Bar News

The journal of the NSW Bar Association

Summer 1985

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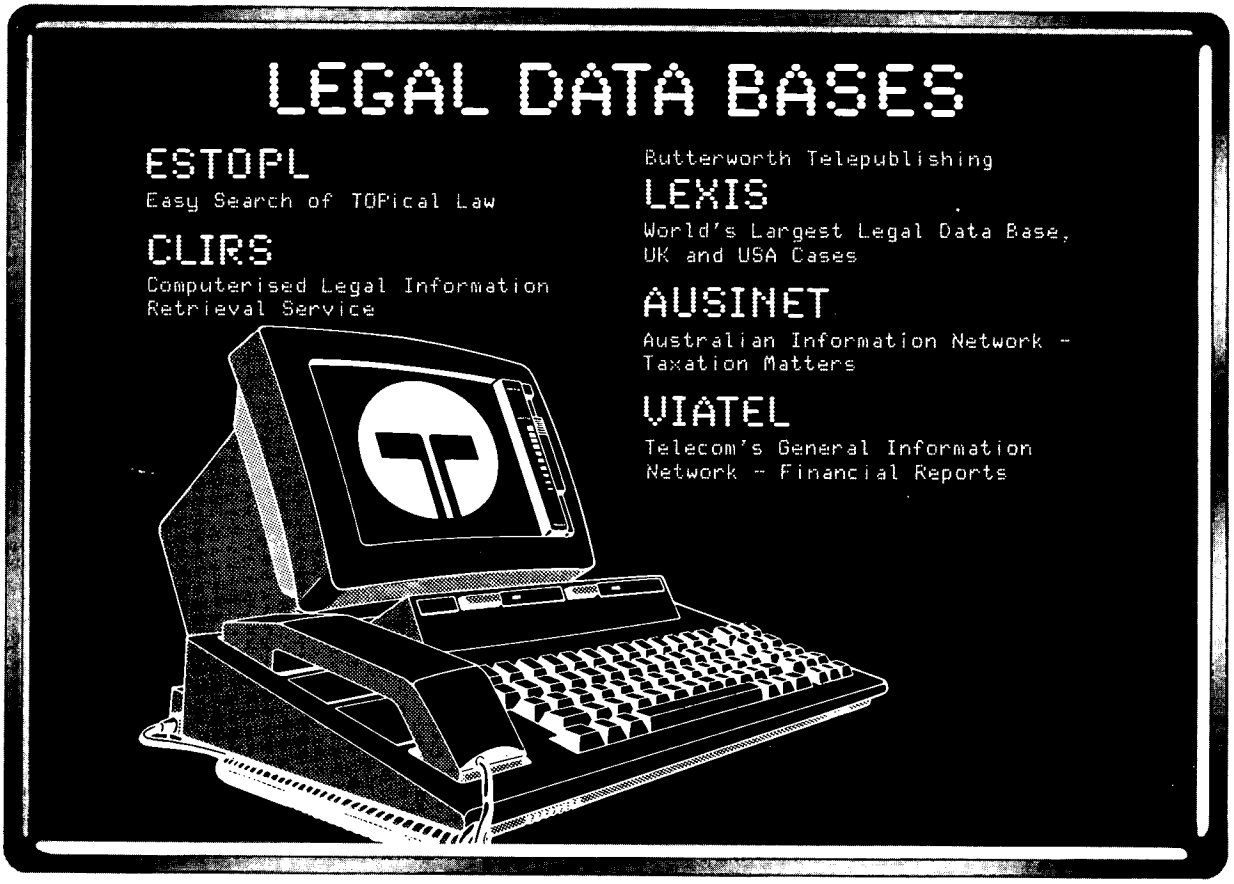

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In this issue

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Newly elected President of the Bar Council, R.V. Gyles QC, plans a presidential style that takes elements from a variety of his predecessors.

The Editor has asked me to make a policy statement.
I aim for a continuation of the Gleeson 'No News is Good News' policy. To adopt a Fraserism, I hope to keep sport on the front page of *Bar News*. Whether zealous journalists, disgruntled clients, recalcitrant judges, sensitive solicitors, and restless politicians, disaffected members of the Association will permit it is another matter.
I can, however, reveal that I have been under intense pressure from certain former Presidents to jettison Gleeson's policy of being first to leave all Bar functions and return to the quite different policy of Meagher and McHugh.
I do not need to catalogue all of the problems we face as barristers and collectively as a Bar.
Escalating costs (particularly for accommodation), consistently inadequate revision of the scales of fees (particularly legal aid scales), and the current threat to several significant areas of work, combine to make survival difficult for those without established practices in commercial work or some other lucrative specialty.
The proliferation of chambers, the growth of regional Bars, the increase in numbers of practising barristers, and the widely differing work background of new entrants to the Bar make the establishment and maintenance of uniform professional standards of competence and ethics more difficult than hitherto.
To say the New South Wales Bar Association is a trade union is about as unseemly and indecorous as (to take one of Gleeson's illustrations) submitting to a Federal Court judge that he has no jurisdiction.
Nonetheless it is the essential truth. It is also a truth recognised by those with whom we must deal. It is not something for which we need to apologise.
There is little point in successfully resisting frontal attacks upon the structure of our profession, and in instituting reforms such as the new education and reading programme and the new disciplinary procedures if by a slow process of attrition the rewards of practice at the Bar will not be commensurate with the risks of the occupation.
Recruitment of able people is essential for the Bar to be able to properly perform its funtions. We are competing in this with the lucrative and heady world of large firms of solicitors and large corporations and with the security which can be offered by the Government and the Universities.
This may be the year of 'bread and butter' issues.

Bar notes

Arbitration Rules

On 11th November, 1985 the Rule Committee of the Supreme Court resolved that SCR Pt. 72 (which relates to arbitrations generally) should be repealed and re-enacted to accommodate the introduction of the Commercial Arbitration Act 1984 in the place of the Arbitration Act 1902.

The new rules will take effect on 1st January, 1986. They contain certain provisions which were strongly opposed by the Bar and of which it is considered that members should be made aware.

Notably Pt. 72 r.2(1) enables the Court, in any proceedings before it, to refer those proceedings in whole or in part for determination by an arbitrator **of its own motion** (ie regardless of the wishes of the parties). The fundamental point of the Bar's opposition to this rule lies in the principle that, absent any binding contractual constraints, a citizen is entitled to have his disputes determined in and by the courts of the land in accordance with law.

That that principle is basic to the interests of justice (and cannot yield to any supposedly pragmatic exigencies, such as matters of technical complexity perceived to be too "difficult" of resolution by judges) has been emphatically recognised in this context both in Victoria and Queensland.

The Supreme Courts of those states have held that an order for compulsory arbitration, if opposed by **any party**, should only be made in the most exceptional circumstances: *Taylor & Sons Pty Ltd v Brival Pty Ltd* (1982) VR 762; *Honeywell Pty Ltd v Austral Motors Holdings Ltd* (1980) Qd.R 355. Logically such an order should never be made where none of the parties desires it.

The Rule Committee introduced two other innovations. By Pt. 72 r.3(2) a judge may be appointed as an arbitrator either alone or with a layman or laymen.

Again the parties' consent is not prequisite. Further Pt. 39 r.2 has been amended to provide for the appointment of a court expert without consent and regardless of litigant's opposition.

The Bar Council considers these steps also represent serious threats to the proper administration of justice. Parties are entitled to have their cases heard and determined in open court and not to be the subject of deliberation by decision makers behind closed doors with relation to matters (eg the lay arbitrator's or expert's opinions) not the subject of sworn and tested evidence.

Members are urged to report any unsatisfactory use of these new rules so that, if need be, their repeal can be the subject of appropriate representation.

