

The legend that was

This is a speech made by Justice Rice to a Bar and Bench lunch in 1985. It is reprinted here in the interests of legal history.

Following the first Japanese air-raid on Darwin in February 1942 the Supreme Court of the Northern Territory, as it then was, was evacuated and all court records and accoutrements were gathered in by one man and taken in the course of many excursions to a slit trench.

His Honour Judge Wells, who was the Supreme Court judge of the day, remained in Darwin throughout the war except for periodical circuits which took him to Alice Springs.

On the occasions that he visited that town, the man who had salvaged most things from the court drove his highly polished 1929 Dodge and parked daily outside the Alice Springs Courthouse.

He was indeed the fattest man I have ever seen.

He made Sidney Greenstreet of *Casablanca* fame look like the Thin Man.

His sparkling dentures made with the precision of a fitter and turner unfortunately lacked the vulcanizing effect of his gums, the result being a perpetual beatific smile.

He wore the fashionable Darwin rig of the day which made him look like a plantation owner.

He was habitually attired in long white trousers, shirt with long sleeves and black tie.

His girth was enormous and to prevent his midriff from becoming blackened by the bakelite-type steering wheel of his car which dug into his paunch, he donned a little white apron at all times before getting into his car.

You might well ask what had this man to do with the court as it then was?

To many, he was the court in all its forms. In fact, he was Judge Wells' right-hand man and accompanied him everywhere he went, and did everything for him but decide the case on which His Honour was presently engaged.

He was none other than Joseph Wesley Nichols, known as Sheriff Nichols, or to his many friends simply as "Nick."

In his time, he held some 29 official positions.

He was the Clerk of Courts, an all-em-

bracing title which covered the Supreme Court before the title of Master was accorded to the role, Clerk of the Local Court and Clerk of the Licensing Court. He was Registrar-General of Deeds which included both the Land Titles Office and the General Registry.

He was Commissioner of Stamps, Commissioner of Succession Duties, Public Trustee, Registrar in Bankruptcy, Registrar of Companies, the Commonwealth Electoral Officer, Registrar-General of Births, Death and Marriages, a Special Magistrate, Justice of the Peace and Clerk of Arraigns.

In short, whatever official title there was for public office in the service of the law, he was the holder of it.

Quite apart from these official functions he was an old soldier of World War I and, because of his skills as an *amanuensis*, he was not only President of the RSL but the Secretary as well.

Versatility

To illustrate Nick's versatility, I can testify to the fact that on one occasion when he was sitting alone as a Special Magistrate at Alice Springs dealing with a World War II veteran who found himself before the court on an almost daily basis for drunkenness, His Worship simply fined "Machine Gun" Mick ten shillings for his latest offence, left the Bench, and was then approached by the defendant, this time in his role as Secretary of the RSL, and Mick said to Nick: "Can you lend me ten bob?"

Nick opened his RSL drawer which held the contents of the provident fund, handed Mick a ten shilling note which Mick returned to Nick in his role as Clerk of Courts and Receiver of Public Moneys, and the fine was thereby paid.

It was Nick who, in 1951, presented me with my first wig and gown, both of which had been in storage since that first raid on Darwin.

The wig had endured the ravages of time, the gown was something akin to a mini-skirt, but nonetheless fulfilled my re-

quirements until I had earned enough to replace both articles of court attire.

At that time, there were four practitioners only in Darwin: Brough Newell, John W Lyons, a man named Coop and the other had abandoned his practice to join Ampol.

There were two legal practitioners at Alice Springs: Neil Hargrave and myself.

And the other two in the Territory were Mrs Holds, the wife of the Postmaster at Tennant Creek, and Bill Nobbs, who was later to become a judge of the Family Court, but who has since retired on account of ill-health.

The court at Alice Springs was diagonally opposite the present court complex and all criminal trials, except for murder and treason (of which there were none), were conducted by a judge sitting alone without a jury.

Unfortunately, Judge Wells had the misfortune to be involved in a serious road accident on the Daly Street Bridge in Darwin and retired shortly after I had first set up in practice at Alice Springs.

His Honour's place was filled by His Honour Mr Justice Martin Rudolf Chemnitz Kriewaldt who, incidentally, despite his undoubted prowess as a lawyer, had not taken a law degree but had completed what was then called the Final Certificate in Law at Adelaide University.

His academic qualification was a Bachelor of Arts, University of Wisconsin in the USA.

During the very close association between Judge Wells and Sheriff Nichols, the Sheriff had acquired a facility for his own brand of pidgin English.

Pidgin affirmation

Under the Evidence Ordinance, once it was established that a witness lacked competence to swear on oath, the court form of affirmation devised by Sheriff Nichols took this form:

"Jacky, you bin see that big boss fealla, all same judge, bin sit longa there?" - pointing to the judge.

Jacky replied: "You-eye."

Sheriff J W Nichols

"He became exceedingly testy...stripped Nick of his function and substituted an associate, the first of whom was John Somerville..."

"Now you bin tellum all same judge fell all about that trouble bin come up longa Yuendemu. You bin tellum all same true fella what you bin see longa your own eye, not what some bugger bin tellum longa your ear. No more gam, no more humbug?"

Jacky replied: "You-eye."

"Now you bin tell him all same judge big loud voice, all same corroboree?"

Jacky replied: "You-eye."

Acceptable

The so-called affirmation having been administered, Jacky would then be examined by the Crown Prosecutor and so the trial would proceed successively with each Aboriginal witness who was called.

