VICTORIAN BAR NEWS

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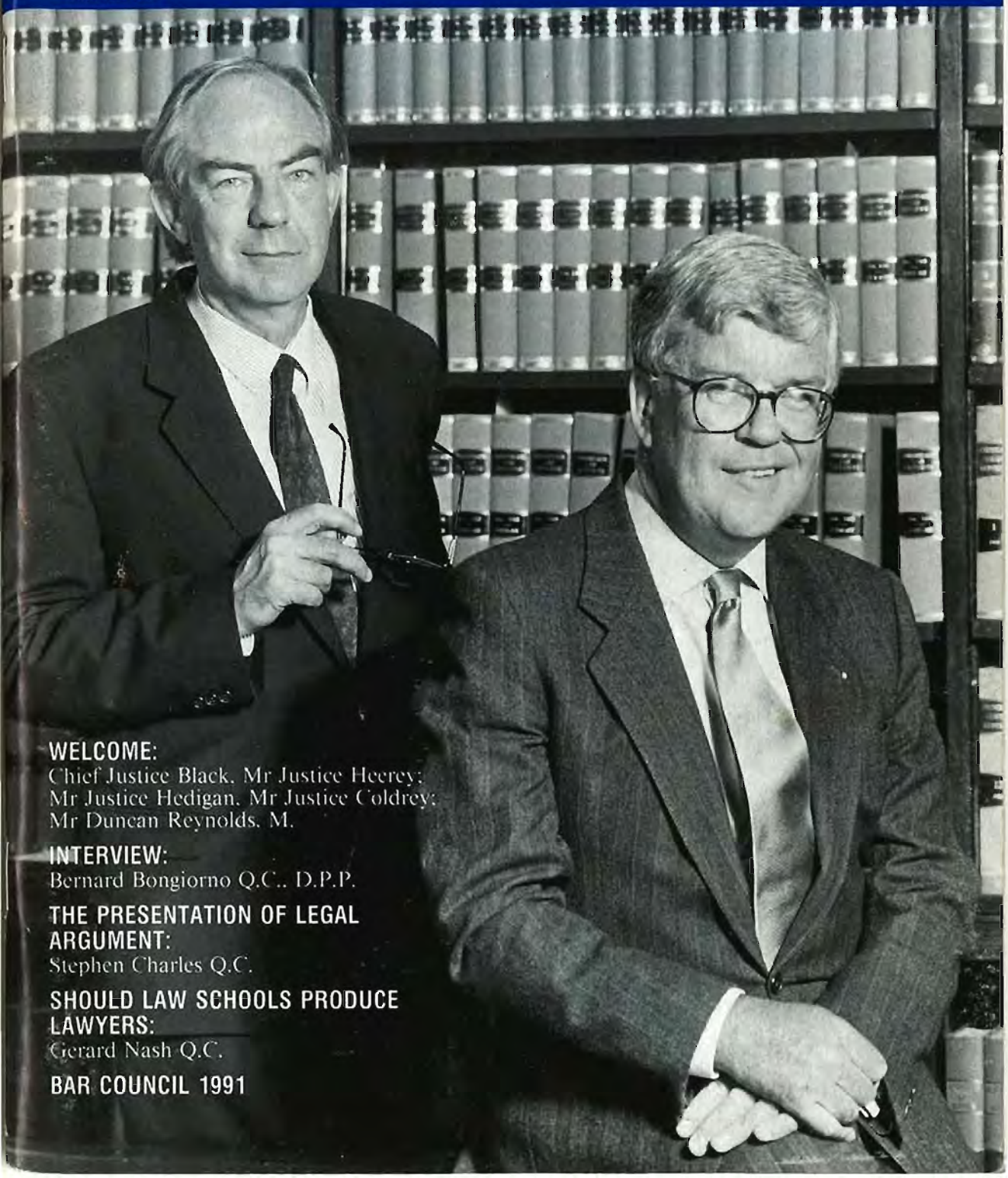

WELCOME:
Chief Justice Black, Mr Justice Heerey; Mr Justice Hedigan, Mr Justice Coldrey; Mr Duncan Reynolds, M.

INTERVIEW:
Bernard Bongiorno Q.C., D.P.P.

THE PRESENTATION OF LEGAL ARGUMENT:
Stephen Charles Q.C.

SHOULD LAW SCHOOLS PRODUCE LAWYERS:
Gerard Nash Q.C.

BAR COUNCIL 1991

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Stephen Charles Q.C., The Presentation of Legal Argument

Bar Council 1991

Alternative Dispute Resolution Conference

Cover: The new Federal Court Judges, Chief Justice Black and Mr Justice Heerey

CONTENTS

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EDITOR'S BACKSHEET

IT HAS BEEN SAID THAT THE acceptance of the office of Director of Public Prosecutions is a stepping stone to the bench. Proponents of the view point to the last two incumbents — the last being Coldrey Q.C. (as he then was).

However there is a contrary view. It is that acceptance of a place on the Editorial Committee of the *Bar News* (by members of Her Majesty's Counsel) is a stepping stone to the bench. Hence, the elevation of Coldrey Q.C. (a committee member of some years) following the well earned elevation of our former joint Editor Heerey Q.C. to the Federal Court. It is rumoured that Bongiorno Q.C., our new Director of Public Prosecutions, has already applied to fill the vacancy on *Bar News* caused by Coldrey. *Bar News* is pleased to announce that Gerard Nash Q.C. has been appointed new joint editor.

Peter Heerey's elevation to the Federal Court is indeed a great loss to *Bar News*. As was said in the speeches at his welcome, his efforts and hard work have greatly contributed to an overall improvement on all levels in the magazine. As his joint Editor I can say that it was a pleasure working with him, and during over five years together we never had any real disagreements as to the content and style of *Bar News*.

The committee welcomes Gerry Nash's appointment. He has been a committee member for some years and is therefore familiar with the mechanics of producing the magazine. As a former dean of Monash University Law Faculty and author of many well known books he is well equipped as the new joint Editor.

Mr. Justice Coldrey's (as he now is) replacement is Clive Penman alias Graham Devries whose mouthpieces and other jottings have graced these pages for many issues. Clive aspires to an elevation to the Dredging Alternative Dispute Resolution Board.

It is good to see that the workings of Hyland's list ranks with the Gulf War in newsworthiness. The *Age* newspaper, in its infinite wisdom, splashed across its front page on Sunday 17th February 1991 the startling revelation that the Hyland list of barristers was having a meeting to

consider the replacement for Jack Hyland on his retirement as clerk. This article headed "$300,000 — OUR HIGHEST PAID CLERKS, BAR NONE" sat neatly underneath the banner headlines "PEACE: A SLIM HOPE" and "HARTLEY, UNIONS TO VISIT BAGHDAD".

To say the article was full of inaccuracies would be an understatement. However the *Age* followed up this scoop with a small article in the following week, that it had been decided at the meeting that Gerard Hyland (not Gerald as reported) would take over from his father as clerk, and that the "entrenched" system of clerking would not be changed.

This was just plain wrong. To set the record straight a secret ballot was held amongst the members of Hyland's list to decide whether Gerard Hyland would replace his father. The result was not known until 28th February days after the *Age* follow-up story. Gerard Hyland was indeed, endorsed by the ballot to become the new clerk of the list. None of the "disgruntled barristers" referred to in the *Age* materialised.

Since journalists regard themselves as professionals perhaps the *Age* could run an investigative article concerning their value for money and standards — just like the newspaper's continued investigations into doctors and lawyers.

The Bar has 71 committees and bodies of various sorts. This perhaps is not a well known fact. The committees range from the Parking Controller, to the Ethics Committee, from First Aid to the board of Barristers Chambers Ltd. The most interesting is the Human Rights Committee which is manned by some 29 members. What does it do? *Bar News* hopes to publish reports of some of these committees to keep the Bar abreast about what is being done on its behalf.

As part of this process this issue contains a photograph of the members of the current Bar Council together with their experience at the Bar and telephone numbers. So if you have complaints or inquiries keep this issue for reference.

Paul Elliott
Editor

THE CHAIRMAN'S CUPBOARD

EVERY BARRISTER WHO HAS BEEN IN practice for 20 years or more is likely to have accumulated a stock of material some of which should have been eliminated 19 years ago. The Victorian Bar has been in existence for 107 years. It too has a quantity of matter that has been retained beyond its time. I suspect, however, that both the Bar and individual barristers are also in possession of items which should be preserved because their significance extends beyond the transient and may indeed extend beyond the Bar. Their preservation to date has been more by chance than design, and they remain at risk.

An archivist has been engaged part-time to advise the Bar Council about what should be preserved, and how to preserve it.

We can, and should, correct this. Accordingly, an archivist has been engaged part-time to advise the Bar Council about what should be preserved, and how to preserve it. Any barrister who thinks that he or she has archival material, and who is prepared to lend or donate it to the Bar, is invited to communicate with Anna Whitney.

The theologians would not think so, but among the older items in the Bar's collection is a set of sermons/speeches delivered at the services to mark the opening of the legal year. They present an eclectic and ecumenical face to anyone who might wish to retrieve them from the Chairman's cupboard. They have, no doubt, been preserved so as to offer successive Chairmen some hope of moving in the right direction. Most of them are concerned with God's place in the administration of justice. Their relevance to the Chairmanship is therefore obvious.

But I do them an injustice if I dismiss them with a flippant aside. This year's harvest is typically rich. At St Patrick's Cathedral, Rev. Francis Harman spoke of the profession continuing "a link forged perhaps some seven centuries ago when King and Justiciar and Cleric worked hand in hand blending the canons of the church with the rude customs of the realm". At Temple Beth Israel, Rabbi Daniel Schiff contrasted this with the absolute ruler who far from joining with others to blend appropriate laws "knows no constraint of ethics or limits to evil in the pursuit of his own ends." He had Hitler and Hussein in mind. Dr Keith Raynor, the Anglican Archbishop, referred to "the great tradition of Israel which, thank God, has passed into the tradition of our civilisation, that no ruler or judge, however great, is a law unto himself."

The promotion and maintenance of the rule of law must be one of the Bar's principal purposes. In my opinion, we have a professional and an individual obligation in this regard.

Events in the Gulf do serve as a reminder that the rule of a tyrant does not compare well when measured against the rule of law. The promotion and maintenance of the rule of law must be one of the Bar's principal purposes. In my opinion, we have a professional and an individual obligation in this regard. The Australian Bar Association has recognised this recently with the publication of a statement on the independence of the judiciary — an independence which is an essential element in the rule of law. Copies of the statement may be obtained from Anna Whitney. The Human Rights Committee of the Bar has a broad brief to monitor breaches of the rule of law which result (as they commonly do) in human rights violations.

The appointment of Bongiorno Q.C. as Director of Public Prosecutions has left a large gap in the ranks of the Bar Council. The new DPP gave outstanding service to the Council, and to the Bar as a whole. At the time of his appointment he was Chairman of each of the Ethics Committee and the Clerking Committee. He was also a member of the Executive Committee, the Legal Aid Committee and the Bar Staff Committee. He has never been afraid of fresh ideas, and has been articulate in expressing opinions which are always based soundly upon common sense. I personally benefitted very greatly from his friendship and wisdom. The Bar's loss is considerable. The people of Victoria, however, have found a worthy successor to Mr Justice Coldrey.

The Bar is of course unchallenged and unchallengeable as the principal professional home of those Victorian lawyers who specialise in advocacy. Until recently, it was also unchallenged as the body to which belonged the leaders in most other areas in which lawyers practice.

This is not now the case. The creation of Australia-wide partnerships of solicitors means that other centres now offer a wide range of legal skills from a large pool of competent specialists. These firms do not compete directly with the Bar over the full range of legal services, but they compete nevertheless in a number of important respects.

The Bar can meet this competition. If it is to do so, however, it must project itself as a centre of excellence in every area of the law in which barristers have traditionally been engaged — and in some in which they have not.

Alternative dispute resolution is an example. Barristers have appeared before arbitrators for as long as arbitration has existed as a means of dispute resolution. Barristers have acted as arbitrators over the same period. Barristers have not been involved with concilliation and mediation to the same extent, because those means of dispute resolution have not been as commonly called upon. The Bar collectively, and individual barristers as individuals, must now exert leadership in all aspects of dispute resolution as it assumes greater importance in the dispensation of justice. For its part, the Bar Council will continue to fully support the Victorian Bar Dispute Resolution Scheme.

A significant step forward was taken on Saturday 23 February and Saturday 2 March. Over those two days, a very successful course was jointly conducted by the Institute of Arbitrators Australia and the Victorian Bar. Some 100 barristers registered. The speakers were well chosen, and their lectures were of a high standard. The organisation of the course, for which the Bar is indebted to the Institute and to Phipps Q.C. and Martin Q.C., was excellent. The facilities likewise. The course as a whole was an outstanding demonstration of the Bar's commitment to an improvement and extension of the service which it is able to offer. Similar endeavours must follow, so that the Bar will be seen in all relevant quarters as a place where the best lawyers are found and the best service given.

David Harper

THE ATTORNEY-GENERAL'S COLUMN

THE AUTUMN SESSION OF PARLIAMENT promises to be a most productive one as I intend to deal with some 24 Bills to go through the House which will implement significant reform and substantive change to the law.

MAGISTRATES' COURT

As I have previously foreshadowed, I will be introducing a Bill which will increase the jurisdiction of the Magistrates' Court in civil cases (other than personal injury cases) from $25,000 to $40,000 and in the County Court from $100,000 to $200,000. This will help to make the law more accessible and cheaper to the litigant and is consistent with an agreement reached between Queensland and New South Wales Attorneys-General to standardise court jurisdictional limits between the States.

A Bill which introduces a case transfer system, unique to any jurisdiction in the world, which will enable cases to be transferred between jurisdictions up or down the court hierarchy.

These jurisdictional increases will be brought in together with a Bill which introduces a case transfer system, unique to any jurisdiction in the world, which will enable cases to be transferred between jurisdictions up or down the court hierarchy. This is based on a report by the Case Transfer Committee headed by Mr. Justice McGarvie. The transfer mechanism can be initiated by parties themselves or by the court and recognises that the complexity of a case is not necessarily related to its monetary value and matches a case to the appropriate court.

CRIMES (SEXUAL OFFENCES) BILL

Reforms to the law relating to sexual offences, both substantive and procedural, will be the subject of the Crimes (Sexual Offences) Bill. It is based on a major review of sexual assault law undertaken by the Victorian Law Reform Commission. In relation to children, there is provision making it easier for them to give evidence and abolishing the corroboration rules affecting such evidence. It provides the option of allowing children to give evidence by video or audio recording and permits, where capable, a child to testify to a court by closed circuit television from another room. These reforms are also extended to people with impaired mental functioning. The Bill sets out new procedures for a court to follow in dealing with late complaints by a victim and their history so as to give greater protection to victims and avoid prejudicial treatment as much as possible.

To the substantive law the Bill removes a number of anomalies concerning penetration and the issue of consent relating to rape. It also addresses the law of incest and the age of consent.

Finally, the Bill clarifies the law after the recent High Court case of *R. v. Mobilio* specifying that consent to conduct which could otherwise constitute rape or indecent assault is of no effect if it is obtained by a false representation that the conduct was for medical or hygienic purposes.

SENTENCING BILL

A major reform of sentencing law and practice will take place with the introduction of the Sentencing Bill. It is the culmination of considerable discussion and consultation, based largely on the 1988 Report of the Victorian Sentencing Committee chaired by Sir John Starke Q.C.

The Bill, in conjunction with the Corrections (Remission) Bill, will abolish remissions to implement a policy of truth in sentencing so that sentences served will reflect sentences passed. It is not intended, however, that sentences will lengthen and to this end the Bill specifically requires courts, when sentencing offenders, to take the abolition of remissions into account. As

part of the sentencing package, the Bill also establishes, at the option of the court, an easily-understood 13 level scale of maximum penalties going from non-custodial levels to custodial levels.

The Starke Committee recommended that in order to promote consistency in sentencing the legislation should spell out general sentencing principles. It also enables the Full Court to issue guideline judgments to provide guidance to courts on sentencing. The process will be assisted by the Judicial Studies Board which was the subject of legislation passed last year as it will have the opportunity to conduct seminars on the new Act after it has passed.

The Bill also creates a new sanction called an Intensive Correction Order which is between imprisonment and a Community-Based Order and caters for a special type of offender. It removes an anomaly in our fine defaults provisions and clarifies the law relating to conviction/non-conviction after a finding of guilt.

PUBLIC DRUNKENNESS

A Bill is currently in the House, introduced last session, which decriminalises public drunkenness. It arises out of the Report of the Royal Commission into Aboriginal Deaths in Custody, "The Muirhead Report", which found that 67% of all the Aborigines who died in police custody in Australia during the period reviewed by the Commission had been arrested and detained in police cells for public drunkenness. Community attitudes have also changed to the extent that public drunkenness is no longer perceived as so heinous as to warrant punishment by detention and conviction. The Law Reform Commission of Victoria has also recommended decriminalisation and the Bill will bring Victoria into line with the other Australian States (save Queensland and Tasmania) where public drunkenness is no longer an offence.

TRADE PRACTICES ACT

The Commonwealth Government has recently announced its desire to extend the operation of the *Trade Practices Act* to Commonwealth and State instrumentalities and other business authorised by State legislation which are currently excluded from its coverage. This view is a recognition of the need to apply across the board the principles under the Act which promote competitive principles and protect the interests of consumers and users of goods and services. I recently requested the Law Reform Commission to report to me on the regulation of trade practices in Victoria and the Government may in the future consider the possibility of reciprocal legislation.

Jim Kennan

THE ETHICS COMMITTEE

Up before the Stipes

THE ETHICS COMMITTEE OF THE VICtorian Bar (together with its lay observer) meets every second Tuesday, has sandwiches for lunch and spends an hour or so pondering the real and imaginary frailties of its colleagues. The job is not easy: considering the question of whether a particular member of counsel has committed a disciplinary offence by being rude, overbearing or otherwise intimidatory towards a client whilst trying to eat an overfull Essoign Club salad sandwich is no mean feat — particularly if the complainant has put his or her complaint at great length in almost illegible handwriting.

Complaints to the Ethics Committee come from a variety of sources. Clients complain that counsel were rude, failed to follow instructions, failed to properly cross-examine, failed to call relevant witnesses, forced them into a settlement, did not force them into a settlement, overcharged or did not attend court or a conference at the appointed time. Judges complain that counsel are not there when a case is called, have too many briefs to give proper attention to the matter in hand or generally engage in conduct which although falling short of contempt of court nevertheless deserves censure. Solicitors make complaints similar to those of clients and occasionally counsel complain about each other — usually in relation to alleged touting or advertising or rudeness in Court. Police complain about breaches of undertakings or other unprofessional behaviour in Court.

Barristers practising in Family Law or Crime are more likely to have complaints made about them than those who confine themselves to Equity and the Commercial List. In the Personal Injuries area accusations are often made that counsel applied pressure to clients to settle when they did not want to although occasionally, the allegation is the reverse: a settlement should have been effected to avoid the consequence which in fact befell the hapless plaintiff when he failed to achieve a verdict at all or fell below an offered amount.

The Ethics Committee's consideration of complaints goes through a series of stages. The barrister concerned is asked for an explanation. That explanation is usually conveyed to the complainant and sometimes the matter is effectively

resolved at that point. If it proceeds further and involves a conflict of fact the Ethics Committee may decide to hold a summary hearing at which evidence can be taken from the complainant, the barrister concerned (if he wishes) and any other relevant witness. The degree of formality at such hearings varies depending upon the gravity of the matter being discussed. Sometimes the Committee has counsel assisting it and the barrister being enquired into may be similarly represented. At other times where the allegation is less serious or the factual dispute less severe the matter proceeds without the assistance of legal representation.

The most common theme which runs through the majority of complaints to the Ethics Committee is that of rudeness, arrogance, overbearing behaviour or being generally "unprofessional".

After a summary hearing the Ethics Committee may impose certain minor penalties in accordance with the disciplinary provisions of the Legal Profession Practice Act. In more serious cases, it may charge the barrister concerned before the Bar Tribunal. This Tribunal, which sits in public, is chaired by a former Supreme Court Judge (presently the Hon. Mr. B.L. Murray Q.C.) and has both legal and lay members. Its powers extend as far as striking the name of a barrister off the Supreme Court roll.

The most common theme which runs through the majority of complaints to the Ethics Committee is that of rudeness, arrogance, overbearing behaviour or being generally "unprofessional". Failure to communicate and advise properly when advice is required often results in a disgruntled client making a complaint which a little care and forethought could have avoided.

As well as performing its disciplinary role the members of the Ethics Committee provide advice to barristers on "ethical" matters. Committee members are often asked for instant solutions to sometimes extremely complex matters. Conflicts of interest and duty and conflicts of duty to two or more clients are among the most difficult to resolve. The protection which advice from the Ethics Committee gives counsel is extremely valuable as the view is taken that a barrister acting in accordance with the advice of one of the members of the Ethics Committee (even if the advice turns out to be erroneous) will not be dealt with for an ethical offence. This principle assumes of course that the member of the Ethics Committee who gave the advice in the first place was fully apprised by the member of counsel concerned of all the relevant facts.

The rules of ethics and etiquette under which the Victorian Bar operates are collected in Sir Gregory Gowans' book together with the numerous circulars which the Bar Council has distributed over the years. Published in 1979, Gowans is now out of print and a sub-committee of the Ethics Committee is presently working upon the codification of the principles set out in it whilst at the same time seeking to achieve uniformity of principle with the Bars of other States, particularly New South Wales. This work will shortly result in a much simplified set of principles governing practise as a barrister in Victoria. At the same time the Ethics Committee has commenced publishing Professional Practice Bulletins which, it is hoped, will give guidance to members of the Bar by reference to specific problems which have in fact arisen.

The changing nature of legal practise inevitably means that many of the principles which have governed the conduct of the Bar in the past are being questioned. Perhaps some of them will change. Whatever happens however, there will always be the need for some body to which people who have complaints against barristers can make those complaints. The improvement of communication skills, the adoption of "good manners" and generally the taking of care to ensure that clients are properly informed as to what is happening at all stages of a piece of litigation would do much to lighten the load on the Ethics Committee and remove the unpleasant experience for the barrister of being complained against and finding himself or herself "up before the Stipes".

LEGAL RESOURCES COMMITTEE REPORT

THIS COMMITTEE WAS SET UP BY THE Bar Council in June 1990 with the aim of examining four broad objectives:

(i) improving the standard of library resources available to members of the Bar;
(ii) reducing unnecessary duplication of library resources within the Bar;
(iii) reducing overall costs of library acquisition to members of the Bar; and
(iv) the provision of advice and information to readers.

Since June the committee has submitted a preliminary report to the Bar Council concerning proposals and recommendations for an enlarged and professionally staffed major law library. We understand that report is presently under consideration.

The state of library resources available to the Bar may be contrasted with our northern colleagues. The New South Wales Bar is equipped with a library occupying some 303msq. and has some 15,320 volumes including loose leaf services. For the past 8 years it has engaged a librarian and two assistants. Prior to that it operated with one librarian. It provides to its members such services as an annual library catalogue, facsimile services, ESTOPL and it operates as a lending library. It is extensively used by its members. We understand the annual cost of providing the New South Wales Bar library is approximately $200,000 including salaries. Bearing in mind that the Victorian Bar is somewhat smaller than the New South Wales Bar and that the establishment of a lending library is not envisaged so that the library could be comfortably operated with one librarian, we would estimate the annual cost of such a library should be less than the New South Wales figure. That would represent an annual per capita cost to members of the Bar approximating the cost of one substantial text book, without taking into account the cost, which is already being incurred, of the present library (last year $22,275.00).

In addition to obtaining information from the New South Wales Bar the Committee has also inspected several impressive libraries maintained by large Melbourne firms. In each case the libraries inspected occupied approximately 300msq. and were staffed by at least 5 librarians. In each case the library collections were comprehensive and included all loose leaf services and most text books as well as comprehensive collections of law reports and statutes. In addition to that the solicitors' libraries all had access to legal computer databases such as Lexis and Info-One and had CD ROM facilities. The Bar is lagging a long way behind the other half of the profession so far as libraries are concerned.

Having regard to the deficiencies of the Supreme Court Library and to the prohibitive cost of maintaining a comprehensive private library it is clear that members of the Victorian Bar are practising under a considerable handicap compared with major law firms and the New South Wales Bar. The problem is being exacerbated by the constantly increasing cost of all legal textbooks and services. This is particularly so for the more junior members of the Bar who generally are not in a position to acquire a library and in respect of whom the Bar has traditionally given support. The position can only be redressed by the Bar undertaking the establishment of a major library.

The deficiencies of the present Bar library are well known to members of the Bar and have been documented in a comprehensive report to the Bar Council by the former Chairman of the Library Committee, John D. (now Mr. Justice) Phillips. The most obvious deficiencies of the library are in the textbook and loose leaf services areas. In addition its space is so limited (approximately 75msq.) that it has no more available shelf space for additional books and in fact the shelf space is inadequate for the present collection.

The question of a location for a major library is not something which this Committee has been requested to consider. Accommodation is at a premium for the Bar and decisions need to be made whether the long term interests of the Bar as a whole may be better served by making proper provision for the accommodation of library space even at the expense of present or future chambers space.

The cost of maintaining private Bar libraries has resulted in the growth of group co-operative libraries and of group co-ordinated buying programmes in order to reduce duplication. Having a set of Victorian Reports on every shelf has already become an expensive anachronism. In order to try to assist members of the Bar seeking to establish group co-operative libraries the Committee is working on producing model documentation which should be available shortly.

Fred Davey

LAW COUNCIL REPORT

AUSTRALIAN LEGAL CONVENTION

THIS IS CONVENTION YEAR. THE 27TH Australian Legal Convention will be held in Adelaide in September, beginning on Sunday 8th and ending on Thursday evening 12th.

COST OF JUSTICE INQUIRY

The Senate committee scheduled public hearings in Perth and Adelaide in February. To assist the committee, the Law Council is preparing a list of the main matters on which it believes the committee can most usefully concentrate its attention.

TRADE PRACTICES COMMISSION STUDY OF THE PROFESSIONS

The TPC has issued its first general discussion paper in connection with the study. The Law Council is consulting with its constituent bodies and Sections on what response should be made to the paper, which is to be followed by a series of more detailed papers dealing with each of the professions.

PRESIDENT'S VISIT TO ASIA

The Law Council's President, Alex Chernov Q.C., in January paid short visits to Singapore, Malaysia and India to hold discussions with the legal profession in those countries. He was warmly received and met officers of the legal professional bodies as well as judges and ministers.

The President was greatly assisted by the Australian Government before and during the visit. One of the agenda items for a meeting of the Policy Advisory Group in early February was a discussion of ways in which the Law Council could develop closer links with the profession in the Asia-Pacific region.

VICTORIAN BAR SUPERANNUATION FUND REPORT

THE VICTORIAN BAR SUPERANNUATION Fund has now been in existence for more than thirty years, and for the last eight years it has been operating on the basis that investment managers have been employed by the Trustees.

Presently the greater part of the Fund is invested by Westpac in fixed interest securities, and smaller parts are invested by Potter Warburg, ANZ Management and National Mutual Life, as well as by BT Australia.

In view of the uncertain state of the economy, as to which some economic forecasters are extremely pessimistic and some are moderately optimistic, the Trustees of the Fund have adopted a very conservative policy. Thus less than ten per cent of the Fund is presently invested indirectly in equities (whether property or shares), and the balance is invested in conservatively chosen securities such as bank bills.

In the result the Fund, which last year returned 16.34 per cent after tax, will return less than that rate during the current year, in view of falling interest rates. However it is expected that the rate of inflation will be substantially exceeded by the after tax return for the current year.

During the last eight years the average compound growth of the Fund has been, on actual funds invested from time to time, approximately 17 per cent. This compound rate compares well with that of most insurance companies and other commercial funds, and indeed the Noble Lowndes Performance Survey shows a median large-fund performance of large commercial funds for this period of 16 per cent.

However regrettably I am unable to be confident that an average return of this magnitude will be obtained during the next decade. The Trustees have been advised that returns during the 90s will probably be lower than those during the 80s, especially in view of lower general interest rates and the new tax on superannuation funds of 15% imposed by the government of Mr. Hawke. Conversely, increased tax deductions are now obtainable.

In these circumstances I would recommend that although superannuation is a desirable component of the savings of barristers, care should be taken to ensure that too great a proportion of barristers' savings is not invested in this form, especially in view of uncertainty as to future government policies in regard to superannuation.

NATIONAL PROFESSIONAL INDEMNITY INSURANCE

The LCA has assisted the President of the Law Institute of Victoria (Mr. Gandolfo) and Mr. Roberson (Law Society of New South Wales) in arranging for a report to be prepared on experience in each of the States and Territories and in gathering information as to the views of constituent bodies on the basic elements of a national scheme.

PROFESSIONAL QUALIFICATIONS

The Law Council is seeking information on proposals being developed for the mutual recognition of qualifications throughout Australia. The proposals flow from the special Premiers' Conference held in Brisbane in October last year to discuss "a closer partnership" in intergovernmental relations.

