Committal Proceedings and Coronial Inquiries

On 20th December, 1960 the Bar Council appointed a committee consisting of *Kerr* Q.C., *McGregor* and *Helsham* to consider and report on the procedure of coronial inquiries generally and issued a statement to the press indicating that a report on the subject had been called for.

The committee, despite the intervention of the vacation, completed its report immediately after the termination of the inquest into the death of Dr. J. M. Yeates which was one of the matters which led to the appointment of the committee, and the report was adopted at a special meeting held on 20th January, 1961.

The Council in adopting the report, resolved that it be published generally as it dealt with matters of fundamental importance affecting the rights and liberties of the subject and as a contribution to the public discussion of those matters.

The report created wide interest and was published *in extenso* in the Sydney morning papers. In view of this interest the report is published in full below for the information of the Bar.

One of the recommendations made by the committee was that the Council appoint a committee to consider the whole question of publicity in connection with committal proceedings before Magistrates. The Council established a new committee to be known as The Civil Liberties and Rule of Law Committee (as to which a note appears elsewhere in this issue). It began what promised to be a lengthy task of collecting material for the report.

The press became aware of the project; the president made a statement on the subject; and the matter was raised in the State Parliament. Following this publicity, the Legislative Assembly on 28th February, 1961 agreed to a motion in the following terms:—

That, in the opinion of this House—

(1) The Government should appoint an expert committee to inquire into the law and practice relating to the examination before coroners or committing magistrates of persons charged or liable to be charged with crime, and to what extent such law and practice requires alteration.

(2) That such committee should consider means to ensure the protection of the innocent, a fair trial for an accused, and the apprehension and conviction of the guilty.

(3) That such committee should be drawn from representatives of both branches of the legal profession, the Department of Justice, and the police, and should be presided over by a judge.

The Minister of Justice (the Hon. *N. J. Mannix*) announced that the inquiry would be conducted by a departmental committee.

The Council has stated publicly that it welcomes the institution of the inquiry and has indicated that it anticipates no difficulty in making available from the ranks of the Association experienced members to serve upon the committee. The Minister has stated that he will confer with the Council before appointing the committee.

In view of the impending official inquiry, the Council has resolved that its committee should consider the information coming to hand as a result of the inquiries which have already been instituted with a view to its presentation to the departmental committee; that the committee's terms of reference should be widened to cover all those of the departmental committee and that the committee should consider and report to the Council (1) what evidence and submissions should be presented to the departmental committee on behalf of the Bar (2) as to representation of the Association on that committee and (3) by whom any material should be presented to that committee on behalf of the Association.

Report on Coronial Inquiries

(1) The Bar Council has asked for a report on the working of the system of coronial inquiries into deaths where it is suggested that murder or manslaughter has been committed and, in particular, on features of the inquest into the death of James Macrae Yeates.

The conduct of this inquest has been criticized by members of the Bar in letters to the Council and otherwise and the matters raised by them will be among those considered in this report.

History and Background

(2) Although in mediaeval times the coroner had many duties connected with the fiscal rights of the Crown, changing conditions brought it about that the holding of inquests into unnatural deaths became for all practical purposes his only function. During the 19th century the institution of police forces and the conversion of the role of examining magistrates from a police to a type of judicial function ultimately resulted, in England in 1908, in the setting up of a departmental committee to examine the law and practice relating to coroners and coroners' courts. Thereafter in 1926 the law in England was amended in accordance with the report of the committee to require the coroner to adjourn an inquest, if a person had been charged with murder, manslaughter or infanticide, until the conclusion of criminal proceedings. Since 1926 in such

cases in England committal proceedings have been substituted for coronial enquiries. However the old system has continued in New South Wales until the present time though the 1960 *Coroners Act*, not yet proclaimed, adopts the English system. Under the old system the coroner inquires into the cause of all unnatural deaths and may make a finding of murder or manslaughter and commit a person for trial whether there has previously been a charge or not.

(3) In 1935 a further committee was appointed in England under the chairmanship of Lord *Wright* "to inquire into the law and practice relating to coroners and to report what changes, if any, are desirable and practicable".

That committee pointed out that the 1926 Act of the U.K. is "a statutory recognition of the fact that under modern conditions the functions of the coroner are mainly directed to other than criminal investigation".

