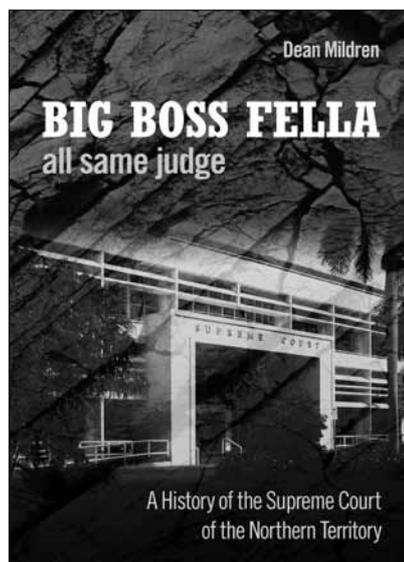


Big Fella All Same Judge: A History of the Supreme Court of the Northern Territory

Dean Mildren | The Federation Press | 2011



The title of this engaging book comes from an affirmation which Aboriginal witnesses were asked to make by a special magistrate in the Northern Territory, Joseph Nichols. Nichols affirmed witnesses in Pidgin English, along the following lines:

Jacky, you bin see that big boss fella, all same judge, bin sit longa there? – pointing to the judge.

Jacky replied. 'You-eye'.

Now you bin tellum all same judge fella all about that trouble bin come up longa Yuendumu. 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.

Mr Nichols was himself a colourful character. He was described by a local legal practitioner (later to become a Supreme Court judge in the territory) as:

... 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 vulcanising 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.

As might be gathered from these extracts, this is an entertaining book. It not only provides a fascinating account of the history of the Supreme Court and justice more generally in the Northern Territory, it does so in a very readable way.

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The author is well qualified to give this fascinating historical account of the territory's legal and judicial systems. Dean Mildren has been a justice of the Northern Territory Supreme Court since 1991 and, prior to his appointment, he practised in the Northern Territory for many years. Justice Mildren also displays the welcome trait of any good judge: the ability to laugh at himself. He recounts a case in 2004 when a young serial thief whom he had previously released on a suspended sentence came up before him again for breaching the terms of his release order. Upon hearing that the accused had committed numerous stealing and burglary offences while on suspension, the judge asked: 'Who was the bloody idiot who granted him bail?'

The book traces the history of the judicial system in the Northern Territory from 1863, when the Northern Territory ceased to be part of New South Wales and became part of South Australia. The author has carefully researched the background and contributions of all the judges who have served in the Northern Territory. They include Justice Samuel James Mitchell, who was appointed a resident judge on 1 April 1910 and resigned in April 1912 when the Commonwealth (which in 1911 had taken over administration of the territory) refused to offer him a commission for more than five years. Justice Mitchell is also remembered as the

grandfather of Dame Roma Mitchell, Australia's first woman to be appointed as a senior counsel, then as a superior court judge and later as governor of South Australia.

We are also treated to some fascinating insights into the things which particularly motivate Northern Territorians. In December 1918 there was a serious public uprising in Darwin provoked in part by the administrator's decision to increase the price of beer by 31 per cent. There was considerable public disquiet about this, together with other actions taken by the administrator and his perceived ally, Justice Bevan (who was then the territory's sole Supreme Court justice). A public rebellion was avoided when, on 18 October 1919, the administrator, Justice Bevan and

the government secretary were all run out of town by the Darwin mob, leaving their wives behind.

No one should be surprised that Justice Bevan was both controversial and unpopular, particularly in the eyes of Darwin's beer-drinking trade unionists. In 1915, in the midst of a waterside workers strike (which meant that a Dutch vessel was unable to unload its cargo), Justice Bevan went down to the wharf and personally assisted in its unloading!

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This well researched book deals extensively with the interaction between the territory's justice system and Indigenous Australians. We learn that it was the practice to imprison Aboriginal witnesses (potentially for months) prior to them giving evidence in criminal trials. The conditions at Fanny Bay Gaol at the time are described as 'barbaric'. We are also given a timely reminder of the draconian nature of the territory's Welfare Ordinance 1953–1957, under which the administrator declared all

but six Aboriginals in the territory (including Albert Namatjira) to be wards. This meant that all such persons could be taken into custody (for their own 'care and assistance'), were restricted in their freedom of movement without written authorisation and even had to get permission to co-habit or marry. This part of the book takes on a particular poignancy in view of the recent debate and controversy concerning Commonwealth intervention, a modern reality

which possibly also attracts the author's description of the Welfare Ordinance as 'an appalling piece of legislation of the most patronising kind imaginable'.

We are treated to absorbing accounts of many Territory cases which have contributed to Australia's legal history. Cases such as the trial of Bradley Murdoch for the murder of Peter Falconio, the significant litigation in *Mengel v Northern Territory* (which has proven to be a landmark decision

in torts and administrative law) and, perhaps most fascinating of all, a refreshingly objective analysis and description of the various proceedings surrounding the death of Azaria Chamberlain. Justice Mildren also discusses numerous cases dealing with the relevance of customary law and sentencing of Aboriginals and how Territory courts have dealt with 'payback punishment'.

I hope that the author will forgive me if I mention the only malapropism I spotted in the entire book. In detailing the extra security installed for the Falconio trial, the author describes on page 331 how the dock 'was provided with a perspicacious screen'!

The publication of this book deserves two bouquets. The first must go to The Federation Press for having the courage and imagination to undertake its publication, helping to secure its reputation as Australia's leading legal publisher. The second goes to the author for having produced such an interesting and informative work.

Review by John Griffiths SC