

## IT In The Courtroom From Both Sides Of The Bench - The Transformation Of Justice

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The topic I have been asked to address, "IT in the Courtroom From Both Sides Of The Bench", gives me free rein. Taking advantage of speaker's licence, I have added a gloss to my subject, or, if you like, amended it to give a better indication of my thesis. The topic I will actually address is: "IT in the Courtroom From Both Sides Of The Bench - the Transformation of Justice".

The points I want to make are the Internet has and will transform justice:

- \* First, by publishing the court's decisions to any member of the community with an interest to read them, a computer and an internet connection;
- \* Secondly, by publishing many important hearings to any member of the community with an interest to observe them, a computer and an internet connection;
- \* Thirdly, by enhancing interaction between the Court and the community by enabling any member of the community to transact legal business of a relatively routine nature through eCourts.

All of these matters are essential if the community is to have the open access to justice which is and has always been the fundamental premise of the English legal system. The one reservation I would ask you to consider is: is too much law dangerous? I shall return to this.

### The Importance of Law Reports

Law reports perform the important function of ensuring the judiciary and members of the legal profession have access to records of prior decisions in order to give full force and effect to the doctrine of precedent. They also serve the function of providing information to the public concerning the business of the courts. They are ancillary to the principle that courts administer justice in public. The public has a right to enter the Courts to see and hear what is said. The publication of reports of what takes place in Courts enlarges the areas of the courts and communicates to the whole public what the public has a right to hear and see.<sup>1</sup>

The notion of justice being administered under the public gaze, with its underlying premise of access to justice, is one aspect of the rule of law. It is part of that "body of inherited values, mainly distilled from the experience of the common law over the centuries, but also to some extent derived from the political and legal philosophy of ancient Greece and republican Rome" under which the community expects to operate.<sup>2</sup>

As was said in *Attorney General v Leveller Magazine Limited* [1979] AC 440 at 449 - 450 by Lord Diplock:

"... If the way that courts behave cannot be hidden from the public ear and eye this provides a safe guard against judicial arbitrariness or idiosyncrasy and maintains the public confidence in the administration of justice. The application of this principle of open justice has two aspects: as respects proceedings in the court itself it requires that they should be held in open court to which the press and public are admitted and that, in criminal cases, at any rate all evidence communicated to the court is communicated publicly. As respects the publication to a wider public of fair and accurate reports of proceedings that have taken place in court the principle requires that nothing should be done to discourage this."

The reports of which Lord Diplock spoke are not those which merely record the decision in each case. They are the reports of what, in effect, the public would hear if able to avail themselves fully of their right to attend the court and be present throughout the hearing.

How has the law historically discharged its duty of encouraging the delivery of law to all the public?

Some History and the Rule of Law

But first some history.

Australia and, of course England from which it derives its legal history, abide by the rule of law, the essence of which is that all authority is subject to, and constrained by, law.<sup>3</sup>

Law is a heavily information dependent profession. Courts in the common law world are bound by the doctrine of precedent requiring each court to follow any case decided by a court above it in the hierarchy.<sup>4</sup> It is essential, in order that that duty be discharged, that the courts have access to those decisions. Hence law reporting in the common law world has an early, if chequered, history.

Let me take you for a quick trip back in the time machine.

Law Reporting in England appears to have commenced as early as 600 AD when King Ethelbert of Kent put into writing the dooms (judgments) of his folk juxta exempla Romanorum which were published in Kentish.<sup>5</sup> History does not record how slavishly (if at all) those judgments were applied.

Following the Norman Conquest in 1066, the Normans sought to apply the law as it had been observed during the reign of Edward the Confessor, albeit that it was translated into Latin to make it accessible to the clerics who were responsible for administering English Law.<sup>6</sup> Latin was to remain the language of records and French the language of pleadings in courts in England until 1650. It was not until 22 November 1650 that a Bill was passed by which English became the language of the Law,<sup>7</sup> but, even then, English did not become the official language of the law until the early eighteenth century.<sup>8</sup>

The first phase of what might be called "formal" law reporting in England began shortly before 1270 and ended in the summer of 1291. During these two decades only just over 400 reported cases survive: 171 from the Common Bench and 166 from the General Eyre.<sup>9</sup>

One of the features of this period of law reporting was that independent reports of the same case were not infrequent and, moreover, such reports could be very different.

