Interference or Intervention: Descending into the Arena

Charlie Rozencwajg: Magistrate

"Once upon a time there was a judge who talked too much. He asked too many questions. One after another in quick succession. Of witnesses in the box. Of counsel in their submissions. So much so that they counted up the number. His exceeded all the rest put together. Both counsel made it a ground of appeal." (1)

This is how Lord Denning described the conduct of 'Hippy' Hallet, (Sir Hugh Imbert Periam Hallett), the trial judge in *Jones v National Coal Board* (2). The basis of the appeal for the plaintiff was that the interruptions by the judge made it impossible for counsel to put her case properly, and for the Board, that the interruptions had prevented it from having a fair trial.

The appeal was successful and had the effect of ending the career of the trial judge. Lord Denning recounts how the Lord Chancellor summoned Hippy Hallet and it was agreed he would continue to sit for a little while then resign.

That consequence would not, I suggest, occur today, thereby prompting the question: has there been a cultural if not legal shift in viewing the role of judges in the conduct of proceedings.

Courts today, have become far more active as evidenced by therapeutic jurisprudence (even allowing for the distinction between plea hearing and trial) and also in the administration of trial lists by way of case management.

In Victoria, court support services include: bail support program, court service unit from office of corrections, C.R.E.D.I.T (court referral and evaluation for drug intervention and treatment) program, disability co-ordinator, juvenile justice adult court unit, mental health liaison service and aboriginal liaison officer. A magistrate at the point of considering granting bail, much less sentencing, is frequently involved in crafting a program of rehabilitation, and that process is necessarily inquisitorial as well as interventionist.

Case management in the higher jurisdictions involves a judge in the issues of the trial well before a trial date has been fixed much less a jury empanelled.

Whilst in courts of summary jurisdiction, magistrates wear both hats simultaneously.

In *Jones v National Coal Board*, the judgement of the Court delivered by Lord Denning stated (3):

> ...In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries Even in

> England, however, a judge is not a mere umpire to answer the question "How's that?" His object, above all, is to find out the truth, and to do justice according to law ... And Lord Greene MR who explained that justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, "he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict": see *Yuill v Yuill* [2]
>
> Yes, he must keep his vision unclouded. It is all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth: and the less dust there is about the better. Let the advocates one after the other put the weights into the scales — the "nicely calculated less or more" but the judge at the end decides which way the balance tilts, be it ever so slightly. So firmly is all this established in our law that the judge is not allowed in a civil dispute to call a witness whom he thinks might throw some light on the facts. He must rest content with the witnesses called by the parties: see *In re Enoch & Zaretzky, Bock & Co* [3]. So also it is for the advocates, each in his turn, to examine the witnesses, and not for the judge to take it on himself lest by so doing he appear to favour one side or the other: see *R v Cain*, [1] R *v Bateman* [2], and *Harris v Harris* [3] by Birkett LJ especially And it is for the advocate to state his case as fairly and strongly as he can, without undue interruption, lest the sequence of his argument be lost: see *R v Clewer*[4]. The judge's part in all this is to hearken to the evidence, only himself. asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well. Lord Chancellor Bacon spoke right when he said that [5]: "Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal."

There is however a tension created by declaring a judge's role to "hear and determine issues raised by the parties, not to conduct an investigation or examination" on the one hand and "to find out the truth" on the other.

It may be of value to question, in fact, if there has not been some shift in practice in the dichotomy between the inquisitorial and adversarial approach. If we leave aside an active involvement in the

process of investigation and the calling of witnesses by the court, are we seeing a convergence of the two systems? Or indeed, was the contrast ever as stark as is often thought.

Lord Denning's description of the role of the judge to include clarifying any point that has been overlooked or left obscure seems to leave wide scope for a judge to play a role beyond merely deciding which way the scales, upon which the advocates have placed their weights, may tilt.

Significantly in *Jones v National Coal Board,* the issue was whether the intervention by the judge had interfered with the conduct of the proceedings to the degree that a fair trial had been impeded. In contrast, many an active intervention by the judge today is cast on appeal in terms of actual or apprehended bias. Essentially, this may have more to do with the manner than the substance of the intervention. Indeed it may well be contended that the legitimate role of a judge is far more interventionist than might generally be acknowledged, provided that it is deemed necessary and is couched in neutral terms or, if it involves disapprobation, the nature of the witness' evidence is properly regarded as warranting such censure.

