



Newsletter

AUTUMN 2002

Advocating for Justice

Vol 6 Issue 1, May 2002

The annual *Advocating for Justice* Lecture was presented by the Association on Thursday 16 May 2002 at the Essoign Club. His Honour Justice Bernard Bongiorno introduced Georgina Costello and Julian Burnside QC who spoke on the topic “*Refugees and Asylum Seekers. Their rights, Our responsibilities.*”

Georgina Costello, a solicitor at Mallesons, is coordinator of the Refugee Legal Network. Georgina outlined the task confronting those seeking permanent residency in the country, whose applications made amidst an ever-changing landscape of legislative amendments with limitations being placed on appeal rights. For many, their attempt to gain residency is undertaken without representation. Georgina highlighted the important role that those providing *pro bono* legal services in the field can fulfil.

Julian Burnside QC, familiar to many as Counsel in the *Tampa* case, has been active in addressing the ongoing plight of those with Australia’s detention centres. Julian spoke of the broader moral context of the “asylum seekers” debate, particularly his view that the current mandatory detention and “Pacific solution” policies are unjust. He suggested an alternative course, namely that detention be restricted to an initial period to facilitate security and health checks of new arrivals. This contrasts with the current situation whereby detention for periods in excess of two years is not unknown.

Julian and Georgina both shared their own impressions of the inadequate conditions in which those within the detention centres are held.

There is considerable scope for barristers practicing in Criminal Law to make a contribution. Interested members of the Bar should contact Georgina Costello at Georgina.Costello@mallesons.com. A “*Refugee Law Training Day*” being hosted by Julian Burnside QC on Saturday 15 June 2002 has already been fully booked but a further day is planned. Members will be informed as to

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Advocating for Justice (cont..)

how to register in due course.

The Association thanks Justice Bongiorno, Georgina Costello and Julian Burnside QC their contributions to a very successful event. The over \$700 in donations from attendees will

go to the Refugee and Immigration Legal Centre.

Further information is available through the Refugee and Immigration Legal Centre website at www.rilc.org.au

Committee News

Legal Aid

VLA has proposed changes to the amounts granted for certain Magistrates' Court summary matters. Details of the proposal are contained later in this edition. Member response to the proposals is welcome and can be emailed to cba@crimbarvic.org.au. We thank Benjamin Lindner for representing the Association in consulting with VLA.

Publicity

Members could hardly have avoided the wealth of publicity attached to the Wales-King murder investigation. The Association has been concerned about the coverage of the case and has supported the views advanced by Liberty Victoria on the subject, namely that a level of journalistic restraint is required, especially in circumstances where no individual has been convicted nor any evidence heard by a court.

Spent Convictions

The Association has supported recent moves to introduce a spent convictions scheme similar to that currently legislated in NSW. Ed Lorkin and Phillip Priest QC are preparing a submission for Government on the topic.

Police Cells

The Association has been concerned at the unacceptable number of remand prisoners being held in police cells. The Police Ombudsman's report on the subject was very critical of the conditions in 3 cell blocks in particular. Duncan Allen is to examine Ombudsman Report and advise the Committee as to necessary further action from the joint taskforce.

Anti-Terrorism Legislation

The bill produced by the Government containing new "anti-terrorism" powers for Federal officials was the subject of complaint for its impact upon individual liberties and such concepts as the right to silence. It appears now that the Labor Party and Democrats will move for significant amendments in line with the Law Council submissions and that the Government is prepared to accommodate a deal of change to the draft Bill.

November 2001 Dinner

The CBA Annual Dinner was held on the 29th of November 2001 at Fortuna Village Restaurant, with 164 attending. As is invariably the way with CBA dinners, a late rush on tickets filled the restaurant to overflowing, making the night a resounding success. Thanks go to Nicola Gobbo for her organisational efforts, Colin Lovitt QC for his inimitable hosting, and His Honour Judge John Smallwood, for entertaining the crowd as guest speaker.

Alcohol Interlocks

The Association provided its submission on proposed State Government legislation as to the use of Alcohol Ignition Locks in drink-drive cases. Legislation is currently before Parliament.

