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OBITUARY

FIORI RINALDI, AM

The Hon. Michael Kirby AC CMG

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Australia, in its earliest colonial days, began, for the most part, as a collection of penal settlements established by the British based on judge-made criminal law. So it is astonishing that it got by until 1979 without a comprehensive series of law reports focusing on decisional precedents concerning criminal law and sentencing. It is equally remarkable that the gap in the available decisions, that would help to chart the solutions to current problems, should have been filled by a person who came late to the mysteries of the common law system and brought with him the

passions and interests of his Italian ancestry. In 1979 the *Australian Criminal Reports* began life as an essential tool for judges and legal practitioners working in criminal law and sentencing. The report series, is published by Thomson Reuters, Fiori Rinaldi was the sole editor of these reports up to Volume 147. He then entered into a joint editorship arrangement with Matthew Goode of Adelaide. Rinaldi handed over the series entirely at Volume 165. His name no longer graced the front cover of the volumes. In the intervening years, the reports have reached 225 volumes, and still counting. But the lawyer who conceived the idea and brought it to fruition was Fiori Rinaldi.

To those untutored in the law, they may be puzzled as to why this initiative was so important. When the Australian Constitution was written, the Founders in their wisdom decided, in criminal law, to follow the United States rather than the Canadian precedent. They left criminal law mainly to the States and Territories to develop their own laws and practices on crime and sentencing. Perhaps this was a relic of misbegotten pride in the uniquely harsh convict system. However that may be, it meant that, in a country of substantially common social attitudes to crime and punishment, the law developed in separate and sometimes quite different directions. However, whether governed by a criminal code (as in Queensland, Western Australia, Tasmania and later the Northern Territory) or by a mixture of statute and common law (as in the other jurisdictions) there remained much in common where basic principles were concerned. The problem was that, before 1979 and before computers, it was very hard to find the common links. Into this void strode an energetic, passionate, decisive lawyer. Fiori Rinaldi took the cases as they were decided in the High Court, Federal Court, Supreme Courts. He sometimes even noticed lower courts with relish. He personally supervised the preparation of the headnote summaries that encapsulated the essential principles in each decision. This was a mighty contribution to an area of the law too often neglected because, as often stated, only partly in jest, "crime does not pay".

Suddenly, thanks to Rinaldi it became easier to see the whole landscape of Australia's criminal law. Ordinary citizens are not wrong in judging that area of law as central to civilisation and justice of every society. Fiori Rinaldi was also passionate about the causes of reform and improvement. His bright blue and red

volumes can now be found on the shelves of lawyers' offices throughout Australia. They are his great memorial. He made a contribution, greater than the Founders had done, to enhancing coherency in criminal law and sentencing throughout Australia. For judges in the higher courts, it is puzzling in the extreme to consider what it was like before the *Australian Criminal Reports* arrived. It took an obsessive and fiendishly energetic lawyer like Fiori Rinaldi to launch the enterprise. It is still going strong. It is enhanced by a journal of articles, case notes and commentaries - the *Criminal Law Journal*, on whose board Fiori Rinaldi would also contribute. Fiori Rinaldi was a bit eccentric and highly opinionated. He upset some judges by discarding their learned opinions, concluding that they contained 'no issue of new principle'. Australia's criminal law and sentencing practice is in a much healthier state because of his unique contribution. It was gift for Australia, although most would not have heard of his name.

Rinaldi had his critics who said that criminal cases were usually concerned with facts and undeserving of too much legal analysis. He regarded such attitudes as basically classist and treated them with contempt. Into the frequent void of principle that preceded his initiative, he introduced greater awareness of governing principles. His guiding objective was to reduce inconsistency and to enlarge the equal treatment of like conduct where the law so permitted.

