

## Bar Practice Course 02/2014



**Back row, left to right:** Joshua Raftery, Ben Symons, Andrew Bailey, Tim Russell, Scott Roulstone, Dean Elliott, Nathan Avery-Williams, Amelia Avery-Williams, Geoff Farland, Charles Gregory, Michael Rose, Luke Chapman, Sophie Anderson. **Second row left to right:** Jacinta Reid, Lizzie McLaughlin, Yvonne Frost, Elisa Triingali, Alexander Edwards, Sharon Harris, Dan Crowe, Matt Karam, Helena Mann, Ashley Bithrey, Peter Tierney, Daniel McMahon. **Third row left to right:** Rob Davies, Michael Fantin, Manal Hamdan, Naomi Oreb, Rebekah Rodger, David Chitty, Heidi Robinson, Dewashish Adhikary, Ben Mee, Gordon Babe, David Larish, Alex Barnett, Ari Katsoulas. **Front row, left to right:** Georgia Huxley, Rebecca Sutters, Jay Lawrence, Theresa Phan, Bilal Rauf, Kevin Zhu, Victoria Cha, Michelle Giacomo, Alex Terracini, Evangeline Arulrajah, Mitchell Davis, Georgia Lewer, Razia Shafiq. Photo: Murray Harris

## Letters to the editor

### Chief justices in anecdote and fable

Sir,

May I accept, through you, the Honourable John Bryson's invitation to 'supplement, correct or challenge him', as published in the Winter *Bar News*? I note the disjunctive and advise that my contribution is at most supplementary - I would not presume to correct or challenge him.

First, regarding my hero, Sir Owen Dixon: John refers to *Jesting Pilate* (which I confess to having never read; if that excludes me from the ranks of 'real lawyers', then that, in what I recall of the words of Sellers, in response to Lord Denning's 'timorous souls' jibe, 'is a fate which I must bear with such fortitude as I can command.') but he offers neither explanation nor justification for the adjective in the title. Perhaps this may

help. In *Derbyshire Building Co Ltd v Becker*, it emerged that the trial judge ('Dooley' Brereton - a thoughtful lawyer, as a rule) had left to the jury the meaning of a written contract. 'His Honour must' said the chief justice 'have had in mind the demeanour of the document! Ho ho! The demeanour of the document! Ha ha ha!' No sound was heard in court for a good minute but Sir Owen's repetition of his jest and the accompanying giggles. My leader, Raymond George Reynolds QC, was equally delighted (it had been one of our grounds of complaint) if less audibly mirthful.

Next, Sir Garfield Barwick. Yes, I have heard many complaints about the rudeness, even cruelty, of the NSW trio, Barwick, Taylor and Kitto JJ. My

experience of them was very limited indeed, but in my very occasional appearances in that much-feared tribunal, I had nothing but kindness and courtesy from 'the little man.' Perhaps he kept his fearsome side for worthier opposition.

Then, Sir Frederick Jordan. My only appearance before him was as an applicant (represented by Mr R M Stonham, for a nominal fee of 1,00.0 Guas) for reduction of the term of my articles of clerkship, which he, presiding over the full court, duly granted. But I may be able to throw some light on The Honourable John's statement that 'his practice had been very narrow.' I am able to assure him that his Honour had appeared in at least one murder trial. How do I know that? From 1953

to 1956 I had the pleasure of sharing chambers in Lanark House with the much-loved lecturer in Roman law, T P Flattery. Admitted in 1923, and a Master of Arts and Bachelor of Laws as well as a noted cricketer and baseball player, Tom's dreadful stammer and consequent shyness proved an obstacle to professional advancement that he (unlike Arthur Rath) could not surmount. In the years that I knew him, his only court appearances were before the registrar of probates, seeking executor's commission. But, on the desk we shared, in pride of place, was a mahogany-coloured brief, so old and desiccated that one scarcely dared handle it. It was a brief to Mr TP Flattery:

'You with Mr F R Jordan QC' to appear at the Central Criminal Court to defend (unsuccessfully, as it turned out) a charge of murder.

As to the Hon H V Evatt, I will mention briefly an appeal to the full court in which Ray Reynolds led me - I think it was *Becker v Derbyshire* (supra). Ray said to me 'I am going to do some written submissions. The Doc will appreciate them'. He handed them up at the hearing, to everybody's surprise, and the members of the court took them away. The written judgment of the chief justice upheld Ray's arguments, even to the point of incorporating whole paragraphs, word for

word, though without acknowledgment - right down to the phrase: 'In our submission!'

As to the description of Sir Leslie Herron, one good nickname can be worth a hundred words. Some readers may remember that Leycester Meares J had a nickname for everyone. The one he coined for Herron C J said it all: 'The Bullfrog!' I hasten to add that it was an affectionate rather than a pejorative sobriquet.

Harry Bell

### The changing nature of the bar

Sir,

I am prompted to write by Peter Lowe's informative and entertaining account of 'The changing nature of the bar' (*Bar News*, Autumn 2014) and in particular the section headed 'Motion Day'.

Until I read Lowe's article and observed his use of the past tense - followed, indeed, by a pluperfect - I was unaware that this 'historic practice' had ceased. The practice that I remember involved the listing of 'Motions Generally' in the full court or Court of Appeal. There would, on Motion Day be a list of Motions for Hearing but in 'Motions Generally' it was permissible to move in a matter for which no originating process had been filed. These were matters of urgency and, being ordinarily *ex parte* could be expected to be short. The Bar

Table would be thronged; occupied by counsel engaged in both listed and unlisted matters. The court officer would complete a list of appearances, including initials where counsel shared a surname with a colleague. This was supplied to the associate to the presiding judge, so that he or she could work out precedence with the aid of the *Law Almanac*.

When the court sat, the associate called motions generally, calling each name as Lowe stated, in order of seniority. Thus: 'Mr X, do you move?' If Mr X was engaged in one of the listed matters, he would simply stand, bow, and silently resume his seat. If, however, he was briefed in an unlisted matter, he would announce his appearance and seek to move on an affidavit.

It was in this context that there took place the famous incident, of which you have doubtless heard, involving Ron Austin of counsel. Ron, admitted to the bar on 14 February 1947, was very large - indeed, obese: six feet tall and well over 20 stone - but nimbler mentally than physically. He was to appear in an unlisted matter and when the chief justice's associate said to him: 'Mr Austin, do you move?' Ron, as he struggled gamely to his feet, made the celebrated reply: 'With difficulty, Your Honours'.

I shan't feel offended if someone with a more accurate recollection than I gets in first on the procedure followed.

Harry Bell

Sir,

Since retiring from practice in 2009 I enjoy reading the *Bar News*. Mr Lowe's article on 'The changing nature of the bar' (Winter 2014), which I have just

received, is amongst the best features that I have had the privilege and enjoyment of reading and, as the 90 footnotes demonstrate, must have been the result of

extensive and painstaking research. Congratulations and thank you.

Roy Alloway QC