

Peter Edward Nygh (1933 – 2002)

*By David Bennett AO QC
Solicitor-General of Australia*

Peter Edward Nygh who died on 19 June 2002 after a short illness was a leading international lawyer and a great Australian.

Peter was born on 16 March 1933 in Hamburg, Germany, the first child of Eduvard and Käthe. His father was Dutch but working in Germany at the time. The family left Germany shortly after Peter's birth and moved to The Hague and then Rotterdam where they built a home in Kralingen. Peter attended the Gymnasium Erasmianum in Rotterdam. His brother, Evert (Philip) was born in 1938. Käthe died in 1941. In 1946 Eduvard remarried an Australian, Muriel Poole and had two daughters, Jane (1947) and Ann (1949). He died in 1949. Muriel brought the family to Australia in 1951.

Peter attended Sydney University Law School and did articles with William Arnott & Poole. After graduation he was called to the Bar. Soon after that he commenced an academic career as a lecturer at the University of Tasmania. He met Jill Griffin in 1957 and they married in 1961.

Peter travelled to the United States on a Fulbright Scholarship and obtained a doctorate (SJD) from the University of Michigan. He and Jill returned briefly to Tasmania before he took up a position at the University of Sydney where he was ultimately appointed as professor of law.

Peter and Jill had four children: Nicola (1965), Libby (1967), James (1968) and Anneke (1970). Libby died at the age of eight months and Anneke was killed in a car accident in 1999.

In 1971 Peter obtained a Von Humboldt scholarship and the family spent a year in Germany where he worked at the University of Köln. In November 1973 he was appointed as professor of law and founding head of Macquarie University Law School. Peter was a gifted teacher with a rare ability of being able to explain complex concepts in simple terms and of engaging his students. Over the years he taught a significant proportion of the current legal profession in Sydney either at Law School or in continuing legal education.

In 1979 he was appointed as a judge of the Family Court of Australia and he was appointed to the Appeal Division in 1983. It is common in Australia for the legal profession to be suspicious of academics who are appointed to the judiciary. Those people who retain that attitude are forced to concede that Peter was one of the most outstanding successes of any appointment to the Family Court. He was always fair and judicial; his courtroom manner was exemplary and his knowledge of the law was extensive. In a jurisdiction where emotion is often a major factor, it is a

measure of Peter's outstanding ability and empathy that the losing litigant always left his courtroom knowing that he or she had received a fair hearing.

In 1987 Peter was awarded a doctorate (LLD) from the University of Sydney for his published works and in particular *Conflict of laws*, the leading Australian textbook on private international law. The seventh edition of this work was published in 2002.

Jill died from melanoma in 1992. Peter retired from the Family Court in 1993 although it turned out to be anything but a retirement. He was Principal Member of the Refugee Review Tribunal for two terms, each of approximately twelve months from 1998-9 and 2000-2001. He was a visiting professor at Bond University and the University of New South Wales. He retained a practising certificate at the Bar and appeared in a number of important cases in the High Court. He was an active member of the International Law Association (Australian Branch) for many years and held various executive positions including President. He was also a member of the Executive Council of the International Law Association at its headquarters in London.

Most importantly of all, he represented Australia at the Hague Conference on Private International Law where he was one of the two *rapporteurs* to the Convention on Recognition and Enforcement of Foreign Judgments. He regularly attended meetings of this conference, representing Australia and sitting as a *rapporteur* without remuneration from either the Australian Government or the Hague Conference and without even the payment of his fares and other expenses. The work was onerous and the cost to him enormous but he continued it as a labour of love for his adopted country and for the institutions of private international law which he loved so dearly.

He was awarded the Order of Australia (AM) for his contribution to international and domestic law on Australia Day 2002. The induction ceremony on 10 May 2002 was his last public appearance. He was diagnosed with pancreatic cancer on 16 May and died 19 June at the home of his brother and sister-in-law Philip and Margaret surrounded by his family.

He had been invited to deliver the lectures for the General International Law course at the Academy of International Law in The Hague in 2002. He considered this to be the summit of his career and was deeply disappointed that his last illness prevented his delivering the lectures and making a final visit to The Netherlands. Everything that Peter did was executed to perfection, yet he never sought the overt accolades that he so richly deserved.

Peter is survived by his daughter Nicola and son James and his grandchildren Kerrin and Callum. He will be sadly missed not only by his family but also by the Australian legal profession, the Australian international law community and his many friends and admirers at The Hague Conference.