Online Criminal History

Phillip Priest QC prepared a submission on the issues surrounding the Online dissemination of Criminal history. The issue came to a head last year when a murder trial before then Justice Hampel was adjourned due to the potential access the jury could have had to the prior conviction of the accused, which had been posted on the

Committee News (cont..)

internet.

Peaceful Assemblies Bill

Roy Punshon SC and Richard Bourke met with representatives from Justice to discuss Association concerns about the bill. This was followed by a Round Table discussion, held on 13 December 2001 chaired by the Minister for Police and Emergency Services, Mr Andre Haermeyer, and attended by a large group of interested parties. The CBA was again represented by Roy and Richard. The legislation is currently under further consideration and will be reviewed later in the year. The Association has been clear that the definition of the Right to Peaceful assembly should accord with International Covenants.

Proceeds of Crime

Nicola Gobbo and Remy van de Weil QC prepared the Association's submission on the *Proceeds of Crime Bill* 2001 (Cth). The Bill in its current form unfortunately does not take into account the concerns raised by the Association, but members will be kept informed as to its progress.

Sexual Offences

Jeanette Morrish QC and Nicola Gobbo prepared a submission to the Victorian Law Reform Commission on its Sexual Offences Discussion paper. The submission is available for perusal through a link on the CBA website. To date, no legislation evolving from the discussion paper is before Parliament.

Search and Seizure Powers

Stephen Sherriffs appeared on behalf of the Association before the Parliamentary Committee inquiring into the powers of entry, search, seizure and questioning by authorised officers. The Association's position has emphasised the need for transparency, common rights and duties including the need for seized materials to be taken before Court in accordance with the *Crimes Act* provisions. Lesley Taylor has pro-

vided further written submissions to the Committee.

Bail Act

Michelle Hodgson prepared the Association submission to the Draft Recommendation Paper on the current *Bail Act* position for accused who fail to appear in court in response to bail. The Association supported the recommendation that the legislation be amended to remove the "reverse onus" situation whereby an accused who fails to appear in answer to bail is held in custody unless he or she can establish that the non-attendance at court was through no fault or negligence on their part. This imposes a higher standard of proof for bail than exists for the proving of the charge per se, and the Association supports the abolition of that provision.

Criminal Law National Liaison Committee (Council of Australia)

Michael Rozenes QC will replace Brett Walker SC and become co-chair of the council with Tim Game SC of the Sydney Bar. Michael will also be the Association's delegate to the International Criminal Court conference. The conference will be held to discuss the creation of an International Criminal Bar.

Magistrates' Court

The Association has a number of issues to deal with as to current practices in this jurisdiction, and to this end Association Chair Roy Punshon SC has met with Her Worship Lisa Hannan, now the Magistrate in charge of the Criminal list, to discuss the concerns raised by members. These include the current listing practices for criminal fixtures.

Electronic Briefs

The move toward the electronic service of briefs is also a subject for discussion. The practice is already being adopted by the homicide squad and will undoubtedly expand. The court and practitioners need to establish appro-

Committee News (cont..)

priate guidelines to deal with this.

Appeal Costs Act Certificates

The Association has liaised closely with the courts and the Justice Department since the Court of Appeal decision in *R v Hall* changed the prerequisites for the application for a certificate pursuant to the act. Whilst ultimately it is expected that the issue can be resolved through a legislative amendment in the Autumn session, the County Court has issued a practice direction to deal with the situation in the interim and is contained later in this edition.

Criminal Trials Act Seminar

The Association hosted its first seminar of 2002 on the *Criminal Trials Act* on Tuesday 12 March 2002. Thanks go to the panel of speakers namely John Saunders, Ray Gibson, Nicola Gobbo and Damian Sheales. More details of the seminar are contained later in this edition. It is hoped that ongoing issues surrounding the operation of the Act can be aired by the membership.

Magistrates' Court Seminar

Her Worship Jelena Popovic, Deputy

Chief Magistrate presented a seminar on 21 May 2002 titled "Magistrates' Court; Sentencing Issues and Parallel Services". Topics for discussion included the access to and range of parallel services, Pre-Sentence detention calculations, Prior convictions, the CREDIT and Diversion programmes. We thank Jelena for her time and effort in presenting the seminar.

