

# New South Wales Bar Wellbeing Committee Experienced Barristers Luncheon

19 November 2019 • Union Universities & Schools Club

The Sydney Bar Commemorates 50 years of service in its ranks

On 19 November 2019, the Wellbeing Committee hosted the Experienced Barristers Program Luncheon commemorating the 50 plus years at the Bar of RR Stitt QC, The Hon. Murray Gleeson AM QC and Peter Hennessy SC at the Union University and Schools Club. The MC for the luncheon was none other than JE Maconachie QC, a distinguished and learned friend to all those present. It was a convivial luncheon where many stories were related by those present and the friendships and myths of the old Bar were renewed and evoked again. It should be noted that to practise for 50 years or more is a unique and rare distinction amongst the ranks of the inner Bar nowadays. In times to come, such lengthy call will become increasingly rare.

Reproduced here are the notes of Stitt QC's speech in acceptance of the award for his distinguished service. His reminiscences of the giants of the Bar from the 1960s, 1970s and 1980s were thoughtfully expressed and entertained all. Others in attendance were Wheelahan QC, West QC, Robberds QC, King SC, The Hon. RS McColl, Smith SC and Mr Paul Daley were in attendance, each of whom bore witness to the times past. It was an emotionally charged event which was attended by much good feeling in the room as spouses and friends alike, took time to reflect on the recent history of the Sydney Bar and the unique careers to which it gave rise.



JE Maconachie QC, Kylie Nomchong SC, Paul Daley, RR Stitt QC, the Hon M Gleeson AM QC, P Hennessy SC, Tim Castle, Sarah McCarthy

The Honourable Murray Gleeson, distinguished guests, learned friends.

I thank the New South Wales Bar Association and the Experienced Barristers Committee, in particular, for arranging this function. I thank the Hon. Murray Gleeson for agreeing to participate in it and to present the certificates. I thank you all for your attendance. It is quite humbling. I appreciate very much and I am grateful

for, the kind and encouraging words from John Maconachie QC, a learned friend of long standing for whom I have great respect and affection. His words will stand me in good stead for my next 50 years at the Bar.

As I understand it to reach 50 years of continuous practice at the Bar requires two essential characteristics; the first is not to die; and the second is not to be appointed to the Bench. Although I suspect an appointment

to the Bench in some jurisdictions is a fate worse than death.

It is a truism that an occasion such as this, which emphasises my 50 years of continuous practice, induces in me mixed emotions. Apart from everything else it focuses the mind on one's mortality.

Sir Owen Dixon in his book *Jesting Pilate* described barristers as *hand maidens in the temple of justice*. Over the years I have found

the task of being such a hand maiden to be both difficult and demanding.

On reflecting on my 50 years at the Bar for me the best analogy of that time is captured by the opening line of Charles Dickens novel *A Tale of Two Cities*. Dickens wrote:

*It was the best of times; it was the worst of times.*

I say that because a barrister's working life requires considerable intellectual and emotional investment in the tasks of litigation; the outcome of which can induce, on the one hand an intense feeling of satisfaction, even elation at success; or on the other hand, despair and self recrimination at a defeat; - Particularly in a case which you believe you should have won. To be able to cope with these highs and lows is a fundamental necessity for continuing to practice at the Bar.

The travail between Triumph and Disaster, those two imposters as Rudyard Kipling called them, enlivened my life at the Bar. It is the product of adversarial litigation conducted in courts before critical and demanding judges. You expect to lose a number of cases because of the cab rank rule. You are not given the luxury of choosing what side of the case you're on.

It was the best of times because of the people with whom I became involved and with whom I worked and who instructed, mentored and guided me; whose conduct and professionalism I sought, unsuccessfully, to emulate.

To all of those people I am indebted. Debts that I can never repay.

The first is my wife Sally. She believed in me. When I was a solicitor, she encouraged me to go to the Bar. She supported me both financially and in so many ways in those early years, and in the subsequent years. She gave me unflinching support both in the struggle to establish my practice and continuously thereafter. In the beginning even though she was working herself; at night after dinner, she would type my chamber work and then in the early hours of the morning I would drive to solicitor's offices (mostly in the suburbs) and deliver it. In that way we returned chamber work within one day of receiving the brief. I suspect that this caused much surprise and astonishment to the solicitors.

It was the best of times that I read with George Smith, who was my pupil master. He was a very good but underrated Barrister. He had a mischievous sense of humour. I had briefed him when I was a solicitor. He guided me through my reading years and subsequently. His appointment to the District Court bench was a loss to the Bar.

I was admitted to the Bar on a Friday, Friday 26 April 1968. That day George

Smith gave me two briefs for the Orange District Court starting the following Monday. He said:

"Here are two briefs for Defendants in front of Judge Black Jack Newton at the Orange District Court. He has never given a verdict for the Defendant in his life. Good luck."

I worked on these briefs all weekend and the cases ran on the following Monday and thereafter. There was a verdict for the Defendant in one of them and the Judge reserved his decision in the other. It was the best of times. Afterwards as the solicitor drove me to the airport, he said to me:

"our clients have done well; you did quite a good job. I have never heard of you before. How long have you been at the Bar? I didn't like to say "only a couple of days", so I said "Oh not long".

