

*Honourable and Learned Members*

*The Honourable Dr Allan Martyn Finlay QC*

*1912-1999*

*Attorney-General 1972-1975*

*Derek Round*



## PREFACE

*This profile of Martyn Finlay is the first in a series I am writing on members of the legal profession who became prominent in Parliament - Honourable and Learned Members.*

*The profiles have been made possible by a grant from the New Zealand Law Foundation for which I am grateful.*

*I owe an enormous debt to Martyn and Peggy Finlay for their assistance and also for their hospitality at their Freeman's Bay home.*

*I am also grateful to Martyn's former ministerial colleague, the Hon Dr Michael Bassett, who helpfully made available to me the text of an oral history interview he had with him. Other friends and colleagues of Martyn have also been helpful.*

*This profile was completed the day Martyn died. I telephoned him about 4 o'clock in the afternoon to check a couple of details and we chatted for some time. I said I would send the draft to him for his comments and suggestions in the next day or so. Sadly, it was not to be.*

*I first knew Martyn Finlay when I was a member of the Parliamentary Press Gallery in Wellington and soon came to respect his intellect, humanity and thoughtfulness. It was a privilege getting to know him even better while working on this profile.*

*Tanglin Lodge  
Masterton*

*Derek Round*

*February, 1999*

## The Honourable Dr Allan Martyn Finlay QC

1912 - 1999

Attorney - General 1972 - 1975

A Frustrated Law Reformer

Martyn Finlay was a frustrated law reformer who had been secretary to the first law reform committee set up by Labour Attorney- General Rex Mason before World War 11 but was to become disappointed he was unable to achieve more himself when he was Attorney - General in the Third Labour Government.

Finlay's law career took him from an office boy's job in the old - established Dunedin law firm of Adams Brothers to the office of Attorney - General and the International Court of Justice in The Hague where he led the New Zealand legal team in the French nuclear testing case in 1973.

His appearance before The International Court of Justice led to Finlay taking silk, but he was a reluctant QC.

The Australian team which argued a joint case with New Zealand was led by Attorney - General Lionel Murphy QC.

The Kirk cabinet took the firm view that New Zealand should not be outranked and that Finlay should take silk too.

He did so reluctantly, he explained, because he thought it could make it difficult for him to return to private practice after his political career was over.

"And so it proved to be," he said in his retirement.

Born in Dunedin on January 1, 1912, Finlay was the son of Baptist missionaries who had worked in India. He had four brothers born in India, two of whom died. Another brother, Harold John, ten years older than Martyn, was struck by polio and lost the use of his legs.

Their father, David, whose health had not been good, died two years after Finlay was born.

Finlay's crippled brother became a brilliant geologist. Martyn recalled meeting overseas geologists

geologists who were overawed at the mention of his name. He frequently pushed his brother in his wheelchair the two miles from their home to Otago University - developing powerful leg muscles which were to make him a keen walker throughout his life.

Harold John died quite young in the 1950's Their middle brother , a chemist, went to Malaya and died in the war against Japan.

Finlay's mother , Emma Matilda, who was 46 when he was born, had a fierce determination to ensure her children got the very best education, however strained the family finances were.

His father left a house and a small fund of investments which was just sufficient to pay the rates; everything else had to be earned so his mother took in boarders.

Finlay was Dux of Dunedin's Northeast Valley Primary School and went on to Otago Boys' High School which he left at the end of the 5th form. He would have liked to stay longer but it was the start of the Depression which made it imperative to get a job, so he started at Otago University at the age of 16. He was interested in studying medicine but there were no scholarships available at the time.

He took the only one available where he could support himself into a law office.

"I had no great love for it but did it through lack of any other choice,' he was to recall.

Finlay said he had a "fundamental immaturity' at that stage.

Through the family's Baptist connections, he got a job with Adams Brothers Solicitors - F.B. and H.S. Adams were sons of Adams J.

In his first year at Otago Finlay studied philosophy, psychology and ethics but found himself "quite out of my depth" and had to repeat them. What he described as his laboriously slow career in law started as office boy in 1928. "I advanced in snail - like fashion from office boy to stamping and registration clerk," Finlay said. He may have drawn up a few simple

documents, he recalled, but until he left in 1936 he had never interviewed let alone advised a client.

"My eight years in law in Dunedin could hardly be described as glorious," Finlay said.

There was no full - time law faculty at Otago - or at the other colleges of the then University of New Zealand. The part - time dean of law at Otago was J.B. Callan, later to become a Supreme Court judge, and lectures were held in the Supreme Court building, Callan taught the law of torts which, according to Finlay, he succeeded in making more interesting than other subjects.

"Others were dreadfully dull, but it was much more a system of lecturing and people taking notes than I think is appropriate for a university course." Finlay said. The seminar was an unheard of institution.

Finlay was to recall with some amusement that he was the "Intellectual Representative" on the Otago students' executive - "a grandiose title but that was the name that was given to it". The title was ironic in view of Finlay's firm denials years later of any suggestion he was the Labour Party's "intellectual."

The teenage law student, who was to become President of the Labour Party, had no interest in politics at the time. "I probably shared my mother's prejudices which included a mortal fear of the Catholic Church and the Red Feds, although they were so absurd one tended to laugh at them."

He voted Labour in 1935 - "it was an emotionally - attuned vote. I had very little knowledge of the real issues." He explained his Labour vote as a "mass reaction which one sensed rather than analysed - you just absorbed it."

