

Address by The Administrator of the Northern Territory

An edited excerpt from the keynote speech at Opening of the Legal Year Darwin, Monday 4 February 2008, Hanuman Restaurant.

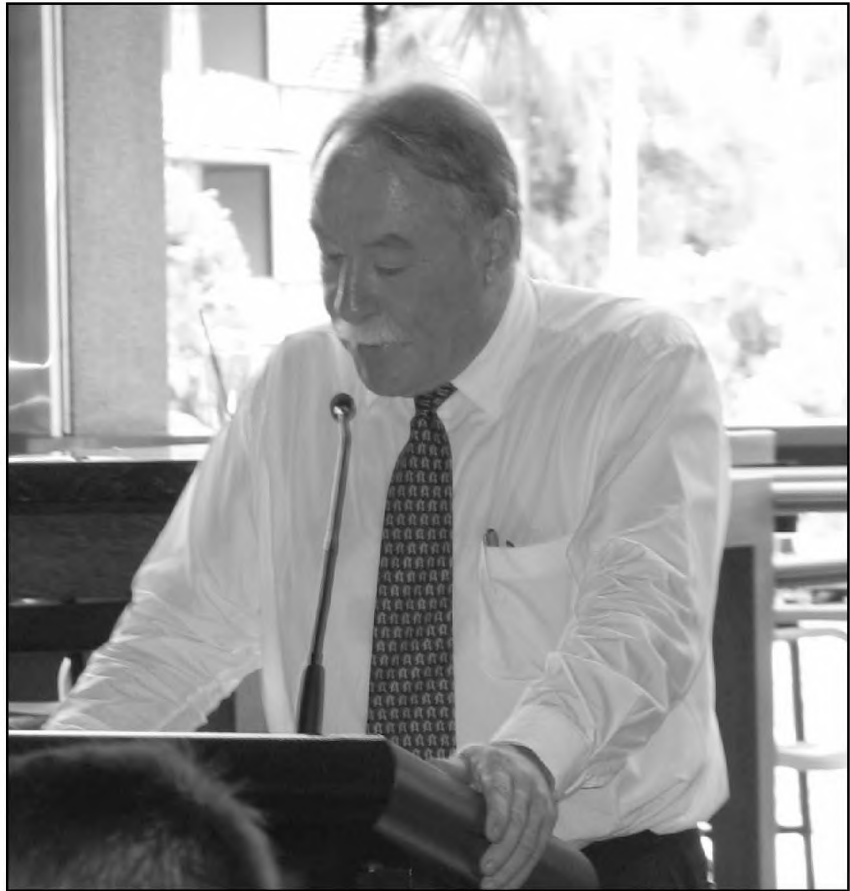
Thank you Duncan for the invitation to speak at this lawyers function now that I am no longer a practicing lawyer. Not everyone here would know that you lived with us as our surrogate son during Year 12 and a bit of 13 and that somehow we got you to study and pass. This is a strange form of revenge to ask me to speak here.

Speaking of revenge, Duncan forced our daughter Zoe to eat green peas and in retaliation Zoe hid his Year 12 assignment and caused Duncan to panic calmly which is an asset as you will discover. But I want to tell you publicly that your surrogate parents are very proud of you.

For nearly 20 years I was deemed to have a practicing certificate by reason of holding the office of Solicitor-General. Now that I am the Administrator I am not allowed to engage in any other work so I neither need nor want a practicing certificate but here I am. I was asked to reminisce on a life in the law, a dangerous opening to give me, but it has been a long time and I am ready. Like all good stories, you need a beginning, a middle and an end; or as was said in Alice's Adventures in Wonderland – "Begin at the beginning and go on until you come to the end: then stop".

This is the beginning. I commenced working in the law as a Clerk articulated to Arthur Gustave Knox, the Deputy Public Solicitor in Sydney, in February 1964, 44 years ago.

