
CLANT 2007 Biennial Conference

By Mark Johnson, Criminal Lawyers Association NT

In late June this year, lawyers (plus partners and children) from around Australia travelled, once again, to Bali for the 11th biennial CLANT Conference. The theme for the conference was Remote Justice. Such is the national prominence of the CLANT biennial conference that this was the third consecutive conference where NT delegates were outnumbered by those from the other states and territories.

For most of us from the NT, this meant an early attendance at Darwin Airport – 5.30am. But the upside of this was that we arrived at Bali and were at the resort (Bali Hyatt in Sanur), by mid-morning. Even though the weather was unseasonably rainy, this did not last long as the sun soon emerged. This provided plenty of time for delegates to start reading furiously in preparation for the hard slog in the conference the following week. For those with partners, affectionately referred to as handbags (a term applying equally to both male and female partners), this allowed maximum time for exploring swimming pools and shops.

On Saturday, after registration (i.e. collection of conference bag and t-shirt), everyone gathered on the lawns of the Bali Hyatt in the evening all for a relaxed and welcoming cocktail party on a beautiful balmy evening. There followed a further day of relaxation on Sunday, so that the conference commenced on Monday morning. After a brief welcome by the CLANT President, the conference was formally opened by the Attorney-General, (as usual) in the guise of Tom Pauling QC, the NT Solicitor-General. [It should be noted that no NT Attorney-General has attended CLANT conferences since Daryl



The Entrance to the Bali Hyatt, where the CLANT Conference was held

Manzie and Fred Finch in the last century. But, it was pleasing to note that Daryl Manzie was in Bali at the time and came along to the opening on Monday.]

The keynote address was presented by none other than High Court Justice (and CLANT Patron), Michael Kirby. This paper was of top quality and, as most would be aware, features in the inaugural edition of the Northern Territory Law Journal. His Honour's paper succinctly set out the various aspects of Remote Justice and, at the same time, covered recent developments in the High Court. For those wanting MCPD points, this was a real bonus. The following are some brief extracts from the paper: "The purpose of a meeting in a remote place is to encourage the participants to think beyond their comfort zone....Justice should not be remote, whether in the geographical or intellectual sense. It is our duty as lawyers to help bring justice according to law to people who face legal problems....The Criminal Lawyers' Association of the Northern Territory is aware of the importance of bringing justice to parts of Australia that are geographically remote. But all of us must be alert to the risk that justice is remote when it is most needed.

It is against that risk that we strive in trials, and on appeals, to prevent miscarriages of justice and always to provide justice according to law - not remote but actual, equal, principled and real."

This paper was followed by another dealing with subject matter of particular contemporaneity – Customary Law – is it still relevant? by CLANT life member and stalwart, Justice Dean Mildren. This was an excellent exposé on the subject matter. In the course of his paper, His Honour stated: "In my submission customary law or cultural practices sometimes provide relevant background material of a secondary fact to prove a primary fact which has traditionally been regarded as a mitigatory fact."

In his conclusion, Mildren J went on to say: "Customary law is still and is likely to remain relevant in an evidentiary sense to both criminal responsibility and sentencing for some time to come even if the states and territories were to adopt the Commonwealth's model."

In the same subject area, there followed a paper (Government Injustice in Remote Australia) presented by Rex Wild QC and Stewart O'Connell. This double-act by Rex & Stewart was certainly insightful into both the paper and the Commonwealth Government's response. While they admitted that little new had come out of the Inquiry, Rex and Stewart very strongly advocated that the knee-jerk response by the Commonwealth Government largely disregarded the work, and particularly the recommendations of the report.

After lunch, Colin McDonald QC presented a paper entitled 'Don't bury us before we're dead' - Constitutional Issues in Death Penalty

Continued page 36

CLANT 2007 Biennial Conference cont...