As a barrister I was involved in a trial of an affray at Pentridge Prison. There had been a riot which was video taped by the security cameras. The prosecution did not produce the videotape. The trial judge, on receiving what was obviously an unsatisfactory explanation to his queries as to the reason for the failure to produce the video, exclaimed to the prison officer giving evidence, in the presence of the jury: "That won't wash!"

When the judge made that statement he was obviously indicating to the jury that in his opinion the explanation of the witness lacked credibility. Some may say he overstepped his role both in substance and in manner, but is that so?

In *The Queen v Colin Bouwer* (4) the Court of Appeal in New Zealand dealt with a submission based on criticism of the judge's questioning during and summing up of, the evidence of the defence expert witness as to the cause of death of the deceased. The judge had included in his charge to the jury the following:

> *Ladies and gentlemen, I suggest you will need to reflect upon what Professor Marks said in that respect. Was it inappropriate for an expert of his standing who has flown half way around the world, to say that he would not discuss the coincidence that Annette Bouwer had within her body this quantity of sulphonylurea drugs? Was it not, when you think about it, quite essential that he do so? If one is going to diagnose, even a tentative diagnosis of such a rare disease, surely one must confront the other evidence, including that there was both the availability of sulphonylurea drugs at all relevant times and, more crucially, that such drugs were found in the person's body before and after their death, that I would have thought was an essential part of the picture, an essential part of the evidence and had to be brought to bear.* (5)

In its judgement, the Court of Appeal stated:

> *There is no doubt that the Judge was indicating to the jury his disapproval of what he saw was the failure of the witness to put his theory concerning the rare disease of beta cell hyperplasia into the full context of the death of Mrs Bouwer to which undoubtedly, the presence in her body of sulphonylurea drugs must have been a substantial contributor, if not the sole cause. We think, however, that the criticism made by the Judge was, in the circumstances, a fair one. ... A Judge is entitled to express an opinion on factual matters and when that opinion is unfavourable to the defence that fact alone does not render the summing up unfair if it is also made clear to the jury that questions of fact are entirely their responsibility, which the Judge did in this case. An appellate Court will of course interfere if it considers that the comments made by the trial Judge are stronger than the facts of the case warrant.* (6)

In the same case, objection was taken to questions by the trial Judge that effectively summarised what the expert witness for the prosecution was saying and had him confirm the gist of his evidence.

The Court held:

> *As we have said, the Crown case was strong. It naturally tended to follow that the answers to the important questions were unfavourable to the appellant. But, provided the Judge, as he did, approached the questioning of the witnesses in a neutral way there was nothing improper or having the appearance of bias if the questioning, for that reason, had such an effect. It would have been wrong for the Judge to fail to ensure that the jury were guided in this way to focus on the real issues and were not distracted by collateral matters of little importance or confused by the volume of technical information.* (7)

By implication, the court acknowledges that had this been a case of a lay witness whose evidence appeared quite comprehensible, the approach of the appellate court may have been to regard the judge's summarising of the evidence in the form of a question, more emphasis than clarification, and therefore properly described as descending into the arena, if not as indicating bias.

Contrast Bouwer's case with the intervention of the trial Judge in the case of *Conway v The Queen,* during the cross examination of the co-accused, McFie, with whom Conway had been involved in a relationship. The Crown case was that they had engaged Steer and Williams to murder Conway's wife. (8)

> His Honour: "*I just want to explain something to you, Ms McFie. You understand that when counsel cross-examine they are acting for the party whom they represent?*"
>
> McFie: "*Yes, I understand that*"

His Honour: "So you are being cross-examined by Conway through Mr Pappas on instructions presumably given by Conway to Mr Pappas as his counsel, do you understand that?"

McFie: "Yes"

His Honour: "You remember Mr Conway gave evidence that if you came to an arrangement with Steer and Williams to have Mrs Conway killed you did not do it on his instructions, you were doing it independently of him. Do you remember him giving that evidence?"

McFie: "I remember something - a question along those lines, yes."