This view was also adopted by the present Minister of Justice of New South Wales in his second reading speech introducing the 1960 Bill and we agree with it. It underlines the gradual withdrawal of the coroner's earlier role of criminal investigation and of "helping the police".

The committee pointed out that the coroner still inquires into death where the police have not been able to charge anyone. After outlining the safeguards of the criminal law which apply in cases where a man has been charged with a crime, including the strict observance of the laws of evidence both at the committal proceedings and at the trial, the report contrasts with that system what occurs or may occur in coroners' courts where murder is suspected and there is a suspicion against a particular individual, who, because of the absence of evidence has not been arrested and charged. "The rules of evidence may not be, and sometimes are not, fully observed in such cases". A suspected person may be "called as a witness on subpoena and questions put to him".

As will be seen later we regard this procedure in such cases as highly unsatisfactory as did the Wright Committee.

(4) The committee therefore recommended in effect that—

(a) The coroner be relieved of the duty, in cases where no one has been charged, of asking for or accepting a verdict of guilty of murder against any particular individual. (This recommendation has now been in substance adopted in our 1960 Act.)

(b) The law should require strict observance of the laws of evidence in the comparatively rare cases where there is a suspicion of murder but not enough to justify a charge against any individual.

(c) The law should be amended to provide that if suspicion is directed against a particular individual he should not be put on oath unless he desires to give evidence. If he gives evidence it should be confined to eliciting his statement and he should not be cross-examined on the inconsistency of his evidence with that of other witnesses.

Recommendations (b) and (c) have not yet been adopted in New South Wales.

Applicability of the Laws of Evidence

(5) As to the laws of evidence in Coronial Inquiries, *Halsbury's Laws of England* 3rd ed. (1952) Vol. 8, p. 504, says: "A coroner's inquest is not bound by the strict laws of evidence. In practice, however, the laws of evidence are usually observed by coroners especially in cases where the coroner's inquisition may charge a person with murder manslaughter or infanticide".

Jervis on Coroners 9th ed. (1957), p. 159 et seq., discusses the same matter and refers the reader to standard text books on the law of evidence (e.g. *Phipson*), presumably on the basis that the laws of evidence are generally to be applied. However, the author goes on to discuss the well-known charge of Mr. Justice *Wills* to a grand jury in 1890 and says "Allowance must be made for the changed circumstances of the day." (i.e. between 1890 and 1957.)

He continues "But when such allowance is made, it seems fair to assume that the learned judge's statement that the coroner can often collect information of facts and statements which, whether or not they are capable of being turned into evidence, are often very valuable as supplying material for investigation by the police and as affording clues to further inquiry is as true to-day as it ever was . . . . But in any case in which statements may have been given in evidence which were not strictly admissible, the coroner should take care to direct the jury to dismiss from their minds, in considering their verdict, all such inadmissible matter if a committal is likely to result."

What Mr. Justice *Wills* said about coroners in his charge was a passing comment made not in a coronial inquiry or in a proceeding making it necessary to state the law on such inquiries, but in a murder trial in which he thought it desirable in his summing up to make such observations. His remarks were *obiter dicta* and, it is submitted, are not fixed law but a statement of policy suited to other days. This charge of Mr. Justice *Wills* to the jury, after referring to the value to the police of inadmissible evidence given in coronial inquiries, went on to say that the coroner, acting on the laws of evidence, would throw away a good deal of the remaining usefulness of the coroner's inquiry which "put individuals who ought to answer in suspicious circumstances for what they had done on their trial, and led to proper investigations, preventing the hushing up of matters of this kind."

A final quotation from Jervis is in point: "Therefore the coroner must be mindful to use that discretion which is invested in him by common law and for the exercise of which no rules can provide, since each case requires such consideration as circumstances and justice demand."

(6) As to what the law ought to be our view is that the rules of evidence should be strictly applied in an inquest where criminality is suggested or suspected and the law should so provide. We find the approach of Lord *Wright's* Committee much more in accord with modern circumstances than that of Mr. Justice *Wills* and recommend that the law should be amended to prevent any risk of the application of the principles outlined by Mr. Justice *Wills*. It will later be seen that the Yeates inquest illustrates the dangers of following the practice recommended by Mr. Justice *Wills* and demonstrates the need for the approach recommended by us.

