

Report on a 2006-07 CSU Regional Archives Summer Research Scholarship

South West Slopes Law Society Scoping Study

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During summer I undertook a scoping study for the South West Slopes Law Society to assess the feasibility of producing a book about lawyers in the community. The history of legal practice in New South Wales has received little attention. There is a doctoral thesis by S.J. Woodman on the colonial period, but only one book, J.M. Bennett's *History of Solicitors in New South Wales*. It was published in 1984 and has a metropolitan focus with little, if any, reference to the region designated for the present project.

The designated region for the proposed book is Wagga Wagga and district, which includes the City of Wagga Wagga, Junee, Coolamon, The Rock, Lockhart, Gundagai and Tumut. Part of the rationale is that legal practices in Wagga Wagga have traditionally "visited" or maintained branch offices in these towns. Some of the towns also have independent practices not affiliated with those in Wagga Wagga, providing useful points of comparison.

A key objective of the study was to compile a comprehensive list of district solicitors and legal practices as far back as 1860, arranged by location. Personal details (dates of birth/death), dates of admission as solicitors, references in newspapers and obituaries (if any) were also recorded. Given the study's focus on the role of lawyers in the community, a particular concern was the human face of law, looking at individual lawyers and the relationships they maintained with partners and employees in their own practices, with other practitioners, with clients and, most importantly, with people and organisations in the designated region. Service in local government, in community and charitable organizations and in politics was consequently important.

Locating source material was challenging. CSU Regional Archives holds several small accessions of practice records from district law firms (mostly old deeds), but no private records from solicitors apart from Edwin Fenn Lusher and his daughter Evadne Fenn Lusher. The Archives' microfilm copies of Lusher family papers proved valuable because they give particular emphasis to the Lushers' extensive community involvements. They also include copies of Evadne Lusher's MA thesis from the University of Sydney and her MLitt thesis from the University of Cambridge. Her theses are

pioneering sociological studies of the Wagga Wagga community. Rather surprisingly, they have little to say about law and order and virtually nothing about legal practice in the city. More generally, the records reveal that both Lushers were prominent members of community organizations like the School of Arts, and that Edwin Fenn Lusher was a local government officeholder and a strong political activist. He was president of the United Australia Association, a key figure in the Riverina (New State) Movement and an outspoken supporter of post-war reconstruction.

Attempts to locate other archival sources through the online Register of Australian Archives and Manuscripts (RAAM), hosted by the National Library of Australia, and the PICMAN database at the State Library of New South Wales proved disappointingly unproductive. Similar difficulties were encountered in searching for photographs of individual solicitors, which are essential for the book's proposed picture/text format. Although photographs of some current practitioners can be sourced from the *Daily Advertiser* negative collection, contacts at each practice are being relied upon to supply images of individual solicitors, both past and present. While some practices have access to past photographs others are unsure about where such source material resides.

The lack of archival sources has enforced a heavy reliance on printed sources including monographs, newspapers and a variety of directories, reference books and indexes. Sherry Morris's Biographical Index proved especially useful in providing references to newspaper articles (mainly obituaries) about local lawyers, although there were occasional sensations like the death of H.B. Fitzhardinge, who was struck by a train while crossing the railway tracks at Wagga Wagga. Sands Directories were another useful source, but needed to be treated with caution because of their inconsistency in nomenclature of individuals and practices.

The local Law Society provided names of contacts in each of the practices in the designated region. Meeting with these contacts was a positive experience. Most were forthcoming and keen to take part in the study, even if they were not able to lay their hands on the required information immediately. In a few instances some recently arrived partners were unaware of the history of their practices.

Several in-depth pilot interviews were conducted with selected practitioners who indicated a willingness to speak at length about their own experiences,

about their community and charitable activities, about the changing nature of legal practice within their locality, and about changes in the structure and management of legal practices more generally.

The interviews suggest that the nature of legal practice and the way solicitors interact with the community has changed significantly. For instance, solicitors were more heavily and more publicly involved in local organisations in the past through serving as councilors and even mayors for successive terms, sitting on hospital boards and administering sporting groups at the local and regional levels. Several partners pointed out that their practices still do voluntary work for community and charitable organizations without charge, one practice claiming it accounted for as much as 20% of the work done in the office. A lot of this activity is invisible to the wider community.

Older members of the profession who were interviewed suggested that legal practice is much more competitive, “cut throat” and pressured than it used to be. Smaller town practices in the past would pass on work to one another and often refer litigation, matrimonial and criminal cases to colleagues in Wagga Wagga. Surviving practitioners from smaller towns say they

preferred to engage in de facto mediation in order to retain clients in a situation where the practice could well be acting for both parties and only advised clients to go to litigation as a last resort.

The rural character of these country town practices has also diminished with practitioners doing more commercial work for small businesses. Lawyers in small towns no longer provide taxation services (that is, preparation of returns) to clients, although this was once an important point of contact and source of revenue. Other changes are related to demography, with some of the towns closer to Wagga Wagga becoming bedroom suburbs for wage and salary earners who may well prefer to have their legal work done elsewhere.

These days most of the smaller practices have been wrapped up into bigger entities, although some of them continue to operate relatively autonomously under the “umbrella” of the parent practice in Wagga Wagga. These amalgamated Wagga-based practices are much more like their Sydney or Melbourne counterparts, with Law Society specialist accreditation in fields like company law, estate and succession planning, which have grown more complicated and specialized over the years.

Practice management has changed as well. The managing clerk no longer exists though they once were the backbone of law practices, doing all the conveyancing, preparing the accounts and supervising clerks and shorthand typists. One interviewee recalled that Claude Ryan, the managing clerk at Walsh & Blair, was with them for “about 50 years”! Legal partnerships are also giving way to incorporated entities run by practice managers. This appears to be less a matter of reducing joint and several liability than of making it easier for equity holders to come in and out of the practice. Incorporation also brings advantages in terms of superannuation and other benefits. Several of the interviewees spoke of the difficulty of attracting and retaining partners, employed solicitors and “paralegals”. This is not only a problem for the smaller towns, but for Wagga as well. The gender balance of country practices also appears to be different from metropolitan counterparts.

The South West Slopes Law Society is currently assessing the financial implications of proceeding with the proposed publication. Assuming it decides to proceed, the next phase will need to be the conduct of more in-depth interviews. Those that already have been done suggest that they are one of the most productive sources for a project of this type, not only providing raw material for authors, but raising issues in need of explanation.