



**Mary Gaudron and David Hicks**

The cover for this issue is adorned by the unmistakable image of the Hon Mary Gaudron QC, whose portrait was unveiled in the Bar Association Common Room on 21 February 2007. The portrait, by renowned portraitist Sally Robinson is a significant addition to the Bar Association's already impressive collection.

The launch provided all present with a reminder of her Honour's withering wit, nice line(s) in self-deprecation and, through it all and, as ever, her fierce and formidable intellect and burning sense of justice. In this context, her portrait fittingly incorporates the text of section 75(v) of the Constitution by way of a superimposed stencil. Her Honour spoke, with an enthusiasm bordering on passion, of her belief that it is section 75(v) – providing for mandamus, prohibition or injunction against officer(s) of the Commonwealth – that enshrines the rule of law in this country, and as such constitutes the single most important provision of the Constitution. In that context, and unsurprisingly, she made reference to the scandal of the detention of David Hicks for over five years without the laying of charges.

What was striking about the circumstances surrounding Hicks's ultimate plea to charges of vastly diminished gravity than those originally raised was the widely held *perception* that he had only pleaded guilty in order to escape the living hell of Guantanamo Bay and the prospect of a bespoke 'trial' without the fundamental features and protections associated with

justice in a developed and civilised society. Whether or not this perception is accurate may never be known. It highlighted, however, in a material way the manner in which the rule of law, and respect for it, has been gravely undermined by the whole saga. The perception I have referred to would surely not have arisen or been so widespread had it not been for the circumstances of his detention without charge and the prospect that any 'trial' Mr Hicks was given was to be bereft of those basic features long regarded as essential and fundamental hallmarks of justice.

**David Jackson AM QC**

Jackson QC was bestowed a rare honour for a practising barrister in the Australia Day honours list with the award of Membership of the Order of Australia. The award was principally in relation to his outstanding skill and role as an advocate. As such, it was an important institutional recognition of the significant role played by advocates in our adversary system. Jackson QC has dominated the Australian appellate Bar and, in particular, the High Court for well over 20 years. Any barrister privileged enough to have appeared with him (or indeed, against him) will be well aware of his consummate professionalism, his dedicated and careful preparation, his brilliance at refining an argument and the apparent ease and style of his presentation.

**This issue**

*Bar News* is pleased to publish an Opinion piece by Attorney General Hatzistergos on the topic of jury trials, and congratulates him on his appointment. It is hoped that he, and his shadow, Greg Smith, both members of the Bar Association, will be regular contributors over the next four years.

As is now customary, *Bar News* is also pleased to be able to publish this year's Sir Maurice Byers Address by Justice Heydon on the topic of 'Theories of Constitutional Interpretation: a Taxonomy.' The address bears all the characteristics of his Honour's approach to scholarship: meticulous research, an abiding sense of the importance of history, and a commitment to the rigorous classification of ideas with a view to ultimate intellectual elucidation.

The featured theme of this issue is mediation and the Bar. Long-time mediation specialist, Angyal SC, provides a systematic guide to preparation for, and the conduct of, mediations. Gleeson SC, in a typically challenging way, discusses the approach the Bar should be taking institutionally to mediation, whilst Street SC and Kunc volunteer their thoughts on the subject.

Readers will also find considerable interest in two thought provoking pieces by new members of the Bar, Christopher Withers and David Sulan, who respectively write of their recent experiences in litigation and advocacy in New York and London where they practised for six and four years respectively. Withers provides an illuminating account of the distinctive features of commercial litigation in New York, with surprising views as to the value of pre-trial depositions and a degree of apprehension, based on his experience, at the growth of class actions for securities related claims. Sulan writes of the concerted attempt by Herbert Smith to establish an in-house advocacy unit in London with the recruitment of two queen's counsel.

Those interested in legal history will enjoy the Hon John Slattery QC's reminiscences of the Supreme Court judges of the 1940s and will savour the republication of Max Beerbohm's *Dulcedo Judiciorum* and his observations on the Chancery and common law courts in London almost 100 years ago. (Spigelman CJ appropriately drew on in this piece in his farewell speech on the occasion of Bryson JA's retirement which is noted in this issue along with that of Handley JA).

Admirers of Bullfry QC will also be delighted by his return to these pages after a short absence, care of the good Professor Aitken, with as ever the dab hand of Poulos QC to illustrate Bullfry's increasingly disconcerting encounters with the members of the solicitor's branch.

Readers of *Bar News* for at least the last 15 years will be saddened to learn that this issue contains the final instalment of 'Coombs on Cuisine', formerly 'Circuit

Food', by Coombs QC. This decision is causally quite unrelated to the High Court's recent decision in *John Fairfax Publications Pty Ltd v Gacic* [2007] HCA 28. Coombs never described a 'square of pig's paunch' as 'texturally, bringing to mind the porcine equal of a parched weetbix' nor a 'dismal pyramid of sorbet' as 'jangling the mouth like a gamelan concert': *ibid* at [161]. His restaurant reviews have been characterised by the irrepressible *joie de vivre* of a true raconteur, conversationalist and bon vivant. Thanks to the former president (affectionately 'Coombsy') for the pleasure, fun, tips and recipes that he has shared over the years.

On a final note, *Bar News* records its appreciation to outgoing Bar Association President Michael Slattery QC for his keen support of this publication over many years as well as for the energy and dedication he has brought to the discharge of his office.

Andrew Bell

## Letter to the editor

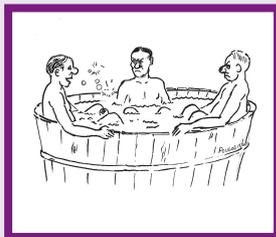
Dear sir,

In Elizabeth Cheeseman's 'Hot tubbing: concurrent expert evidence',

the author says that the practice of taking the evidence of experts concurrently appears to be an Australian innovation (*Bar News*, Summer 2006/2007, p55).

An interesting answer appears in the autobiography of former Federal Court judge Sir Edward Woodward, where it is said 'the original idea [for the practice] had come from John Kerr, in an article he wrote in response to the refusal of economists to give evidence at a national wage case because of Bob Hawke's aggressive cross-examination': *One Brief Interval: A Memoir*, The Miegunyah Press, Melbourne, 2005, p129.

David Ash,  
Frederick Jordan Chambers.



## THE HEART OF THE CITY ST JAMES CHURCH

### CHRISTIAN MEDITATION GROUPS

Four ecumenical Christian meditation groups meet each week in the crypt of St James' Church at the top of King Street in the city. The groups are part of a worldwide network of over 1500 groups meeting in about 110 countries.

The ancient Christian tradition of meditating on a simple sacred phrase was revived by the English Benedictine monk, John Main (1926-1982). Meditation involves coming to a stillness of spirit and a stillness of body. It is the aim given by the Psalmist ("Be still and know that I am God"). Despite all the distractions of our busy lives, this silence is possible. It requires commitment and practice. Joining a meditation group is a very good start.

Anyone who already meditates or who is interested in starting to meditate is welcome. You may quietly join the group and slip away afterwards or stay around to talk or ask questions.

**When** Tuesday: 12.10pm – 12.50pm  
 Wednesday: 7.45am – 8.30am  
 Friday: 12.15pm – 1.00pm  
 Sunday: 3.00pm – 3.30pm

**Where** Crypt of St James' Church  
 176 King Street, Sydney  
 (enter under the spire)

**Websites** [www.christianmeditationaustralia.org](http://www.christianmeditationaustralia.org)  
[www.wccm.org](http://www.wccm.org)

**Enquiries** [richardcogswell@hotmail.com](mailto:richardcogswell@hotmail.com)