Website

The Association website is located at www.crimbarvic.org.au. Links to all Court lists, major legal sites and associations are provided, along with up to date news and events from the Criminal Bar Association. Please feel free to provide feedback as to how the site can be improved.

Lex Lasry QC

The Association is pleased to announce that Lex Lasry QC has accepted a secondment to the Committee. The updated Committee Details are included below.

Committee Details

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**Law Institute of Victoria
Media Release: 19 May 2002**

**MORE DETAIL NEEDED ON STATE OPPOSITION'S
LAW AND ORDER POLICY**

The Law Institute of Victoria and the Criminal Bar Association today called on the State Opposition to release more details about its law and order policy, revealed in a newspaper report.

The President of the Law Institute, David Faram, said few details about the policy had been released. He said the criminal law section of the Law Institute was available to consult with the State Opposition about any of its criminal law and order policies.

However, Mr Faram said he was concerned by aspects of the newspaper report that claimed the Opposition wanted to impose a range of minimum sentences on convicted offenders.

"If this is a proposal for mandatory sentencing, the Institute is opposed to that concept because we know what sort of injustices that has caused in the Northern Territory and Western Australia where mandatory sentencing has been applied," he said.

Mr Faram said adequate sentencing powers already existed to deal with commercial drug dealers and violent crimes. "Trafficking for commercial quantities in hard drugs, for example, can attract up to life imprisonment and we believe the discretion should be vested in the courts," he said.

The chair of the Criminal Bar Association, Roy Punshon, SC, said criminal barristers were opposed to mandatory sentencing because of its tendency to produce injustice. "We have complete faith in the judiciary's capacity to impose sentences that meet the circumstances of the particular case," he said.

For further information, contact the Institute's media adviser, Paul Conroy, on 0418.371099

Legal Aid Fees

For some time the Association has been trying to persuade Victoria Legal Aid that a jail conference fee should be paid to counsel appearing in committals. We have now been provided with a Discussion Paper titled "*Magistrates Court Criminal Law Fees; Proposals for Change Briefing Paper*", dated 16 May, 2002.

The proposal to change certain fees is as follows;

i) Currently there is a lump sum fee of \$450.00 payable to a legal practitioner (solicitors) in relation to Magistrates' Court Criminal matters. That figure is regarded as comprising an appearance fee of \$261 and a preparation fee of \$189.

Legal Aid Fees (cont..)

ii) 19,500 grants of this type were made by VLA last year.

iii) Of the 19,500 grants, 12,700 were lodged by written application to VLA, which VLA regards as the most cost efficient.

iv) Of the 19,500 grants, 6,800 were "phone grants" for a same day appearance, typically bail applications or pleas for people in custody on the day. VLA must re-process these when a written application is lodged. If this category of grants can be reduced, funds will be available for other work.

v) As less preparation is undertaken for same day phone grants than written applications, the preparation component of the lump sum fee will be reduced by \$100.00.

vi) VLA will introduce 2 new fees payable namely a preparation fee for Form 8A (\$124) and a one hour gaol conference fee for committals (\$110)

5. VLA seeks the response of the LIV and the CBA.

The two new fees suggested should be supported. The fee for Preparation of the Form 8A (\$124) will be available to Counsel where counsel

is briefed to prepare the Form 8A. Currently, solicitors tend to undertake the task themselves. It may well emerge that solicitors will prefer to brief counsel to do this rather than doing it themselves.

As for the proposed gaol conference fee to be payable for committals of people in custody, it is proposed that it is only payable if the practitioner who undertakes the conference also does the appearance- it is an advocates' conference fee.

The Association is preparing a formal response to be forwarded to Victoria Legal Aid.

Benjamin Lindner

**Association website;
www.crimbarvic.org.au**

The Association Website has been recently updated, and now includes the following;

- Links to all main legal sites, including daily court lists.
 - Latest Association News
 - Links to a number of recent Association submissions
 - Photographs from the November 2001 dinner.
 - Details of Association Seminars and upcoming events.
 - Full copies of articles from Benjamin Lindner on the Defence reponse in Criminal Trials and Ashley Halphen on ReprieveAustralia.
- The address is www.crimbarvic.org.au . Your feedback is appreciated.

