



## **In Search of Origins: Blindness in History and Law**

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### **The 2010 Matt Laffan Lecture in Social Justice**

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Mr and Mrs Laffan and other members of the Laffan family; Professor Gillian Triggs, Dean of Law; Mr Ben Cheshire; distinguished guests, ladies and gentlemen. It is indeed an honour for me to deliver the second Matt Laffan Memorial Lecture in Social Justice. Matt was one of the most captivating and inspirational speakers whom I have ever listened to; and although we did say a brief hello after one of his talks, sadly I never really came to know him. Yet, like many of us persons with disabilities, he decided that his disability would not in any way hold him back from living life to the full. Matt had an outstanding legal career with the NSW Office of the Director of Public Prosecutions, he served on a rugby tribunal and he even stood for Lord Mayor of our beautiful city of Sydney.

#### **1. Introduction**

My subject this evening is a twofold one, blindness in history, and also blindness in law. In other words, I shall examine a number of blind persons who have played important roles in the history of our world. As a blind lawyer, in the final portion of this narration, I shall comment on several outstanding blind lawyers and shall unpack two landmark legal decisions dealing with we blind people. I have chosen this topic to increase the awareness of how we blind have contributed to the history of our world. As a blind lawyer myself, this is also an opportune forum to recount the stories of some blind lawyers, as well as the stories of several blind persons whose litigation has developed two legal precedents. Before embarking upon this task, however, I wish to say a few words about why, so late in my life, have I sought to search for my origins as a member of the blind community who have peopled our world ever since human beings first came to life on this magnificent and sacred planet.

#### **2. In Search of My Origins**

I was born at the Royal Women's Hospital in Melbourne on Friday 8 October 1948, that is more than sixty years ago. My blindness resulted from a medical intervention after my premature birth. As a prem baby who came between eight and ten weeks early, in order to aid my breathing I was placed in an air tight humidity-crib and given pure oxygen.[2] In a nutshell, high levels of pure oxygen in premature babies causes the arteries in their eyes to constrict and even to be destroyed. In turn, this constriction causes further blood vessels to grow at the backs of the eyes which are unstable and which detach the retinas. In my case, this meant that I became blind within a few hours of my birth.



In medical terminology, my blindness was due to retrolental fibroplasia, which is now known as retinopathy of prematurity. By the mid-1950's and after much research in the United States and also work done by Australia's own Dr Kate Campbell, researchers learned of the dangers of giving such high levels of pure oxygen to prem babies. Today the oxygen which is given to premature babies is mixed with nitrogen and now retinopathy of prematurity is a rare but not an unknown medical condition. I am therefore a retrolental fibroplasia child, or in short form an RLF child, and about ten thousand of us were born from 1945 to 1955 in the developed world where sealed humidi-cribs were available.

From when I was a very small boy at kindergarten and in grades 1 and 2 at the Royal Victorian Institute for the Blind school in St Kilda Road Melbourne, I became determined to succeed and to carve out a life for myself despite my total blindness. Although it has been a long journey, I have had a relatively successful career as an academic labour lawyer, culminating in my five year term as the Dean of this law school from July 2002 to September 2007. I have been blessed by Marriage to Professor Mary Crock - my life partner - and also to be the dad of three very special children.

However, for most of my life, as I now perceive it, I had a strange attitude towards my blindness. For me my lack of sight was a big stumbling block which needed to be kicked aside so that I could get on with my life. In other words, throughout my entire career I tried to lock my blindness away in a cupboard and to succeed despite being blind. I now realise that this attitude caused me to steer away from blindness situations for fear of being type/cast as little more than a blind lawyer. For example, I believe that this attitude caused me not to study discrimination and disability law in any depth. Yet, if friends, colleagues, students or acquaintances were asked to describe me to other persons, they would say, "Ron McCallum is a blind labour law academic." Put another way, whether I liked it or not, my total blindness was as obvious as is my gender.

My election in November 2008 as an inaugural member of the United Nations Committee on the Rights of Persons with Disabilities was an unexpected turning point in my career. This Committee is the treaty body which oversees the United Nations Convention on the Rights of Persons with Disabilities. Being exposed to disability issues throughout our world has been a life changing experience, and it has caused me to think more deeply about my own blindness. According to United Nations figures, there are approximately six hundred and fifty million persons in our world who have disabilities. World Health Organisation figures show that there are approximately 161 million people who are blind or vision impaired and that there are approximately 37 million persons who are totally blind with most of us living in developing countries. This has made me very aware that as a blind person in a developed nation like Australia, I have had many advantages, the most important being my ability to access computer-based adaptive technology which has so enriched my life.