Fiori Rinaldi was born in Kalgoorlie, Western Australia, on 17 September 1929 to an Italian migrant family from Valtellina near the Swiss border. The family had migrated to Australia in 1925. There were 4 boys and he was the second born. After race riots broke out in Kalgoorlie in 1934, the family returned briefly to Italy, then under Mussolini. They came back to Australia in 1937. Fiori's earliest education was in a one-teacher school on the Woodline, followed by time as a boarder at Saint Ildephonsus College run by the Marist Brothers at New Norcia. He matriculated to the University of Western Australia where he graduated with honours in philosophy in 1950.

Fiori Rinaldi served for a short time as a reporter on the *Perth Daily News*. He then joined the Commonwealth public service, working mainly in the Australian Taxation

Office until 1958. In that year, he quit that position to take up post as a lecturer in philosophy in the University of Queensland. In that city he became involved in the work of the Dante Alighieri Society, in which he was to play an active part for decades. It helped provide a link to his family's culture. Perhaps it was Rinaldi's work in the public service and journalism that got him interested in the law.

He began part-time studies for a law degree in Melbourne and Canberra, eventually completing the degree at the University of Queensland in 1963. He was admitted to the Queensland Bar. In 1969, a lectureship in law followed at the Australian National University. His studies in philosophy, and perhaps his Italian impatience with the messy character of much common law reasoning, sharpened his mind to always ask about the basic concepts that the myriad individual cases analysed and illustrated. This special interest made him a perfect choice to be inaugural case editor of the *Australian Criminal Report* series. He threw himself into the task with ferocious energy. He had wandered over the face of Australia in search of a mission in life. Having found it, whilst at the ANU, he made it his own. He could be seen anywhere with a briefcase stuffed full of judicial decisions which he read, criticised and classified to see whether they would "make it" into a series of case reports that he supervised. He deployed a force of case reporters whose work was subjected to his sometimes withering scorn. He was not engaged in this task for the money. He saw it as it was: a long overdue contribution to the consistent development of criminal law and sentencing decisions across the continental country which he had embraced as his own.

Not satisfied with his work as editor of the reports, Rinaldi wrote more than 200 case notes on important criminal cases for the *Criminal Law Journal*. Meantime he was teaching, marking exams and writing books or contributing to studies of topics ranging from parole, suspended sentences, drug offences, imprisonment for non-payment of fines and so forth. His energy was highly disciplined. Eventually, the time came for him to retire from teaching law at the ANU. Finally, reluctantly, he even withdrew from editing his beloved criminal judgments.

In later life, in company with his wife Nena de Julia, whom he had married in 1952, he began to indulge his passion more fully in all things Italian. Every other year, they

would visit Italy. His long contribution to the Dante Alighieri Society was acknowledged in 2000 when was awarded honorary life membership by the Canberra branch. He was a lively personality around Canberra, taking an active part in Canberra society. In fact, he became a one person whirlwind of energy in his adopted home town.

In 2002, in the Queen's Birthday Honours List, Rinaldi was recognised for his work in criminal law and his service to the judiciary and legal profession. He was appointed a Member of the Order of Australia. He lived out his final years in Canberra. In June 2012 he suffered a fall that resulted in a leg fracture. This kept him in intensive care and an aged facility until he was received by death on 8 April 2015. One can almost imagine him contesting judgments of the Almighty at the Pearly Gates and pointing to inconsistencies, lack of rigour, inelegant expression and the need for more attention to principles and an occasional measure of kindness. These were his common complaints about judicial reasons. They occupied much of his time in the magnum opus he leaves behind for the criminal lawyers of Australia.

Fiori Rinaldi is survived by Nena and their son Geoffrey together with his four granddaughters and three great granddaughters. He should be appreciated by lawyers in every part of Australia and by its citizens. Intuitively, ordinary citizens know the importance of crime and punishment. If our strange, chaotic legal system of judicial precedent were explained to them, they would understand how Rinaldi's initiative contributed not only to legal principle throughout Australia but also to the unifying force of common links in criminal law and consistency in sentencing.