

Bangladesh - When A meets B

- 6 Incredible Days ...

Clifford Einstein QC reports on the Clinical Legal Education and Advocacy Workshop conducted between 2 and 6 January 1996 in Dhaka, Bangladesh under the joint sponsorship of the Australian and New South Wales Bar Association and the Bangladesh Bar Council.

On Friday 5 January 1996 Syed Ishtaq Ahmed, a distinguished looking former Attorney-General of Bangladesh, rose to his feet in a Thai restaurant in Dhaka. Speaking ever so quietly to his guests, who included Justice A T M Afzal, Chief Justice of Bangladesh, numerous other Bangladesh judges, senior advocates at the Bangladesh Bar and ourselves, the following words were said:-

"We are very proud of our house of justice. It has been ravaged by many storms. Ill winds have swept through seeking to knock it down. It has withstood all of these elements and much, much more."

"So it is that when you give up of your valuable time to assist in educating our children in law you assist in keeping our house in order and nourishing it for the future."

"Thank you from the bottom of our hearts for your great kindness in travelling from the Pacific Ocean to the Bay of Bengal to strengthen the house of which we are so proud, and which we have and continue to endeavour to keep together through so much."

Those sentiments said it all.

But back to the beginning.

From the moment we were met on Tuesday 2 January by colourful and immaculately dressed young law students at Zia International Airport, Dhaka, presented with bouquets and ushered into the VIP lounge, the hospitality and enthusiasm we were to receive during the ensuing week were revealed.

And the warmth, genuine sincerity and wonderfully friendly hospitality accorded to the New South Wales Bar instructors, Donovan QC (team leader), Glissan QC, Einstein QC, Tilmouth QC (South Australian Bar), Lindsay QC, Walmsley, Ainslie-Wallace and Laughton, made the visit possibly the most exciting and fulfilling days in our lives.

Inaugural Ceremony

The inaugural ceremony was held on the afternoon of 2 January in the now disused High Court building, once a magnificent mansion occupied by Lord Curzon, sometime Viceroy of India.

This auspicious event was well covered by the media, both press and television. The Chief Justice officially opened

the workshop. The following excerpt is taken from the *Bangladesh Observer* of 3 January 1996:-

"Lauding the efforts of the organisers, Justice Afzal said the workshop unfolds an era of a very fruitful relationship between the professional bodies of the two countries belonging to different continents engaged in the establishment and sustainence [sic] of the rule of law. He thanked the Australian legal fraternity for its assistance in holding such workshop, first of



"Relaxing on the river cruise"