Reforming Criminal Justice

On 17th September 1985 the President of the Bar Council wrote to the Attorney General to inform him of the Bar's views on necessary reforms to the system of criminal justice in New South Wales. The following reforms were advocated:

- There should be no report by the Judge to the Court of Criminal Appeal, except by consent.
- In each trial there should be a complete transcript of evidence, addresses and exchanges between Judge and Counsel.
- The court reporting should be by electronic audio recording.
- No amendments should be made to transcripts except by order, in open court, after argument.
- The Judge's summing-up should be treated in the same way as the rest of the transcript. It should be available immediately and not altered or edited except in open court, after argument.
- The jury should be discharged immediately after verdict.
- There should be a criminal trial registry independent of the Solicitor for Public Prosecutions for the purpose of listing cases and allocating judges.
- There should be a fixed time table for trials whereby the Crown is required to file indictments and give to the defence statements of prospective witnesses and other material to be used at the trial, well in advance of the date fixed. Any change in the date should be by order of a Judge after hearing both sides. The practice whereby the Crown Prosecutor can manipulate the list by the expedient of declining to present an indictment should stop forthwith.
- When taking a verdict of guilty the Clerk of Arraigns should question each juror to ensure that there is in fact unanimity. The present perfunctory question addressed to the whole jury ("so says your foreman, so say you all?") is not helpful, and in view of recent events a clear question to each juror would help avoid error, and later speculation. The matter was referred to by Barwick CJ in *Milgate v The Queen* 58 ALJR 162.
- A convicted accused and the Crown should be on an equal footing so far as time to appeal is concerned. At present the accused has 10 days (Criminal Appeal Act, S.10) whereas there seems to be no limit on the time within which the Crown may appeal against sentence (s.50). The time should be 21 days.

The President also advised the Attorney General that it was the view of the Bar Council that the right of an accused person to make an unsworn statement should be retained.

Bar Policy

At its meeting on 24 October 1985, the Bar Council resolved that decisions on matters of policy should, when of general interest, be promulgated to all members of the Association.

It hoped the move would reinforce the cohesion of the Bar and enable members to 'speak with one voice' when questioned on matters of general policy.

Policy decisions of general interest made by the Council in 1985 are:

1. **Tutorship and part-time practice:** A barrister member who accepted a Tutorship within a Law Faculty was informed that the Council would have no objection to his appearing at the Kingsford Legal Centre, or interviewing clients at the Centre, as part of his duties, provided he received no payment for such activities other than his salary as a Tutor.

2. **Areas of Preferred Practice:** It was decided against expanding information available to solicitors in the document 'Areas of Preferred Practice' to include barristers' qualifications in non-legal disciplines.

   The principle underlying this decision is that Counsel should be briefed on the basis of their perceived 'cost-effectiveness' as advocates and that expert witnesses to cover non-legal matters should be summoned as necessary.

3. **'Bulk-Fees':** The Council resolved that it had no objection to a member being paid a 'bulk-fee' for a week's work — or other period.

4. **Darling Harbour:** The Council opposed a Bill in relation to land at Pagewood which amounted to Parliament legislating for the result of a particular piece of litigation and the costs associated with it.

   The more recent Darling Harbour Authority (Amendment) Bill and Blue Mountains Land Development (Special Provisions) Bill have had a similar effect and formed the subject of a press release registering the Council's opposition to this type of legislation.

5. **'Verbals':** The Council wrote to the Attorney-General and issued a press release condemning the practice of Police 'verbals'.

   The release also strongly supported the recommendation of the Criminal Law Review Division of the Attorney-General's Department that the questioning of suspected persons by police officers should whenever possible be recorded on video.

6. **Ethics procedures:** The existing two Ethics Committees were expanded by the addition of a distinguished non-Council member in each case. The Committees themselves were renamed 'Complaints Committees #1 and #2'.

   Additionally, complaints may be referred to a Disciplinary Tribunal. These procedures are explained fully and promulgated in the 'Bar Rules' section of the 1985 Annual Report, and the President comments upon them in his 'President's Report' in the same publication. The new Bar Council (1985-86) has three complaints committees.

7. **The 'Silk-List':** It was decided that the list of applicants for Silk should in future be made accessible, on request to the Registrar, to all members and barristers' Clerks.

The Half Century Ball

The incorporated Bar Association of New South Wales will be 50 years old in late 1986.

The Bar Council will host a Ball on Saturday 1 November 1986 to mark this Golden Event.

The venue has been laid at the University of Sydney and in particular the Front Lawn, the Great Hall, the Ante Room and the Quadrangle.

The Palm Court Orchestra will entertain ballers in the Great Hall during drinks and in marquees in the Quadrangle during dinner.

Members of Circus Oz will provide occasional diversions.

Dance Bands yet to be nominated will play in the Great Hall and on the Front Lawn later in the night.

Non-members and their guests will be most welcome. Tables of any size can be accommodated and early plans should be made for the formation of tables.

Further details will be available in the New Year but the appropriate diary entry should be made now.

A plea for Jewish women

Dear Editor,

We would be most grateful if you would be able to bring to the attention of your readers a problem which female Jewish clients may encounter in the family law situation, and of which your readers may not be aware.

Even though a woman may have a divorce decree pronounced by the Family Court of Australia, under Jewish religious law, she is unable to remarry unless she also has a Jewish divorce decree, which is called a "Get", and which is obtained through the "Beth Din", which is the Jewish ecclesiastical court.

Such a religious divorce may only be granted by the husband.

The problem is that on occasions a man will refuse to give his ex-wife a religious divorce, thus preventing her from having any remarriage recognised under Jewish law, and this can have drastic consequences for the status of any children of such remarriage.

One solution to this problem appears to be to include in any section 87 agreement a provision, where applicable, that the husband will forthwith apply for and take all necessary steps and use his best endeavours to grant a Jewish Get, and that the wife will consent to the receipt of the same and will cooperate with the husband in taking such necessary steps.

A further solution appears to be to seek in any application to the Family Court an order that the husband grant the Get.

The Family Court has attempted to facilitate the granting of a Get.

We would refer you to *Steinmetz and Steinmetz* (1980) FLC 90-801 and *Steinmetz and Steinmetz (No.2)* (1981) FLC 91-079, where it was held that the husband pay the wife lump sum maintenance within three months, but that if within that period the husband had caused the wife to be granted a Get, the lump sum maintenance would be reduced.

This followed the English Court of Appeal decision in *Brett v Brett* (1969) 1 All ER 1007.

Unless the above is borne in mind by the wife's legal representatives, the wife will be in the unhappy situation of being unable to obtain a religious divorce from an unwilling husband, although already divorced in the Family Court.

Lysbeth Cohen
Status of Women in Jewish Law
Chairman
The National Council of Jewish Women Of Australia
Woollahra NSW

Farewell, Bill Cook

Words and pictures from the retiring Registrar's farewell dinner

GLEESON QC: Bill Cook joined the Bar Association in 1965. At that time it had 423 members; its membership now numbers approximately 1000. I say approximately because the precise number of our members is a secret, we pay fees to the Law Society on a basis of capitation — the Law Council I should say — we don't yet pay fees to the Law Society.

The principal speaker this evening, by his own request, with the common and warm consent of the Bar Association, is the member of the Bar Council who probably had the closest association with Bill Book in recent years. That is Wheelahan, who has been our Honorary (and extremely successful) secretary.

Before Wheelahan is given the opportunity to express his feelings, there is another ceremony that has to be performed. It is customary for people who take Silk in any given year to make a gift to the Bar Association. The people who took Silk in November 1984 had the inspired notion that they would make a gift to The New South Wales Bar Association of a portrait of Captain Cook ... Lord QC, on behalf of those who took Silk in 1984, and who had this marvelous idea of making such a handsome gift, such an appropriate gift to the Bar Association, will now make the gift.

LORD QC: It is, you may agree, quite unfair that an ex-airman should be called upon to present a portrait of an ex-sailor.

As Gleeson has said, it was the practice for some years now, or has been the practice for some years now, for the Silks of a given year to mark their appointments with a gift to the Association. I have to tell you, because he has told me I have to tell you, that the idea of giving the portrait of Bill Cook came from Les Downs. A group of us met last year in the President's Court about to make our bows and obeisances and he propounded this idea which was enthusiastically received and indeed unaminously adopted by us.

There are some who think that silver and tables are more appropriate, but I speak for those whom I represent and, of course, on instructions, and we felt that it would be the perfect union of our appointments and Bill Cook's retirement that we should do something by way of portrait so that he could bear us in mind and the members of the Association still to join could bear him in mind also and be grateful for what he has done.

Mr Barron is a portrait painter of great quality, capacity and reputation. He has been welcomed on more than one occasion into Buckingham Palace to paint portraits of the Sovereign, and indeed it is not inappropriate perhaps that he should paint the portrait of Bill Cook who has himself been rewarded by the Sovereign with the award of what used to be Membership of the Royal Victorian Order.