This procedure was accepted during the course of several trials by Mr Justice Kriewaldt, but it soon became apparent that defence counsel would invariably rely upon the argument that the testimony of such a witness, who was not duly sworn and who had not taken the appropriate affirmation, amounted to little more than the testimony of a child of tender years whose evidence needed to be corroborated.

As a result, the number of acquittals became somewhat disproportionate in comparison to expected convictions, especially at the hands of Mr J L Travers, QC, as he then was.

Now Mr Justice Kriewaldt, who had had a very strict and Christian upbringing, and who was a dedicated Lutheran, learned more and more about Aborigines, and especially those in the Hermannsburg area and in the many missions at the Top End of the Territory.

He became exceedingly testy about what I might term the Nichols' form of affirmation and not only put a stop to it, but stripped Nick of his function and substituted an associate, the first of whom was John Somerville, followed by John Merity, George Cridland and George Kicken-son, to administer oaths or affirmations strictly.

Nick was relegated to his many and di-

verse activities, but no longer administered his form of affirmation.

After the new swearing-in procedure had been adopted for some time, the Crown was called upon to prosecute the Chambers brothers on an indictment for malicious wounding of Aborigines who had taken up a position on the roadway, blocking the entry of station vehicles to the homestead on their property.

The Crown allegations were serious and there was a great need to ensure a conviction in order to put an end to what was considered to be extreme maltreatment of Aborigines.

The Crown was instructed by Professor Bailey, the then Commonwealth Solicitor-General, to brief HG Alderman QC, as he then was, to lead for the prosecution, especially as the Minister for Territories, Mr Paul Hasluck, as he then was, had the responsibility of accounting to the United Nations for these alleged acts of atrocity. When the case came on for trial at Darwin the Courthouse was still an army-type Sidney Williams hut located on the Esplanade a short way down from the Hotel Darwin.

The Bench was at the northern end; there were one or two overhead fans and the sides of the hut were almost completely open.

At this time John Somerville was the associate and Mr Justice Kriewaldt directed that he swear in the first witness.

In the meantime, Harry Alderman QC, who was leading Keith Edmunds for the prosecution, left his seat at the right-hand end of the Bar table and moved to a position outside the courtroom and lit up a cigarette.

Billy, the first witness, was asked whether he was a Christian and upon his answering that he was, the judge directed that he take the oath.

The oath was administered by the associate whereupon Travers QC, for the two accused, arose and applied to the trial judge for leave to examine the witness on the *voir dire*.

His Honour reluctantly granted this application because it involved the compe-

tency of a witness and the examination went something like this:

"Now, you have told the court, Billy, that you are a Christian boy?"

"Yes."

"And you know what that book is that you held in your right hand?"

"Bible."

"And you know what the Bible is all about, Billy?"

"Yes."

"Now will you tell His Honour what the Bible is all about?"

"God."

"Now, Billy, tell us who God is?"

Billy hesitated, looked up at the Bench, then around the court and then along the Bar table and, seeing the vacant chair, said: "Him bin that fella him bin go out for a smoke."

Happy to say that notwithstanding this challenge to the competency of the witness for the prosecution, convictions were duly recorded and justice was done.

The Supreme Court in what I might call Kriewaldt's day sat principally at Darwin and at Alice Springs during such times as circuits would be fixed by the judge.

In addition, however, Mr Justice Kriewaldt took every opportunity to see as much of the Northern Territory as he could, and on two occasions he appointed sittings on outback cattle stations.

Outback trials

The first time was at Anthony's Lagoon Station where he conducted the trial of a celebrated Territorian who was a renowned cattleman named Wason Byers. Byers was charged with cattle duffing, as it was euphemistically called.

The Crown alleged that he had stoled callie from Victoria River Downs Station and had superimposed his Coolibah Station brand over the VRD brand.

The case lasted many days and was conducted on the verandah of the station homestead with the judge and all counsel in full legal regalia.

Byers was acquitted thus notching up one of Travers; many victories in the North-

The legend that was Sheriff JW Nichols

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on Territory. This case, incidentally, preceded the Chambers' case.

His Honour also sat at the trial of two young men who had set up camp at a place called Siegel's Creek in the gulf country just west of the Queensland border.

They were charged with stealing a large herd of cattle from Alexandria Station at a place called Michibiyo Waterhole.

That trial lasted a week and was conducted in a corrugated iron shed some distance from the homestead of Alexandria Station.

The accused were convicted of stealing something like 12 cattle only, for which they were sentenced to a short term of imprisonment and the payment of a substantial fine.

You can well imagine, therefore, why Mr Justice Kriewaldt was inspired to urge the Commonwealth to build the present Supreme Court building since the court facilities were very poor indeed.

Although I did not know Judge Wells personally, I was briefed to appear against him at the suit of one of those injured in the road accident which brought about his premature retirement.

The Commonwealth had offered to make an *ex gratia* payment of 5000 pounds to my client on the judge's behalf, but His Honour had persistently refused to approve of the Commonwealth intervention.

He had considered himself blameless, as indeed he may have been.

Nevertheless, on the morning of the trial, Mr Dick Ward, as he then was, who appeared for Judge Wells, finally received instructions to settle the action on that basis.

To put the case in its proper perspective, at that time there was no compulsory third party insurance in the Northern Territory. The days of Judge Wells, Sheriff Nichols, Mr Justice Kriewaldt, Sir Harry Alderman QC, the Honourable JL Travers QC and Justice Ward have long since passed, but each in his own way contributed in no small measure to the success of the court as it now is.

N A T I O N A L

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