(7) As to the present law and practice we are of the view that although the assumption is that the coroner may under certain circumstances accept inadmissible evidence, it is clear that at the very least he has a discretion not to do so, and justice demands that he should not do so in any case where criminality is suspected or suggested. The rule of practice, as stated by *Halsbury*, should in our view be the basic procedure. The charge of Mr. Justice *Wills* is not any longer, if it ever was, a precedent on which coroners should rely in the conduct of inquests where there is a suggestion or suspicion of criminality. For example, the suggested help to the police is nowadays largely fictional. What may happen is that material already collected by the police consisting of hearsay gossip and rumour may be given wide publicity through the coroner's court. Every effort should be made by coroners to avoid the impression that a person against whom no prima facie case is adduced and who is not charged is being punished by being exposed to the ruinous publicity of such hearsay gossip and rumour or is being subjected to a form of duress.

(8) We are mindful of what Mr. Justice *Halse Rogers* said in *Ex parte Brady*; *Re Oram* (1935) (52 W.N. (N.S.W.) 109, at p. 112) namely "An inquest is merely an inquiry and it has its disadvantages as well as its advantages. As to the latter, it may often, from the publicity which it receives, enable further evidence to be procured which will assist in the administration of justice. But where an arrest has been made and a charge of murder laid, the publicity given to the evidence at such an inquiry may be gravely prejudicial to the accused, especially where evidence which would be inadmissible at a trial is received and published widely. At one time it was illegal to publish such evidence, and it might be that restrictions should again be imposed."

It is to be noted however that Mr. Justice *Halse Rogers*, in the above passage, was not directing his mind specifically to the problem which exists where no one has been charged but suspicion is directed against a particular person. At a later stage we refer to the question of publicity given to inquests.

(9) We shall now undertake two tasks (a) to examine the Yeates inquest in the light of the above principles; (b) to examine the new *Coroners Act* (N.S.W.) (No. 2 of 1960) in the light of the same principles and to make recommendations as to a further amendment made necessary by the application of those principles.

We shall first discuss certain features of the Yeates inquest.

Hearsay and Irrelevant Evidence.

(10) A great deal of hearsay evidence of a highly prejudicial character was admitted by the coroner. It would not have been admissible in committal proceedings or at a trial because it was hearsay and in some cases irrelevant. It consisted, among other things, of inadmissible opinions and conclusions of witnesses and rumours.

(11) Examples were: (a) questions asked of a Mr. Dickins as to whether he "thought" the "rumours" about an association between Mrs. Yeates and Dr. Hedberg were correct. Mr. Dickins' personal opinion about rumours would be inadmissible and in any event valueless evidence in any trial; evidence of the nature of rumours about any matter is clearly not admissible and opinions about the truth of such rumours would, if this were possible, be even more obviously inadmissible in any court of law. The police prosecutor tried to justify the question as to rumours by saying: "The question is one of motive. The position is this that both Dr. Hedberg and Mrs. Yeates saw fit to refuse to cooperate with the police. The question was put to Mrs. Yeates and she did not see fit to answer it."

This statement provides no ground for admitting such evidence and is in itself prejudicial.

(b) Admission of evidence from relatives and friends of Mrs. Hedberg of various statements alleged to have been made by her:

(i) that Dr. Hedberg had given her a sherry after which she was ill;

(ii) that he had given her an injection for varicose veins after which she was ill;

(iii) that she thought her husband was trying to kill her.

(All this evidence had no proved connexion with the death of Dr. Yeates and was hearsay. It was the more obnoxious because the person alleged to have made the statements was dead and therefore could never be cross-examined; as to (iii) Mrs. Hedberg herself could not have given evidence in this form because it is at the highest, opinion and not fact. As to the degree of mischief involved in this inadmissible evidence, which was widely publicized —it would give readers of the press the impression that Dr. Hedberg had been responsible for his wife's death.)

(iv) that a certain poem (admitted in evidence) was written by Dr. Hedberg to Mrs. Yeates.

(Even Mrs. Hedberg could not have given this evidence in the form of the statements attributed to her since they were assertion or opinion only.)