His Honour: "Well, you understand what Mr Pappas has just put to you acting for Conway and you understand that it is not Mr Pappas talking, it is Mr Conway talking. Do you understand that? I just want you to understand how advocacy works. You see, Mr Pappas has not got a personal interest in this case. Mr Pappas, like your counsel Mr Thomas, like the Crown prosecutor, they all appear here as professional advocates representing the particular interest for whom they appear, understand that?"

MeFie: "I understand that, yes."

His Honour: "So understand Mr Pappas is cross-examining you on behalf of Conway. Do you realise that?"

MeFie: "Yes, okay."

His Honour: "I just want to explain that to you?"

McFie: "Thank you."

His Honour: "Because you do not want to get the idea that counsel have got any personal interest in this case or what the evidence is or anything of that nature. They are acting professionally in the discharge of their brief which they have accepted on behalf of a party, understand?"

McFie: "I understand that, thank you.

His Honour: "I am glad you do.'

That was not, however, the end of the matter. Shortly thereafter the trial judge again intervened during Mr Pappas' cross-examination of McFie. On this occasion McFie was being asked about a telephone conversation which she had had with Steer. She had told Steer that it would take about ten weeks to get together the money that he was owed. The following exchange then took place:

His Honour: "*I do not know whether you understand what is going on, Ms McFie, I really do not?*

McFie: "*I beg your pardon.*"

His Honour: "*I do not know whether you understand what is going on, I really do not?*"

McFie: *"In what way?"*

His Honour: *"Mr Pappas, counsellor for John Conway, is cross-examining you with a view to establishing in the mind of the jury that you are responsible for this murder alone and not him, not Conway?"*

McFie: *"I've just gathered that."*

His Honour*: "Well, I thought you were a bit slow coming to it?"*

McFie: *"I'm sorry, your Honour.*"

His Honour: *"Well, do not apologise. I want you to understand what is going on and that is what is going on. Do you understand now?"*

McFie: *"I understand what you're saying"*

His Honour: *"Which means that if this cross-examination prevails, Mr Conway would be acquitted of the murder and you would be convicted of it. That is what he is aiming at? Do you understand? That is - - - "*

McFie: *"I don't understand that"*

His Honour: *"Well, that is the way it is being put to you."*

The submission by counsel for the appellant was that it was not apparent why the Judge had interrupted defence cross-examination given that there was nothing in the questions or answers *"…. which suggested McFie was unable to understand those questions or to answer them save in a way that would implicate her in the arrangements with Steer and Williams. Nor were Mr Pappas' questions unfair, misleading or deceptive."*

Counsel submitted that in those circumstances, the intervention of the Judge may well be interpreted by the jury as stemming from a concern that Conway might be wrongly acquitted while McFie alone might be convicted.

The judgement of the Court of Appeal was as follows (9)

> *We have considered carefully Mr Tilmouth's submission in relation to his matter. The trial judge in this case was a most experienced judge in criminal matters. It seems to us from our reading of the transcript that it was open to his Honour to have concluded that McFie was not doing justice to her own case because she had not fully appreciated that the trial, which had been conducted throughout on the basis the neither Conway nor herself had been in any way involved in the murder of the deceased was now being conducted upon the basis of a "cut throat" defence.*
>
> *We are unable to discern in the trial judge's observations any remarks which might reasonably be thought to have conveyed to the jury any view on his part that it would be unsatisfactory if Conway were to be acquitted and McFie convicted. His Honour was obliged, in a difficult situation, to ensure that McFie understood that the strategy behind Conway's defence had altered, and that Conway was now seeking to implicate her in the commission of the offence.*

If that is a correct analysis, then what is the purpose of the judge ensuring that the questions put to her were not the invention of counsel but contrived with the connivance of the co-accused Conway? It goes well beyond ensuring an understanding by McFie of of the questions themselves. If so, then what precisely the judge is trying to communicate to the witness, and how the jury will interpret this intervention, are issues that would cause serious concern.

Ironically, during the course of the trial the judge had to rule on McFie's fitness to plead. He found no basis for the existence of any of the criteria in s68 of the Mental Health (Treatment and Care) Act 1994 (ACT) that essentially relates to her understanding of the charge, the nature of the proceedings, her ability to follow the course of the proceedings and understand the substantial effect of any evidence given against her. The cross examination of McFie was adjourned to allow her to be medically examined, and the following morning His Honour ruled that the issue of fitness to plead did not arise.

