

The Judges, by ROBERT THOMSON (Allen and Unwin, Sydney, 1987), pp. 255. Limp recommended retail price \$17.95 (ISBN 0 04 340010 8).

The author has produced a book which some will find entertaining. His racy “journalese” style and the forthright confidence of his opinions are engaging.

The first chapter sets the tone. “Corruption” and “Misbehaviour” were words the Australian Judiciary did not have to wear; and until 1980 it could look back on an unsullied past. Thereafter follows a reference to two judges against whom allegations were made and the effect on the “Institution”.

There is a chapter which refers to various judicial idiosyncracies including the observation that members of the Bench are sometimes reclusive and sometimes lonely, educated but sometimes ill-informed.

Sitting in judgment on judges according to the author is awkward and the safest verdict is an “Open Finding”. But apparently if there is a finding, there must have been a trial — or was it an inquest? In the same chapter the author effectively reveals a misunderstanding of the role of robes and wigs. The startling discovery is also made that Judges’ Chambers are dominated by books and that there are to be found photos of children (meaning no doubt the judges’ children). Perhaps the judges spend so much time in Chambers that they have no other way of remembering their children.

The author refers to the religion of some judges; but oddly enough, in relation to particular judges the name of only one denomination is repeatedly mentioned. There is no deduction made from this revelation. The average age of judges, the number of their offspring, their sports, hobbies, social activities are relentlessly recorded. We are told that there is surprisingly little contact between judges; that their isolation comes from not making the effort to cultivate a wide circle of friends (some of these find judicial contact “uncomfortable”); they do not know each other very well, they do not know how other judges handle cases. The author has no doubt set out to entertain rather than inform the reader.

There is a recounting of the controversy relating to the appointment of Mr Justice Stewart as Chairman of the National Crime Authority. There is a further chapter related to the trials of the late Mr Justice Murphy and the former Judge Foord.

The Family Court is the subject of a chapter headed “Unsworn Statements”. Anecdotes of judges and their sayings are quoted. There is considerable reference to the difficulties which have arisen since the establishment of this Court. The author rightly appears to recognize the quality of the judges there and their hard-working devotion to a task, rendered more demanding by the legislation they have been called upon to administer and the circumstances under which their work is carried out. One wonders if he might have spent some time considering whether the denigration of the sacrament of marriage and the forced “informality” have contributed to the problems their Honours have encountered in their service to the public.

A large section is devoted to the President of the Court of Appeal who is variously described, but eventually as "Michael (Donald) Kirby".

There is a chapter "Judgment Days" devoted to the actual hearing, at least notionally, of cases in courts, referring inter alia, to the task of assessing witnesses' credibility and generally to the way in which judges go about their work. Writing judgments is discussed through quotations from those who have spoken with the author.

The mental processes attendant upon sentencing criminals are examined as is the reaction of the individual to his/her decisions being considered on appeal. The attitude of the Bench to the Bar is recorded in a chapter "Bar and Bench". The author conveys that judges generally think that barristers are "lousy", that is that they consider counsel do not do their work properly. The reader might be a little cautious in accepting this generalisation. The method of some of the more senior counsels' of making their submissions more acceptable is related. The earnings of barristers are revealed.

The word "conservative" is constantly used and applied to a category of judges without attempted definition or explanation; but it seems to be a bad quality. The forthright opinions of persons, highly critical of the Bench and its attitudes are repeated in some detail.

The author tells of his "endeavours" from the middle of 1984 to obtain interviews with judges; some have shown reluctance. However, he pursued his purpose and is able to quote many statements which are sprinkled throughout the book. They occupy a large part of it; some judges speak more than once.

For those who espouse the prevailing media culture of unearthing the christian names of persons to whom they refer, this book will be of assistance. The first names of many judges are quoted; and from the initial recital to a more personal shortening, for example William Patrick becomes "Bill" and Gerald becomes "Gerry". Thus the reader who wishes will be able to achieve a kind of vicarious spurious intimacy with those mentioned; yet it would be unwise before feeling too cosy, to accept that the author always name drops accurately.

There is displayed a robust disdain for the doctrine of precedent. The author leaves the impression that he prefers those who are not shackled by it. Yet students should bear in mind that the doctrine is part of the law of the land; and judges who do not follow binding authority in point may be overruled in a higher court. The High Court so reminds us in the recent case of *Osmond v. Public Service Board*.¹ Perhaps a little reflection could reveal the problems that could arise if each judge was encouraged to make ad hoc decisions. A side effect would be a bonanza for the legal profession.

Of the High Court he writes "once established the High Court faithfully, or blindly, toed the Imperialist Line". On "numerous occasions, the Court ... reversed its own previous decisions to bring them into accord with those of the Privy Council, and of even relatively piddling British Courts, such as the English Court of Appeal". Members of the profession will be likely to feel that the place and importance of the Court of Appeal has been

misunderstood and underestimated. Lord Denning, of whom it is said that he preferred to sit there even after he had entitlement to work in the House of Lords or the Judicial Committee of the Privy Council, would have been surprised, even saddened to hear (quite apart from the vulgarity) the Court of Appeal so described.

It was surprising to read that (speaking generally) “judges believe they have not enough power”.

This is not a lawyer’s book but does provide an account albeit superficial of recent events concerning judges. The writer leaves it with the feeling that there is a strong case for leaving judges to sit in public, their decisions to be reviewed also publicly and thereafter to return to anonymity and privacy to work on the next case, without fruitless search for some clue or hitherto arcane quality which will explain them all.

D. G. McGregor*

*Q.C., Hon. Visiting Professor of Law, University of New South Wales; formerly Judge of the Federal Court of Australia.

FOOTNOTES

1 (1986) 159 CLR 656.