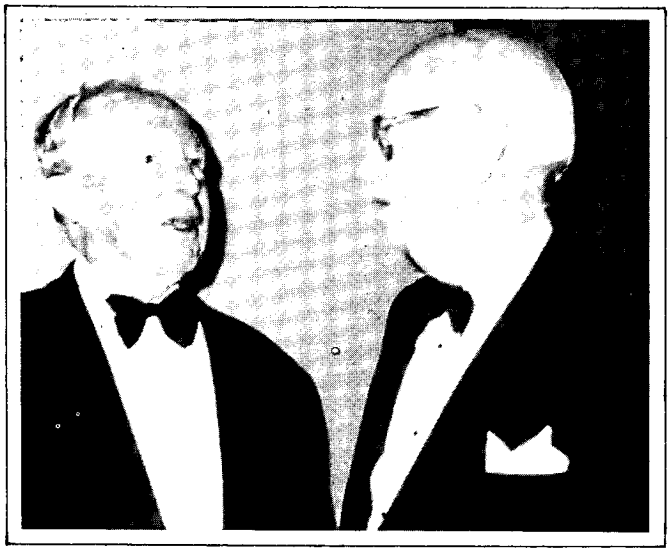
It is regrettable perhaps that owing to some administrative change the Captain has now been demoted to Lieutenant of that Order, but still that is a matter for those who have greater say in it than we have.

May I say this, those of us who have known Bill Cook, and we all have known him, will leave this dinner with the confident assurance that we will never forget him — and we trust that he will never forget us.

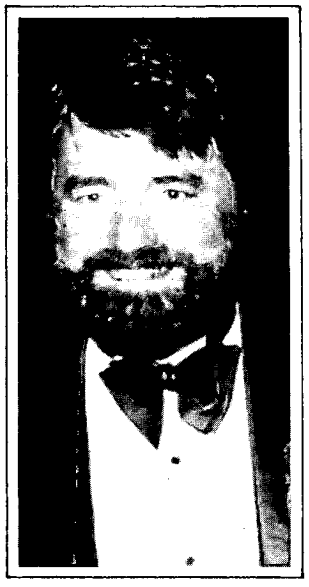
To Bill Cook we extend our thanks and to Mr Howard Barron, portraitist par excellence, we also extend our thanks for perpetuating him on what might be called "immortal canvas".

I now call on Wheelahan to propose the toast to Captain Cook.

WHEELAHAN: Your Excellency, Captain Cook, Mrs Cook, Judges, Knights of the Realm — there are no Peers here, we are waiting for Sir William Deane's next step on the judicial ladder. The President delivered one of his now customary opinions, it was delivered very



Sir Garfield Barwick PC, GCMG and P.J. Kenny QC. Right: Mr Justice Kirby and T.E.F. Hughes QC.



speedily, but like so many of them these days it was factually inaccurate anf thoroughly useless. He has defamed me and has said very little about me you may have noticed. I have been dragooned into this spot tonight and for him to suggest that I am here of my invitation is stressing it too far.

I heard Lord QC and I shed a tear as I am sure a lot of you did, it was a touching moment. But having heard him I can understand why the legislature of this great State made it obligatory for the Crown to address first.

The man left so much unsaid, he left so many old wounds unopened. So many scandals unrevived. So many libels unpublished. My Latin embrocation for this evening is "furiosi non voluntus est", which Gleeson will tell you later means roughly "the mad are not responsible for their acts". Hence my appearance here.

Bill Cook joined us in 1964. The President in that year was Kerr QC (as he then was) — the most junior Silk was Laurence Street QC, the most junior barrister was Rod Craigie. There were 400 odd (or certainly very peculiar) members of the Bar, five of whom were female. These latter class of members of the Bar were designated with very helpful and instructive titles such as Miss or Mrs, and it was most helpful in those days because a chap had a rough idea where he stood — it is not so now of course, we are lucky to get their initials in.

In those days the Chairman of Quarter Sessions was His Honour Judge Monaghan. He was described by one of his sibling Judges in those days as "our non-playing Captain". The Judges then were colourful, multifaceted, three-dimensional chaps, nicknames were ubiquitous, and some bordered on being onomatopoeic — there was for example "The Hisser", "The Boy Wonder", "The Tired Lion", "Carter Brown", "The Black Prince", "The Funnel Web" and "The Red Nosed Reindeer". There will be a prize in the next *Bar News* for those who get them all right.

Well what do we have today. We have such inelegant appellations as "Knuckles", "The Crusher", and worst of all — what have we done to deserve this? — we have got "The Ringbarker". The Registrar has seen many of these Judges, at close quarters, but more importantly he saw with great regularity the Presidents; and haven't we had some Presidents ... The Registrar, or the not-so-retiring Registrar, who we are honouring tonight, has manfully and cheerfully shouldered the burden of being Registrar for over two decades under such benevolent regimes as that of "Admiral" Glass, "Chancellor" Samuels, "The Ayatollah" McGregor and Trevor "I've never seen a cheque so small" Morling.

He was able to struggle on, but under Gleeson's regime he has had to muster what little dignity was left to him and retire.

Long ago when the Bar was in its egalitarian mode, and that's a long time ago you will appreciate, the Bar played cricket against the articled clerks. Hiatt QC failed to attract the gimlet eye of the selector, none other than that outgoing bon vivant and raconteur Roger (Harbour Bottoms) Gyles. Hiatt petulantly elected to play with the articled clerks, proclaiming with uncharacteristic candour that he had once been an articled clerk as he had once been a barrister.

Well in order to redress this imbalance, the Registrar invited the then President of Silk to play for the Bar. The President who had just successfully prevented newspersons from breaking and entering his home — one T.E.F. Hughes — said he would play but on three conditions. They were that he would be permitted to arrive after the morning tea adjournment at Central Court; that he be Captain; and that he could bring his own bat which was then, and for all we know still, bearing an exhibit stamp.

Of course Bill, when he was but a humble Assistant Registrar, was the Registrar to the very elegant, gentle, philanthropic Bernard Riley. One of the later Presidents who is neither gentle, elegant or philanthropic was Meagher.

Meagher became President in 1979. It was a turbulent, indeed nervous period for the Bar. On one occasion Meagher left Sydney to attend a convention in Hong Kong and, as he left, he could not but help deliver a backhanded and gratuitous swipe at the Law Reform Commission wherein he described the then formidable Professor Sackville and his Comissioners as being "the gang of four". He then left the shores.

It appears, on reflection, that Professor Sackville was to Roddy Meagher what Bishop Tutu is to P.W. Botha. The Registrar was understandably relieved to see Meagher out of town, but barely had his plane touched down in Kaitak when this wonderful little message came down from the Crown colony.

It was Meagher on academics. He said this: "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

Mr Justice McHugh and K.R. Handley QC

prattle relentlessly about the non-subjects of consumerism, bail, poverty, computers and racism"; and added: "They may be dismissed from calculation. They possess neither practical skills nor legal training. They are failed sociologists".

Well after the publication of this conscientiously held opinion, the Registrar began a workmanlike impersonation of Mafeking repelling the enraged dervishes of academia. Meanwhile in Hong Kong, Meagher ordered another Chivas Regal.

It would be inappropriate to give this gathering a glossary of the Presidents that have been serviced and assisted by the Registrar without mentioning the Presidency of the now Mr Justice McHugh. There was a slight, barely perceptible shift in approach when Meagher moved out of the Chair and the Judge moved in.We moved from the indigo of Meagher's Tory philosophy to the pinkish-tinged policies of the Gucci Bolshevik. This smoked salmon socialist espousing deep waterfront socialism, brought to the Bar a new love of horse racing.

But as I say, Bill was able to weather all of these storms until the arrival of Gleeson.

It is with great regret that the New South Wales Bar loses a man with Bill's knowledge of the Bar and of barristers. Every Judge sitting in New South Wales who was appointed from the ranks of barristers was appointed after Captain Cook came to the Bar as Assistant Registrar and then as Registrar.

He has maintained the Association on a steady course during some particularly troubled times, and it is with great regret that I see him go. He has been a great assistance to all members of the Bar, particularly young barristers, and he is a most highly regarded and most highly respected man.

CAPTAIN W.F. COOK: Thank you for that painting, what can I say about having my portrait painted other than to thank, most profusely, the Silks of 1984; and in particular Les Downs.