Of greater importance than my personal circumstances, this new awareness of my blindness as an integral part of me, has sent me on a voyage of discovery in search of the roles which we blind persons have played in history and in law. In the remainder of this lecture, I shall share the fruits of this voyage. There are, however, three caveats. First, I have only commenced my research, so please forgive any referencing gaps in the present narration. The second caveat is



that within the confines of a lecture-length piece, it is not possible to be comprehensive with respect to this large subject. Given my own blindness, I have tried in most instances to confine this account to persons who lost their sight early in life.[3] It is also the case that as illustrations I have chosen blind persons whose lives interest me. The third and final caveat is that we know far more about remarkable blind men than we do about equally outstanding blind women. Sadly, in what follows, all but one of the blind persons whom I mention are men. It is my hope that future scholars may be able to redress the balance and undertake research on famous blind women.

When undertaking the research for this lecture, what has struck me has been some significant characteristics of successful blind people. Throughout history, it has been our ability to articulately communicate with other persons which has given us an easier entry into mainstream society than has been the case for other groups of persons with disabilities. It is also the case that as we have been unable to read until the invention of Braille almost two hundred years ago, our prodigious memories have been of enormous assistance to us. Even in my own development as a lawyer, I have had to rely upon my memory to a greater level than do most lawyers of my generation. As an aside, I am amazed how so many people these days down-play memory. After all, it is memory which is at the root of diagnosis and classification which are the hall marks of most professions. In my view, memory is an element of intelligence, and its harbouring and analysis of experiences should lead inevitably to humane thinking.

### **3. Blind People in History**

The undertaking of research for this lecture has been truly fascinating to me, and I now wonder why I did not seek to learn of blind people in history much earlier in my life.[4] In my early researches, I speedily learned that our general histories have for too long neglected the lives of truly remarkable blind and vision impaired persons.

Ever since the emergence of human kind on the planet earth, blind and vision impaired women children and men have been present in families, tribes, clans and nations. We were there when we lived in caves, as hunter gatherers, as agriculturists, as town dwellers and as immigrants. I have no doubt that we blind and vision impaired persons will continue to people the earth and possibly other planets until the demise of our species. In other words, we are part and parcel of the human family, and although health and medical advances may lessen our numbers, on the other hand, our increased longevity will lead to more of us losing our sight in our senior years.

We blind women and men have been mums and dads when societies have enabled us to marry or to partner. Throughout most of the history of our species, parents of blind children have had it tough because until the development of modern medicine many such parents were stigmatised by the notion that the blindness of their children was because of some wrong or sin on their part.

A number of accounts of life in the ancient world deal with the blind, with the most prominent and well-known being the Christian gospels which describe Jesus curing several blind persons. My favourite story which is for me the most precious passage in the New Testament is to be found in chapter 9 of John's gospel. It concerns Jesus giving sight to a man who had been born blind, it is short and should be read in full, but the following poor summary of mine will suffice.



Jesus saw a blind man, and his disciples asked him whether it was the man's sins or those of his parents which had caused his blindness. Jesus said, "Neither this man nor his parents. It was to let God's work be shown plainly in him." [5] Jesus then mixed some earth with his saliva, placed the mud on the man's eyes, told him to go and wash it off and when he did so, he could see. The pharisees were upset that Jesus had cured him on the Sabbath and they questioned the man and his parents. When the man said that Jesus was a prophet he was driven out of the town. Within a short while, Jesus found him and asked if he believed in the son of man, that is in Jesus Christ, he said "yes" and knelt before Jesus. It is clear that the man who had been born blind was courageous when facing the pharisees, and he was open to acceptance of Christianity. I hope that he married, had children and lived a bountiful, long and fulfilled life. His articulate and forthright courage has been an example to me, and no doubt to countless blind and vision impaired women, children and men over the last two millennia.

Throughout our known history, blind people have often been story tellers and teachers. More especially in oral societies, their memories enabled them to be custodians of the oral traditions of the tribe or nation. While it is not possible to factually verify, it does appear that the ancient greek story teller Homer was blind and had to memorise and then dictate his epic poems, the *Iliad* and the *Odessey*. Another famous blind scholar was Didymus of Alexandria who lived in the Fourth Century AD. He taught philosophy and theology and was known as a truly great teacher. Coming closer to our time, The Seventeenth Century British writer Milton became blind and had to dictate his most famous epic, *Paradise Lost*.

Blind persons and music are often placed together by people, most probably because there have been countless blind musicians over the millennia. Undoubtedly, the most famous blind musician of our time is Steveland Judkins, who is better known as Stevie Wonder. He was also a retrolental fibroplasia child, being born premature in Michigan in 1950. After all, music is an art form where we blind persons can fully participate along with everyone else.

