



**Launch of *J.V. Barry: A Life* by Mark Finnane, published by UNSW Press
Supreme Court of Victoria Library
29th November 2007**

Peter Riordan, SC – Chairman, Victorian Bar Council (2007-2008)

Good evening, my name is Peter Riordan, I am the Chairman of our Council. I would very much like to welcome you all here tonight, and in particular the Barry family for the launch of the book *J V Barry: A Life*, the biography of John Barry.

John Barry was a member of the Victorian Bar and a judge of this court, the Supreme Court. We are very pleased at the Victorian Bar to be associated with the launch of the book, *J B Barry: A Life*, and I would very much like to thank the Chief Justice and those at the Supreme Court who have enabled it to be launched in this magnificent library. I will shortly call upon David Neal, who is a friend of the author and a member of our Bar, to formally launch the book. After he has done so, he will call upon Mark Finnane, the author, to address you for a short period. Mark is a professor of history at the University of Griffith and he will then give Susie Barry, a daughter of John Barry an opportunity to make some remarks on behalf of the family. So, David, if I could ask you to launch the book, please.

Dr David Neal SC

Could I too welcome in particular the Barry family to this court where their forebear worked from 1947 until 1969 and made a very distinguished contribution both to the life of the law in this state and to the general political and intellectual life of the country that we now live in, but in that very different era of the first half of the 20th century.

My working title for these remarks is: “Public intellectuals, judicial activists and other people that we should worry about”. Now, we know to worry about such people because we have been warned as recently as September of this year (2007) by Paul Kelly of the *Australian* about the second-rate contributions made to Australian political life by public intellectuals, and his contention in that piece that the defining feature of intellectual life is its divorce from governance. “This is its strength and its flaw,” says Kelly, “Politicians by contrast are driven to find solutions”.

Kelly and his journalistic colleagues Greg Sheridan and Gerard Henderson have also been responsible for attacks on people who they describe as “judicial activists”. The particular

instance that they have in mind, or perhaps the most recent one that I have in mind, is the attack that they mounted on the Victorian Court of Appeal for rejecting the confessional evidence of Jack Thomas in a case where the Court found that Thomas had been detained for months in Pakistan, had been subjected to very cruel conditions of detention and threatened by both the Pakistani secret service and by the CIA with removal to Afghanistan where he would be subjected to torture. Despite the Court's rather chilling descriptions of this treatment, when "the Kelly gang" as I call them - this is a modern Kelly gang, not the one that John Barry actually wrote about - came to describe what the Court had done in that case, their accounts of it were entirely stripped of the cruel conditions that Thomas had been subjected to and were pleased to describe what had happened in the Court. As an example in the case of Henderson, he complained that the Court of Appeal had focused on the 'legal technicalities of the case', and pointed out that the President of the Court of Appeal who delivered that decision, Justice Maxwell, had been a staffer for the former Labor Attorney General, Gareth Evans, and a past President of Liberty Victoria. Greg Sheridan's contribution to this was to say that "while terrorist trials must be fair, they need not be perfect replicas of ordinary criminal trials". None of them referred to the conditions of the detention that led the Court of Appeal to say that "it could not lend its approval to these techniques in relation to any trial in which someone was charged with a criminal offence".

There's a sort of reckless failure on the part of commentators such as these to deal with the potential for abuse of power even in liberal democracies. The conditions of detention at Guantanamo Bay, the secret rendition of terror suspects and, to a lesser extent the recent events involving Mohammed Hanif, signals that they should have noticed before they rushed to make the assessments that they did.

These reflections caused me to wonder what Paul Kelly and co. would have said when John Barry was appointed to this court, the Supreme Court in 1947? I think that in Barry's own criminological parlance, he probably would have been described as a serial offender, or at the very least a recidivist. Barry was a public intellectual and Mark takes that approach in his book, but unlike the public intellectuals that Kelly is so critical of, Barry himself was no stranger to the exercise of power both through his political and legal activities before the war, and as a judge of this court in particular in relation to cases where the death penalty was still available. Mark identifies Barry's particular vantage point at the start of the book, where he says to us that what he wants to do is to explore Barry's ideas about the relationship between power and privacy, and power through the exercise of both the legal and political systems of this country. For me, that's the most interesting part of this terrifically interesting book.