Agreement was reached in Brisbane that mutual recognition in the area of occupational licensing and professional recognition should apply across all States and Territories. The steering committee that supports the special Premiers' Conferences has set up a working group to develop detailed proposals to put before another special Premiers' Conference in May.

FAMILY LAW INQUIRY

Parliament will decide in February whether to hold a Senate joint inquiry into the *Family Law Act*. If the inquiry proceeds it is likely that the Family Law Section will be called upon to do a considerable amount of work on the matter.

NATIONAL CORPORATIONS LAW

Professor Bob Austin of the LCA's Companies Committee and the Secretary-General (Peter Levy) appeared before the Senate Standing Committee on Legal and Constitutional Affairs to describe the practical difficulties facing companies as a result of implementation of the new law on 1 January and to comment generally on the legislation.

COUNCIL MEETING

At the invitation of the Law Society of the Northern Territory the Law Council will hold its general meeting in Alice Springs on 23 March.

Barristers should hence obtain advice as to the proportion of their savings they should place in superannuation. However they should also bear in mind that if they purchase superannuation or insurance from the agents of large companies, they bear indirectly large commissions for the agents and large administrative expenses. In these regards the Victorian Bar Superannuation Fund offers advantages, since the Trustees act in an honorary capacity and overheads have been reduced to minimal amounts. In particular, barristers are very ill-advised in acceding to pressure by insurance and superannuation agents unless they obtain a sufficient number of competitive quotations.

Further information or advice can be obtained from the Trustees of the Fund (Hayne Q.C., Habersberger Q.C. and Robson Q.C.) or from myself.

I.C.F. Spry (Chairman of Trustees)

WELCOME

Chief Justice Black

MR. JUSTICE MICHAEL ERIC BLACK Q.C. was, on the 1st February 1991, welcomed by the profession at a ceremony in the Federal Court in Melbourne as the second Chief Justice of the Federal Court.

Black was born on the 22nd March 1940 in Egypt, where his father was then a serving member of the British Armed Forces, firstly in the Army and latterly in the R.A.A.F. The accident of his birthplace led to Black having been given a sobriquet which will no doubt now quietly fade away.

The Blacks moved to Melbourne where His Honour attended Wesley College and ultimately Melbourne University, graduating in 1961.

For a man who became such a distinguished member of the Appellate Bar of Australia, and justly famed as a lawyer of deep learning in a wide range of areas of the law including Constitutional Law, Administrative Law and Criminal Law, it may seem strange to some that his academic abilities did not early foretell his future. He did not, however, waste his time at University where he met his future wife, played student politics with considerable glee and success becoming at one stage the President of the Law Students Society, orchestrating "marbles matches" and devoting a not inconsiderable amount of his time to vintage motor cars.

After serving Articles with the firm then known as Middleton McEachern Shaw & Birch His Honour signed the Bar Roll on the 19th March 1964, reading in the Chambers of the late E.D. (Woods) Lloyd Q.C. This was a fortuitous relationship as both men shared a passionate interest in the concept of justice as well as other peccadillos such as the firing of a miniature cannon in Chambers and the construction of model shipping.

Black quickly made his way in developing a practice. He moved rapidly through the ranks of Petty Sessions advocates, in all its jurisdictions, to later acquire a significant Plaintiffs practice in personal injuries in the County Court. He was a distinguished member of the Circuit Bar, and was regularly seen taking the delights of the air and such cuisine as Morwell could then offer — a daunting task on all accounts.

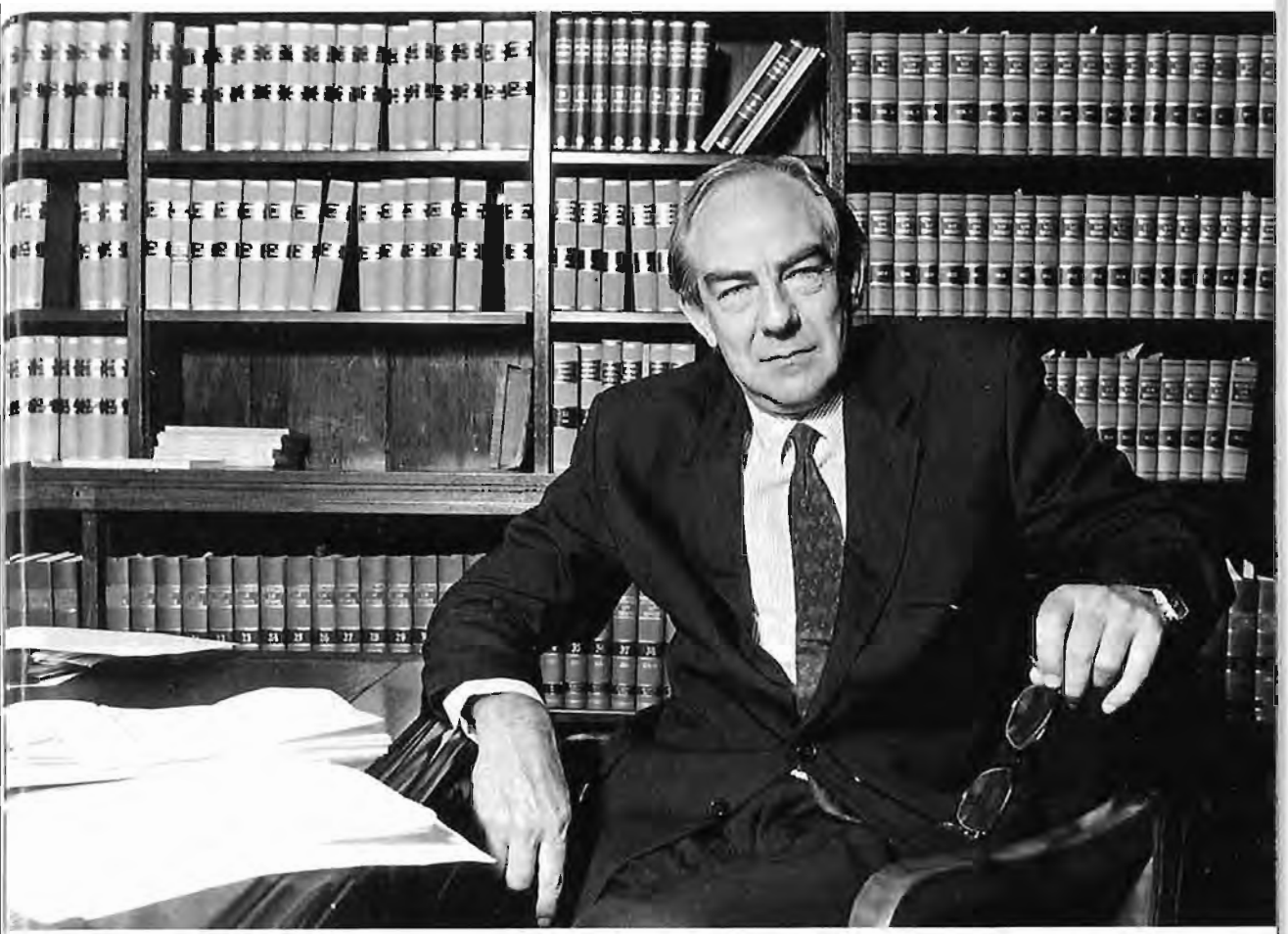
By this time His Honour commenced to take Readers, the full list of whom is Flatman, van der Weil, Kornblum, Finklestein, O'Hara, Montgomery, Vassie, Vickery, Middleton and Jopling.

His Honour took Silk in Victoria in 1980 and in Tasmania in 1981.

Throughout his long career at the Bar Black has given of his time generously to all. To clients he was utterly committed, no matter be it a "little battling Aussie widow", or a grossly maligned politician. To the Bar he gave with particular generosity. He not only had his 10 Readers, but his doors were always open to people seeking advice on matter of advocacy or law. He was a member of the Bar Council between 1968 and 1970, and of the Legal Aid Committee between 1978 and 1979. He served on the Leo Cussen Institute Council between 1984 and 1989. He has also served on the Board of the Royal Melbourne Hospital and also as the Defence Forces Advocate.

However, it is probably from his position as Chairman of the Bar Readers Course between 1981 and 1987 that he will be known to a large number of Barristers. During that period he gave with extraordinary generosity of his time and learning and experience to a large body of young Barristers. The "gold" bag presented to him by the Readers course remains one of his most cherished possessions.

His Honour lists his recreations in Who's Who as Art History, Sailing and light railways. These are but a small part of the activities into which Black has thrown himself. Quite apart from an abiding affection for the cities of Hobart and Florence and the mastery of the languages which are required in each of those locations, His Honour has shown a burning desire to reform the wayward members of the community, which appears to be an inherited tradition. His Honour's father, upon retirement, studied theology, and is actively involved in counselling activities through the Church. His son, Rufus, was awarded the Victorian Rhodes Scholarship in



1990 and intends to study theology at Oxford. Black has made the object of his reforming zeal the dissolute members of the Bar who parade under the name of the 'Red Faces Club'. His regular attendance at their modest eating and drinking sessions was not to participate in the Bar gossip, or to deepen his already considerable appreciation of the wines of Australia and Italy, but merely to ensure that he would, by example and exhortation, persuade his wayward brothers — and sisters — to lead a purer life.

Any member of the Bar who had more than a passing acquaintance with His Honour, must have known for some time that he was destined for high office. His tremendous powers of preparation and presentation of legal argument, his skills as an advocate in an extraordinarily wide range of matters at *nisi prius*, marked him out as one of the Bar's most distinguished members. In his ultimate specialization as a leader in the Appellate Tribunals in Australia he showed that he had few peers in this area.

It is thus no surprise that the Federal Government has chosen His Honour to follow in the distinguished footsteps of the first Chief Justice of the Federal Court, The Honourable Sir Nigel Hubert Bowen. From its creation in 1976, the Federal Court has continually grown in importance and stature, and the appointment of His Honour as its second Chief Justice has earned not only the universal approval of the Bar in Victoria, but has been received with great pleasure by the entire legal profession of Australia. The elegance of mind and argument, the sharpness of wit, and the passionate belief in the importance of the legal system doing justice, will ensure that, when His Honour can raise his head from the heavy matters of administration, he will preside over a forum distinguished for its civility, learning and patience.

It is difficult to imagine any judicial appointment in recent years which has been more loudly applauded by the Victorian Bar. The Red Faces' loss is the country's gain.

WELCOME

Mr. Justice Heerey

THE APPOINTMENT OF PETER HEEREY Q.C. to the Federal Court of Australia on 17th December 1990 was a milestone for the Court, being the first appointment of an Editor of the *Victorian Bar News* to that Court.

Although His Honour had been a member of the Victorian Bar for 23 years, his legal career had started in Tasmania where he was born on 16th February 1939. He was educated at St. Virgil's College, Hobart and graduated with a First Class Honours degree in Law and Arts from the University of Tasmania in 1960.

The next few years saw a variety of activities including being articled to Mr. W.C. Hodgman senior at Hodgman & Valentine, working in London, touring Ireland on a motor-cycle and sidecar; winning the Davies Brothers (proprietor of *The Mercury*, the Hobart daily newspaper) scholarship in company and industrial law, and studying at post-graduate level at the University of Melbourne; then a stint with Corr & Corr, and ultimately back to Dobson Mitchell & Alport in Hobart as a partner.

His Honour's organisational flair and skill, now well-known, manifested themselves early when in 1966 notwithstanding a family background in Labor politics he successfully managed Michael Hodgman's first successful political campaign through the "I'm for Hodgman" committee (rumoured to consist of Heerey and Hodgman).

The lure of the Victorian Bar proved irresistible and His Honour commenced reading with Jim Gobbo (as Sir James then was) in 1967. His Honour's later interest in judicial administration may have received early stimulation in 1969–1970 when he appeared for one of ten accused (with other notables such as Smith J., Chernov Q.C., Gorton Q.C. and numerous others) in what was then Australia's longest criminal trial. His Honour quickly built up a wide and varied commercial practice and was recognised as a formidable opponent, taking silk in 1985.

In the course of his busy practice His Honour found time to marry Sally Macdonald in 1969 and they have three boys — Edward and twins Charles and Tom, well-known for helping His Honour's Bar colleagues consume appropriate amounts of alcohol on festive occasions.

His Honour's contributions to the Bar are well-known — member of the Victorian Bar Council from 1969 to 1973, including the position of Honorary Secretary, and co-editor of this august journal from 1986 until his appointment to the Bench.

His Honour's energy and skills however were not confined to legal practice. From 1973 to 1979 he served as a Councillor on the Hawthorn City Council; in 1984 he was appointed Chairman of the Victorian Psychological Council, a position he held until his elevation; from 1981 to 1986 he was Honorary Secretary of the Australian Institute of Judicial Administration.

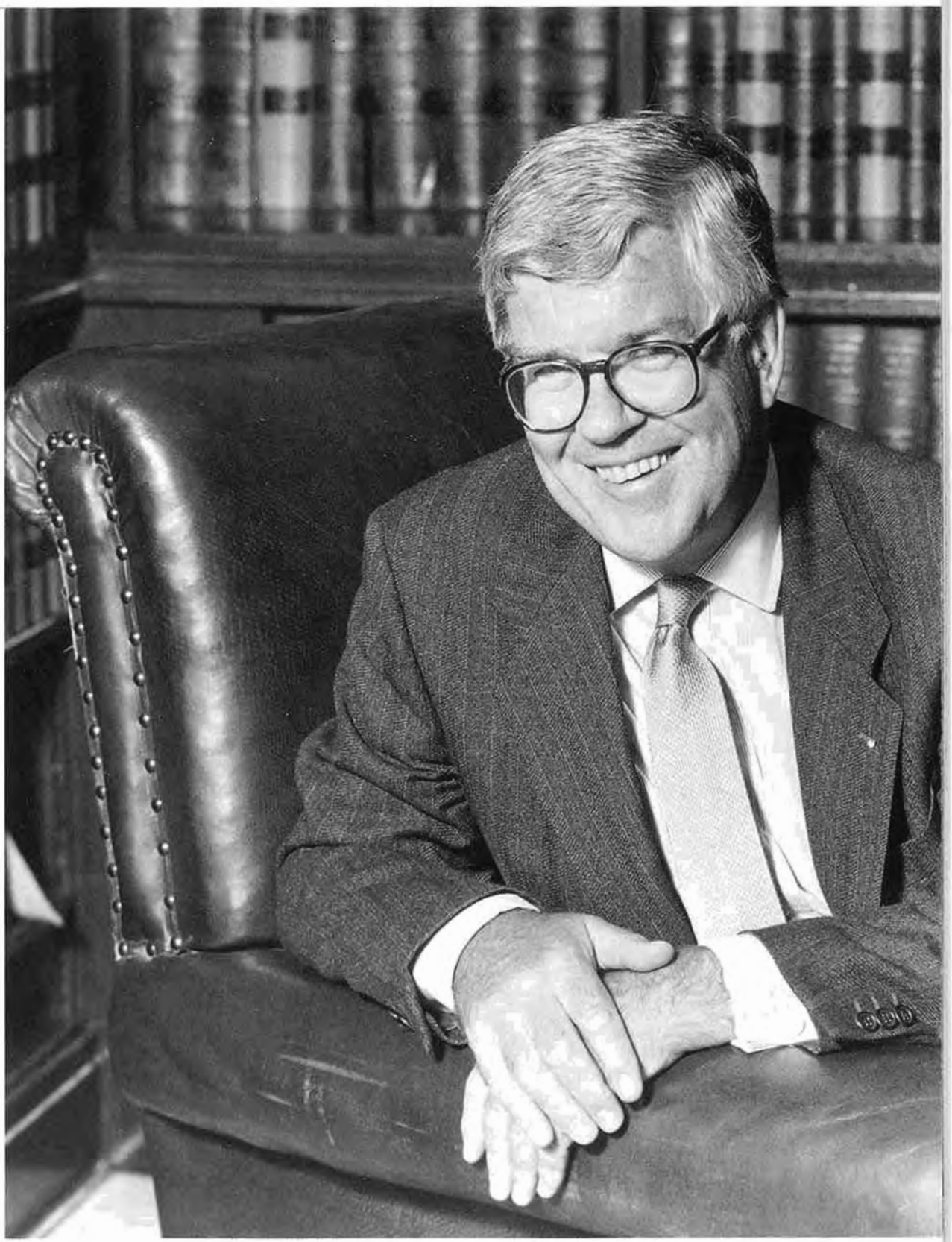
Notwithstanding his busy professional life, His Honour developed a myriad of extra-curricular activities and skills in spheres such as royal tennis, skiing, cycling, wine appreciation, lunching, photography, tennis, cricket and a remarkable memory for poetry demonstrated by his instantaneous rendition of "Clancy of the Overflow" to the Irish Bar in Dublin in 1989.

His Honour had a remarkable ability to cope with technology and was able, with his adept use of the medium of poetry, to solve the age-old problem of telephone calls left unanswered. Witness the following missive sent by facsimile transmission; it brought the required response:

"A charming chap is . . .
He loves to lurk in shady nooks
Midst burbling streams and birds that twitter
Away from city flash and glitter.
The reason for this solitude
Is not that he's by nature rude
Oh no, it's just that he, alone
Of all men is a phobophone.
He cannot bear to touch or smell
The gift of Alex Graham Bell.
When told of call he's asked to answer
He charges off like Bengal Lancer.
So friends and clients will be lax
To contact him except by fax."

An early indication of his propensity for judicial impartiality was seen during the lead up to the International Bar Association conference in Ireland in 1989. He played in the Australian Bar cricket team against an English team and in the same week played for the English Bar against Australia at Oxford.

The Bar wishes Mr. Justice Heerey a long and distinguished career on the Bench.



Mr Justice Hedigan

DECISIONS OF GOVERNMENTS AND Attorneys-General are often unpopular. Not so that to appoint John Joseph Hedigan Q.C. a judge of the Supreme Court. This inspired appointment has been unanimously acclaimed. For our Horatius "even the Tuscans could not forbade to cheer".

Hedigan was born the youngest of seven children, and was the only boy. His father died when he was ten, and thus young Jack was brought up by his mother, ably assisted by his sisters. That they did nobly and that the opportunities lovingly provided were completely exploited is evidenced by Hedigan's scholastic record. He was dux of De la Salle, graduated with honours from Melbourne Law School, and obtained a Master's degree from Michigan Law School. Hedigan did his articles with Corr and Corr, was admitted to practice in 1955 and signed the Roll of Counsel in 1957. He read in the chambers of the late Olaf Moodie Heddle Q.C., a great place to learn the art of advocacy. Hedigan soon became and remained a master of the art.

Both before and after taking Silk in 1973 Hedigan was a true all-rounder. He was equally at home before a criminal or a civil jury, in the probate court or a commercial cause or in the appellate jurisdiction. Many a hoop, misunderstood by stewards because of the vagaries of his mount has because of Hedigan's advocacy left the V.R.C. committee room free to meet next Saturday's engagements. The Family Court and numerous tribunals and commissions have seen him often.

Hedigan was the epitome of the fearless advocate, utterly uncompromising in the presentation of his client's case, quick to perceive judicial aberrancy and just as quickly to "direct" the bench accordingly. Hedigan was an honourable, fair and obviously competent opponent. He was also combative. Scholarly opponents called him volatile, whilst the less articulate complained of a "short fuse". Notwithstanding a preference for the broad sword even when the rapier was available, Hedigan also employed a subtlety and guile unexcelled by the most accomplished of the hushed voice brigade. He was a penetrating and resourceful cross-examiner, powerful and eloquent addressing a jury, and often persuasive of the most difficult judge. Out of court he was a most accomplished negotiator, reflecting his skill as a poker player. In short the complete advocate.

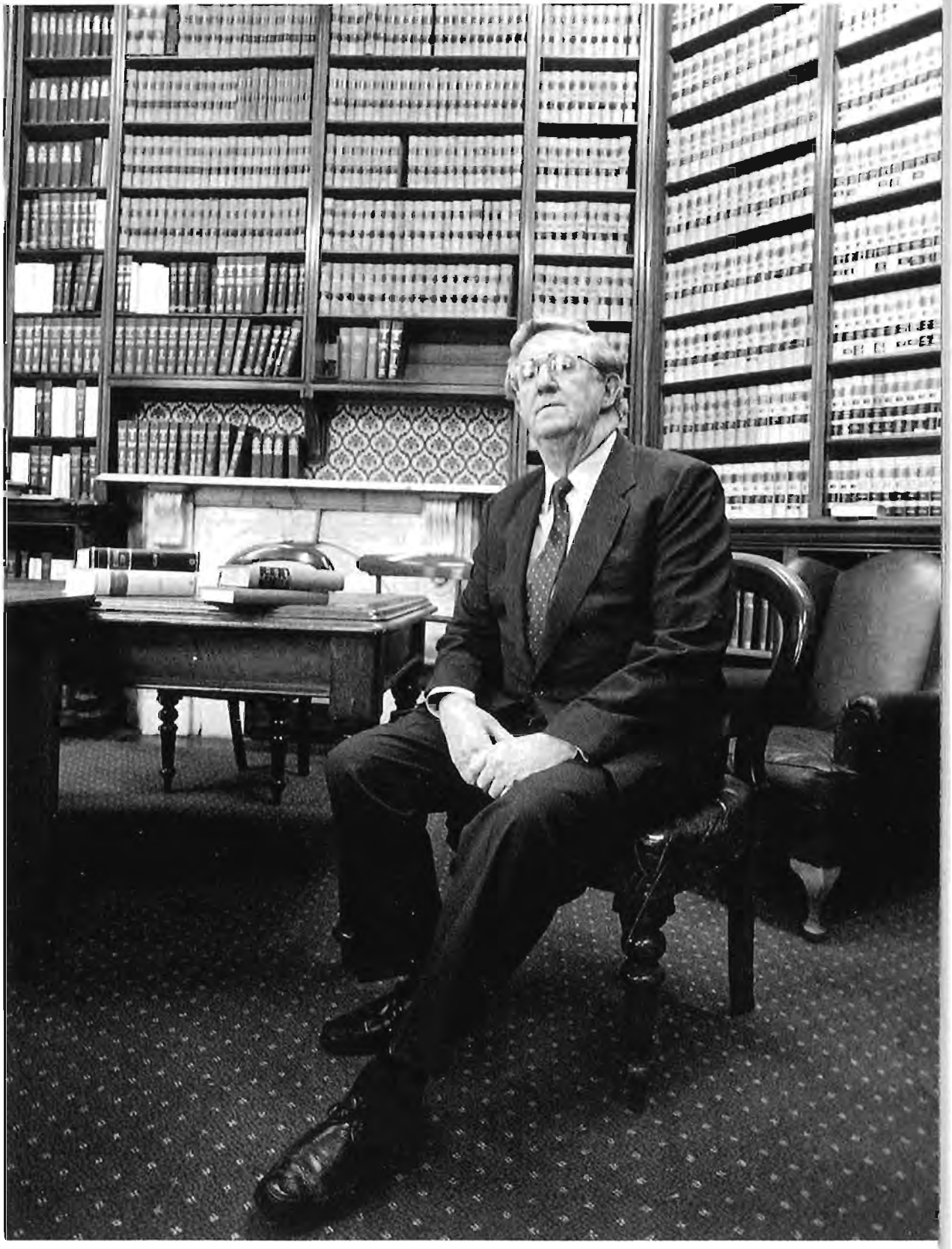
Hedigan was a "Bar man", demonstrated not only by his outstanding achievements in various offices, but more importantly by his participation in the camaraderie and ethos of the Bar. This made Hedigan a valued member and Chairman of the Ethics Committee, the real rudder of the Bar. Likewise, his lengthy and outstanding service as a member of the Board of Examiners. The Bar Council benefited greatly from many years of his industry and sagacity. During the "troubles" between the Law Institute and Bar Council, Hedigan was one of the Bar's emissaries. That the troubles are now all over is due in no small part to Hedigan's "diplomacy".

Hedigan has a large life outside the law. He is a leading Catholic layman, has served long and with distinction on the Board of Bethlehem Hospital and has involved himself in many other religious and civic activities. All the above might suggest that with Hedigan it is "all work and no play". Not so at all. When appropriate Hedigan is the master of the art of relaxation. He is a keen and good gardener as his garden shows. Well and widely read, a true connoisseur and consumer of wine, he is also a knowledgeable lover of good music, opera and the theatre. Hedigan's love of music (somewhat paradoxically) drives him on particular occasions (e.g. St. Patrick's Day lunches) to sing. Happily, his highest achievements are not to be found in his somewhat mixed tenor.

When appropriate, Hedigan with others has treated lunch as an oasis in the desert of the day. On such occasions Hedigan is both a formidable and stimulating companion. To listen to him discourse (and there are only limited alternatives) on myriad matters, ranging from beloved Collingwood to the most esoteric of subjects, is to appreciate the depth and width of his knowledge and interests. It also makes one appreciate the extent of the quicksands confronting those who will now appear before him.

At home Hedigan is the family man, long and happily married to the lovely Helen, and with two children Anna and John. To lunch or dine at the table of Helen and Jack is a delight. There is a profusion of good food, the best of wine, and above all great company. In the context of wine there have been anxious enquiries made of Jack, particularly by one of his senior brothers, whether the adjustment in income will impact upon the future availability of the wines of Bordeaux and other regions at the Hedigan manse. Happily Hedigan has assured his brother that his stocks will easily last him out. Hopefully he is right. If not it will be a stark reminder of the inadequacy of the judicial salary.

Hedigan's erudition, his forensic accomplishments, his experience but above all his common sense and compassion, make him a most welcome and valued addition to this most important Court. The Victorian Bar salutes a favourite son and wishes him well.



Mr Justice Coldrey

HE SAYS HE IS SHORTER THAN 5'6" AND describes himself as a stand-under man. At his welcome he applauded the speeches of Kirkham Q.C. and Mr. Gandolfo as the best in all the time he'd been on the Bench. He is not just a witty man and one of the best after dinner speakers you ever heard; he uses his flair for humour to set others at ease, to take the sting out of a dodgy atmosphere. I suspect he uses it most of all on himself, for there is nothing in the least pompous about him.

Those who were able to get standing room inside the Court at his welcome heard how he went to Essendon High School. He lived in that area and still does. He follows the local football team. He is still married to the same girl and still thinks the world of her.

He came to the Bar in 1966 and read with Kevin Coleman. He served his apprenticeship in Petty Sessions. He had done articles and spent another year with Ray Dunn who had a huge personal practice in crime. Little wonder that the criminal jurisdiction began to choose him. In time he appeared in some important trials. In the late '70s and early '80s he appeared regularly in the Northern Territory defending aborigines charged with crimes. That is a tough arena. Being in those trials is walking through the fire.

I do remember that he did the plea for a man called Eastwood. Mr. Eastwood pleaded guilty to a second offence of kidnapping a school of children. The result was an effective one year extra on the sentence undergoing. That persuasion of Murray J. was hard-won. No doubt the plea had style. But I know that he spent more than a week in full-time preparation. Appearing for people in criminal courts is a serious business and he always prepared his cases with utter seriousness. His practice flourished. He had readers: Kelly, Jedwab (now with the DPP's office), Fagan, Dodson (now the solicitor for the Northern Land Council) and Borchers.

In 1982 he went to Alice Springs as the lawyer for the Central Land Council. That body is responsible for making aboriginal land claims and generally helping to administer aboriginal holdings. The fact that he took the position at all shows that he puts principle before fees. The whole family was with him for the two years of his tenure. He worked very hard indeed, for there are whole groups of aboriginal people in central Australia who reaped the fruit of his toil and who still cherish his memory.

Much as he would try to conceal the fact by a light dismissal, he has developed to a high degree his discipline of hard work. He was DPP for over six years and that is well known. What is also well known by those who dealt with him in that time is his diligence. It is an important quality in a DPP and in a judge.

