

**MY 2000 CHURCHILL FELLOWSHIP**

**(Ref. 00/8)**

**A FINAL REPORT**

**TO**

**THE WINSTON CHURCHILL MEMORIAL TRUST**

**CONCERNING MY FELLOWSHIP PROGRAMME  
BEGUN IN 2000 AND COMPLETED IN 2001**

**BY**

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## INTRODUCTION

I was awarded a 2000 Churchill Fellowship and proceeded to the United Kingdom in August 2000 to commence it. While I was there, my elderly mother contracted viral pneumonia and I was obliged to return home urgently to assist her during her convalescence. The Trust very graciously permitted me to retain the balance of the grant and continue the remainder of the Fellowship programme in 2001, which I have now done – with great success.

My project has been to conduct research for a series of books I am writing on the lives of Australia's early Chief Justices – a work not merely of biography, but of review of Australia's legal foundations. My following report demonstrates that, in every way, the results of the Fellowship exceeded even my best expectations.

In September 2000 I presented an Interim Report to the Trust, part of which I reiterate here. I do not, however, repeat the segment headed "The Fellowship and Some Churchill Highlights" (p. 5) in which I gave an account of seeking out English reminders of the life of Sir Winston Churchill.

I renew my sense of appreciation of the privilege of being a Churchill Fellow – of which I remain most proud. The Fellowship has enabled me to complete essential research that would otherwise have been beyond my financial resources to undertake.

## EXECUTIVE SUMMARY

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PROJECT DESCRIPTION: To enable completion of a work of national biography "Lives of the Australian Chief Justices (1824-1900)".

PLACES VISITED: **London:** Intensive research at the British Library, the Newspaper Library (Colindale), the Public Record Office (Kew), the National Portrait Gallery, the Society of Genealogists and the Family History Centre.

**Cambridge:** University library.

**Durham:** University library.

**Edinburgh:** National Library of Scotland.

**Bermuda:** The Bermuda Archives, Bermuda National Library, Bermuda Historical Society.

**Antigua:** National Archives of Antigua and Barbuda, the Public Library of St John's, Supreme Court Registry, St John's Diocesan Office, Antigua Museum (former court house).

**St Kitts:** National Archives of St Kitts, St Christopher Heritage Society.

**Anguilla:** Government Survey Office, Ministry of Infrastructure.

**Austin, Texas, U.S.A.:** Law School of the University of Texas at Austin.

LESSONS AND THEIR DISSEMINATION: The theme I am pursuing in my forthcoming books seeks to compensate for neglect of a proper understanding of early legal institutions and personalities in Australia and of the challenges that stood in the way of establishing the rule of law here.

A visit to England, in that context, is a lesson in itself. The country that was the source of our law, constitution and so many components of our system of government and social order, never loses its appeal to the historian. The principal lesson, for me, is the need to keep alive a public awareness of the good things that came from our English inheritance, and to try to arrest the growing notion that Australia was just another "European" colonial outpost. The very names of our State capital cities and of their principal streets still attest our origins. As to the law, in particular, we should never lose sight of them.

Research in Bermuda and the Leewards reinforced another lesson – that a researcher should not be guided by others and should rarely accept "No" for an answer. Preliminary approaches to likely repositories of sources in those places were not encouraging. There seemed to be a risk, for reasons mentioned later, that my inquiries might be futile. But, in fact, I found myself pressed for time to accomplish all the research that unfolded as I worked, as it were, on site. I have never known a research visit to fail completely – the lesson is, to rely on one's own judgement, not on that of others.

The Leeward Islands exemplified another lesson: that of admiration for the determined way in which leaders of British colonial communities travelled the world in the eighteenth and nineteenth centuries, sometimes in the cause of advancing themselves,

but usually with a priority of serving their country. They undertook journeys that even today, with modern transport, are long and arduous

My project will result in the publication of a series of books that will be an ideal medium for disseminating – in a permanent form – the results of my research and my interpretation of them.

## **PROGRAMME**

### **Part I – The United Kingdom 2000**

As originally planned, my Fellowship was to have taken me on a continuous journey to the U.K., then to Bermuda and then to the West Indies. Because of the sudden and serious illness of my mother, soon after I arrived in London, I had to return home and the latter part of my programme was deferred to 2001. I was, however, able to complete the greater part of my intended research in London and Edinburgh.