One of my first jobs was to pack up application books to the Privy Council in London in the then famous case of Parker v The Queen. Mr Parker had killed a man who ran off with Mr Parker's wife – actually they pedalled off on a bicycle. The case turned on whether provocation



His Honour, The Administrator, Mr Tom Pauling QC speaks at the Dariwn lunch

should have been left to the Jury to reduce the crime to manslaughter. A decision of the House of Lords in Director of Public Prosecutions v Smith stood in the way of any affirmative answer to that question and so provocation was not put and a murder conviction and death penalty followed. Chief Justice Dixon, with the concurrence of the rest of the court, stated:

"Hitherto I have thought that we ought to follow decisions of the House of Lords, at the expense of our own opinions and cases decided here, but having carefully studied Director of Public Prosecutions v. Smith (1961) A.C.290 I think that we cannot adhere to that view or policy. There are propositions laid down in the judgment which

I believe to be misconceived and wrong. They are fundamental and they are propositions which I could never bring myself to accept...I wish there to be no misunderstanding on the subject. I shall not depart from the law on the matter as we have long since laid down in this Court and I think that Smith's Case should not be used in Australia as authority at all"

The murder conviction was set aside and five years later while taking my turn as the interviewing officer at the Public Solicitors a dapper jockey-sized man with a cloth cap came in and asked to see Mr Knox. It was Mr Parker coming to say thanks. His case had meant the end of slavish adherence to

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English authority. I am not sure he appreciated the departure from *Stare Decisis*.

For me it ignited an excitement about the development of the common law which I have maintained over all those years and have been fortunate to argue cases that have contributed to that development... But I have got ahead of myself.

I was at the Public Solicitor's for six years and while I loved the work it wasn't doing much for my self-development. I was living with my aged mother and I felt a bit trapped. After a traffic jam at Christmas and a late arrival at work, I declared to my work mates that I had had it with Sydney and picked up a NSW Law Society Journal which fell open at an ad for Cridland and Bauer Darwin. The ad was four months' old but they hadn't found the right person for the job. As they say the rest is history, a little of which I would like to share with you today.

In March 1970, I left my unhappy mother at Mascot Aerodrome waving from an open viewing area. You can't do that now at Sydney airport. I was on the milk run: Melbourne, Adelaide, Leigh Creek, Oodnadatta, Alice Springs and arrived in Darwin on a hot and humid day.

George Cridland picked me up at the airport, we dropped my bags off at some temporary accommodation and he took me to the office about where the Crowne Plaza now stands in Mitchell Street. I was introduced to Michael Ward whose part of the practice I was to take over. The 69/70 wet season was a flop and his wife had flipped and he could only give me a brief few hours to acquaint me with the practice before taking his poor wife to Adelaide. She looked as though she had a sprinkler head on her head, the way she perspired, the picture is so clear



His Honour, The Administrator, Mr Tom Pauling QC addressed audiences in both Darwin and Alice Springs

and weird.

Three huge files sat on the desk and these were the urgent, urgent files. One was the ship, the *Golden Swan*, under arrest at the wharf. The second concerned 20 bus passengers injured when the *Redline Coach* they travelled in collided with a *Stevens Transport* truck on the old *Coomalie Creek Bridge* near Adelaide River, which is still there no doubt to remind me of the case. No writs had issued and the statutory time limit was to expire in three days. The third case was the *Gove Land Rights Case* as city agents for Frank Purcell of Geelong for the Plaintiffs.

The *Gove Land Rights Case* was

an absolute eye-opener. I had no experience of anything aboriginal and to get to know the great leaders of that generation was simply amazing. Sadly few survive today, one is Mr *Wali Wunungmurra*, the Chairman of the Northern Land Council, who with *Galarruwuy Yunupingu* was a translator in the court. The case failed on both legal and evidential matters but it was the real beginning of the Land Rights agenda, the *Woodward Commission* and the *Land Rights Act*. It set the platform for *Mabo*. Land claims and native title have taken up a huge part of 37 years in the law in the Northern Territory and I will come to some of the more bizarre aspects of them in a while.

The legal profession was tiny in 1970. We had one Judge, Richard (Dick), later Sir Richard Blackburn, and two magistrates: Haynes Leader in Darwin and the infamous Bob ("Scrubby") Hall in Alice Springs. Justice Blackburn heard the Gove land rights case. With few exceptions we were all young and out of our depth.