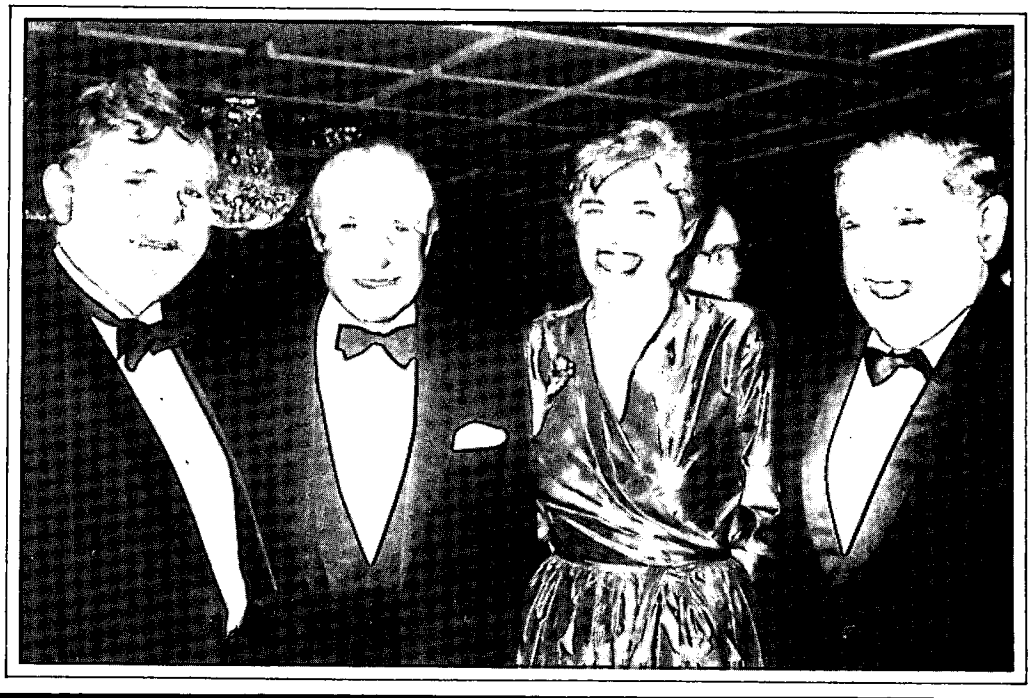
I did give him the Cromwellian instruction that it was to be "warts and all", but Mr Barron, whom the donors were so lucky to be able to commission — almost as you might say in between visits to Buckingham Palace to paint Her Majesty — has over complimented a somewhat more humble subject. I am thrilled with it and I do hope the Bar approves also.

Unlike Sir Laurence, who hangs outside Banco in what is now known as Five Ways (Paddington barristers will recognise of course that that is where all the Streets meet) I will probably finish up hanging around David Martin's bar.

However, wherever I am hung I will, in the words of the Prayer Book, "Be amongst you and remain with you always". And I am now able to say — proudly — that I did *not* leave the Bar Association "unwept, unhonoured and unhung".

"Sunset and evening Star
and one clear Call for me
And may there be no
moaning of the BAR
When I put out to Sea".

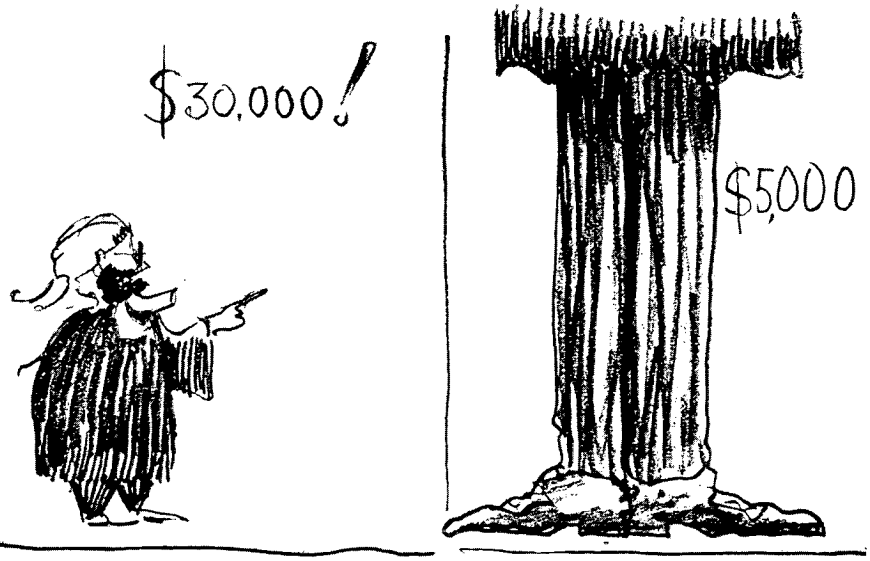
The Chief Justice, Sir Laurence Street, Mr Justice Cantor, Kevin Murray QC and Cecily Backhouse



Below:
R.P. Meagher QC

A day out in the Compensation Court

with Kirkham and Poulos



The other side of midnight

Michael Finnane QC, looks at Athol Moffitt's recently released book A Quarter to Midnight. *Finnane QC was the Inspector appointed to inquire into the affairs of the Sinclair Pastoral Company Pty Ltd and other companies, appeared for Ms Schreiner SM in the special Commission of Inquiry into allegations made by Bob Bottom, and more recently was counsel for the Crown in the inquiry into the convictions of Anderson, Alister and Dunn.*

Athol Moffitt, QC, formerly the President of the Court of Appeal Division of the New South Wales Supreme Court has produced a book of some 242 pages, entitled, somewhat melodramatically *"Quarter to Midnight"*.

The book is an interesting one, not least because it records in one place, the views of a recently retired judge on a number of matters on which he has been expressing his interest for some years.

Moffitt devotes about half of the book to the subject of organised crime. The rest of the book is concerned with the deficiencies of the National Crime Authority, the role of Judges as Royal Commissioners, the deficiencies of Special Commissions of Inquiry, the failings of some judges, politicians, political parties (particularly the ALP), the separation of powers and recommendations for various steps to be taken to combat organised crime.

"Organised Crime", says Moffitt may be described as "repetitive, high profit crime, conducted virtually as a business, based on syndicates of some permanence, having among its essential characteristics the use of sophisticated business practices (particularly in the area of money laundering) to conceal its enormous profits, the deliberate abuse of civil liberties to protect its agents, and, most importantly, the systematic use of bribery and corruption to hamstring the normal operations of the law, and to facilitate its entry into more legitimate areas".

He correctly points to the threat to our society posed by organised crime and the vulnerability of any government long in office, to be entrapped by interests controlled by organised crime. The assertion is made that the ALP is particularly vulnerable because of its philosophy of strong party loyalty or "mateship".

It would be more correct in my view to assert that all political parties are vulnerable and particularly because of the tight party discipline that operates in all parties, no party willingly concedes even the slightest possibility of vulnerability to corruption.

However, if Moffitt's premise that mateship creates vulnerablity is correct, the most vulnerable party, without doubt is the National Party, particularly its Queensland Branch.

The valid point is made, however, that the reaction in Australia to allegations of corruption and the existence of organised crime is for the relevant government to set up an inquiry.

As he says "In Australia we have an inquiry obsession". Very often, it occurs that when an inquiry has presented its report, its recommendatins are ignored sometimes with insult (for example, the Vernon Inquiry in the Menzies era, and the Woodward Inquiry into the Asia Dairy scandal).

Quite a deal of the book is concerned with instances or organised crime in the US and Australia, meetings of known crime figures, details of money laundering methods, involving in one instance at least a rather notorious disbarred Sydney barrister who operated at relevant times out of Zurich.

Much of what he says about organised crime and some of the anecdotal material is not new. Nevertheless it is quite interesting to read.

It is also interesting to read what he has to say about his own inquiry (held in 1974) and the Woodward, Williams, Stewart and Costigan inquiries. There can be no doubt that these inquiries all revealed the existence of widespread crime, tax evasion, graft and corruption.

It also seems to be the case, as he claims, that many of the recommendations made by these Royal Commissions have not been accepted by the Government to whom they were made.

In Chapter 6, *Sideswipes*, Moffitt considers, particularly in relation to the Costigan inquiry, the vexed problem of the applicability of the rules of natural justice to inquiries into crime. Moffitt's view, which I share, is that the mere fact a person is being investigated, does not entitle him to be present during the evidence of all witnesses giving evidence which might concern him nor should he necessarily be entitled to cross examine anyone.

After all, whether a policemen or a Royal Commissioner is getting evidence, there is no difference in principle.

If a person's rights are likely to be affected as a result of the investigation (other than by prosecution) then it may be appropriate to give him an opportunity to make submissions or even take a larger role. This would depend on the circumstances.

Another matter he touches on in this chapter is the attempt to discredit everything Costigan said because of his making a few demonstrable factual errors and because of his disputes with Packer. This criticism of Costigan and similar types of criticism of other Commissioners and persons conducting inquiries (eg, Inspectors of Companies) must make many, particularly Judges, reluctant to embark on such inquiries.

