Court 4 in the Supreme Court re-opens

By Justice Frank Vincent, Court of Appeal, Supreme Court of Victoria, 7 April 2008

Thank you, Chief Justice, for the opportunity to contribute to this occasion. For a number of reasons, this court holds particular significance for me, and it is wonderful to see it so splendidly restored and adapted for use in a new century.

My connection with this room began over half a century ago when, as a second- or third-year law student, I sat in the public gallery and watched the charismatic Frank Galbally, who was then at the height of his powers, successfully defend a policeman charged with the murder of his wife. Obviously attributing his success in some small part to devine intervention, immediately after the verdict, Galbally and his client walked down the street to St Francis Church to pray. Their piety was observed by a passing newspaper photographer who, by chance it seems, was in the vicinity and with his camera ready.

It was in June 1964 at the age of 26, and a barrister for three years, that I first took my place at the Bar table here, appearing on behalf of the one of two men charged with murder. The trial judge, Monahan J, was a great criminal lawyer and judge. I am reasonably confident that he was even more terrified by my lack of experience than I was. A wily prosecutor named Bill Fazio leading a young Michael Kelly represented the Crown and the legendary Jack Lazarus appeared for the co-accused. I remember telling my client, who I recall was known, and not inappropriately, as 'Lard head', that I had not appeared in a trial of that kind before. He responded that that was alright and that he was similarly inexperienced.

Somehow or other we both managed to negotiate the process successfully. However I often wondered whether even Lard head's equanimity was shaken at the commencement of the hearing. In an endeavour to present myself as totally at ease, indeed something of a cross between 'the Fonze' and Bobby Darrin, I had practised getting to my feet, shrugging my gown causally around

my shoulders and announcing my appearance. It all went quite well until I indicated that I appeared for the wrong person.

Counsel appearing in those trials were forbidden to refer to the death penalty. Of course, and particularly in cases in which there was a concern that it might be imposed, it was almost irresistible not to make some comment obliquely alluding to it. When this was done, judges generally would let the breach pass without anything being said.

In that trial, however, my reference could hardly be described as a passing allusion. I concluded my final address with the statement that:

> In one sense, it can be said not to matter whether this trial ends with the day of a gaol gate or the snap of a gallows rope. Each is a terrible sounds and I pray to God that it will not be in such a moment of silence that you discovered the meaning of reasonable doubt.

I think that all I need to say of the trial judge's response is that it has remained clear in my memory.

Waiting for the jury in cases of that kind was very stressful. In that matter, the jury returned quite late on a Friday night. The prosecution and the defence team, which included a young law clerk named Ian McIvor, had been waiting in a nearby watering hole and it is probably sufficient to state that it was good for all concerned that they were not out any longer. When they returned a verdict of guilty of manslaughter, Jack Lazarus stated helpfully, I think, in relation to his client's position, 'It's the drink, your Honour.' Monahan J responded, 'Quite so, we'll adjourn till Monday'.

As both a member of counsel and a judge I have spent a remarkably large part of my working life in this room. As a barrister, I appeared regularly in Court 4 over more than 20 years. Once, I appeared in four murder trials in immediate succession in this Court. Throughout that period, there were only two possible sentences in those cases – the death penalty which was abolished at the end of 1974 and imprisonment for life. For practical purposes, all cases were fully contested. It was unclear whether a plea of guilty could be lawfully entered in a death penalty case, although I am aware of one occasion on which it was accepted. As both sentences were mandatory, there was no plea proceedings and save for asking whether the convicted person had anything further to say about the verdict, the sentence was handed down immediately. On four occasions, I sat at the Bar table, devastated, as I heard my client sentenced to death. On one of them, the judge, after imposing sentence on the co-accused, realised that he had not asked whether the man had anything to say. Accordingly, his Honour, sensitive to such matters, had him brought back to the court, apologised profusely and then made the enquiry. Unsurprisingly, the deeply shocked individual muttered 'no' and his Honour sentenced him to death again, once more apologising for his omission.

As a trial judge, for 17 years, I presided in a very large number of cases here. The Russell Street Bombing trial, that of the persons accused of the murder of the police officers in Walsh Street, the eight police officers charged in relation to the death of a man named Jensen, the trial, also of police officers, arising out of the death of a man named Gary Abdullah, the first murder trial of Peter Dupas, the plea hearing for Beckett and the trial of Camilleri for the killing of two Bega school girls, the plea hearing in relation to the serial killer, Paul Denyer, and a vast number of less well known proceedings were all conducted in this room.