From Edinburgh I was to have travelled by car to various places in Scotland and England. With the benefit of hindsight, it must be doubted whether I could have reached all the places I had proposed to visit, as there were acute petrol shortages in northern England at that very time, due to blockades in protest at high fuel prices.

Because of the need to abbreviate my programme, this first stage of the Fellowship was undertaken under great pressure. My object was to examine source materials that are not available in Australia in the hope of finding new material for inclusion in my books. I should mention here that research of this kind is partly detective work and partly a “lucky dip” so that there is no guarantee that anything of use will be found. Fortunately, luck and detection were on my side and I discovered a wealth of new material that will add much to my writing.

The chief sources I was researching were in the Public Record Office, across the Thames at Kew, Richmond. It is a vast modern building in which the use of current technology stands in strange contrast to the sometimes ancient documents housed there. I was already familiar with the rather complicated research procedures that have to be followed in that office, and thus saved a great deal of exploratory time. Requests for records are placed by computer and the documents are delivered by mechanical conveyors. It is odd, after using such up to the minute procedures, to come face to face with the handwritten (often in immaculate copper-plate) records of the nineteenth century that I needed to consult. On the “lucky dip” principle, perhaps one volume of records in three would contain no information of any use to me, whereas the other two would have an abundance of material. To “get round the course” in the limited time, I ordered over 80 pages of photocopies. For the rest I almost filled an A4 writing block with transcripts and notes. In all, I spent several days at Kew.

The next institution of assistance to me was the Newspaper Library (a unit of the British Library) located at Colindale in the outer north-western suburbs of London. I spent two days there reading, on microfilm, a variety of old colonial newspapers, none of which is available in Australia. Again, after much perseverance and eye strain (microfilms are disagreeable things to read for any length of time), I uncovered much invaluable material and made further photocopies and manuscript notes.

There were some rare books, of use to my research, that I perused at the British Library at St Pancras. For completeness I went to the Society of Genealogists and Family History Centre at Islington, but I found no new material there. I spent some time checking catalogues at the National Portrait Gallery (London), in the hope of finding new likenesses of my subjects, but without success.

In Edinburgh, I spent a day working usefully on primary records held in the National Library of Scotland.

Because of the need to cut short my visit, and abandon the intended driving segment of the programme, I made sorties to university libraries at Cambridge and Durham, being day trips by train out of London and Edinburgh respectively. They led me to collections of original correspondence and other papers of great use to my research. I was able to obtain some further information by phone calls to people I had intended to visit in person, and one gentleman, from Warwick, whom I had intended to visit, was good enough to call on me in London where he had other business to transact.

Thus far, the programme yielded a vast amount of new source material relating to early Chief Justices from every State except Queensland (in which case my research is already completed).

## **Part II – The Atlantic and Caribbean 2001**

### **Background**

The research I undertook in the Leeward Islands and Bermuda in 2001 differed markedly from the research I accomplished in the United Kingdom in 2000. The latter, in a sense, followed predictable paths. It was certain that some buried treasure would be found. The challenge was in finding the right places in which to look. As indicated above, I was most fortunate to locate nearly all of the treasure I was seeking there.

In the Caribbean and Atlantic, the position was much less predictable. Many early colonial records have been lost or are available only at the Public Record Office in the U.K. I was much less sanguine of success, and apprehensive of embarrassment should my researches come to nothing. Those fears, however, soon proved to be empty ones.

### **Antigua**

This was not on the itinerary for my original 2000 programme. I had been deterred by advice from the Public Library of St John's that their entire collection had been destroyed in a hurricane a few years ago, and the suggestion that a visit would be pointless. Nevertheless, my London research last year prompted me to plan a brief visit this year. It was well worth the trouble. American Airlines arrived late on the first day of my three-day visit, while the local carrier LIAT rescheduled flights on the third day: so I had only a single day at my disposal which was fully occupied. As reported informally to Mrs Munday, I found throughout my Leewards and Bermuda visits that the Churchill Trust visiting card provided a spontaneous *entrée*.

