

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

recovery, and with compassion for his illness and suffering.

Present was the celebrant, a young priest courteous, intelligent, handsome, direct, respectful, quietly welcoming and sincere in his empathy with Beverley in her loss. He was assisted by a young man in casual street clothes, summer shirt and slacks, who by his knowledge of the mass showed himself to be a trainee for the priesthood, it seemed.

Present also were, of course, Beverley, Mary Gaudron, her husband John Fogarty, Mary's friend Sybil Davis, an Australian long-time resident in Tauxigny (near Loches and Tours), Jim Staples and Professor Phillip Camus, who had had charge of the case of Adrian, and Mrs Camus, his wife - also a doctor. The hospital is a University of Medicine teaching hospital. The day was warm, sultry, cloudy and calm.

The celebrant priest, who bore himself upright in a long white gown, greeted and spoke to us in the chapel, and received the requests for certain matters to be met in the course of the service (which were put to him by Mary at Beverley's nomination) with every grace and attention. Beverley was particularly concerned for the priest to know that Adrian was utterly given to the faith of the church, to its standing and meaning amongst Christians. She had asked for the mass to be celebrated in the Latin language on account not only of Adrian's mastery of that language but because it invoked for him the deep cultural significance of the church in the history of Europe, of catholicism and christianity. It would seem that the celebrant had been especially provided by the church authorities for his learning in the Latin liturgies. Indeed, a special permission was given for the mass to be said in Latin by reason of the rules adopted in such a matter at Vatican II.

The hearse, with Adrian's remains in his coffin, which had been closed in Beverley's presence and that of her party from Australia, was waiting outside the chapel. The celebrant asked us to leave the chapel with him, to go outside, where he spoke some words in explanation of what was to come, and he and we were to follow the coffin into the chapel. The coffin was laid on a stand in the aisle before the altar.

The small congregation (there were no strangers to Adrian present) sat on chairs on which were laid booklets in Latin and French of some 33 pages, entitled *Liturgie des Defunts* (for those who are departed, late, deceased). The text is a collation of Psalms, music for the songs of the church, text from the Gospel, especially the letters, Epistles of Paul and John, the invocations to the Lord due from the celebrant, traditional prayers due from the congregation to which there are known responses and confirmations when the prayers are offered up by the priest on its behalf.

The text is in two columns - on the left is the Latin, and on the right a rendering in modern French. On the last of the thirty

three pages of textual material there are final prayers offered by the celebrant to God to look benignly upon the soul of the deceased. This final imprecation comes not merely after a place is accorded for material drawn from the New Testament and from traditional hymns (both words and music), but at the end of an account, given in French by the editor(s), of the significance of the gestures of the celebrant, of his vestments, to be noted as the Mass proceeds - such matters as the tender of bread blessed by the priest and tendered by him to those of the congregation who seek communion with Jesus then and there - and the blessing by the priest of the blood of Christ, which he holds aloft and displays to the faithful. All this was faithfully pursued by the celebrant in the course of the Mass. And, as is foretold in the liturgical text distributed on each chair, there was to be and there was a final prayer thus: (according to the French translation)

Lord, we pray this of you: have pity on your servant. He submits in his heart to your will. Let him not be the object of your punishment, and having been part, here, amongst us, by his true faithfulness, of the devotion of the faithful, let him be above, by your grace, joined with the host of angels, by Christ, our Lord. Give him eternal repose, and let the light of heaven shine upon him without cease. Let him repose in peace. Let his soul, and the souls of all the departed, by the pity of the Lord, repose in peace.

[As that last series of prayers was given, and as is proposed in the text, it was heard amongst us - Amen - several times.]

Most of the mass was given by the priest, he facing the altar with his back to those in the congregation for the occasion, and voiced by the priest quietly, undoubtedly as a matter well-known to and understood by those familiar and faithful with such a Mass. The priest began by cladding himself with a shoulder-mounted drape hanging front and back mainly of black, over his white full-length wear, and richly marked with two broad full length wide strips in gold and regular decoration. This had been laid ready on a table to the left of the altar as we faced it. He then turned at the outset and addressed us in French explaining the significance of various gestures to be made by him in the course of his service. He told us that he would, from a special hand held fire in a pot of gold metal on a hand-held chain, seek to surround the coffin with smoke, as if this was washing/masking the departure of the deceased from earth into heaven. He told us that he would prepare holy water to be sprinkled by him upon the coffin and the flowers there laid, and that we would be able to follow him in this sprinkling, each of us, as we did in due course.

The priest then addressed some general remarks to the whole significance and importance to his church in France, to have the opportunity, the invitation, on behalf of Beverley, the wife of the deceased, especially, to be able to pray and intercede for one from Australia, so far from his home,

who had departed this life on French soil. He saw his Church as enriched by the recognition given to it by an Australian, in whose heart, he was told, France had a special and high rank. This was gesture not only to his church, to the faith, but to France - for which he was humbled. He argued that while the physical remains of the deceased, of Adrian, lay even then in our midst, his soul had already departed for the judgment of the Lord, and the mass was a prayer for pity to be accorded to him by the Lord when this judgment was given upon him. He argued that all life was a preparation for this moment, and he was assured that Adrian, by his faithfulness to the church in his lifetime, had prepared himself well for what was to come. He emphasised our right to be confident upon the point. He placed no small store on the point that the Church in France was able to offer Adrian's soul to *le seigneur* - the Lord.

It was after these introductory remarks that he turned to the altar, and commenced the formal procedures, pronouncements, and gestures, of a traditional Catholic mass, given on this occasion, unusually, in Latin. In the early preparatory moments, his lay assistant played from a recording music of an unaccompanied female or male choir.

It was not a short mass. At its end, we sprinkled the coffin, each of us, and then the priest led us to the outside where the coffin was placed in the hearse under the several large bouquets which had also been in the chapel.

Each of us then spoke with the Professor and his wife. We thanked them for their attendance, and received from them the assurance of their condolences, and of their disappointment that their efforts had failed, because life is ultimately beyond the mastery of men. The hearse was soon driven away, and the small party could do no more than depart for Dijon.

Tim Ostini-Fitzgerald

(1952 – 2002)

By David Day.

St. Brigit's Church, Sally's Flat NSW, 7 June 2002.

There is no visible sunrise on this sad day. Cloud and rain cover the Central Tablelands. Low rain clouds drape the hills on either side of the Turon Valley as we approach our destination. It has rained all day making the unsealed roads run with small muddy streams and become dangerously slippery. Mercifully it is not cold with the temperature holding at 14 degrees.

Sally's Flat is a locality about forty five kilometres north of Bathurst, not far from Hill End, and about forty kilometres east from Ostini country, the Ophir- Mullion Creek area north of Orange. It is high fine wool grazing country and a long way from