Charles Luland (1938 – 2002)

*By His Honour Judge
Stephen Norrish QC*

Charles Allan Luland QC, a senior judge of the District Court of NSW, died suddenly at his home on 16 May 2002. He had faithfully served the people of NSW as a judge, a prosecutor and defender of people charged with serious criminal offences for 30 years. Throughout his life he performed his professional responsibilities with equanimity, humility and honour. Very few lawyers have or have had his ability to prosecute and defend criminal matters with equal skill. Yet, although Charles rose to the highest echelons of the legal world, his origins held no portent of the successful career that he achieved.

He was born and raised in Botany, his father and other family working in the tannery industry for which the area was well known. The Luland family's presence in the area for a number of generations and its contribution to the local community is recognised by a local street named in honour of it. Appearing in murder trials or before the High Court as a senior member of the legal profession would have seemed to Charles and his family, at this point of his life, a distant, perhaps impossible, achievement.

Charles was educated at local public and state schools before leaving at 14 years of age to work in the tannery where his father was employed. He worked there for nine years. However, like many people of ambition and intelligence denied early educational opportunity, he studied for his matriculation at night. During this period in 1959 he married Beverley, to whom he remained devoted until his death. He matriculated at the age of 23, whilst he was working in the Commonwealth Police Force. During this service he progressed to the rank of sergeant first class. He was involved in criminal investigation and document examination, as well as lecturing at the Commonwealth Police College at North Head. He also successfully undertook and completed studies for the Barristers' Admission Board. It was during this period that his children, Karen, Mark and Scott, were born.

Whilst policing was a serious business for Charles, with the added responsibilities of family and studies, he was not without a sense of mischief. At the police college where he lectured, a dinner was held after the graduation ceremony one year, which was attended by the then commissioner of the Commonwealth Police. The commissioner of the time was very keen for plain-clothes Commonwealth Police to wear hats similar in style to those worn by Leonard Teale and his colleagues on the television show then popular called 'Homicide'. Late in the evening, after the

dinner, an impromptu 'Mexican hat dance' was conducted around such a hat, which had been left abandoned in the bar area. The finale to the dance involved Charles ceremonially jumping on the hat to irretrievably crush it. Charles's dramatic jump unfortunately coincided with the arrival of the commissioner back in the bar area to retrieve the hat, which he believed he had left there for safe keeping. Although the commissioner was not amused, the event was no impediment to Charles' career in policing.

He was admitted as a non-practising barrister in 1971 whilst still a serving police officer. With a young family to support, he took the courageous decision of leaving the Commonwealth Police and working for the clerk of the peace (the predecessor to the director of public prosecutions) instructing in criminal trials. He commenced his legal career in 1973 by entry to the private Bar. At that period of time for people without connections within the legal profession, direct admission to practise at the Bar without prior experience as a solicitor was unusual and fraught with the risk of failure.

However, instead of failing, Charles prospered. He took chambers at Chalfont Chambers in Phillip Street, not unnaturally, given his previous career, mixing with barristers largely specialising in the criminal law. Some such as Tony Bellanto QC and Bill Hosking QC, at various stages of their careers, were leaders of the NSW criminal Bar.

With his life's experience up until that time he had his feet firmly planted in the real world and used his knowledge of the everyday and his understanding of human foibles to great effect. He was a direct, plain speaking advocate, who practised without display of his emotions or theatrics. His background enabled him to have a good understanding of people, which allowed him to readily empathise with his clients and also understand clearly how to communicate with juries.

Although establishing himself at the private Bar in 1976 he was appointed one of the public defenders of NSW, led by Howard Purnell QC, co-author of the then definitive criminal law textbook *Watson and Purnell*, and who was in many respects father of the modern criminal Bar in NSW.

Charles held this appointment for over 13 years. There he worked in a competitive environment. He was joined by Bill Hosking (later to become a judge of the District Court). During his time as a public defender he worked with other leading criminal legal advocates many themselves to pursue eminent judicial careers, such as John Shields QC, Jeff Miles (formerly chief justice of the ACT Supreme Court), Reg Blanch QC (now Justice Blanch, Chief judge of the District Court), Peter Hidden QC (now Justice Hidden of the NSW Supreme Court), Michael Adams QC (now Justice Adams of the Supreme Court), Virginia Bell SC (now Justice Bell of the Supreme Court), Rod Howie QC (now Justice Howie of the Supreme Court),

Malcolm Gray QC (now Justice Gray of the ACT Supreme Court), Dr Greg Woods QC (now Judge Woods of the District Court), Martin Sides QC (now Judge Sides of the District Court), Paul Byrne SC (former law reform commissioner) and among many others who in various ways have influenced not only modern legal practice, but also the legislative development of the criminal law in this state over the past three decades.