In the Court of Appeal By Paul Holdenson QC

Another Duty Imposed Upon Defence Counsel?

Whether it be in a contested summary hearing or in a trial before a judge and jury, one of the real difficulties in being a barrister is deciding when and when not to take a certain point.

Many barristers proceed on the basis that where the point is a “legal point”, (for example, the point concerns the construction of the statute under which the accused has been charged), is “reasonably arguable”, then it should be taken on behalf of the client. After all, it is not for the barrister to decide whether the point is such that it will definitely succeed!

It may be that this philosophy now needs to be re-thought - at least in the context of contested summary hearings in the Magistrates’ Court because, if such a point is taken by defence counsel at the conclusion of a summary hearing, and is upheld by the presiding Magistrate, such that the charge is dismissed, then that may not be the end of the matter for the client.

If, subsequently, the DPP “appeals” the point to the Supreme Court on behalf of the Informant pursuant to s.92 of the Magistrates’ Court Act, 1989 (Vic.) on a question of law and the appeal is subsequently allowed (in other words, the point was “no good”), then the now unsuccessful respondent to the appeal cannot be granted an indemnity certificate pursuant to the Appeal Costs Act, 1998 (Vic.); see DPP v Sher (No. 2) (2000) 116 A.CrimR 458.

If, on the other hand, the appeal is dismissed by the single judge of the Supreme Court, but the DPP then “further appeals” the point to the Court of Appeal, and there succeeds, then

the now unsuccessful respondent (who had been successful before both the Magistrate and the single judge of the Supreme Court) cannot be granted an indemnity certificate pursuant to the Appeal Costs Act; see DPP v Greelish [2002] VSCA 68; (unrep., 22 May, 2002).

In these circumstances, it is obvious that the defendant to the criminal proceeding in the Magistrates’ Court is underwriting the errors made by presiding Magistrates. Such is indeed both unfortunate and inappropriate and ought not be a burden imposed upon any defendant in any criminal proceeding. In these circumstances, the Appeal Costs Act surely requires immediate amendment.

The lesson from each of the two above-mentioned cases for members of this Association is that these possibilities should be explained to the client so that the client might have some say in deciding whether or not the point is to be taken.

That such an approach should be taken is, in my view at least, confirmed when it is recalled that in each of the above-mentioned cases the unsuccessful respondents were ordered to pay the costs of the successful DPP; see DPP v Sher (No. 2) and para. [3] on p.458 and DPP v Greelish at para. [2].

These outcomes are surely contrary to justice. Moreover, in the case of DPP v Sher (No. 2), it was “doubly unjust” because the decision had been made by defence counsel not to take the point, but the Magistrate himself alone took the point, acceded to it and ruled accordingly. In the case of DPP v Greelish, the outcome was particularly onerous because those costs included the costs of the DPP before both the

In the Court of Appeal (cont..)

single of the Supreme Court and the Court of Appeal.

PAUL HOLDENSON

Appeal Costs Act Certificates

Practice Note

Section 17 of the *Appeal Costs Act* 1998 having conferred on (*inter alia*) the County Court the authority to grant indemnity certificates to accused persons in certain circumstances, the following Practice Directions will apply henceforth in respect of the exercise of that jurisdiction by the County Court, namely:

1. An application for a certificate under section 17 of the *Appeal Costs Act* may be made orally on the day a criminal proceeding is adjourned.
2. Where, on an application under section 17:
 - (a) the Court is satisfied of the matters contained in sub-section 17(1)(b); and
 - (b) the Court has before it evidence that additional costs have been paid, as required by sub-section 17(1)(c) (as defined by the Court of Appeal in *R v Hall* [2001] VSCA 181);

the Court may order that an indemnity certificate be granted.

1. Where an indemnity certificate is granted under the procedure contained in Paragraph 2 of this Practice Note, the practitioner should prepare and forward to the Court three (3) copies of the appropriate form of certificate. The Court will authenticate the draft certificates and return two (2) copies to the practitioner.
2. Where:
 - (a) the Court is satisfied of the matters contained in sub-section 17(1)(b); and
 - (b) the Court does not have before it evidence that the additional costs have been paid, as required by sub-section 17(1)(c) (as defined by the Court of Appeal in *R v Hall* [2001] VSCA 181);

the Court may order that an indemnity certificate shall be issued on the production to the Court of satisfactory proof of payment of the additional costs.
1. Where a conditional order is made under the procedure in Paragraph 4 of this Practice Note, practitioners must file with the Court proof of payment of additional costs together with three (3) copies of the draft indemnity certificate in the appropriate form.
2. If satisfied with the proof of payment of the additional costs, the Court will authenticate the draft certificates and return two (2) copies to the applicant's practitioner.