There have been a number of significant blind composers over the last few centuries, with the most famous being Maria-Theresia von Paradis who was born in Austria in 1759 and died in 1824. When still a toddler she lost her sight, but became a composer, as well as a singer and a pianist. She knew Mozart who thought well of her, and it is my understanding that Maria-Theresia was one of Beethoven's piano teachers when he was a young boy. It is often not realised that J S Bach went blind towards the close of his life, however, he recovered his sight in the three days before his death because in my view God smiled upon him. Of all the composers, I gain the most spirituality from his music, though of course Beethoven and Handel are also precious to me.

In the Twentieth century, Joaquin Rodrigo was the most well-known blind composer of classical music. He was born in Spain in 1901 and passed away as a very elderly man aged 97 in 1999. He lost most of his sight when he contracted diphtheria when aged three and he is best known for his guitar music and especially for his guitar concertos.

One of my special memories was listening on short wave radio to the BBC early on the morning of 18 October 1978 Melbourne time, and hearing the inaugural performance of Rodrigo's flute



concerto which he especially wrote for the superb flautist James Galway. James played the flute and at the end he brought Rodrigo up onto the stage where they both received rapturous applause.

For me, the two most remarkable blind people in history are Louis Braille, who is very well-known, and Nicholas Saunderson who is not at all well-known.

Louis Braille was born on 4 January 1809, and died shortly after his forty-third birthday in January 1852.[6] Louis Braille was born in the village of Coupvray which is about 50 kilometres east of Paris. His father was a harness maker, and when aged three in 1812 young Louis injured himself in one eye when playing with his Dad's Awl which is a sharp instrument used to make holes in leather harnesses and straps. The eye became infected, he lost his sight in it, and because of what is known as sympathetic ophthalmia he also lost the sight of the other eye and became totally blind. Louis was a bright and musical boy and at the age of ten he won a scholarship to the blind school in Paris. In 1821, Captain Charles Barbier of the French army visited the blind school because he was trying to perfect a type of night writing for soldiers to use in the dark and no doubt wished to test this system on some blind people. His system comprised groups of twelve dots and some dashes. Apparently Louis Braille found this night writing incomprehensible and so he set out to invent a better system and he came up with braille in 1824 when he was only fifteen years of age. This is, by any measure a truly remarkable feat.

The essence of braille is groups of six dots, three dots down and two dots across making a braille cell of six dots, and as Louis Braille showed the braille cell can contain sixty-three combinations of dots. These combinations mean that there is more than enough for the alphabet, punctuation, and in French braille for the accented letters. Its power is that a blind reader can instantly recognise any dot combination in a braille cell just with one touch of the finger. It was a truly liberating invention which has enabled we blind people of the last two hundred years to read and to write in most languages, including musical notation. I use braille on most days of my life and am eternally grateful to Louis Braille for his invention.

Louis had to fight long and hard to have braille accepted as the appropriate method for blind people to use to both read and to write, and this recognition did not occur until after his death. In large part, I suggest this was because when people looked at braille with their eyes only, they did not comprehend the benefits of a six dot cell, as distinct from a method whereby dots, dashes and circles were used. After all, they look more picturesque than the six dot cell. Yet for we blind, one touch of the braille cell is enough and its symmetry is magical. It was, at the end of the day, the blind themselves in France who understood the superiority of braille and in the fullness of time we blind won the day.

Louis Braille was also a fine pianist and a gifted organist. From all accounts he was very religious and saintly in his dealings with others. Sadly, Louis Braille never married, and never achieved the fame which only occurred long after his death. He died of tuberculosis in early 1852, but for the previous eight or so years this disease caused a sharp deterioration in his health.

Perhaps as I am also an academic, for me, the most amazing blind person in modern times was Professor Nicholas Saunderson who lived in England from 1682 to 1739.[7] Nicholas was most



probably born in early January 1682 for there is a record of his baptism on 20 January of that year. He was the only son of John and Anne Saunderson who were relatively wealthy. When Nicholas was only twelve months old an attack of smallpox destroyed his eyes and left him blind. In any event, his father taught him mathematics, he attended a local school, learned to speak French fluently and became well versed in the Greek and Latin classics, and he was also musical and played the flute. From accounts of his knowledge, especially of the Classics, he must have had people reading to him for hours and hours, probably in both Latin and Greek. No doubt he possessed an extraordinary memory. He learned the letters of the alphabet by tracing the letters on tomb-stones, and as a small boy I can also remember doing this in cemeteries; and I also traced the letters on the old glass milk bottles which the milkman used to deliver to our house. Nicholas invented a board with holes into which pegs of various sizes could be put to aid him in arithmetical calculations. Interestingly, in primary school I learned arithmetic on the Taylor slate which appears to have been derived in part from Saunderson's slate. The Taylor slate on which I did arithmetic, used square lead pieces which were placed into octagonal holes.

