



# Forbes Flyer

THE NEWSLETTER OF THE FRANCIS FORBES SOCIETY FOR AUSTRALIAN LEGAL HISTORY

Autumn 2008

## History reports itself

The OED traces the word "law" through old English to things of Norway, Sweden and Iceland. In Old Icelandic, the singular of the word meant "something laid or fixed".

The authors observe on the one hand that that in many other languages, the word for "law" is also derived from roots meaning "to place", while on the other that Latin leg- or lex "is not now generally believed to be cognate".

Mind you, Latinist lawyers have put their best leg forward elsewhere, making themselves necessary for the making of legacies, for the sending of legations, and for the language of legibility generally.

Then there is "lawyer" itself. A Penang lawyer for dispute resolution? Or coprinus comatus, or lawyer's wig<sup>1</sup>, for fungal fields. But is there better than Rainforest-Australia's definition of "Lawyer vine"<sup>2</sup>:

- Also known as 'wait-a-while', the lawyer vine is a prickly climbing plant with hook-like spines that attach themselves to anything.
- If you do become caught simply remove the barbs in the opposite direction to which they attached themselves.

David Ash

Editor

## The 2008 Australian Legal History School Essay Competition

The competition is OPEN FOR BUSINESS!!!

The competition is open to all Students enrolled, at any time during 2008, in an Australian Secondary School or their first undergraduate course (including a combined Law Course) at an Australian University. It is not

1. [http://en.wikipedia.org/wiki/Coprinus\\_comatus](http://en.wikipedia.org/wiki/Coprinus_comatus).

2. [http://rainforest-australia.com/Dangerous\\_rainforest\\_animals\\_and\\_plants.htm](http://rainforest-australia.com/Dangerous_rainforest_animals_and_plants.htm).

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confined to students enrolled in formal courses of study in history or law.

To see the official guidelines (and to print them off), go to the society's link at <http://www.forbessociety.org.au/>.

As readers will recall, the newspaper owned and operated by those early firebrands of the Australian bar, Mr Wentworth and Dr Wardell, was *The Australian*. So it is apt that almost two centuries later, the Society's competition is being supported by the national title of the same name.

As Michael Pelly puts it, in *The Australian's* Legal Affairs section for 4 April 2008:

### Just what does 'guilty' mean?

Two notorious incidents in Australia's legal history will be examined in a national essay competition being supported by *The Australian*.

The Francis Forbes Society ran its inaugural contest last year, with James Triggs of Doncaster Secondary College, Melbourne, winning for his effort on the Rum Rebellion,

Authority, Democracy and the Rule of Law. He collected prizes worth almost \$2000 and an edited version was published in the *Australian Bar Review*.

This year the society is running three divisions: junior secondary (years 7-10), senior secondary (years 11-12) and undergraduate university. Each category carries cash and prizes worth \$1500.

The question is: "How can a lawyer defend somebody he or she 'knows' is 'guilty'? What is it to 'know' that somebody is 'guilty'?"

The contestants are being asked to discuss this from the perspective of a member of the community who is not a lawyer using examples drawn from the Dean Controversy (1895-1896) and/or *Tuckiar's Case* (1932-1934). The first relates to the prosecution of George Dean for the attempted murder of his young wife shortly after the birth of their child. Dean was convicted and sentenced to hang but his solicitor, R.D. Meagher, secured a pardon on the basis that Dean was innocent. They came unstuck because Meagher - believing their "guilty secret" was protected by privilege - revealed it to his own legal adviser, Julian Salomons QC.

The second episode covers an Aboriginal warrior who was unfairly convicted in the Northern Territory and sentenced to hang for the murder of a policeman.

*The Australian* will publish updates on the competition and the winning entry on its website.

So spread the news, please. And thank you to Michael Pelly and the Legal Affairs section under the editorship of Chris Merritt, for getting behind the Society's competition.

## Early NSW decisions

With two hundred years under the belt since the "other rebellion" against Governor Bligh, it is apt to remind ourselves of the site published by the Division of Law at Macquarie University, "Decisions of the Superior Courts of New South Wales, 1788-1789", <http://www.law.mq.edu.au/scnsw/index.htm>.

The site was created, its publisher says:

... to publish many of the hidden court records of the superior courts of New South Wales. At present it concentrates on the Supreme Court's decisions between 1788 and 1841. We also include a number of cases concerning Aborigines from later years. The site is presently under construction, and we will be adding new cases. At present it contains well over one thousand cases and two million words.