CHIEF JUDGE

8 February 2002

Drink Driving Cases in the Supreme Court and Court of Appeal

By Warwick Walsh-Buckley

A recent traffic case in the Supreme Court may have impact on criminal defence tactics generally.

***Kurzbock v Hallett* [2001] VSC 459 (3 December 2001)**

Ashley J dealt with a s 92 *Magistrates Court Act* 1989 appeal from a defendant charged with exceeding a speed limit by more than 50 kph contrary to *Road Rule 20* which proceeded as a Magistrates' Court contest. The prosecutor was informed twice by the defence that it would be put to strict proof. The informant commenced to give evidence in chief. Defence counsel invited the prosecutor to tender the informant's sworn statement in lieu having to give that evidence orally. The prosecutor, with the Magistrate's consent, took up that invitation. In cross-examination a successful attack was made on the police laser with the result that the speed alleged could not be proven from the laser. However, the informant, a traffic police member, gave expert evidence on his speed estimate of the defendant's car. The prosecution shut its case. The defence did not make a no case submission - it opened and shut the defence case without calling evidence. The speed ultimately established beyond reasonable doubt was substantially lower than on the laser, but still in excess. However, the defence submitted that the prosecution had not proven beyond reasonable doubt the defendant infringed a speed limit sign described under *Road Rule 21*, which was how the charge was pleaded, and argued on analogy to *Passey v Burns* 32 MVR 160 [2000]VSC 492. The Magistrate accepted that the charge would fail.

The prosecution then applied to re-open which the defence opposed on grounds the prosecution was put to strict proof, thus, it was reasonably foreseeable proof of a lawful speed limit was required, and due to unfairness to the defendant (with reasons why) as the defence had shut its case, and cited leading High Court decisions eg. *Chin* (1985) 157 CLR 671 in support. The Magistrate allowed the prosecutor to re-open stating "...given the way the matter proceeded, the invitation to adopt a statement...to tender it to the Court rather than have the Informant to give his evidence in the normal manner seems to me sufficient grounds for the Court to exercise its discretion...". The informant was recalled and described the signs in terms of the *Road Rules*.

Ashley J held that the appellant had not shown the Magistrate's discretion miscarried - the Magistrate evidently recognised that exceptional circumstances were required before permitting re-opening and decided that calling the evidence was not reasonably foreseeable, there was no unfairness demonstrated to the Magistrate, and there was good reason why the defendant would keep out of the witness box.

Although several recent Supreme Court cases dealt with the discretion to permit re-opening, amongst other points, those cases (mainly drink-driving) usually dealt with formalities, not strict elements of offences, and the application to re-open was made after defence no-case submissions (with difficulty in showing unfairness) and not after the defence case closed. This

0.05 cases (cont..)

case demonstrates yet again the difficulty for the defence impugning on appeal the exercise of a Magistrate's discretion. Defence counsel should ex-

pect prosecutors to be armed with this case.

By Warwick Walsh-Buckley

International Criminal Law Seminar: 28 May 2002

The Melbourne International Humanitarian Law Unit of the Australian Red Cross is having a seminar on the 28th of May 2002 titled "***The International Criminal Court: An Australian Perspective***", presented by The Melbourne International Humanitarian Law Unit of the Australian Red Cross.

Venue: Freehills, Level 42, 101 Collins Street, Melbourne

Time: 6.15 for 6.30pm

Cost: \$10 (payable at the door).