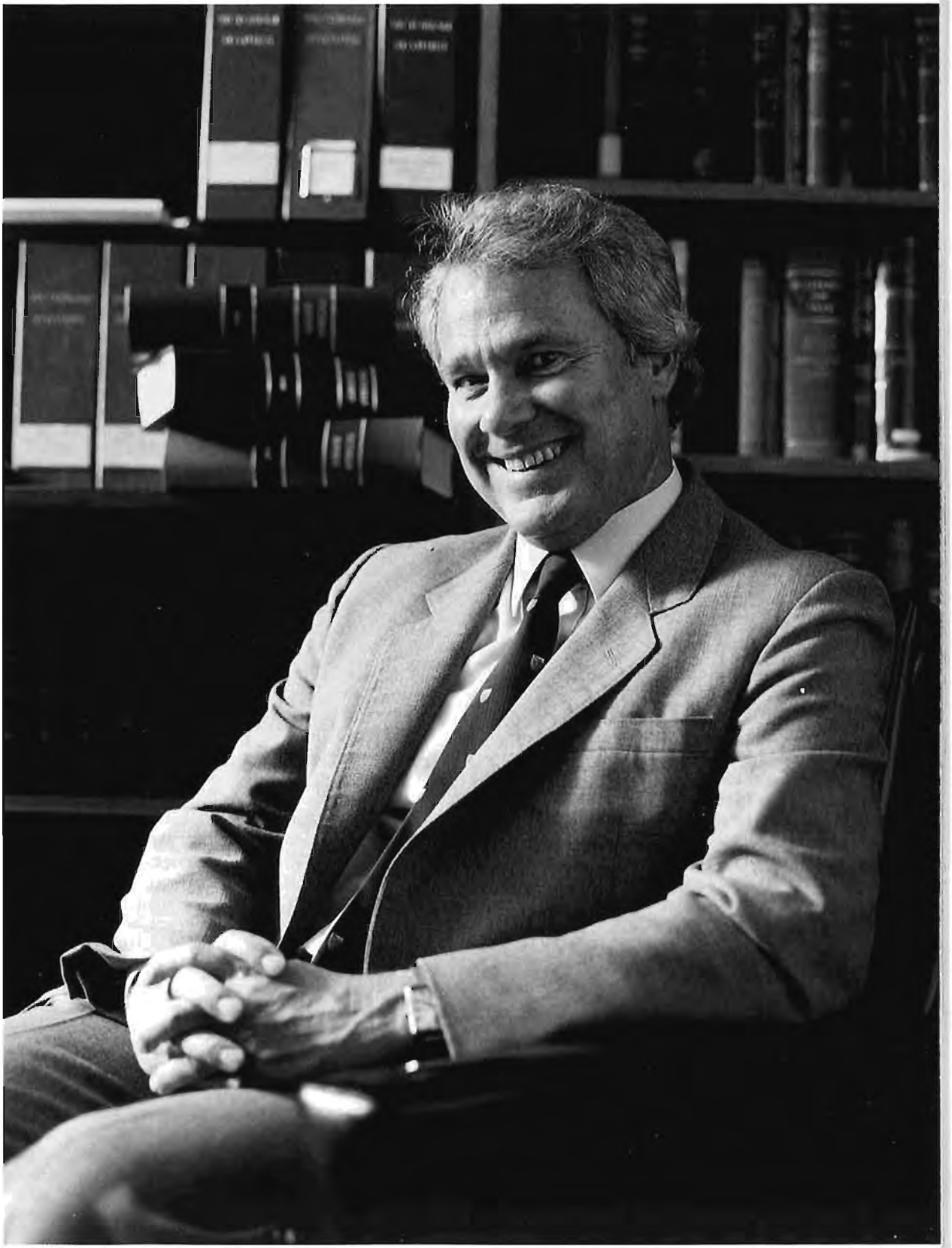
There is some comfort too in the nature of those for whom he has special respect. One of them was the late Fred James, that giant of language and intellect whose only failing, if it be one, was a deprecation of his own outstanding abilities. Another is Judge Villeneuve-Smith whose junior he was in the police inquiry in the '70s. Again, admiration for the lightness of touch that conceals the classy mind. Coldrey wrote his welcome for the *Bar News* (Winter 1983) and it tells as much about the author as the subject. His relish of humour of course, but above all deep regard of unflaunted principle.

It was during the policy inquiry that one of the newspapers referred to the work of "the nuggety and tenacious Mr. Coldrey". Of course he was "Nugget" after that.

He was appointed DPP in 1984 and took silk in the same year. The Director of Public Prosecutions heads one of the State's largest specialist legal practices. A Director can take one of two approaches to his office. He can be fully available for decision and consultation, or he can spend a good deal of time in court. There is no one correct course. Coldrey, like his predecessor John H. Phillips Q.C., appeared in court only rarely. His successor Bongiorno Q.C. is said to favour more court work like his Federal counterpart Weinberg Q.C.

But make no mistake: he is able to make hard decisions and as DPP he would have made them daily. It was he who decided not to prosecute Mrs. Emily Perry for an alleged poisoning in Victoria nearly two decades before (see *Perry v. R.* (1982) 150 CLR 580 and *Perry v. Lean* (1985) 39 SASR 515). It was a cause celebre at the time. He accepted a plea from Gianfranco Tizzoni to secure that man as a witness in a striking murder trial (*R. v. Bazeley* (1986) 21 A. Crim. R. 19). Most importantly those decisions were based on painstaking research and made with fearless independence of spirit. That's how he has always operated.

We expect he will be a Supreme Court judge of quality.



Duncan Reynolds

DUNCAN KEITH REYNOLDS WAS appointed a Magistrate in October 1990. His Worship was educated at Hailebury College and Monash University. He graduated in 1972 and commenced articles at Phillips Fox. He then went to Europe for an extended holiday, returned to a position at Maddock Lonie and Chisholm, and came to The Bar in 1977.

After reading with Dove Q.C., His Worship developed a busy, varied, but mainly civil practice in the Magistrates' and County Courts.

His Worship took Chambers in Four Courts in close association with his now brothers McPherson and Klestadt. He was a founding organiser of the now defunct Four Courts cricket competition. His real cricket flannels and right arm spin bowling will never be forgotten.

His Worship was an early riser. This, combined with his industry once awakened, caused him to remove the "Sir George Lush Memorial Lambskin" from his chair and place it upon the floor for an afternoon siesta in chambers. He also regularly attended the many social functions required of us at The Bar. On one occasion after a list "W" annual dinner, His Worship caught the Sandringham train home. His notorious napping took him to the end of the line, back into town, and finally to Williamstown where he caught a cab home.

His Worship is a keen supporter of all sport. His active involvement is now centred at Royal Melbourne Golf Club, where he thoroughly surveys much of the course. On one recent occasion, with unerring consistency, he hit off from the 11th tee on two successive drives and hit the same roof. He was heard to mutter "volenti" as he reached for his third ball and proceeded down the 11th. The attributes His Worship demonstrated in his practice will hold him in good stead on the bench. He is courteous, able, thorough and tolerant, with an understated but active sense of humour.

We wish him well.

OBITUARIES

The Honourable James Robinson 1926–1990

THE HONOURABLE JAMES ROBINSON died in Canberra on 7 December 1990 after a short illness.

Jim, or Sandi, as he was affectionately known to many of his friends and colleagues, had retired after serving 16 years as a Judge and Presidential member of the Australian Conciliation and Arbitration Commission.

Jim was born of missionary parents on 21 January 1926 at Tsunyi in South West China. He was educated at Chefoo in North East China, at a school primarily for children of missionary parents, where academic standards were monitored by requiring all students to sit the Oxford Local Examinations; the same exams as those held in England. The school achieved the remarkable average pass rate of 96%. On returning to Australia in 1939 at the age of 13 Jim finished his schooling at Melbourne High.

After serving in the A.I.F. in the Central Intelligence Bureau Jim graduated LL.B. from the University of Melbourne in 1948. He completed the degree of Master of Laws in 1953 whilst serving 2½ years as Associate to Sir Raymond Kelly, Chief Judge of the Arbitration Court.

Admitted to practice in Victoria on 1 December 1953, and in South Australia in 1956, Jim practised there as a barrister and solicitor for nine years. The family returned to Melbourne in 1965 where he signed the Roll of Counsel of this Bar on 6 May 1965.

Jim specialised in Industrial Relations. From 1961 until his appointment in August 1970 he represented the National Employers in all major national cases conducted before the Commonwealth Conciliation and Arbitration Commission. He was renowned for his hard work, thorough preparation and witty advocacy. He had a wonderful turn of phrase which, although appearing to be spontaneous, was generally the result of much time-consuming effort to find the right word to be used in precisely the right place. Jim's fine advocacy persuaded the National Wage Bench in 1967 to introduce the Total Wage concept.

A frequent adversary during Jim's National Wage days was one R.J.L. Hawke. They became firm friends and maintained the friendship until Jim's death. The Prime Minister and his wife, at their request, attended the private funeral service, as well as sending a message of condolence which was read at Jim's Memorial service held at the Victorian Arts Centre.

During his 16 years on the Bench, Jim sat on many National Wage cases and also headed a number of panels of industries. They included the stevedoring, oil, railways and, most appropriately, the panel responsible for preventing and settling industrial disputes in the entertainment industry. The arts had been close to his heart from his university days and, as George Fairfax said at his Memorial service, Jim might just have easily taken to public life on the stage instead of on the Bench.

On one occasion, legend has it, during a dispute involving the Australian Ballet, Jim made a long and impassioned plea to the artistic integrity of the dancers, imploring them to lift their bans and return to work. Jim's plea was greeted with a standing ovation in the No. 1 Court room and the "show went on".

When not interstate, Jim was usually to be found in his Chambers at around 7 a.m. after driving from his home in Frankston. Somewhere in his busy schedule he found time to write short stories for publications such as *Playboy*. Whilst not admitting it, Jim did not deny having written a novel entitled *Anatomy of a Strike* under the pseudonym Lake O'Charley.

He also proudly displayed a platinum record of *The Boys Light Up* by Australian Crawl, for his

collaboration with son, Brad, on the lyrics of two numbers.

Jim's sense of humour also made him a much sought after dinner speaker. His "Glossary of Industrial Relations Terms", with its irreverent descriptions of terms usually taken so seriously, delivered in his laconic style often brought tears of laughter to his audiences.

In January 1986 Jim Robinson retired incognito to Coffs Harbour where he remained typically busy. He became involved with the Coffs Harbour Arts Council holding the office of Vice-President; he was President of the Coffs Harbour Writers' Group with a membership that went from four in 1988 to over 30 active members in 1990; and furthermore, as a member of the Regional Gallery Advisory Committee, significantly contributed to the writing of a handbook to be produced by that Committee.

During his lifetime he had maintained a strong affection for the country of his birth and took early retirement at the age of 60 in order to pursue his interests in writing and China.

Jim had spent a number of months in the New Territories of Hong Kong gathering together, and then culling through, more than 1,000 Chinese folktales and fables. In April 1988, his friend, Gough Whitlam, opened an exhibition called The Wit and Wisdon of China at the East and West Art Gallery in Armadale. The exhibition was a series of Ch'an paintings illustrating a number of ancient Chinese fables that Jim had selected and interpreted for the Western reader.

Jim recently returned from China after spending several weeks revisiting the towns and villages he remembered from his youth. During this period he had been gathering material for a book he had planned to write this year.

In 1988 he accepted the position of Visitor to Bond University, Australia's first private university. At the same time, he broke his rule of not becoming involved in matters of industrial relations by accepting the position of independent Mediator/Arbitrator for academic staff at the University.

Jim, who was a most charming, gracious, learned and gentle man, will be sadly missed by all those with whom he was associated.

Keith D. Marks
Les Kaufman

B.W. Nettlefold Q.C.

BRIAN AND I EACH CAME TO THE Victorian Bar from Tasmania and were closely associated for many years both family-wise and work-wise in Victoria. I feel privileged to say a few words for him and about him.

First, I wish to express all our sympathy to Mary and their four children, their wives and their 6 grand-children and to all the other relatives on his sad passing. And then I wish to tell you a few things about Brian's career.

Brian was born in Tasmania on the 11th September, 1921. 1991 was his 70th year. He had 2 brothers. In fact his brother Bob and I graduated in Law at the same time and Bob went on to become a Justice of the Supreme Court of Tasmania. They were indeed a talented legal family and the tradition is continuing in this generation. (Dennis with Corrs and Chris with Mahoney & Galvin.)

Brian was educated at St. Virgil's College in Hobart. It was a Christian Brothers' School. I attended the Hutchins School which was to St. Virgil's what Melbourne Grammar is to Xavier in Victoria. He was a little ahead of me and in fact I did not know him at school. But because our schools were closely associated, although rivals, his sporting achievements were well known to me. When he came to Melbourne we appointed him an honorary Hutchins Old Boy to attend our dinners.

He served in the Royal Australian Navy in Corvettes during the Second World War. I am informed and verily believe that on one occasion he was transferred from one ship to another because he was a very good bridge player. But that was the only bridge he saw. He had no wish for a naval career. He was too independently minded to have anyone telling him what to do.

He studied Law at the University of Tasmania and achieved his LL.B. with Honours.

In 1960 he won a Mercury Scholarship in Company Law (somewhat equivalent to the Victorian Supreme Court Prize) and came to Victoria with Mary, his wife (to whom he was married

in 1944) and their 3½ children. He attended Melbourne University for a time.

In 1960 he came to the Victorian Bar where he read with Bob Gilbert who was an ex-P.O.W. and a leading exponent in Company Law.

His clerk was originally Mr. Jim Foley. When the Victorian Bar built and moved into Owen Dixon Chambers he transferred to the newly appointed clerk Mr. Jack Hyland where he remained until his retirement. They remained fast friends.

A barrister in a new "country" with a young family to support on a barrister's irregular income was a testing time for both Mary and him. It needed all the stubbornness and determination for which he was well-known and for which he had been dubbed "The Bear" by his friends.

He established a large common law jury practice and became a Queen's Counsel in 1977.

From 1977–1986 he practised as Queen's Counsel and conducted a number of important cases. He was a forceful and competent advocate. His room remained austere and carpetless (quite unlike the glossy present-day chambers) so that the character of the man rather than the surroundings dominated.

In 1986 he retired mainly due to ill-health.

Unfortunately he was afflicted by his last illness about 2 years ago.

Jack Hyland and I saw him last November in hospital and he was still showing the old spirit for which he was known, but alas it was not to be.

We will remember him —

(a) For his enormous enthusiasm for whatever he was doing —
  (i) In just plain enjoying himself in the company of his friends and family;
  (ii) In any kind of sport either in actually playing it as he did in his earlier years or in spectating or vicariously when his children played it.

(b) As a keen race-goer and football spectator. It was said that stewards at his various racing clubs or the umpires at Victoria Park would not start the day's proceedings until he arrived. He saw with delight Collingwood win its first premiership for many years in 1990, equalling the delight which he displayed some years previously when North Melbourne won its first premiership with the aid of his son Billy. Thus displaying a barrister's versatility in changing sides when necessary.

(c) Finally we remember him as the devoted family man over a period of some 46 years.

Let me again express our great sympathy to Mary and his family in their great loss and say we will all miss him.

Geoff Colman

BAR NEWS INTERVIEW

Douglas Salek interviews the new Director of Public Prosecutions.

CAN YOU GIVE ME SOME BIOGRAPHICAL DETAILS?

I'm 48, I was born on 1 January, 1943 at Geelong. I went to school at Catholic primary schools and finally St. Joseph's College, Geelong. I then

BERNARD BONGIORNO

did an LL.B. at Melbourne University. I did my Articles with William R. Hunt in Lonsdale Street.

After working as a solicitor for about a year or so, I came to the Bar in 1968 and read in the Chambers of Tom Neesham, now Judge Neesham, which itself was odd because he did planning work, something I'd never done. In fact I've had a history of doing "odd" things — doing things that are different to those who are immediately around me.

Shortly after that I started on the Geelong circuit and I think probably did most County Courts in Geelong from between 1970 to 1981–82 and in latter years the Supreme Court as well. At the same time I did some prosecuting funnily enough; I prosecuted at Colac with singular lack of success for about two or three years until about 1972. I remember my last case in Colac because my father had a stroke during the course of it and in fact I left and have never been to court in Colac since; it was in April, 1972.

I really didn't do any more crime until in 1975, I did an inquest for a policeman who had an acci-

dent in his motor vehicle and his wife had drowned, she'd fallen out and drowned and he was charged with murder. I did the inquest and probably it was the last inquest to be held in front of a jury. Harry Pascoe impanelled a jury of seven men who took about eleven minutes to commit my client to trial and if you have ever heard the form of a Coroner's verdict, given by a jury, it's one of the most chilling things you could imagine — "We, the Jury do hereby find that he did feloniously, wilfully and with malice aforethought" (and all sorts of other things) "murder the said so-and-so on such-and-such and order that he do stand trial in the Supreme Court". That was in 1975, I did that trial as junior to Charlie Francis. We had it thrown out at the end of the Crown Case, mainly because it depended largely on "Chamberlain" type expert evidence — so-called expert evidence from a Professor at Melbourne University that the car couldn't have done what the accused said it had done and on that basis we got the acquittal.

I took silk in 1985, and my readers were Roger Franich, Carl Price, David Beach, Michael Crennan, Katherine Norman and Bruce Lee.

I did no more crime at all until 1990 when I accepted, in a moment of rash weakness, an offer from a lady I had never heard of to do a criminal trial that was going to take, I was told, about eight or ten weeks. It ended up taking five months and resulting in the acquittal of one and conviction of two futures traders in January of this year. Subsequent to that I received a telephone call whilst I was in Adelaide on a view for a civil action that I had there and offering me the job of Director of Public Prosecutions.

Is it a fair assessment to say that your experience as Counsel has been essentially in non-criminal matters?

Essentially in non-criminal matters but heavily in common law matters, more lately in commercial matters.

A lot of people would say that a cross-disciplinary approach is very useful. Do you see your relative lack of experience in crime as being a hindrance or a help to your position?

Well I suppose a lack of experience can never be a help but I think that there are things about the way I . . . there have been forward movements in the trial of civil cases, some of which, at least, could be applied to criminal trials. Some couldn't be, some would be an improper restriction of the accused's rights, but there are many that could be adapted to criminal cases. I think that there has been very little advance in the way criminal cases are tried now, as against certainly 1970 when I used to do them. They seem to be exactly the same and if anything they have become more prolix rather than less.

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Do you base that comment on the future traders trial?

Well, not only on that trial but on reports that I've read. Voir dire applications in particular seem to have gone silly in the last few years. But I remember when I did crime in the early '70s a voir dire was a relatively rare event, they seem to be now standard in almost every trial. The best advice I thought I was ever given was by Judge Shillito, who told me that he couldn't understand why people ran voir dires at all, they were much better off running the issue in front of the jury. That doesn't seem to be the way it's done these days. I don't know whether there is anything I can do about it but certainly the cost of some criminal litigations is such that there could be problems and the community may well — quite inappropriately — seek to have matters made

summary matters which ought to be tried in front of juries and I think that has got to be guarded against. It may mean that we have to rethink some of the ways in which we conduct jury trials.

What other observations did you make about the criminal trial process from your experience?

I think that there might be scope for the Crown taking more risks of acquittal by itself looking at the efficiency with which it conducts the trial. In retrospect, and again, very much in retrospect, I think I could have in the futures traders trial not compromised the trial even if I dropped perhaps 10, 15 even 20 witnesses off the presentment. Now it's all very well to say that now because the result was an appropriate one or satisfactory one for the Crown so you could easily say we could have done it a lot easier. Of course you would have run the risk that there might have been an acquittal. That might have to be a risk that the Crown might have to run in some cases just for the sake of properly deciding to bring someone to trial but bringing them to a limited trial and say that we're only going to prosecute them on this count despite having a lot of evidence that goes to a totally different charge. We just cannot afford to run these mega trials — they're too costly and we may have to do something about them along those lines.

Why did you take the appointment?

Well, I've always taken the view that life is not a dress rehearsal and no one is ever likely to offer me a job like this again. There are other jobs that I might be offered sometime in the future but I hope frankly, that it's in the distant future and not in the immediate future. I could have stayed at the Bar, I was enjoying doing all sorts of things, I mean in the middle of that criminal case I had a case reported in the equity division of the New South Wales Supreme Court which must be some sort of record I think from a County Court criminal trial to the rarified atmosphere of P.W. Young J.'s Equity Court. I suppose I could have kept on doing that sort of thing for another four or five, six years. But, the challenge of seeing how the criminal law works from the inside and perhaps having some influence over its future, the challenge of finding out how other systems prosecute people because I intend to do some travelling in this job and see how other systems have brought their experience to bear on the way people are prosecuted.

Do you propose to appear in court yourself?

Yes, I do. Indeed I did today, I went down and got a suppression order from Judge Keon-Cohen this afternoon at 2.15. Mainly because Counsel rang me at 12 minutes past 2 and said that there is a civil matter starting and if it's published in the paper tomorrow morning it will blow a trial we're doing so I went down and got a quick suppression.

Would you contemplate prosecuting a criminal trial as opposed to appearing in the appellate jurisdiction?

I would like to but recognising the reality, the probability is that I just will not have the time. If somebody could find a three day — if there is such a thing as a three day criminal trial, I'm not sure they exist anymore. There used to be, and perhaps if someone could find one for me like that which is neat and can be dealt with in front of a quick judge to deal with it sort of quickly, then you may find that I'll turn up in a trial. The

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thing I set for myself was that I'd like to do one trial a year but that might be stretching it because the sort of trial I'd be interested in doing would probably take too long, but there must be some murder trials that I could work on, some that don't have a great deal of evidence.

Since the inception of the office the practice if not the convention has arisen of appointing the Director to the Supreme Court. Do you see that as a good practice?

If I went back to the Bar I might stop doing crime and go back to doing commercial cases, so it wouldn't trouble me terribly much.

Do you approve of the practice of appointing the Director to the Supreme Court?

I don't disapprove of it, I think it's appropriate.

What right of audience will you give to pressure groups such as The Victims of Crime Assistance League? To what extent will you, if at all, listen to them?

Well, I'll read their letters if they write to me, I could imagine that on some occasions in some circumstances I might talk to them personally but my function is the prosecution of a criminal trial. The care for victims of crime is an important matter but it's not a matter that I see within the immediate purview of the Director of Prosecutions. The criminal injuries compensation area is a separate area in this state. It maybe there ought to be more involvement of the accused in the compensation process. After all historically compensation was left to the law of torts; now it may be that we ought to have a modified law of torts and the victim, the defendant — as he would have been in a tort case would be more involved in compensating the victim than I perceive he presently is.

The practical realities of that might be difficult?

The practical realities are that there is never any money, I suppose, but I'm not so sure that that's always the case in crimes of property. In England they make things I think called criminal bankruptcy orders which we could investigate here but it seems to me to be inappropriate that somebody who has been defrauded of a large amount of money should be left out of pocket while the defendant can continue to lead a luxurious lifestyle.

Is it appropriate for the Director to respond to press outcry in determining whether to lodge an appeal against inadequacy of sentence?

No, it's not. As I understand it, people — from police to victims, concerned citizens — write in and seek the Director's powers to be exercised to launch an appeal. There is nothing wrong with that but the Director has a statutory obligation to make up his own mind as to the inadequacy of the sentence before he appeals and I would adopt the same practice as my predecessors have done and I would hope to put into effect the dictum of Chief Justice King whose name of the case I can't remember but it's quoted in the last annual report which sets out the parameters of what he sees as the crown appeal but the mere fact that the newspapers are screaming for blood I would hope would have no effect on my exercising of the power.

What about if you perceived that it's not the newspapers but indeed a genuine public outcry about the inadequacy? How would you respond to that?

Well if there was a genuine public outcry it

may well be that I'd feel the same way — I'm a member of the public as well. Or it may be that my feeling would coincide with that and if it did I'd exercise the powers under the Act and launch an appeal, but if it didn't I'd certainly wouldn't. If I came to a view that there ought not be an appeal I would not appeal simply because the press or anyone else was screaming.

The Occupational Health and Safety Act is currently being highly publicised by the Minister. How do you propose to maintain your independence from that type of politicised legislation?

Well, the review of material which comes into this office to determine whether a prosecution should be launched is an intellectual process not an emotional one. The evidence is either there to launch a manslaughter prosecution in an industrial safety case or it isn't. If the evidence isn't there all the pressure in the world from the Minister can be exercised but it won't have any effect though. My officers will send up draft presentments on the basis of whether the evidence exists to prosecute and if it doesn't, well they won't.

What's your view as to the role nolle prosequis should play in the criminal justice system?

Well they should exist to filter out those cases that have slipped past the Magistrate and become the subject of a possible presentment in certain circumstances where the evidence doesn't justify them or for some other reason the prosecution ought not to proceed. The guidelines for the prosecution have now been virtually agreed between the Commonwealth and most of the States by my Federal counterpart. Weinberg's published them and I think, without having studied them in detail, I think I subscribe to them virtually as he's published them. Part of those involve a no bill procedure.

What do you see as the role of the prosecutor on a plea and under what circumstances should the Crown address a Judge on appropriate sentence?

Again, I've got no reason to disagree with the Full Court decisions where the Court has made it clear that it's the duty of the prosecutor to convey to the Court the Director's views if in fact the Court is threatening or looks as if it might impose a sentence which the Director would appeal from. I certainly don't see the role of the Crown to call for the death penalty or doing of the things which we see in *LA Law*.

By the time you leave the office what would you like to have achieved?

I'd like to have achieved a more efficient running of criminal trials, I would like to achieve the retention of the jury trial in every indictable case in which it's presently used. I would not like to see it eroded any further, and I would like to see it maintained in a way that is efficient.

THE PRESENTATION OF LEGAL ARGUMENT

A Paper Given by Stephen Charles Q.C. to the Graduating Readers of the Queensland Bar at Brisbane in October 1990

ADVOCACY WAS SAID BY QUINTILIAN to be the highest gift of Providence to man. Opnions differ as to the qualities required in an advocate. For example, in his book *The Seven Lamps of Advocacy* Judge Parry listed seven virtues he thought all advocates should possess. He named honesty, courage, industry, wit, eloquence, judgment and fellowship. It is interesting to note that eloquence was placed fifth in that list. Indeed John Buchan recognised that eloquence is rarely found in those who practise law. He even went so far as to say that, "the successful lawyer is not often a first-class speaker". Before examining the qualities necessary to the presentation of a legal argument, it may be helpful to bear in mind by way of contrast the qualities a good solicitor is supposed to have. I found these set out in a work published in 1669 called *The Compleat Solicitor* as follows —

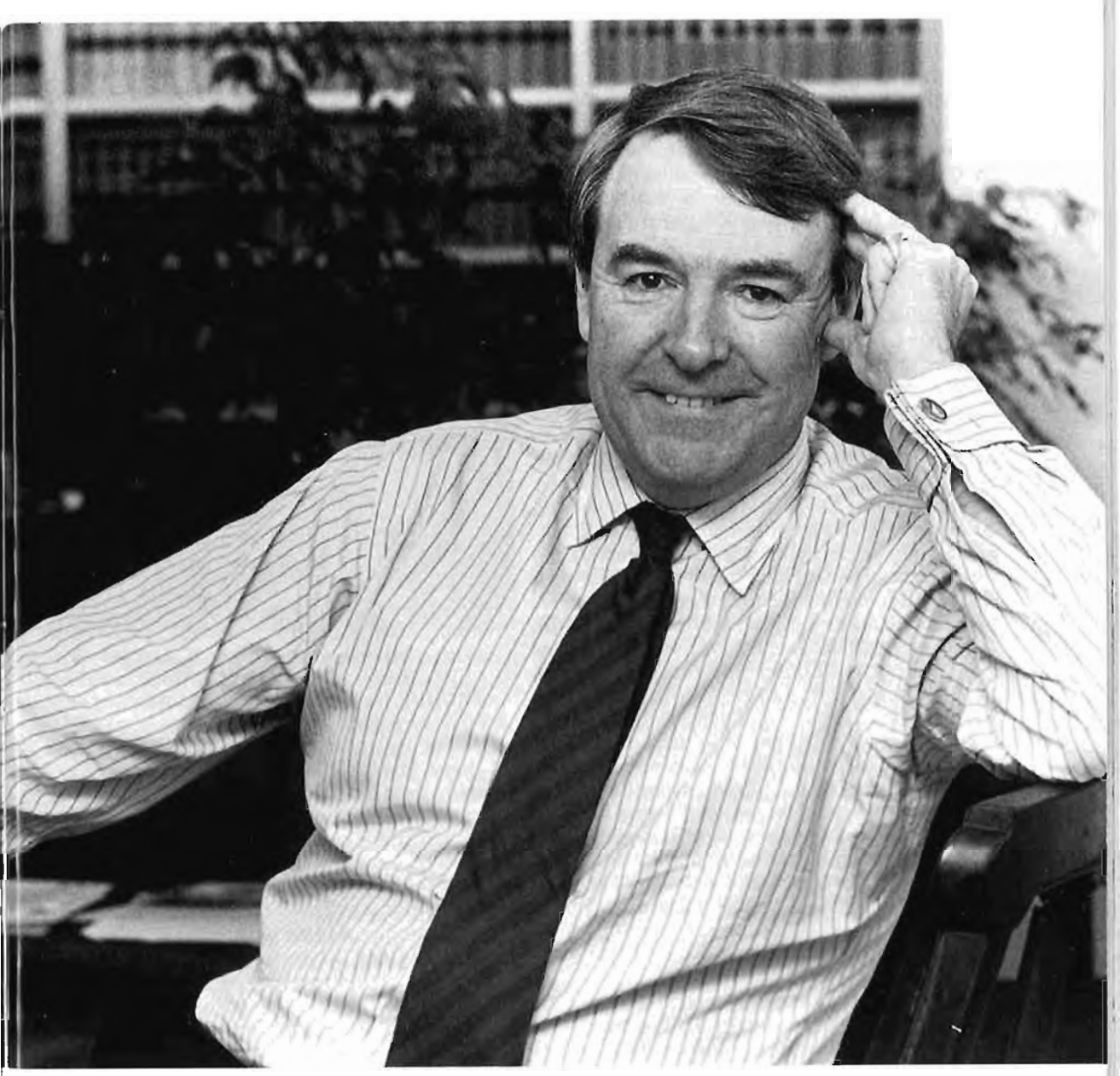
"First, he ought to have a good natural wit.
Secondly, that wit must be refined by education.
Thirdly, that education must be perfected by learning and experience.
Fourthly, and, lest learning should too elate him, it must be balanced by discretion.
Fifthly, to manifest all these former parts, it is requisite that he should have a voluble and free tongue to utter and declare his conceipts."