In its judgement, the Federal Court in upholding the trial judge's ruling, said: (10)

> *Once again the advantage that the trial judge had in seeing and hearing the witness must be emphasised. His Honour's own observations as to McFie's demeanour during the trial, during her evidence-in-chief and particularly whilst under cross-examination, gave him considerable advantage in this regard.*

The questioning of the different manner in which these seemingly related issues are dealt with by the trial Judge and subsequently the appellate Court gives rise to a cause for concern in the search for consistency.

The difficulty of reconciling decisions in such factually distinct cases as Conway and Bouwer may well go towards explaining the lack of clarity in this area of law.

In different respects, they both raise the issue that by his or her intervention, a judge may give the impression to the jury that they are convinced that an accused is guilty.

In the case of *Lars, Da Silva & Kalandaerian* (11), in the course of the trial there were some 60 occasions in which the Crown prosecutor objected to a question asked by defence counsel, but there were in excess of 900 occasions where the trial judge interrupted the course of the course of the evidence. Though the Court of Criminal Appeal in N.S.W. considered that many of the objections were either proper or technically valid, it went on to say: (12)

> *It interrupted the flow of cross-examination in a manner calculated to render it difficult for counsel to under take their proper task; it caused the rejection of some questions which were properly asked and capable of eliciting relevant and admissible evidence, consequences which would have been avoided had the judge left it to the Crown Prosecutor to take such objections as to him seemed fit and ruling upon them with the benefit, if necessary, of submissions from counsel on both sides; and it was certainly capable of creating in the minds of the jurors an impression that the judge favoured the Crown and had no confidence in the validity of the contentions being advanced on behalf of the accused by way of cross-examination of the Crown witnesses.*

This case is of course well known for the running battle between senior counsel for one of the accused and the learned trial judge effectively creating a situation where a fair trial was just not feasible.

The following excerpt is merely one of many interchanges that illustrate the point.

> E O'LOUGHLIN: There's a challenge at the way they've prepared documents, there's a challenge of the way documents have been torn out of exhibit books, a document has been torn out
>
> His HONOUR: Yes;
>
> E O'LOUGHLIN: ... I tried to make that quite clear through a witness the other day and you lambasted me and you insulted me in relation to it, it's quite obviously what I'm trying — the point I'm trying to make.
>
> His HONOUR: Yes.
>
> E O'LOUGHLIN: Your Honour you suggest that I read my brief, I suggest the Crown reads his brief and I suggest your Honour reads that paragraph, there's no mention of Boyle in it.
>
> His HONOUR: Yes carry on Mr O'Loughlin, any more?
>
> E O'LOUGHLIN: Well I'm going to carry on because quite frankly your Honour I am sick and tired of you dropping the bucket on me constantly as if I'm doing something improper...
>
> His HONOUR: Yes.
>
> E O'LOUGHLIN: . . . you've made outrageous comments about me, you've insulted me
>
> His HONOUR: Yes.
>
> E O'LOUGHLIN: ... and I not prepared to be over borne by you quite frankly and I'm making a point to your Honour that we are trying to conduct this trial, the Crown's had years to prepare it . . .
>
> His HONOUR: Yes.
>
> E O'LOUGHLIN: . . . .and there's no mention anywhere of Sergeant Boyle and . . . .
>
> His HONOUR: Any more? Carry on the jury's enjoying this I'm sure, go on, carry on.
>
> E O'LOUGHLIN: Well if you want me to I'm quite happy to.
>
> His HONOUR: Well keep going, I mean you may as well get it all off your chest at once without...
>
> E O'LOUGHLIN: I'm not going to no, I'm not going to get anything off my chest, I've got a lot more to say...
>
> His HONOUR: Well you . . [not transcribable]
>
> E O'LOUGHLIN: ... I'm not going to get it all off my chest in one go, I'm just waiting...
>
> His HONOUR: Well save a bit for this afternoon then it'll brighten up the afternoon.
>
> E O'LOUGHLIN: Well it might amuse you your Honour.
>
> His HONOUR: I beg your pardon?
>
> E O'LOUGHLIN: It might amuse you but I'm concerned about justice in this matter...
>
> His HONOUR: Well so am I Mr O'Loughlin.