(12) Subject to certain exceptions not relevant here, hearsay is not admissible in a court of law. If a fact is to be proved by oral evidence it must be that of a person who has directly perceived the fact to which he testifies. If something is alleged to have happened the evidence must be that of a person who can give direct evidence of the happening otherwise it would be impossible to test by cross-examination the truth of the testimony, and the law rejects evidence which cannot be adequately tested. (*Halsbury's Laws of England*, 3rd ed. (1952) Vol. 15, p. 266.) It is not permissible in a court of law to accept the testimony of a witness to prove a fact upon the basis that he has heard someone else state it to be the fact.

(13) In the Yeates' inquest the nature and extent of hearsay rumour and opinion and of irrelevant evidence tendered and admitted exceeded all reasonable and proper bounds. The coroner sought to justify his action by resort to the approach of *Wills*, J. as outlined by *Jervis*. He repeatedly said that evidence he was admitting would not be admissible in a court of law and that he would himself ignore any such inadmissible evidence if he were considering whether any person should be committed for trial. With great respect the coroner appears to have misconceived the nature of his discretion in admitting or rejecting hearsay evidence. At p. 40 of the depositions he said "and in an endeavour to ascertain that information (i.e. how when and where the deceased met his death) I feel I have a very wide scope and must allow within reason everything to be admitted."

In argument at pp. 99-100 he said "I feel that I cannot be fettered by any precise rules of evidence but I must admit anything which will help in some way or other the police probably later on in any further investigation".

In discussion at pp. 193-195 the coroner said "Even if it were hearsay, as I mentioned yesterday, I feel bound to accept it, unless it is totally irrelevant" and further "I do feel bound to collect any evidence at all, whether it is strictly admissible or inadmissible in view of the fact that it may throw some light upon the inquiry I am making."

Again at p. 200A the coroner said "The police and I will say myself, have a duty to the public, if possible to obtain it and we are bound to get such evidence and information as is possible."

(14) It appears from these quotations that the coroner proceeded upon the basis that he "must" or was "bound" to admit the hearsay evidence tendered by the police. This is in fact incorrect. He is not bound to admit hearsay evidence and, as *Halsbury* says, the practice is not to admit it, especially if a charge of murder manslaughter or infanticide may be made. The very existence of such a practice shows that the coroner is not bound to admit hearsay evidence because it may assist the police. A coroner should also consider the prejudicial effect of what is proposed upon private citizens against whom no charge is preferred or to be preferred. In the Yeates inquest the press were giving widespread and very detailed publicity to everything that happened in the court and the obvious prejudicial character of the evidence and the irrelevance of much of it should, as a matter of justice apart from technicalities, have led to the exclusion of the evidence above referred to. The fiction that the police may be helped is not a compelling argument, nowadays, for admitting inadmissible evidence. The whole modern approach to the coroner's court is that the functions of the coroner are directed to other than criminal investigation. Indeed the risk involved in such a procedure is that a person considered to be a suspect but against whom the police have no evidence or case may be punished by the leading of a mass of hearsay and even of gossip or rumour which the police already know. It must be remembered that the police themselves collected and tendered all the inadmissible evidence in this inquest.

(15) We appreciate the difficulty of the coroner's task but are of the view that he should regard himself as not entitled to admit inadmissible hearsay in cases where murder or manslaughter is suspected and the law should positively provide to this effect. It is no argument for the admission of hearsay evidence which, on considerations of justice alone, should be rejected because of its prejudicial character, that persons have refused to answer questions, or "to co-operate with the police" or have not "seen fit to answer" a question put by the police. Statements of this kind were made by the police prosecutor as reasons why hearsay should be admitted. All persons have the right to decline to answer questions put by the police unless there is a particular statutory obligation in special circumstances requiring them to do so. To admit hearsay evidence of a prejudicial character for the reasons given by the police prosecutor in the Yeates inquest would be to give the police power to impose sanctions for "refusal to co-operate". This would be a disastrous departure from the principles of the law.

(16) The newspapers gave very wide publicity to all the hearsay evidence and published a photostat copy of a "poem"—itself hearsay evidence. The photostating was apparently not done while the court was sitting nor, so far as the transcript shows, by any permission of the coroner who presumably would have charge of and be responsible for the custody of the exhibits. The coroner said that none of the exhibits had been photographed but that photostat copies may have been made available by one of "the parties". It is not the practice, nor should it be, to extend the right of the press to include inspection or photostating of exhibits, in court or out of court. There was no evidence associating the "poem" with Mrs. Yeates and in these circumstances there was, as we have said, in our opinion no evidence justifying its reception at all.