Mark says this: "few Australian writers have considered the interlinked abstractions of privacy and power. Fewer still have combined their reflections of a lifetime of practice in the domains of privacy and power. Those who write about such subjects have increasingly been academics or public intellectuals, free or freed from the everyday responsibility of exercising power. Contemplating the life of John Vincent Barry, offers the possibility of understanding how these very modern concerns were considered by one who was so conscious of dealing with them during a period of profound social conflict and change in the decades before our own. In public and private writing of such a constant critic of his times we have the opportunity to view how the future looked from our privileged standpoint of knowing how it turned out".

Barry had the double disadvantage that not only was he a public intellectual, but he also had a background in civil liberties, abortion law reform, criminology, divorce law reform, anti-death penalty campaigns, (and) he was a member of the ALP Executive during the '40s. He narrowly missed election in the Federal electorate of Balaclava in the 1943 election, got back something like 20,000 votes from the incumbent, but just couldn't quite pull it off and went on in the '40s at Royal Commissions to represent as diverse clients as Eddie Ward and John Wren. He was a confidante of federal attorney-generals, in particular during the war effort of various issues with Sir Garfield Barwick during the '50s as the lead-up to the *Matrimonial Causes Act* of 1959 developed, and then finally in particular with Attorney General Nigel Bowen, who in the year of Barry's death 1969, let Barry know that one of his great dreams, the Australian Institute of Criminology was going to become a reality.

'The Kelly gang' as I have been talking of them probably would have been even more alarmed if they had known how close it was that Barry could have been appointed to the Australian High Court.

In 1946, according to Mark's inside sources, the Cabinet had voted for Barry to be appointed to the vacancy on the High Court, but Chifley and Evatt, it seems, were nervous about the political acceptability of this and overturned the appointment. It went instead to Sir William Webb. Mark has a terrifically interesting quote from Barry's friend Geoffrey Sawer, who was also of course an eminent constitutional lawyer. Sawer wanted to speculate about what the High Court would have looked like had you had (Sir Owen) Dixon there with someone whose intellect was of a very different frame than his own, that is John Barry.

So when Barry was appointed the following year to the Supreme Court, Geoffrey Sawer wrote to him and said the following: "My best wishes and congratulations. I have written this much several times, and then been stumped by the difficulty of possible impropriety of my further reaction to your appointment, namely that you should be on the High Court or in Federal Cabinet. Not because you will not be a credit to the Supreme Court, but because the other two institutions I have mentioned are especially in need of a jolt or two, which nobody around is capable of providing. However, I suppose the High (Court) is still not impossible, it badly needs someone who can talk with Dixon and Co. on equal analytical terms and with the further aid of social philosophy somewhat more recent than Herbert Spencer. I look forward with pleasure to your handling of administrative law and crime".

There are so many quotable quotes in this book that my copy is already marked up extensively and it's not obviously appropriate to have a lengthy reading tonight, but there is one extract that I would like to read. Soon after he is appointed to the Supreme Court, issues to do with civil liberties after the war were becoming very much to the forefront. Barry was in touch with all of the major players and as you would expect, and Mark has mined this beautifully. The correspondence going between them is terrifically illuminating of the network of legal minds who were so much in the forefront of Australian politics at the time, and in particular legal minds like Dixon, Latham, Robert Menzies himself and of course Barry. These correspondences are a terrific revelation of the politics of the era.

In relation to the Communist Party case, and I sort of again pick up the echo of the recent decision of the High Court in *Thomas and Mowbray*, about the operation of the defence power. There is a fascinating correspondence between Barry and his great friend, the American academic, Professor Mark Perlman, who was an expert in labour relations and fascinated by the industrial relations system of Australia. He had been here and as Mark told me the other day, bowled up to the Prime Minister's office and said "Look, I really would like to talk with you about these things", and Menzies apparently was pleased to grant him an interview.