E O'LOUGHLIN: ... and quite frankly I don't think my client's getting a fair trial, they(?) make that quite clear.

His HONOUR: Yes very well, well you've said your piece."

The real issue however is how to balance the role of a judge to impartially, in the words of Lord Denning "find out the truth" without giving the appearance that he is convinced of the guilt of the accused.

The adversarial and inquisitorial systems are often contrasted as being respectively exclusionary and inclusionary. Is this description accurate or is it rather the manner in which evidence is elicited in the adversarial system that sets it apart?

In R v Mawson (13) the trial judge asked 268 questions of the complainant, who was the wife of the accused in relations to charges of assault and false imprisonment, compared with 238 by both counsel. The number of questions of itself is not conclusive. However in the course of questioning of the wife, the judge elicited evidence of prior assaults and including the abduction of herself by the accused which the judge had earlier, in the absence of the jury indicated to counsel he did not regard as relevant and admissible.

In *Botany Bay City Council v Rethmann Australia Environmental Services,* Tobias JA in delivering the judgement of the Court said: (13)

> *"In Galea v Galea (1990) 19 NSWLR 263 at 281, the guidelines relevant to determining whether there has been an excessive intervention by a trial judge such as to deprive a party of a trial according to law, was stated by Kirby A-CJ (with whom Meagher JA agreed) in a series of propositions which I would summarise, so far as is relevant to the present case, as follows:*
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> *(a) The test to be applied is whether the excessive judicial questioning has created a real danger that the trial was unfair: if so, the judgments must be set aside.*
>
> *(b) A distinction is drawn between the limits of questioning by a judge when sitting with a jury and when sitting alone in a civil trial. Greater latitude in questioning would be accepted in the latter case.*
>
> *(c) Where a complaint is made of excessive questioning, the appellate court must consider whether such interventions indicate that a fair trial has been denied to a litigant because the judge has closed his/her mind to further persuasion, moved into counsel's shoes and "entered the perils of self- persuasion".*
>
> *(d) The decision on whether the point of unfairness has been reached must be made in the context of the whole trial and in the light of the number, length, terms and circumstances of and the intervention. It is important to draw a distinction between*

intervention which suggests that an opinion has been finally reached which could not be altered by further evidence or argument and one which is provisional, put forward to test the evidence and to invite further persuasion.

(e) It is relevant to consider the point at which the judicial interventions complained of occur. A vigorous interruption early in the trial or in the examination of a witness may be less readily excused than one at a later stage where it is designed for the legitimate object of permitting the judge to better comprehend the issues and to weigh the evidence of the witness concerned."

The last point is of particular significance, especially in the case of an inexperienced judicial officer who may well regard his intervention in the cross-examination of a witness as helpful to the accused. As Lord Denning said in *Jones v National Coal Board* (14)

It is only by cross-examination that a witness's evidence can be properly tested, and it loses much of its effectiveness in counsel's hands if the witness is given time to think out the answer to awkward questions; the very gist of cross-examination lies in the unbroken sequence of question and answer. Further than this, cross-examining counsel is at a grave disadvantage if he is prevented from following a preconceived line of inquiry which is, in his view, most likely to elicit admissions from the witness or qualifications of the evidence which he has given in evidence in chief....[it] diverts cross-examining counsel from the course which he had intended to pursue, and to which it is by no means easy sometimes to return.

However it may be expressed, a reading of the authorities tends to the conclusion that an active involvement in the course of a trial by a judge is unacceptable only if it evidences actual or apprehended bias or prevents counsel from adequately putting the case for the accused. What may be underlying the criticism in the relevant cases in the appellant jurisdictions is not involvement or intervention per se but the manner in which it is expressed or capable of being perceived.

This point is illustrated by the intervention of the magistrate the subject of the appeal in *Hoare Bros V Magistrates Court* as evidenced in the transcript (15)

Prosecutor: That's the evidence in chief of this witness, Your Worship.