(17) Under the *Coroners Act*, 1960, the coroner will have power to direct that any evidence given at

the inquest be not published (s. 42 (b)). It may be argued by some that this section will give the coroner power to prevent the prejudicial effects of the admission of hearsay evidence by enabling him to prevent its publication. The press would strongly resist the policy of preventing the publication of evidence actually given in open court and the main vice is in the acceptance of hearsay evidence in the first place. So far as the "poem" is concerned it would not have been admissible in a court of law and provision should be made to prevent the acceptance by coroners of this type of evidence in such circumstances. In that event prejudice would not arise from publicity to the same extent. Coroners may find it difficult to admit hearsay and then direct it not to be published. Publicity is an accepted part of our legal proceedings and operates to deter persons from giving untruthful evidence. The better way to attack the problem is to prevent hearsay altogether.

(18) There is a strong school of thought that there should be no publication of the evidence (other than certain formal matters) at committal proceedings, even though hearsay evidence is rejected in such proceedings under the law, upon the ground that the publication of such evidence may prejudice the later trial of the person charged. Those who take this view would probably extend the prohibition to coronial inquiries under the old system still operating in New South Wales where a person is charged or may be charged or committed for trial. This whole subject of publicity at committal proceedings was recently inquired into in England by a committee of which Lord *Tucker* was chairman. This committee considered only cases where a man had been charged, all of which cases now go in England to examining magistrates and none of which are dealt with by coroners. The Tucker Committee accordingly made no recommendations about publicity given to proceedings in coroners' courts. It did however recommend serious limitations to the publication of evidence at committal proceedings until after the trial unless the accused was discharged before the magistrate. It did not seek to prevent full publicity at the trial or afterwards nor after discharge of the accused, in the event of his discharge by the magistrate. This recommendation was based on the need to avoid prejudice at the trial.

In the future in New South Wales our coroners will not deal with persons already charged and may not themselves find a man guilty of an indictable offence or commit him for trial. In cases where no one has been charged the coroner may however inform the Attorney-General that a prima facie case is, in his view, made out against a particular person and the Attorney-General may present an *ex officio* indictment.

We do not consider the matter of publicity at committal proceedings to be within our terms of reference, which confine us to proceedings in coroners' courts. We are of opinion that the important thing is to exclude hearsay in coroners' courts where murder is suspected or suggested and to watch how the provisions of the new Act giving the coroner power to prevent publication actually work out. The Wright Committee thought that this question of publicity was now of little practical importance in regard to coroners' courts as compared with its importance in regard to proceedings before examining magistrates. The reason for this view was that in cases where a man is charged he is not dealt with before the coroner. Where no one is charged there is no trial to be prejudiced by publicity and, although it is technically possible that the coroner may find that a prima-facie case exists, although the police have not charged anyone, this is extremely unlikely and its mere possibility does not seem to us to warrant an automatic forbidding of publicity. We do, however, recommend that the matters dealt with by the Tucker Committee be considered by the Council and that a committee be appointed for the purpose.

(19) A further matter for consideration is the breach by a police officer of an undertaking given to a legal adviser of a particular person that he would contact that adviser if he wished to see her again. At common law a person who is questioned is under no obligation to answer. This being so it is obvious that a person may require legal assistance before speaking to a police officer. Once a police officer is informed that a person does not wish to answer any questions except in the presence of his legal adviser, and then only upon the advice of that adviser, this should be accepted by the police. It was doubtless for this reason that the police officer gave the undertaking referred to above. It is most undesirable that, having given such an undertaking and being aware that the person involved wished to have the benefit of legal advice, the police officer interviewed her with the intention of getting answers to questions in the absence of the legal adviser.

The reason given by the police officer for breaking his undertaking is unsatisfactory and is not a justification. He said he did it "because I felt I should give Mrs. Yeates an opportunity of refusing to sit down and discuss this matter with the police in the absence of her solicitor. I gave the matter considerable thought before I did it".

Later he said "I thought that opportunity would be beneficial to the course of justice."

In fact, Mrs. Yeates had already made a statement and had later made a decision as to how and under what circumstances she would deal with further questions by the police.