After six years at Otago Finlay graduated LLB in 1934 and spent another two years working for his LLM. He was awarded first class honours in international and conflict of

laws, contracts, torts and company law.

Thumbing through a University of New Zealand calendar in the library one evening (he had been given his own key to use the library) Finlay saw there was a travelling scholarship in law awarded every two years. He applied for and won the scholarship, worth two hundred pounds a year for two years.

Oxford and Cambridge seemed beyond his means and he had never heard of the London School of Economics until he enrolled there after he went to England in 1936.

He was assigned to Professor Hughes Parry and worked on a study of "Equitable ideas concerning property in the development of the law of contract."

He recalled : "It turned out there was quite a social aspect of the equity that was instituted to correct the rigidity of the common law. That system became fossilised, particularly around property concepts and these from the Court of Chancery were carried into the common law courts, partly to relieve the fossilisation but at the same time also incorporating different ideas of property and ownership; so one way or another equity did shape the nature of contractual relationships and the law relating to them."

Part of his PhD thesis, which was published by the University of London Press, dealt with third party contracts. It was to be followed in part in *NZ Shipping Co Ltd v A.M. Satterthwaite Ltd* [1974] 1 NZLR 505, a decision of the Privy Council.

As well as attending Hughes Parry's tutorials Finlay was invited to seminars of the Professor of Political Science, Harold Laski, who became his friend and mentor. A brilliant talker, who had great influence on his students who revered him, the socialist Laski's political philosophy was described as a modified Marxism. He held a strong belief in individual

freedom. Laski was chairman of the British Labour Party 1945 - 1946.

Finlay became interested in political questions including the Spanish civil war and in Labour Party activities. He went door - knocking for Dr Edith Summerskill in the 1938 Fulham by - election in which she entered the House of Commons, later becoming a junior minister and chairwoman of the Labour Party.

At the end of 1938, after finishing his PhD, Finlay was awarded a scholarship to attend a summer school in Czechoslovakia - "a pretty radical kind of group." Czechoslovakia was at that time facing the German threat to Sudetenland. Finlay found intense discussion at the summer school with divided views even between the Czechs and Slovaks.

On his way back from Prague he got a job as a temporary research assistant at the League of Nations in Geneva, stopping for a day in Nuremburg where one of the last Nazi rallies before the war was being held.

In Geneva, Finlay mixed with a group of foreign correspondents including Robert Dell of the Manchester Guardian who had been for many years its Paris correspondent and who impressed Finlay with his considerable dignity and learning.

In 1939 Harold Laski, who was on sabbatical leave in the United States, suggested Finlay look for a scholarship there and he found a fellowship at Harvard Law School reserved for a graduate of a British university. Laski had suggested he look at a study of criminal justice then being made in Cleveland and Boston.

Laski had arranged for Finlay to study under Felix Frankfurter but, disappointingly for him, Frankfurter was soon after that appointed to the Supreme Court bench by President Roosevelt.

"The Ivy League attitude to scholarship at the time was much broader than in Britain," Finlay said. He was told to just sit down and read what he liked in the Law School library.



One of the first things he did was to immerse himself in The New York Times and the Boston Herald.

Finlay had just one academic year at Harvard. He had started to follow up the Boston crime survey but about this time decided to return to New Zealand in stead of going back to England. He had got the news of the New Zealand Labour Government's return to office in mid - Atlantic on his way to America in 1938.

By then Finlay had become an occasional contributor to the left - wing publication Tomorrow and "my thoughts turned more and more to New Zealand." At the end of 1939 he wrote to Prime Minister Michael Joseph Savage - "I was enormously bold" - and said he would like to return and be part of what the Labour Government was doing.

Savage's reply apparently crossed as Finlay sailed home. The Prime Minister created a job for him, working with Rex Mason on law reform, with the aim of bringing some continuity and organisation to Labour's reforms.

Mason, early in Labour's first term, had set up an informal law reform committee of practitioners who came together occasionally and discussed a variety of topics. "With Rex's crusading spirit they got through a phenomenal amount of material," Finlay said.

One of his first tasks, at the age of 27, was to set up a committee to look at third party insurance for motor vehicles. It was chaired by Wellington lawyer H.R.C. (later Sir Richard) Wild who was to become Solicitor General and then Chief Justice, and included Oswald Chetwin Mazengerb QC. The committee came up with a recommendation that there should be some statutory third party insurance but the war brought its work to an end. It was considered the question of third party insurance could be put off for a while. Finlay, rejected for war service as medically unfit, stayed on in Mason's office but there was not much happening there.

"There was no stomach for law reform in Parliament, occupied with putting the country on a war footing, and I just filled in time," Finlay said.

When former clergyman Arnold Nordmeyer joined the Cabinet he asked Finlay to join the corps of ministerial secretaries and he agreed on the understanding that if Labour was defeated he would stay on in the corps.

Finlay had travelled home from the United States with Rhodes Scholar Ian Milner, son of the noted Frank Milner, headmaster of Waitaki Boys' High School. Ian Milner, Political scientist, diplomat and Professor of English at Charles University in Prague, was to be named as a probable KGB agent by the Australian Royal Commission on the Petrov affair, which Milner strongly denied. Milner got a job in the Education Department on his return to Wellington in 1939 and he and Finlay shared lodgings at 225 The Terrace.

Dr William Ball Sutch was economic adviser to Finance Minister Walter Nash at this time and Finlay found himself coming under Sutch's influence. "In a way he was my mentor," he said.