The exceptions were George Dickensen who was Counsel Assisting at the War Crimes Tribunal in Japan following World War II, the memorable and much admired Dick Ward, George Cannonball Cridland who was a decade older than most of us and later John McCormack. Ian Barker was then in Alice Springs as was Brian Frank Martin. We didn't have a roll of practitioners until 1979 when we had a mass admission. Somehow they knew when you were first admitted here. In my case it was the 19th March 1970 about six days after I arrived so I guess there was some formality about it. We were all given a little certificate and this is mine.

There was nothing formal about the lunch that followed the admission. It was at Charlies Olympic Restaurant as usual at a time when the wine list read Ben Ean Moselle and Seppelts Moyston Claret. Ah, those carefree days when you didn't have to make choices except between white and red.

Justice Blackburn went to the ACT to become Chief Justice and was replaced by William Forster first as Judge, Senior Judge when Jim Muirhead arrived and then as our first Chief Justice. We became very close friends, though that didn't count for anything in Court, (he showed no favours). Like his predecessor, Bill Forster as a former Master of the Supreme Court of South Australia, felt the need to teach us procedure and practice. How we tried their patience. How we exasperated them.

We had additional judges left over from the disbanding of the Commonwealth Court of Conciliation and Arbitration. Two, Sir Reginald Smithers and Sir John Nimmo were delightful to appear before. Two others, Sir Percy Joske who edited the leading matrimonial causes handbook of the day and Edward Dunphy who served from 1961-1979 were awful. I appeared before all of them with mixed results. Ian Barker managed to get the last death penalty out of Ted Dunphy. Pemble (1971) 124 CLR 107. We used to lunch a lot and I had had a terrific criminal sittings. I asked him at lunch how he went and he answered:

"Not bad on average"

"Hows that?" I asked.

"Well I got death and a bond."

My practice had extended to Western Australia by then in a largely vain attempt to boost my monthly billings so I could profit share. Back in Darwin, however, at the tender age of twenty-four I found myself as Counsel for Tony Jungari, from what was then called Hooker Creek, who was charged with the murder of his brother, the aptly named Benny Bulldozer (produce club). This is the club that killed him!

You may wonder how I came to be in possession of the principal Crown exhibit in a murder trial but first some cautionary advice. This trial took place when an accused person could make an unsworn statement from the dock.

The Crown case was over just before lunch on day two. The case was about self-defence so cross-examination was very brief. Benny Bulldozer – a big boy who weighed about sixteen stone, wanted Tony's third wife but she wouldn't go with him so Benny poured scalding tea over her and set off to get Tony – a skinny little bloke. Benny threw sticks, spears and a boomerang at

Tony who dodged and weaved but when cornered he got this club from the roof of his humpy and hit Benny once here and killed him outright.

This should be easy I thought, I'll get Tony to tell his story to the jury and no worries, 'self-defence'. So I decided to have a rehearsal during the luncheon break. He stood in the dock, I sat in the jury box – he was wonderful, the story really flowed. The Court reconvened.

"Mr Jungari will make a statement from the dock," I said. The guard urged Tony to his feet. He stared at me and was mute. The court clock ticked very loudly. The Judge fidgeted. After a silent eternity I asked if I could speak to my client? He, of course, having already told me the story he wasn't going to tell it to me again. In his mind I knew the story already and didn't need reminding, Oh-Oh. A valuable lesson to learn – I was panicking – a lifeline from the Judge – You may prompt him in a non-leading way Mr Pauling.

Tony, why did you kill Benny? His eyes lit up. I killed that Benny because he was going to kill me – if I hadn't killed him he would have killed me. I had to do it or he would have killed me. He resumed his seat.

Well, His Honour observed to the Prosecution, it sounds to me like a definition of self-defence. The jury were out for seventeen minutes. It took fifteen of those minutes for the urn to boil. It was all over in less than two days, unimaginable speed in those days. I went to the Sheriff and said, "My client wants his club back." The Sheriff said, "I don't see why not, sign here..." And I did. Tony said I could keep it and I have.