Chapter 7 is devoted to Moffitt's criticisms of the National Crime Authority as being a "toothless tiger" subject to too much political interference from governments and too little scrutiny by Oppositions and Parliaments. I found this chapter the least satisfactory of the whole book.

It is often repetitive and it suggests failure although the Authority is quite new and obviously will need time to operate effectively. Furthermore, whilst it does not have all the powers of a Royal Commission (eg, it is unable to require answers where there is a claim for privilege unless the relevant Minister or Ministers give authority), it is a statutory authority without precedent in Australia, in effect a standing Royal Commission with investigative and prosecuting powers. Government caution is perhaps understandable.

I was somewhat amused to read the following on page

139: "Most of the criminals of earlier days were less intelligent than those of today and were in awe of the law. Detectives were smarter than they and outwitted them when cornered. Despite the right to silence, they usually made some admissions and often confessed".

No doubt the author pines for those simpler times — the criminals were stupid and owned up — the police were smart and presumably incorruptible.

He also deplores the fact that instead of alterations in the law to "meet the problem of the more intelligent criminal and organised crime" there has been pressure for reform in the opposite direction. Presumably he is referring to demands that oral "admissions" to the police become a thing of the past and that proper recording of interviews be held.

It needs to be said that the present system has allowed corrupt police to blackmail people, extort money and even, it would seem to protect organised crime interests, to drive out rivals in the SP betting, casino and brothel trades by threat of arrests backed up by false oral confessions. Hence, contrary to the view of the author, reform in this area should help to hamper organised crime as well as striking a blow for civil liberties.

However, despite these blemishes, Moffitt puts a strong and well argued case for attacking organised crime by civil actions aimed at the proceeds of the laundering of crime profits. He points to success in the area of recovering tax evasion money and argues convincingly for amendments to the law to enable similar steps to be taken against organised crime figures who would be put in the position of having to explain the sources of their wealth or face its loss.

To some extent, the governments of New South Wales and Queensland have legislated in this regard, though apparently only in relation to money from illegal drug operations.

The remainder of the book (with the exception of Chapter 11 — the *Overview*) is not concerned directly with organised crime at all but rather with the independence of the Judiciary, Commissions of Inquiry and the Separation of Powers.

Many general readers would at this point in the book (P.155) probably put it down. Lawyers may not.

All of Chapter 8 *"Independence of the Institutions of Justice"* could appear in any general treatise dealing with the ideals of judicial independence. He does not favour specialist judges, eg a judge controlling the defamation, commercial or adoption lists or working exclusively in one country area. He is of the view that judges ideally come from the ranks of barristers, particularly those who adhere to the "cab rank" rule, and he believes there have been political appointments to the judiciary in recent year. He also deals with the Attorney General's judicial role when deciding whether or not to prosecute.

The Chapter on Commissions of Inquiry (Chapter 9) is not entirely a happy one. He appears to regard the Special Commissions of Inquiry as quite bad in principle because the complainant is "put on trial". He refers to the Inquiries concerning Bottom, Sinclair and Jackson. Leaving the third inquiry to one side, in each of the other two inquiries, allegations were made by the "complainants" which were demonstrated to be utterly false and without foundation.

Bottom alleged a magistrate was involved in a serious conspiracy to pervert the courses of justice and was in league with organised crime figures. He had no evidence to back up these allegations and the facts were such that he unequivocally withdrew all allegations.

Sinclair similarly made allegations that were held to be totally false and baseless.

I find it difficult to understand the objection to requiring people such as this to "put up or shut up".

Moffit also believes that narrowly based inquiries are no good and disagrees with the approach of the Chief Justice in the Farquhar-Humpries Royal Commission, that extensions of terms were a matter for the Government.

He also refers to the practice of the Victorian and High Court Judges refusing to act as Royal Commissioners, of the problems that can arise from the setting of terms of reference, and of the New South Wales tradition of Supreme Court Judges acting as Royal Commissioners. He makes the point that in the past the Chief Justice would play a part in nominating a judge, whereas recently that convention has been ignored and judges have been appointed directly by the Attorney General.

His review of these matters is a valuable one and leads me to conclude that New South Wales Judges also ought to consider refusing to sit as Royal Commissioners, particularly if asked to inquire into criminal activities. They cannot then be dragged into public controversy about such matters.

Additionally such inquiries must give a judge information about people who may well appear in his court later as a party or a witness.

In his penultimate chapter on the separation of powers, Moffitt spoils what is otherwise an interesting chapter by making a direct attack on the present Commonwealth Director of Public Prosecutions, Mr Ian Temby, QC, because the latter was a member of the ALP before assuming office and had previously been an endorsed ALP candidate for a Federal seat.

He says (P.221) "Surely such an appointment is only made because the appointing government expects that on important occasions the party member office holder will not be independent and will not let the party down".

This is a most intemperate and ill considered attack. If Moffitt's view were to be accepted as having general application, then no active member of the ALP would be eligible for appointment to any important judicial or quasi judicial post except by a Conservative Government.

Correspondingly, no active member of the Liberal or National Parties would be eligible for appointments by Conservative Governments. The proposition is ludicrous.

It is difficult to understand why Mr Temby should be the subject of this attack. He is certainly entitled to take strong exception to it.

Despite this strange attack on Mr Temby, the book in general is worth reading. It is not easy reading, and it certainly is not all concerned with organised crime.

Interesting though it is, it does not really make out a convincing case that "We are dangerously close to ... ruination point ... the hour is late". Indeed nearly half the book concerns matters other than organised crime.

Nevertheless all Supreme Court Judges and practising barristers ought to read it.

A Quarter to Midnight *by Athol Moffitt is published by Angus & Robertson Publishers.*

The alternative view across the rabbit-proof fences

by David K. Malcolm QC

In the Winter 1985 issue of *Bar News* I.D.F. Callinan QC (*The View from Across the Dingo Fence*) set out to justify "the resistance of Queenslanders to the intrusion of southern practitioners into the Queensland Courts".

It may well be that the Queensland attitude to reciprocity of admission is in part a consequence of geographic proximity to the large bars in Sydney and Melbourne. It is significant that Mr Callinan suggests:

> "The Queensland Bar's view, and indeed as I understand it, the views of the Queensland Government are that there should be a strong Queensland Bar, and ready access by the Queensland Public to that Bar, that that strength and access should not be put in jeopardy by an unrestricted right of practice by other barristers from out of Queensland."

The Western Australian Bar is an independent Bar, but unlike Queensland, Victoria and New South Wales, it is not a separate Bar. Practitioners from the amalgam have the same right of audience as the members of the independent Bar.

The latter comprise practitioners who have elected to practice solely as barristers and whose undertaking to do so qualifies them as members of the Western Australian Bar Association.

Until the early 1970s only persons who had been resident in Western Australia for a minimum of six months were eligible for admission in Western Australia. Following an intense debate the legal profession in the State agreed to abolish this requirement and to adopt an "open door" policy.

The Government supported this approach and the relevant legislation was duly amended. There were dire predictions that the Western Australian profession would be swamped or taken over by solicitors and barristers from other States and in particular from Sydney and Melbourne.

I was one of those who rejected these predictions and argued that the greater the contact and interplay between the Western Australian profession and their colleagues elsewhere the stronger the profession as a whole would become. The predictions have not turned out to be correct.

I support the principle that a litigant in Australia should be able to choose his solicitor and counsel from among the Australian legal profession. This is not to say that I do not support the view that there should be a strong Western Australian Bar and ready access by the public to that Bar.

I do support that view with enthusiasm. It is a view which is shared by the Western Australian Bar Association and I believe, the Government and Judiciary in this State.

It does not follow that the strength and access of the Western Australian Bar will be jeopardised by the existence of an unrestricted right of practice by other barristers from out of Western Australia.

Western Australia remains a growth area. The developments which have taken place in the last decade have resulted in something of a boom in litigation and heavy demands on the commercial firms.

The Bar has grown, but it had a narrow base. The Western Australian profession now exceeds 1500 of whom more than two thirds are under the age of 35.

The fact there is only a small independent Bar and a comparative handful of silks is a reflection of the narrow base from which the profession has expanded in the past decade or so.

While there are approximately two visiting silks from other States admitted in Western Australia for every local silk, it does not follow that opportunities for local silk or for local barristers to take silk have become significantly diminished. On the contrary the exposure of the local practitioners to visiting silk has been a professional benefit.

