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Schiftan, Lynnette Rochelle

(1942 - 2016)

Born	1 January, 1942, Melbourne Victoria Australia
Died	28 August, 2016
Occupation	Barrister, General Manager, Judge, Lawyer, Queen's Counsel

Summary

Lynnette Schiftan was the ninth woman to sign the Victorian Bar Roll (1967) and the second Victorian woman to take silk (1983). In 1985 she was appointed a Judge of the County Court of Victoria – the first woman to be appointed to a Victorian State Court.

A Victorian Bar News article published at the time of Schiftan's appointment to the bench quoted her reflections on the early days of her legal career:

'I experienced a great deal of prejudice as a female barrister, from the community generally, from solicitors and from the Bench. However, I suffered no such prejudice from other members of the Bar, who formed a protective barrier around me, which I remember with great affection.'

She was also treated well by the majority of her 'brother judges', several of whom 'were accepting and helpful particularly as it was a Court in which I had never practiced. I had three judges come to me separately unbeknownst to the other two and say, "you haven't done much crime like this, have you. Okay how about you come at 7:30 in the morning and I'll help you." All offered a list of things to consider.'

When Schiftan resigned from the bench in 1988, she was still the only female member of the Victorian State Judiciary. In March 1988 she joined Coles Myer as General Manager Legislative Affairs, a role requiring her to monitor the company's compliance with relevant legislation and to represent the company in an advocacy role as necessary.

Go to 'Details' below to read a reflective essay written by Lynne Schiftan for the Trailblazing Women and the Law Project.

Details

The following additional information was provided by Lynnette Schiftan and is reproduced with permission in its entirety.

I was born on 6 March 1942 and grew up in an Australian Jewish house; conservative middle class and if anything with an English slant. It was a close and very sheltered household in all sorts of ways. We observed Shabbat every Friday. It was a small gathering of family members; we lit candles, had a simple meal and talked to each other. We were liberal Jews and that identity informed our values. I attended Methodist Ladies College and the experiences there reinforced the conservatism of our home.

The year I was born was also the year my father, Philip Opas, signed the Victorian Bar Roll, thus becoming a barrister. My earliest memories, of the law and the Bar were at the age of five or six. My father babysat often. When he worked on weekends my sister and I would accompany him to Selbourne Chambers. These particular Chambers were built over an old wine cellar. The old wine smell remained combined with musty books it left an indelible memory – decades on I still remember quite clearly. The floors had brown linoleum floors with diamond patterns and highly polished banisters that made for a good slide for two little girls. The chambers became a playground for my sister and me. We tried on wigs, dressed up in gowns and saw grown men, colleagues and friends of my father's dressed up just like us. I also recall the rushing around, the noise and finally doors shut because serious conversations were taking place. When I returned as an adult and a barrister the building had been demolished and replaced by new chambers opposite the Supreme Court.

By the time I was a young teenager, I was a well-seasoned observer of the theatre of Court. When the Courts went on circuit to regional centres such as Bendigo, Ballarat, Horsham and Mildura during School Holidays, the family would accompany him. I sat in the Court and listened. By then I had a real knowledge of the roles and importance of the various individuals necessary for the operation of a Court. I absorbed it all and thought it was exactly what I wanted to do in later life. When the time came my parents were adamantly opposed to my entering a Law Course. In that time the solution was easy – I obtained a Commonwealth Scholarship and entered Melbourne University Law School. My father was concerned that if I did Law I would fail and my mother was certain that a female lawyer would never marry. I graduated with a very average LLB from Melbourne University in 1965.

In 1966 at the age of 24 I began my legal career journey. As it happened I returned to a very familiar regional city to do my articles. I was articled to Bruce Garde of Hillard Rice and Garde in Mildura in northwest Victoria – a well-established and regarded firm in the region. I was paid a salary of $70 per week, which covered board and a car much needed for local work and also my trips home to Melbourne every weekend. The firm's main client was the Council, it also acted for local businesses such as wineries, orchardists, cooperatives and very occasionally took general legal work and some petty crime alleged against family members of major clients.

Just as it is today, greater numbers of Indigenous Australians lived in regional rather than metropolitan areas. For the first time I witnessed the challenges facing Aboriginal Australians. There was a community living in humpies on the banks of the Wentworth River at Dareton NSW. I was shocked to my bootstraps at the conditions and began to realise that life for some people was a terrible struggle. There was a disproportionate representation of Aboriginal Australians charged with a range of offences mainly alcohol related including drunkenness in a public place, graduating to theft, crimes of violence and murder. The local Wentworth Magistrate seemed to be constantly fighting authorities trying to keep young Aboriginal Australians, in particular, out of jail. He succeeded if the offence of drunkenness in a public place, drunk and disorderly or similar offence was a first time appearance but for "regulars" there was no alternative. The women and children I saw were listless and lacking any reasonable support. I also became aware that violence against women and children was commonplace. An issue that I came to learn beset both Aboriginal and non-Aboriginal Australians. Unbeknownst to me it was also an issue that would define my career in years to come.