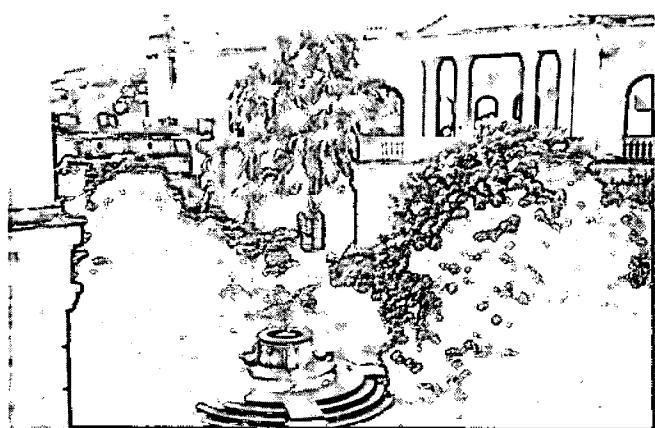
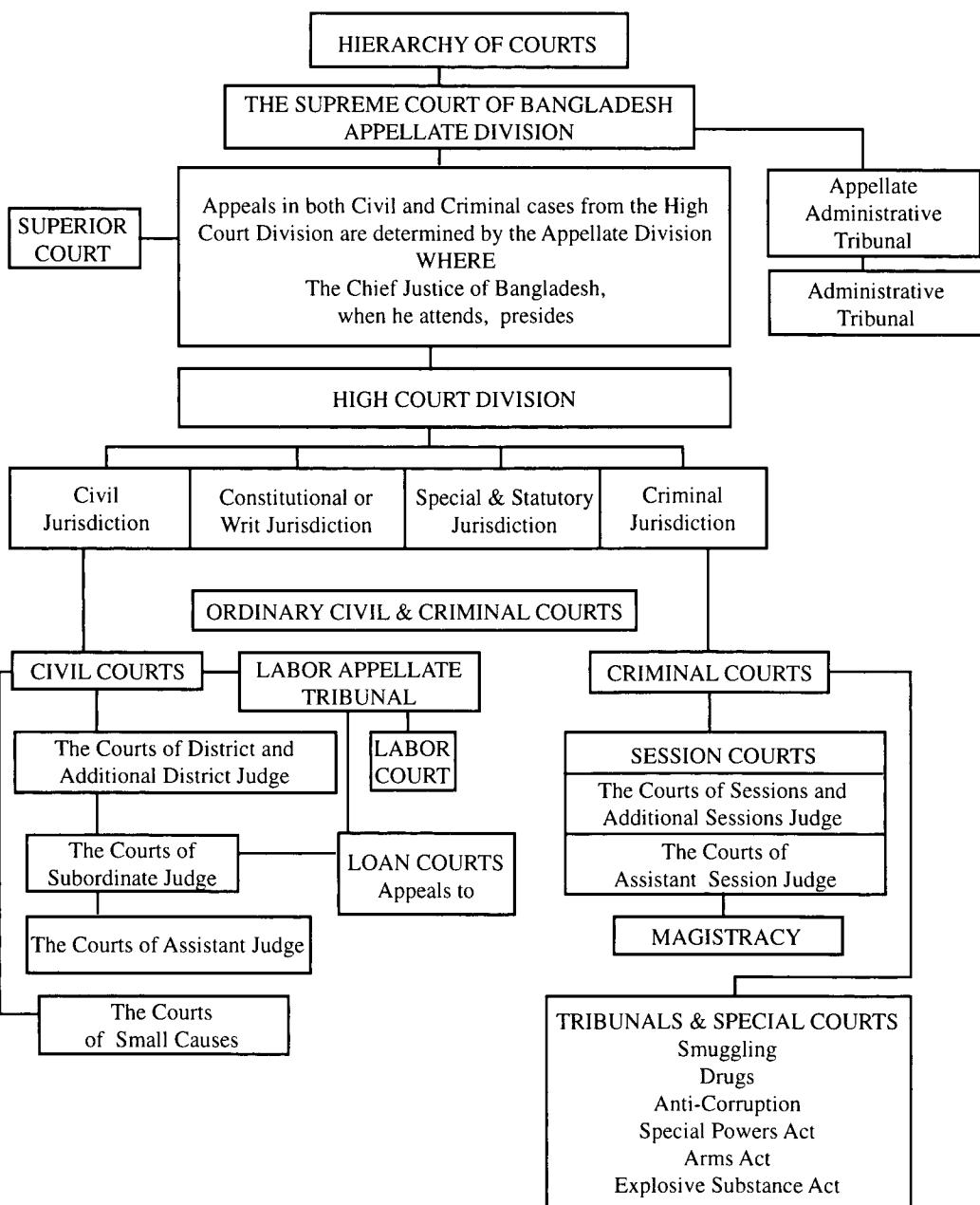
Front Row : Donovan QC, Chief Justice, Dr Kamaal Hossein, a justice, Mr Md. Amir-ul Islam Back Row: Ainslie-Wallace, Glissan QC, Einstein QC, Tilmouth QC and Laughton can just be made out

its kind in Bangladesh and hoped this would serve the cause of peace and justice world over.

A number of resource persons, including Brian Donovan (Queen's Council) [sic] are in the city to conduct the workshop. Australian Bar Association and the Australian Advocacy Institute are also collaborating in holding the workshop.

Justice Afzal said - 'In Bangladesh, we live in a small territory with our aspirations and frustrations under a constitutional system with a promise to realise through the democratic process a socialist society, free from exploitation - a society in which rule of law, fundamental human rights and freedom, equality and justice, political, economic and social will be secured for all citizens'."