It is important, however, that those who visit Western Australia reflect about the need to preserve the warmth of their welcome. Because the local Bar is small it needs the support and encouragement of visiting barristers.

Membership of the Western Australian Bar Association is the first step. Another step which visiting silk should consider is to request the assistance of a local junior wherever the opportunity arises or the circumstances permit.

Not only will the local knowledge be of assistance to the visitor, but he will also be making a leader's contribution to the development of the local Bar. The Western Australian Bar Association would like to think that the acceptance of some responsibility for the strength and development of the local Bar goes with the acceptance by a visitor of a Western Australian commission as silk "in and for the State of Western Australia".

I write as a Western Australian who has had the privilege of being admitted to the Bar of New South Wales and taken silk in that State. I have personally enjoyed and benefited greatly from the support, encouragement and friendly rivalry of my colleagues in New South Wales, both in Perth and in Sydney.

So long as barristers from out of Western Australia, and in particular those who have taken silk in that State, remember that they accept responsibilities to the local Bar on admission they may be assured of a continuing welcome in Western Australia. This will be so whether they appear in the Supreme Court or the Federal Court.

Res Judicata or how a final injunction in the Equity division can bar recovery of damages

by K.R. Handley QC

It is generally well known that damages for a cause of action must be assessed once and for all, and that after damages have been assessed a second action cannot be brought to recover further damages. See *Conquer v Boots* [1928] 2 KB 336.

It is also generally known that issues of fact or law determined in prior proceedings cannot be relitigated between the same parties or their privies in later proceedings. See *Blair v Curran* 62 CLR 464 at 532 per Dixon J.

However members of the Bar may not be generally familiar with a further principle of the law of estoppel by judgment which is illustrated by the decision of the High Court in *Port of Melbourne Authority v Anshun Pty Ltd (No. 2)* (1981) 147 CLR 589.

In that case the Authority hired one of its cranes to a hirer. A third party injured by the operation of the crane sued the Authority and the hirer.

Cross notices were given for contribution between the defendants, and the Authority was adjudged 90 per cent responsible. In a second action it sought to enforce an indemnity in the contract of hiring.

The High Court held that the Authority was estopped from enforcing the indemnity because the claim to do so could and should have been raised in the earlier proceedings.

Recently Clarke J had to consider whether estoppel by judgment applied to bar proceedings for damages in the Common Law Division for breach of contract where earlier proceedings in the Equity division to restrain the breach had been concluded by a consent judgment for a final injunction and costs.

No claim for damages had been raised in the Equity Summons. Clark J held that a second action claiming damages for the same breach could not be maintained because damages could have been claimed and recovered in the Equity proceedings.

He applied *Port of Melbourne Authority v Anshun* (above), and an earlier decision in *Serrao v Noel* (1885) 15 QBD 549 (CA) which was based on similar facts.

There proceedings had been taken in the Chancery Division to restrain dealings in certain securities and for their delivery up to the plaintiff. A final order was made by consent for the securities to be delivered up and for payment of costs.

Subsequently the plaintiff sued in the Queens Bench Division to recover damages for the wrongful detention of the securities. No claim for damages had been raised or pleaded in the Chancery proceedings, but the Court of Appeal held that the second action could not be maintained as it was brought on the same cause of action.

In this case and in the case before Clarke J the plaintiffs had succeeded in the earlier equity proceedings, and had obtained final consent orders which in terms did not release the defendants from claims for damages. Moreover in neither case had damages been claimed in the prior proceedings.

It is apparent that care must be exercised in obtaining final injunctions by consent or by decision (especially in urgent cases) lest the plaintiff's rights to damages be inadvertently lost.

Another area where the principles of *Anshun's* case should be borne in mind is by parties in Supreme Court proceedings who contemplate determining the action and then invoking the jurisdiction of the Federal Court under the Trade Practices Act. Care should be taken, when the Supreme Court proceedings are resolved that the litigant's right to raise associated non-federal issues in the Federal Court is preserved.

Obituary: Lord Diplock

Lord Diplock died on 14 October aged 78. He had just finished sitting on the Judicial Committee of the Privy Council as a member of the Boards hearing two Australian cases, *Lloyd v. David Syme & Co Limited* and *Austin v. Mirror Newspapers*. Rumour has it that his Lordship was writing the judgment in the former case on October 13, the day before he was admitted to hospital.

On October 16 Lord Scarman paid tribute to Lord Diplock in the House of Lords.

He said the House's sense of loss was individually and collectively very deep and would endure.

By Lord Diplock's death the nation lost one of the finest legal brains of all time in the history of common law. He was a truly great appeal judge: original, creative, and of old established legal shibboleths, devastatingly destructive.

Yet he was a very traditional common-law judge. He believed in developing the law by judicial decision and he adopted a sturdily independent, but also a very co-operative approach to the statute law.

He was a champion of the purposive approach in interpreting Acts of Parliament, seeking out their legislative purpose, and wherever possible, giving effect to that purpose in his interpretation of their provisions.

For many years he and Lord Wilberforce were the Castor and Pollux of the legal firmament guiding the law through the troublesome areas of social and economic change which merged into the law through the channel of legislation.

While it was not the time to assess Lord Diplock's specific contributions to the development of the common law, Lord Scarman said, they were many, particularly in the field of commercial law, arbitration law, and administrative law. In those fields some of his decisions would remain important landmarks for a very long time.

The aftermath of Teh's case

Public Defender, J.L.Glissan QC suggests practitioners move quickly to safeguard the rights of clients convicted before the decision in Teh's *case.*

On 11 July, 1985, in *He Kaw Teh v R. (60 ALR 449)* the High Court, by majority, overruled the decisions of the Court of Criminal Appeal (NSW) in *Bush* and *Rawcliffe*, as to what constitutes "possession" for the purposes of the offences contemplated by S.233B of the Customs Act (1901) Commonwealth and, by implication, under the Poisons Act in New South Wales; and reasserted both common sense and common law, approving (per Gibbs CJ at 458-9, and per Brennan J at 494) Lord Diplock's formulation in *D.P.P. v. Brooks* (1974) AC 862 at 866:

> "In the ordinary use of the word 'possession', one has in one's possession whatever is, to one's own knowledge, physically in one's custody or under one's physical control".

This, it can confidently be asserted, now represents the law of possession, and also the correct direction to be given to jurors charged with the duty of determining the factual situation where the Crown alleges possession. As Brennan J said in *Teh* (at 495):

> "Nagle J expressed his understanding of possession having regard to the context of the provision which allows for acquittals on proof of a reasonable excuse. His Honour found in the phrase 'without reasonable excuse' the source of relief for innocent possessors. I find the source of relief in the notion of possession itself".

A question next arises as to the consequences of such a decision as this.

On the day after the decision of the High Court was pronounced, its effect was fully felt: His Honour Judge Knoblanche, QC, discharged a jury without verdict during his summing-up (after a trial which had lasted some five weeks) on the basis that the whole of the Crown case and of his Honour's summing-up had been predicated on the law as it stood when the trial had begun — ie the law as stated in *Bush* confirmed by *Rawcliffe.*

There have, however, in the dozen years since the decision in *Bush*, been many convicted of "possessing" drugs or contraband in circumstances which would no longer amount to proof of the kind required to found a conviction. What, one may ask, of them? Are there, for those "wrongly" convicted any avenues of appeal against conviction opened by the decision in *Teh's* case?

In New South Wales, at least, the answer appears to be in the negative, although not resoundingly so; for there are two competing lines of authority. One, (*Piening v Wanless* (1968) 117 CLR 498; *R. v Unger* (1977) 2 NSWLR 990) seems to rest on a kind of extension of the principle of finality and public policy and partly on the so-called doctrine of merger.

The other, to moderate that restrictive attitude by taking into account "all the circumstances of (an) application (for leave to appeal out of time"), and whether "on the particular facts (of the) case, the jury were misdirected" (*R. v Holden; R. v Tyrell*). In any event, the matter is clearly discretionary.

In *Unger*, (1977) 2 NSWLR 990; the Court of Criminal Appeal held (per Street CJ, who gave the judgment of the court) that:

> "There has always been an unwillingness to permit the reopening of past decisions. This finality of decision in each individual case leaves the courts free to permit a judicious flexibility in the development of principle in later cases, free from inhibition lest such development may set at large disputes that have previously been resolved. The concept of merger in judgment, both in the civil and in the criminal field, ... equally with the doctrine of res judicata, serves this requirement of flexibility for potential development of the law". (P.995-6).