When he was twenty-five in 1707, Nicholas Saunderson went up to Christ's College Cambridge where he taught Sir Isaac Newton's *Principia*, as well as Newtonian mathematics and even optics. It does appear that while his arithmetic board was helpful, he did do much of the calculus in his head. In 1711, he was elected to the Lucasian Chair in Mathematics which had also been held by Sir Isaac Newton. He did not have a degree, and this would have barred him from the Chair election, however, Queen Anne recommended to Cambridge University that Nicholas be awarded a Master of Arts degree which occurred on the day before his successful election. In 1714, King George I appointed Saunderson as a Commissioner of the Board of Longitude where he sat with Sir Isaac Newton and Edmund Halley who gave his name to the famous Halley's Comet, and in 1719 Nicholas was elected a Fellow of the Royal Society. In 1723 when he was about forty-one years of age, he married Abigail Dickens and they had a daughter and a son. After a debilitating illness, Nicholas passed away in 1739. Contemporaries remember him for his truly superb teaching and for the manner in which he expounded and explained mathematical concepts. His son posthumously published Saunderson's large book on mathematics in which concepts are clearly unpacked and explained.

Nicholas Saunderson is, in my opinion, an example to we academics because his life bespeaks of how superb and dedicated tertiary teaching is able to enlighten so many students. Whenever I think that I am having it tough, I turn to Nicholas Saunderson for inspiration and after a few minutes of meditation I get back on my feet. What would Nicholas Saunderson have achieved had he been given access to the computer-based adaptive technology which so enriches my life.

Over the past one hundred years, blind persons have engaged in very many occupations. For example, there have been blind school teachers, university lecturers and professors, business persons, physiotherapists, Chiropractors and a large number of lawyers. Let me mention here two truly remarkable blind men of our present time, Jacques Lusseyran, the French resistance leader and later University Professor, and the English politician and Cabinet Minister David Blunkett.

Jacques Lusseyran was born in Paris on 19 September 1924.[8] On 3 May 1932 when he was seven years of age, Jacques Lusseyran was blinded in a school room accident. When he and



other primary school children were rushing for the class-room door to go out for morning play, Jacques was jostled from behind by another child, he fell and struck his head on the teacher's desk and the arm of his glasses was pushed into his right eye. It was removed in an attempt to prevent sympathetic ophthalmia, but in any event the retina of his remaining left eye was already torn and he became totally blind. As he tells it in his autobiography which covers his life up until 1945,[9] within a few weeks he began to see an inner light and also images in his mind. Having never seen myself, I do not understand this phenomenon, however, this inner vision gave him a great deal of comfort and stability. Young Jacques speedily mastered braille, and although there were excellent schools for the blind in Paris, wisely his parents kept him at his old school from whence he graduated to High School and then to the University of Paris in 1941. This mainstreaming of his education, I infer, greatly aided his social development.

In late 1940 when Jacques Lusseyran was sixteen, he established a group of young persons to resist the Nazi occupation, and they called themselves Les Volontaires de la Liberte, that is, the Volunteers of Liberty. Jacques interviewed young men older than himself and decided who would and who would not be admitted to the Volunteers of Liberty. He had an uncanny ability to deduce so much from a persons voice, breathing, etc, which are the main ways we blind people identify with others. The Volunteers of Liberty began to produce a newspaper to give out news to citizens. In early 1943, they joined with a much larger resistance group called Defence de la France which became known as DF, and they were able to more broadly distribute a much larger newspaper. Jacques and many of his colleagues were betrayed by an informer, and early on the morning of 20 July 1943 he was arrested by the Germans. After spending six months in the Fresnes Prison in Paris, he and many of his co-resistance workers were sent to the Buckenwald concentration camp in Germany. In mid-April 1945 Buckenwald was liberated, and Jacques Lusseyran was one of the very few survivors from his group.

After the war, he continued his studies and in the 1950's, he became a university professor in France. Later he emigrated to the United States and was made a full professor at Western Reserve University in Cleveland. I presume that his field of study was Literature. He married Marie and became a father, however, tragically in 1971 when Jacques Lusseyran was only forty-six years of age, he and Maree were killed in a car accident in France. His truly remarkable life where he showed great courage when just an adolescent is an extraordinary example to we blind people. It is fitting to recite the final words of his autobiography where he speaks of two truths in the following words. Jacques Lusseyran wrote:

The first of these [truths] is that joy does not come from outside, for whatever happens to us it is within. The second truth is that light does not come to us from without. Light is in us, even if we have no eyes.[10]

The second gifted blind person of our own time is the Right Honourable David Blunkett.[11] He was born blind in Sheffield on 6 June 1947 and like myself he attended boarding schools for the blind from an early age. David went to the University of Sheffield where he graduated with a Bachelor of Arts degree in political theory and institutions. In 1970, he was elected to the Sheffield City Council where he served until 1988. David became the leader of the Sheffield City Council from 1980 to 1987, and it was known as one of Britain's most left-wing councils. Interestingly, David also lectured in industrial relations and politics from 1973 to 1981, and in



our chats we have discussed teaching as blind people.

