

J Hunter and K Cronin, *Evidence, Advocacy and Ethical Practice: A Criminal Trial Commentary*, Sydney: Butterworths, 1995.

This is a most interesting book — its authors' aim as expressed in the preface is to deconstruct the criminal trial so as to understand and analyse evidence law and advocacy practice. This is a most ambitious goal and the book goes, at least some substantial way, towards achieving it.

The first chapter deals with the criminal trial in history: if it were only by reason of this chapter it would be of substantial value to Australian law students, whose ignorance of important developments in the 15th-18th centuries and before must be obvious to all involved law teachers. Students ought to know of Anglo-Saxon justice — if such it can be called. A distinguished historian, V H H Galbraith, regularly described it as, "unmitigated barbarism". The questions posed at the conclusion of the chapter are, in my view, stimulating and interesting.

Chapter two is concerned with the role of the judge and, as such, looks at topics such as the judge's role in the trial (particularly when dealing with an unrepresented accused), directions on evidence, summing up, directing verdicts and contempt powers. For readers whose knowledge of judicial behaviour at trial is confined to *Jones v National Coal Board* [1957] 2 QB 55, the materials and comment in this chapter will prove of substantial and comparative interest. Of course, *Dietrich v R* (1992) 177 CLR 292 and *McPherson v R* (1981) 147 CLR 512 are excerpted and appropriate comments are made, concluding that the approach represented in the English Court of Appeal's decision in *R v Leicester City Justices; Ex parte Barrow* [1991] 3 WLR 368 that, "... litigants in person can avail themselves of all necessary aids to conduct a case — including the quiet assistance of a lay adviser." be adopted in Australia. The issue of judicial bias and unwarranted judicial intervention is likewise discussed and useful points made, especially in relation to the erosion of the corroboration requirement. That erosion, it should be said, troubles me: as someone familiar with the Scots situation, where corroboration is a central part of evidence law generally, and with some recent Australian case law I wonder whether that erosion is wholly fair or proper in many situations.

The third chapter involves the jury — its history, composition and process. Once again, this chapter is well and effectively handled with copious reference to case law and literature. As the authors appropriately point out, much research on jury behaviour is hard to evaluate and has to be properly contextualised. Chapter four goes on to discuss the roles of the lawyers involved in the trial process. As might be expected, this chapter contains substantial extracts from such well known (notorious?) cases as *R v Birks* (1990) 19 NSWLR 677, *Alister v R* (1984) 154 CLR 404, the extraordinary case of *R v Ward* [1993] 1 WLR 619 and *R v Anderson* (1991) 53 A Crim R 421. This chapter is excellent and stimulating and ought to be

compulsory reading for all of those seeking to practise in the area and, indeed, for many now so practising.

The remaining chapters are organised on rather more expected lines: thus, chapter five deals with the accused and includes a detailed discussion of the evaluation of the testimony of the accused (including an excerpt from the High Court's decision in *Edwards v R* (1993) 178 CLR 193) and the situations where the prosecution may be permitted to introduce an accused's prior convictions or other evidence of bad character into evidence. This is, presently, a particularly vexed issue; the more so as the legal journalist, Evan Whitton has been highly critical of the way in which the law operates in this regard. Presumably, Whitton's interesting, though I think impracticable, thesis appeared too late for consideration in the book under discussion.

Chapter six is concerned with the subject of witnesses generally and examines issues such as witness credibility and the examination of witnesses. Chapter seven discusses identification evidence at trial, and analyses most of the anticipated topics of identification parades, photographic identification, excerpts and so on. Chapter eight discusses confessional evidence and Chapter nine the operation of the hearsay rule. The latter, in particular, has attracted the wrath of Whitton.

I found this book both interesting and informative; its reference to relevant literature from Australia and elsewhere, for example, will be invaluable to any student of evidence and procedure. I do, though, have one reservation: I found it difficult to tell whether the authors intended it to be a text or a casebook. Much, of course, depends on any users' teaching methods, as casebooks tend very much to be idiosyncratic and develop out of their compilers' methods of teaching, but I think that I would find it hard to teach from. But that is partly a personal point of view — it is still a worthwhile and interesting project.

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