Let me illustrate the manner in which an early case was approached, both in terms of argument, judgment and reporting.

In 1287 in the Michaelmas term, John Aucher "brought an action of right in the Common Bench at Westminster claiming land at Cottered in Hertfordshire against William De La Bruere."<sup>10</sup> There are five reports of the action, one in Latin, two in Anglo-Norman French, described as "full-length", and two others also in French but abridged versions of the full length reports in Anglo-Norman French.<sup>11</sup>

The Latin report of Mr Aucher's case recorded what was said in indirect speech and did not identify the justice or justices who heard the case.

The reports in Anglo-Norman French apparently identify two of the five justices of the Common Bench, the Chief Justice Thomas Weyland and his junior, William of Brunton, as having heard the case.

Among the fascinating features of the report is the manner in which they dealt with a plea of estoppel. William of Bereford, who was to become the Chief Justice of the Common Bench, acted for the claimant and advanced the estoppel argument. It appears that the justices indicated that the claimant's attempt to rely upon an estoppel argument should be rejected. Bereford then sought to rely upon precedent, saying:

"I have seen it so adjudged before you yourself and there ought to be one law for all the people of this kingdom".

Weyland CJ responded, apparently accepting the precedential value of previous judgments, but saying:

"You certainly do not say right. If you have seen such a decision tell us the names of the parties."

William of Bereford is not recorded as having answered.<sup>12</sup> His difficulty was due, no doubt in small measure, to the fact that he did not have access to any written reports of those cases.

The reasons the estoppel argument was dismissed were not recorded and were probably not even given. The fullest report records William of Brunton saying, in dismissing the argument:

"We know well that there are many judgments on both sides, but we are all agreed. We adjudge that you answer over."<sup>13</sup>

And now a leap to the twenty-first century. Today the following would be the case: First, William of Bereford would have had access to at least 11 High Court decisions reported in any of 3 series of printed law reports (the CLR's, the ALJR's and the ALR's) as well as the internet reports. If he'd searched on Austlii's Australian databases he would have got 5793 hits for "estoppel" and if he'd searched on WorldLii, 9556. This is one illustration of my point about the possible dangers of too much law. But I digress.

The Court's reasons would have occupied many pages. If decided in the High Court each judge would probably have delivered a separate judgment exploring the development of the principle, the facts and then marrying the principles to the facts in order to discharge the judicial obligation to give reasons.

But William of Bereford did not have these resources at his fingertips and so the argument was lost.

The problems of law reporting in the thirteenth century are well illustrated by the fact that it was apparently quite usual for there to be two or in some cases four independent reports of Common Bench cases. In the case of reported cases from the General Eyre, two or even three independent reports of the same case survive. In one case in the 1285 Northamptonshire Eyre there were as many as seven reports and in two other cases from the same sittings no fewer than five.<sup>14</sup>

Such reports were not the official reports of the proceedings. The official record of what was said and of the Court's judgment was the plea roll.<sup>15</sup>

The second phase in law reporting commenced in about 1291, apparently attributable to greater resources being provided to "apprentices of the court" to sit in court to observe and report upon cases.<sup>16</sup>

From 1292 to 1534 law was reported in the Year Books, leading to the situation where there is almost a complete set of reports of English Law from that day to the present. Happily for the legal profession during the fourteenth century the practice of there being numerous reports of a case appears to have diminished so that there was generally only one, as a result, it is suggested, of greater organisation in their preparation as "creatures of the Inns of Court" - prepared by the apprentice lawyers who "banded together in their inns".<sup>17</sup>

