come up for the afternoon and, more importantly, to see if they have a brief for the following day, or even the day after that, or the day after that . . !

LETTER TO THE EDITORS

Judges' Chambers
County Court
Melbourne
26 October 1990.

The Editors,
Victorian Bar News.

Gentlemen,

This note is to notify you that I have inspected the photograph of the rabble which purported to represent the Bar in its football match against Messrs. Mallesons and have noted the names of those who appeared in Carlton jumpers.

Yours sincerely,

J.R. Hanlon.

DANTE REVISITED

Melbourne fan John "Ginger" Monahan drumming up support at the Demons' last game for the season.

FOOTBALLING DADS

JOHN JORDAN WAS RECENTLY PLAYING Super Rules footy at centre-half-forward for Sunbury against Essendon District Football League and he lined up on 1969 Brownlow Medallist Kevin Murray. In order to settle the terms of the forthcoming contest from the outset, John said to the old warhorse:

"O.K. Muzza, no funny business today; I've got four kids you know".

Undeterred, Kevin shot back through that famous toothless grin of his a chuckle and said:

"So have I, but they're all grown up!"

ADELAIDE LAW CONVENTION 1991

THE LAW COUNCIL IS PLEASED TO ANnounce the 27th Australian Legal Convention to be held in Adelaide from 8–12 September 1991.

The relaxed atmosphere of South Australia's capital with its temperate spring climate featuring our country's premier wine producing district, combined with a stimulating papers programme and a range of entertaining social functions, promise this Convention will be one of 1991's foremost conference events.

Guest speakers from the National Institute for Trial Advocacy in the United States, the U.S. Department of Justice, the French Cour de Cassation, and Japan's judicial system are included in the programme, while other sessions will cover topics from environmental law, damages, trends and policy in company law to liability for economic loss and a host of other issues of interest to a wide range of lawyers.

The Convention Social Committee have planned a Barossa Train Trip, a Wine and Food Extravaganza, entertaining tours for accompanying guests and a Masked Ball at the Convention Centre.

Registration booklets are expected to be printed for sending out in March/April 1991. Further information may be had by contacting:

The Conference Secretary,
27th Australian Legal Convention,
Law Society of South Australia,
G.P.O Box 2066,
ADELAIDE, S.A. 5001.
Tel. (08) 231–9972
Fax. (08) 231–1929

REVIEW OF THE COMMONWEALTH ADMINISTRATIVE APPEALS TRIBUNAL

THE PRESIDENT OF THE COMMONwealth Administrative Appeals Tribunal, the Honourable Justice Deirdre O'Connor, invites submissions concerning the operations of the Tribunal.

The Tribunal's role, as part of the Commonwealth Government's administrative law package, is to provide an independent and high-level review on the merits of administrative decisions made by Commonwealth ministers, agencies and officials. The decisions which the Tribunal can review are contained in over 235 Commonwealth laws.

The Tribunal's President is encouraging all agencies and groups who use the Tribunal to make a submission. "The submissions will assist the review of the efficiency and effectiveness of the Tribunal's existing administrative operational arrangements and structures" Justice O'Connor said.

The purpose of the review is to make recommendations to the Tribunal's President and to the Commonwealth Attorney-General on how improvements can be made.

Submissions should be forwarded by 10 December 1990 to:

The Working Party,
Review of the Administrative Appeals Tribunal,
C/o Administrative Appeals Tribunal,
G.P.O. Box 9955,
CANBERRA, ACT 2601.

WINNER OF COMPETITION

The entries for the competition in *Bar News* No. 74, Spring 1990, were of a particularly high standard. Equal first were Mary Baczynski with the caption:

"SYD NOLAN, EAT YOUR HEART OUT"
Horse: Glen
Dog: Rowan

and an entry from "Red Beret" with the caption:

"ADAMS ON EVE IN THE GARDEN OF EDEN"
Horse: Eve
Dog: Adam
Rider/Person: The Forbidden Apple

The Editors did receive an entry on the back of a sodden Essoign Club winelist purporting to come from Michael Adams, which, insofar as it was decipherable at all, was considered not appropriate for a family publication like *Bar News*.