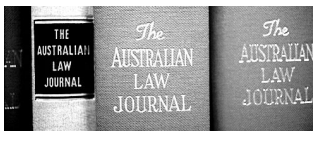
Hearsay



INSIDE THE WORLD OF LEGAL AFFAIRS

Edited by **Marcus Priest**

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Deacons chief executive partner Don Boyd was this week forced to put out an internal circular to staff denying a rumour it was in merger negotiations with another major firm. The report of the negotiations by online newsletter *Crikey* sent Boyd's email box into meltdown. As a result, he was forced to deny the rumour — but expect to see many more, some with more substance than the Deacons one.

It is perhaps symptomatic of an extremely active partner-recruitment market under way. Recruiters report a high level of activity, with not just individuals but entire practice groups being targeted by rivals.

No one is immune, even some partners from the once rock-solid Mallesons Stephen Jaques are understood to be sounding out other employers.

A number of merger negotiations are also said to be taking place in Sydney. Driving the high level of activity is a tight legal labour market and a continuing glut of corporate work.

But what makes the situation different from past poaching wars is that this time law firms are more interested in snapping up groups of partners — especially those that guarantee they can bring their client base with them. As a result, the consequence of their departure are likely to be much more serious.

Already, since the beginning of this financial year, a group of Middletons partners has gone to Phillips Fox and more are expected.

To cap it off, the London and New York firms are in town again next month to snatch more young lawyers, only six months after similar visits at the beginning of the year.

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Next week the Federal Court is expected to make an important decision in relation to the claims of legal privilege by AWB over sensitive internal documents. It is only one example of the growing willingness of lawyers and their clients to claim legal professional privilege over everything, including the office stationery requisition form. It is why the event next Wednesday in the Queensland Supreme Court is truly remarkable.

Allens Arthur Robinson will hand over 20 volumes of legal advice dating from the firm's Brisbane office — formerly Feez Ruthning — from 1874 onwards to the Supreme Court library. It is not the first time the firm has had to hand over boxes of legal advice; it was forced to do so during the Jackson inquiry into James Hardie. But this time the firm is not so unwilling to do so. It is part of the Queensland Supreme Court's drive to create an archive of historic documents.

Allens is the first to come to the party, but such was the sensitivity of handing the documents over for imaging that a special amendment to the Supreme Court Library Act was

passed earlier this year by the Queensland parliament. It specifies that the documents can be disclosed to the public only if they are more than 100 years old and used for historical or educational purposes.

The Feez Ruthning documents contain advice from the likes of Australia's first chief justice, Samuel Griffith.

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Chief Justice Murray Gleeson was in fine form on Saturday night when he was guest of honour at Stacks The Law Firm's 75th birthday bash in Sydney. Gleeson, like Stacks, started his life in the NSW country town of Wingham. He told the 500-strong audience that when he was growing up, Wingham streets were often uneven and ''the young lawyers at Stacks might be shocked to hear'' that they just picked themselves up and dusted themselves off. He also talked of his early violin playing days and how he ''lost'' his violin on the Kempsey mail train — something his mother was still reminding him about. ''I need closure,'' he joked.

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It has been a year since Federal Court judge Graeme Hill died in mysterious circumstances in his home. At the time police said he did not die of natural causes, but the circumstances surrounding his death are set to remain a secret. The coroner has completed a report but an order made in April prohibited its publication, including the post mortem examination and transcript of proceedings. Hill, an expert in tax law, was found in his Sydney home on August 24 last year.

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Some recent Federal Court appointments have had famous namesakes. The identities of the counterparts of Neil Young, QC, and Richard ''Dick'' Tracey, QC, would be known to popular culture buffs. The twin of John Middleton is somewhat more obscure. But the Melbourne commercial silk knows his namesake well — winemaker John Middleton of Mount Mary winery. And he revealed at his swearing-in recently that he has not been averse to taking advantage of confusion about who is who.

''At times when I booked restaurants, the restaurant proprietors — obviously very keen to ingratiate themselves with Dr Middleton so as to obtain more of his excellent wine, which was in short supply and greatly sought after — would let me jump the queue and would usually give me the best seat in the house,'' Middleton told the court.

''I considered the principles of law regarding misrepresentation by silence, and concluded that in all the circumstances I was not required to correct the obviously incorrect assumption made by the restaurant proprietor as to my status.''

Apparently Middleton's love of wine is matched only by his love of dancing. But he is now being urged to give it up for the sake of the reputation of the judiciary.

''Your sons are probably too polite to tell you the truth but I think you need to know, particularly now that you are entering this new phase of your career, that it is very important for you to stick to what you are good at,'' Victorian Bar Council president Kate McMillan, SC, said last week.

''No one doubts that you will be a very good judge — in fact, an excellent judge — but on the topic of dancing, we urge you to take heed of the advice of the first officer on your recent boat trip who, on watching your antics on the dance floor, said: ''Let's hope he makes a better judge than a dancer.''

Justice prevails in Thomas appeal

COMMENT
Andrew Lynch and Edwina MacDonald

In quashing Jack Thomas's conviction, the Victorian Court of Appeal has demonstrated the crucial role courts play in safeguarding fundamental rights in the post-September 11 world. The decision has been criticised but should be praised. It is proof that we are not letting terrorists win. They cannot frighten us into abandoning our traditional liberties.

In Pakistan, Thomas received horrific treatment. He was held in a kennel-like cell for about two weeks and was without food for about three days. He was assaulted and threatened with torture, indefinite detention and execution. He was told his wife would be raped. Interrogators, including Australians, offered Thomas inducements for his co-operation. He was not able to have a lawyer present for these interviews.

Despite all this, judge Philip Cummins admitted as evidence in Thomas's trial an interview he had with Australian Federal Police in Pakistan. The judge found that because this interview occurred a few weeks after those earlier inducements and threats, Thomas's statements would not have been coloured by them. Last Friday, the Court of Appeal disagreed.

The court found that Thomas's detention, the inducements, threats and prospect of indefinite detention weighed heavily on his mind at the time of the interview. His admissions were not voluntary because Thomas effectively did not have a free choice to speak or be silent. The court also criticised use of the interview given the absence of a lawyer.

Critics say the decision to overturn Thomas's conviction shows the legal system is out of touch with reality. On the contrary, the Court of Appeal grasped the import of what Thomas experienced and how it must have tainted his statements to the police.

To insist that the prosecution relies only upon admissions that are freely made and not obtained by duress, intimidation or undue pressure is vital if the courts are to administer justice based on truth. This is not only to protect the rights of the individual. It also means the community can have confidence in the decisions reached by the courts. Sending people to jail using evidence such as this makes none of us safer and risks wrongful convictions.

The Court of Appeal is hardly alone

"Thomas effectively did not have a free choice to speak or be silent."

on this issue. Last year the House of Lords rejected arguments by the English government that it could rely upon evidence obtained by torture practised by another country. The lords were unanimous in saying that admissions that were made under any hint of oppression or torture had no place in an English court.

They drew on centuries of common law practice in making this ruling.

It is deeply worrying if we are so panicked by the terrorist threat that we would consider forsaking such a crucial principle of justice. Our leaders often say that terrorists want to change our way of life and we must not let them achieve this. Nothing could be a greater concession in the ''war on terror''.

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