Apart from the work that the apprentices did, the independent reports appear to have been compiled variously from notes made in court by, for example, the judge presiding over the case, by enrolling clerks making notes prior to recording the official record in the plea roll and, finally, by the lawyers hearing the case. Otherwise, lawyers in the late thirteenth and fourteenth centuries had to rely upon their own memories of what was said.<sup>18</sup>

The invention of the printing press greatly facilitated the spread of legal information - it was to the medieval world, I suggest, what the Internet has been to the modern world. Its effect was described in the following terms:

"The advent of the printing press effected a great, though silent, revolution in law ... it widely disseminated legal knowledge; it greatly facilitated the standardising of justice throughout the country; it provided politicians with an armoury of those juristic weapons with which they fought the battle of English liberty in the 17th Century. The first hundred years, however, of the era of the printing-press did not witness the production and publication of any new work in English legal literature to be compared in merit or importance with either Fortescue or Littleton. Lawyers seemed to be content if they received from the press a steady supply of old authorities - registers of writs, books of entries, year books, abridgements, statutes and court keepers' guides.

This literary sterility may have been due to the fact that English common law was out of favour in high places. The Tudors leaned towards courts like the Star Chamber in which not common law but

something very different was administered. English common law, indeed, was during the first half of the 16th Century, in almost as grave danger of losing its supremacy as was the English Parliament. It was saved, however, by the Inns of Court, and by the weapons which the printing press put into the hands of those organised champions of precedent."<sup>19</sup>

Authorised reports as we know them commenced in 1863, when W.T.S. Daniel Q.C. proposed a Council of Law Reporting to act gratuitously and be responsible for the appointment of editors and reporters and to undertake the management and direction of the printing and sale of the English Law Reports. Editors and reporters would be expected to devote their whole time to the discharge of their duties and salaries should be sufficient to secure the services of men duly qualified by learning and experience. Daniel's scheme was approved in substance and the first meeting of the Incorporated Council of Law Reporting was held on 25 February 1865.

In 1865 the reporters began their work in Westminster Hall, the home of the superior Courts, in Lincoln's Inn Old Hall and the Rolls in Chancery Lane. The first volumes of the Law Reports appeared in 1866 by which time there were over 400 subscribers at 5 guineas a year. In 1870 the Council was incorporated under the Companies Act with the object of:

"The preparation and publication, in a convenient form, at a moderate price, and under gratuitous professional control, of reports of judicial decisions of the superior and appellate courts in England."

While "The Law Reports" was to be run as a private enterprise without state aid or interference, it was not intended to be profit making except in so far as it was necessary to make it self-supporting. In fact in 1970 the Council was registered as a Charity.<sup>20</sup>

As at 1895 there were 1800 volumes of law reports in England.<sup>21</sup> Let me put it in an Austlii context. As at 1997 or thereabouts the 65000 cases on the Austlii database was described as comprising 3.2 gigabytes of legal texts. I don't know how you translate that into "volumes".

#### Australia

In Australia law reporting had a slow start. In the 1820s and 1830s, three major Sydney newspapers devoted a large proportion of their columns to law reporting.

In New South Wales there were no continuous law reports until the commencement of the thirteen volume series called Reports of Cases Argued and Determined in the Supreme Court of New South Wales, covering cases decided between 1863 and 1879. The thirteen volume series was based on newspaper accounts. It also included a few cases before 1863.

Apart from a volume published in 1846, contemporary law reporting did not begin until the New South Wales Law Reports commenced in 1879. Very few cases decided before 1863 have ever been reported and even those were sometimes incomplete accounts of what the judges said in court.