At the 1987 general election, David Blunkett stood as a Labor Party candidate for the constituency of Sheffield Brightside, he won the seat and has sat in the House of Commons for the last twenty-three years. When Tony Blair's Labor Party Government took office in May 1997, David became Secretary of State for Education and Employment, and he found himself Britain's first blind Cabinet Minister. After the 2001 election, David Blunkett became Home Secretary, and as I understand cabinet rankings when Home Secretary he was number three behind Prime Minister Tony Blair and the Deputy-Prime Minister. It is fair to conclude that he was a conservative Cabinet Minister which appeared to contrast with his earlier left-wing outlook when he was on the Sheffield City Council. David has had his "ups and downs", including fathering a child with a married woman with whom he had an affair. In 2004, questions arose as to whether he had used his influence to assist with the immigrant status of his former lover's pilipino nanny. In any event, he resigned from the Home Secretaryship in late 2004, and although he was Secretary of State for Work and Pensions in 2005, he never again entered Cabinet. David is currently a back-bencher in the Gordon Brown Government, and in 2009 he married Dr Margaret Williams, and together they visited Australia in November 2009. David and I have met one another on a couple of occasions, and he is a person with a remarkable presence and a politician right down to his finger tips. His achievement of becoming Tony Blair's Home Secretary is a truly remarkable one and bespeaks of his tenacity and perseverance.

#### **4. Blind People as Lawyers**

Many blind persons have found rewarding careers in the law, and I am familiar with some of their achievements in the developed Common Law world, that is in the United Kingdom, the United States, Canada, South Africa, and in Australia and New Zealand. Like no other profession, the essence of lawyering is a way of thinking backed up by legal knowledge. In other words, a lawyer's work is mainly "all in the brain work" consisting of analysis, diagnosis and classification where memory of legal material is a pivotal part of the process. This is perhaps why many of us with sensory or motor disabilities have turned to the law as a road for advancement. Matt Laffan, I am sure, viewed the law as a means of social advancement for we persons with disabilities.

This evening, I shall speak about four blind lawyers who would receive entire chapters in any history of blind and vision impaired lawyers. The first is Sir John Fielding who was a half brother to the English novelist Henry Fielding.[12] When his half brother died in 1754, Sir John Fielding, known as Jack Fielding took over As Chief Magistrate at Bow Street London and he held this office until 1780. It does appear that owing to a disease in his eyes he lost his sight when still a young man. However, it was said of him that he could recognise the voices of three thousand London criminals, and he appears to have used the same methods of identification and perception as did Jacques Lusseyran. It is my understanding that even when habitual criminals tried to trick him by disguising their voices, he never erred in calling them by their true names. He re-structured Bow Street, employing a number of constables who were known as the Bow Street Runners. Though I know far too little about him, he must have been a quite remarkable Chief Magistrate.



The second lawyer is the famous Sir Alfred Rupert Neale Cross, who was known to everyone as Rupert Cross and I was fortunate to briefly meet him in 1968. Rupert was born in 1912, but when he was about one year old he contracted cancer of the eyes which left him totally blind. As well as being an outstanding legal academic, Rupert was a school boy chess player of some note. He was Vinerian Professor of English Law and Head of the Department of Law of Oxford University. He taught at Oxford from the 1950's until the 1970's, and his most famous book titled, *Cross on Evidence*, is one of the Twentieth Century's most well-known pieces of legal scholarship. He died in 1980.

The third blind lawyer is Justice David Tatel who was appointed by President Bill Clinton to the United States Court of Appeals for the District of Columbia circuit in 1993.[13] David was born in the early 1940's, however, when he was a teenager, the disease of retinitis pigmentosa began to destroy his sight and David became legally blind in the 1970's. Justice David Tatel is one of his nation's most outstanding appellate judges. He and I have spoken on the telephone, and his warm and friendly personality shone through his gentle words.

Last but not least is the now retired Associate Professor Laurie McCredie. After being blinded when still a very young man in a military accident in Australia in 1952, he retrained as a lawyer, spent some time in legal practice and in mid-1966 commenced teaching law at Melbourne's Monash University. The presence of Laurie McCredie at Monash University was a major reason why I went to that University to study law in 1967. Laurie has been, and still is a great inspiration to me, and is beloved by his students more than any other academic of my acquaintance.