Magistrate: Thank you. Can I just ask a question before I hand you over to Mr Szabo. Given that in this case, the case is, that is the allegation is, that the spraying of Glyphosate in paddock 9 [on Liberton] if we call it that, drifted into paddock A [on Warrah] and did the damage to the crop over the western side of paddock 9.

Witness: That's what appeared to have happened, yes.

Magistrate: Yes and, and is it your evidence that, that the damage to the crop in paddock A is consistent with Glyphosate over-spray? Is that what you're saying?

Witness: Yes.

Magistrate: Right. That being the case

[Here Mr Szabo objected on the grounds that these were questions which the prosecutor should have been putting, that it could be seen that the Magistrate was "taking up the bat for the prosecution, and that the questions tended "to suggest a yes/no answer". The Magistrate responded that he was entitled to put leading questions to the witness "to get matters clarified", and dismissed the objection. The Magistrate continued.]

Magistrate: Given that that's the case and that's my understanding of your evidence, given that the damage occurred to the crop from Glyphosate, let's presume that to be the case, it's not saying that's proven at this stage, but let's presume that's the case, did you notice, my question is, did you notice any damage to the plantation, the trees or anything in the plantation area that was also so consistent?

Witness: No I didn't.

Magistrate: Did you look?

Witness: I did.

[The witness then described at some length what he had seen and not seen in the plantation. The Magistrate continued.]

Magistrate: Well, how is that explicable. Is it that certain species are more susceptible to Glyphosate than others or, or is there any other explanation? I mean, why didn't the Glyphosate affect the trees is what I getting at?

[The answer to this question occupied more than one page of the transcript. The Magistrate continued.]

Magistrate: I'm sorry, does it take a stronger dose of Glyphosate to have an adverse effect say on a, a bigger stronger plant such as a tree than?

Witness: A tree, to actually kill a tree with Glyphosate is, is not easy. In fact the accepted method of doing it is to cut the tree down, and get at the, and actually paint neat Glyphosate on the stump at the point that you cut it down. That's the, the best way of killing a tree and it is on the label for doing that.

Magistrate: Right. So the circumstances that you discovered here, are not surprising to you?

Witness: Not surprising at all.

Magistrate: Yes, thanks. Mr Szabo. [Mr Szabo then proceeded with his cross-examination.]

Had the magistrate ceased his questioning on receiving the reply "No I didn't" when he asked if he had seen damage to the trees consistent with the chemical damaging the crop in the same area, there would, in my opinion have been no basis for complaint of his intervention. (other than he ought to have waited till defence had cross-examined the witness). It is the continuation of questioning on receiving the negative reply (which favoured the defence) that could only be construed as striving to undermine the answer given, that gives rise to legitimate complaint, in both its nature and appearance.

In an article published in the Alberta Law Review, Hugh Silverman Q.C., writes: (17)

> *The trial judge can be a pilot who guides the trial along sedate, orderly lines within the confines of the rules of evidence and the applicable law. He is certainly more than an umpire, watching the sporting theory of litigation in action; and he is less than a participant in that he should not enter into the fray of combat nor take on the mantle of counsel. .... In a sense he is a composite of the pilot, umpire and participant, with the tradition and legacy of common law.*

Silverman argues the role of the judge ought be increased to the point of witnesses being called on the motion of the judge. Leaving that latter issue aside, there is certainly appropriate scope within the existing context of our system of justice for a judge, cautious of the consequences intervention may have and the risk of the appearance of bias, to be actively yet appropriately involved in the course of a trial, in that distinct yet ill defined realm that exists between umpire and participant.

1. The Due Process of Law by Lord Denning. Butterworths 1980
2. [1975] 2 QB 55
3. Ibid. at 61
4. [2002] NZCA 146 (24 June 2002)
5. Ibid at 6
6. Ibid at 7
7. Ibid at 9
8. [2000] FCA 461 (11 April 2000)
9. Ibid at 63
10. Ibid at 69
11. (1994) 73 A Crim R 91
12. Ibid at 127
13. [2004] NSWCA 414 (revised 7/12/ 2004)
14. op cit.
15. [2003] VSC 257 (4 July 2003)
16. (1967) VR 205
17. The Trial Judge: Pilot, Participant or Umpire? (1994) vol xi