In March 1984 he was appointed a deputy senior public defender, at which time he took silk. His work then largely involved Supreme Court trial work, which invariably meant conducting difficult and emotionally demanding murder trials. He was no stranger to the Court of Criminal Appeal and the High Court, but felt most comfortable pleading a case in the presence of a jury with whom, with his modest bearing and his clarity of expression, he developed great rapport. He undertook difficult cases without complaint, much work performed in country centres such as Albury, where he was later to return as a judge.

His career however took a significant and, at the time, unexpected turn subsequent to the appointment of Reg Blanch as the first director of public prosecutions. Notwithstanding over 15 years of conducting cases for the defence, the director understood that Charles's even temperament, his ability as a lawyer, his modesty and integrity, made him an ideal choice to conduct major criminal prosecutions.

Such was Charles' devotion to the higher ideals of justice that he had no difficulty accepting appointment as a deputy senior crown prosecutor and the change for him was seamless. He continued to conduct himself, as he had as a public defender, with exemplary fairness and objectivity. Within a short period of time he was appointed senior deputy director of public prosecutions, primarily advising the director in relation to the conduct of prosecutions and appeals. Although the work was demanding and the responsibility great, he enjoyed the opportunity of reflecting upon the principles involved in the application of the law away from the cut and thrust and the daily grind of a trial practice.

On 22 February 1993 his achievements in the law culminated with his appointment to the District Court, on which Bench he served with distinction until his death. As a judge he had a reputation, not surprising given his background of policeman, defence counsel and crown prosecutor, for being 'absolutely straight down the middle'. He brought to his office none of the worst aspects of past experience, such as bias or pre-judgment.

As a judge he was industrious and productive. He maintained an intense interest in legal developments and was widely recognised for his great grasp of the current law, particularly in criminal law and procedure. He enjoyed work at the 'coal face'. He brought to the Bench his ability to get to the point and, in a

jurisdiction which bears the brunt of adjudicating over the greater bulk of most serious crimes committed in this state, his ability to deal with his work quickly but fairly made him a great asset to the court and an honourable servant to the community.

Although his involvement in the law was great and time consuming, it did not match the great passion he had for family life and the interest he maintained in the achievements of his wife and children. He had much about which he was entitled to boast but he was a man of humble bearing who would rather talk about Beverley's skill as an artist, than any case in which he had been involved either as lawyer or judge. He was an accomplished golfer who lamented that his short game never quite matched the accuracy and reliability of his driver and long irons. Whilst he was proud of his rise from 'humble origins' to silk, he was equally proud of the two 'holes-in-one' he achieved. He enjoyed classical music, theatre and travel. He had a wide interest in the visual arts and was a great encouragement to his wife's interest in that area.

The last year of his life was blighted by a severe illness, the depth of which his colleagues and friends had little knowledge or understanding. As a person who rarely spoke of himself, seeking support outside his family was beyond him. The support of his family however remained strong throughout and always optimistic.

At the time of his death he was 64 years of age. His funeral service was attended by many representatives of the judiciary, court administration and a large number of members of the legal profession, including those associated with both the prosecution and the defence of criminal matters, his family and friends.

He is survived by his wife Beverley, his daughter Karen and her partner Michael, his sons Mark and Scott and his wife Joy, his grandchildren Jack, James and Emma and his brother Ron and sister Jean and their families.

Adrian Philpot

(1946 – 2002)

By Jim Staples

St Jeanne D'Arc Church, Dijon, France, 8 August 2002

The following account of the Mass, which was conducted in French and Latin by Abbe G Babinet, Fraternity of St Peter, was written by Jim Staples.

In the afternoon of Thursday 8 August 2002, a mass was celebrated in a chapel attached to the *Centre Hospitalier Universitaire de Dijon*, in which Adrian had been received for his illness and where, by all appearances, he was treated with all skill, care and concern, in optimism for his