## **5. Two Landmark Legal Decisions**

In my searches through the law books for cases involving we blind people, I have chosen two English decisions which I regard as landmark cases. They have found their way into the standard texts, however, they are worth unpacking again through the lens of a blind academic lawyer. The first decision is *In The Estate of Charles Gibson* [14] which was decided by Justice Pearce in 1949 sitting in the Probate, Divorce and Admiralty Division of the English High Court of Justice. The judge held that a blind person could not witness the signature of a testator. The second is the more famous decision of *Haley v London Electricity Board*[15] where the House of Lords held that bodies digging up footpaths owed a duty of care to blind people. I shall examine these decisions in turn.

In 1942, Mr Fred James suffered an accident which caused him to be blind. He was at that time middle aged, and also the managing clerk to a firm of solicitors. It appears that after he became blind, his wife assisted him with his work as a managing clerk. Some eighteen months after his accident, that is in 1943, he and his wife purported to witness a testator signing a second codicil. A codicil is a document whereby a testator alters some aspect of her or his existing will. Section 9 of the *Wills Act* 1837 (UK), required that the testator had to sign the codicil " ... in the presence of two or more witnesses, present at the same time, ... " etc. The question which Justice Pearce had to decide was whether Mr Fred James could validly witness the testator's signature. If so, the codicil was valid, but if not, the codicil was invalid. Mr James gave evidence that he had known the testator since 1932 and that he recognised the testator's voice. Furthermore, at the



relevant time, the only three persons present in the small room were the testator, his wife and himself.

It may be asked why did this matter come to court at all? After all, a blind person cannot see another person put her or his signature to a document. In my view, this matter most probably came to court for two reasons. First, it was important to one or more beneficiaries to have the second codicil held to be valid. Second, it is fair to conclude that the Nineteenth Century authorities on witnessing wills and codicils were somewhat unclear. Some cases seemed to assert that so long as it can be said that a person had an opportunity to witness the signature then this was sufficient. However, Justice Pearce held that as Mr James was blind at the relevant time he could not witness the testator's signature upon the codicil. Speaking of Mr James, Justice Pearce said:

[Mr James] ... had been blinded eighteen months before, in his middle age. He was not then so clever, therefore, in his remaining faculties as people who have been born blind and who have had many years of affliction in which to train their other senses. His evidence was honest, but he admitted that he relied on presumptions in regard to several matters that happened. On his evidence alone, without that of his wife, I should feel no certainty whether the document had been signed by the testator and the other witness, nor would he be able to identify the document.[16]

*Haley v London Electricity Board*[17] was decided by the House of Lords in 1965 where their Lordships unanimously reversed an unanimous Court of Appeal and found in favour of the blind plaintiff. I can do no better than to quote the facts as set out by Lord Denning MR when sitting in the Court of Appeal. Lord Denning MR said:

John Haley, the plaintiff, is now aged sixty-four. Twenty-five years ago he suffered a great misfortune. He was hit in the eye by a hard ball, and he was rendered completely blind. But he overcame this misfortune with great perseverance and courage. He became a telephonist employed by the London County Council. He worked at the Education Office in Greenwich. Every day he walked to the bus stop and he then caught a bus to his work. He went by himself from his home along Charlton Church Lane, using his white stick, tapping his way along. He had gone this way for seven years and knew every inch of it. Then on October 29, 1956, he met with another great misfortune. He was walking along the pavement, feeling his way as usual, when his right leg came into contact with something in his path. It was about four inches above the ankle. He was "sort of catapulted over," he said, and fell, hurting his head. The injury affected his hearing; and the effect of it on him, already blind, was much greater than in a normal person. He became very upset emotionally. Not only is he blind but he is for all practical purposes deaf. The result is he has not been able to work at all since the accident.[18]

Some workers from the London Electricity Board had dug a shallow trench across the footpath. They had put up a sign which enabled pedestrians to walk out into the roadway until they got past the trench. To prevent pedestrians from falling, one of the workers had placed a punner-hammer across the footpath just before the excavation. A punner-hammer is a long handled tool which has at one end a big round head which is used for flattening down earth. The end of the



handle of the punner-hammer was placed on some railings of the fence at about the height of two feet with the punner head at the other end. While John Haley's white cane had connected with the punner-hammer handle it was obviously an inadequate guard.

In 1950, in *Pritchard v Post Office*[19] the Court of Appeal had found against a blind woman who had fallen down an open manhole and had suffered injuries. The case was on appeal from the Liverpool County Court and it was briefly argued before the Court of Appeal. At the end of the argument, Sir Raymond Evershed MR delivered an extemporaneous judgment, with Lord Justice Jenkins and Justice Roxborough simply stating their agreement. The Post Office workers had removed a manhole cover and had placed a wooden guard around the opening. It does appear that this guard may have been adequate, and there was no evidence that the plaintiff had been using a white cane. In these circumstances, the Court of Appeal simply affirmed the holding by the trial judge that there was no negligence. This was hardly a precedent of significance, and it certainly did not stand in the way of the House of Lords in finding for John Haley.