Brian Donovan QC's marvellous ability to reach out to, and to communicate with, young advocates in relation to the fundamentals of advocacy and in relation to the advocacy



The inner courtyard of the disused High Court building



Donovan QC at group session

workshop concept was clearly demonstrated in his first address to all the advocacy students. Donovan QC's dedication in organising the workshop and the considerable time and effort expended by him during the many months before the event must be applauded and, plainly, enabled the workshop to be carefully, efficiently and successfully run in all respects.

Likewise, it was obvious that Mr Md Amir-ul Islam, ably assisted by Dr Mizanur Rahman, had expended the same considerable time and effort in Dhaka.

An impressive programme was distributed for the opening ceremony recording all the speeches. It also included a detailed schedule and breakdown of sessions for the workshop. The concluding pages gave a detailed CV of each member of the "International Faculty" in attendance. A most efficient team of student assistants and liaison officers was allocated to each tutor group to attend to their every need. They saw to it that each day ran extremely smoothly. We were ushered to morning tea, afternoon tea and all functions by this dedicated team.

The Bangladesh Courts

The Supreme Court of Bangladesh comprises an Appellate Division and a High Court Division. The functions of the two divisions are distinct and separate. The two divisions are governed by two separate sets of rules as regards practice and procedure. The courts apply the common law. The hierarchy of courts is as set out in the chart opposite.

The Bangladesh Bar Council is a statutory body, having as its primary role the licensing of lawyers for practice, the maintenance of a list of law institutions and the disciplining of those advocates who violate the ethical standards.

There are over 20,000 lawyers registered in Bangladesh with the Bar Council.

Continuing legal education is a new concept for Bangladesh and this workshop was conducted pursuant to the personal initiative of Mr Md Amir-ul Islam, the Chairman of the Bar Council's legal education program.

The Workshops Begin

On Wednesday 3 January the first of the workshops began in earnest. We had already experienced the difficulties of understanding one another's accents - as the Bangladesh accent is especially sharp in comparison with the very broad Australian accent. It took quite some time for both parties to "tune in".

The trainee advocates appeared to be incredibly shy and reticent as we commenced the first workshop. The initial problem posed was a simple question of an application for an injunction to restrain a golf club from permitting play on the 15th hole for the reason that the configuration of the hole constituted a serious hazard to safety of the person. The 15th was a dog-leg to the right and golfers had been in the practice of attempting to drive for the hole from the tee. A number of previous incidents had occurred whereby children living in a home unit complex situate directly between the tee and hole had been hit by the ever-hopeful golfers.

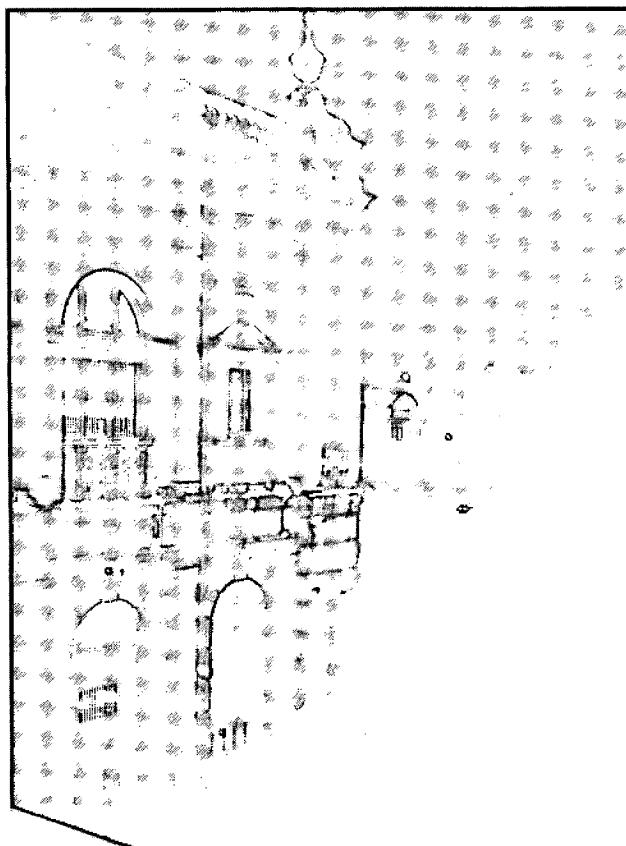
After enquiring as to whether the students whom Glissan and I were addressing, had read the materials, we were pleasantly surprised to learn that our students had indeed read the same. We then enquired "Well, what is the single most important factor which in your minds requires to be communicated to the judge in order for you to obtain this injunction?". The

obvious expected answer was - "The danger of injury to the home unit complex residents". No such answer emerged. Indeed, no answer was forthcoming despite Glissan's and my several attempts to extract an answer to this seemingly simple question.