The author adds various moral requirements such as patience, prudence, a calm content, and "a certain staid and settled manner of living".

There must obviously be limits to the attention barristers should pay to the example given by solicitors. Some solicitors find the direct approach an aid to communication with their public. One began a letter to his client "you rude illiterate Teutonic peasant". The same man commenced a letter of demand to the proposed defendant after a motor car accident "you rat, you worm, you disgrace". The abuse is by no means one-sided. The secretary of the Victorian Law Institute once replied to a letter of complaint with a detailed explanation. The response came in the following terms —

"Dear Mr. Lewis, you bastard,
Thank you for your weaselling double-talking buck-passing two-faced chiselling letter. You, sir, are a pusillanimous prick. How dare you write such rubbish to me?"

After six more pages of the same, the writer concluded on a delphic note, "so, you bastard, drop dead". The complaints received by the secretary of the Law Institute are sometimes enlivened by the vagaries of the Telecom system. On one occasion he picked up his telephone to be asked by an aggressive questioner whether he had finished spaying her bassett hound. He re-



plied he hadn't started and the caller became threatening.

In the 18th and 19th centuries, the leading figures at the English and Irish Bars were renowned for their powers of speech-making. Take for example John Philpot Curran. In a speech in 1794 he was attacking the English idea of freedom which gave liberty to its colonial subjects immediately they landed on English soil but kept them in their own subjugated territory in a state akin to slavery. Mark the following passage, delivered, I may say, totally without notes —

"No matter in what language his doom may have been pronounced; no matter what complexion incompatible with English freedom an African or Indian sun may have burnt upon him; no matter in what disastrous battle his liberty may have been cloven down; no matter with what solemnities he may have been devoted upon the altar of slavery, the first moment he touches the soil of Britain the altar and the god sink together in the dust; his soul walks abroad in his own majesty; his body swells beyond the measure of the change that burst from round him, and he stands redeemed, regenerated, and disenthralled by the irresistible genius of universal emancipation."

Yet Curran was at first cruelly hampered by a stammer, and was unable to utter a word the first time he got to his feet in court. He rose to great heights, dominating the Irish courts in the same

way and at the same time as Erskine in England. Those of you who question how it is that he was able to overcome so acute a disability, might possibly wish to follow the example of Demosthenes who suffered both from a stammer and severe weakness of voice. The stammer he cured by constantly speaking with small pebbles in his mouth; his weakness of voice by reciting aloud on the seashore until he could be heard above the sound of the waves.

Nervousness provides less of an obstacle to successful advocacy. Roger North, later Lord Chancellor of England, wrote about his first appearance in court (in 1772) that it was "a crisis like the loss of a maidenhead". Fifty years later, after a career which early nerves had totally failed to blemish, Roger North had a succinct phrase for bad argument and incompetent advocacy; "much squeak and no wool, and but an impertinent contention to no profit". Or take by way of example the Eighth Duke of Devonshire, 62 in 1895 and probably the only man in England both secure enough and careless enough to forget an engagement with his sovereign. Edward the Seventh, having informed the Duke that he proposed to dine quietly with him at Devonshire House on a certain day, duly arrived, to the consternation of the household, for the Duke was not at home and had to be hurriedly retrieved from the Turf Club. The Duke trained himself for the disagreeable task of speaking at public meetings by a method he once revealed to the young Winston Churchill when they were appearing together at a free trade meeting in Manchester. "Do you feel nervous, Winston?" asked the Duke and on receiving an affirmative reply, told him "I used to, but now, whenever I get on a public platform, I take a good look around and as I sit down I say, "I never saw such a lot of damned fools in my life" and then I feel a lot better."

The Melbourne Bar owes much in its origins to Ireland. A high proportion of the first barristers to practise in Melbourne came from Trinity College, Dublin. The first to arrive was E.J. Brewster. The second was James Croke who became Crown Prosecutor. The first Victorian judge, Willis J. (renowned for his appalling behaviour in court) set so unpleasant a standard for discourtesy that on several occasions counsel appearing withdrew, Crown Prosecutor Croke having put it once "it appears useless for me to continue". Croke was then followed out by all the other counsel sitting in court in sympathy. When Croke withdrew, the most senior members of the Bar wrote to the judge the next day protesting at what they considered to be an unwarranted attack on the prosecutor and informing the judge that they had every confidence in the way Croke had handled the case. At the next sitting of the court, Willis read out the barristers' protest and then announced that if members of the Bar did not wish to appear before him that was alright with him, as both he and the court could get on quite well without them. The third member of the Bar to arrive was Redmond Barry, also from Trinity College, Dublin, later to become the judge who tried and sentenced Ned Kelly.

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The Irish had their own idiosyncratic — even eccentric — style of advocacy. The Lord Chancellor in Ireland was at one time Sir Ignatius O'Brien. His Court of Appeal was a disaster and counsel were usually unable to make the simplest statement without interruption. O'Brien insisted upon informing counsel of the way his mind was operating. Sergeant Sullivan once interrupted such a soliloquy by sweetly suggesting that the operation of what his Lordship was pleased to call his mind, would become relevant if his Lordship would first listen to the facts of the case. Quite a lot of progress was then made during the remainder of the day. On another occasion Curran offended Mr. Justice Robinson, to the point where that judge cried out, "if you say another word, sir, I'll commit you". Curran responded, "then my Lord, it will be the best thing you will have committed this year". Contemplate the following situation in a court presided over by the Irish Lord Chief Justice, Sir Peter O'Brien (universally known, because of his lisp, as Pether), who liked it to be thought that he was, even then, a gay Lothario; it was said that a pretty witness would often turn the case before him and a veiled reference to the weaknesses of mankind would always revive his failing interest. One Paddy Kelly was endeavouring to bolster an application for which he had not much legal support by reading the more salacious parts of the correspondence. The story goes that —

"After a while, Pether lifted a deprecating hand. "Mithter Kelly", he lisped with a melancholy smile, "Mithter Kelly, it won't do; it won't do at all. There wath a time when thuch thingth interethted me; but I regret to thay I am an exthtinct volcano!" Paddy was not in the least put out; "Begor, me Lord", he grinned, I think there's a r-rumble in the ould crathur yet!" Pether sat back delighted; Paddy got his order!"

One quality not mentioned by Judge Parry specifically, unless encompassed by the description wit, is ability. Possibly all those concerned with an assessment of advocacy have assumed the existence of a certain native ability. The same assumption might well be made good in the case of all those present, in the light of your successful completion of all necessary legal examinations. It is however quite possible to take a singular view of ability. Cardinal Conway, the former Primate of all Ireland, is reputed to have asserted with some frequency that it takes two glasses of whisky to bring an Englishman up to the functional level of an Irishman. On the other hand, Dr. Kenealy spent most of the 78th day of the Titchborne case (the 20th of his speech to the jury) in an argument with the Lord Chief Justice in which he was attempting to claim that fat men were more stupid and forgetful than thin men.

Nowadays it would probably be conceded without quibble that the first essential in the presentation of legal argument is industry. It will often take many hours of hard work to prepare one hour of legal argument. For only thus will you attain the ground work and the degree of organisation which is essential to the proper presentation of an argument. The object must be total mastery of the facts and the law, an essential element in mastery of the law being complete control of the procedural and jurisdictional basis for one's case, the relevant Supreme Court rules or the appellate rules by which one arrives at the hearing. Detailed written notes are obviously essential to adequate presentation of an argument, though great care must be taken to preserve one's flexibility; one must be able to depart at any time from the prepared argument, should the circumstances or a question require it. As to organisation, take Sir Robert Megarry's description of the counsel who is devastatingly good.

"He does everything right. He is well-organised, lucid, moderate and reasonable. He watches the judge's pen throughout, and answers the judge's questions fair and square, with no flannel or cottonwool. He claims no more than is fairly arguable, and throws away his bad points without waiting for them to be challenged."

There is an art in organisation. When one is on one's feet, notes tend to get blurred or become lost. A question may direct one to a different part of one's argument. Attempt to be orderly as well as organised. If one's case is based on a series of major propositions, put them first, then elaborate. If you have a large collection of notes, paginate them. Flag your interpolations. Important points should be underlined. Young J. (of the Supreme Court of NSW) helpfully recommends coloured pens and textacolours for the ready identification of passages to be cited and lines of thought that need to be pursued. Capitalise important headings in the notes. Have relevant extracts of judgments copied and the vital passages marked in your version. When referring to transcript, or case material, know the page and the correct part of the page to which you need to refer. Prepare your summary of argument and list of cases with a view to informing the court and helping it to understand the argument. Know which grounds of appeal are your best and which can be thrown away. If the facts are complex make sure your chronology is adequately detailed.

The first essential is to read the brief. It is surprising how many barristers do not. Take the following example, which also charmingly presents the atmosphere of an Irish Court at the turn of the century. An advocate called Sir Francis Brady, who had a passion for music, was conducting a prosecution before Lord Justice Fitzgibbon. The story goes as follows —

"Sir Francis, debonair and heedless of all around him, opened his brief, probably for the first time, as the witness was sworn, and the following somewhat unusual scene occurred. "Your name is Marmaduke Fitzroy?" "It is not." "And you live at Rocksavage on the Douglas Road?" "I do not." "And you are a retired army officer." "I am not." Fitzgibbon had by this time recovered from his laughter at the first answer, which was hardly a surprise from the somewhat rough lips that had spoken it. "Sir Francis, Sir Francis!", he cried, "the witness doesn't agree with a word you are putting to him!" Sir Francis lowered his brief, and for the first time caught sight of the coal heaver who had been answering his questions, if questions they might be called. He looked at the ceiling, whistled a few bars of "Let Erin Remember", looked at the witness again and said blandly; "then who the deuce are you? and what are you here to swear?""

It was also once said that 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".

It is not necessary to parade one's industry. One does not give every — indeed any — case for obvious propositions or one will rapidly wear out one's welcome. Having mastered the facts and the law, the aim must be to be succinct, concise, lucid, above all relevant. One cannot be any of these things if one does not have clear in one's own mind both the facts and the law. Contrast with the version of the devastatingly good counsel, the paralytically bad, also defined by Vice-

Chancellor Megarry.
"He may be incoherent, rambling, unorganised, obscure, tedious, long winded, confused and confusing, bull headed, and a dozen other things."

One of the most succinct (as well as one of the finest) advocates seen in Australia was Robert Alexander Q.C., now Lord Alexander of Weedon. On one occasion, he rose in the House of Lords to seek Leave to Appeal. The matter was one of considerable importance, the costs enormous. Lord Diplock was presiding. As Alexander rose to his feet, Lord Diplock looked at him and shook his head negatively from side to side. Without saying a word, Alexander resumed his seat.

Lord Greene's advice to the advocate was "always get your case on its feet on the merits before you turn to the law". Command the moral high ground if you can. But never ram the fact down the Court's throat. It must be done lightly. Do not leave any court — save possibly the Family Court — under the impression that you think it is entitled to administer palm tree justice. Courts are very willing to be moral. But you must ease them along, demonstrating proper legal support.

A prime requirement in every argument is to attempt to set the limits of the case. Whatever the audience, the advocate must know the limits he or she wishes to set on the case and then persuade the tribunal to accept them. It does not matter whether the case revolves round one single theme, or whether it involves many. It does not matter if the theme is a momentous one, or that the advocate is appearing for a worthless scoundrel. The way in which it is done is of secondary importance to the fact that it is done.

Avoid irritating mannerisms, matters that will distract from your argument (unless your argument is awful and needs distractions). Avoid clicking pens, flicking rubber bands. If you can, stand absolutely still. Control your client. Make sure he isn't sitting in court behind you with an active mobile telephone, ready to explode into jangling and infuriating disharmony. One judge in Melbourne repeatedly insists that counsel not make facial submissions.

Clarity and order in presentation are of course but two aspects of style. Style may be cultivated. Now in legal argument, content is so much more important than complexion, that the latter cannot he said to be essential. But I doubt if it is necessary to descend to practices which Lord Chesterfield stigmatised as "an offensive indifference about pleasing". As an advocate you are attempting to convince the tribunal of the correctness and persuasiveness of your argument. An advocate has a position of proud independence, and will naturally avoid the sycophantic or the obsequious; but it is not a prostitution of one's talent to affect good manners or to be neatly and properly dressed in court. Lifting your foot onto the next seat, like a dog at a lamp post, is a mannerism calculated to infuriate most judges — don't do it unless you intend this result! One's robes are the badge of an ancient and honourable profession and should be worn as such. They should not be worn in a dirty and torn condition nor with the wig askew. Be on time. A disdain for these conventions is arrogant and selfish and may cost your client dear. Attempt to make your arguments attractive by the manner of their presentation to the court. Spice them with humour.

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An aspect of good manners, and part of the attempt to convince a tribunal which may be hostile, is complete control of one's feelings and behaviour. One may frequently find one's argument is opposed by an ignorant, antagonistic, or rude tribunal. There are various ways of countering such difficulties. "Are you trying to show contempt for this court?" said the judge to Mae West. "Nah", said Mae, "I'm trying to hide it". In *Bryans v. Faber and Faber* a litigant in person, who had been unsuccessful in the Court of Appeal, hit opposing counsel on the head with a carafe of water. For this contempt he was imprisoned for three months. It can be said with some certainty that the physical response is unlikely to be persuasive and may endanger one's personal freedom, at least temporarily. There are many ways of discipling unruly judges (as the Irish demonstrated best of all) and many occasions when courage is required. There must be no timidity about an advocate's performances. It has been said that "resort to the law is a form of civilised warfare, and the advocate the modern

representative of the medieval champion". Although courage is valueless unless it is balanced by discretion, there is a time to stand and a time to sit for every advocate. The classic example is the confrontation between Erskine and Buller J. in the Dean of St. Asaph's case. A disagreement arose as to the wording of the verdict delivered by a jury. Finally, Erskine said —

"I stand here as an advocate for a brother citizen and I desire that the word "only" may be recorded."

Buller J. replied —

"Sit down, Sir; remember your duty, or I shall be obliged to proceed in another manner."

Erskine said —

"Your Lordship may proceed in whatever manner you think fit. I know my duty as well as your Lordship knows yours. I shall not alter my conduct."

The judge made no reply to this comment and did not repeat the threat of committal. In 1892 Sir Edward Carson appeared for Lord Clanricarde before a Commission set up to inquire into the wholesale and totally outrageous evictions of tenants then taking place in Ireland. When he applied to cross-examine the first witness, the President of the court, an English High Court Judge who should have known better, refused to allow him to do so in the following terms —

"President: "I decline to hear you".

Carson: "I must press this matter. I will ask for a vote to be taken to see if every Commissioner takes your view."

President: "I will not hear you further, and I will order you to withdraw."

Carson: "I insist upon my right till every Commissioner orders me to withdraw. I will stand up here and now for justice to be done to Lord Clanricarde as well as to everyone else."

President: "The Commissioners have consulted and we have come to the unanimous conclusion that we will not hear you . . ."

Carson: "My Lord, if I am not allowed to cross-examine I say the whole thing is a farce and a sham. I willingly withdraw from it. I will not prostitute my position by remaining longer as an advocate before an English judge."

President: "I am not sitting as a judge."

Carson (in a loud whisper): "Any fool could see that"."

Having remained on his feet throughout this exchange, Carson then threw down his papers and stalked out of the room. These were strong but thoroughly justified words. Denied the right to cross-examine there was little he could usefully do. His client lost nothing by his refusal to participate further, indeed his conduct effectively destroyed the moral authority of the Commission. Advocacy of such corrosive power is not, however, recommended to inexperienced counsel.

In American courts, matters are conducted in somewhat more freewheeling fashion but it has nevertheless been said by their Supreme Court that "lawyers owe a large, but not an obsequious, duty of respect to the court in its presence". In *Offutt v. United States* a judge summarily committed a trial lawyer for ten days for contempt of court in circumstances which included the following interchanges —

Although courage is valueless unless it is balanced by discretion, there is a time to stand and a time to sit for every advocate.

"The Court: Motion denied. Proceed.

Mr. Offutt: I object to your Honour yelling at me and raising your voice like that.

The Court: Just a moment. If you say another word I will have the Marshal stick a gag in your mouth."

And later —

"The Court: Don't argue with the court.

Mr. Offutt: I am not arguing with the court, your Honour.

The Court: Don't answer back to the court, either."

The judge had really warmed to his task, by the time he came to discharge the jury, with these comments — "I also realise that you had a difficult and disagreeable task in this case. You have been compelled to sit through a disgraceful and disreputable performance on the part of a lawyer who is unworthy of being a member of the profession; and I as a member of the legal profession, blush that we should have such a specimen in our midst". The Supreme Court later set aside the committal.

As to the gag, physical restraint is occasionally necessary. In the Chicago Conspiracy trial, one of the defendants, Bobby Seale, was bound and gagged in court, although even this did not succeed in silencing him.

An elementary aspect of the attempt to convince by argument is the use of court conventions. In citing a case or referring to an occupant of the bench, letters should never be used as an abbreviation. You will frequently nowadays hear counsel referring to reports by their abbreviated reference as "CLR". Since most judges have been trained in the observance of these conventions, this manner of citation will usually

annoy and sometimes infuriate the tribunal. Give judges their proper title. Remember that an argument is submitted. Do not offer comments to the bench prefaced by "I think" or "suggest".

Support your argument on appropriate occasions with photostat copies of reports. This has always been useful with magistrates, but may also be of great assistance with superior judges, especially if they are unlikely to have the necessary authorities in court. Remember that a long day's legal argument is very tiring and that even fit young advocates may fall asleep in court on a hot afternoon. Keep control of the court and its attention.

It is essential that you know your court. An entirely different argument would be made to the High Court than would be put before most other judges. Know which of the judges is deferred to, or relied upon, by the others. You must know who talks to whom, their grudges, their prejudices, their past victories and defeats, their hobbies, their attitude to precedent. And if a judge has a penchant for a glass of wine at lunch, you must remember to put your best arguments in the morning. It is said that Sir Owen Dixon, when still at the Bar, would often play one member of the High Court off against another. In *Afternoon Light*, Sir Robert Menzies says that 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 "which chilled [Menzies'] blood" and said 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. Sir Douglas Menzies said that Dixon would with diabolical skill set one judge against another in dialectical combat in the course of persuading the majority to decide in his favour. Viscount Haldane was another who is said to have displayed a Machiavellian skill in manipulative advocacy. In his autobiography he said —

"I knew the judges in the House of Lords and Privy Council so well that I could follow the working of their individual minds. If, for example, Lord Watson, who was by no means a silent judge but who was a man of immense power, started off by being against me, I would turn around to some colleague of his on whose opinion I knew he did not set much weight, and who would be sure merely to echo what Lord Watson had just said. By devoting myself to the judge who had merely repeated Lord Watson's point I well knew that I should speedily detach Lord Watson from it and bring him out of his entrenchment."

Again —

"I have sometimes stated the point as it had been decided against my side in the court below before the tribunal could realise on which side I was arguing. I have done this when I saw that they were in an obstinate mood, with fairness, but with the result that they jumped from sheer combativeness against the proposition of law which I intended in the end to overthrow, and it was then that I gradually disclosed how it was that I was really there to argue the other way. The results were sometimes good."

The advantage of such psychological exercises may have been more apparent in the old days of the High Court when it was possible for Starke J. to say (in *Federal Commissioner of Taxation v. Hoffnung*) that —

"This is an appeal from the Chief Justice, which was argued by this court over nine days, with some occasional assistance from the learned and experienced counsel who appeared for the parties. The evidence was taken and the matter argued before the Chief Justice in two days. This case involves two questions, of no transcendent importance, which are capable of brief statement, and could have been exhaustively argued by the learned counsel in a few hours."

The atmosphere in the High Court is somewhat less abrasive these days. But the court hates being lectured. Counsel who are long-winded, diffuse and prolix risk being chopped off at the knees. On the other hand, a judge who is less certain of his own control of the law, or who is looking over his shoulder at the prospect of appeal, will welcome detailed citation of authority, and the explicit statement of his jurisdictional basis for proceeding. Then again, a magistrate may welcome an argument structured quite differently from that which one would offer to higher courts. Short citation of relevant authority is far more likely to impress a magistrate than a lengthy discussion of a variety of possible arguments.

It is not merely the characteristics of your tribunal of which you must be conscious. Even its location may be significant. A recent arbitration in Hong Kong was conducted in one of that city's leading hotels. The walls were not soundproofed and were somewhat thin. In a bedroom adjoining the hearing room, a voluble Chinese weightlifter conducted a regular gymnastic afternoon liaison with a nymphomaniac Nigerian herbalist. The results were so diverting to the elderly Chinese arbitrator that it was necessary to repeat the argument delivered every afternoon the following morning.

Honesty and integrity are essential. It is always right to be seen to admit wrong and to fail to do so can cause great harm. If a point is bad, give it away. If you have twenty points, differentiate clearly the good from the bad. If you put them all as having equal force, the destruction of one may become the thirteenth stroke of the clock; throwing doubt on all that has gone before. Never mislead a court either as to the facts or the law. If you are unopposed cite to the tribunal those cases which contradict your argument. Never cite a minority judgment without so de-

It is always right to be seen to admit wrong and to fail to do so can cause great harm. If a point is bad, give it away.

scribing it. Your effectiveness as an advocate will depend to a considerable extent on the reputation you build for integrity. The Australian legal community is small enough for judges and opponents rapidly to learn and remember those who are honest and to keep a black book with the names writ large of those who are not.

One of the highest achievements of the advocate is to make the court believe that the argument by which the case is to be won is the court's own. If the tribunal can be persuaded that the argument is the court's own idea, it will usually find it irresistible.

Let me now contrast an entirely different school, the practitioners of aversion therapy, one of the most charismatic of which was R.P. Meagher Q.C. (as he then was) of the New South Wales Bar. Meagher, on one occasion delivered a paper on the scope and limitations of legal practice courses, to a conference in Hong Kong which was attended by a large audience, most of whom were academics. In the course of his paper, the following comments were included —

"In the whole of Australia, for example, there are only one or two academic teachers of any real value in real property, in contracts or in torts; yet there are about 17 law schools. One finds a number of Universities without a single member of staff capable of teaching equity. There are, to be sure, multitudes of academic homunculi who scribble and prattle relentlessly about such non-subjects are criminology, bail, poverty, consumerism, computers and racism. These may be dismissed from calculation. They possess neither practical skills nor legal learning. They are failed sociologists. So one has a shortage of teachers to impart legal doctrine. Who, then, is left to teach practical skills? The depressing answer is: nobody of merit."

R.P. Meagher (now J.A.) has taken with him the same approach to the Bench. In a recent appeal his Honour's reasons for judgment commenced "Notwithstanding the arguments of counsel for the appellant, this appeal must succeed". But then Meagher J.A. is simply gilding the legal literature to which F.E. Smith and the first Lord Russell of Killowen contributed so much. It is said of F.E. Smith that —

"His worst insults were reserved for Judge Willis, a worthy, sanctimonious County Court judge, full of kindness expressed in a patronising manner. F.E. had been briefed for a tramway company which had been sued for damages for injuries to a boy who had been run over. The plaintiff's case was that blindness had set in as a result of the accident. The judge was deeply moved. "Poor boy, poor boy", he said. "Blind. Put him on a chair so that the jury can see him."
F.E. Smith said coldly: "Perhaps your Honour would like to have the boy passed round the jury box."
"That is a most improper remark", said Judge Willis angrily. "It was provoked", said F.E. "by a most improper suggestion."
There was heavy pause, and the judge continued, "Mr. Smith, have you heard of a saying by Bacon — the great Bacon — that youth and discretion are ill-wed companions?"
"Indeed I have, your Honour; and has your Honour ever heard of a saying by Bacon — the great Bacon — that a much-talking judge is like an ill-timed cymbal?"
The judge replied furiously, "You are extremely offensive, young man"; And F.E. added to his previous lapses by saying: "As a matter of fact we both are; the only difference between us is that I am trying to be and you can't help it."

But perhaps the best example of the style you may find it convenient to avoid when conferring with solicitors, or even when addressing the bench, is Lord Russell. On one occasion, a gentleman came to see him about a reference for a position. Russell's clerk required him to put his request in writing, after which he was ushered in. The conversation went as follows —

Visitor: "How do you do, Sir Charles? I think I had the honour of meeting you with Lord X at . . ."
Russell: "What do you want?"
Visitor: "Well, Sir Charles, I have endeavoured to state in the letter which I . . ."
Russell (talking up the letter): "Yes, I have your letter, and you write a very slovenly hand."
Visitor "The fact is, Sir Charles, I wrote that letter in a hurry in your waiting-room."
Russell: "Not at all, not at all; you had plenty of time to write a legible note. No, you are careless. Well, go on."
Visitor: "Well, Sir Charles, a vacancy has occurred in . . ."
Russell: "And you are very untidy in your appearance . . ."
Visitor: "Well, I was travelling all night. I only arrived in London this morning."
Russell: "Nonsense, you have had plenty of time to make yourself tidy. No, you are naturally careless about your appearance. Go on."
Visitor: "Well, Sir Charles, this vacancy has occurred, and Y asked me to see you . . ."
Russell: "And you are very fat."
Visitor: "Well, Sir Charles, I am afraid that is hereditary. My father was very fat . . ."

Russell: "Not at all. I knew your father well. He wasn't fat. It is laziness."

The Irish traditions have not entirely disappeared from the Australian, certainly not from the Melbourne, Bar. Tom Doyle who died in 1961 was on one occasion cross-examining a new Australian. He had driven him into a corner and, moving in for the kill, asked:

"If that is so, then why did you say this to the plaintiff?" The witness cowered back into the box and said: "I no answer da quest". Doyle leaned forward and said: "If you no answer da quest, da judge, he make for you plenty of trub!" He then turned to the judge and said: "I must apologise to your Honour for parading my linguistic abilities in this way". The judge replied: "That is quite alright, Mr. Doyle, you said exactly what I was about to say myself."

To the graduating readers, may I say this —

You are about to embark on the most fulfilling, stimulating and exciting career. It will overwhelm you with its variety, its idealism and its demands. Your obligation, in turn, is to commit the hard work and the time to make yourself the best-equipped advocate to the very limit of your capabilities. But a final caution. Sir John Simon once said that the public regard the lawyer "as an unprincipled wretch, who is constantly engaged in the unscrupulous distortion of the truth by methods entirely discreditable and for rewards grotesquely exaggerated". The public opinion of lawyers may have been captured in the following verse —

"The law the lawyers know about is property and land;
but why the leaves are on the trees,
and why the waves disturb the seas,
why honey is the food of bees,
why horses have such tender knees,
why winters come when rivers freeze,
why faith is more than what one sees,
and hope survives the word disease,
and charity is more than these,
they do not understand."

One adjective constantly applied to barristers is arrogant — by clients, by solicitors, the public and by governments. And many barristers appear to be. That very search for excellence, the insistence upon independence, contribute to the reputation. Often the appearance is merely a camouflage of nervousness or ignorance or uncertainty. But arrogance is not attractive. What is the relevance of all this to advocacy? Arrogance, the disdain for another's views, contributes nothing to an understanding of those views and may end by impeding that process of communication and persuasion which is the advocate's critical obligation and overwhelming satisfaction; and the advocate's survival will depend not only on the guarantee of first-class service to the client but also on the continuing willingness of the public to brief the advocate.

SHOULD LAW SCHOOLS PRODUCE LAWYERS?

by Gerard Nash Q.C.

PREJUDICES

This paper is premised on the following assumptions, not all of which may be shared by the reader.

(1) The primary function of Australian law schools is to produce lawyers.
(2) A person who knows nothing of the practice of law is not a lawyer.
(3) The LL.B. graduate should be an embryo lawyer, not an academic ovum awaiting fertilisation in the test tube of experience.