Proceeds will be directed to Australian Red Cross of Victoria

RSVP : ihl.rsvp@vic.redcross.org.au

Enquiries: Shivani Pillai, Foley's List 9225 8336 or 0411 446 500

CBA forum; **Crimes (Criminal trials) Act 1999**

The Association held a special forum, moderated by Roy Punshon SC, at the Neil Forsyth Room on the 12th of March 2002. The panel of speakers of Nicola Gobbo, John Saunders, Ray Gibson and Damian Sheales led a wide ranging discussion whose purpose was to collate member's experiences of the Act that could then provide the basis for submissions to the Judges in charge of the Criminal Trials listing

Ray Gibson outlined some positives and some negatives he saw in the Act.

Positives :

1. Requirements for the Prosecution to provide an opening allowed for some certainty as to how the Crown put its case.
2. Directions hearings allow for representation and funding issues to be resolved to avoid unnecessary adjournments. This compares to the pre-Act situation in which 37% of trials were adjourned on the trial date.
3. Disclosure of Expert Witness nar-

rows the issues, adding to efficiency in trials.

4. The Act is a mechanism allowing for preliminary points of law to be disclosed. These should be ventilated at an early stage. For example, a permanent stay application.

5. Disclosure re: presentation to juries of maps, flow charts, etc. In this sense the Act is helpful in encouraging such presentations.

Negatives:

1. There exist wide variations in Defence responses. Some are detailed, others bland and vague.
2. The Act does not seem to have facilitated the earlier appointment of Trial Judges.
3. Neither has it led to date certainty. The experience of members is that there are still a significant number of cases in the reserve lists.
4. There exists a wide variation as to the knowledge and imposition of the provisions of the Act amongst Judges.

CBA forum... (cont..)

5. Section 16 of the Act allows for comments on departure from or failure to comply with pre-trial documents; but it does not address the issue of the consequences of such comments. No points regarding the Act have yet been raised in the Court of Appeal.

Damian Sheales noted that for practitioners, the preparation of the defence response, ought be at the *end* of your case, and should be done by the person who runs the trial. He also had experienced a wide divergence of rulings on the Act.

Nicola Gobbo addressed the “misconception” that the defence response need disclose the defence case, noting that allegations can be denied or disputed short of an explanation being offered. Nicola also addressed the impression that the Case Conference system has led to an increased number of reserved pleas at committal level. On the positive side Nicola thought the system allowed for more prompt listing of pleas for young offenders, especially helpful if the accused is nearly out of time to be suitable for YTC.

More generally, members present expressed opinions on other issues relating to the Act. On a broader philosophical level, a number of members saw

difficulties with Judges participating in case conferences in such a way as to be mediators.

The utility of the Case Conference seems also to be dependent upon the early briefing of counsel to allow for meaningful discussions between prosecutor and defence.

There was complaint about the penalties that apply under the Act should Defence counsel hand back a brief within 7 days of trial date, but is not equally applicable to prosecutors.

The ability under the Act to do a defence openings was praised as an effective tactical response if used properly by the Defence.

Funding issues remain a concern and pose a risk to the effective operation of the Act. Inadequate payment for the preparation of defence responses as well as an unwillingness from the OPP to brief as early as desirable was a concern to the membership that will be taken up by the Committee.

As a result of the forum, the Association intends to form a sub-committee to work out the issues and discuss with Judges and the Government, who were very critical of this when in opposition. Please forward any comments and concerns to Nicola Gobbo at ngobbo@melbpc.org.au

Stephen Jones: McVeigh's Attorney

On Thursday 14 February 2002 I attended Tulane University and heard a talk given by Mr. Stephen Jones Esq., the attorney who represented Timothy McVeigh, the man held responsible for the death of 168 people including 19 children under the age of six.

Over the duration of the two and a half years that Mr. Jones acted for the ‘most hated man in America’, he received numerous death threats, six of which were taken so seriously that FBI

investigation was required. He slept with a loaded shotgun under his bed and his house and office were under the constant surveillance of armed guards.

Neither Mr. Jones nor his family were in any way harmed, but as a result of his involvement with McVeigh, Jones lived in constant fear, lost his law practice and was the subject of public scorn and ridicule.

McVeigh's Attorney (cont..)

For Jones the story began on Friday, May 5, 1995, 3 weeks after McVeigh's arrest, Jones recalls receiving a phone call from the Department of Justice. He spoke to the Chief Justice of Oklahoma, Chief Justice Russell. Jones was asked whether he would agree to act for someone charged with the Oklahoma bombing. McVeigh's name was not mentioned at this stage but no one else had been charged for the bombing either.