Finally, I elected to select one particular student and, addressing him squarely, said to him - "Well, what in your view is the single most important thing which you would wish the judge to know when you are explaining to the judge the need for this injunctive relief?".

Answer - "What is golf!?" !!!

"Where were you Maconachie?!!" Notwithstanding my friend's absence, it became incumbent upon me to take out my pretend driver, to demonstrate a golf shot and upon Glissan to draw on the blackboard a golf course and to explain how the game worked.



Disused High Court building at twilight

From that time on, things improved rapidly. Once the students understood the nature of the game of golf they had no difficulty whatever in addressing the court. During the ensuing days, most of the difficulty we experienced was trying to harness the unbounded enthusiasm of these students to learn.

Six hours labour: six hours dining

The daily routine was fairly rigorous. We worked very hard initially for three to four hours from about 9.00am to 12.30pm. We then had a solid three hour midday period of lunch, followed by a further three to four hours of solid workshop, usually resulting in our return to the hotel by about 7.45pm. We were then given 15 minutes (and no longer) within which to shower and change. Each night we were formally invited to dine at official banquet after banquet, with formal speeches held either in private homes or in 5-star hotels or top restaurants. On almost each of these occasions the guests in attendance included numerous justices of the Supreme Court, High Commissioners of India, Canada, Australia and the like, as well as present and former Attorneys-General. Our discussion with the judges, senior advocates and other guests at these dinners proved illuminating for us and, we hope, were of interest to those with whom we were speaking. For example, I had close discussions with Supreme Court Justice Naimuddin Ahmed on legal aid and on delay reduction programs in Australia and on the delay difficulties now being experienced in Bangladesh. When next Gleeson CJ or Clarke JA raise these issues, it may not be inappropriate to point out that, although our system can certainly be improved, according to some statistics there are almost 500,000 cases pending in the Bangladesh judiciary against a total strength of 710 judges. In the year 1990 there were 359, 652 cases pending in Bangladesh.

In the course of these discussions we learned of a crucial and important fact. This is that, regardless of the difficulties which the judiciary and the legal system in Bangladesh labour under, there is a basic belief in the justice of the system held

by the citizens. That belief, which is a tangible thing, augurs well for the future of the Bangladesh legal system and suggests that our work in Bangladesh is a very long way from a shot in the dark.

Let us now shortly revisit some of the aspects of the visit.

Day 1 - 2 January 1996

5.30pm Inaugural Session

Speeches were delivered by the Chief Justice, Donovan QC, Glissan QC (reading message from President, New South Wales Bar Association), and others. Printed booklets were also distributed containing the speeches, CVs and photographs of Australian barristers.

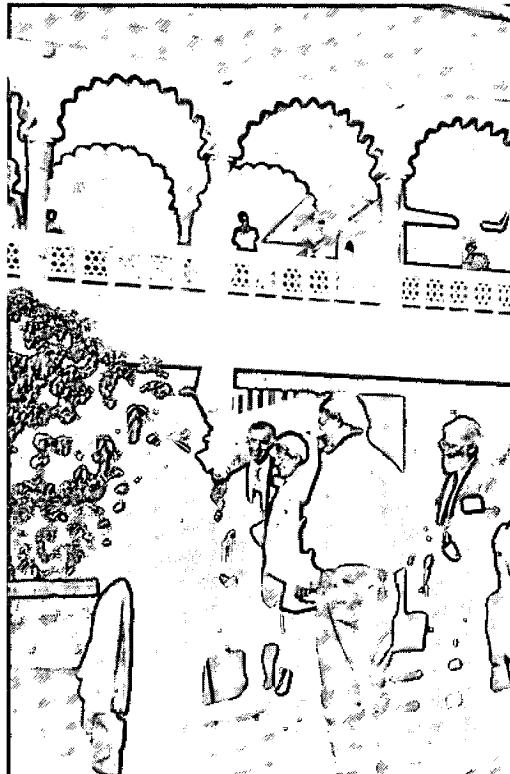
8.00pm. Dinner was held at the palatial penthouse - marble floors and walls - of Mr and Mrs Md Amir-ul Islam. Armed soldiers were stationed at gates, ground floor doors and top floor. The guests included many justices, high commissioners and senior advocates.