Together they wrote under a variety of "aliases" for the radical Tomorrow :

In an ironic twist of fate, Finlay ,as Attorney - General, was much later to be involved in Sutch's prosecution under the Official Secrets Act for allegedly passing information to the Soviet Union. Ironically, too, the Finlays were for a time to rent an Auckland apartment from Sutch's wife, barrister Shirley Smith.

As Private Secretary to Nordmeyer, Finlay helped to set up the medical services and implement other parts of the Social Security Act which had come into force in 1938. Nordmeyer was the youngest member of Cabinet and Finlay found working for him "quite exciting."

With Milner, Finlay attended meetings of the Labour Party's Wellington North branch of

which J.P. Lewin, later President of the Public Service Association and Secretary of Trade and Industry, and businessman Harold Innes were members.

Finlay said in a 1969 interview that his interest in politics had developed as a result of being in England at a "highly activist political time" when the Popular Front was very much to the fore and the Spanish civil war was being fought.

"This interested me and I was confirmed in my belief by having been at the final session of the League of Nations when Czechoslovakia was being dismembered by the Western Powers," he said. He joined the Labour Party, he explained, principally because he felt it had a sense of sympathy for the "underdog". "Primarily my interest was in international affairs. (Labour's) attitude to these was much more justifiable than that of the Chamberlain regime."

Finlay said he sensed Labour had a willingness to experiment, not to be tied, and to be bold in its approach. He thought Labour had tried to do this in New Zealand. It had encountered "manifest difficulties" in putting this into force but had certainly come in with that belief in 1935.

Finlay worked for Nordmeyer from 1940 to 1945, taking a break in 1943 to stand for Labour in the Remuera seat. "Remuera seemed the kind of place where I wouldn't be a misfit," he said. He increased the Labour vote against former Auckland Law School dean Ron (later Sir Ronald) Algie but it was to remain a solid national seat for many years.

After making some useful contacts with trade union officials during the campaign Finlay began to think about setting up a law practice in Auckland. Frank Haigh had the biggest trade union practice there at the time and there were suggestions Finlay might work in partnership with him but it came to nothing.

In 1944 Finlay set up in practice on his own on the corner of Vulcan Lane and High Street, thanks to a one hundred and fifty pounds overdraft guaranteed by brewing tycoon and

Labour supporter Sir Ernest Davis. He had met Davis through Nordmeyer who Davis admired, and the brewer took a "sort of shine " to the young lawyer, "popping one or two jobs my way."

Finlay's first wife, Peggy, was his secretary - typist in what he called "a very tiny hole in the rather decrepid" Campbells Buildings. "We just opened the door and waited for people to come in. It didn't do badly."

His first case was a claim against the Mount Albert Borough Council after a truck overturned. But he overlooked the requirement that proceedings should be commenced within six months and was non - suited - "hardly a triumph of litigation,"he was to recall wryly.

Finlay later went into partnership with Norman Shieff in the firm Finlay and Shieff. One of their biggest clients was Fletchers, resulting from Finlay's friendship with George Fraser, a Fabian, who had been on the staff of Prime Minister Peter Fraser and later became a key figure in the Fletcher empire.

Still interested in a possible political career, Finlay moved to a flat in Cheltenham on the North Shore and joined the North Shore Labour Representation Committee. He began courting the nomination for the seat, held by Mrs Mary Dreaver when it was Waitemata, and narrowly won it in 1946, becoming one of the youngest MPs at 34.

"I remember 1946 as one of the few occasions when our organisation was better than (National's) and I was able to be certain of the result of the election,"he said. There was some surprise, shared by Nordmeyer and others, that Labour won the 1946 election. Nordmeyer thought the defeat of the British Conservatives in 1945 would be a precedent for Labour being turned out in New Zealand.

"It was pretty evident then, I think to all of us, that we were unlikely to win the next one,

so the question was whether we should just fade out with a whimper or try and continue with a bang," Finlay was to recall.

"There were some of us who were all for being fairly dramatic but others like Peter Fraser were to try every possible expedient to hang on. So there was a continual, running series of disagreement between the old guard and the younger MPs like Bill Anderton and Warren Freer - a group of people who were anxious to push things more vigorously than the rest were.

"It crystallised around the conscription issue of 1949. We had quite vigorous arguments as to whether there should be an official line or whether we should be able to have a conscience vote on this issue or, at least, a conscience 'say - -so' without voting in Parliament against the Party which, with its narrow, four - seat majority, would mean defeat for the Government. But Fraser would have no part of that."

Finlay's closest friends in caucus were Palmerston North MP Ormond Wilson, Freer and Raglan MP Alan Baxter. Nordmeyer remained a "pretty close friend" although he was a minister.

In his maiden speech on July 9, 1947 Finlay had spoken mainly on industrial relations, admitting there might be more apparent industrial unrest than previously but denying there was actual unrest.

The description "labour troubles" was apt because it was the pain and travail attending the birth of a new society, he said. "That new society is one based on full employment which, I believe, will relegate to the museum of history many of the causes of acute industrial discord in the past." Finlay told the House : "We are entering, I believe, on a new era of industrial and human relations - an era in which the worker will become and be treated as an adult human being instead of just an adjunct to a machine or a digit in a cost accountant's ledger."