The Communist Party case was decided in 1951 and here's the exchange between these players about what had happened. "Barry was never (this is the correspondence between Barry and Perlman) an uncritical observer of Labor politics or unthinkingly hostile to what he had increasingly called 'Tory' governments as he aged. In the coming years, there was much to disillusion him as he watched the Labor Party tear itself apart. As the first letter crossed the Pacific, the new Menzies Government was busy preparing legislation to outlaw the Communist Party. Perlman opened the discussion, "he held no brief for Communists" he said, "but he was sure that the proposed Australian legislation with its reversal of the burden of proof and the warrant of search of homes would be unconstitutional in the USA." He had met Menzies in Canberra, while they had spoken for less than an hour, Perlman didn't get the impression that he was in any sense crude, far from it. "I thought one of the most sophisticated men I had met in a long time." Barry also knew Menzies, as we have seen, they had even acted together on at least one brief in the days before Menzies went into politics. He was in a good position to question the wisdom of the legislation which he deplored, which reserving his opinion of the man promoting it whom he considered "politically able, if vain and shallow".

Like Perlman, he was bemused by the stance pursued by Menzies, "your judgement of Menzies is sour, he is a first-class Liberal and in personal beliefs the same type of Liberal, 'small l' liberal, that I am".

Never one to shirk a good discussion, Barry who at this stage was in hospital because of a slipped disc, wrote back to Perlman on the previous day (that) the High Court, by a 6:1 majority, had invalidated Menzies' Communist Party Dissolution Bill. "No part was spared", he reported to Perlman, going to the heart of the issue, which was the majority opinion that there existed "no state of emergency sufficient to vitalise the defence power to the extent necessary to support the legislation." He believed that there was an inevitability about the judgement and for good measure paid tribute to the influence of American constitutional law on Australian institutions. To have held otherwise would have destroyed the federal system and would have involved abdication by the High Court from the John Marshall created role of super legislature.

I skip a bit, and then get the correspondence between Barry and Dixon on the same. "A key figure on the High Court's decision in the Menzies' decision was Owen Dixon, especially since the Chief Justice, Sir John Latham, alone of the 7 judges had supported the validity of the Bill. Dixon the advocate of strict legalism, was not averse to the use of state power as we have seen through his role in the wartime administration, but he was also conscious of the role of the courts in restraining or monitoring it. In 1954 Barry discussed with Dixon the role of the US Supreme Court and reported back to Perlman. "Dixon and I talked today of the US Supreme

Court. He considers it a tragedy that the Court should be so unaware of its true function for he suggests, “had the Court been a strong body following its legal course, rather than a tortuous political line, McCarthyism would not be the threat that it is. There may be something in the suggestions Courts are effective when they stick to their proper job and they cease to act as the balance wheel in a social mechanism when they don’t.”

Barry was no friend to the Communist Party; “Communism and Catholicism,” he said (having been born to a Catholic father and a Protestant mother) “are both closed systems and I want neither of them,” he told Perlman. But like Dixon, he took pleasure in the role that the High Court had played in curbing Menzies’ folly.’

I only knew of Barry slightly before I came into contact with Mark after many years. We knew each other as baby academics at the University of New South Wales when I was at the Law School there and he was in History. We were both interested in social history and we met along with some of the other people who are here tonight, historian David Phillips and Diane Kirkby, and we were all very interested in social history as a way in which, in particular, court documents and Magistrates’ Court documents could reveal things about the common people, and in particular for Mark and myself, in early New South Wales. (Mark) was interested in policing and I was interested in the developing legal system there. So when Mark told me he was doing a ‘great man’ biography of John Barry, I became a little concerned that he had lost his path, but in fact it’s not that at all.