At the end of the nineteenth century, Gordon Legge recognised the need for better reporting and compiled a two-volume set of reports of New South Wales cases going back to 1830. Legge's oldest case, dated 1830, is the oldest formally reported legal decision in Australia. Yet it is six years after the establishment of the permanent New South Wales Supreme Court and over forty years after the colony's first trials were held in 1788. The first Chief Justice of New South Wales, Francis Forbes, occupied the bench from 1824 until 1836, but Legge included only seven of his decisions. His court made thousands of decisions in this legally fertile period, and very few have reached the reports.<sup>22</sup> Would that New South Wales had had some of those enthusiastic apprentices at law, sitting in their cribs in the early English courts scribbling away as they learned their profession.

#### Law Reporting on the Internet

Contrast the traditional paper/print-oriented approach to law reporting to that available now through the Internet.

In many ways courts have taken law reporting out of the hands of private enterprise. They now control their own product.

First, and perhaps most importantly, all Australian judgments can now be accessed free on the Internet, both through the Austlii site and the web sites of all Australian courts. There was, of course, some original resistance to that - old habits of user-pays die hard - but that step of free access to law is essential to my hypothesis of the Internet making justice more accessible to the community.

Graham Greenleaf and his colleagues have recorded elsewhere the steps they took to achieve free access to judgments. <sup>23</sup> It was, in my view, profoundly important that they achieved that outcome.

The breath-taking effect of free access to the law can be gauged when one appreciates the scope of the Internet. Let me recount the description of the Internet given by Justice Michael Kirby in his judgment in *Dow Jones & Company Inc v Gutnick* [2002] HCA 56; (2002) 210 CLR 575 at [80]:

"It has been estimated that, by the end of 2002, the number of Internet users will reach 655 million.

The number continues to grow exponentially. It is estimated that in some countries, the number of users doubles every 6 months. ... the term "cyberspace" recognises that the interrelationships created by the Internet exist outside conventional geographic boundaries and comprise a single

interconnected body of data, potentially amounting to a single body of knowledge. The Internet is accessible in virtually all places on earth where access can be obtained either by wire connection or by wireless (including satellite) links. Effectively, the only constraint on access to the Internet is possession of the means of securing connection to a telecommunications system and possession of the basic hardware."

So one of the significant advances brought about by the Internet is the manner in which it has made the workings of the justice system accessible to anybody with a computer and an Internet connection. This will be enhanced if the media publish the hyperlink to the full text of decisions when they provide their report of proceedings.

Will the Internet change the Law?

What does an Internet future hold for lawyers, courts and the substantive law?

In 1995 Ethan Katsh suggested that the advent of electronic informational technologies supplanting print would have a profound effect on the legal world. Among his predictions was that with greater public access to legal information the public's need for lawyers may be reduced.<sup>24</sup> In a review of Katsh's work, Pamela Samuelson acknowledged that he was correct to note that "digital networked environments have enhanced the public access to legal information, and that this trend will likely continue" but rejected his surmise that digital technology would reduce the public's call for lawyers. As she observed:

"People hire lawyers because they believe the lawyers will know how to extract the right needle from the right haystack of legal information."<sup>25</sup>

So far Ms Samuelson has proved more accurate.

Insofar as Courts are concerned, notwithstanding the availability of eCourts enabling more minor matters to be resolved without court attendance, I have no doubt that justice will continue to be administered in an open court room to which the public can have access by personal attendance. As Justice Michael Kirby has observed:

"The right to see in public a judicial decision-maker struggling conscientiously with the detail of a case is a feature of the court system which cannot be discarded, at least without risk to the acceptance by the people of courts as part of their form of governance."<sup>26</sup>

So far the Internet has not brought about any radical changes to the substantive law. The world of strict legal principle and the Internet came face to face in the recent case of *Dow Jones & Company Inc v Gutnick* [2002] HCA 56; (2002) 210 CLR 575. In that case Dow Jones operated *WSJ.com*, a subscription news service on the World Wide Web which provided access to *Barron's Online*. The material was loaded onto the appellant's servers in New Jersey in the United States. It could, of course subject to payment of the subscription, be accessed anywhere in the world by a person with a computer connected to the Internet. The edition of *Barron's Online* for 28 October 2000 contained an article in which several references were made to Mr Gutnick. He sued Dow Jones in the Supreme Court of Victoria claiming damages for defamation. He lived in Victoria where most of his social and business life was focused.