Why then did Lord Denning MR and Lord Justices Donovan and Danckwerts hold that the London Electricity Board had not been guilty of negligence, more especially when the improvised guard was so inadequate. In all of the circumstances, I would have expected compassion on the part of Lord Denning MR, however, he simply said:

[The defendants] ... must realise that [the footpath] ... is used by men and women hurrying to work, by boys and girls running to school, and by old people pottering on their morning walk. All these are commonplace users of the way, and proper provision must be had for their safety. But the defendants do not have to cater for the man who walks with his head in the air and does not look where he is going. He is such an exceptional person that they need not provide for him. If he runs into a fence or guard, it cannot be helped. It is not their fault. Likewise, I am afraid I must say, the defendants do not have to provide for the blind, at any rate in places where they have no particular reason to expect blind persons to be. It would be too great a tax on the ordinary business of life if special precautions had to be taken to protect the blind.[20]

I met Lord Denning in 1974 when he attended an Australasian Law Teachers' Association conference at Monash University. Having the brashness of the young, I told Lord Denning that I agreed with most of his decisions, but that I was pleased he had been overruled by the House of Lords in *Haley's Case*. Lord Denning was both gracious and courteous. He said, "Mr McCallum, negligence is a very thin line, and the plaintiff did not get across it." The ruling of the Court of Appeal fits within the old paradigm of the medical model of disability. Under this model, persons with impairments should be cured, but where this is not possible they should be looked after. If they choose to venture forth, they do so at their peril.

An unanimous House of Lords overturned the Court of Appeal.[21] Counsel adduced evidence of the number of blind people in Britain and in London, and highlighted evidence from the Post Office that it used adequate guards having in mind blind pedestrians. Lord Reid said the following in his speech.

In deciding what is reasonably foreseeable one must have regard to common knowledge.



We are all accustomed to meeting blind people walking alone with their white sticks on city pavements. No doubt there are many places open to the public where for one reason or another one would be surprised to see a blind person walking alone, but a city pavement is not one of them. and a residential street cannot be different from any other. The blind people we meet must live somewhere and most of them probably left their homes unaccompanied. It may seem surprising that blind people can avoid ordinary obstacles so well as they do, but we must take account of the facts. There is evidence in this case about the number of blind people in London and it appears from Government publications that the proportion in the whole country is near one in 500. By no means all are sufficiently skilled or confident to venture out alone but the number who habitually do so must be very large. I find it quite impossible to say that it is not reasonably foreseeable that a blind person may pass along a particular pavement on a particular day.[22]

Almost fifty years have passed by since *Haley's Case*, and today it would be unthinkable, I suggest, for a trial judge to find against a blind plaintiff where such inadequate guarding had been used. We blind people have come out of our houses and have been freed from the shelter of the old medical model of impairment. However, *Haley's Case* is a pertinent reminder of a past battle which has enabled us to use the streets in our daily lives.

## **6. Conclusion**

The purpose of this second Matt Laffan Lecture in Social Justice has been a twofold one. First, I have examined the roles that some famous blind people have played in the history of our world. Second, as a blind lawyer myself, I have commented on four truly outstanding blind lawyers and have unpacked two landmark legal precedents concerning blind people. My concluding message is that we blind persons, along with all other persons with disabilities, seek acceptance from the community. We are part and parcel of the human family, and we have the same rights as do all other citizens. At times we may need a little more care than do most, but no more care than is given to children, to the elderly, to persons suffering sickness or injuries or to women in the late stages of pregnancy. A society which is helpful to all groups is both wholesome and nourishing. Like all groups, we blind persons have played a role in enriching human life in our world and we wish to join hands with you and to walk further down this path.