Buffet Dinner

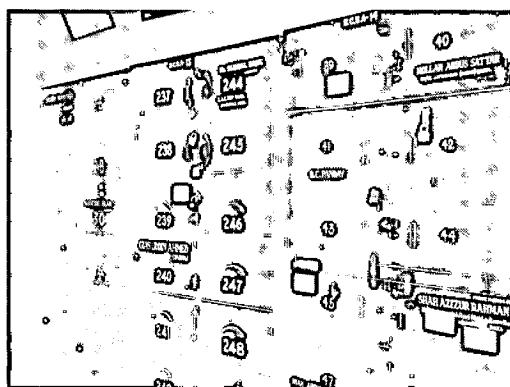
We watched with interest as, although cutlery was provided, it seemed superfluous. A number of the guests used their fingers, although in deference to us, some used knives and forks. Note - it is customary to mix the rice and sauces delicately with one's fingers and then to carefully transport the food into one's mouth. We saw this seemingly difficult manoeuvre carried out with elegance and ease by many guests. We all delighted in trying the many highly spiced dishes and delicious desserts; but could not succumb to the "finger" technique.

Day 2 - 3 January 1996

Midday. Luncheon at a Chinese restaurant. Followed by a visit to the Supreme Court, where we watched our host, Mr Md Amir-ul Islam, argue an application to quash a suit commenced in a lower court for divorce before two trial judges. I had no difficulty in following the debate. The judges are pointing out to Amir that the Appellate Court will not entertain the matter when disputed questions of fact not yet determined below may affect the application.



Arrival at Supreme Court Building



Personal lockers in Supreme Court Bar Common Room

What does excite one's interest is that every so often the debate switches from English to Bengali.

I enquired (both of Amir and of one of the judges whom we later met socially), as to the language switches. Apparently, the "official" court language is English, all pleadings and evidence and judgments are in English, but the occasions for lapse into Bengali are when some humour is or may be appropriate - almost like a *voir dire* that constitutes a type of break in the argument, an additional gear. Something like a Shakespearean "aside". But the discussion between advocate and judge, even in Bengali, remains relevant and I muse about the possibility of switching to Bengali in addressing, say, Meagher JA in the course of address when he seems to be getting the upper hand - "Now look, Rod - relax for a minute. Why is it that your proposition must be correct? Surely the High Court can't always be wrong!"

The argument ends. The judge begins dictating his judgment quietly and privately to a court reporter sitting near him. No-one is supposed to hear this. No-one does. The orders will be announced later.

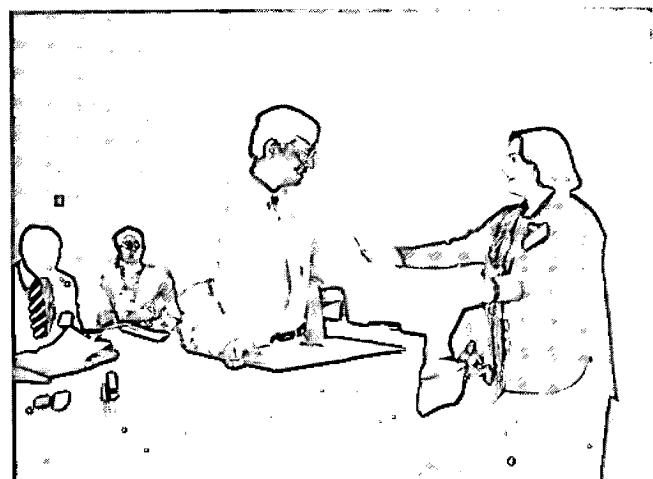
As we moved along the Court corridor speaking with Dr Kamal Hossein (one of the most senior advocates at the Bangladesh Bar and a person well known to, for example, Mahoney P. and others who have had involvement with human rights in Bangladesh), a crowd began to close in on us. One really senses the natural curiosity of these local barristers and some onlookers who showed a keen interest in our visit to their courts. A small man pulled at my sleeve and handed me his business card. Indeed, I must record that from the second we walked into the inaugural ceremony until we left Bangladesh, I must have received at least 60 business cards from all manner of advocates, judges and others. Fortunately I had taken a number of my own cards with me, but my main problem through most of the time we were in Bangladesh was that I was never sure which card belonged to which advocate, judge or other individual. Hence I was forever consulting my sheaf of cards until one Bangladesh attorney suggested that I "put away all those cards - we don't want to see them again, and we know you have them!"