The Chief Justice held in *Unger* that the conviction:

> "depends ultimately upon the authority belonging to the District Court at the time of his trial, and not upon the factual and legal material relied upon by the District Court". (P.996).

This decision, in my view, represents an extension of the principle on which it is founded. Whereas the common law rule (expressed by Lord Green MR in *re Berkeley* (1945) Ch. 1) was that:

> "It is not necessarily a ground for enlarging time that in some subsequent case a different view is taken of the construction of an act of Parliament".

The principle expressed in *Unger* is that the establishment of such a different view is not sufficient. Ultimately, the question is one of discretion:

> "to be exercised by regard not only to all of the facts and circumstances of the particular application, but also to what the Court of Appeal in *R. v Ramsden* described as the alarming consequences flowing from a general policy of permitting the re-opening of cases in consequence of the subsequent exposure of a misconception as to the prior state of the law". (P.994-5).

In *R. v Holden* (17/12/79 — unreported — Court of Criminal Appeal, NSW) *Unger* was distinguished in a situation similar to the one which arises after *Teh.* In *Piening v Wanless*, Menzies J had said:

> "In my opinion the verdict in the trial which was conducted upon one basis cannot be set aside merely because the decision, upon which counsel presumably relied in determining how he would conduct his case, has been overruled subsequently.
>
> It is not for counsel to determine whether or not he will challenge or accept a decision which stands in his way, and, having accepted it, his mistake and acceptance cannot be made the basis for setting aside any verdict which is returned by the jury upon the case submitted to them in order that a new, and in some ways inconsistent case — as the course of argument would seem to indicate — can be submitted to another jury".

Holden's case was one which depended upon the admissibility of certain similar fact evidence received at a joint trial with one *Markby.* His counsel advised — wrongly as the High Court ultimately held (in relation to

the co-accused) — that the similar fact evidence was legally admisible. In dealing with Holden's Application for Extension of Time to Appeal, the court (Nagle CJ at CL, Carmichael and Hunt JJ) held:

> "(Counsel's) belief could not, in the circumstances be thought to have been unreasonable and Holden's failure to take any step until the High Court over-ruled the unanimous decision of this court supporting (counsel's) belief should not, in our view, prejudice his application for an extension of time.
>
> That is not to say, however, that this court is prepared to grant an extension of time in which to appeal whenever a subsequent decision by a superior court demonstrates an error in the advice given or a decision made by counsel in relation to the conduct of a criminal trial. The grant of such an extension of time must depend upon all the circumstances of the case.
>
> Such an extension of time will not be granted *merely* because that subsequent decision overrules some principle of law mistakenly accepted as correct by counsel at the trial ...."

The Court of Criminal Appeal in *Holden* seems to have proceeded on the basis that the question was one of discretion, and that two considerations were of prime significance:

> "whether in the light of all the circumstances of the present application it is just that an extension of time should be granted";
>
> and
>
> "the real issue in this application, as we see it, is *Holden's* delay between learning of *Markby's* success in the High Court and his own application some four months later".

Any question of prejudice in the proper presentation of the Crown case at a new trial is a matter which will go to the exercise of the discretion.

The decision in *Teh* has already led to at least one new trial being ordered.

Rabih (Court of Criminal Appeal — November 1985) was convicted of supplying heroin prior to the decision of the High Court in *Teh*, the Crown case depending upon proof of Rabih's possession of the contents of a bag found in his shop.

Counsel for Rabih at trial made submissions as to the judge's directions on possession although these fell short of arguing that *Bush* and *Rawcliff* were wrongly decided. The appeal against conviction was brought within time and was pending when the High Court's judgment was delivered.

Following its decisions in *Unger* and *Ruana*, the Court of Criminal Appeal allowed the appeal and ordered a new trial. This decision highlights the distinction that the Courts make between a change in the law after the time for appeal has expired and all proceedings on the indictment are at an end, and such a change when an appeal is pending and not disposed of.

Thus it can be seen that should the change in the law, brought about by the decision of the High Court in *Teh's* case, encourage the bringing of appellate proceedings although out of time, there are a number of obstacles to be overcome, and any delay in approaching them may well prove fatal to the prospects of the contemplated appeal.


I MUCH PREFER
THE JABOT
MASTER - HIDES
COLLAR AND TIE.

Motions & mentions

Three blind mice

Readers may be interested in a poem describing the proclivities of the Court of Criminal Appeal constituted by Jordan CJ., Bavin and Halse-Rogers JJ sitting in the late thirties. The appellants were almost invariably unrepresented.

The poem has been rescued from obliviion thanks to the acute recollection of Mr J.M. Brennan, formerly a judge of the District Court. *Mr Justice H.H. Glass*

THE THREE BLIND MICE

Aloof and austere, august and severe
Sir Freddy, Sir Perc and Sir Tom
Administer law as applied to the poor
With dignity, grace and aplomb.

This trinity deals with the man who appeals
And lest he should do something worse — he
Is led back to gaol all trembling and pale
By Sir Freddy, Sir Tom and Sir Percy.

To alow an appeal is not in the deal
To dismiss one they're always quite ready
So I'd tremble with fear if I had to appear
Cor: Sir Percy, Sir Tom and Sir Freddy.

Not so elementary

On a fine clear day, the Popi M, an old weatherbeaten tramp steamer nearing the end of its life, was sailing in light winds and deep calm seas in the Mediterranean. Suddenly a hole opened in the plates in her engine room, water rushed in and she quickly sank.

The ship owners sought indemnity from the underwriters claiming the loss had been due to the perils of the sea. The ship owners conceded that there could have been no collision with a submerged rock or floating object to cause the hole in the ship's side.

They contended, nevertheless, that the ship must have collided with a submerged submarine travelling in the same direction and at about the same speed as the ship. There was not a scintilla of evidence to support this proposition. The underwriters argued that prolonged wear and tear of the ship's hull over many years caused the plates to open up under the ordinary action of wind and waves.

The trial judge, Bingham J., rejected the underwriters' defence on the evidence and found that he was bound, in the circumstances, to accept the ship owners' hypothesis, however improbable.

The House of Lords unanimously overruled the trial judge's findings, holding that the ship owners had failed to discharge the onus of proof. Lord Brandon, who delivered their Lordships' judgment, said that in accepting the submarine theory the trial judge had applied Sherlock Holmes "well known but unjudicial dictum": "when you have eliminated the impossible, whatever remains, however improbable, must be the truth". This their Lordships held was the wrong test.

Edmunds & Fenton Insurance Company Limited v. Rhesa Shipping Co. S.A. (1985) 3 ANZ Ins. Cases 60-635.

Chief Justice Sir Laurence Street, the retiring President of the Bar Council, A.M. ("Smiler") Gleeson Q.C., and Robyn Gleeson.

Motions & mentions

Affidavit blues

In a crowded Court room on a motion day in the District Court Council moving had eight affidavits, none of which had backsheets. The following exchange took place between the Judge and Council:

Judge: "Mr Tink, it is essential that the backsheets on affidavits be properly completed with the name of the deponent and the date of swearing. Otherwise much court time is wasted finding the identity of the deponent and the date of the deposition. This is the eighth affidavit filed by your instructing attorney the backsheet of which has not been properly completed. I only wish that I could require you to have this task performed standing on top of the mens' lavatory in Martin Place".

Mr Tink: "Your Honour, I only wish I was right there, right now!"

Quotable quotes

"...The point taken by the cross defendant (insurer) ... is that the very fact which gives rise to the insured's liability to a third party also entitles the insurer to deny indemnity to the insured in relation to that liability.

That is a point worthy of the notorious Ostrich Insurance Company which features in the advertising of one of the largest insurers in this State".

(Knezevic v Sanderson & Anor, Hunt J, unreported, 14 November 1985)

On the rails

Recently I learned that a shuntee wishing to sue the largest employer of shunters, namely the State Rail Authority, has only one year to do so under a limitation provision which has survived the Notices of Action & Other Privileges Abolition Act, 1977.

I suppose everyone else at the Bar knows about the provision, which has been around for the best part of this century and lies in wait in Regulation 5 of Schedule 5 of the Transport Authorities Act 1980 and extends to all officers of the State Rail Authority and the Urban Transit Authority.

For those short of restful reading at night this subject has been considered in *Commissioner of Railways v. Farley* (1958) 101 CLR 339; *James v. Commissioner of Railways* 80WN 524 and *Storozuk v. Commissioner of Railways* (1963) SR 581.