(20) A final matter arises out of the calling of Mrs. Yeates and Dr. Hedberg as witnesses on subpoena. There can be little doubt from the general conduct of the inquest that a guilty involvement of one or both of these persons in Dr. Yeates' death was being suggested. Each, upon counsel's advice, claimed the privilege of refusing to answer questions. There was no prima-facie case against either of these witnesses and neither was charged. In the

case of Mrs. Yeates a senior police officer had told her before the inquest that no one suggested she was involved in her husband's death. The coroner returned an "open verdict" saying that there was "not one scintilla of evidence which would involve either Dr. Hedberg or Mrs. Yeates." The coroner was technically entitled to have them called as witnesses but this is an unfair and unsatisfactory situation. Although they were not charged and there was no evidence against them and in due course no finding of their guilt, they necessarily suffer a prejudicial effect in the public mind.

This situation was discussed by Lord Wright's Committee which said that the real object of questioning a suspect before the coroner is to elicit his guilt by questions put to him and that the claim of privilege in which this course may result "is scarcely likely to place him in a favourable light with the coroner's jury" (nor, we should add, with the public). If privilege is not claimed it can only be at the price of submitting to what may be a severe cross-examination. It follows that a person who has a common law right not to answer questions by the police can be forced to do so on oath before the coroner or claim privilege with all the adverse consequences.

The Wright Committee pointed out that a finding of guilt in these circumstances before the coroner must leave an indelible stain on the character of the suspect, even though eventually at the trial he is found not guilty. Even without a verdict of guilt in the inquisition, the report said, the proceedings at the inquest may leave the suspect under a cloud of suspicion. This is contrary to the fundamental principles of the criminal law, which place the responsibility on the Crown to prove a case against an accused before he has to decide whether to say anything at all. Where a man is charged he can wait until the conclusion of the Crown case at his trial before electing to give evidence, to make a statement from the dock, or to remain silent. The onus is always on the Crown to prove its case positively and beyond all reasonable doubt.

We are of the view that in a case where no one is charged but at the inquest suspicion is directed against a person he should not be put on oath unless he desires to give evidence. The Wright Committee also adopted this view and added a further recommendation, with which we agree, that if such a person elects to give evidence the questions put to him should be directed simply to eliciting his statement and he should not be cross-examined on the inconsistency of his evidence with that of other witnesses. In our view the *Coroners Act* should be amended to ensure this result.

The Coroners Act 1960

(21) In New South Wales the *Coroners Act* 1960 was passed last year but has not yet come into operation. Its importance can be demonstrated by some of the remarks of the Hon. Mr. *Mannix*, Minister of Justice, in his second reading speech. (*Hansard*, 1 March, 1960, p. 2656). He explained that the Bill relieved coroners of the responsibility of holding inquests where a person has been charged with an indictable offence involving the issue of the cause of death and pointed out that this followed English procedure adopted in 1926 and recently adopted in the Australian Capital Territory. He then added—obviously quoting from Lord *Wright's* report, which he referred to frequently in his speech "It is a recognition of the fact that under modern conditions the functions of a coroner should be directed, in the main, to other than criminal investigation."

With this observation we agree and would add that the Yeates inquest demonstrates its value.

The Minister said that in the case where an inquest proceeds, no charge having been made against a person, and the coroner is of the opinion that a prima-facie case has been made out against a known person for an indictable offence involving the death of the deceased he is not to return a finding but to forward the depositions to the Attorney-General stating particulars of the offence and that he believes that a prima-facie case has been established. This is an important step forward because it means that no finding, e.g. of murder by a named person can in future be made by the coroner under any circumstances. Mr. *Mannix* adopted the recommendation of Lord *Wright's* Committee that the coroner should no longer have power to commit any person for trial on a charge of murder or manslaughter. He referred to the Committee's report in his speech and used a considerable amount of material from it.

In New South Wales once the new Act comes into force, the coroner will be forbidden from indicating or suggesting in any way in his findings that any person is guilty of an indictable offence.

The Government is to be congratulated on its new *Coroners Act* which was supported by all parties in Parliament. In our opinion, however, it suffers from one important defect which the Yeates inquest illustrates. Prejudice is prevented in the case where a person is charged but not in a case of suspected murder where no one is charged.