The first hearing in what was then called the Central Criminal Court commenced on 14 February 1884. It was, the *Argus* of the following day reported, the real opening of the newly constructed building and, the newspaper recorded that the court was 'thronged' with people:

> At ten minutes past 10 'clock, amidst a silence which the voice of the crier was not needed to produce, his Honour entered the bench from a little door at the back. The bar rose, and a compact row of wigged heads bowed deferentially, the judge responding in like manner to the salute. A moment's pause occurred, while expectation was on tip-toe to hear the first official words which should agitate the yet unsanctified air of the Court. His Honour made no sign, and the bar had no nerve to speak. The associate was the only man equal to the occasion, and his first memorable words were, 'Bring William George Clamp to the bar!' An officer in the dock dived down into the bowels of the earth by way of a stone staircase, and presently brought up from the underground dungeon, a prisoner. But his name was not William George Clamp, and he was ignominiously dismissed amidst the unchecked titter of the spectators. The real William George forthwith appeared, and the business proceeded as smoothly as if the first event in the Court had not been a bungle.

The *Age* journalist who reported on this courtroom, a few days later, in an article entitled 'New Law Courts Blunders – Poor Arrangements in Central Criminal Court' was singularly unimpressed by this courtroom. He stated:

> The great *bete noir* of the new structure appears to be the Central Criminal Court, which in the first place is difficult to find, and which when found is seen to be defective in the last degree.

He was critical of what he described as the 'utter absence of acoustic properties' and continued:

> Another difficulty is presented by the peculiar principle on which the different persons are located, the jury being to the left of the bar, the witness to the right and the prisoner immediately behind. A zealous counsel, therefore, who desired to keep all parties before him would require to be perpetually revolving so as to face all corners – an

> operation which could only be gracefully performed on a piano stool or some similar piece of mechanism…

He pointed out that it would not be pleasant or even comfortable experience to be tried in this court:

> In a British court, where every man is supposed to be innocent until he is proved guilty, it seems somewhat incongruous that a prisoner whose guilt has not been established should be compelled to traverse an underground tunnel, which leads to an underground cell, where he is exposed to the utmost discomfort till his time for trial arrives; and when that eventful epoch has come he is sent up a flight of stairs into the prisoners dock – a place which for barbaric and repulsive appearance could hold its own with some of the halls of the Inquisition. In this dock, designed in such a humane and genial style, no seat is provided for the prisoner, who, it must always be remembered, had not yet been proved guilty, and it is enclosed with an iron railing, surmounted by cruel barbarous spikes, an ingenious invention intended to prevent the unconvicted prisoner from even leaning upon the railing, no matter how many dreary hours the case may last.

There was also considerable criticism of the straight–backed throne-like chairs with which the court was equipped but were still in general use when I first came here and are still littered around the building. One of them I noted was in the Banco Court and used for Justice John Coldrey's farewell last Thursday. They were certainly of solid construction.

For the major part of its history, Court 4 has been used for the most serious criminal trials conducted in the Supreme Court. However, due to the changing character and complexity of proceedings over recent years, it is not always suitable. It was also used from time to time for hearings by the Old Court of Criminal Appeal. Generally referred to for many years simply as the Criminal Court, within its walls our community and our legal system has confronted and been confronted with an extraordinary range of human problems and interactions for over 124 years. It was here, for example, that Colin Ross was tried and convicted in 1922 in relation to what became known as the Gun Alley murder of a little girl. Ross was later executed.

As Weinberg J pointed out in a paper concerned with the problem of delay in the criminal trial process:

> Ross was charged on 12 January 1922 and committed for trial on 26 January. His trial commenced on 12 February with a verdict on 25 February. His appeal to the Full Court was denied on 20 March and an application for leave to appeal to the High Court was refused a little over a fortnight later. Ross was then hanged on 24 April.

The process appears to have been highly efficient as it was completed in a little over three months but I observed in quite recent newspaper reports that, as a consequence of doubts raised in relation to that conviction, you Mr Attorney, have sought the advice of three members of the Court concerning the possibility that there may have been a miscarriage of justice.

Within my personal memory, William John O'Meally was convicted of murder in this room. Later, a man named Taylor and he were the last persons in Victoria ordered to be whipped. Twice in this building but not in this room, I was required to present submissions for men who were at risk of the imposition of that barbaric punishment.

In this room were conducted the trials of Lee, Clayton and Andrews and Ronald Ryan. Jean Lee was the last woman and Ronald Ryan the last man to be hanged in this State.

Great judges and advocates and some who were not so great have occupied the bench and bar of this courtroom over the last 124 years.

Acknowledging the force of the some of the criticism of this courtroom that were initially made in 1884, I have always been proud to enter it.

It is said that there is a ghost in Court 4. If there is, I am sure that it knows me well. Perhaps the time will come when we'll get together and compare notes.