Cases in Indonesia. This provided all with a very salutary lesson in what is involved in dealing with capital criminal offences where the death penalty is actually involved. As Colin said in his conclusion: "John North and I, together with our valued colleague, Robert Khuana SH, have been again this week in the death tower. We witnessed again the pain, frustration and not far from the surface, fear, in Scott Rush's eyes and in his movements. We listen to the guards, the prison doctor, the excellent Australian Consulate staff and know none of the six condemned persons is travelling well. They are not able to "get on with life". They have been in death row now for nearly a year. Executions in Indonesia usually take some years after conviction. The six condemned Australians in the death tower at Kerobokan are living examples of the "death row phenomenon."

The final paper on Monday was entitled Double Jeopardy: Quo Vadis by Walter Sofronoff QC, Solicitor-General for Queensland. As many jurisdictions in Australia are now toying with or, worse still, actually changing the various laws dealing with double jeopardy, this was clearly a topical subject and covered well by Walter. Amongst the general themes of his paper was the need for all lawyers to be vigilant to ensure that we do not stand idly and silently by as governments seek to bring in these supposed reforms.

After the formalities of the first day, most delegates and partners sauntered just down the road from the Bali Hyatt to a local warung, Apa Kabar (translated as "how are you?") for a Bintang Night with some satays and, unsurprisingly, quite a few Bintangs. The success of the night was such that it continued for some hours afterwards, at least for the young, or young-at-heart.

Tuesday morning started with a



CLANT Life Members

new addition to CLANT conferences, a hypothetical on a subject of current relevance, namely Deliberate HIV Infection, which was moderated by Justice Kirby. We certainly got good value from His Honour as he showed himself to be a real workhorse at the conference. But, not surprising in view of his reputation and also as he is the Patron of CLANT. The hypothetical panel was (as specifically requested by His Honour) a mix of ages, liberals, conservatives (or, as His Honour referred to them, troglodytes), genders and jurisdictions. It was not only very informative, but also very entertaining.

The hypothetical was followed by a paper presented by Trevor Mor-



David Ross

ling QC, well known to those who are not so young and have been in the NT for some years. Trevor's paper was entitled Mediation in Criminal Matters. Some of you might be asking yourselves how mediation could work in criminal matters. If you do, you wouldn't be alone as many delegates were clearly thinking along those lines, at least before hearing from Trevor. By the time that the paper was finished, most listening were able to think outside the ballpark a little more than they had previously. Maybe there is a place for mediation in criminal matters?

For those who attended the 2005 Bali conference, there was an opportunity to see/hear the keynote address by Major Dan Mori, David Hicks' Military attorney in the US Military Commissions. To follow this in 2007, Lachlan Carter (Vic Bar) presented a very interesting paper entitled Legal Duties Owed by the Australian Government to Citizens in Custody Overseas. Lachie's paper provided us with much more detail of what has really been happening, especially with the findings of Tamberlin J in the Federal Court action. Unfortunately, for us at least, Hicks' guilty plea denied us the opportunity to see the finality of this litigation. As Lachie submitted, "...as a matter of principle, such a duty (by the Government on its citizens) should

be held to exist”.

After lunch, Pat McIntyre presented a paper about the now well established and successful Elcho Island Mawul Rom Project. It had been intended that the main presenter would be the Rev. Dr Djiniyini Gondarra, the main architect (with Pat) of the project. Unfortunately, due to the death of his wife, Djiniyini was unable to attend. [CLANT wishes to pass its condolences to Djiniyini on the loss of his wife.] But, in his absence, Pat did an admirable job. His paper showed the delegates at the conference many things, not the least being that we do not have all the answers – we need to constantly keep our minds open to the inclusion of alternative methods and ethos in dealing with matters in the criminal justice system.

To finish up day two, Professor Ned Aughterson presented a paper on International Extradition. For those of us with very little knowledge of this subject, we all left much better informed. It showed us that those such as Tony Mokbel and Christopher Skase could have been well pleased that they were Australians overseas with our government seeking their return, C/F being in Australia and a foreign government seeking extradition. Ned also made us aware of yet another area where the law is changing and perhaps eroding the bases that our courts are now considering extradition applications, especially international.