In a case which precipitated the coup<sup>3</sup>, we see John McArthur put his case for Richard Atkins not being permitted to sit in judgment upon him. For example, McArthur argued, Atkins:

... dissociated and combined with that well known dismembered Limb of the Law, George Crossley (and others of as wicked minds, although not quite so notorious) to accomplish my destruction.

(Dr Currey maintained<sup>4</sup> that "[John McArthur] was so spelt by the man] until September 1816 when, on the same day in that month, he signed one document John McArthur and another John MacArthur. Two years later, and thereafter, his signature was John Macarthur, although, in 1820, Commissioner Bigge addressed letters to John McArthur, Elizabeth Farm, Parramatta.")

## Eric Miller QC (1903-1986)

Mr Philip Selth, the executive director of the NSW Bar Association, is writing a biography of the late Eric Miller QC and is keen to talk to anyone who may have some reminiscences.

Miller QC appeared in a number of notable cases, including the 1943 'Brisbane Line' Royal Commission and the Federated Ironworkers 'forged ballots' case in 1950. He often had as his junior John Kerr and, later, Lionel Murphy. Neville Wran appeared as his junior when Eddie Ward MP sued the *Australian Financial Review* for defamation in 1959.

Miller, who had his own racehorses, did a lot of work for owners and trainers. Justice Kinsella criticized him in the 1962 Off-course Betting Royal Commission for not being a gentleman. (Miller's SP bookie client told the commission that on occasion even members of the judiciary and the clergy used the services of an SP bookie.)

Philip Selth can be contacted through the Bar Association, Selborne Chambers, 174 Phillip Street, Sydney 2000, T 02 9229 1735, F 02 9221 1149, E [pselth@nswbar.asn.au](mailto:pselth@nswbar.asn.au).

## Vexatious litigants

Simon Smith is a post-graduate student at Monash University. He is engaged in legal history research toward a doctorate, and is tracing the stories of people declared vexatious litigants in the first 50 years of the sanction, from 1930 to 1980. In that period the superior courts of Australia made ten declarations.

3. <http://www.law.mq.edu.au/scnsw/html/R%20v%20Macarthur,%201808.htm>.

4. C H Currey, *The Brothers Bent*, 1968, Sydney University Press, page 10.

An important part of what promises to be an informative insight into our legal history, is the collection of oral histories from people who intersected with these litigants. Is anyone able to assist with oral recollections of the following?

- Rupert Millane (1930)
- Ellen Barlow (1931)
- Edna Isaacs (1941)
- Goldsmith Collins (1952)
- Geza Laszloffy (1963)
- Constance Bienvenu (1969)
- Dieter Soegemeier (1980)

If “yes”, please contact Simon @ sbsmi1@student.monash.edu.au or on 03 9531 5278.

## The NSW Legal Profession at Gallipoli

Based largely upon military records, Tony Cunneen has written a working paper on the involvement of NSW lawyers in Australia’s Gallipoli campaign in the First World War. It is entitled *Engaged to Act on Another Front*, and can be viewed at [www.forbessociety.org.au/documents/gallipoli.pdf](http://www.forbessociety.org.au/documents/gallipoli.pdf).

Tony invites comments, corrections, criticism and the provision of research assistance from members of the legal profession, their families and the public generally so that this area of Australian social history can be elaborated. Please email [acunneen@bigpond.net.au](mailto:acunneen@bigpond.net.au).

## Tim Castle’s Capital Punishment Database

The names, crimes and fate of the 1300 people who were sentenced to death between 1826 and 1837 are contained in the Castle Database. Some were executed, and many others were reprieved by the Governor and the Executive Council only to face a term of transportation to places such as Norfolk Island or Moreton Bay. Find out more at <http://research.forbessociety.org.au>.

The Castle Database was recently the subject of an article by Lauren Wilson in *The Australian*, 24 March 2008.

## Autumn Quarters

### In autumn 1808

On 20 April 1808, Napoleon’s nephew was born. His particular claim to fame is that he served his nation as a president and later as an emperor. Is a reader aware of any other republican royals?

### In autumn 1858

On St Patrick’s Day 1858, the Irish Republican Brotherhood is founded in Dublin.

### In autumn 1908

On 10 May 1908, Mother’s Day in its current form receives its first public celebration in Andrew’s Methodist Episcopal Church in Grafton, West Virginia.

### In autumn 1958

On 27 March 1958, Nikita Khrushchev becomes premier of the Soviet Union.

## Contacting the Forbes Society

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