Thus the Archivist at the National Archives of Antigua, Dr Marion Blair, was at first dismissive, insisting that she could do nothing for me. I gave her my Churchill card, indicating that I would be grateful if she could write to me should any new information come to light. I left the building (during which time she obviously read the details on the card) and was some distance down the street when I heard her call me back. She then insisted on accompanying me to the Supreme Court and

introducing me to the Registrar, and on taking me to the offices of the Diocese of St John's, both of which repositories had materials that were helpful to me. Dr Blair kindly agreed to peruse my draft material that will relate to Antigua, and to comment on it.

The Public Library at St John's had risen like a phoenix – if that can happen after a hurricane – and directed my attention to a number of general historical texts on Antigua – including a very expert one published only last year (of which I purchased a copy). Without being in Antigua I would not have known of its existence. No similar study had been published since 1844. The Archivist and the Librarian were also able to assist me with suggestions for illustrative material for one of my forthcoming books.

I visited St John's Museum, a former court house in which one of my subjects once sat as Chief Justice of the Leewards after relinquishing the Chief Justiceship of Western Australia. The museum otherwise had no sources of use to me.

In short, it would have meant a loss of much valuable material had I adhered to my original programme and bypassed Antigua.

### **St Christopher (St Kitts) and Nevis**

Here my research was directed particularly to the lives of Sir Archibald Burt (first Chief Justice of Western Australia) and to Sir Alfred Stephen (third Chief Justice of New South Wales) who were born at St Kitts. There was little surviving information about Stephen (though the National Archives gave me details of some American researchers who had made inquiries about him, and whom I will contact), but such a wealth of detail about Burt that I will require an additional chapter to trace his Caribbean career. This material has not been noticed in the sketchy writings about Burt that exist in Australia.

My quest began at the St Christopher Heritage Society where the Archivist, Mrs Jacobs, was not in her office on my first calling. Her assistant seemed very pessimistic about there being any sources at all, but she referred me to Mrs O'Flaherty, the Archivist of the National Archives of St Kitts. Again, the initial reaction was discouraging. But Mrs O'Flaherty was very obliging and, after some trouble, unearthed a Burt file. It contained a family tree (not, I think, ever seen in Australia) tracing the family back to a pioneer settler and sugar planter at Nevis (now, constitutionally, part of St Kitts) in the early seventeenth century. From there, one inquiry led to another, and soon a wonderful array of source materials had come to light. By the greatest of good fortune, official manuscript records relating to Archibald Burt, dating from the 1850s, had survived and yielded absorbing information. Burt was appointed, provisionally, as Chief Justice of St Christopher by the Lieutenant-Governor in 1856. But the Governor-General, in Antigua, disapproved of the appointment. A resulting constitutional clash had to be resolved by the Colonial Office, which countermanded Burt's appointment to save face for the Governor-General. By that reversal of fortune, St Kitts lost a very able lawyer who, deciding on a fresh start, went to Western Australia. The details of the *contretemps*, that ended his long family association with the Caribbean, have not been published before.

Again, I was assisted by Mrs O'Flaherty with a wide range of background materials that are unavailable outside St Kitts, and with details of other writers and family members, particularly in England, who are working on other aspects of Burt family history. I have already been in touch with some of them, and the replies have yielded still more superb material.

On my return to the Heritage Society, the Churchill Trust card had again worked its magic, and some members of the Society asked that I arrange to meet them, as I did. They had other rare materials that I was able to copy for use in my writing. They also expressed great interest in seeing and commenting on my draft.

My research in St Kitts occupied three very full days. I also made the ferry journey to Nevis to see the sites of the former Burt sugar plantations, and to gain an impression of the place so that I may write of it with a sense of informed understanding.

### **Anguilla**

Knowing in advance that the colonial administration of Anguilla had been removed to St Kitts in the 1820s, I did not expect to find much in so small a community, but felt that I should go there for the sake of completeness. That was a wise choice.