Dow Jones sought to challenge the service of the writ and statement of claim upon it. Alternatively, it sought an order that the proceedings be permanently stayed. It argued that the statements about which Mr Gutnick complained were published when they became available on the servers it maintained in New Jersey, that it was the law of that jurisdiction which governed all questions of substance in the proceedings, and that Victoria was a clearly inappropriate forum for the trial of the proceedings. The High Court unanimously held that publication, which is of course the gist of an action in defamation, occurred in Victoria. Furthermore, Gleeson CJ, McHugh, Gummow and Hayne JJ in their joint judgment held that publication would take place when the material alleged to be defamatory was available in comprehensible form, assuming the person defamed had in that place a reputation which was thereby damaged. In the case of publication on the World Wide Web their Honours held it was not available in comprehensible form until downloaded onto the computer of a person who has used a web browser to pull the material from the web server. It was when that person downloaded the material that the damage to reputation may be done and that was where the tort of defamation was committed. Justice Gaudron agreed with their Honours (at [44], [56]).

These were hardly novel propositions but they attracted uproar in the Internet community illustrated only last Friday in the AFR in an article dramatically head-lined "Lawyers call for Global Internet Rules" which reported that the decision had "sparked an international call by lawyers for a worldwide set of rules governing publication on the internet." 27

#### The Internet and the Courts

Courts have enthusiastically embraced Internet technology as a part of their commitment to open and accessible justice.

In 1998 the High Court commenced to prepare its decisions with paragraph numbers so that passages could be referred to without the need to cite page numbers.<sup>28</sup> In addition, it adopted technology to ensure that the Court's judgments were accessible on the High Court's website within minutes of being delivered. Transcripts of oral argument before the court were also made available on the Internet shortly after argument was completed. In addition the Court adopted media-neutral citation.

Almost every jurisdiction in Australia has adopted a Practice Note intended to provide for and encourage the use of technology in civil litigation in the Court. Based on draft guidelines developed by the Australian Institute of Judicial Administration these practice notes deal with:

- \* The electronic exchange of court documents;
- \* The electronic exchange of discovery databases;
- \* Technology for hearing.<sup>29</sup>

In addition, the Supreme Court of Victoria has issued a Practice Note dealing with judgments in electronic form. That practice note noted that judgments of the Court which are stored in electronic form were to be given a media neutral citation similar to that adopted by the High Court of Australia identifying the judgment by date, by court identifier and unique case number. It advised that the Court would accept paper copies of unreported judgments obtained from an electronic database provided that the cover sheet was handed to the judge with the judgment or part of the judgment relied upon. It also made it the responsibility of practitioners to ensure that any paper copy handed to the Court contained the current revision of the judgment in the form that it was stored in the Supreme Court library.

In Western Australia the Supreme Court has introduced a system of electronic appeal books for particular cases deemed to require that approach - presumably appeals involving large quantities of documents.<sup>30</sup> Although there has been at least one electronic appeal in New South Wales there is no indication that is to become the norm.

In England Lord Woolf CJ issued a Practice Direction on 11 January 2001 dealing with the impact of the Internet on judgments. It directed that from that date, all judgments in every division of the High Court and the Court of Appeal were to be prepared for delivery or issued as approved judgments, with single spacing, paragraph numbering (in the margins) but no page numbers. The main reason for the changes was said to be to "facilitate the publication of judgments on the Worldwide Web and their subsequent use by the increasing numbers of those who have access to the Web".