Afternoon Session

The first teacher training session with the law teachers and senior advocates. It went well. Insofar as the senior advocates were concerned, they had no difficulty in following how we approached the workshop. The procedure was that the student advocate cross-examines the student witness. The senior advocate then gives a critique of the student advocate's performance. We then review the senior advocate's critique.

We obviously had some additional difficulty in dealing with the law teachers' segment of the teaching session. The problem is that these law teachers at the University have never actually practised as advocates and do not intend to ever so practise. Thus, we are trying to teach those who have no practical courtroom experience how to teach advocacy concept and practice to young advocates. But the willingness of the

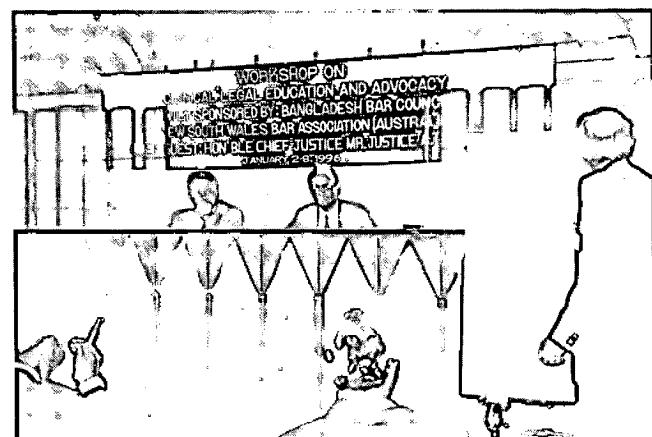
academics to learn and to pass on what we can demonstrate and teach is clear.



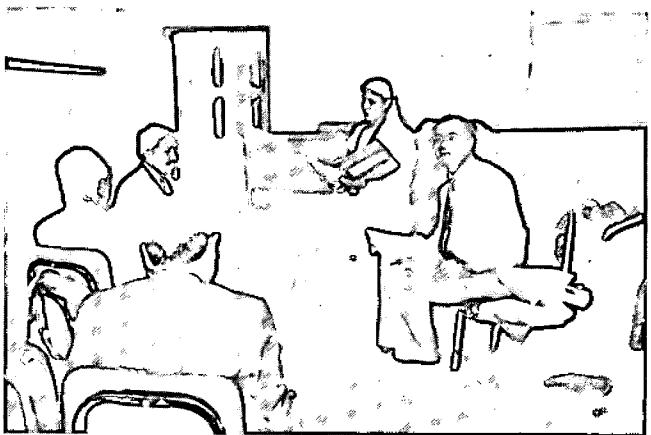
Ainslie-Wallace making a point



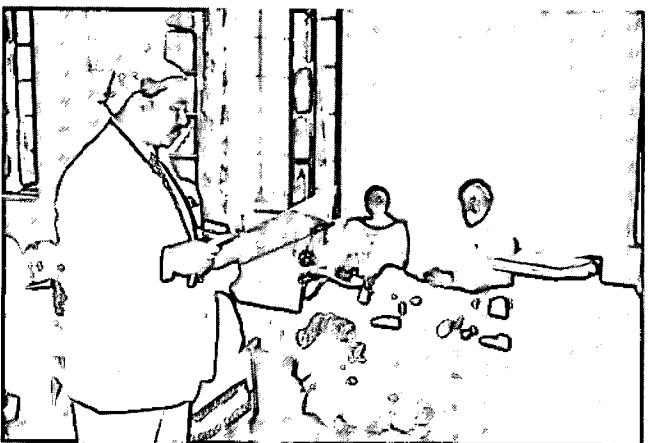
Donovan QC capturing Ainslie-Wallace making a point