I began with some inquiries at the Government Survey Office about early land grants, but it emerged that all records before 1974 had been destroyed. That office suggested, however, that I contact Mr Kenn Banks, Permanent Secretary of the Ministry of Infrastructure. Mr Banks has a committed personal interest in the history of Anguilla. Although he was presiding over a meeting when I called at the office of his Department, he broke away from its business on my arrival and spent 15 minutes discussing my research project. I found, later in the day, that others similarly interested had been supplied by Mr Banks with my phone number on the island, and they called, offering any help they could give. The most significant call was that of Mr Justice Mitchell, a Judge for Anguilla, then sitting on circuit at St Vincent. He has made a very detailed study, from English and local records, of the Leeward Islands (British) courts, and he offered many valuable suggestions for further research, and gave illuminating answers to questions that had arisen from my existing research. Again, I have discovered a panel of experts keen to read drafts of my chapters and to offer comments.

I was astonished by, and delighted with, the results of my short stay at Anguilla.

### **Bermuda**

The purpose of this visit was to ensure that I had not overlooked anything of importance in my “Life of Sir Francis Forbes” (Australia’s first Chief Justice) which is to be published later this year and the text of which is already with my publisher. Forbes was born in Bermuda in 1784 and became Attorney-General there before advancing to judicial appointments in other British Colonies.

In many ways, given the advanced stage of the project (my visit was originally to have been more timely last year), I rather hoped not to find new sources of so much importance that I would be obliged to rewrite the text. Fortunately such a rewriting is not necessary, but I found many new references that will add considerable value to the annotations to the book.

I had hoped to establish the precise date of Forbes’ birth, but records in the Bermuda Archives confirmed that parish records for 1784 are fragmentary and do not supply the date. There are no birth notices in the contemporary newspaper. Curiously, the precise birth date of Forbes’ younger brother, in 1788, is recorded.

In the Bermuda National Library I was able to read early newspapers which yielded additional references. Karla M. Haywood, Archivist at the Bermuda Archives, went to great trouble to locate relevant historical materials for me. The very active

Bermuda Historical Society, the relevant publications of which I acquired several years ago, put me in touch with Mrs Hollis Hallett, an elderly freelance genealogist. She took great interest in my project and gave me a most useful print-out from her computer files about the Forbes family. Even though such studies are her livelihood, she refused to accept any payment. As with all the other centres I visited, I found the local historical community very generous with the assistance and suggestions – and very receptive to the Churchill connexion.

### **Part III – Austin, Texas, U.S.A. 2001**

Although not, strictly speaking, part of my Churchill Fellowship programme, it will be of interest that I mention my brief visit, conveniently included on my journey home, to the Tarlton Law Library in the University of Texas at Austin. It is a University that takes a practical interest in many things Australian and has annual exchange students. Professor Roy M. Mersky, Director of Research, has corresponded with me on matters of mutual interest about legal history over some years. The opportunity to see such a dynamic and bountifully stocked law library was too good to miss. The collection includes a vast number of rare books of great interest to a legal historian. For instance, the one-millionth addition, acquired last year, was one of the three surviving copies in the world of the first printed law dictionary in the English language. Its rarity was reflected in the price of U.S. \$75,000 paid by a University benefactor.

I spent a whole day at the Tarlton Law Library, being shown through the collection and the Law School premises by Professor Mersky and his colleagues. I found the experience a crowning moment of a very successful research programme.

### **CONCLUSIONS AND RECOMMENDATIONS**

In a very real sense, the fruits of this Churchill Fellowship will continue to be gathered for some years to come. There are likely to be some 20 volumes in my “Lives of the Australian Chief Justices”, the first three of which will be published this year. Each and every volume will acknowledge the encouragement and support I have received from the Trust. I note that Mrs Munday has approved of the draft of a form of acknowledgement I propose to use.

I realize that research of the kind I have undertaken tends to fall outside the usual range of the Trusts’ interests. I am all the more appreciative of the recognition that has gone with the grant of a Fellowship in my case. The assistance I have thus received has enabled me to enhance the series and to expedite its conclusion, leading to what I firmly believe will be a lasting contribution to our national history.

The launching of the first volumes will occur later in the year. I very much hope that the Trust might be represented at the event, an invitation to which will follow in due course.

I can only reiterate my most grateful thanks.

J. M. BENNETT  
8th May 2001