The New Fabian Society was active about this time with Jack Lewin as one of its leading lights. A magazine, *This Week*, was started - with far too much optimism and far too little capital as Finlay put it. George Fraser, who was staying with the Finlays in Takapuna, was the sole member of the staff but became disenchanted. Finlay suggested he see Sir James Fletcher about a job, which turned out to be sound advice.

Finlay did not get on with Peter Fraser - Warren Freer recalls him standing up to the leader in caucus - but was to say later that his admiration for Fraser grew as the years receded - "particularly as a politician and to some extent as a statesman."

But he commented : "As a manipulative politician I don't think I've known his equal, even Muldoon." Fraser seldom made a move without contemplating all the consequences and deciding his course of action very carefully.

Finlay remembers Fraser caucuses as sometimes acrimonious but his manipulation showed itself in its most effective form. The Prime Minister had the advantage of the Legislative Council and could always rely on its Labour members to supply a nucleus which would support anything he wanted to do.

Being in charge of the caucus agenda and timing of discussions, Fraser could postpone issues until Federation of Labour President Fintan Patrick Walsh - Fraser's greatest ally, according to Finlay - came in. "By what right I don't know but he had open access to caucus every time he wanted. Many caucuses were devoted to routine matters and Walsh was not there. But if Walsh was around you could be sure there was something important in the wind."

Walsh was there to whip into line those with union connections "and also threaten in the way only Walsh could do, with various suggestions of retribution." Fraser and Walsh understood each other in a way Walsh and Nash never did, Finlay said.

As the Labour Government slid inexorably into defeat in 1949 Aucklanders travelling into the city from his North Shore electorate saw the wharfs were not being worked and prejudice against watersiders was high.

That was reflected on Finlay and his law practice. "I had gradually acquired a fairly substantial union practice - Carpenters' Union, Waterside Workers Union and unions like that," he said. "But they deserted me simply because I was a member of a government that they didn't think was sufficiently radical. Had I been free to act and speak as I wanted and not had to follow the majority of the gradually declining government I would have personally been much better advantaged. But one after the other the unions left me as being insufficiently politically active."

Finlay was doing a lot of his legal work at weekends and taking it down to Parliament with him. His electorate extended from North Head to Milford and across to Northcote and, with a narrow majority, his wife had to stand in for him at many of his branch meetings.

His 1949 defeat by Dean Eyre, who was to become a National minister and then a diplomat, was "perhaps the worst feeling I've ever had, even though we knew the bottom was falling out, simply to have it kicked from under you." Fifty years later he was to recall : "I remember the miserable weekend I spent cleaning up papers and generally putting the past behind me."

Finlay immediately became much more active in his law practice and picked up quite a large volume of criminal work, appearing in some widely - publicised murder trials.

One was the trial of 26 - year - old English labourer Frederick Foster who shot and killed Sharon Skiffington in an Auckland milk bar on March 28, 1955. He had been going out with her but her affections had apparently cooled. Foster's defence was that he had no intention of shooting her but hoped, by firing harmlessly at the wall, to make her realise he was serious in

his affections for her. Police evidence showed the shotgun was in a dangerous state and its firing action was extremely delicate.

Foster was found guilty and hanged at Mount Eden Prison on July 7, 1955. He had unsuccessfully appealed to the Court Of Appeal. Its judgment was delivered by Adams J. Finlay's old boss in Dunedin. Finlay described the Foster case as the most moving and dramatic case he had.

"I think he was quite wrongly hanged," he said. "The true verdict in that case, I think, should have been manslaughter. He was a very immature young man whose defence when a shotgun was discharged and killed a girl was that he didn't intend to do it but intended to frighten her. I think there was probably some substance to it; there was certainly no intention to kill."

Finlay said a particular incident changed the whole context of the trial. Until then, the defence had been going as well as could be expected and he felt the jury was impressed with the way the defence was developing. Foster went into the witness box and gave evidence "pretty well."

But the first question asked by the Crown Prosecutor, Sir Vincent Meredith, demolished the "whole atmosphere of sincerity," Finlay said. Meredith's question was : "Didn't you say she was a bloody good f---?" Finlay recalled "You could see the whole caste of the jury's countenance turned. It was an admissible question to ask but one that should not have been asked without prior warning to defence counsel. But they had statements to that effect from someone else and that information should have been given to defence counsel. It was quite unfair tactics on the part of the Crown."

Imposition of the mandatory death sentence brought a surge of public support for Foster and donations poured in to bring his mother from England. Finlay took her to Wellington to



make a final plea for clemency to Prime Minister Sidney Holland but this was turned down and the law took its course.

Finlay's great regret was that he had never appeared in a murder trial where the question was "Who did it ?" In every case he had the question was "Why did he do it ?" He said : "It was a matter of explanation rather than an alibi or a vigorous defence with the idea of getting a man off completely."

He continued to maintain his interest in the Labour Party and was president from 1958 to 1962 after serving as vice - president for four years.

Finlay, who was to become Minister of Civil Aviation in the Kirk Government, was appointed a director of Tasman Empire Airways by Jock Mathison, Minister of Transport and Civil Aviation in the second Labour Government.

His marital status at the time had been the subject of some comment in Labour circles. He and Peggy separated in 1950 and he began to live with his second wife, Zelda (also known as Peggy - she joked as did others, about "Peg One" and "Peg Two") who he was to marry in 1961 when he got his decree absolute. Peggy changed her name to Finlay by deed poll while they were living together. "The fact we were living together was quite well known," Finlay said : "We were living next door to Bill Cuthbert, the Auckland LRC President, so it would have been pretty difficult to conceal it."