In addition, the Practice Direction required neutral citation to be used as the official number attributed to the judgment by the Court. It directed that the neutral citation was required to be used on at least one occasion when the judgment was cited in a later judgment and that, once the judgment was reported, the neutral citation should always appear in front of the citation from the law report series. The changes described in the Practice Direction were said to "follow what is becoming accepted international practice ... [and to be] intended to make it easier to distribute, store and search judgments, and less expensive and time consuming to reproduce them for use in court." 31

#### Federal Court of Australia

The Federal Court of Australia adopted an eCourt Strategy in the 2000 Financial Year. The Strategy was said to reflect the Court's commitment to ensuring that the justice system is "relevant and responsive to the needs of the Australian community in the 21st Century". It "aims to maximise the potential of relevant technology to extend and enhance the accessibility of the Court and the way in which proceedings may be managed." 32

The eCourt Strategy includes the development of the Court's case management system, the electronic filing system, the eCourt on-line forum, electronic courtrooms and electronic hearings.

On 3 August 1999 the Federal Court became the first Australian court to broadcast a live judgment with video and audio on its homepage. The judgment was handed down by Justice Kevin Lindgren in the case of Australian Olympic Committee Inc v Big Fights Inc [1999] FCA 1042. It concerned the copyright in films of the 1956 Melbourne Olympic Games. Announcing the delivery of the judgment, Federal Court Chief Justice Michael Black said the use of the Internet was a national evolutionary step in the Court's experiment with television. 33

#### Land and Environment Court

In November 2002 the New South Wales Land and Environment Court established an Internet Based Computer system for litigants and their representatives called e-Court. The objective of e-Court and other Land and Environment Court on-line projects is to improve the services available to litigants and their representatives. E-Court enables parties in Class 1 - 4 matters to:

- \* Initiate proceedings on-line (using the internet);
- \* Lodge documents on-line;
- \* Obtain hearing dates and adjournments through e-Court's call-over facility;
- \* Use the internet to check the record of activity in their matters;
- \* Access any documents that have been filed on-line; and
- \* Access decisions in which they have representation.

The system has a "public user" facility which means that if a Council chooses to become a public user, all new applications to the Court where that Council is a respondent will be electronically served by the Court on the Council.

#### Supreme Court of Queensland

The Supreme Court of Queensland also has an e-Court Service ([www.ecourts.courts.qld.gov.au](http://www.ecourts.courts.qld.gov.au)). Using e-searching any District or Supreme Court civil files from specified registries can be searched free of charge (compared to fee-based over the counter searches). They can be searched 24 hours a day 7 days a week. In 2003 the Court had had 35,000 on-line searches in four months, an average of 2600 a week and 426 a weekday. 20% of all searches were conducted after hours. Using e-listing litigants could use an on-line form to "bid for trial dates". Straightforward chambers style matters could be dealt with using the e-Chambers facility with documents eg. draft orders and submissions being submitted on-line.<sup>34</sup>

#### NSW Local Court

Only last week, the NSW Local Court announced it was considering adopting a web-based system of cyber courts which would allow solicitors to deal with simple matters using a web-cam and a laptop.<sup>35</sup> The Practical Workings of the Courts and the Internet  
To sum up, the on-line publication of all notable decisions of the High Court of Australia, the Federal Court and the State Supreme Courts, Industrial and Environment Courts has made those decisions readily accessible to all members of the public.

Secondly, rather than the public having to come to the courtroom, technology has brought the courtroom to the public. I have already outlined the advent of eCourts.

The interaction between the public and courts has been particularly evident in Royal Commissions such as the HIH Royal Commission and the Building Industry Royal Commission and inquiries such as the Longford Inquiry into the Gas Explosion in Victoria.

Although it has not yet clearly emerged, I suggest that, as time progresses, legal principle will inevitably adapt, whether by virtue of the historical evolutionary process or by statute, to recognise the advent of internet technology.

Is too much Law Reporting dangerous?