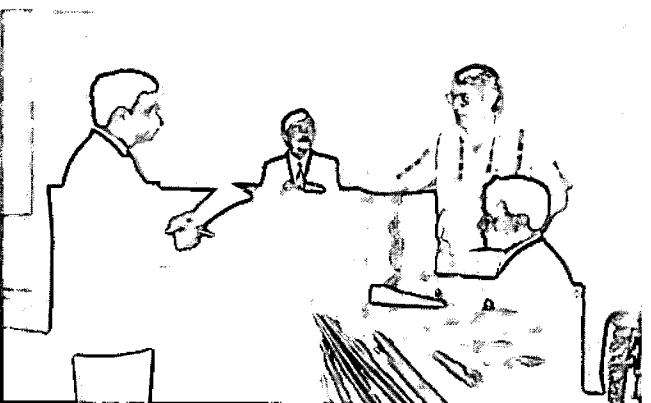
Glissan QC and Tilmouth QC in workshop



Einstein QC in a light moment



Laughton and Lindsay SC in workshops



Day 3 - 4 January 1996

Morning Session

Teaching followed the usual pattern and we were then taken to a most extraordinary luncheon at the invitation of the Metropolitan Bar Association - Dhaka.

This luncheon requires some careful description as it probably represents, certainly for me, the outstanding recollection which I will always have of the week.

We had, of course, received a formal invitation to this luncheon.

We were driven to the Metropolitan Bar Association premises from the High Court building in which we had been lecturing. The drive itself, like many others we had taken through the city, was incredibly interesting. We passed literally hundreds and hundreds of "baby taxis" - see the photographs. We passed through the markets and the abiding impression was one of people, people, people and colour, colour, colour - everywhere and very little space in which to move. Along the sides of each road there were open drains and men squatting over these drains to urinate as a matter of course. Seeing sights like this had become quite ordinary for us over the previous days. One even became immune to the incessant cacophony of horns, hooters and bicycle bells. Overtaking vehicles need only a hair's breadth clearance on either side. Sometimes it was necessary just to shut one's eyes and breathe in as our vehicle wormed its way through the traffic.

When we finally arrived at the area not far from the Metropolitan Bar Association we left our cars because of the narrow market-like streets through which we were escorted. We pass a dentist's office - which is a stall with an array of dental instruments and teeth. We pass the barber which is another stall with mirror and chair. Beggars were kept at a distance, although we were aware of their presence.

After coming to a huge banner over a doorway proclaiming our visit we were ushered into a large common room literally packed with senior advocates, judges and lawyers. Across one end of the room all of the Australian barristers and Amir-ul Islam were seated at an official table, just as if we happened to be a panel of chief justices of various countries. Then we received a lengthy introduction from the President of the Metropolitan Bar Association who is depicted in one of the photographs. He explained that the building in which we were sitting commenced construction in about 1910 and proceeded to give a careful description of each and every alteration to the building, its genesis and who was responsible for the same. The same secretary then, from time to time, introduced us to one or other of the judges or senior advocates in the room. Whenever such introduction took place the introducee stood, came up to the table and shook hands with each of us in turn and then usually delivered his own speech.

It took almost two hours to complete the formalities despite the fact that each speaker gave a solemn undertaking to be short. Finally we were taken upstairs to lunch prepared by our hosts.

To describe the Metropolitan Bar Association's

ceremony is very difficult. This is because you had to be there to feel the atmosphere, to hear the sounds and to experience the event. It was very difficult to speak over and above the sounds of outside horns and bicycle bells which seemed to permeate the room from beginning to end. The cultural and ethnic differences between us, the supposed dignitaries, and the judges and advocates sitting on the other side of the bar table was a tangible thing. When "thin Roger CJ Comm Div" was appointed to the Commercial Division of the Supreme Court he referred to the fact that there were but a few steps separating the bar table from the bench and to the enormous divide which crossing those steps actually represented. I felt the same in this room. There were only a few steps separating ourselves and the front row of those honouring our visit. But that separation on that day brought home to me and, I think, to the other members of the group, what an incredible difference of background experience, approach and general attitude to the law and to the world each group must have. Yet, notwithstanding that tangible divide, I learned during the course of my many discussions with advocates and judges in Bangladesh that, notwithstanding various problems particularly at lower levels in the courts - the fact is that the man in the street genuinely and sincerely does believe that a judgment by a judge is something important and formal and is something which lays down the law and is to be honoured. That single fact suggested to us that the goodwill with which we had been greeted, and the discussions that we had had on matters such as the rule of law, natural justice and fundamental human rights, were not misplaced. There is undoubtedly a future for any country, no matter how much assistance it needs, if there is already the structural backbone of a democracy, i.e. a belief in the rule of law. And our impression was of an incredible will to learn, improve and succeed.