This is a terrific book. I am sorry I wanted to put all the good reasons first, so I just didn’t seem to be too effusive, it is a terrific book about Australia in the first half of this 20th century. The Communist Party extract that I read for you I hope will be the taster that will make you want to buy this book yourselves and your friends.

Wonderful Christmas present if you know any lawyers, and Mark, I think, has achieved in this book what really good histories should do. It’s not simply a litany of facts. This is an abstraction and imaginative history that recreates the truth of the generation immediately prior to at least my own generation and bring to light some of the major issues that were going on there, and helps me, and I think will help you, to think about the exercise of power, in particular the exercise of power at the political and legal levels and that it will not only illuminate what we understand about Barry’s own era, but that it will illuminate this new era that we are going into and I fervently hope that the new Rudd Labor government does appoint some public intellectuals and some judicial activists.

Congratulations Mark, it’s a terrific book.

Professor Mark Finnane, author of *JV Barry: A Life*

Well, thanks very much, David, I really appreciate your support for this occasion and it’s of course particularly appropriate that we are celebrating the biography in this place, because Barry, as David has recognised, was above all an intellectual.

He loved books, research and writing. His own library was a proud possession, although kept in much more modest circumstances as you will see from the photo in the book, at his house in Hampden Road. It had been built up from his youngest days in Melbourne in the 1920s. Amongst his papers is a notebook which records the borrowings from his own collection between the years 1939 and 1941, of books borrowed by people who included Dixon, Calwell, Evatt, Brian Fitzpatrick - all the leaders of the bench and bar and politics in Melbourne at the time. This was a very considerable man of intellectual influence in the 1930s and '40s.

I am very grateful to the Bar Council for its support and hosting this occasion, and to the Supreme Court for generously making available the library, and it's a great pleasure for me to have David Neal here to launch the book.

As he has alluded to, more than 25 years ago it was conversations with David (Neal) that first got me in touch with some of the questions about law and society that historians need to ask more often. Writing this biography was somewhat of a surprise to me, but it's been the highlight of my work as a historian. A few people have asked me how long it took. Well I hope you will indulge a few moments to tell how the book came about.

Nearly 20 years ago, I was beginning some work on the history of punishment in Australia. In the National Library manuscripts room, I found some references to the papers of Sir John Barry. Among them I found 2 large files, one dealing with the writing of this first book, a book he wrote with George Paton and Geoffrey Sawer, the other with the sometimes tempestuous history of the Melbourne Criminology Department, of which Barry was the first Chair.

The materials were rich. I came back to them in a couple of things I wrote later about prisons and about the Criminology Department. Understandably, the private papers which seemed to be very extensive were closed in the forward of the excellent guide that has been prepared in the National Library. One saw that access to them would be gained only by the perhaps-forbidden process of writing to Lady Nancy Barry.

A few years later, Bernard Teague's [excellent entry](http://www.adb.online.anu.edu.au/biogs/A130146b.htm) (<http://www.adb.online.anu.edu.au/biogs/A130146b.htm>) in the *Australian Dictionary of Biography* provided the kind of guide that suggested this was an important figure on which someone might do more work one day. It wasn't going to be me.

Nearly 20 years ago I also met John Myrtle, then Principal Librarian at the J V Barry Library at the Australian Institution of Criminology in Canberra. John was a model of help in responding to some queries I had about the library holdings when I started to publish a few things that touched on the Barry papers. He also started asking whether I might do something bigger about Barry himself when I gave a paper a few years later at a Criminology conference about the early years of the Melbourne Criminology Department. David Byles who is here with us tonight was present. He was warm in his response and pressed me to do more.

It was John Myrtle who urged me on at the beginning of 2002 - the most important signal was that John knew the family was interested in seeing a biography done. The process of getting

some funding from the Australian Research Council was begun. The application was successful and I was delighted to find that John was ready to pull up stumps at the J. V. Barry Library and instead collaborate on the research leading to this biography.