Finlay's marital status apparently resulted in the TEAL appointment being discussed at some length by the Labour Cabinet.

"I was summoned to the Grand Hotel in Auckland in the presence of Walter Nash to give an account of myself and my life and works and whether I had the moral qualities to represent the Government on the Board of Tasman Empire Airways and I was asked about my marital status and so on," he said. "I remember going home to Peggy very furious and

saying to her what I thought they could do - go and get stuffed or words to that effect. You don't use those words exactly to Walter, but that was the clear message I gave him. It had nothing to do with him, and if it was a consideration that was material to the decision that they might or might not make, I was not interested. However, they seemingly overlooked it and appointed me."

Looking at appointments to public bodies thirty years later, Finlay said it was inconceivable that appointees' marital status should be looked at that closely :

Finlay and Nash never hit it off. "There was friction between myself and Fraser but we did have some respect for each other, I think. Nash always seemed to be so sanctimonious in his professions of idealism but I suspected the reality of his beliefs."

Although he was out of Parliament after losing North Shore in 1949, Finlay had his sights continually on politics with the hope of getting a seat nearer the city rather than on North Shore and moved to Ellerslie on the boundary of Otahuhu and Onehunga. He was interested in the Onehunga seat but it went to Hugh Watt, later to become Deputy Prime Minister.

Finlay believed former Federation of Labour president Tom (later Sir Thomas) Skinner, who had been MP for Tamaki from 1946 to 1949, used his influence to stop Finlay getting a seat. "Skinner was more on the manipulative side of politics," he commented. "I suppose that's an aspect of trade union work." Finlay had expressed interest in the Auckland Central seat when Bill Anderton retired but was told this was ruled out because he was living with someone when they were not married.

After he and Peggy were married in 1961 Finlay challenged some sitting MPs including Ritchie Macdonald in Grey Lynn and Rex Mason in New Lynn. Mason was in his 70s. "It was a very difficult decision," Finlay recalled. "I had been his secretary and respected and admired him. But I thought he was getting to the stage where retirement at least ought to be

considered."

President of the Labour Party at the time, Finlay was feeling disenchanted at being rejected for the seats where he challenged and saw little prospect of success. He was reluctant to try for go to Waitakere, the last seat for selection, but was persuaded to Put his name in and found that Nordmeyer had arranged for winemaker George Mazuran and two friends to attend the selection meeting. With their support, he defeated trade unionist Eddie Isbey, later to become an MP himself, by about three votes.

Finlay returned to Parliament as MP for Waitakere in 1963, giving up the presidency because he believed the two offices should be separated. He held the seat until he won the new seat of Henderson in 1969. He continued to work as a part - time practitioner. His practice was largely industrial but there was also some general work including criminal cases.

With the election of the Kirk Labour Government in 1972, Finlay, who had been re - elected in Henderson, was appointed Attorney - General and Minister of Justice.

Prison reform was one of his major aims but he was to admit later that he had been less than successful in achieving this.

As minister, he said his firm objective was to maintain lines of contact from inside the prison to the outside. "I made it clear to all superintendents that if anyone was in trouble they should be able to communicate - don't worry too much about the toll charges." He felt changes in administration and rules were upsetting for prisoners and he wanted continuity of administration.

Finlay spent one Christmas redrafting the prison regulations himself, but they did not come out. "I really wasn't as good at administration as (former National Justice Minister) Ralph Hanan. I was an initiate in administration. I didn't make friends with prison staff like superintendents. They were hostile to me from the start. they regarded me as a left - winger

and do - gooder." He was also unpopular for writing a "Dear Les" letter to an Auckland lawyer in prison.

Finlay believed prisoners should be able to communicate with him directly - "I hated sensitive letters being censored." But he would not deal personally with any prisoner complaint about administration.

Lack of movement in prison reform was Finlay's greatest disappointment as minister. He recalled accepting an invitation from Hanan to attend the opening of the new security unit at Paremoremo Prison. Its electronically - controlled clanging doors and total removal from the outside world left him with a feeling of hopelessness. "I was so depressed," he said.

From the beginning of his term he had wanted to move in this field of reform and see a major overhaul of the Penal Institutions Act and the overhaul of regulations determining the day to day life of prison administration.

"I was continually frustrated in this," he was to declare. "If I had had a second term I would have been a much more hard - driving minister."

Slow progress in prison reform had been listed by Nordmeyer as one of the greatest disagreements he had with Rex Mason when he was Minister of Justice.

A controversial piece of legislation for which Finlay was responsible was a bill to suppress the names of accused people until they had been convicted - unless they asked for publication.

Looking back, he said the legislation was ill - prepared, with no provision for appeal, and should have been referred to a committee. "In essence it was rather flawed," he said.

But the legislation, quickly repealed by the incoming National Government, was praised by veteran journalist Pat Booth who was Deputy Editor of the Auckland Star at the time it was introduced. In his autobiography, *Deadline*, Booth said the Finlay bill seemed a reasonable

protection against the "gross distortions of justice sometimes perpetrated by journalists" - not because of malice or planned, but simply through time factors.

The Finlay law "which the media railed against so successfully" would have prevented the sort of haphazard cover which threatened the reputation of the innocent, Booth said, adding : "His law weighted the citizen's good name ahead of media rights and I supported it."

On balance, Finlay saw the suppression of names legislation as the legislation he was most pleased with and was sure it would come back.