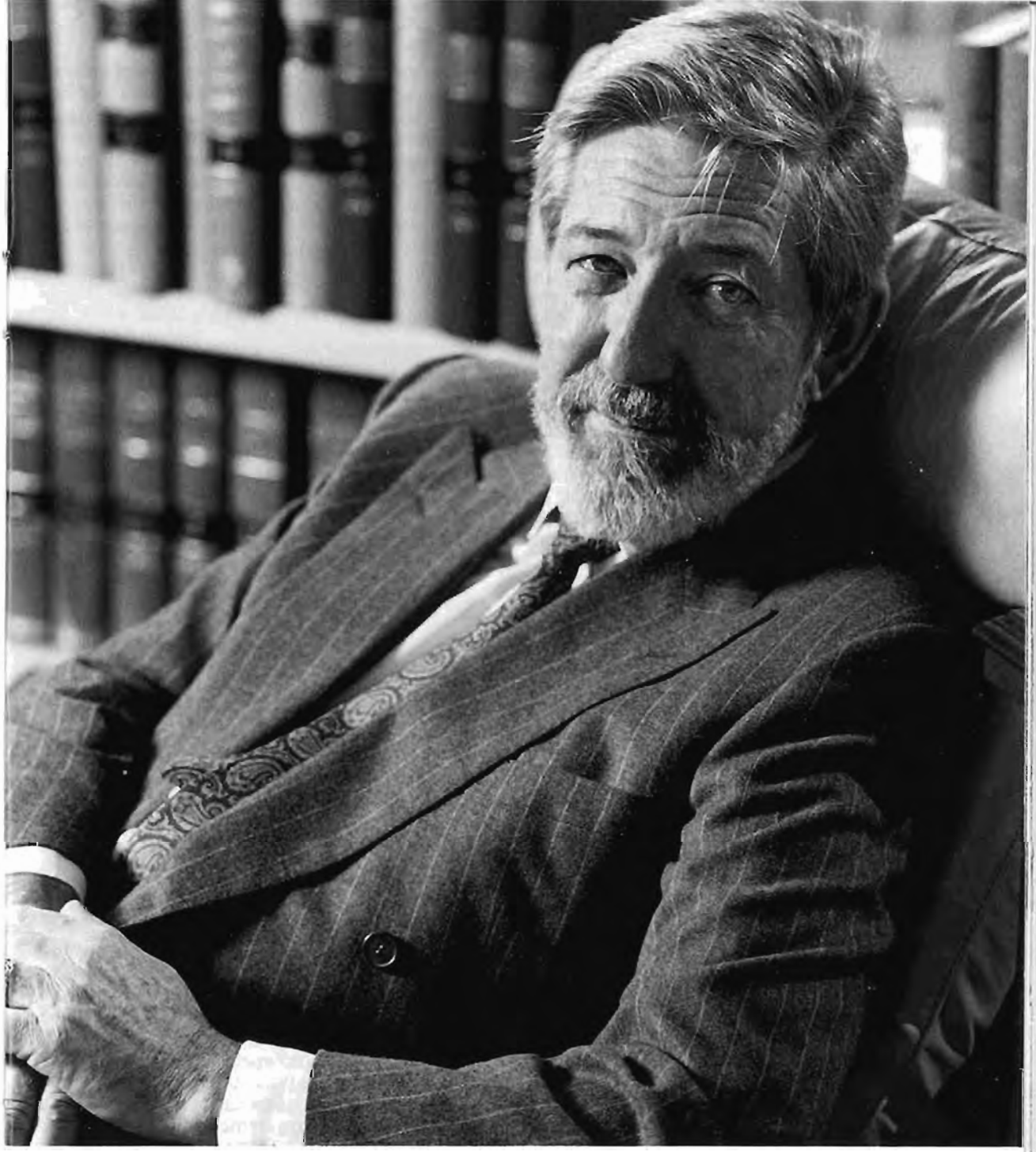
A LAWYER?

Essentially a lawyer is a person with a knowledge and understanding of the theory and practice by which the rules of our society are implemented, and who applies that knowledge and understanding to advise and assist those who do not have the necessary skills or understanding.

His or her talents may be used to protect the individual against governmental oppression; to enable the wealthy client to better use his wealth to become wealthier; to assist the indigent to obtain social welfare payments in accordance with the relevant rules, or to avoid liability for existing debts where the rules permit of such avoidance. His or her talents may be applied to the defence of those accused of crime to ensure that (whether guilty or innocent) they are tried according to law and are convicted only on evidence properly before the court which establishes their guilt in accordance with the existing rules.

Some lawyers may use their talents solely for the purposes of scholarship and teaching. In the last half century, in this country, we have come to describe those lawyers as "academics". They, in turn, refer to those of us who do not so use our talents as "practitioners".

This distinction between practitioner and aca-



demic is not only unnecessary. It is divisive and highly undesirable; and it is destructive of our capacity to educate the law student; it hampers the efficiency both of teacher and of practitioner.

THE COLONIAL LAW SCHOOLS

As is pointed out in the Australasian Universities Law Schools Association Report on Legal Education in Australian Universities,[1] university legal education in this country developed originally not as a separate academic discipline but as courses of study providing the basic qualification for practice.

"The fledgling professions in each colony were not sufficiently strong or well organised to provide their own courses of training for legal practice such as the profession provided in England

. . . The degrees in law which [the University of Melbourne from 1957 and the University of Sydney from 1959] provided were accepted by the profession as the basic qualification for practice. As a result, the emphasis of legal education in Australian universities during their formative days was to supply professionally-trained practitioners from colonial stock".[2]

Until after World War II most lecturers in the law schools were practitioners who taught on a part-time basis. Melbourne Law School, for example, which in 1939 was the second largest law school in Australia, had two professors on its staff in 1939. When in 1940 an additional full time lecturer was appointed, it was considered a major development.[3]

At that time, the majority of our law teachers were concerned with the law in practice. Teaching was concerned with exposition of basic principles and a discussion of how those principles in fact operated. Although analysis of theory may not have been as complete nor as scholarly as is now the norm, the university did provide students with a practical understanding of the functioning of the law.

Prior to World War II a very large percentage of lawyers took their degrees or studied their law subjects at the same time as they served articles of clerkship. The practical and academic learning processes ran side by side. For these students there were no "stages" of legal education. The theory which was canvassed at lectures in the morning or evening was often applied to the problems of clients during the balance of the working day.

There were, of course, disadvantages. Students who studied part-time found that the problems of the office and of clients distracted them from their theoretical studies. They did not have the benefit of discussions in law libraries and (in those days before the case book and the photocopiers) often found it difficult to find the time to read the cases in the law reports.

THE OXBRIDGE INVASION

Since World War II the number of students serving their apprenticeship and studying for their law degrees at the same time has declined. At the same time, with the implementation of the Martin Report,[4] the number of law teachers expanded dramatically as did the facilities available in the law schools.

The law schools changed from a small group of lawyer academics assisted by a great number of practitioner teachers to a large group of lawyer academics with a decreasing input from the practising profession. In time — a very short time — the lawyer academics became academics who happened to be lawyers.

The Australian law schools now contain a large and erudite group of legal academics and scholars who provide 90 per cent or more of the input into undergraduate education in law. By reason of the size of the academic community they are not seen, and do not see themselves, as being an integral part of the profession in the way in which their predecessors of the 1930s, the 1940s or the 1950s saw themselves.

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The expansion of university law schools which followed the Martin Report gave the law schools the academic foundation and substance which they required; but the same process created a division between practitioner and academic which had not previously existed in Australia.

For no good reason, and to the detriment of the legal profession as a whole, the academic profession has been carved out of the body of lawyers as a separate and distinct group of people, largely having different perspectives and different values from those of the practitioner. This has reduced the insight of law schools and of law students into the nature of practice, and it has deprived the practitioner of the benefits of the more leisurely, more scholarly and less prag-

matic analysis which could assist him in his day-to-day activities.

This separation of practice from theory has been exacerbated by the establishment of new law schools located a considerable distance from the major city centres. This has reduced the accessibility of the practising profession to the academics and of the academics to the practitioner, reducing contact and interaction.

The growth in the number of full-time academic staff has had a number of effects.

(a) The general scholarly content of law subjects has improved;
(b) Practical insight has disappeared from most law subjects;
(c) Most teachers have post-graduate qualifications from overseas universities — Oxford, Cambridge, London, Harvard, Yale, Michigan — , although post-graduate qualifications from an Australian university have recently become more common;
(d) Most law teachers have little or no experience of practice;
(e) The size of the legal academic community and the size of the staff of individual law schools is such as to provide a self-contained professional community separate and distinct from the practising profession;
(f) There has developed a tendency amongst university law teachers to under-estimate the importance of a knowledge of what happens in practice to an understanding of the meaning and impact of case law and statute.

STAGES OF EDUCATION AND THE NEW ACADEMIES OF PRACTICAL TRAINING

Today we have a clear two-stage (or three-stage) approach to what should be a continuum of education.

The academics teach theory and develop in the student the academic and intellectual skills which are required in practice (the "first stage" of legal education). The "practical skills" and the insight into the reality of law are left until after graduation.

Until the 1970s, the would-be lawyer, after graduation, entered into a period of apprenticeship in which practical experience was expected to fertilise the theory and to transform the graduate into not an embryo lawyer but a lawyer who was fully functional and effective. This was seen as the "second stage" of legal education.

In the 1970s for a number of reasons (not unassociated with cost effectiveness and the disparate standard of articles of clerkship) practical training courses were established on an institutional basis either to supplement or to replace apprenticeship training.

This "practical training" (from which live clients are noticeably absent) has become the "second stage" of legal education. During the practical training course, the graduate acquires certain "practical skills", and thereby (in theory) becomes an embryo lawyer. After a short period of service as an employee solicitor ("the third stage" of legal education) he or she is expected to emerge from the womb, fully fledged and mature.

The practical training courses are specifically designed not to teach theory. Somewhat anomalously they do in fact teach the theory of practice, rather than the practice of law.

The division of legal education into stages is arbitrary, unnecessary and confusing. It confuses our aims. It bores the student. It sanctifies a division within the legal profession which should be abolished. It makes it harder for the student to learn his theory or to understand practice; it requires him to go from the equivalent of the economist's model with only one variable to the realities of a world where multiple variables are the norm.

WHY CAN'T THE LAWYERS?

The law in practice bears the same resemblance to the law in the law reports (and as canvassed in the newspapers and even the text books) as does the tip of an iceberg to the great mass which floats below the surface. It is made of the same stuff; but it is not visible in the reports and its exact extent, characteristics and shape are unknown to the reader.

Most law courses with which I am familiar are concerned with the visible part of the iceberg, not with the 80 per cent which makes up the vast bulk of the lawyer's work in practice.[5]

The practice of law is primarily concerned with people, facts and files. That practice is, of course, conducted against a background of legislation and in the context of basic common law principles, which principles are subject to continual modification; and the lawyer needs to have a thorough grasp of theory. It is important that he or she understands not only the basic principles of the law but also the process by which those principles are modified, expanded and delimited. At the present time our university law schools provide him (or her) with an understanding of theory which is at a very high level.

However, by reason of the way in which our law courses are presently taught (at least those with which I have any familiarity) that theory is not put into a context of fact and operation. The analysis of principles takes place in the context of interpretation and analysis of appellate court judgments or of rulings on the law at first instance. It is a course built around materials which form part of the stuff of the practice of an appellate court litigator.

Most lawyers are not litigators; still less are they concerned to argue in the High Court the appropriateness or otherwise of following a particular line of authority (in relation to, for example, excessive force used in self-defence). They are dispute avoiders; they are facilitators. Yet the student is given little or no insight into the role of the lawyer as a dispute avoider — as one who helps the client to arrange his affairs so that litigation does not ensue.

Most lawyers are not litigators; still less are they concerned to argue in the High Court the appropriateness or otherwise of following a particular line of authority (in relation to, for example, excessive force used in self-defence). They are dispute avoiders; they are facilitators.

Even in relation to litigation, the orthodox law course provides little insight into practice. It does not deal with any of the problems which arise from the following:

(a) those cases which involve litigation are ultimately determined by the evidence and the trial judge's findings of fact rather than by an analysis of the outer fringes of the law;
(b) the trial judge's finding of fact will depend upon the admissible evidence which each of the parties has available to place before the court;
(c) it is not merely the existence of admissible evidence but also the credibility of the witnesses who give the evidence, or of the documents from which the evidence is derived, that will determine the finding of fact;
(d) the practice of law is concerned with people and the way in which facts impinge upon them rather than about the impact of law on facts;
(e) clients do not necessarily tell their lawyers the truth, nor, even when the clients speak the truth, do the courts necessarily accept that what they say is the truth;
(f) the provision of competent advice or the conduct of successful litigation involves questions of judgment, organisation, and factual analysis as well as an understanding of the relevant law.

Unless a student appreciates each of these matters, his or her understanding of the law is developed out of context and with no true appreciation of the role which the law plays in the everyday life of the lawyer, still less an understanding of what is the lawyer's role in society.

It is only after the law student graduates from the traditional law course that he has an opportunity — or that he is required — to digest facts and to exercise judgment. During his undergraduate course all we require of him is legal analysis.

Certainly the lawyer must have the capacity for legal analysis; but of what use to the client is legal analysis in litigation where the only issue between the parties is as to who is telling the truth? Of what use to the client seeking advice in respect of an intended transaction is legal analysis, unless it can be applied constructively to establish a factual situation in which, if any dispute arises, the client will be in a position to prevail?

The implicit assumption throughout the law course is that practical skills will somehow be inculcated or acquired after graduation, that it is not appropriate to teach them in a university law school.

The community is fortunate that our science departments and medical schools adopt a more humble approach. Ours is probably the only profession which insists that students learn all their theory before we let them into the laboratory.

"Med students learn dissection;
Engineering bods erection;
In B.Ed. they teach classes;
But law students get passes
Studying theory with style
Without client, fact or file
Oh why can't the lawyers
Teach their students how to . . . ".

A client who wishes his affairs to be arranged in order to achieve a particular result requires advice as to the law, but he also requires advice as to the facts which will bring him within the ambit of a particular rule of law.

Advice to the client must be given, transactions must be arranged and litigation must be conducted in the context of the circumstances in which the client finds himself. Regard must be had to the bargaining position of the client, his asset position, the cost of a particular course of conduct, the importance of the particular matter to the client's overall financial or personal affairs, and to whether the client can afford to lose.

To teach theory and practice at the same time and in the one institution was, and is, the logical method of replacing or supplementing articles. It is in accord with our colonial history and it corresponds with the approach taken by the former colonials in the United States.

It is highly desirable that at as early a stage as possible the student should see that the law operates within a matrix of facts and that, unlike the analysis which appears to take place in appellate court judgments, that matrix of facts has to be determined in the light of human foibles and on the basis of evidence and credibility.

The dichotomy between theory and practice which we have adopted from the United Kingdom has not been adopted in North America. The lawyers of the United States find no need for a system of post-graduate practical training whether by apprenticeship or institutional training; but they feed into their law courses and into particular aspects of their law courses a practical component.

Medical students, in the closing years of their course, work in casualty departments of large hospitals. They see that the doctor's role is diagnosis and treatment of problems which are not pre-digested. They are forced to be party to decision-making and the exercise of judgment in relation to practical matters, most of which have no high theory behind them; but most of which require action — and appropriate action — if the patient is not to suffer a range of penalties ranging from mere discomfort to death.

THE ROLE OF THE LAW SCHOOL

It is regrettable that with the decline in enthusiasm for articles we did not, instead of creating new forms of institutional training, decide to feed the practical component back into our university law courses.

To teach theory and practice at the same time and in the one institution was, and is, the logical method of replacing or supplementing articles. It is in accord with our colonial history and it corresponds with the approach taken by the former colonials in the United States.

Such an approach was not adopted, possibly because it would have required a departure from our newly found Oxbridge tradition. It would have meant that the nature of our university law courses would change; it might have meant that some of our academics would need re-training. It might have meant that we must distinguish a B.A. in law from the LL.B. degree. There might have developed two streams in our law schools or two different categories of law school.

These were not, and are not, insuperable problems. They are problems which can, and should, be overcome in the interests of the legal profession, the students and the academics.

In an ideal world, I would introduce practical content into each relevant law subject and also establish a mandatory clinical programme.

The form of the practical content in individual subjects would, of course, vary with the subject. Obvious examples can be formulated, such as drafting tutorials and drafting exercises in Civil Procedure (as used to be the case at Monash); drafting tutorials and drafting exercises in conveyancing (as used to be the case at Melbourne); the taking of witness statements, negotiating exercises and advice on evidence in Torts; programmes involving commercial planning decisions in Company Law and Contract; and the taking of instructions from a client in any subject.

In addition to adding practical content in each subject, I would introduce a clinical programme. There are at least two ways of implementing a clinical programme. One, which is very popular in the United States, is the clinical programme attached to a particular subject, i.e. a clinical programme in Family Law or in Administrative Law or Criminal Law. The other is the type of clinical programme that has existed at Monash since 1975.

If practical content can be otherwise introduced into the individual subjects, I would prefer the Monash-type clinical programme, where students deal with real clients and real problems across a range of subjects without the problems coming in nice pre-packaged categories.

In a clinical programme students learn about people, facts and files. These are what the practice of law is about. It is, of course, also necessary to understand the relevant legal principles and to be able to decide on which side of the line a particular set of facts — once those facts have been ascertained — will fall.

The clinical programme in a university law

school should be designed to provide an input of facts, an input of responsibility, an input of "people skills"; to provide an understanding that the academic answer may well be useless as a solution to the client's problem; and to develop the skills involved in taking instructions, negotiating, keeping file notes, keeping to deadlines etc.

I would also seek legislation to permit students in the clinical programme in their final year to appear in small matters (criminal and civil) in the Magistrates' Court.

It is vital to the future of the legal profession and the standing of our law schools in the profession that steps be implemented now to introduce a greater practical component into the LL.B. degree.

Even if the ideal cannot be achieved immediately, it is vital to the future of the legal profession and the standing of our law schools in the profession that steps be implemented now to introduce a greater practical component into the LL.B. degree.

I appreciate the difficulties which this may cause for those who teach Contracts but have never practised, or who teach Criminal Law without ever having appeared in a Magistrates' Court or before a jury. The fact that it poses problems, however, is in one sense a reason why it must be done.

It may be that, in the short term, members of the full-time practising profession will need to provide a great deal of input. In the long term, however, it is to be hoped that those members of the profession who teach in the law schools will in fact practise at least in that area of the law in which they teach.

THE COMPLEAT LAW DEGREE

If our law schools are not primarily in the business of general liberal education, but are primarily in the business of producing lawyers, then it is embryo lawyers not academic ova which should emerge at the end of the LL.B. degree.

If our law courses contained more practical content, if our academics had more practical experience or if that practical experience could be provided by adjunct teachers, there would seem to be no reason in the closing decade of the 20th century why a law degree with the requisite content should not be the only prerequisite to the practice of law.

I realise that not all law graduates will wish to practise and not all law graduates will wish to study the subjects which the profession may regard as essential to admission to practice. The law schools — as educational institutions — should not be prevented from handing out degrees to people who have not complied with the requirements of the profession for admission to practice. Those degrees should, however, be distinguishable from those which qualify a graduate for practice.

In England, where education for the profession historically lay with the profession, university law courses were established not with a view to producing lawyers but with a view to producing people who understood the theory of law, educated gentlemen, jurists or legal philosophers; people who understood the rule of law and the content of the rule of law.

There is no reason why there should not be such law courses in Australia — law courses which provide a B.Juris. degree or a B.A. (Law) — which do not purport to fit their graduates for the practice of a profession but do purport to teach them to think, to analyse and understand a particular branch of learning.

There is no reason why a law school should not abdicate the responsibility for training legal practitioners and pursue some other aim as its primary aim. Such a law school should, however, explicitly disavow the education of legal practitioners as its primary aim.

To preach professionalism is not to denigrate the educational role of the law degree; it is to suggest that the person who has completed his university education has the degree of technical competence which is expected of an embryo lawyer.

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1 July 1977.
2 Report on Legal Education in Australian Universities p.1.
3 See ibid p.3.
4 Committee on the Future of Tertiary Education in Australia, Report, 1964.
5 For a summary exposition of the difference between "Law as Tort and Law as Practised", see Megarry (1967) Sol.J. 730.

THE CORPORATIONS LAW: A QUESTION OF NATIONAL INTEREST OR POLITICAL EGO?

by Tony Greenwood and Gail Owen

ON 1ST JANUARY, 1991 THE CORPORations Law became effective giving Australia its first truly national corporate regulatory scheme.

While the concept of national legislation was hailed by many as long overdue the introduction of the Corporations Law on 1st January was not greeted with great enthusiasm, particularly by lawyers. The Business Law Section of the Law Council, the Commercial Law Section of the Law Institute and, in the final weeks, some of the financial press had pressed the various governments to delay implementation — but the pleas fell on deaf ears and "in the national interest" the legislation proceeded.

The history of our new national system was somewhat checkered. Initially, when the Commonwealth determined to press ahead with national legislation without the support of the States, it struck a constitutional hurdle in the form of the High Court. As a result of the High Court's decision the legislation was reviewed and the Standing Committee of Attorneys-General (under the acronym SCAGs) entered into meaningful discussions on the pros and cons of the national interest and less significant matters such as finance. A bargain was finally struck at a meeting held in Alice Springs in June, 1990.

Originally it had been envisaged that the national scheme would have been in place by 1st July, 1990, but during May and June of that year it became apparent that this date was impossible and in announcing the SCAGs agreement a new date for implementation was set — 1st January, 1991. Although it was not then apparent, the die had been cast and political egos were on the line.

The legal fraternity and the business community waited for the legislation to appear — and waited and waited.

The Corporations Legislation Amendment Bill 1990 was finally released on 8th November, 1990. To say "released" is perhaps to use poetic licence as, although the Bill was introduced into the House of Representatives on that day, it was not generally available from the Government Printer or the Papers Offices until some days later. Initially copies could only be obtained, at some considerable expense, through a private monitoring service.

The amending Bill comprised some 300 pages and made numerous amendments, some minor, some major. No consolidation was available and task of vetting the changes could only be described as mammoth.

It soon became apparent that both the *Corporations Act* 1989 and the amending legislation were defective and that there would be no opportunity to consider properly the numerous further amendments which ought to be made to ensure that the new scheme would proceed effectively and efficiently. The regulations had not then been drafted, let alone become available for perusal, and it was apparent that they would be likely to contain further pitfalls. At the same time it became increasingly apparent that the necessary bureaucratic structures (both in terms of personnel and premises) were not likely to be in place in time. This difficulty was exacerbated by Western Australia baulking at the last moment.

In response to these concerns members of the Commercial Law Section of the Law Institute wrote to and waited upon the Victorian Attorney-General and contacted the Federal Attorney-General, the Victorian Shadow Attorney-General and Peter Costello. These communications expressed concern at the unholy haste with which the changes were being made in circumstances which made proper consideration of important and far reaching changes farcical and requested deferral of implementation of the proposed law. A number of apparent errors in the drafting of the Corporations Law as amended by the Bill were pointed out as examples of the defects which needed to be remedied prior to the

legislation proceeding. For example:

- ☐ a person who controls 20% of the shares of a company is deemed to have a relevant interest in shares held by any of that company's directors (section 33);
- ☐ many commercial documents may have their meaning and effect changed by the automatic substitution of references to the Corporations Law for references to former legislation (section 80);
- ☐ failure to incorporate the Australian Company Number correctly into a common seal may enable a company to disavow a sealed instrument (section 219);
- ☐ a primary producer co-operative company incorporated under the Corporations Law will be denied the right to ascertain whether its shares are being acquired by stealth by non-producers (section 717);
- ☐ substantial shareholders who have complied with the Companies Code may never need to lodge a substantial shareholder notice under the Corporations Law (section 758);
- ☐ private business trading trusts established as unit trusts which issue further units will require a prospectus and approved deed and are deemed to have public unit trust provisions incorporated into their trust deeds (section 1069) [this was subsequently "reversed" by regulation 7.12.04];
- ☐ a number of translations of "Act" to "Law" were not effected.

While it was acknowledged that legislative changes would need to be made throughout the course of 1991, it is fair to say that all such pleas fell on deaf ears — we were advised that it was in the national interest for the legislation to proceed on 1st January, 1991. Perhaps we were naive, but at all times we believed the national interest was best served by bringing in legislation which could be readily understood by lawyers and the business community and would stand comparison with other landmarks of statutory company law over the previous one hundred and fifty years.

On 21st November the Institute sought the assistance of the media, making a press release quoting, amongst other things, part of its letter to the Attorney-General likening the rush to commencement of the legislation to the charge of the Light Brigade and regretting Victoria's lead on the basis that "the effort, while heroic, [would] have the inevitable result".

The media's response to the press release was mixed and somewhat disappointing — perhaps the legal profession should expect no better — and a number of press reports suggested the lawyers were too late and too obstructionist.

As barristers may be wont to observe, Victorian solicitors sometimes appear to enjoy bashing their collective heads on brick walls and persist we did with further press releases, correspondence and visits to politicians. We were rewarded in December by a distinct turning of the tide of opinion as the financial press gradually came to the conclusion that there were serious defects in the legislation which ought to be addressed prior to its implementation.

In mid-December the Senate referred the matter to its Standing Committee on Legal and Constitutional Affairs and it was announced that a public hearing would be held. Our initial efforts to be permitted to appear at that hearing were rebuffed. It appeared that the public hearing would only last a few hours and was to be held privately — there were to be two submissions — from the Law Council and Mr. Hartnell. However, again persistence paid off and through the good offices of Senator Barney Cooney we were given a time slot.

Although the result was probably inevitable Tony Greenwood flew to Canberra in a last ditch effort to bring some sense to bear on the debate. The Law Council of Australia and the Business Council of Australia (which was also given last minute rights to appear) appeared at the Committee hearing — the former suggested that a deferral should be considered, although not in the strong terms we would have liked to hear. The Institute framed its proposal on the basis that legislation should not commence operation until adopted by all Australian jurisdictions. This was regarded by the Minister as totally unacceptable. However, the point was not lost on Western Australia, which ultimately bowed to the pressure and adopted the legislative scheme. The format of the Committee hearing resembled a round table discussion between each of the parties, and this proved a useful means of conducting this forum.

As is frequently the case the inevitable occurred and we are living with the consequences. From the lawyers' point of view the implementation of the legislation has provided some work, although it is fair to say that uncertainties in the legislation have resulted in other work (such as share issues) not proceeding. Defects in the legislation are in some respects so startling that only retrospective legislation to cure them will be satisfactory.

At the end of the day the lesson to be learnt is that tight reasoning and logic may win a court case but are of limited use in the political arena once a government agenda has been set. Parliament is no longer a forum for detailed improvements to technical legislation and the community should insist upon a lengthy gestation process for far reaching and complex legislation

(of which the company and securities legislation is an example) proceeding from discussion paper to policy paper to draft legislation for critique before a Bill is introduced into either House. If the legislation is to be integrated with regulations to secure its proper operation, both should be available simultaneously. That the shape of prospectus law was not known until *after* major listed companies had been obliged to comply with it over a critical period in January is a situation that we hope will never be repeated.

THE CORPORATIONS LAW

The following is taken from the new Law.

"Location of other interpretation provisions

7 (1) [Location of interpretation provisions] Most of the interpretation provisions for this Law are in this Part.

[subs (1) am Act 110 of 1990 Sch 2]

7 (2) [Interpretation in Chapters 6, 7 and 8] However, interpretation provisions relevant only to Chapters 6, 7 and 8, respectively, are to be found at the beginning of those Chapters.

7 (3) [Interpretation of Part, Division, Subdivision] Also, interpretation provisions relevant to a particular Part, Division or Subdivision may be found at the beginning of that Part, Division or Subdivision.

7 (4) [Interpretation of individual section] Occasionally, an individual section contains its own interpretation provisions, not necessarily at the beginning."

THE ROYAL COMMISSION INTO THE TRICONTINENTAL GROUP OF COMPANIES

THE ROYAL COMMISSION INTO THE Tricontinental Group of Companies commenced on 7 September 1990 when letters patent to the Honourable Sir Albert Edward Woodward OBE Q.C., Douglas Gilbert Williamson RFD Q.C. and William Patrick Gurry Esq. were issued. After political controversy surrounding the appointment of Mr. Gurry he was replaced by John Carden Esq. on 26 October 1990. The letters patent also invested the Royal Commissioners with powers as investigators under the National Companies and Securities legislation. The Royal Commissioners are therefore empowered to go beyond the jurisdiction of Victoria to, for example, compel production of documents and to conduct investigations into companies within the Tricontinental group. The Royal Commissioners have very broad powers indeed.

The Royal Commissioners sat to take applications for leave to appear on 4 December 1990. A cast of thousands makes its way from various of the bar buildings down to King Street each day. Crennan Q.C., Sutherland and Tony Howard appear as Counsel assisting the Royal Commissioners. Goldberg Q.C., Hargraves and Marks appear for the auditors of Trico, KMPG Pete Marwick, O'Callaghan Q.C. and Maxwell appear for Tricontinental. Middleton and S. Anderson appear for various of the directors and employees of Tricontinental and the State Bank. Shatin and J. & D. Beach appear for the Commonwealth Bank and Perton and Sandbach appear for Liberal politicians Brown and Stockdale.

After leave was granted to various of these parties to appear the hearing of the matter was adjourned to 14 January 1991 and the Commission has been sitting ever since.

Crennan Q.C. opened by examining all the published accounts and annual returns of the Tricontinental group of companies. After that, the Commissioners commenced to take evidence from the directors of the State Bank and from Tricontinental. This process is continuing at the moment. The Managing Director of Tricontinental, Mr. Johns, is yet to give evidence.