John's passionate interest in Australian history and politics combined with his formidable skills as a research librarian, made him the ideal research assistant. The book would not exist without him and as you see on the title page, that is acknowledged. It was also John who introduced me to the Barry family on a memorable day in March 2003.

We both came to Melbourne to meet the family and enjoy their hospitality including wines from Mouth Avoca, which you are enjoying here today. I am sorry that Nancy, Lady Barry Jack's second wife and Joan his elder daughter have not lived to see the product of their willingness to open the family archives, but I will always be grateful for their trust in doing so. Both John, Jack's son and his wife Ida and Susie, the younger daughter and husband Don are here with us today, as well as you can see many other members of the Barry clan. I enjoyed the warmth of the Barry family from the first meeting. Their support, enthusiasm and willingness to deal with some surprises from the research has been indispensable to allowing the book to go in the direction I wanted.

Jack Barry was the first judge of the Victoria Supreme Court who had been born in the 20th century. He was from my grandparents' generation so I could recognise some things in his personal archive that told us of a pre-war Australia that I never had contact with.

The last two decades of his life I was more familiar with, but to fill out the sense of engagement with the politics and culture of the Cold War years that characterised Jack Barry's life, I was helped especially by interviews I was able to conduct in 2004 with two of his closest friends of the 1950s and '60s, Norval Morris and Mark Perlman, both now deceased. I hope when you read this book, that you will see captured some of the vitality and humour of these two remarkable men in their longstanding friendship with Jack Barry. Wonderfully, I found when I reached Pittsburgh that Mark Perlman had uncovered nearly 200 letters that Jack had written to him between 1950 and 1955 which complemented the almost complete record otherwise of their 20 year weekly correspondence across the Pacific. John Myrtle and I hope to publish some of this correspondence in the future.

John also discovered much else in this research journey from Geraldine Crow, the daughter of Barry's judge's associate of 22 years and a memoir by Jim Edwards which provides many stories in the biography. From Dr Luke Murphy, Barry's sometime doctor and son of Barry's first employer and mentor, we got letters, photos and reminiscences. From the National Archives of Australia, we found an ASIO file that tells us a lot about the erratic governance of the 1950s. From the ABC archives, we found a rare recording of a radio interview with Barry. I am grateful to such people and institutions for their careful guarding of the traces of Barry's history, which is also part of our history. I think you will agree that the University of New South Wales has done a handsome job in producing the book, and I am grateful to the Press for its continuing commitment to publishing the serious research in Australian history and politics that we need. The book couldn't have been produced without support financial and in kind,

including support to me directly which had been made possible by the Centre for Public Culture and Ideas at Griffith University. The country needs such institutions, press and centre.

Well finally this moment cannot pass without recording my love and gratitude to my family, many of whom are here today. My mother Patricia Finnane embarked not too late in life on her own legal career, but it was her passion for learning, reading, having an opinion and making a judgement that helped turn more than one of us into writers. To Maureen who has shared 35 years with me, this book is dedicated with love and affection. Thank you for being with us.

Susie Barry, Justice Barry's daughter

Good evening ladies and gentlemen. My name is Susie Barry, and I would like to thank you all for being here this evening, in particular I would like to welcome members of the Finnane and Myrtle families and of course we have many Barry's here tonight as well. On behalf of the Barry family, I am delighted to say a few words to you this evening. For all of us and for some many young Barry's as you will see, this is a very proud occasion as we return to the Supreme Court to celebrate the launch of this wonderful book, *J V Barry: A Life*, by Professor Mark Finnane. This book records and explains the life of our father, our grandfather and our great grandfather, John Vincent William Barry.

At the time of his death in 1969, I was 16 years old and over the intervening years my memories have concentrated on my father as the focal point of family life. He left us with a strong pride in his legacy, even though for most of us, our knowledge of the details of his life has been sketchy.