Some would say there could never be too much law - but not all lawyers would agree. When W.T.S. Daniel QC proposed the Council of Law Reporting in 1863, he attached to the outline of his scheme a paper by Nathaniel Lindley, who subsequently became Master of the Rolls in 1897 and then sat as a Lord of Appeal in Ordinary in the House of Lords. That paper set out what was required for a good law

report. He started by saying that care should be taken to exclude from the reports those cases which passed without discussion and which were valueless as precedents and those which were substantially repetitions of what was reported already. On the other hand, he said care should be taken to include:

1. All cases which introduce, or appear to introduce, a new principle or a new rule.
2. All cases which materially modify an existing principle or rule.
3. All cases which settle, or materially tend to settle, a question upon which the law is doubtful.
4. All cases which for any reason are peculiarly instructive.

He then said that reports should be accurate, contain everything material and useful and be as concise as was consistent with those objectives. In particular they should show the parties, the nature of the pleadings, the essential facts, the points contended for by counsel and the grounds on which the judgment was based as well as the judgment, decree, or order actually pronounced. These guidelines are still followed today in England. 36

I have no doubt that similar criteria are applied by the authorised reports in Australia. They are a model for rational reporting.

How will that be affected by the current approach of reporting virtually everything on the Internet? So far I have not seen too much exuberance in Counsel citing Internet reports with reckless disregard for their precedential quality, but I have no doubt it is necessary to keep a weather eye on such tendencies.

#### Conclusion

One of the great advances of the Internet has been to give the law back to the community: The "open" court is now also a "virtual" court with the public having full and free access to court decisions via the web.

That should considerably enhance the public's understanding of the workings of the courts, particularly if the media ensure that when they report a précis of a case they also include the web-page reference to facilitate access to the full-text of the decision.

Greater access to those decisions should transform the community's understanding of the administration of justice. Experience tells that when the community is fully aware of the facts of a case, it has a far greater appreciation and acceptance of the outcome than when only "informed" by the 30 second sound-bite/TV grab which appears on the electronic media or the inevitably summarised version which appears in the print media.

oOo

The Hon. Justice Ruth McColl  
Judge, Supreme Court of New South Wales, Court of Appeal  
28 November 2003

1 *Waterhouse v Station 2GB Pty Limited* (1985) 1 NSWLR 58 at 62; see also s 24 of the Defamation Act 1974 (NSW) as amended.

2 *The Rule of Law, Foundation of Constitutional Democracy*, Geoffrey de Q Walker, Melbourne University Press, 1988 at 5.

3 Gleeson CJ, "Courts and the Rule of Law", *The Rule of Law Series*, Melbourne University, 7 November, 2001, <[www.hcourt.gov.au/speeches](http://www.hcourt.gov.au/speeches)>

4 Cross: *Precedent in English Law*, 2nd Ed p 6; Allen; *Law in the Making*, 7th Ed p 363 cited in *Viro v R* (1978) 141 CLR 88 at 120 per Barwick CJ. Further, uniformity of decision in the interpretation of uniform national legislation such as the Corporations Act is regarded as a sufficiently important consideration to require an immediate appellate court not to depart from the interpretation placed on such legislation by another Australian immediate appellate court unless convinced that interpretation is plainly wrong. *Australian Securities Commission v Marlborough Gold Mines Limited* (1993) 177 CLR 485 at 492.

5 *The Cambridge History of English and America Literature*, Vol VIII, Chapter XIII at §2.

6 *Ibid* at §4.

7 *The Cambridge History of English and America Literature*, Vol VIII, Chapter XIII at §15.

8 Pollock and Maitland, *History of English Law*, Vol 1, 2nd Ed, 1923, p 83.

9 *The Cambridge History of English and America Literature*, Vol VIII, Chapter XIII at §6. The "Eyre" was the court of the justices itinerant or justices in eyre, who were regularly established, if not first appointed, by the Parliament of Northampton, 1176, with a delegated power from the King's great court or Aula Regia, being looked upon as members thereof; they made their circuit round the kingdom once in seven years, for the purpose of trying causes. They are called by Bracton justiciarios intinerantes. They were afterwards directed by Magna Carta to be sent into every county once a year.