Professor Ron McCallum AO

## End Notes

- [1] Professor of Labour Law, University of Sydney. I thank Ms Linda Steele for assisting me with the historical research for this lecture. I also thank Ms Janice Sim and Ms Belinda Reeve for their research assistance. I thank my wife, Professor Mary Crock, for her love and understanding over the past quarter century.
- [2] In what follows, I have drawn on the work of David Brown and also upon discussions with my late Father-In-Law Professor Emeritus Gerard Crock, David Brown, "Establishing Proof", *Washington Post*, 19 April 2005, (available online at: <[www.washingtonpost.com](http://www.washingtonpost.com)>).
- [3] I have not examined famous blind people like Helen Keller who were deaf as well as blind, or other persons who had a further disability above and beyond their blindness.
- [4] In what follows in this lecture about famous blind people, I have in large part relied upon the address by Kenneth Jernigan, President of the National Federation of the Blind which he delivered at the annual convention in New York City on 5 July 1973 which was titled: "Blindness: Is History Against Us?". I acknowledge that Kenneth Jernigan has shown me that blind persons are usually absent from our general histories. I have also visited the website of the Royal National Institute for the Blind (RNIB) of Great Britain which contains a section titled "Famous people with sight problems", whose links go to other websites. See <<http://www.rnib.org.uk/aboutus/aboutsightloss/famous/Pages/famous.aspx>>. I have also consulted Wikipedia on a number of occasions when researching for this chapter.
- [5] John's Gospel, Ch 9 verse 3.
- [6] There is a significant amount of material on Louis Braille. In what follows, I have relied on my general knowledge and recollections, and also on the following sources. The classic account of Louis Braille is given in Jean Roblin's biography titled, *The Reading Fingers*, 1952 which is available on the American Foundation for the Blind's website at: <<http://www.afb.org/roblinbiography/book.asptwo>>. I have also relied upon two papers which were delivered at the International Conference to celebrate the Bicentenary of Louis Braille held at UNESCO Headquarters in Paris from 5 to 8 January 2009. See, Euclid Herie, available online at: <[http://www.avh.asso.fr/rubriques/infos\\_braille/actes/06-3%20Euclid%20ERIE%20\(Eng\).htm](http://www.avh.asso.fr/rubriques/infos_braille/actes/06-3%20Euclid%20ERIE%20(Eng).htm)> and Michael Mellor, available online at: <[http://www.avh.asso.fr/rubriques/infos\\_braille/actes/06-5%20Michael%20MELLOR%20\(Eng\).htm](http://www.avh.asso.fr/rubriques/infos_braille/actes/06-5%20Michael%20MELLOR%20(Eng).htm)>. The biography on Wikipedia is also useful and appears to me to be accurate.
- [7] The sources on which I have relied concerning Nicholas Saunderson are, J J Tattersall, "Nicholas Saunderson: The Blind Lucasian Professor", (1992) 19 *Historia Mathematica* 356-370, and the biography of Nicholas Saunderson on the Lucasian Chair website, Cambridge University, where details are given of his written work which was posthumously published by his son. See <[www.lucasianchair.org/18/saunderson.html](http://www.lucasianchair.org/18/saunderson.html)>.
- [8] Jacques Lusseyran, *And Then There Was Light - Autobiography of Jacques Lusseyran Blind Hero of the French Resistance*, translated from the French by Elizabeth R Cameron, (Morning Light Press, London, 1998, originally published Heineman, London). I am grateful to my blind friend Tim Noonan for putting me in touch with this superb piece of autobiography.

- [9] Lusseyran, end note 8 above. The introduction which was presumably written by the translator, Elizabeth R Cameron, gives brief information about his later life.
- [10] Lusseyran, end note 8 above, the final sentences of the epilogue.
- [11] There is an immense amount of material on David Blunkett which I have not as yet read. There is a biography on him which he co-wrote with Alex MacCormic, David Blunkett and Alex MacCormic, *On a Clear Day*, 2002. David has also described his time in Parliament, David Blunkett and Jim Norton, *The Blunkett Tapes: My Life in the Bear Pit*, 2006.
- [12] I have relied upon material in the British Archives, see <http://www.nationalarchives.gov.uk/education/candp/prevention/g08/g08cs1.htm>.
- [13] I found information on Justice Tatal in a section of an article by Jeffrey Rosen, "The Next Court", (The New York Times, 22 October, 2000). Judge Tatal and I also had a brief telephone conversation in 2008.
- [14] [1949] p. 434. I am grateful to Associate Professor Laurie McCredie for drawing this case to my attention.
- [15] [1965] AC 778. When I studied the law of torts in 1969 at Monash University, one of my lecturers was the late Professor Harry Street who was visiting from the United Kingdom. I remember how sensitively he described this decision in class.
- [16] [1949] pp. 434, 436.
- [17] [1965] AC 778.
- [18] *Haley v London Electricity Board* [1964] 2 QB 121, 126.
- [19] [1950] WN 310; 114 JP 370.
- [20] [1964] 2 QB 121, 128-9.
- [21] [1965] AC 778. The Law Lords were Lord Reid, Lord Morton of Henryton, Lord Evershed, Lord Hodson, and Lord Guest. Lord Evershed who had delivered the principle judgment in *Pritchard's Case* had no difficulty in distinguishing this slight precedent and in agreeing with his fellow Law Lords.
- [22] [1965] AC 778, 791.