Tricontinental was a merchant bank that was 100% owned by the State Bank of Victoria from 1985 onwards. Prior to 1985 the State Bank had a minority shareholding. Part of the task being performed by the Royal Commission is to examine the acquisition of Tricontinental by the Bank in 1985. The Commissioners are also examining the way in which the State Bank treated Tricontinental since acquisition. The Commission would also be examining the business of Tricontinental, which was principally that of a money lender. It lent monies in a variety of ways principally financing its facilities by accommodation bills of exchange. It also financed by taking security against shares and real estate and it was engaged in project finance.

The Royal Commission is expected to run into next year. By later this year the Commission will be examining the individual transactions engaged in by Tricontinental.

BAR COUNCIL 1991

Members*	Date of Signing Bar Roll
Andrew McINTOSH (Hon. Sec.)	23rd May, 1985
Hartley HANSEN Q.C. (Junior Vice-Chairman)	9th February, 1967
David HARPER Q.C. (Chairman)	1st October, 1970
Andrew KIRKHAM Q.C. (Senior Vice-Chairman)	9th February, 1967
David HABERSBERGER Q.C. (Treasurer)	22nd February, 1973
Robert KENT Q.C.	17th February, 1972
Nicole FEELY	26th May, 1988
John MIDDLETON	13th September, 1979
Tony PAGONE	28th March, 1985
Jack RUSH	2nd September, 1976
Brind WOINARSKI Q.C.	9th April, 1970
Bernard BONGIORNO Q.C.	25th July, 1968
John WINNEKE Q.C.	9th March, 1962
Stewart ANDERSON	26th November, 1987
Joseph TSALANIDIS (Assistant Hon. Sec.)	20th November, 1986
William MARTIN Q.C.	2nd March, 1972
Christopher JESSUP Q.C.	13th February, 1975
Robin BRETT	26th April, 1979
David BEACH	22nd November, 1984

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H — 7555	8409
G — 8558	7341
A — 8444	7798
H — 7555	7463
F — 7777	7377
D — 7999	7176
F — 7777	7280
G — 8558	8448
A — 8444	8931
S — 7333	7726
W — 7888	7801
W — 7888	7770
D — 7999	8117

Seated (L to R) A. McIntosh (Hon Sec), Hartley Hansen Q.C. (Junior Vice-Chairman), David Harper Q.C. (Chairman), Andrew Kirkham Q.C. (Senior Vice-Chairman), David Habersberger Q.C. (Treasurer), Robert Kent Q.C., Nicole Feely.

Standing (L to R) John Middleton, Tony Pagone, Jack Rush, Brind Woinarski Q.C., Bernard Bongiorno Q.C., John Winneke Q.C., Stewart Anderson, Joseph Tsalanidis (Ass't Hon Sec), William Martin Q.C., Christopher Jessup Q.C., Robin Brett, David Beach. Absent Gerard Nash Q.C.

**Listed in order as seated and standing.*

VERBATIM

The Opening of the Legal Year

29 January 1991, 8.45 a.m.:
Intersection of Albert Street and Gisbourne Street outside St Patrick's Cathedral:
His Honour Judge Keon-Cohen, travelling west in Albert Street, was distracted from the task in hand by the spectacle of a convoy of Government cars travelling east carrying a cargo of his brethren and thus failed to notice, until too late, that the cars in front of him had stopped. While engaged in the sorry business of names and addresses His Honour noticed Meldrum Q.C., red bag in hand making his way to St Pat's. H.H. "Hello there Ron! Do you happen to know the name of a good lawyer?"
Meldrum, "No but I'll pray for you!"

Keygrowth Ltd. v. Mitchell and Ors

Coram Nathan J
2 November 1990
Nathan J.

"It's all right, you can tell me in Mr Larkins' absence." J.G. Santamaria "I was going to say that Mr Larkins had left the Bar Table, but I thought it would be unfair to say so in his absence."

Instructions to Counsel (from the client)

14,MANTS AGO I.BUY THIS CAR MY VIFE NOT DRIVER EVREY DAYS SUM TIME SHEE GOING TO HOPPUSCORSING MARKET SHE HEZ FRIST TIME CAR SHEE DAZINT NO GOOD END BAAT CARS 4 MONTS AGO I M DRIVEN FLAMINTON RECORSE RD CAR HEZ FOLTIY BRAKE KANT STOP IM HET FRONT CARS END IM TAKEN IM PAD $477,60. FOR FIX BRAKE AGEN ME EKSED END BRAKE NOT FIX

Say one for me!

PROPLEY 3 TIME BIG AXSED END FORM FOLTIY BRAKE FOLT IM TAKEN CAR AGEN HE SED THIS NORMAL BRAKE NOT VONT TO FIX PROBLE MY VIFE CAR LAST AXCEDENT ME END MY CHILDIRIN VERRIY LAEY NOT DAYN DD DD D FRIST IM PAD SAIM COP. ULTRA TUNE.

$750,	Ultra Tune
$598	
$600	alarm
$477,60	SAIM COP
$750	MY INSURENS UP
$350	i paid panel beaterr firs excedent
$450	next exsedent paid extra insurenes
$ 50	take of alarm
$700	i m missing time take cars panelshop
$4,725,00	PL IM VONT THIS MANI BACK IMIADETLIY OLSA CAR NO GOOD ENIY MORE MY VIFE SCERING TO DRIVER THIS CARS OLSA 3 TIME EXSED END DEN CAR NO GOOD LIKE BIFORE ?????????

Manning v. Della Riva & Associates Pty Ltd

Coram Judge Russell Lewis
21st February 1991
Jens for Plaintiff

Jens: (leading wife of the plaintiff through her evidence) And the poof, you got one because of his leg.
Wife: Yes
Jens: And does the poof help.
Wife: Yes, I put the poof on the couch and my husband puts his leg over, the higher the better.

Magistrates' Court, Frankston

Southey: "Your Worship, there seems to be a slight conflict of interest. I have just discovered my client is also charged with the burglary of my parents' home!"
After much laughter, there was the following response.
Mr. Golden: "Do you want him executed?"

The application was adjourned, to be made by someone else!

Our own Len Flanagan Q.C. has just been appointed the Northern Territory's first DPP At the time he took up his position in Darwin in January this year, a gay and lesbian Mardi Gras was being arranged for February. That festival is something that one would think Flanagan would have no interest in. But he was forced to. A telephone number for the coordination of the Mardi Gras was distributed amongst interested parties. By accident or design that telephone number was the DPP's. After taking a number of unusual calls which surprised him no doubt, his first official duty in his new position was an internal investigation into how the DPP's number came to be given as the coordinator. The results are not known, but the Festival was said to have been a success.

MOUTHPIECE

AN ACCOUNT OF A BARRISTER'S telephone call to a smallish suburban solicitor.

Ring, ring, ring, ring, ring, ring, ring, ring, ring, ring, ring, burrrrrrrr . . .

Ring, ring, ring, ring, ring, ring

"Fibb, Lye, Falls, Hood, hold the line please."

Ring, ring, ring, ring, . . .

"This is the legal office of Fibb, Lye, Falls, Hood, Legal Consultants and General Counsel. Our receptioniste is temporarily occupied. Your call has been placed in a queue and you will be attended to shortly. In the meantime, you may care to listen to the services offered by our highly skilled and experienced solicitors. We . . ."

Bzzzzz . . . ring, ring, ring

"Fibb, Lye, Falls, Hood, hold the line please."

Ring, ring, ring, ring

"This is the . . ." bzzzz

"Fibb, Lye, Falls, Hood, good morning, err good afternoon, hold the line please."

Ring, ring, ring

"Good afternoon, Fibb. Lye, Falls, Hood may I help you?"

"Who shall I say is . . . hold the line please."

Bzzzzzzzzzzzz

"You there?"

"Who shall I say is speaking?"

"How do you spell that?"

"Jay, Oh, Aye, En, Ess?"

"Jay, Oh, Haitch, En would you hold the line please?"

Ring, ring, ring, ring

"You there Mr James?"

"Sorry Miss Jones! I'll put you through now."

Ring, ring, ring, ring, ring, ring, ring

"This is the legal offices of Fibb, Lye . . ."

"Fibb, Lye, Falls, Hood, hold the line please."

"May I help you."

"I am sorry, I'll try them again. Who shall I say is speaking?"

"You do not have to speak like that, I am doing my best. It is not my fault they do not answer. Who did you say it was?"

"Jay, oh, Haitch, En, Ess?"

"Ohh James! Putting you through."

Ring, ring, ring, ring, ring, ring, ring, ring, ring, ring, ring.

"Mr Blondini's secretary. Hold the line please."

"Mr Blondini's secretary. May I help you?"

"Who's speaking please?"

"Jeans?"

"Ohh. Jane."

"Sorry, James. I am afraid Mr Blondini is in conference."

"No I can't say when he will be finished."

"He might I dunno!"

"Can I take a message?"

"Yes. I'll get him to ring you back. Who shall I say rang?"

"How do you spell that?"

"Haitch, Aye, Why, Em, Ess?"

"Jay . . ."

"Aye . . .

"Emm . . ."

"Hold the line please."

Bzzz, splutter, burr, ring.

"Yuh, there. No where were we? Jay?"

"Aye . . ."

"Emm . . ."

"Ess. Mrs James?"

"Oh Miss James. What's yer number?"

"He knows it does he? I better get it anyway."

"Alright. I'll let him know you rang."

"Urgently?"

"Yes. OK."

"I'll makes sure he gets that message as soon as possible."

Needless to say, Miss Jaymes [with a "Y"] of Counsel, does not hear back from Mr Blondini that day, or for some days. Then she receives a message upon returning from Court asking her to ring him urgently. The message was taken five minutes earlier. She tries. She gives up half way through the solicitor's recorded list of wares.

A few days later her telephone rings at 5.15 pm.

"This is Fibb, Lye, Falls, Hood, Solicitors. Mr Blondini's Secretary. Mr Blondini calling. Would you hold the phone please?"

Ring, ring, ring, brrrr.

The recorded message starts again . . .

"Elspeth! You were supposed to ring me days ago! Why didn't you?"

"You sure?"

"No. I didn't get any message!"

"Are you certain you rang? You could have made a mistake?"

"Oh alright. It doesn't matter."

"OK. Water under the bridge eh?"

"Oh yes. About tomorrow's brief . . ."

"Yes the one where we are suing for fees . . ."

"I know you haven't received the brief yet."

"Well . . . it has settled. You are free tomorrow."

"Err no, I didn't get a brief fee for you."

"Why!"

"Well the other side reckoned that as we settled it a week before the hearing you weren't entitled to a brief fee."

"Can't be helped, eh!?"

"Means you can catch up with your paperwork eh!? Have a long lunch. Catchyer."

Brrrrrrrrrrrrrrrrrrrrrrrrr

Crashing sounds as one Ericsson Standard Model deskphone [$25 secondhand] hits wall.

USA — INSTITUTE OF TRIAL ADVOCATES

Debbie Wiener goes to America in search of advocacy

THE NIGHT I ARRIVED IN BERKELEY I thought there were reindeer on my roof. But, then I thought, this cannot be right, the 12 days of Christmas have well and truly passed. I subsequently discovered that indeed there were no reindeer on the roof, but that the Hotel Durant, an old hotel built in about 1928, had no soundproofing whatsoever. Consequently, during my week there, every time anyone upstairs, downstairs or next door went to the bathroom, turned on the T.V., or even turned over, one heard it all in quadraphonic sound. This did not however detract from a most stimulating, enjoyable and fruitful week at Berkeley.

The demonstrations of the opening statements indicated just how different the American system is. The Americans are very much into graphics and what they term demonstrative evidence.

I went to Berkeley in January to do a Master Advocates Programme, under the Institute of Trial Advocates. I had no real idea of what to expect, although I had spoken to Hampel J. and Felicity Hampel and Doug Salek and Paul Elliott. It transpired that I was the first Australian to actually participate, Doug and Paul took the easy way out and were observers. His Honour and Felicity had at one time been instructors in some of their courses. At the end of the week I felt immeasurably enriched by my experience.

A wad of material arrived just before I left for America but what with the Christmas rush and the endless round of cocktail parties, I did not have time to even look at it until I got to New York. I arrived in Berkeley late afternoon feeling extremely jet lagged due to the three hour time difference between New York and San Francisco. Getting out of the shuttle bus, I spotted Michael Shatin through the window of the hotel restaurant and we went for a walk later on exploring the town of Berkeley. I remember remarking to Michael, on observing a drug deal take place, that I felt I was in a time warp. Michael replied that you feel like that because, indeed we were. Indeed that really personifies the atmosphere of Berkeley. One feels catapulted back into the sixties flower power and all. Michael was on the faculty of the course and without a doubt earned the respect and admiration of all the Americans.

On the Monday afternoon there were demonstrations of the three opening arguments of the model case. The case itself concerned a heart transplant patient who, some two hours after the operation, heaemorrhaged and lost some two litres of blood within a few minutes. When he was opened up, it was discovered that the suture holding the donor heart to the aorta had ruptured. The patient was sewn up but fell into a coma and three days later died. The issue was whether the ruptured suture was due to surgical negligence or defective manufacture. The participants were divided into three camps, those for the plaintiff wife of the decreased, the surgeon and the manufacturer of the suture. We were told that the hospital had settled with the plaintiff! The demonstrations of the opening statements indicated just how different the American system is. The Americans are very much into graphics and what they term demonstrative evidence. There were a lot of graphs, charts and any other visual aid which they thought would en-

hance the case. There was a great deal of razzamatazz and emotion, particularly from the plaintiff's counsel. One of the participants, a Supreme Court Judge from Canada, said that no way would she allow that kind of behaviour in her Court! Most of the Americans however felt that an emotive, passionate opening statement was the way to go.

By the end of day two and about half way into day three most of us felt that we ought to take up some other profession, such as basket weaving.

The next day the course started in earnest. This was no mickey-mouse. Each day commenced at 8.30 with a full team meeting. The 50 or so participants were initially divided into groups A and B. Thereafter, we were put into one of four "break-out" groups of about 7 or 8 participants. After three or four days, the groups were shuffled around. Thus, each morning from 8.30–9.15 group A would meet and group B would meet. There would be a break from 9.15 to 9 30 and thereafter each group of 7 or 8 would meet and this would continue throughout the day until 6.00 pm. At the end of some of the days, the teams would regroup and there would be more demonstrations or something of that nature. At the end of Tuesday's session Michael Shatin had the invidious task of cross-examining the doctor whose negligence, it was alleged, had caused the suture to rupture. It was generally thought that he did an excellent job.

Each day we were videoed at least once. There were always two and sometimes three faculty members critiquing the students at each session. Once videoed, one would then take the video to the video room where somebody else would critique it. There was thus the opportunity to gain a divergence of opinion as to one's performance. Generally, the faculty were in agreement, however, there were occasions when one would get a favourable critique from one and a less favourable critique from another. By the end of day two and about half way into day three most of us felt that we ought to take up some other profession, such as basket weaving. This view however luckily changed and by the end of the course we all felt that not only had we chosen the right profession but we had gained an enormous amount. One of the most exciting things was to observe the other participants and not only learn from their mistakes but also from their strong points. It was also most encouraging to watch their development.

Although one was to supposed to have fully prepared all the exercises by the commencement of the course, very few had actually done this. In a sense this was probably preferable because what was required to be done by the faculty was not necessarily what one had prepared. This then necessitated working hard either at nights, in the morning or both. Generally speaking, we would wander back from the University at about 6.30, have a shooter and then a group of us would go out for dinner somewhere. The first couple of nights we were all very diligent and were virtually teetotal and commenced working at around 9.30 or 10.00. However, as the week progressed and everyone began to loosen up and know each other a bit better, the drinking increased and the meals extended into the late evening. One would then try to do an hour's work and then collapse at about midnight or 1.00 a.m. Around about 5.30 in the morning one started to hear, again in quadraphonic sound, everyone getting up, taking showers and getting dressed. Most people managed to do about an hour's work at night and another hour or two early morning. There were always those at breakfast who were busy working away in between drinking coffee and eating blueberry muffins. There were those who would wake up at 3.00 a.m. unable to sleep, do a couple of hours, go back to sleep then stagger down to breakfast somewhat weary.

One aspect that cannot be under-emphasised was the friendliness and warmth of the participants. Without exception, the people were warm and giving and most keen to learn, not only of their own system but also of ours. The diversity of people was most interesting. Although the majority were Californians, there were quite a few from farther afield, such as Washington, Memphis, Texas and New York. The majority of participants would have been in their late thirties to early forties, and most would have had approximately 10 to 12 years experience. There were some who had only been in practice some 5 or 6 years and some as many as 20 to 25. Without exception these people were keen and eager to gain as much as they could from the course.

Many of them had participated in other NITA courses. Some of them ran their own in-house advocacy programmes and were very keen to learn from NITA and see what could be incorporated into their courses. For example, one of the participants was an ex-cop and ex-marine who now is on retainer to the Los Angeles Protective League and runs an in-house programme. Interestingly, he had been a cop in Berkeley in the sixties and was able to fill us in on much of what transpired way back then. There was B.J. from Memphis, Tennessee who sounded just like J.R. in *Dallas* and had all the southern courteousness and charm that one reads about but almost never experiences; there was Scott from Texas who had the most amazing accent and was a real charmer. The list goes on and on and I can say without a doubt that next time I go to the States I will need an enormous amount of time to try and visit all my new-found friends. The faculty members consisted of some of the leading trial attorneys in the United States. Most of them were regular NITA instructors and knew this particular case very well. Some of the ones who were outstanding were so because of their interest in the subject, their ability to critique without being negative and their own innate charisma and ability. There was no doubt in my mind at the time, and there remains no doubt now, that we have much to learn from them. We think we know it all, but the truth very clearly is that we don't.

On the penultimate day, there were a few optional workshops. There were voice workshops, communication workshops, and two workshops devoted to drill exercises. The idea of the drill exercises was stolen from basketballers, and it was the first time it was incorporated into NITA. There were two sessions devoted to them, the first one being devoted to examination-in-chief and cross-examination, and the second one to final addresses. They were both run by Jim Brosnahan, who is one of the leading trial attorneys in the country. Everyone who went to one or both of his workshops benefited enormously and it is hoped that these will be incorporated into the Readers' course. The course concluded with a demonstration of closing addresses. Interestingly, most of the participants were a little disappointed with the closing, with the exception of one final address which was nothing short of brilliant. The NITA courses emphasise the importance of addressing without notes and curiously all the instructors used notes to a greater or lesser extent. Indeed, one of their most hammered points is the non-usage of notes. Another point which they hammer home and which was particularly emphasised in the drill exercises, was the usage of short, pithy questions.

There was no doubt in my mind at the time, and there remains no doubt now, that we have much to learn from them. We think we know it all, but the truth very clearly is that we don't.

The final dinner was held on the Saturday night and the instructors put on a little revue, the highlights of which were a redoing of Abraham Lincoln's Gettysberg Address — he was told to put it into language that the everyday person could understand — and a wonderful Jimmy Swaggert-type confession of the 10 sins against NITA. An innovation introduced by yours truly was the putting on of a little revue by some of the students. Luckily for Melbourne, it was very well received. In conclusion I can recommend the course highly. Those of us who think we know it all or can be taught nothing new by the razzamatazz Americans are very much mistaken. Although some of their practices cannot be incorporated here and although some of their procedures are different, there is no doubt that they are far more advanced than us when it comes to the importance of demonstrative evidence and that although some people are born advocates, very few have outstanding talent. But everybody can learn, and learn a great deal, from courses such as NITA.

I went to Berkeley expecting at worse to meet a few nice people. In the event, I had a most stimulating and worthwhile educational experience, discovered talents and abilities I did not know I had and met a whole host of new stimulating people. I was exposed to a range of ideas that had never previously been presented in such an attractive manner and I can only say that if we could organise a NITA workshop over here not only the Bar but the entire community would benefit.

Debbie Wiener

TALES FROM THE SOUTH PACIFIC

IN NOVEMBER 1990 MY WIFE LYN AND I spent a week or so in Fiji. Whilst staying at the Na Koro resort, on the island of Vanua Levu, warnings of a tropical cyclone were broadcast. On Monday morning, 28 November, we visited the nearby township of Savu Savu. On our return to the resort Jan Raymond approached us and recommended we leave that afternoon, effectively "while you can". It seems that this is "a serious cyclone" and although it is not necessarily expected that it will affect this part of the island group, it may nevertheless make it difficult to move from one region to another. It had been our intention to spend another day or so at Na Koro but we accept her advice, quickly pack and make a booking on the 4.00 p.m. flight to Suva.

The plane from Suva is thirty minutes late. It cannot find the airstrip! The weather has closed in remarkably quickly and the radar systems appear to be non-existent. The Heron, which is a neat plane which can carry sixteen passengers, flies us to Suva in cloud all the way. The flight takes only forty minutes but it is a bumpy and scary experience. When we reach Suva we are forced to circle for twenty minutes. Planes are coming from everywhere to seek sanctuary. We eventually arrive at about 5.30 p.m. We do not have a booking for this night as we were not due to spend time overnight in Suva until the end of the week. We obtain a taxi at the airport, it is a luminous green Valiant, of which the driver is apparently extraordinarily proud. The seats have been covered in vomitous green and yellow crochet fabric. Our driver, who is a very pleasant young man, boasted of his car's origins and history and compared it most favourably to all the Japanese taxis driven by his competitors. The inevitable happens — the car breaks down in the middle of the peak traffic and the pouring rain. It is necessary to push it off the road and we must wait while our driver rings another taxi to come and take us off his hands.

Another taxi came which takes us to the Grand Pacific Hotel. This certainly looks a "grand" hotel, it was built in 1914 and has that wonderful Colonial architecture that is associated with the British Empire. Greg Davies of Counsel, who has visited Fiji professionally over the last few years, had warned me that this hotel has "suspect facilities and staff and guests", but that it had been "done-up".

The reception people obviously did not like the look of us. We were soaking wet for one thing. Perhaps it was the suggestion, by Lyn, who is a part-time travel agent, that we should be entitled to some discount. We were shown a $40 room with which we were not impressed. It had single beds, filthy old blankets and a concrete floor. Although the hotel looked like Raffles (Singapore) from the outside, the room looked like the Old Melbourne Gaol. We were not impressed. We went back to the desk and were told there was nothing else available.

The Travelodge is almost next door. It is where we are booked for the weekend. We leave our luggage temporarily at the Grand while we run through the absolutely teeming rain to the Travelodge. There we are welcomed with open arms. "Yes, there is plenty of room here . . . "thank you for coming and dripping water all over the place like drowned rats . . . we would love to have you here". Well, it was not quite like that but compared to the unwelcoming committee at the Grand Pacific it was really something.

The rooms at the Travelodge were most pleasant. A shower, a change of clothes and a glass of wine made everything look much rosier. We dined in-house on Samosas and curry and liqueured coffees. That's better!

The next morning it was still very cloudy although not so much rain. We learned later during the day that the weather in Na Koro, by now, was beautiful. The cyclone never got anywhere near it! We visited the local courts on this morning. They are directly opposite the Travelodge (which explains why Greg Davies recommended this location) and are contained in the Government buildings. There are two Magistrates' Courts here and a court described as the "Supreme Court" (but which is actually the High Court). The court hierarchy is somewhat indeterminate but starts with the Magistrates' Court and progresses to the High Court. It has been intended, since the Constitutional changes over the last few years, to add a Supreme Court and a Court of Appeal on top of this structure. We are told by one of the court officials that they are having trouble finding any judges! The hope had been to recruit these from overseas but nobody seems to be interested, given the current state of things in the country.

I peeked into a room marked "Barristers Only". It was very similar to robing rooms found in any circuit court in Victoria. The seating provided in the room must have been contemplated for the use of itinerant Counsel. The accompanying photograph will explain.

It was a little difficult to find a court in action. We did find a court which was sign-posted as "Supreme Court" (but which did not in fact exist at the time). We later discovered that this was a sitting of the High Court. Mr. Justice Daniel Fatiaki presided in his red robes. Apparently the High Court Judges here "specialise" in either civil or criminal work. This was a criminal trial. The trial judge was, from his speech, clearly British educated. By his appearance he was a native Fijian. The court room itself was very attractive with open windows at both sides and a Colonial atmosphere. Despite the rain it was still very hot wherever we went. The court was quite pleasantly cool.

Nevertheless, it seemed completely incongruous to see everybody in their robes and wigs and full British panoply.

The defendant, Samuela Lawaca, had been charged with the theft of church committee money. He stood alone in the dock. He had no legal representation. There was no jury. The prosecutor, also fully robed, was Mr. Senaka Senaratne. He had a great deal of trouble with "leading questions". The Judge, I noticed, rolled his eyes from time to time and found it necessary to instruct Counsel as to the appropriate way to put his questions. The Judge was only a young man but appeared to have modelled himself on Guthrie Featherstone Q.C. M.P. (but now of the bench).

Although there was no jury there were three men sitting at a desk towards the front of the court. Lyn thought they might be a "three man jury". I thought more likely that they were the press. She, in fact, was closer to the truth. They were "assessors" who do in fact operate very much as a jury.

Apart from the normal family members who attend these hearings, the court was also complete with the inevitable school girls on a school outing.

It seemed somewhat unfair that the defendant was unrepresented. He was given the chance to ask some questions of one of the witnesses and, like the prosecutor, had some difficulty. He put his questions, as defendants always do, more like comments or submissions. The Judge said, I thought unfairly, "you are an intelligent man; can't you frame your questions better?" In Victoria, we have a reader's course which goes for two months, the purpose of which is to help qualified lawyers reach some preliminary state of expertise in this matter and here is a civilian defendant (and all through an interpreter I might add) being expected to have that ability. In any event, the judge took over. He asked the questions that the defendant wanted asked and did it most beautifully I thought. He got all the answers that the defendant had been seeking to bring out and then sat back and, figuratively speaking, preened.

It was an interesting hour or so watching the proceedings. We discovered that the defendant changed his plea later in the day and pleaded guilty to all charges. According to a press report, the accused told the court, during his plea in mitigation, that "the lesson church members should learn from this case was 'not to trust one another' ". It sounded a pretty silly thing to be saying as part of a plea. The Judge obviously agreed; he said the real lesson to be learned is that "dishonesty and abuse of trust never pay". He gave Lawaca twelve months imprisonment.

I couldn't help comparing this result with that obtained by the assailant of Dr. Anirudh Singh. Press reports, in Australia, claim that he was beaten black and blue by a group of soldiers for taking part in a protest in October 1990 that involved the burning of a copy of the country's new racially based Constitution. On his release from hospital three weeks later, Dr. Singh was formally charged with sedition. Although five people were sent for trial for Dr. Singh's abduction and assault, all received suspended jail terms and small fines.

We saw no sign of racial or political unrest during our short stay in the City of Suva. But, of course, our next and last day there was spent hiding indoors from Tropical Cyclone Sina. But that's another tale!

Rex Wild

COMPETITION

THE PHOTOGRAPH SHOWS HEEREY'S chambers immediately after his elevation to the Bench. The best caption wins a bottle of Essoign wine. Entries to the Editor.

WELCOME TO HEEREY J.

I WISH TO JOIN WITH THE VAST MULTItude of people who have congratulated Mr Justice Heerey on his elevation to the Federal Court Bench. Like them I wish him a long and happy sojourn on the Bench.

For me it was an especial pleasure to discover Mr Justice Heerey's appointment. In a way, it could be said that everything I am, I owe to His Honour; that everything I know about the practice of the law I derived from His Honour; that His Honour has been a unique and special mentor to me; and, that such success as has come my way at the Bar has been due in no small part to His Honour's benefaction.

I cannot recall precisely when I first met His Honour although it seems as if I have known him all my existence. I do feel that ours was a quite special relationship — whilst His Honour has a sense of humour based on irony and never directed barblike at anyone else it seemed that he was sufficiently confident of our relationship to often make me the butt of his humour. Far from being hurt, humiliated or upset at his verbal jests I considered them to give me substance, colour and an attention that I would otherwise have lacked.

As well as kickstarting my career at the Bar His Honour, through his good offices, ensured that I was able to participate in many of the functions organised by the Bar and most especially to represent the Bar through many of its sporting teams. Without such opportunities my exposure to solicitors would have been virtually non-existent!

I applaud His Honour's imagination, creativity and drive particularly during his co-stewardship of the *Bar News* and say "Sir, it has been a great pleasure to be your protege!". Although it may be borne of a forlorn hope I look forward to appearing in his Court some time.

Clive Penman
Barrister-at-Law

Dear Clive,

Thanks so much for your kind note.

Clive, I think you seriously underestimate your talents. I am a devoted reader of that fine publication Victorian *Bar News* and I am struck by the prominence given to your activities in so many fields — professional, cultural and sporting. If you will pardon a lapse into the current argot, you are a pretty high-profile sort of guy — as well as being caring, sharing, up-front, laid-back, hands-on and user-friendly.

Stick at it, Clive. I'll look forward to seeing your in my court — and I don't mean just the bankruptcy jurisdiction. Kind regards.

Peter Heerey

19 December 1990

The Honourable Mr. Justice Heerey,
C/- Clerk "H",
205 William Street,
MELBOURNE 3000

Dear Sir (or may I call you Judge?),

I am devastated! My career is in tatters! What am I going to do now?