Jowitt's Dictionary of English Law, Vol 1, 2nd Ed, Sweet & Maxwell, London, 1977 at 762 - 763.

10 "Observing and Recording the Medieval Bar and Bench at Work", the Origins of Law Reporting in England, Selden Society lecture, July 6, 1998, Paul Brand D.Phil., F.B.A., Selden Society, 1999 at 3.

11 Ibid at 4.

12 Ibid at 5.

13 Ibid at 4 - 5.

14 Ibid at 7.

15 Ibid at 8; In the old common law practice the steps in every action were entered on a roll, which was called the plea roll, the issue roll, or the judgment roll, according to the stage which the action had reached: Jowitt's Dictionary of English Law, Vol 2, 2nd Ed, Sweet & Maxwell, London, 1977 at 1588.

16 "Observing and Recording the Medieval Bar and Bench at Work" at 15 - 17.

17 Milsom, Historical Foundations of the Common Law, 2nd Ed, Butterworths, London, 1981 at

18 Ibid at 9, 22.

19 The Cambridge History of English and America Literature, Vol VIII, Chapter XIII at §11.

20 The information in the preceding 2 paragraphs is drawn from 'The History of The Incorporated Council of Law Reporting for England & Wales', taken from a lecture given by Carol Ellis QC CBE, former Editor of The Law Reports <<http://www.lawreports.co.uk/history.htm>>

21 The Cambridge History of English and America Literature, Vol VIII, Chapter XIII at §9.

22 Kercher, Bruce, Recovering and Reporting Australia's Early Colonial Case Law: The Macquarie Project. Law and History Review, Volume 18 Number 3 18.3 (2000): 15 pars. 27 Nov. 2003 <<http://www.historycooperative.org/journals/lhr/18.3/resources.html>>.

23 Greenleaf G et al, 'The AustLII Papers - New Directions in Law via the Internet', 1997 (2) The Journal of Information, Law and Technology (JILT). <[http://elj.warwick.ac.uk/jilt/leginfo/97\\_2gree/](http://elj.warwick.ac.uk/jilt/leginfo/97_2gree/)>

24 Law in a Digital World, M. Ethan Katsh, Oxford University Press, 1995 at 83 - 91.

25 Pamela Samuelson "The Quest for Enabling Metaphors for Law and Lawyering in the Information Age" 94 Mich. L. Rev. 2029 (1995 - 1996) at 2054.

26 "The Future of Courts - Do They Have One?" The Hon Justice Michael Kirby AC CMG, Third Annual Colloquium, Gold Coast, Queensland -

<[www.highcourt.gov.au/speechs/kirbyj/kirbyj\\_future1.htm](http://www.highcourt.gov.au/speechs/kirbyj/kirbyj_future1.htm)>

27 Katherine Towers, "Lawyers call for Global Internet Rules", Australian Financial Review, 21 November 2003.

28 High Court of Australia, Annual Report, 1997 - 1998 at p 11. The first such judgment is The Queen v Swaffield (1998) 192 CLR 159; [1998] HCA 1.

29 The Supreme Court of New South Wales, Practice Note 105 (15 March 1999 - this Practice Note does not deal with technology for the hearing - it is currently being revised), Supreme Court of Victoria, Practice Note No 1 of 2002 - Guidelines for the use of Technology in Litigation in any Civil Matter, Supreme Court of South Australia, Practice Direction No 52, Guidelines for the use of Technology, Supreme Court of Northern Territory, Practice Direction No 2 of 2002, Guidelines for the use of Information Technology in Litigation in any Civil Matter, Federal Court of Australia, Practice Note 17, Guidelines for the use of Information Technology in Litigation in any Civil Matter.

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31 Practice Direction (Judgments: Form and Citation) (Supreme Court) [2001] 1 WLR 194.

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36 Taken from a lecture given by Carol Ellis QC CBE, former Editor of the Law Reports, <[www.lawreports.co.uk/history.htm](http://www.lawreports.co.uk/history.htm)>