— *Restless*

The mention peril

One of the hazards of the first year reader is the obligation to undertake the variety of mentions which busy and more prosperous colleagues need undertaken. There are hazards within the hazard.

One such reader during that period of readership when one's mention practice is wider than any other facet, arrived breathlessly before the Master as his case was called.

Advancing purposefully to the Bar table, he shuffled through the bunch of scribbled notes in his hand and announced his appearance for the Plaintiff.

"Master", he said, "the Plaintiff requires an adjournment by reason of the amended defence which the Defendant has foreshadowed in a recent letter. In my submission, the Plaintiff can not be forced on in the face of this outrageous ambush".

Noticing another familiar name amongst the papers still clutched in his hand he paused, and said slowly and uncertainly "and I, for the Defendant, oppose the Application."

Having a ball

The annual soccer match between the Bar Association and the Law Society was held this year on Sunday 20 October 1985 at No. 4 Oval in Centennial Park.

Having won the Challenge Cup last year, the Bar Association team was keen to retain it, just as the Law Society team was out to win it back.

So much so, they turned up in force with a full team of eleven, plus some six replacement players who were able to continually relieve some of their flagging task force. (The Bar Team had a full team plus one, which was two players better than last year when we won the cup with only 10 men).

To beat the late season heat, the game kicked off at 9.30am and whilst the first half ended nil-all, it was full of promise for the Bar Team with a number of excellent chances going astray.

But, after starting so well and looking so good, two lapses in our defence half-way through the second half let the solicitors in for two relatively easy goals.

To add to our burden, soon after, one of our more impressive players (who shall remain nameless) made a copybook header into his own net whilst attempting to clear the ball over the baseline.

With the score standing at 3-0 against us and time running out our lads were not for giving up. In a determined fight-back, Nick Tiffen produced a superb cross in front of goal to find the head of Alastair Little who nodded it into the back of the net to pull one back.

But time was against a recovery and, at the final whistle, the result stood at 3-1 and the Cup was lost — until next year.

The best and fairest player trophies for the Bar Team and the Law Society team were awarded to Nick Tiffen and Aaron Mucsnik, respectively.

Other members of the Bar team not already mentioned were: Michael Ellicott, Dennis Flaherty, Christopher Fox, William Purves, Brian Ralston, John Rose, Matthew Rowe, Peter Stone and David Williams.

Unfortunately, the Patron, Hon. Mr Justice Powell, was unable to be on hand to present the Cup and other trophies this year, and the task fell to John de Meyrick, the Bar's soccer guru, who also supplied the nets, posts, shirts, and so on, dressed the walking wounded, and ran the line.

Coming events

February 20-21 — Conference — Judicial review of administrative action in the 1980s — prospects and problems — University of Auckland, New Zealand. Contact: the Co-ordinator, Legal Research Foundation Incorporated, Qantas Airways Limited (Liz Gilmore).

March 5 — Environmental awareness course (7 two-hour weekly lectures to 23 April) — organised by among others, Institute of Engineers, Augustralia in conjunction with the environment law association.

March 16-18 — Conference — Role of Courts in Society — Jerusalem (contact: Shimon Shetreet, Faculty of Law, Hebrew University of Jerusalem, Mount Scopus, Jerusalem).

March 15-21 — Environmental Law seminar: "Resource Investigation, funding and control: Victoria & Vancouver, British Columbia (contact: International Bar Association, 2 Harewood Place, London W1 R9H3).

June 19-21 — Tenth annual conference of the Australian Mining and Petroleum Association Limited — Regent Hotel (Milburn) (contact A Rosenthal — D.X. 104, Melbourne).

From Roll to Roll

Persons who have had their names removed from the Roll of Barristers to the Roll of Solicitors from Friday 20th September, 1985 to Friday, 1st November, 1985 inclusive:

Friday, 20th September, 1985:

Anthony John Parkes
Michael Joseph Wilcox
Stephen Edward O'Connor
Henry Edward Moore
Peter John Kennedy
Patricia Mary Hutton
Henry Anthony Mierczak

Friday, 1st Novemnber, 1985

David Thomas Wilson
Peter George Robert Erman
Jeffrey James Hinde
Anthony Mineo
Howard Smith Charles
Bruce Edward Coyle
Philip Densham White
Gavin John Lawrie
Peter Denis McNamara
Roger Colin Ralston
Michael John Crowe
Ernest John Schmatt
Paul Michael Couch
Frank Anthony Veltro
Peter John Jessep
Anna Maree Russell
Mark Matthew Kelly

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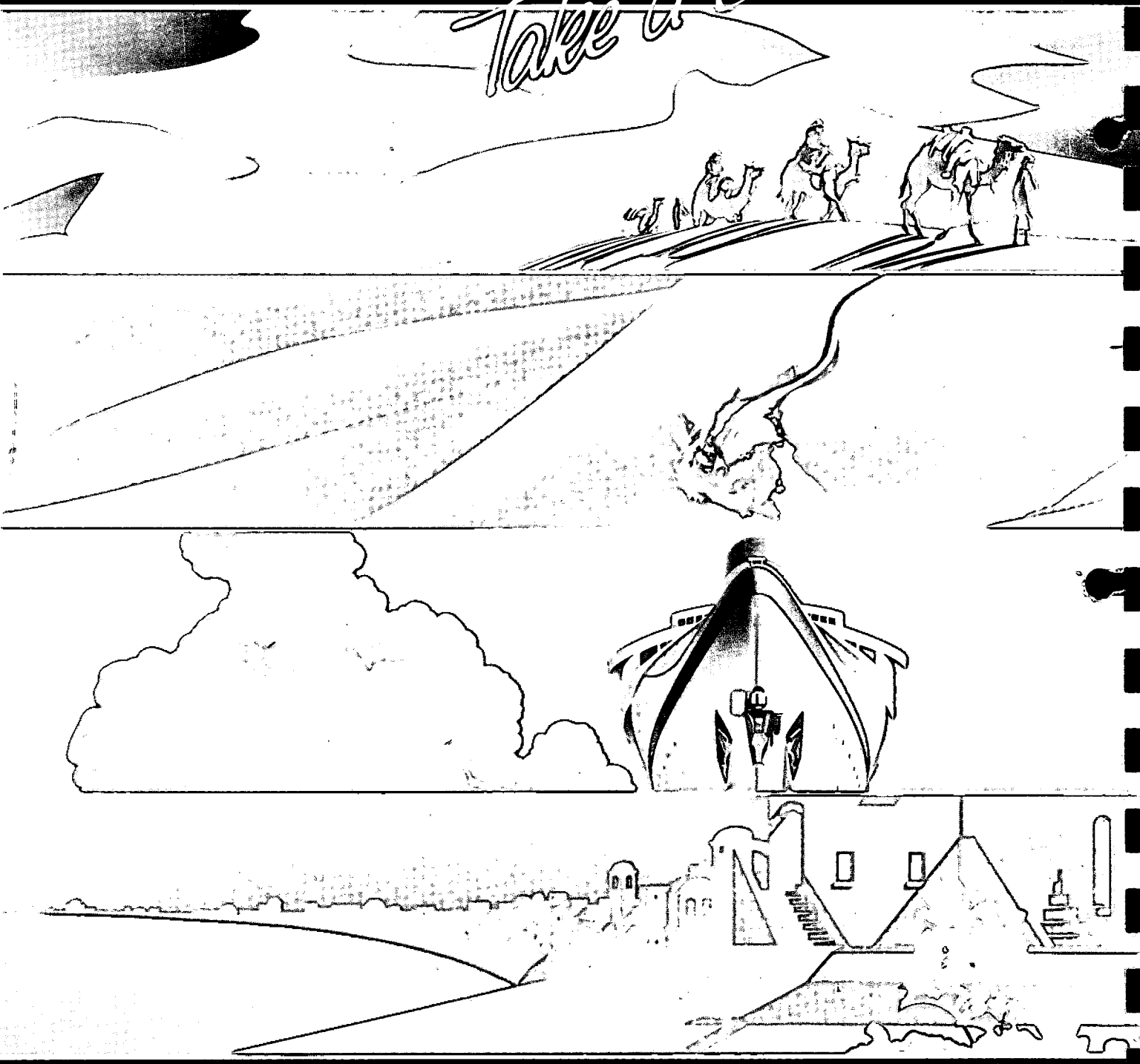

DETOURS – Q.H. TOURS, 140 PACIFIC HIGHWAY, NORTH SYDNEY NSW 2060. LIC. NO. B884.

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