I read the news of your appointment with a mixture of joy and terror. I am very pleased for you and your family upon your appointment and I congratulate you on same. I wish you many years of happiness and pleasure whilst upon the Bench. However, I must say that with your elevation, my career will be in very grave danger of petering out. I have always considered that without you I was nothing, that you were my benefactor at the Bar; that you were my inspiration; and, that you were the source of everything that was me. Were it not for the oppression of the family mortgage and all the other family debts, I would seriously consider making application to become your associate.

It is thus with a sense of some ambivalence that I send you my very best wishes for a long and happy life on the Bench.

Yours faithfully,

CLIVE PENMAN
Barrister-At-Law
Four Courts' Chambers (South)

COMPETITION WINNER

Winner of Competition Michael Adams being presented with his prize by the Chairman.

WINNING *BAR NEWS* CAPTION

"Did anyone tell Harper that on taking the Chairmanship he would have to take ALL of the muck from the Supreme Court!?"

RUNNER UP — Nathan Crafti
Veteran Supreme Court Judge to recent appointee

"And as for the Bar Council Chairman, we have special arrangements whenever he makes a submission"

BAR CHRISTMAS PARTY

Cale Darnegie Institute of Public Relations and Marketing Co Pty Ltd

Marketing Division
Progress Report
Subject: Simon Kemp Wilson
Brief: To package and market the subject so as to be acceptable and accepted by a minimum of 50% of persons who came into contact with it.

Phase 1:
It was decided to package the product in a well known form. Unfortunately, this did not work as a survey undertaken by our market research division showed that only approximately 20% of the subjects surveyed approved of the product so packaged.

Phase 2:
It was decided to repackage the product in a form more popular and acceptable to the general public. Photograph 2 shows the product so packaged. It is apparent that this did not excite great interest. Even the photographer in the background was Nash of our Public Relations Department.

Phase 3:
It was considered that the product would be more acceptable if whilst packaged in a publicly accepted manner it included some small give-aways. In Photograph 3 it will be seen that this had little impact either.

Phase 4:
It was a great disappointment to us to observe the product so downcast at these early set backs in our programme (Photograph 4). Derham, on

loan from our now defunct political campaigns division, initiated a programme of large giveaways (Photograph 5).

Phase 5:
The programme of publicly acceptable packaging together with larger giveaways proved to be of varying success. Subjects surveyed showed

disinterest (Photograph 6); disbelief (Photograph 7); and obvious disgust (Photographs 8

and 9). Ultimately, some younger and more impressionable members of the test group began to show a measure of curiosity (Photograph 10).

Conclusion:
The general public should be given approximately 12 months to overcome the adverse impressions gained from this project. We do not believe that the product is completely unmarketable but will need more careful presentation in the future.

OPENING OF THE COUNTY COURT JUDGES' COMMON ROOM

TO MARK THE OCCASION OF THE OPENing of the new common room for County Court judges, on 30th November 1990, refreshments were provided for judges of the various jurisdictions, and other selected members of the Bar and the profession. It was good to see that the hardworking and underpaid members of the County Court had been provided with some improvement in their work conditions. The Chief Judge was a convivial host to what was agreed to be an extremely enjoyable function — the ensuing photographs testify to same.

Mr Justice Frederico, Judge Keon-Cohen, and Mr Justice Fullagar

Judge McNab

Mr Justice Nathan, Wright Q.C. and Judge Crossley

DINNER FOR FORMER LORD PRESIDENT OF MALAYSIA

ON 6TH FEBRUARY 1991 THE BAR COUNcil gave a dinner in honour of Tun Mohamed Salleh bin Abas, the former Lord President of Malaysia.

Tun Salleh Abas became Lord President of Malaysia in 1984. In 1988 he was removed from his position in controversial circumstances which are canvassed in part in the summer 1990 issue of the Bar News.

The members of the Bar and a sprinkling of their guests (totalling approximately 60) who attended heard a fascinating after dinner address from his Lordship which, though directed primarily to events in Malaysia, underlined the importance of judicial independence.

Tun Salleh Abas described the events leading up to his removal from office in 1988 and canvassed the amendments to the Constitution of Malaysia which in his Lordship's contention have reduced the independence of the judiciary. He stressed the universal proposition that, once the executive has power to remove members of the judiciary from office without very elaborate safeguards, the separation of powers breaks down and the rule of law disappears.

At the conclusion of his address Tun Salleh Abas dealt with questions from the floor. Question time gave Denis Smith the opportunity to extrapolate from his own experience in Malaysia and Jack Hammond the opportunity to profer advice as to problems which might confront returning Malaysian students who, during their studies in Australia, had occasion to be critical of the Malaysian executive.

Justice McGarvie, Chris Jessop and visitor.

Former Lord President of Malaysia, Tun Mohamed Salleh Bin Abas, with Chief Magistrate, Sally Brown.

L to r: David Harper, Sir Ninian Stephen, Tun Mohamed Salleh Bin Abas and Peter Gandolfo, President of the Law Institute.

ALTERNATIVE DISPUTE RESOLUTION CONFERENCE

Alex Chernov

IMAGINE, IF YOU CAN, NEARLY 100 members of Counsel giving up their Saturdays to attend a talkfest! Well, come they did, bleary eyed, in dribs and drabs, between 8 and 9 am to the World Trade Centre on the 23rd day of February, 1991. The earlier they arrived the more they hung out for a caffeine fix! Even more surprisingly, almost all of them returned the following Saturday.

They came, of course, to attend the Victorian Bar's General Dispute Resolution Course, conducted in conjunction with the Australian Institute of Arbitrators.

Fortified by generously provided coffee and encouraged by stirring openings from Frank Shelton, Solicitor and President of the AIA, and our very own Chairman, David Harper Q.C., they stayed on to hear papers from John Sharkey, Solicitor, Stephen Charles Q.C., and David Byrne Q.C. Fortunately, given the attention spans of the participants, the papers bracketed an impromptu dissertation on Spanish and Portuguese arbitral systems by Tony de Fina, Vice President of AIA, and an excellent buffet lunch. Copies of Mr de Fina's paper were not distributed on the day but are eagerly awaited by all participants. For those who required exercise after their meal there was an opportunity to visit the Private Schools exposition downstairs.

On the second day, and notwithstanding the absence of a pre-seminar caffeine fix, participants enjoyed further papers from Messrs de Fina and Shelton and a highly amusing, diverting and informative "demonstration" prehearing arbitration conducted by Geoff Masel, Solicitor, with the "assistance" of Maurice Phipps Q.C. and Hugh Foxcroft. Phipps' "expedited" timetable for completion of interlocutory steps was a work of art requiring, as it did, a minimum of a year to bring on a Retail Tenancies arbitration. It would have gladdened the heart of any case flow manager!

Lunch again was excellent even though wine extended only to those participants, and the *Bar News* photographer, who managed to wangle themselves a seat on the head tables. Alex Chernov Q.C. provided a second desserts course with an amusing and all too brief talk which included some startling statistics on case loads in Indian higher courts. Many participants were disappointed that the time allocated to Alex, but not taken up by him, was not employed by a paper on

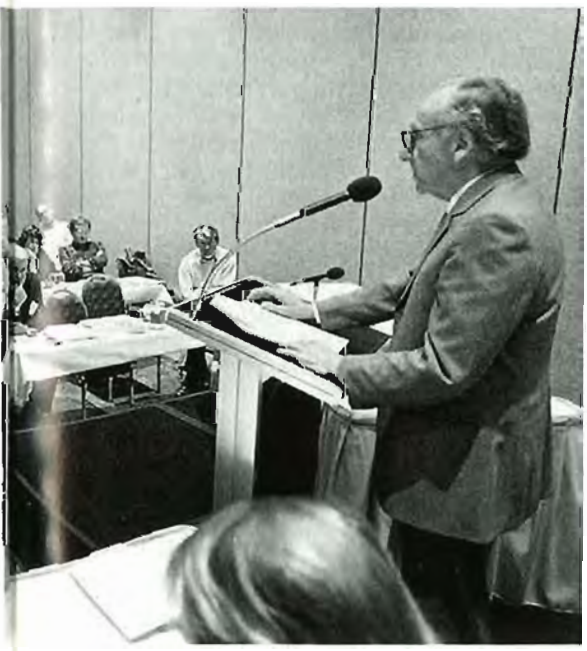
Mr Justice Marks

The official table (the only one with wine)

South American Inquisitorial Arbitral proceedings. Alas and alack!

Lunch was followed by further lively papers papers from Mr Justice Marks and Douglas Jones, Solicitor, and a free cocktail party which almost succeeded in quenching the appetite of those who missed out on the luncheon wine.

It was the apparently unanimous view of those who attended that Mr Justice P. Heerey, as he now is, who is "the brains behind the scene", Bill Martin and Maurice Phipps Q.C.s had done a great job in organising a highly successful, informative and enjoyable two days — albeit Saturdays! All participants felt that they had gained a great deal from their attendance. It can only be hoped that this conference sets a precedent for developing other areas of practice so that the Bar can continue to play its part, at a high standard, in the overall role in which the Law serves the community.



BOOK REVIEWS

Foreign Exchange in Practice by Steve Anthony, 1st Edition

The Law Book Company Limited,
i–xix; 1–217; Appendix 219–235; Index 237–239
Price: Limp $39.50

BASICALLY, THIS BOOK IS ABOUT money. It is about dealing in money of one currency and about the profits or losses which result when the rates of the Australian currency alter against the rate of the currency of some other country. The book is written by a participant in the foreign exchange market and it is aimed at participants in the foreign exchange market.

Above all, the book is practical. The recurrent theme of the book is the relationship between interest rates and exchange rates. The book reproduces in large measure the course called "The Citibank Bourse Course" conducted by Citibank's foreign exchange division. Steven Anthony, the author, is the head of Citibank Australia's Foreign Exchange and Marketing Division and a lecturer in the bourse course. The bourse course is taught in over fifty countries but its application is refined to each jurisdiction in which the course is taught. The book recognises the foreign exchange industry uses a peculiar vocabulary and that the industry exists by reason of its participants abiding by an acknowledged code of behaviour founded on principles paralleled to economic and banking practices.

Even a reader who is a complete novice in currency trading can benefit from this book. Virtually every aspect of foreign exchange dealing is explained. The book is divided into twelve chapters, each of which covers some discrete facet of currency trading. Chapter 7, entitled Forward Exchange Rates, is the most complex. It requires an understanding of the way forward margins are calculated, the premiums which apply, tax implications, available hedging options and a sound working knowledge of the most effective (and thus the most financially attractive) cost of forward exchange. The concept of forward exchange itself is simple enough but the arithmetical formulae and ancillary concepts which apply make it a difficult area.

The industry is replete with jargon. All the

more when dealing in Eurocurrency markets. The front of this book contains a glossary which explains such convoluted notions as the purchasing power parity theory, the zero premium cylinder, spot value, swap rate and so on. Legal Latin is a piece of cake by comparison.

The setting out of the book is helpful. Most pages comprise a diagram which the author uses to explain the way a particular transaction works. At the end of each chapter the author poses a series of questions to illustrate the concept under consideration. Where some mathematical formula is involved, the author makes his point by example. Some of the arithmetic is quite complicated.

Although LBC is the publisher, the author is not a lawyer nor is there any reference to law throughout the book. The timing of the publication of this book is somewhat unfortunate. The massive expansion in foreign exchange activity occurred following the deregulation of the Australian foreign exchange market in 1983 and 1984. The litigation which was spawned through currency hedging in Swiss francs and the like had all but petered out by 1988. In the current climate, very few Australians have any money, let alone money with which to engage in foreign exchange dealings. Surprisingly, this book emerged in late 1989 when most, if not all, action on the foreign front had died.

This book is the most comprehensive on the field so far available. The price is modest for value.

Joshua D. Wilson

The Right Direction: A Casebook of General Jury Directions in Criminal Trials by James Lindsay Glissan Q.C. and Sydney William Tilmouth Q.C.

Butterworths, 1990
Pp. v–xxi; 1–207
Price: $68.00 (Hardcover only)

THE SELF-AVOWED AIM OF THIS BOOK IS "to provide immediate, convenient and readily accessible assistance to counsel called upon to consider the trial judge's summing up 'on the instant' ". It covers matters of both evidence and procedure as they are ultimately impressed upon a jury in the trial judge's charge. Does the book succeed in its aims? How "user-friendly" is it, really?

The book is conveniently divided into seven sections —

1. General directions which arise in every trial;
2. Complicity-directions as to derivative responsibility;
3. Matters which as to the accused;
4. Directions as to the accused;
5. Summing up the evidence;
6. The Jury; and
7. Duties of Counsel.

Each of the seven sections is further divided into discrete topics (numbered 83 in total); the leading cases are listed with the most authoritative decisions highlighted. Short extracts from a selection of cases cited are then reproduced in the text. The "right direction" on a topic is often covered in less than half a dozen pages, certainly satisfying the aims of conciseness, convenience and accessibility. Furthermore, the authors have been very economical in providing explanatory text to extracts from cases, preferring to let the directions suggested by the courts speak for themselves.

To accommodate the inevitable prospect of authoritative decisions changing by the usual development of the common law, the authors provide a blank page or two at the end of each section titled "Notes" — another example of its "user-friendliness".

The book closes with an appendix entitled "Summing-Up checklist" which re-organises the table of contents into a checklist for counsel, who may apply it to the task of anticipating all necessary and relevant directions to be put to a jury. The checklist may also be a useful guide to raising exceptions to a judge's charge and, later, in order to analyse a charge with a view to appealing to the Full Court. Whilst of greatest value to counsel involved in criminal trials, it is a volume that could also prove useful in submissions in summary contests in Magistrates' Courts e.g. effect of the other party's failure to call a witness, corroboration, circumstantial evidence, recent possession, etc.

The authors attribute the book's concept to another NSW silk, W. D. Hosking Q.C. The presentation and organisation of the book are excellent. Finally, it is a step toward producing a compilation of "standard" jury directions which could be utilised by judges in trials — such directions would be used heuristically, adapted in each case to the peculiar facts of the trial. While one hears of such "standard" or mode directions being used by judges, it is to be hoped that a complete set might be published for the benefit of judges and counsel alike.

The Right Direction succeeds in its objectives and provides an excellent basis for any future compilation of model directions.

Benjamin Lindner

Legal Aspects of the Transfer of Technology to Developing Countries by Michael Blakeney

ESC Publishing Ltd., Oxford, i–ix; 1–189; Bibliography 190–202: Index 203–204; £24.50 (UK)

ON 1 MAY 1974, THE GENERAL ASSEMBLY of the United Nations pronounced the New International Economic Order declaration. It comprises three key elements. First, the elimination of the economic dependence of developing countries on developed countries' enterprises. Second, the promotion of accelerated development to the economies of developing countries on the principle of self reliance. Third, the introduction of changes to the management of the world resources in the interests of the whole of mankind.

The United Nations has since interpreted the NIEO by saying access to the achievements of the developed countries is one of the governing principles of the NIEO declaration and that access to the technology which enabled the developed countries to make their achievements is to be assured by appropriate legal means.

This book is concerned with the mechanics of transferring intellectual property rights from owners or users in a developed country to those in a developing country. The author canvasses approximately thirty international treaties or conventions which touch on some aspect of the recognition, control or development of know-how. He identifies the "technology" capable of being transferred to give effect to the aspirations of the United Nation declaration. The author discusses commonly used transfer techniques such as know-how agreements, turn-key contracts and joint venture arrangements. The author assumes a reader has a thorough working knowledge of the way various commercial arrangements operate so he does not descend into the areas which are otherwise covered in a standard text on contract or intellectual property matters.

The book contains a heavy emphasis on the way various international conventions bear upon the transfer of technology. The specific provisions of relevant articles of a number of the conventions are set out in the text. A good many of the conventions are obscure, for example, the International Convention for the Protection of New Varieties of Plants. Other conventions will be well-known to intellectual property lawyers, such as the Patent Co-operation Treaty. The material is of use to a practitioner in international law or to a government agency. The works of the United Nations Conference on Trade and Development (UNCTAD) are given detailed reference throughout. The book does not contain extracts of cases although surprisingly, not even a decision of the International Court of Justice is referred to.

The book is a distillation of lectures delivered by the author while studying at the centre for commercial law studies at Queen Mary College, Oxford.

Joshua D. Wilson

Fox: Annotated Transfer of Land Act by J. J. Hockley, 2nd Edition

Law Book Company Limited, i–ixv; 2–201; Index 302–222; Hard cover $47.50

IN 1957 THIS BOOK WAS FIRST WRITTEN by Moerlin Fox, a celebrated conveyancer, university lecturer and President of the Law Institute of Victoria. There is little doubt Mr. Fox was highly regarded in his field. In the foreword to the second edition, Mr. Justice McGarvie (a one-time articled clerk in Fox's firm) describes Fox as a lawyer who "gave wise and practical guidance". For 32 years, Mr. Fox's book has been regarded as a model commentary in an area where countless practitioners tread daily.

The book is a commentary on the various sections of the *Transfer of Land Act*. The author numbers each paragraph of the text to correspond to the relevant section of the legislation. Any amendment to a particular section or, where a number have been made, all amendments are set out in chronological sequence in the text. Each sub-section of the legislation is given a separate commentary with relevant authorities extracted in the body of the text. The author does not use footnotes. If any phrase of a sub-section has been considered by a court, the phrase is set out in eye catching bold print and the relevant passage from the case is quoted. Mercifully, practitioners will be spared countless hours of research time by this method.

The reader should be satisfied the book is comprehensive on no more than a cursory glance of its treatment of the schedules to the Act. Every condition of Table A to the Seventh Schedule is set out in full with supporting cases including the much litigated condition 5 (time of the essence) and condition 6 (rescission by notice). The author goes to the extent of including the Estate Agents (Standard Form of Contract) Rules for the genesis of conveyancers' proforma documents.

This book complements but addresses a more

specific subject than Wikrama's *Sale of Land* or the various loose leaf services on conveyancing.

This is not a book for conveyancing solicitors alone. Any practitioner whose practice at one stage or another touches upon some aspect of the transfer of *Transfer of Land Act* land will undoubtedly find this book a thoroughly valuable addition to his or her library.

Joshua D. Wilson

Modern Banking Law by E.P. Ellinger

Clarendon Press, Oxford, 1987

HISTORICALLY, THE VARIOUS TRADING and savings banks have been central to the operation of the Australian financial system. With deregulation, the number of institutions which have been authorised to describe themselves as banks has increased. Although banks have long existed and although they have long been central to the operation of the financial system, publications which have attempted a systematic analysis of the legal principles which apply to them and to their operation have appeared relatively infrequently.

This book examines the law which governs the structure and operation of banks in the United Kingdom. There is a passing reference to legal principles which apply elsewhere in the Commonwealth, but the focus of the book is on the control of banking activities in the United Kingdom and the legal principles which regulate the bank as a monetary agency in British financial activities. The author has devoted several chapters to an analysis of the definition of what is a bank.

Subsequent chapters consider the bank's role as a depository, and analyse the legal principles which regulate certain types of accounts operated by banks which are prevalent in the United Kingdom. The author has also analysed the operation of the Giro system, which the author describes as the cyclic operation involved in the transfer of credit balances from one bank account into another. Further, the author has devoted a part of one chapter to the analysis of the law which governs the electronic transfer of funds. Part 3 of the book is devoted to an analysis of the bank as financier and lender. This part contains an analysis of current account financing, loans and the provision of securities for banker's advances.

As a book intended for background reading on the subject or to enable a reader to acquire a degree of familiarity with the law in Australia which governs the operation of banks, this book is not terribly useful. As earlier indicated, it is devoted to an analysis of the law which governs this area in Britain. However, as a general text, or to act as a companion to Australian texts on the same subject, it would be a useful addition to many libraries. It is written well, and in a clear style. It contains an "appendix of forms", which contain specimens of the form which various bills of exchange, cheques and various other instruments might take. The index is comprehensive and well set out. It is a text which may find a niche on the shelves of many lawyers, especially those involved in banking and general commercial work.

T. Di Lallo

Criminal Laws by D. Brown, D. Neal, D. Farrier and D. Weisbrot

The Federation Press, 1990 — pp.i–xiv, 1–1448. Index 1449–1464

THE FIRST THING THAT IMPRESSES ONE upon picking up a copy of the casebook "Criminal Laws" is its sheer size. At 1448 pages of text it represents six years work by the four authors.

Intended as a replacement of the then innovative Bates, Buddin and Meure *The System of Criminal Law: Cases and Materials in N.S.W., Victoria and South Australia* (Butterworths 1979) this book focuses not on the three common law states but merely on N.S.W. Even so it is half again the length of the earlier work.

Both books are aimed at the student and the new one follows the pattern of the earlier work by posing a series of questions at the end of each major topic. The questions are aimed at revision of the immediately preceding text.

The authors of this book (all named David!) set themselves a number of tasks in compiling it. Included in these tasks were:

1. Materials should challenge many common assumptions about criminal law, including:
   (a) that criminal law is inevitable and unchanging;
   (b) that criminal law is a unified area of law;
   (c) that certain general principles run consistently through the criminal law determining its rules;
2. Stressing issues of race, gender and class without descending into a blanket and crude portrayal of the criminal law as either the in-

strument of the "ruling class" or as being determined by economic imperatives.
3. Emphasise the, often seamless, relationship between substantive and procedural criminal law.
4. Utilisation of statistical material wherever possible.
5. Utilisation of "popular" legal sources; not just a study of appellate cases and statute. Thus use is made of materials from other disciplines such as history, sociology and feminist theory.
6. While focusing on N.S.W., taking a comparative approach in order either to highlight policy issues and alternatives and/or demonstrate the nature of the law in question.
7. Focus the text more on commentary than case extracts.

The authors claim that they have focused the work on the N.S.W. position alone as a result of "hyperactivity" in the legislatures of the once predominantly "common law" states (Vic., Tas and N.S.W.) thus producing criminal legislation which leaves little in common among them.

In Chapter 1, the four authors make a collective statement, on thematic issues.

In Chapter 2 they examine "The Phenomenon of Crime". Then follows the long Chapter 3 (240 pages) on "The Criminal Process" in N.S.W. Even so it is an encyclopaedic section which should be read by anyone intending to practise criminal law, whether at the Bar or as a solicitor. For example the section in this chapter titled "Appeals" is an in-depth treatment of a crucial yet little discussed phase of the criminal process. Some 40 pages are devoted to this subject. Discussion of the various grounds for appeal is followed by extracts from judgments in the leading case in each area; *Liberato v. R.* (1985) 61 ALR 623 for miscarriage of justice; *Chamberlain v. R.* (1984) 51 ALR 225 for unsafe an unsatisfactory verdict; *Gallagher v. R.* (1986) 160 CLR 392 and *Burton* (1986) 24 A. Crim R. 169 for fresh evidence.

The chapter ends with a view from the perspective of the accused of the nature of the appeal process. An extract, which runs to 4½ pages, from a book by Tim Anderson, one of the three Ananda Marga members convicted for conspiring to murder the leader of the National Front in 1978 is reproduced.

It is this type of "lateral" inclusion which makes this work both instructive and stimulating. Although its heavy New South Wales focus makes this book inappropriate as the standard text for teaching Criminal Law in Victoria, it is nonetheless most informative and written in a style which is both easy to read and provides food for thought. Indeed it is these very qualities which make it a useful work for the practitioner.

Con Killias

Evidence — Commentary and Materials 3rd Edition by P. K. Waight and C. R. Williams

Pp. I–LVII; 1–936, Index 937–950
The Law Book Company Ltd Price: Cloth $99.90; Limp $79.00

BUSY PRACTITIONERS SOMETIMES dismiss case books for being useful to students but to no one else. This book is an exception.

The first edition was published in 1980, based on the evidence courses taught by the authors at Monash University and the Australian National University. The text covers very many of the areas canvassed in such seminal works as *Cross on Evidence* by Byrne Q.C. & Heydon or even that most laudable text, *Basic Evidence* by M. G. Perry.

But as a case book, it draws together material from various sources. It distils the relevant principle and states it in synopsis form. It extracts a passage or two from the leading authority on the point. The authors draw on High Court authority first and then on authority from Full Courts of State Supreme Courts. Some English or New Zealand decisions are extracted. For each case extracted the authors give a short statement of the facts relevant to the issue to hand and, sometimes, the critical argument advanced by each party. The book refers in footnotes to the body of supporting authority on any particular point as well as relevant statutory provisions. Where appropriate it also extracts any Law Reform Commission report on point. The authors append to most paragraphs a section called "further reading" to assist readers to develop the relevant line of enquiry. Throughout, the authors have marked certain parts of the text with a black line down the side of the page. The authors do not reveal what the line is meant to indicate but it seems to indicate material more recent than the earlier edition.

The book contains a very useful section on hearsay and the common law and statutory exceptions to it. It also contains a very good chapter on privilege and in particular to legal professional privilege together with extracts from the salient pieces of *Grant v. Downs, Waind* and *Baker v. Campbell.*

It is an excellent publication of this sort on the law of evidence.

Joshua D. Wilson

WICKETS AND WINE 1990

The Players — 1990

GLORIOUS NOVEMBER WEATHER AND the picturesque backdrop of the Romsey Vineyards provided an idyllic setting for some less than idyllic performances at the wicket last year.

This was the occasion for enthusiasts from Owen Dixon West to challenge Latham Chambers to a game of village cricket and to a less structured luncheon and wine tasting event in the grounds of the winery hosted by Gordon and Judy Cope-Williams.

It was also the occasion to raise funds for the Chris Spence Fund administered by John Dever. Chris Spence suffered a tragic accident whilst skiing last year. He is still in a coma and it appears likely that he will not recover consciousness. Chris carries disability insurance but the level of cover will not ensure financial security for his family.

On the day the crowd of friends and supporters delighted at the sight of Jack Strahan swallow diving for a catch (from which he has happily recovered), Michael Wright failing to retire until lunch, Paul Jens remembering to turn up, Paul

An idyllic setting

Elliott winning the chook raffle, and Simon Wilson restraining himself when he didn't win the chook raffle. Wilson, however, took solace by nominating himself best and fairest on the day.

Peter Heerey (as he then was) captained his Latham side to an acknowledged victory, however, the Owen Dixon West team surpassed them by half in wine appreciation and by other objective standards of general revelry.

Another match is planned for November this year, and the Fund remains open to accept donations.

Peter Vickery

Peter Heerey — as he then was

Wright pads up

Frank Parry serves one up and Wilson sends one down

REPORT ON SIR EDMUND HERRING TROPHY

Balfe Q.C. almost holes a chip.

"WAGS"

THE WIGS & GOWNS SQUADRON'S 1990–1991 season was launched (lurched) on the 26th October 1990 with the now traditional evening bay cruise on the Steam Tug *Wattle*. In contrast to the previous year, the weather was superb for the 60 members and their flotsam — so calm in fact that when durable Duggan was obliged to make a pier head jump for the departing vessel, he needed make no allowance at all for wind assistance.

At 3 bells in the 2nd Dog Watch the ship paused to allow the Club Patron and Admiral — Nick the Nomad — to declare the season open. The post of Kommodore, declared vacant after Klestadt's retirement to a seaside magistracy — was, after no debate at all, visited upon Ken Liversidge. (Shades of Bar Council Chairmanship elections.)

The Squadron's principal function, the annual "cruise in company", was conducted on the 17th December 1990 under the auspices, this year, of the Hobson's Bay Yacht Club. Seven yachts and Brewer's motor boat from a staggered start sailed an indeterminate course, into a growing north-

D. Graham Q.C. standing with Klestadt M. sitting o

THE ANNUAL COMPETITION FOR THE Sir Edmund Herring Trophy between the Law Institute and Bench & Bar was conducted on the East Course of the Royal Melbourne Golf Club on December 19th 1990. The Bench & Bar retained the Trophy for the third successive year.

In perfect golfing weather a field of over 100 players took part in the event. The leading scorers for the Bar were Lovitt and Rice with 43 points, closely attended by Their Honours Keon-Cohen and Hanlon with 42 points. Other creditable performances were put by Batten and Noel Ross, McDonald and Macfarlane and Tebutt and Wischusen all of whom returned 41 points.

The Bar personality of the quarter for December 1990, Rupert Balfe Q.C., was seen in a new role partnering O'Callaghan Q.C. to return the creditable score of 38 points.

The Trophy was returned to its rightful position in the Trophy cabinet in Bar Council Chambers and the Bar looks forward to defending it in December 1991.

The 1991 competition will be held on the West Course at Royal Melbourne Golf Club on Friday 20th December.

Gavan L. Rice

Lovitt Q.C. prepares to do battle.

Stephen O'Bryan driving from the 11th Tee.

erly which somewhat hampered the alternative usually associated with this sport. Apart from Brewer, of which more anon, the fleet made it back to the Club for an excellent Barbecue, the cooking of which was, for the most part, presided over by H.M.A.S. Meldrum.

Trivia buffs will have noted some similarities and differences from past events. For example —

Charlie Wheeler didn't get afloat — again (although he was seen gazing wistfully seawards from the pier attended by his aide de camp).