After his death, my mother and my late half-sister, Joan Hardy, were keepers of the family knowledge but with their deaths a couple of months apart in 2003, much of the oral history of our family was lost. As an older father, he was 50 when I was born. I was always aware of the enormity of his job, his wide-ranging interests and the all-consuming dedication he gave to these. In my memory, he was always loving, but he was often distant and distracted and as a child I knew not to disturb him when he was reading and writing in his back study at Hampden Road or in his big chair beside the fire at Somer's.

When any of use loses a parent prematurely, there are some many things to miss about them and one of my sadnesses has been not having the chance to discuss issues with him as adults do. When the manuscript of the book arrived, I watched myself walk around the envelope for a few days before I opened it and began to read. There was a nervousness about reconnecting with my father, almost a trepidation to meet someone again who had left so long ago, but what a fascinating and inspiring reconnection it has been. At last, I have had the opportunity to really understand his values, their origin and to see in great detail how he put them into practise. At the same time, I have learned so much about pre and post war Australia, and I have been able to see the effort that went into the establishment of standards and institutions which have become an accepted part of our lives, and I can now recognise the lasting effect of his visionary ideas and work. To read of my father's awareness of the social context within

which the law operates as well as his key role in the protection of civil liberties has been enlightening.

I have been inspired by his commitment to ‘small l’ liberal ideology: his staunch belief in the freedom of the individual and his concerns about the erosion of these freedoms. It is ironic that my family were the subjects of ASIO interest justified by ill-informed gossip and supposition, and this has been a reminder of the threat to personal privacy and liberty to which we are all now increasingly susceptible. For my half-brother John and for me, *J V Barry: A Life*, provides a bridge to our past lives. There were times when I felt like I was re-entering my father’s study on a Sunday evening finding Sir Eugene Gorman, Brian Fitzpatrick, Vance and Nettie Palmer, Norval Morris and Professor Mark Perlman or the like, all there enjoying a whiskey and lively conversation, as used to happen on a weekly basis. The book has helped me understand my father’s immersion in his work and to feel even greater pride for his legacy.

For the younger Barry’s, at the very least, this book will provide them with a record and an explanation of their ancestry and it may well inspire them in the values of justice, human rights and civic service that were the hallmarks of their great grandfather’s life.

I would now like to acknowledge the creators of this book. Firstly I must say that in a biography project, it is quite disconcerting to discover that the author and the researcher know far more about your family history that you will ever know. To Professor Mark Finnane, our family owes you a debt for this very fine book. We are grateful to you for the collaboration and the inclusion that you extended to us and for your sensitivity through the investigation and interview process. We respect your integrity and your commitment to keeping this a work which focused on our father and his work, and we thank you most sincerely for this as well as for the time and huge effort that has gone into this book. I am also sure that my mother and Joan would have been delighted with the result, so thank you.

To John Myrtle, this book would never have happened without your vision, and your determination that it should be written and only by a write and scholar of the top calibre. When principal librarian of the J V Barry Library at the Institute of Criminology, John’s dedication and energy inspired my mother, John, Joan and me, and encouraged us to give our full support to this project. We gave our trust to John and he honoured this in every way. For this, for his warmth and for his meticulous research, we also say a sincere thank you.

To Mr Justice Kirby for his thoughtful foreword, we are also very grateful. As a long time admirer, I was honoured to read his contribution to the book, and to know of his empathy with my father and his respect for his views. To Dr David Neal, we very much appreciate that you were able to launch the book this evening. We would like to thank you and also the Victorian Bar, especially Peter Riordan and Denise Bennett for your assistance with tonight’s event and of course we are delighted to be here in the library of the Supreme Court, which is such a very special place for this evening’s event. To UNSW Press, we appreciate that you recognise that this would be a notable contribution to Australia’s legal history, also to the Centre for Public Culture and Ideas at Griffith University, who contributed funding for the publication of the book thank you very much. We hope that you will stay on and enjoy some Barry wine that has been contributed by Matthew Barry, father of the many young Barry’s that are here this

evening. So thank you, Matthew for that, but thank you all again for coming. This is a very special night for all of us in the Barry family, thank you.