In 1967 I returned to Melbourne to complete my Articles at Ridgeway Pierce Freedman and Murray. It also happened to be a leading firm in divorce. I didn't know anyone who was divorced. No one in my parents' circle was divorced. Handling these cases further unveiled what was until then the closeted world of the marital home and domestic violence.

The day after I was admitted to practice, I signed the Bar roll on 12 October 1967. I was 25 years old, I was the ninth woman ever to do so and the first to join the Bar without some years' experience as a solicitor. I joined the Bar unhampered by legal practice or maturity but there was no plan B – I was going to be a barrister. I was "taken in" by my father's clerk – Mr Jim Foley (I always called him "Mr Jim".) I read in the chambers of Mr. Austin Asche (as he then was – later a Family Court Judge and Administrator of the Northern Territory – his practice was solely Matrimonial Causes).

"Mr. Jim" accepted me on condition that I took no work other than Magistrates' Court for two years. He promised that he would then ensure I had a practice. I was sent all over Melbourne doing mainly very minor accident cases but gradually the work changed and I began to appear for what was then known as "deserted wives", usually seeking or enforcing maintenance orders.

I was as 'green' as could possibly be and Mr. Jim was incredibly supportive and very generous with advice. One of his offerings was. He told me that no matter what I was never to cry in front of anyone and if overcome I should go quickly to the "ladies"! He didn't want anyone to see me as being weak. But when it came to the matters of child custody or inter family violence the learning curve was steep.

One way of ensuring work in the earliest days as a barrister was to appear in cases pro bono and this I did as often as possible. My clients were mainly "deserted" wives" – a terrible term -as they were mainly women and children fleeing domestic violence.

I married Peter Schiftan on 2 November 1968. Peter brought his four years-old son, Daniel, into the marriage. Shortly thereafter the three of us went to the Territory of Papua New Guinea for almost two years. There, in 1969 I was admitted to practice and opened the Law Office of Cyril P McCubbery on Bougainville Island (in our kitchen in a woven matting house) where we were living. Peter worked for Bougainville Copper as a General Manager and I was approached by the consortium of Bechtel Western Knapp Engineering to become a Contracts Engineer with responsibility for translating contracts from American English to

Australian English whilst also retaining the right of private practice. I frequently appeared in the “Kiap Court” (local Court) defending expatriate men accused of various criminal offences. The penalties to be applied were usually fines or expulsion from the mine lease and repatriation back to Australia. There were Australian Maintenance Orders to be enforced – not very successfully as Bougainville was a fairly tough place and the expatriate men were seriously tough individuals. Wage garnishee orders worked for a time but the men simply moved on to defeat the effect. There were serious work related accidents and as the Papuan workforce was drawn from various warring New Guinea Tribes a great deal of inter-tribal violence including murder.

We returned to Australia in 1970 and immediately resumed practice at the Bar in my own Chambers. I developed a Matrimonial Causes Act practice – doing undefended divorces. It was a pragmatic decision because the list of cases would be completed in the morning and I could then collect our child, Daniel, from Kindergarten/ School. There was no tax deduction for child minding and in (1972) HCA 49 Lodge v Commissioner of Taxation that situation was reinforced – child minding expenses incurred to enable a woman to derive assessable income were held to be domestic in nature and therefore not a tax deduction. We could not afford any alternative but at least I was at the Bar.

In 1972, at 29 years of age and after our daughter, Kate, was born I again returned to the Bar. By this stage we could afford home help and that also allowed me to take on more complex work that involved days of hearing at a time. During the mid-1970s there were a few more women practising at the Bar. I was senior enough to take on readers. There were six readers in all :- Julia Langslow, Elizabeth Curtain (later Justice Elizabeth Curtain Supreme Court of Victoria) Sue Blashki (later a Magistrate in the Magistrates Court of Victoria) Carolyn Douglas (later Judge Carolyn Douglas of the County Court of Victoria) Clare Grey and Mary Slade. The work at the Bar was increasing and becoming more complex. It was a very busy but good time.