Reform of the matrimonial property law was another important goal during his term as minister. "I wanted the onus to be on the husband to disprove the wife hadn't made a contribution," he said. "That seemed a simple proposition but it wasn't until the last month of Parliament in 1975 that I was able to produce a report and bill which became the Matrimonial Property Act 1976." Finlay said it experienced the same difficulties in the first instance that had beset its progress ever since, becoming the subject of enormous litigation and review. "It was the greatest advancement in law reform; I would like to think I could have the credit for it in the end."

He was disappointed with the report of the commission on the sale of liquor he set up. "I hoped they would come up with a broad recommendation that drinking not prohibited was permitted, but it didn't achieve what I had hoped for - a "Continental" approach to the sale of liquor."

"It was frustrating," Finlay said of his efforts at law reform. "The Justice Department seemed to have an unending supply of minor amendments which would keep clogging up the system." He thought the Government would have had enough time for its legislative programme but felt the oil crisis at the time put it in a position of reacting rather than innovating.

But the Law Reform Committee was reorganised into the Law Commission, set up with a degree of permanence - appropriately in view of Finlay's role with Mason's original law reform committee.

In a 1977 oral history interview with fellow Labour minister Dr Michael Bassett, Finlay reflected on the frustration he experienced during his term as minister.

"Looking back on the assistance I got from my department, I am very, very disappointed because their aspirations, their trend of thought was very much and still is along the lines of my own," he said. "On the surface I got the best service from them - certainly a good deal of sympathy. But looking at subsequent events it seems as if their output on behalf of the present minister (David Thomson) is greater than it was for me. Much of the material that is now coming forward was initiated by me but it has now reached its fruition with a degree of speed and perfection that was not to be accorded to me. I just can't understand why it was."

Finlay became involved in the Arthur Allan Thomas case at a fairly late stage after a second Auckland jury had found Thomas guilty of murdering Jeanette and Harvey Crewe at their Pukekawa farm in June 1970

Thomas's counsel, the late Paul Temm QC (later Justice Temm) had given him some documents to look at "as a fellow lawyer."

"My conclusion was that, whoever was guilty, the murder could not have been carried out in the way the Crown suggested," he said later. The way it suggested (that Thomas had shot the Crewes through a back window of their farmhouse) was unsustainable. but that didn't necessary exculpate Thomas."

With new scientific evidence from forensic scientist Dr Jim Sprott there had been a wide expectation that an acquittal was almost inevitable. But the Court of Appeal dismissed Thomas's appeal and this was followed by a request by his counsel for a further reference to

the court. By that stage the police had dumped some of the exhibits. Finlay said he was "desolate and deeply troubled" at this.

He agreed to have the case referred back to the Court Of Appeal for further consideration under the Crimes Act. Thomas was eventually pardoned and received one million dollars compensation.

Finlay described the Thomas case as "a dark stain on the record of the police and an attitude to prosecuting zeal that one likes to forget." The only thing that redeemed it, he believed, was that it did not involve what he described as the increasing recourse to evidence from fellow prisoners.

Discussing the case in 1998, Finlay talked about what he saw as a diminution of the ethical dimension of the whole of criminal law. He was concerned that the law was used as an instrument rather than as a philosophy.

The 1975 prosecution of his old colleague and fellow *Tomorrow* writer Bill Sutch under the Official Secrets Act for allegedly passing information to a Soviet diplomat - of which he was acquitted - presented Finlay with one of the most difficult decisions of his term as Attorney General and cast a shadow over the long - -standing relationship with the Sutchs.

Police had arrested Sutch and he appeared in court the next day when he was remanded. Finlay was given a brief summary and papers by the police for him to authorise them to proceed further under the Official Secrets Act. Finlay spent the weekend at his Piha Beach cottage considering what he should do - the Act simply said the case should not proceed without the imprimatur of the Attorney - General. The Attorney - General's responsibilities are set out in Campbell's *Crown Practices* and Finlay concluded the case should proceed.

"It wasn't an easy decision by any means," he recalled. "But, if the facts already assembled warranted further inquiries, a preliminary hearing would decide whether there was a case to

answer."Finlay said it was fairly common knowledge that he had some information which was not presented at Sutch's trial. "I don't know why it was not and I had no entitlement to inquire any further."

Sutch's wife, Shirley Smith, from whom Finlay had once rented an apartment, was deeply upset at his decision to allow the prosecution to go ahead but, in a letter to her, he said he simply had no alternative.

Finlay's 1973 appearance before the International Court of Justice in the Hague was one of the highlights of his career as Attorney - General.

Labour's Deputy Prime Minister Hugh Watt had been sent to Paris soon after the Kirk Government took office to express New Zealand's concern at threatened atmospheric testing by the French. When it became a reality the frigate Otago was sent to Mururoa Atoll, the site of the testing.

Describing the French tests as "pernicious and inexcusable," Finlay said : "Throughout, we were devising ways of invoking the jurisdiction of the International Court of Justice."

This was an avenue suggested by D.P. O'Connell who had moved from what Finlay described as a small debt - collecting practice in Auckland to become a distinguished professor of international law at Oxford University.O'Connell had written an opinion on the 1925 General Act for Pacific Settlement of disputes to which New Zealand and France were co - signatories.

New Zealand and Australia lodged claims with the court and succeeded in proving it had jurisdiction. This was followed by a hearing on the merits of the claim to which Australia bought a big team of advisers and scientists. New Zealand had a more modest team.