As most of the delegates at the conference travelled to Bali with Garuda Indonesia, this was reciprocated when Garuda wined, dined and entertained us in the evening in the beautiful grounds of the Sanur Beach Hotel and in weather conditions which were perfect. The food and beer were first class, even if the wine was less so. The shock caused to the ears of all by the CLANT president being called up to sing were eased considerably by those who followed, including



Tony Elliott, Libby Armitage & Peter Thomas

Martin Fisher, Jenny Blokland CM and a duet by sand-gropers, Tom Percy QC and John Prior. I understand that this performance was repeated later in the evening on more than one occasion?

Wednesday was a day of discussion groups, the most notable being that resurrected and hosted by our own Tom Pauling QC, namely Toms Terrific Tour. The popularity of TTT was such that it was not only booked out some weeks before the conference. From the feedback received, none who went were disappointed.

On Thursday morning, we (or most of us) reconvened to hear Michael O'Donnell (CDU) present his paper, Sentencing for Murder in the Northern Territory. As the NT is the jurisdiction in the country with, still, the most draconian sentencing laws for murder, this is an issue close to the hearts and minds of all NT criminal law lawyers. Michael's explanation of the role of the Parole Board was particularly informative.

In the past few months, one of the most prominent news stories has been the trial in Townsville of Queensland Police officer, Snr Sgt Hurley. This arose from an incident on Palm Island which sparked off the Palm Island riots. The prosecutor in the Hurley trial was Peter Davis SC (yes, Queenslanders have progressed

into getting rid of the antiquated QC title). For those living in a cocoon, Hurley was acquitted by a Townsville jury. Peter's paper was not only timely, but it was also presented in such a way that we were all astounded, not just by some of the apparent concerns about the way that the matter was investigated, but by the extent that this was done. All is not well in the state of Queensland! But, I think we all realise that it is not only about Queensland that we should be concerned.

As has become the norm for past CLANT conferences, we were been entertained by a play. This time it was *The Dock Brief*, by John Mortimer (of Rumpole fame), featuring Tom Pauling,



Jack & Anna Karczewski

Continued page 38

CLANT 2007 Biennial Conference cont...



Kirby J and the hypothetical panel

Ken Conway & Rex Wild. It was a most entertaining production by Rex and the performances by Tom and Ken were brilliant. It was also pleasing to see so many partners attending.

After lunch, Chris Kourakis QC (SA Solicitor-General) presented his paper, General Unfairness Discretion. While centering on SA, Chris' presentation was equally applicable to us in the NT. Even though *Bunning v Cross* is still out there, Chris made it clear that, in many situations, its applicability is diminishing.

Following up on their great double act on Tuesday evening, Tom Percy & Jon Davies played it straight in presenting their paper,



Rex & Lyn Wild

Sentencing for Sexual Assault. This was followed by another CLANT stalwart, David Ross QC (who amongst you reading has not had cause to consult Ross on crime?) whose paper was aptly entitled, Presumptions in Criminal Law. David's paper was even better than his usual high standard.

The final day of the conference, Friday, commenced with a forum session on Bush Courts. This session started with a short excellent paper by Chief Magistrate, Jenny Blokland and was followed by contributions by Martin Fisher (NT Summary Prosecutions) and Ben Tyers (ALS WA). One of the most notable aspects to come out of the discussion was the clear consensus over the very poor, cramped and sub-standard facilities provided in bush courts throughout the NT. [Further contributions to the debate should be addressed to Greg Cavanagh SM, c/- Magistrates Court, Darwin.]

The final paper, entitled Castle or Clubhouse? Australian Anti-fortification Laws by David Grace QC (Vic) & John Prior (WA) was not only very informative, but also very entertaining. David and John explained the new anti-fortification legislation and also showed the delegates a rather ironic and amusing video which had been

produced by their clients, the Gypsy Jokers Motorcycle Club - this was provided to WA Commissioner of Police to demonstrate that their clubhouse in Perth was not fortified at all.