By this stage my involvement in Law relating to families had spanned 18 years, I was well established and pursued interests outside the bar. I made myself available to the Centre Against Sexual Assault (CASA). There were other ad hoc groups providing emergency accommodation after family violence to women and children. These services were woefully inadequate. I appeared for many of these women seeking Protection Orders and Maintenance whenever possible. By the time I became involved with CASA it was known that I had a particular interest in sexual assault and that led to me chairing the sub-committee at the Bar on sexual assault. I became the patron of Inner East Foster Care.

Working extensively in the general area of laws relating to “family”, it became obvious that the provisions of The Matrimonial Causes Act 1959 no longer met the needs of a changing society. Men and women were disadvantaged by the stringency and limitations of the grounds for divorce as provided by the Act and the ‘fault concept” within the Act did not assist parties to have suitable ongoing relationships where children’s custody and access were involved. Simply put, marriage was an institution still seen through the prism of religious requirements.

I became actively involved in lobbying for change and was a foundation member of a group ultimately named Family Lawyers Association of Australia. There were many papers presented, articles written and politicians lobbied on the need for change.

After a year of intense lobbying, the Family Law Act of the Commonwealth of Australia (FLA) was finally enacted in 1975. The FLA meant couples no longer needed to show grounds for divorce, but instead, just that their relationship had suffered an irreconcilable breakdown and that they had lived separately for a period of one year. Thereafter, I regularly lectured on various aspects of Family Law Act:-Leo Cussen Institute of Continuing Legal Education, Melbourne and Monash Universities as well as presenting papers at conferences in Australia, United States and Canada.

In 1976, I was appointed to the Bishop Committee Inquiry into the Maltreatment of Children. At the time there was no suggestion of endemic Institutional sexual abuse. Child sexual abuse was not a focus of the inquiry and it was only mentioned in the context of domestic violence. We had no submissions then or at a later committee on endemic institutional abuse. It is a stark contrast to the current (2015) Royal Commission into sexual abuse. The revelations are deeply distressing .From 1986 I was among those advocating mandatory reporting of sexual and all forms of abuse of children.

In Vitro Fertilisation or IVF research and advancement had made great leaps in a decade and by the time I was appointed to the Waller Committee Inquiry in 1982. It took us two years to deliver a report to the Victorian government, permitting IVF to be legalised for the benefit of married couples. Legislation then followed. It is interesting to now note that no comment was made concerning a child’s right to know the identity of a donor and no provision was considered to give families the medical history of the donor. Amendments in recent years now facilitate that option. My extra-curricular interests continued with appointments to the Ethics Committee of the Victorian Bar – Family Law (1983-984), member of the Commonwealth Family Law Council (1984) and convenor of the Sexual Abuse Sub Committee of that Council (1986).

By late 1984, I became one of three female QCs in then practising in Australia. Joan Rosanove QC was appointed a QC in 1954 – there were no other women silks in Victoria between Mrs Rosenove and me. South Australia appointed the first female QC, Roma Mitchell, in 1962. It took almost two decades before the second female silk was appointed – that is Mary Gaudron in NSW, and the State of Victoria followed three years later with my appointment as one of her Majesty’s Counsel. It is particularly pleasing to see many women now with most senior roles in the law. There is no Court without a woman. Bar Societies are or have been chaired by women but the proportion of women appointees is far below their proportion of the profession as a whole. There is a dearth of appointees from the migrant population of practising Lawyers and no Aboriginal Australian on any senior Court of record.

Almost two decades since I embarked on a legal career, I was appointed a Judge of the County Court of Victoria – the first woman to be appointed to a Victorian State Court. My appointment did not meet with universal approval. At the private swearing

in the Chief Justice of the Supreme Court strode into the room and ignoring my husband and our two children, instructed me to take the Bible in my right hand, administered the Oath of Office and left without another word. In the County Court matters were not much better as far as the Chief Judge was concerned. I never had Chambers of my own in 3 ½ years. I was moved from Chambers to Chambers occupying Chambers belonging to a Judge on leave. My personal books and belongings were never unpacked.

There were no toilet facilities for any woman on the floors occupied by Judges. There were “Judges” toilets and “Associates” toilets on each floor. I asked for provision of facilities but was told there was no budget for such provision. I went home and did not return until I invited the Chief Judge to a press conference I was about to call on day three. Facilities were provided at my insistence for all women on that floor with a door label that said “Women”.

But as I said in the 1984 autumn issue of the ‘Victorian Bar News’, “I experienced a great deal of prejudice as a female barrister, from the community generally, from solicitors and from the Bench. However, I suffered no such prejudice from other members of the Bar, who formed a protective barrier around me, which I remember with great affection.” Similarly, several of my brother Judges were accepting and helpful particularly as it was a Court in which I had never practiced. I had three judges come to me separately unbeknownst to the other two and say, “you haven’t done much crime like this, have you. Okay how about you come at 7:30 in the morning and I’ll help you.” All offered a list of things to consider.