Australia, Finlay recalled, made a dramatic case of the enormous damage being done by French testing. New Zealand, with the smaller team, made the more modest case that any



increase in radiation without compensating benefit contributed judiciable damage. Finlay believed this argument had more effect on the Court.

In the event, France gave up testing and the Court, in what Finlay later called a "no decision," rebuked France and the hearing was adjourned. Michael Bassett wrote : "Months of complicated legal argument had ended in what Martyn Finlay and others felt to be a rather pusillanimous decision."

At an early stage the Labour Cabinet had decided that Finlay should represent New Zealand at The Hague. Kirk, supported by Sir Richard Wild, insisted New Zealand's representation should be at the same level as Australia's - which meant Finlay should not be outranked by Australia's Attorney - General, Lionel Murphy QC. "This required me to take silk which I was not over anxious to do," he said. "It meant when I returned to private practice, from which I had effectively been absent for about a decade, it would be at a different level which could prove difficult - and so it did."

Appearing with Finlay at The Hague were the Solicitor General, R.C Savage QC, legal academic R.A. Quentin - Baxter, Professor (later Sir) Kenneth Keith, and Christopher Beeby of the Ministry of Foreign Affairs.

Finlay recalled that New Zealand had the advantage of being able to record nuclear fall-out in Dunedin in reasonable quantities. "A lot of the Australian case was hypothetical which I don't think impressed the Court," he said. "If we hadn't been able to produce that (fallout) evidence I don't think our case would have succeeded."

New Zealand, Finlay believed, put the case more effectively than Australia. "They tended to highlight their case, to be somewhat extravagant in the material they chose and the line they took. Ours was a much more modest, low - key affair and I have good reason to believe it had more effect on the members of the Court than did the case the Australians put. In the

end, the result was the same and it would have been difficult for the Court to have divided in different proportions between the cases when they were touching the same material, but I really believe the way our case was developed and put had a very great consequence on the outcome of the two applications. Credit for that must not go to me but to the New Zealand legal team - the tactics were a group decision."

Speaking some years later about his old leader Norman Kirk, prime minister at the time of the International Court hearing, Finlay said he thought Kirk suspected him and appeared to be jealous or envious of him for quite a long time after he became leader - "for absolutely no reason, because he was highly articulate and could phrase a sentence and adjust himself to a situation much better than I could." Finlay saw no reason for Kirk's jealousy but thought the Labour leader seemed to have an anti - academic stance.

Finlay had voted for Kirk against Nordmeyer in the 1965 leadership election after telling his long - time friend Nordmeyer he was going to do so. "But it was only with some very great reluctance I was persuaded to do it," he said. "My reluctance to do so was compounded of loyalty to Nordmeyer and some dislike of the way in which the whole thing had been manipulated. I thought it was a little shabby and a back - door kind of approach." Finlay finally concluded that Nordmeyer was not giving Labour what it needed to project it into office and maintain its standing, and that it would gradually decline.

Finlay was asked to deliver the Kirk Memorial Lecture at Parliament House on October 19, 1982.

Speaking of the former prime minister, he said : "His mental stature, for one whose formal education did not proceed beyond standard 4, was remarkable, encompassing a grasp and understanding which included familiarity with the most unlikely and recondite topics.

Equally, and perhaps more important, was his unshakable thirst for further information - his

avid reading, his unbounded curiosity and unwillingness to accept face values and facile explanations. Small talk was not for him, and conversation an exercise in the pursuit of knowledge unless, to be sure, he was anxious to avoid discussion on a particular topic, in which event he could be as devious and evasive as any mystic."

Finlay said emotion had led Kirk to politics through the heart rather than through the head and in the end made him dominate the New Zealand political stage. "And having mastered the trade - always pragmatic, often mundane and sometimes grubby - of the politician, he used that as a requisite qualifying course from which to graduate to statesmanship."

Speaking about Kirk's views on the rule of law, Finlay said it was a matter of record he and Kirk differed on some issues such as seizing vehicles from bikies. "It is a matter of fact that lawyers like myself are often too smug and complacent about the might and majesty of the law, and I could sense the irritation with which he viewed the seemingly obviously guilty thumbing their noses at society through thickets of legal technicalities." Finlay added : "I feel very much the same frustration myself today at the way drink - driving legislation continues to be manipulated for the benefit of manifest offenders and to the grievous detriment of the community." But he added : "It is dangerously simple to allow that resentment to substitute for the presumption of innocence under the criminal law, a situation that would put a suspect on proof, the very foundation of tyranny - or to adapt its modern guise, the police state."

Finlay told his audience a key component in the even handedness of justice was the necessity to establish the identity of an alleged offender beyond reasonable doubt. Fallibility in this area was notorious, he said, and nothing most be done to water down the established rules for police parades and corroboration - "indeed I believe they should be strengthened wherever possible."

The former Attorney - General declared : "It is all very well for those who profess a hard

line on criminal law to say that the innocent have nothing to fear. That rests on the assumption that only the guilty are arrested and carried to the ultimate end, is a formula for dispensing with the judicial system altogether."

But he did not think it was necessary to be slaves to tradition and did not see the cautious but steady adaptation and exploitation of modern technology like "bugging" or electronic surveillance as an unwarranted invasion of individual liberty.