Jones was reluctant to accept the appointment. One individual he consulted was the Governor of Oklahoma, who advised Jones against taking the appointment, remarking that while he was of a view that McVeigh was entitled to a lawyer, he was not entitled to "my lawyer."

At 6:30 pm, the following day, Jones contacted the Chief Judge as previously arranged. He accepted the appointment. To have turned around and rejected the offer would, according to Jones, have made a lie of his allegiance to the Bar Association and the duty to take on all cases no matter how unpopular. Despite this, when Jones signed the required documentation he remarked that he 'hoped he had not just signed his own death warrant.'

He was then immediately escorted by U.S. marshals to confer with his client. Their two and a half year relationship commenced with a handshake. Jones said, 'my name is Stephen Jones, I have been appointed to represent you.' McVeigh then said, 'I heard you were coming.' Over the course of the next 10 hours, Jones found his client to be articulate and intelligent. He discussed his political views and elaborately detailed the blueprint of his crime.

Jones ensured that members of his legal team visited McVeigh each day. There were two shifts a day, each of four hours duration. The visits and

interviews lasted many months. Memorandums were written immediately following each interview and filed accordingly. He assigned an attorney the task of analysing the thousands of pages of memorandums to see whether inconsistencies existed. Indeed over the period of time McVeigh had been interviewed, he had retold his story numerous times. The attorney charged with the responsibility of analysing these interviews found many marked inconsistencies in the versions proffered by McVeigh. Jones steadfastly holds the view that it was integral to McVeigh's emotional and personal well being that he took sole responsibility for the bombing. His unequivocal commitment to a version identifying him as the only perpetrator was the principal factor underlying his decision to waive his appeal rights, even when his attorney's discovered an additional 4000 documents after the trial.

Jones believes that McVeigh was recruited by others but went to great lengths to undermine even his own lawyers to accept sole responsibility for a cause he believed in. In Jones' own words he wanted to be regarded as, 'the brains and not just the chump of the operation.'

According to Jones, it was not just the inconsistencies between stories and constant re-invention that lead him to this conclusion. The fact that no one came forward to collect the two million dollar reward that was available was telling for Jones. This is because on McVeigh's own version of events there were three people who existed that, if not co-conspirators, would have readily come forward to claim the reward.

Incidentally, I had occasion to visit the memorial site in Oklahoma. A wall at the entrance is marked 9:01. The wall at the exit is marked 9:03. In between these walls is the moment

McVeigh's lawyer... (cont..)

America lost its innocence. A stream flows between these walls - once Main Street and the location where the bomb detonated, it has been engineered in a way that allows for constant water flow, the sounds of peace and tranquility prevail.

The entire building was blown away except for a small fragment of a wall that remains at one corner of the site. A grass field now covers the area where the building once stood. Chairs are scattered across the grass in a seemingly sporadic fashion. Not so, the number of chairs equates to the num-

ber of fatalities. They are in 9 rows to signify the 9 stories of the building. Each chair is positioned in the precise spot where each worker's office desk was located.

There is a tree on the site that miraculously withstood the blast. It is a peaceful resting place for those unforgivably taken.

Ashley Halphen

Ashley has recently returned from a stint working in New Orleans with the Louisiana Crisis Centre, the organisation founded by English Barrister Clive Stafford Smith. Internships at the centre are run through ReprieveAustralia.

8th International Criminal Law Congress

The Criminal Bar Association is helping to organise the Eighth International Criminal Law Congress, being conducted in Melbourne at the Sofitel. The conference commences on Wednesday, 2nd October, 2002, and concludes at lunchtime on the following Sunday, the 6th October.

A flyer setting out the details and background has already been distributed to all CBA members, members of the Criminal section of the Law Institute, Judges, Magistrates, Crown, legal aid, and other relevant bodies.

The conference organizing committee comprises Lovitt QC (Chairman), Judge Betty King, Rozenes QC, Punshon SC, plus Commonwealth DPP, Damian Bugg QC. Sponsors will include Law Book Co, Butterworths, Anstat, Ludlows, and the CBA itself. Two local representatives from each other State, plus New Zealand, are assisting in putting the program together and promoting the Congress.