I was continuously sent to Circuits in the Latrobe Valley. At that time Latrobe Valley had the highest crime rate in the State and according to police data, this remains today with domestic violence topping the list followed by drugs.

The next three years brought more appointments and responsibilities: The Advisory Board to the Standing Committee for the Centre of Human Bioethics Monash University (1985), Deputy President of the Administrative Appeals Tribunal (1985), deputy president of The Accident Compensation Tribunal (1986), Convenor of the Sexual Abuse Sub-Committee of the Family Law Council (1986), of which I was still a member, Board Member of Queen Victoria Hospital Prince Henry’s Hospital and an Inaugural Board member of Monash Medical Centre. I chaired the non – clinical Ethics Committee in each hospital at which I was a board member.

At 46 years of age I was a County Court judge, a wife, a mother, a weekend farmer – serious farmer. We were working seven days a week; we had children who had sports activity from one end of Victoria to the other. I had obligations to my family as a whole, I insisted on doing everything so no one could say I was a bad mother but, it was exhausting.

Three and a half years after my appointment to the County court I remained the only female member of the State Judiciary and in early 1988 I resigned. My resignation unleashed a tsunami of disapproval. Amongst the criticisms was that I ‘set back the course for advancement for women for generations.’ This came from women lawyers and the members of the press. I didn’t see myself as responsible for all women and I wasn’t prepared to accept that responsibility. At the end of all of this I was absolutely rung out and I no longer held interest in fighting constant battles with the Court. I did not enjoy the work of a judge. At the Bar there was a collegiate environment that was absent from the bench, there was also excitement and competition.

I had no idea what I wanted to do or could do.

In March 1988 I joined Coles Myer as General Manager Legislative Affairs requiring monitoring the company’s compliance with relevant legislation and to represent the company in an advocacy role as necessary. I appeared at Industry Enquiries and oversaw he legal services of the various businesses. I dealt with Trade Practices issues and the like and was appointed an Associate Director of Coles Myer Ltd and a Member of the 16 person Executive Committee responsible for the running of the businesses and reporting to the Board. There were no other women on the Executive Committee and it appeared to me that that was unlikely to change within a reasonable time. At the time I left in 1998 the aggregate businesses had a turnover of $17 Billion with a workforce of 165,000 people.

I have found that the Law provides extraordinary opportunities in many diverse ways. It is my belief that the analytical training which forms an integral part of every Law Course can be massaged into any activity one desires to pursue. Even the Court process of advocacy for one’s client within strict ethical boundaries allows an understanding of issues in dispute which in the best scenario modifies extremes and displays a recognition of outcomes which although may not satisfy the protagonists absolutely, gives rise to a solution which serves the parties well.

In the criminal sphere robust advocacy and rejoinder permit the revelation of weaknesses and strengths, which allows juries to deliberate with a clear understanding of facts. That of course is the ideal and activities do not always lead to such results but to my mind the process is sound.

It is distressing that more than 40 years after I signed the Victorian Bar Roll, an exercise such as this is deemed necessary. It was always my hope that by now, 2015, there would no longer be a need for discussions concerning equality of opportunity within or outside the Law. There are Judges who happen to be women in all Courts but their number is far less than the community presence would dictate. There is no Aboriginal judge in any senior court of record and we have yet to see representation from migrant groups to the extent that they are represented in the community at large. The State Bars have many women as members and in some States women chair their Bar Council. Solicitors firms have an ongoing underrepresentation of women at senior partnership level. It is all taking too long. There seems to be little political or legal fraternity will in ensuring more rapid change via judicial appointments, senior partnerships and representation of all parts of the Community – being the Community the Law is required to serve.

Published resources

Resource
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Women Barristers in Victoria: Then and Now, The Victorian Bar, 2007,
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Magazine article
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Lynne joins her father in the ranks of QCs, Waby, Heather, 1985,
http://www.vicbar.com.au/vicbar_oral/images/raising_the_bar/LynneOpasQC.jpg

Book
The Family Law Act in practice., Opas, Lynne, 1976

Site Exhibition
Australian Women Lawyers as Active Citizens, Trailblazing Women Lawyers Project Team, 2016,
http://www.womenaustralia.info/lawyers

Archival resources

National Library of Australia
[Biographical cuttings on Lynne Opas, Family Court barrister, containing one or more cuttings from newspapers or journals]

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