Phil Misso and crew didn't get their boat around the course — again. This time they waited until they had drunk most of Dowling's champagne before declaring the boat unseaworthy.

Keenan came back for more after his previous cop-out.

Whitehead came — again.

The DPP came — again.

McPhee and Fox didn't come — for once.

"The Rat" reneged.

Horovitz managed to subdue the whole crew of *Blue Max* — singlehanded.

Doug Graham revealed a hitherto unknown liking for — wine.

Trophies were presented by Campbell, apparently because the new Kommodore thought he was going to win one. He didn't.

Liversidge K. (Left) Ackman J. (Obscured) Crossly J. (Centre) Campbell S. (Right)

First prize, and the inaugural "Thorson" perpetual trophy went to Crossley sailing the ex Rowlands boat with a heavyweight crew. Just as well it wasn't a drifter.

Second prize went to Titshall sailing the now infamous Etchel.

Third prize went to *Blue Max* which also carried the spectators, the starter, and the handicapper.

The Committee determined that special prizes were earned by — Pithouse for services above and beyond the call of duty on *Brief Encounter*, Luke Reinhardt on *Panache* for consistency, and to Paul O'Dwyer and the all-girl crew for outstanding seamanship in rescuing, under sail, Brewer and his appendages when they looked like being blown clear to Tasmania.

Our thanks to Hobson's Bay Yacht Club for the use of their facilities, Geoff Otter on *Blue Max* for the spectator boat, and John Mandelert again for his excellent and revealing photographs.

"Pop Eye"

Jane Ackman (Left) Crossley J. (Centre) S. Campbell (Right)

Tony Lupton, Dick P.H. House, Jon Klestadt

Nicholson, Chief Justice Family Court. (Right). Graham Q.C. (Left)

M.Titshall (Left) S. Campbell (Right)

ANNUAL LEGAL FUN RUN AND POWER WALK

A CLOSE PERUSAL OF THE ABOVE result is most revealing. What no doubt strikes the astute observer is the apparent absence of barristers. This of course might be explained by the court commitments of the 1000 super fit barristers on the busiest legal day of the year, namely 17th December 1990; no doubt, further complicated by the starting time of 6.30 p.m.

As a consequence the less than super fit 200 remaining barristers were left to carry the burden.

Of course, the lack of barristers' names in the result may be explained by the usual obsequious desire of barristers to flatter the hand that feeds them.

It can also be observed that in those categories where only barristers were eligible to enter, their results were outstanding and not one solicitor was denied a place.

Yet another observation that clearly strikes one from the results is the explanation as to why Lasry was granted silk. By gaining third place in the 51–60 years category, it is obvious the Chief Justice knew that he was far more experienced and senior than his youthful countenance belies.

It can be seen that Lasry (as he then was) (just), not content with a third place, formed part of a winning team in the "list" competition. If the reader were to ask which list "Latham" is/was, or how many other "list" teams were entered, your reporter has been sworn to secrecy. I am advised that the "Latham" list is purely for purposes non-legal and there is no effort to break away from the Bar.

This report it should be stated was compiled purely from the imagination of the reporter, bears as little resemblance to the truth as is humanly possible and was written by some-one who was not even present, much like most cricket writers.

It would seem that the Bar and this writer missed an opportunity to compete and socialise with those 100 solicitors who presented themselves at the Annual Legal Fun Run and B.B.Q. which followed.

YOUNG LAWYERS/LINK FUN RUN AND POWER WALK

17 December 1990 Results

First Place:	Mark Purvis	
	Male	**Female**
Under 30	Mark Warsnop	Jenny Lamattina
30–40	Mark Purvis	Theana Thompson
41–50	Ian Gilbert	—
51–60	John Macmillan	—
60+	Mr. Justice Gray	—
First Judge:	Mr. Justice Gray	
Mixed Team:	Jon & Janet Holmes	
Solicitors Team Prize:	Purves Clarke Richards: Mark Purvis Matthew Barrett Mark Poutsie	
Hartog Berkley "Shoe" Prize:	Purves Clarke Richards	
Barristers List:	Latham Chambers: Jennifer Davies Lex Lasry Michael Stiffe	

Overall first, second and third place getters for each age group:

	Male	**Female**
Under 30	Mark Warsnop Dominic Macken Ramon Jeffrey	Jenny Lamattina Lisa Nicholson Leah Fricke
30–40	M Purvis (1st home) S Chesterman Jon Holmes	Theana Thompson Shelley Lipe Janet Holmes
41–50	Ian Gilbert Nigel Watson Phillip Sweeney	
51–60	John Macmillan David Coombes Lex Lasry	
60+	Ben Morrey Ian Gray (1st Judge) Allan Moore	
Fastest Team (aggregate of times)	Purves Clarke Richards: Mark Purves, Matthew Barrett, Mark Poutsie Limpalongs: James Leggatt, Ramon Jeffrey, Geoff Dahlsen Sly Striders: Nigel Watson, Glen Tooze, Helen Johannsen	

Overall 1st–5th place winners:	First	Mark Purvis	26:23
	Second	Mark Warsnop	26:46
	Third	Dominic Macken	27:13
	Fourth	Ian Gilbert	27:19
	Fifth	Ramon Jeffrey	27:42

CRICKET REPORTS

Bar 1st XI v. Law Institute

FOUR RUN-OUTS AND TWO LEG-SIDE stumpings off medium paced bowling ensured the Sir Henry Winneke Cup will remain in the Law Institute's trophy cabinet for another twelve months.

The Bar's 118 all out, well inside their 40 overs, was no match for the solicitors' 7 for 190 in their annual game played at the Albert Ground on 17 December 1990.

The toss was held before Gillard Q.C. could arrive (delayed in Court). His deputy won it and the Bar decided to bowl first. Meadows top-scored for the solicitors with a fine 51 not out, and once again our nemesis Craig Henderson knocked up 46 before he was compelled to retire hurt with a leg injury after taking a sharp single. The fielding side was full of sympathy! One of our players was heard to mutter "They shoot horses, don't they?" However, it was later realised that Craig had suffered a serious injury and was still on crutches a month later.

Apart from Gobbo with 3 for 30, our bowling was steady with McArthur and Connor sharing the other wickets to fall. Harper Q.C. and Donald toiled dutifully at the end of the innings when the "slather and whack" was on.

Still, with the Bar batting down to number eleven, the solicitors' total was achievable at less than 5 runs an over.

The debacle that followed was best summarised by the solicitors' Captain, Bob Carpenter during his after the match speech when he said: "With so many run outs and stumpings, it's clear the Bar needs its running down practice back so its batsmen can relearn the time and distance equation." Ross Middleton top scored with 26, although Gillard Q.C. maintained that had he not been run out that honour would have been his. Bill made 23 and the only other batsman to make more than 10 was Connor with 21.

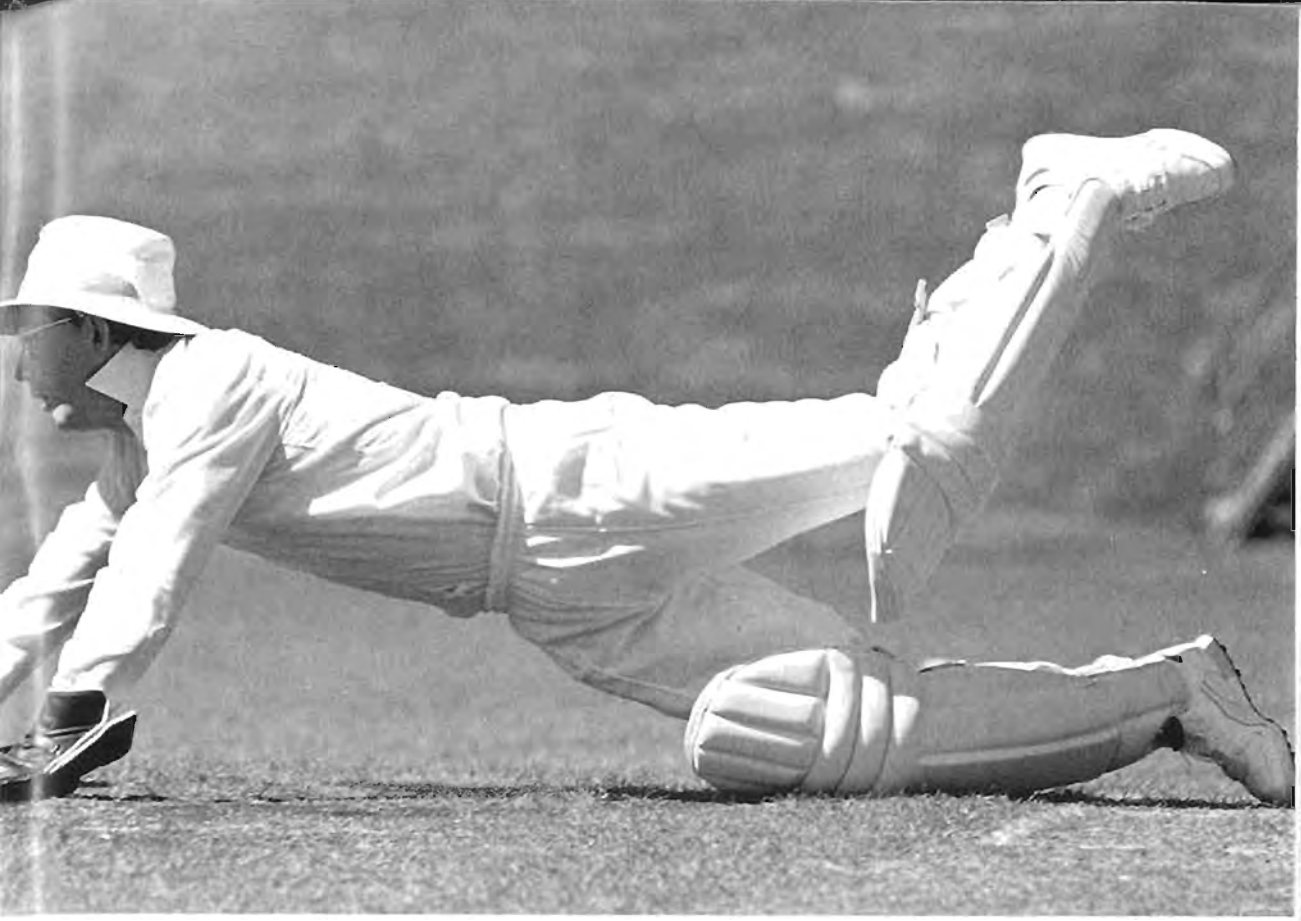
The player who ran out Gillard Q.C. is overjoyed that Bill is on sabbatical in 1991 otherwise his place in the 1st XI would be in jeopardy.

The Bar's team was Gobbo, Ross Middleton, Lithgow, Walton, Macaw Q.C., Connor, Gillard Q.C., Michael Tinney, Donald, Harper Q.C. and McArthur.

CAC

Brian Mueller

David Habersberger



Bar 2nd XI (The All Stars) v. Law Institute

IT WAS AN OVERCAST MORNING, conducive to swing bowling, so it was important to win the toss. Captain Ritter Q.C. was not at the ground, so Ramsey was pressed into tossing. We lost, and Law Institute put us in.

Their opening bowler was definitely a 1st calibre player, and demonstrated this by dismissing Ramsey, who didn't trouble the scorer, with the fifth ball of the match. Things got worse when Wild went in the third over, having only just avoided the ignominy of a duck. Southall showed some flair chancing his hand and making a good 16, before being caught to take the score to 3/30.

The middle order did some good work, with Mathews making 20 and then a partnership of 56 between Kilias and Myers before Kilias went for 25. Myers was finally out to a lucky stumping off Salter for 49, having got us out of a big hole, departing with the score at 7/146. The other useful contribution came from the bat of Glover who hit a lusty 21.

Ritter looking a little rusty, could not emulate the feats of his youth and only managed 5, Gillies made 3, and Hands was left stranded on 8 when Strang was bowled for the same score as Ramsey. All out 181 off 39.3 overs. With the exception of Huntington who took 3 for 9 off 7 including 4 maidens the bowling gave us a real chance.

After lunch and a few health giving ales, we set about containing their batsmen. Things did not go absolutely according to plan that had been carefully thought out by Capt. Ritter. Neither Myers nor Glover who opened the bowling could secure the early breakthrough. It was not until Kilias bowled one of their openers for 20, that the chance of turning the game around presented itself. Those chances had dwindled significantly when Wild caught the other opener off Mathews' second over with the score at 142. Mathews struck again in the same over when Glover caught Forrest for 52. Only one further wicket fell before they got the required runs, Kilias had Long caught behind by Ramsey for 18. Other bowlers, both of whom were unlucky, were Southall and Wild.

Although the game finished with the more usual result, it was an enjoyable contest, and concluded with a few convivial ales.

Andrew Ramsey

Bar 1st XI v. Mallesons Stephen Jaques

THE HOT WEATHER THAT HAD BEEN forecast did not arrive, and the Bar's 1st cricket team played its match against Mallesons Stephens Jaques ("MSJ") in balmy conditions at Como Park on Sunday 17 February 1991.

Although we were put in to bat on a pitch that looked like it might assist the seamers, our resolute openers Radford and Neal were in sparkling form. They added 63 for the first wicket before Neal was out for 29 when he skied a ball into the outfield.

David Harper

Together with Radford's 26, the backbone of our score of 6 for 191 off our allotted 40 overs was Couzens 33 (retired), Connor 31 (retired) and Ross Middleton with a quick-fire 18. Ritter Q.C. remained unbeaten on 8.

When MSJ batted, Con Kilias got the break through in his first over, and shortly afterwards made it 2 for 10 when Radford's athleticism as wicket keeper helped him hold on to a diving catch in front of first slip. However, the bowling hero was our "mystery" spinner, Steven Mathews. He bamboozled the middle order and finished with 4 wickets for 10 runs, with 3 of his wickets clean-bowled. His Captain was forced to remove him from the bowling crease before he cleaned up the tail.

Paul McDermott was put on to relieve him, but in his first over he unfortunately slipped in his delivery slide, tumbled and injured his knee. He was unceremoniously carried off the field to recuperate. At least the skipper was able to get his hands on the ball and finish the over.

Radford, emulating last year's feat when he broke a troublesome last wicket partnership with his first ball, did it again. This time his third ball allowed Couzens to stump MSJ's top scorer Rose

Peter Couzens

for a hard-hitting 42. MSJ was all out for 138, the Bar winning by 53 runs. Others to bowl well were Middleton (1 wicket for 5 runs off 4 overs with 2 maidens), Harper Q.C., Couzens and Cavanough.

Our thanks to Philip Opas Q.C. of MSJ for again arranging the fixture.

CAC

Neville Kenyon and David Habersberger

1st XI
Back row L to R: T. Neal, T. Radford, T. Cavanough, C. Kilias, P. Trigar, D. Harper Q.C., T. Southall, G. R. Hu Q.C.
Front row L to R: P. McDermott, C. Connor, S. Mathews, Peter Couzens, A. McDonald.

2nd XI
Back row L to R: Alan Hands, Malcolm Strang, Phil Kennon, David Habersberger, Rex Wild, Craig Harrison, Bill Gillies.
Front row L to R: Neville Kenyon, Michael Shatin, Jenny Richards, Brian Mueller, John Baring.

Bar 2nd XI (The All Stars) v. Mallesons Stephen Jacques

THE BAR "B" TEAM (179) WON ITS GAME again against the MSJ "B" team (139), on Sunday 17th February at Como Park, after a run gathering spree that resulted in 80 runs being added in the last 8 of its allotted 30 overs.

Opening batsman John Baring (37) who, with Bill Gillies (15) gave the Bar a 34 run opening partnership, loyally followed the captain's instructions to become a permanent fixture, and would still have been batting at midnight if he had not retired in the 22nd over.

Opas Q.C., and others

The opening partnership, and John's subsequent partnerships with Alan Hands (14) and Neville Kenyon (28), enabled the Bar to have enough batspersons available to go after the necessary runs in the latter stages of its innings. The "middle order", Neville Kenyon, Rex Wild (17) and Brian Mueller (13), were able to bat freely and put on the extra runs needed for a win in less than 5 overs.

Malcolm Strang (12), Phil Kennon (5) and the captain (10) proved that it is not the length of the innings, rather the quality, that counts. Strang's dispute with the scorebook continued long after the scorer had gone home. David Habersberger Q.C. refuses to admit that he was stumped by a 75 year old wicket-keeper off the bowling of a MSJ bowler whose name is preceded by the letters "Ms". The team took a blood oath not to tell Mrs. Q.C. who had wisely avoided witnessing her husband's humiliation by visiting Como House.

Earlier in the day MSJ suffered at the hands of a persevering Bar bowling attack.

Rex Wild, whose sun tan makes Andrew Peacock's look insipid, took 2/25 with some fast and accurate bowling, whilst the mildmannered Q.C. turned into Superman and had the superb bowling figures of 3/12. Neville Kenyon, John

Tony Neal

Baring, Phil Kennon, Alan Hands and Jenny Richards also took wickets. Malcolm Strang bowled well (3 runs off 3 overs) without luck. The captain's bowling was so bad that he tried to take himself off after the first ball of his one over of misery, whilst the MSJ team tried to persuade him to bowl at both ends for the rest of their innings.

Jenny Richards first attracted notice during the game when she was accused of letting a ball hit off the Q.C.'s bowling go through her hands and over the boundary. She gained even more attention by having a MSJ litigation partner

caught at short square leg whilst bowling. It was explained to Ms. Richards that neither of those happenings was necessarily good for her career at the Bar.

Brian Mueller kept wickets well. He also kept his temper well. Not even a Test wicket-keeper could have prevented all of the byes for which some of the Bar's rather wayward bowlers were responsible. But for Brian, the Bar's eccentric bowlers would have given MSJ even more "freebies". In addition to Brian, Neville Kenyon, John Baring, Rex Wild, Phil Kennon, Alan Hands and the Q.C. starred in the field.

Craig Harrison distinguished himself as usual by looking like a cricketer. But, unusually, he actually made two contacts with his bat on the ball. This is not to say he scored runs, just that he managed to make contact. Whilst fielding Craig never lost his composure, nor his sunglasses, and he ensured that the ball was given a sporting chance of getting to the boundary. He is a fine sportsman. For further interesting reading about Craig, see (1990) 72 *Bar News* at p.46.

Q.C. junior and Kennon junior umpired during each innings and both teams appreciated their cheerful and unselfish efforts.

All that remains to be said is that on that warm and sunny day Como Park was tranquil and serene and, whilst the Bar and MSJ were happily at play, everyone else at the park sensibly nodded off to sleep.

Michael Shatin

GREY KANGAROOS

Bill Gillard Q.C. toured India with the Grey Kangaroos accompanied by star all-rounder Phil Trigar — this was one of the results, as reported in the Nepal News.

KATHMANDU XI WIN

By A Staff Reporter

Kathmandu, Nov. 2:

Kathmandu XI beat Grey Kangaroo of Australia by seven wickets in the season's first one-dayer at the Tundikhel cricket ground here today. A deserving win for the home side, but never a morale-boosting one.

The visitors were anything but impressive. Their sloppy fielding, feeble attack and listless batting robbed the match of even a semblance of competitiveness.

Two wickets down for a duck, the tourists from down under were bundled out for a paltry 94 runs in 33 overs.

Only three batsmen reached the double figures: M. Foster, D. Shaw and E. Le Couteur, the latter having topscored with 30. Though only three fours to his credit, Couteur's sedate innings was a mixture of both luck and application.

He also figured in a 19-run partnership — their second highest — with Shaw. But that was far from enough.

Ever since P. Davies and W. Gillard left them in the doldrums without opening their individual scores, they had their backs to the wall.

The Kathmandu XI bowling line-up, spearheaded by Sagar Pyakurel's four wicket haul, virtually mowed through the Australian innings.

Wickets fell at regular intervals while runs were hard to come by.

In addition to Sagar's rather match-winning performance, S. Pandey and T. Dixit accounted for two visitors each.

When Nepalese batsmen took to the crease, they were pressure free. Their keyword: No hurry.

Bhupal Shaha and Kishore Pant opened the Nepalese innings and took their time to settle down. It was after 20 minutes that the home side scored its first boundary, that having come off the blade of the latter.

Bhupal, however, soon made his way to the tent, having fallen victim to P. Darley. The score was 23 and Bhupal had scored 6.

Kishore was joined by Pukar Pant, the number three Nepalese batsman, who contributed 25 valuable runs. He was stumped out off the bowling of W. Carroll.

Kishore, who had two lives, one at the first slip and the other when the wicket keeper let him down; midway through the innings, went on to carry his bat. He made 36 runs, with three fours.

Subarna Joshi contributed 25 runs. By the time Dixit struck the winning shot it had become clear that the visitors were a fairly weak side.

The extent of their standard could be gauged from the fact that E. Pope bowled 12 overs — remember, the match was a 40-over encounter — a pointer to the fact that theirs was not a professional side but a bunch of vacationers.

A FAIRY TALE (continued)

NOW GATHER AROUND MY DEARS whilst I continue the tale of the VicBees.

You are probably thinking that now there is a new year much progress will have been made on developing the new hive. There has been much change at the site of the new hive but no developments towards the new building. When we last visited the VicBees there was talk of making it into a bomb site (a la London circa 1950s). More patriotic thoughts prevailed and it has now been developed into a very good representation of a toxic waste dump. Sort of Western Suburbs 1980s. The architects have received much praise for the way they have placed a wide variety of containers so as to give the impression that they have been dumped randomly. It is expected that phase two will consist of a large sprinkle of used motor vehicle tyres, phase three diffuse plantings of weeds and finally introduction of a colony of rare bandicoots. It would be expected that the establishment of that colony would ensure that the site would obtain a heritage classification and/or a Wilderness Society endorsement and be unable to be further developed. If some bandicoots cannot be encouraged to set up abode there a few rats could be introduced. No one would know the difference.

And very few VicBees would care anyway because doom and gloom have descended upon them as well. As everyone knows, VicBees were never endowed with a sense of optimism. Pessimism always came more readily. At the end of last year every VicBee forecast diminished pollen gatherings for every other VicBee. Even some of the more venerated ClerkerBees took to counselling against pessimism, doom and gloom instead suggesting that VicBees had always experienced cyclic variations in pollen gathering. VicBees were warned that if they suffered a cyclic downturn in their pollen collections it would be probably no more than the result of an unusual lunar phase, a unique alignment of the stars or the el nino effect. They were assured that if it happened to them it probably would happen to their neighbours as well. They were reassured that it certainly would not be the fault of the ClerkerBees. Some of the more paranoid VicBees wanted to blame it on the AgeeBee. That was quite unfair to the AgeeBee as he had far more important concerns on his mind.

The new year did come around and doom and gloom did indeed descend. No sooner had the VicBees returned from their holidays than they discovered that it was all much worse than they had imagined it could be. Rumour fed upon rumour and stories abounded. There was the VicBee who had been in the hive for sixteen years but had only been invited out for pollen collection twice in six months. There were the ClerkerBees who had lost their VicBees by the droves. No one knew where the deserting VicBees had gone — not to another ClerkerBee, nor out of the hive altogether. There was the story about the closure of the hive to new Bees. There was even the suggestion that natural attrition would lead to a 25% reduction in the size of the colony — what would that do to hive building and expansion plans!! What would happen to the new group of cells obtained at great expense in one of the older hives! Perish the thought!

The funny thing was that whilst doom and gloom descended like a plague of locusts on a Mallee wheat farm no one had personally experienced any reduction in its pollen quotas although everybee knew dozens of others who were in "real trouble". Individual optimism vied with group gloom.

Perhaps, the solution would be to advance the construction of latest, biggest, most expensive, ugliest hive. After all the number of VicBees expand to just exceed the number of cells available in their hives. There could be a cell-led recovery. At the worst, even if the VicBees did not benefit thousands of others would, such as land developers, builders, engineers, architects, financiers, speculators, consortiums to buy and lease back at great profit, excavators who could undermine neighbouring hives. I am feeling a lot better already.

It is now getting late my dears, perhaps a little more tomorrow night.

THE 1991 BAR CONFERENCE

28th/29th September 1991

Dear Editor,

Re: 28/29 September 1991

Lawyers from overseas are invited to register for the 6th annual conference of the Bar of England and Wales to be held at the New Connaught Rooms, Great Queens Street, London WC2, a short distance from the Law Courts and the Inns.

The conference will open with a keynote speech on Saturday morning. The programme of workshops offers greater diversity this year than

ever before. Subjects to be addressed include many areas of interest to international practitioners.

We would be grateful if you would include the Bar Conference in your calendar of forthcoming events and advise your members through the pages of your journal that their participation will be welcomed.

With very many thanks,

Your sincerely,
Clare Temple

Conference Organiser: Blair Communications & Marketing, 117 Regent's Park Road, London NW1 8UR
Telephone: 071-722 9731 Facsimile: 071-586 0639
Telex: 265181 BLAIR G
Conference Chairman: Mr. Hugh Bennett, Q.C., Queen Elizabeth Building, Temple, London EC4 9AH
Telephone: 071-583 7837 Facsimile: 071-353 5422

NOTED LAW REFORMER APPOINTED PROFESSOR AT MONASH

ONE OF AUSTRALIA'S LEADING LAW reformers has been appointed to a personal chair in the Faculty of Law at Monash University.

Professor Marcia Neave, formerly John Bray Professor of Law at the University of Adelaide, becomes the first scholar to be awarded a personal chair in the faculty.

Dean of Law at Monash, Professor Bob Williams, said: "Professor Neave is one of Australia's leading scholars and law reformers and her appointment will add greatly to the strength and distinction of the faculty."

Professor Neave graduated LL.B. with first class honours from the University of Melbourne in 1966. From 1967–69 she was tutor and senior tutor in the university's Faculty of Law. She was appointed lecturer in 1970 and senior lecturer in 1976.

Professor Neave took leave from the University of Melbourne in 1982 to take up an appointment as research director at the New South Wales Law Reform Commission, where she played a significant role in the references on de facto relationships and accident compensation.

On her return to the University of Melbourne in 1984 she was appointed part-time commissioner with the commission. The following year she headed a government inquiry into prostitution in Victoria, and also was promoted to reader.

In 1986 Professor Neave took up an appointment to a chair in law at the University of Adelaide, and later became dean of the faculty. She is a member of the Victorian Law Reform Commission and the National Advisory Committee on AIDS.

Professor Neave is known internationally as an expert in property, trusts and family law, and has been responsible for several major reports arising from her work for law reform agencies and governments in Australia. She is a Fellow of the Academy of the Social Sciences in Australia.

SUPREME COURT OF VICTORIA PRACTICE NOTE

The Chief Justice has authorized the issue of the following Practice Note

No. 1 of 1991 Civil Appeals

With a view to expediting the hearing of civil appeals and to facilitating the delivery of judgments therein some changes in the practice relating to these appeals will be made.

1. A summary of the facts by the Listing Master will no longer be provided to the Court or the parties, but instead the appellant will be required to provide a summary. Where an appellant is unrepresented, the respondent will be required to prepare the summary.
2. The summary should set out only so much of the facts as are necessary for the Appeal Court's understanding of the issues to be raised on the appeal. The facts should be stated in a neutral rather than a tendentious manner. The summary should identify the issues in the appeal and in so doing should identify the errors said to exist in the judgment appealed from and relate those errors to the grounds of appeal which the appellant intends to argue.
3. The summary should be served upon the other parties to the appeal and an opportunity afforded to them to make such additions, deletions and corrections as are thought necessary. The respondent should have regard to issues intended to be raised by way of cross-contentions to support the judgment appealed from. If agreement cannot be reached as to the summary of facts, the respondent may file an appropriate commentary confined to those facts where the respondent disagrees with the facts as stated by the appellant. The summary is to be filed with the Listing Master and served on the respondent within 21 days after the Listing Master has certified the contents of the appeal book.
4. Any commentary by the respondent is to be filed within 10 days after receipt by the respondent of the appellant's summary. However the summary will be scrutinised by the Listing Master and an appeal will not be entered in the list of appeals for hearing and so will not be able to be allocated a date for hearing until the Listing Master is satisfied that an adequate summary has been filed. So far as cases already entered in the list of appeals for hearing are concerned, a date will not be allocated for hearing of an appeal until the Listing Master is satisfied that an adequate summary has been filed.
5. **Outline of Argument**. Counsel's outline of argument should be delivered to the Court and exchanged with other parties at least forty-eight hours before the day fixed for the hearing of the appeal. Lists of authorities should also be provided at the same time. When it is intended to refer to an authority not reported in the authorised reports photostatic copies of the authority should also be provided.
6. These directions modify the directions contained in Practice Notes published at [1985] V.R. 332, [1985] V.R. 417 (No. 3 of 1985) and [1987] V.R. 854 (No. 2 of 1987) but save as so modified those Practice Notes retain full force and effect.
7. **Commencement.** These directions will take effect so far as possible from the beginning of the second term in 1991.

DATED this 19th day of February 1991.

A.R. Traves
Senior Associate to the Chief Justice