Measures such as the unanimity of jury verdicts and the rule against self - incrimination were not so deeply rooted in the Anglo - American system of law that they must be classed as inviolate and exempt from review or modification as the circumstances that gave them birth underwent radical change. "All have their values and virtues but generally not without some countervailing disadvantage," Finlay said.

Procedurally, he felt the criminal law was not so hallowed a ritual that it might not be called into question.

Finlay recalled that on other occasions he had speculated "whether we have not been too cavalier and uncritical in dismissing the inquisitorial system of the civil law as unworthy of examination and incomparably inferior to the adversary (or gladiatorial) approach of the common law."

He concluded his address by observing that the phrase 'the rule of law' remained a proclaimed and revered hallmark of New Zealand society.

In his valedictory speech to Parliament on October 6, 1978 Finlay quoted from Thomas Grey's "deeply moving and profoundly understanding" *Elegy*. "To sit, as I have done, in Stoke Poges graveyard and read it aloud has brought tears to my eyes and a greater comprehension of what government is all about than any academic or professional pundit has ever been able to convey," he said.

He spoke about Harold Laski, his friend and teacher at the London School of Economics - "portrayed by too many as a wild revolutionary but who was, in fact, a firm and dogged constitutionalist."

Finlay told his fellow MPs he had become increasingly convinced of the need for a "mandatory braking mechanism" in government.

New Zealand had features which were not common elsewhere - a single chamber, little if any constitutional restraint, the Government's unfettered right to settle the Order paper and determine the order of business, the Government's right to take urgency and ram bills through in a single sitting - and the "closure" which was generally unknown elsewhere. "No would-be dictator could ask for more and Hitler overthrew the Weimar Republic with much less," he observed. The power all this gave a government to extend its term or even perpetrate itself was frightening.

Finlay noted that United States Congressional committees enjoyed an esteem denied to New Zealand's Parliamentary committees, largely due to their more extensive jurisdiction. This could well extend in New Zealand to more of the work given to commissions of inquiry. He believed the party system worked clumsily, sometimes tediously and often offensively, but it worked - with greater human satisfaction than any conceivable substitute.

If the party system trivialised issues, the news media were equally to blame because it was the triviality, heated words and insults which made the headlines, Finlay said.

After his retirement from Parliament in 1978 Finlay returned to practice in Auckland and was offered a place in chambers by several colleagues. He said later he regretted he had not accepted those offers. He noted wryly that he had not been inundated with briefs.

Auckland accountant and friend of long-standing, Max Gunn, said: "No one can tell to what heights Martyn's legal career may have ascended if he had not placed loyalty above self

- interest in the last months of the Rowling government. A High Court post was his for the asking."

Finlay was appointed to arbitrate in two acrimonious industrial disputes which, Gunn said, he did with "speed and with conspicuous success to the mutual satisfaction of both workers and bosses."

But other appointments which his former colleagues had hinted at never came.

Max Gunn, speaking at Finlay's funeral in 1999, said : "Here was a man with all the statesmanlike qualities to rise above party politics, willing and able to perform impartial public duty, whose services were never again called upon, even by his own party, during the two decades after he left Parliament."

Martyn and Peggy Finlay were to experience deep sadness over the tragic death in 1989 of their daughter, Sarah Jane, who was found dead in her flat after earlier being sent to prison on drugs charges.

But there was also considerable pride when their other daughter, Amanda Mary, was called to the Bar and Finlay moved her admission. (On the day he died he recalled with gratitude that Justice Sir Ian Barker had granted him dispensation from holding a practising certificate for the occasion. In this, Finlay was more fortunate than his fellow QC, former Labour minister Frank O'Flynn, who could not move his daughter's admission in Wellington because her request for a practising certificate dispensation for him was turned down)

There was also a son from Finlay's first marriage, David Ormond Finlay.

In their comfortable Freeman's Bay home overlooking Auckland harbour Finlay continued to take a keen interest in national and international affairs, reading widely, listening to classical music and enjoying the walking of which he had been so fond of throughout his life'

Always a very private man, he quietly devoted his time to charity work including reading

for the blind and helping stroke victims.

In mid December of 1998 after Labour leader Helen Clark announced her party's intention to reform the company takeover laws Finlay accepted an invitation from Labour Party President Michael Hirschfeld to join Max Gunn to discuss this in February, 1999.

But Hirschfeld died early in the new year and by the end of January, three weeks after his 87th birthday, Finlay was dead, too.

Friends said he was worried his health might deteriorate or he might have a stroke and become a burden on his family.

Martyn Finlay wrote an elegant letter and then, with the courage and dignity so characteristic of him, his life ended on January 20, 1999.

Members of the legal profession, former Cabinet colleagues, Parliamentarians, former clients and many friends joined the Finlay family at All Saints Church in Ponsonby Road, Auckland for his funeral on January 26.

Tributes were paid by the Ombudsman and former legal colleague Judge Anand Satyanand, Max Gunn, former Cabinet colleagues Warren Freer and Bob Tizard, former Prime Minister David Lange, Labour Leader Helen Clark, Labour MP Jonathan Hunt and Finlay's 13 - year old granddaughter, Victoria Carlaw, daughter of his step- son John.

Gunn said Finlay had made "a huge contribution to the standards which once made New Zealand one of the fairest and most considerate societies on earth, adding : "It is the inspiration of such men as Martyn that, when the aberration of the years of market forces greed has vanished, will restore our country to dignity and harmony - and greatness - again."

On Martyn Finlay's casket rested the wig and gown he had worn with pride, integrity and distinction.

Derek Round