Day 4 - 5 January

Luncheon. A picnic was organised by special invitation to a property outside Dhaka owned by a prominent newspaper proprietor. The grounds were set up as a demonstration "village" and "outdoor kitchen" to show VIP guests to the country, just how rural life is carried on. We were driven through a countryside of endless rice paddies, interspersed with brickfields - a large industry in Bangladesh as there is no natural stone.

This proved to be a most relaxing affair and our departure was possibly a little tardy.

On the wild trip home Anne nicknamed our driver "Fangio"! Tilmouth QC looked green. I decided to hold my video outside our car's window aimed at a passing bus to depict the crowding and how the passengers hang out of the windows - I did not pay close attention to exactly what was happening. Whilst videoing, Judith, my wife, pointed out that it might be indelicate to film the passenger who, unnoticed by me, was then throwing up out of the bus window. Judith then saw a dead body laid out behind a smashed-up car. We also passed two dead dogs lying by the roadside, their entrails



A crowd gathers around us in the court corridor



*Picnic river cruise and
(below) Our host at the picnic - the newspaper proprietor*



beside them. Somehow Fangio managed to deliver us back to the old High Court building in time for our afternoon session.

Evening

We were invited to a dinner at an excellent Thai restaurant hosted by the former Attorney-General, as mentioned earlier. As we drove through the back streets to dinner we saw two bodies laid out in the street in the middle of an intersection. As we approached the restaurant we saw a lineup of judges' gleaming white cars - each bearing a flag. Such were the contrasts.

Day 5 - 6 January

River Cruise

A large boat was hired for the day, catering for approximately 250 guests. Many justices and their wives, our students and their wives and children were aboard. The press also attended.

We were treated to a typical Bangladeshi lunch and then a cultural show followed depicting Bangladesh folklore in song and verse presented by young students in very colourful saris.

A ceremony then followed when we were each individually presented with gleaming medals encased in large perspex boxes approximately 40cm high. Our Bar Association was presented with a huge model depicting the maps of Australia and Bangladesh, "A" meets "B", which can now be viewed in the Bar Association Common Room. In many international bodies Australia and Bangladesh sit side by side.

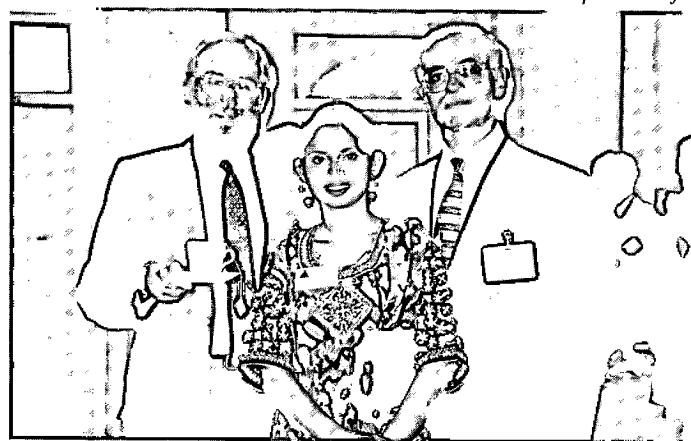
The cruise then concluded with a press conference held on the upper deck in grand style.

The overwhelming generosity of our new-found colleagues and acquaintances was most heartfelt.

Let us hope that the A-B link will be continued annually. Those who participate will obtain riches far exceeding money.



Final press conference at the river cruise



Tilmouth QC, Liaison Officer and Einstein QC



Einstein QC, President Metropolitan Bar Assn, Tilmouth QC