We suggest that the other recommendations of Lord *Wright's* Committee be adopted. Section 18, which provides that a coroner shall not be bound to observe the rules of procedure and evidence applicable before a court of law, should be amended appropriately to provide that where there is a suggestion or a suspicion of criminality the rules of evidence shall be strictly observed although no one has been charged, and the law should be amended to provide that in such cases a person against whom suspicion is directed should not be called to give evidence unless he elects to do so.

(22) An alternative point of view which has been put to us is that the office of the coroner should be retained as an inquisitional office with full powers of investigation supplementary to those of the police and with the right to take hearsay evidence. The arguments for this are:

(a) that some people might be more willing to speak to the coroner than to the police.

(b) that it is desirable to be able to come to a conclusion as to who was responsible for a murder or other crime resulting in death with the aid of inadmissible evidence thus concentrating attention in a particular direction in the hope of building up a case based on admissible evidence.

(c) that it is desirable to have an investigatory office proceeding upon evidence given compulsorily and on oath and subject to cross-examination—this not being available to the police.

Those who adopt this view generally agree that it should be accompanied by a complete forbidding of publication of the evidence taken. We do not agree with this view but believe that the Coroners Court should not be part of the machinery for investigating crime.

Summary

(a) In the Yeates inquest the coroner appears to have proceeded upon a mistaken view of his duty in admitting hearsay and other inadmissible evidence. The nature and extent of hearsay rumour and opinion and of irrelevant evidence admitted exceeded all reasonable and proper bounds. The rules of evidence should be applied in cases of suggested or suspected criminality.

(b) Exhibits should not be made available for copying or photostating. It is a more serious departure from proper practice to allow copying or photostating of an exhibit for publication where no proper basis exists for its reception in evidence. It is not known who made the exhibit available.

(c) Persons against whom suspicion has been directed should only be called as witnesses if they volunteer to give evidence.

(d) Persons who have stated their intention of not answering questions by police officers except in the presence of their legal advisers should not be approached by police officers other than in the presence of their legal advisers.

(e) We recommend that the law be altered to ensure that coroners will strictly observe the laws of evidence in cases of suggested or suspected criminality. Section 18 of the *Coroners Act*, 1960 should accordingly be altered. The law should also provide that persons against whom suspicion is directed cannot be called to give evidence unless they volunteer to do so.

(f) We recommend that the Council appoint a committee to consider the whole question of publicity in committal proceedings.

The Common Room

On the first Friday of term (10th February, 1961) a representative gathering of the Bar met in the common room in the late afternoon to tender to Mr. Justice *Kirby* the President of the Commonwealth Conciliation and Arbitration Commission congratulations upon the occasion of the conferring upon him by Her Majesty of the honour of knighthood.

On 22nd February, 1961 the president entertained at lunch in the common room five of the delegates who had been attending the United Nations seminar on the Protection of Human Rights in Criminal Procedure which had been held between the 6th and 20th of the month in Wellington, New Zealand. They were Mr. *U Ba Swe*, an advocate of the High Court of Burma; Dr. *Cha Liang-Chien*, Vice-Minister of Justice of the Republic of China; Mr. *R. Abdurrachman*, a Justice of the Supreme Court of Indonesia; Dr. *Bagher Ameli*, Under Secretary of the Ministry of Justice of Iran; and M. *Tran Minh Tiet*, Conseiller a la cour d' Appel de Saigon in Vietnam. On the next day Mr. Justice *Rogers* of the Supreme Courts of Sarawak, North Borneo and Brunei who had also been a delegate to the seminar visited the common room for lunch.

These visits were arranged through the good offices of the Solicitor-General of New South Wales who had been a member of the Australian delegation to the seminar.

On 8th March, 1960, Mr. *Gluck* a member of the Bar of New York, visited the common room for lunch.

From time to time, distinguished legal visitors are invited by the president to lunch in the common room and on these occasions, the president occupies the presidential chair at the big table. On such occasions, in addition to the president and some representatives of the Bar Council, members of the Bar are asked to meet and have lunch with the visitors. Necessarily the size of the table limits the number of members who can be asked to help in entertaining the guests but an attempt is being made to ensure that different members have the opportunity of contact with them.

The Law Convention

The Law Council of Australia will hold its Law Convention in Sydney in the short vacation between the 5th and 11th July, 1961. A preliminary notice as to this has already been circulated to all members of the Association.

Lord *Parker of Waddington*, Lord Chief Justice of England, will attend the Convention, and invita-