After a roundup closing session, delegates retired to prepare themselves for the festivities to follow in the evening. These commenced with the Gala Dinner held in Purnama Terrace, a magnificent garden setting with staff providing a wide variety of food in the open air on a beautiful balmy Bali evening. The highlight of the dinner was an award presented to Tessa Pauling on behalf of the partners of delegates. [The term handbags, actually originated from Tessa herself some many years ago.] Tessa's brief acceptance speech saw the inauguration of CHANT (yes, you guessed it, the Criminal Handbags Association of the NT) and she informed all present that CHANT is here to stay. [We understand that a CHANT conference is now being considered and, as a result, we wonder what name will be given to the partners of CHANT members?] After all at the dinner had eaten and drank to the usual excess, the festivities continued with a dance in the Rinjani Hall, by this stage transformed from the conference venue we had all experienced during the preceding four days. The band was most entertaining and included guest appearances by many delegates and handbags. None will forget the excellent performance by Nigel Browne who really got the mob rocking. For a different reason, none will forget the performances, followed by many encores, of Grant Algie (from SA). Of course, the Bintang continued to flow throughout the dance. It was a most enjoyable way to wind up the conference.

As all (or at least most) attending the conference would agree, the 11th biennial conference was a resounding success. The speakers

were excellent and the Bali Hyatt was, yet again, a fantastic venue, with Sanur close enough to shops and within a short taxi ride to the nightspots of Kuta, etc. Bali and the Balinese people were, as usual, most welcoming and friendly and all attending can attest to the warm, safe environment. Compared to past conferences, the attendance at the sessions of the conference were very well attended. Some might consider this due to MCPD, but I think it is more a testament to the quality of the papers.

The CLANT Committee is once again indebted to Lyn Wild who, for the seventh consecutive time, organised the conference so brilliantly. It was a sterling effort, especially considering the number of delegates, the number of different places from where they were travelling, and the different times that they were arriving and departing. WELL DONE, Lyn. We will all line up again in 2009 for a further CLANT conference (in Bali again?). What better way to compile those necessary, but nuisance CPD points? So, start

planning and mark your diaries around mid 2009.



David Grace



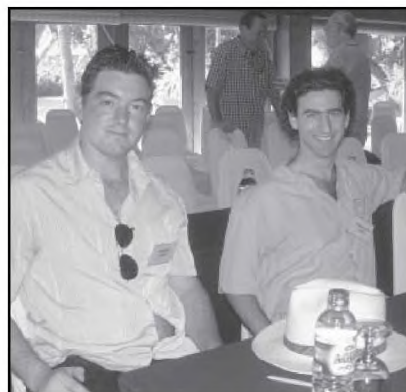
Mildren J, Oliver SM, Suzan Cox & John Nader



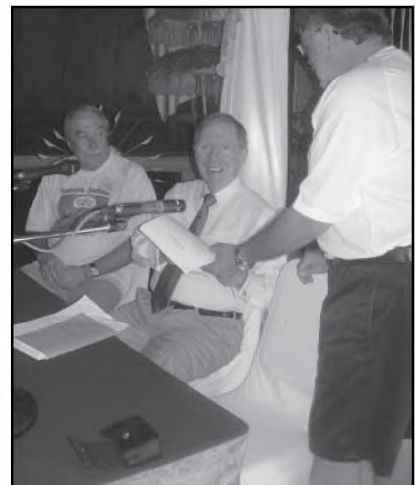
Greg and Ronnie Cavanagh



Tom & Tessa Pauling and a Balinese friend



Daniel Cash & Jonathan Lenn



Tom Pauling, Kirby J & Mark Johnson



Austin and Valerie Asche



Mrs Blockie & Mrs Cockie



Liz Leahy & Dean Mildren

2