This is the eighth such criminal conference conducted in Australasia since 1984. They have provided welcome opportunities for criminal lawyers

from all Australian states and New Zealand to meet, socialise, and discuss the most pressing issues of the time. The conference is renowned for the camaraderie off the field, yet delegates (there were nearly 300 at the last Melbourne Congress in 1996) traditionally become highly involved in the conference sessions.

The CBA was a sponsor of the 1996 Congress, which proved to be the most successful yet held. Budgets are tight, and any profits (some have run at a loss) are poured back into the next conference. After the first Congress, in Adelaide in 1984, the Australasian Criminal Lawyers Association was formed. It is a loose-knit body comprising leaders of various criminal lawyer associations around Australia and New Zealand, and plays an overseeing role, whilst the conferences it supports are run autonomously by the local criminal law associations.

The Sofitel provides the best conference facilities in Melbourne. There will be two cocktail parties (including one, it is hoped, in the wonderful surrounds of the Supreme Court library) a lawyers' long lunch at Mat-

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teo's on the Friday afternoon, and the Congress dinner at the Sofitel on the Saturday night (in 1996, Coldrey J treated the diners to a speech which the New Zealand contingent refused to believe came from a Supreme Court Judge, but rather from a professional comedian!).

Many members of the Association will be involved. The Chief Justice, President of the Court of Appeal, Vincent JA, Flatman, Coldrey and Bongiorno JJ; Weinberg J of the Federal Court; Judge John Smallwood; Chief Magistrate Ian Gray, Magistrates Barrow, Cottrell, and Auty. From the Bar, Richter QC, Rozenes QC, Faris QC, Lovitt QC, Lasry QC, Hore-Lacy SC, Julian Burnside QC, Punshon SC, Liz Gaynor, Ian Freckelton. In addition, DPP Paul Coghlan QC and Senior Crown Prosecutor Bill Morgan-Payler QC, and solicitor for the DPP, Kay Robertson. VLA will be there, along with local academics such as Professors Arie Freiberg, and Stephen Corder, solicitors, forensic experts, VLA, legal authors, and so on.

Meanwhile, there will be a strong contingent of speakers and panel members from all other states and from across the Tasman. Many judges, and leading criminal practitioners, including-virtually all State DPP's will be involved.

The State Attorney-General will open the Congress. Federal Attorney-General, Daryl Williams QC will argue for the anti-terrorist legislation against Terry O'Gorman (President of the Australian Council of Civil Liberties).

Other topics include "equality of arms" - the comparison of resources of the Crown and the defence,; Drug Courts; sentencing in sex cases; the treatment of aborigines by the criminal law; the erosion of the right to silence; compulsory DNA samples; issues surrounding the handling of the David

Hicks case; the perceived politicization of Crown decisions to appeal sentences; the rise of the intervention order; and a fresh look at plea bargaining and case management,.

Peter Faris will argue for the streamlining of appeals to hearings before a single judge! Vincent J will respond! That session, chaired by Mr Justice Winneke, will also look at arguments for and against guideline judgments.

There will be a light-hearted debate on the topic "That the Fourth Estate is Crook on Crime". The media will be represented by "Sly of the Underworld", and radio commentators Alan Jones, and Neil Mitchell. 3AW breakfast guru, Ross Stevenson, will attempt to keep the peace during this session (or, more likely, do his best to disturb it!).

Phillip Ruddock has been invited to engage with both Julian Burnside and lecturer in politics, Robert Manne, on issues pertaining to the treatment of asylum-seekers. Former Prime Minister, Malcolm Fraser, will also be involved.

Many of the sessions this time will take the form of panel discussions, rather than the presentation of papers. What papers there are will be available to delegates by email and otherwise distributed after the conference. There are over 90 speakers, panellists, chairpersons, commentators, and debaters involved.

The Congress Brochure/Program will be distributed to members in the latter half of June. Please direct all queries to one of the Organising Committee members, or contact the Congress Secretariat, ICMS, on 9682 0244 or at: crimlaw@icms.com.au, or Monique Muldoon, 9674 0226, monique@icms.com.au, or Lynne John on 9674 0223 or at lynne@icms.com.au