None of my family or ancestors had had any dealings with, or knowledge of the law. So it was the best of times that I was mentored and guided by my late father-in-law, Mr Justice Kenneth Asprey, who was appointed to the Court of Appeal before I was admitted to the Bar. He had an enviable record of mentoring many junior barristers at the Bar his readers included Sir Anthony Mason, Justice Gordon Samuels, Justice Ken Jacobs and his many regular juniors whom he led often included Sir Laurence Street and Tom Hughes QC. He was a powerful and flamboyant advocate immensely successful and a great teacher and mentor in the law. In addition to being a highly regarded justice of appeal he was a wonderful raconteur. He talked to me about the law, taught me to understand the duties of a barrister and to recognise the privilege of being a member of the Bar.

It was the best of times that I became a member of 7th floor Wentworth chambers which contained many successful and illustrious barristers including J W Smythe QC and Murray Gleeson. The clerk was Fred de Saxe, who was called "The Prince of Clerks". Today our chambers are fortunate to have as our clerk, Simon Walker. I am pleased that a former clerk, Andrew Laughlin is here today.

I worked as junior with both Smythe and Gleeson. Jack Smythe, who was head of chambers, was a fearsome opponent and a devastating cross examiner. On a number of occasions, I sat at the Bar table listening to him destroy the testimony of a vital witness of our opponent; on those occasions I said to myself "no matter how long I stay at the Bar I will never be this good".

I had the same sentiment, and the same thoughts applied, when I was Murray's junior whilst listening to him conduct litigation.

He was without peer as an advocate in all jurisdictions. He was as powerful and successful talking to a criminal jury, (as he did in defending the politician, Ian Sinclair in his trial involving charges of forgery) as he was in making submissions to the highest courts of appeal, both the High Court and Privy Council. I never heard an advocate who bested him.

In the Sinclair trial, the major issue was whether a signature on a series of cheques was that of George Sinclair, Ian Sinclair's late father, or a forgery. The prosecution, in support of the proposition of forgery relied on the evidence and opinion of a handwriting expert, Mr Buglio, who was said to be the best in Australia. His opinion of forgery was based on two things:

1. First the tremulous signature; which was obviously in a shaky hand. He described it as the tremor of forgery.
2. Second that there were cheques that had been signed by George Sinclair in a firm hand bearing dates just before he died (which was about the time the disputed signatures were made).

Murray advised that we should obtain the best handwriting expert in the world. He was identified as Charles Frydd, of New Scotland Yard in London. Murray had a conference with him in London. He showed him photocopies of the questioned documents as the originals were held in the custody of the Crown.

Frydd's advice in London was that before he reached a conclusion, he needed to look at the original documents and also to obtain the oldest known signature still in existence of George Sinclair. He said that people on their death bed often revert to a signature similar to that they used in their younger years.

Frydd came out to Australia even though he had not finally expressed a concluded opinion. Before the trial we obtained an order to gain access to the original documents. They had to be inspected in the strictest confidence and privacy as the presence of Frydd had to be kept secret. If he was known to be in Sydney and he wasn't called it would not have assisted Sinclair's defence. I was given the task of arranging and supervising the inspection by him of the originals and ensuring that Frydd's working papers recording his results were confidential, accurate and not otherwise corrupted.

In addition, an old document bearing George Sinclair's earliest signature was found and this was strikingly similar to the disputed signature. Further, there was evidence that the cheques signed in a firm hand were not signed on the date they bore. They were signed much earlier.

Frydd expressed the opinion that "this suggests to me very strongly that this isn't a forgery at all". Murray cross examined Buglio and extracted damaging admissions from him.

Frydd's appearance was that of an elderly academic with a large shock of white hair. He was cross examined by the senior crown prosecutor on the tremor of forgery. He asked whether Frydd was familiar with the tremor of forgery. Frydd said "Yes, a very old-fashioned concept". He was pointed to the shaky signature and the prosecutor said "look at that, isn't that tremor the tremor of forgery?". Frydd looked at it for a long time and then said "extremely unlikely".

The prosecutor then called for Frydd's working papers in which he recorded the results of his inspection of the original documents. This for me was a pivotal moment. Frydd handed over his notes and the prosecutor and Mr Buglio went through them and poured over them for what seemed to be an extremely long time. It was in front of the jury and they were turning the pages over and back and discussing between themselves at the Bar table. After this very long time the prosecutor said, "no further questions". For me that was the best of times.

Because of Ian Sinclair's very senior position in the federal government, the end of the trial was very dramatic. The judge summed up and sent the jury out to consider its verdict at noon. The unanimous opinion of all, even from the Senior Crown Prosecutor, was that the jury would be out for no more than 20 minutes for an acquittal.

Ian Sinclair was taken into custody and locked up. Murray and I returned to chambers where the two of us sat alone in the room and we waited, and we waited.

Hour after hour went by. We couldn't understand it "what went wrong? What more could we have done?". The hours ticked by and we were in despair. It was the worst of times.

At 10pm at night word came through the jury has reached a verdict. Murray and I walked to the court in Hospital Road. It was an amazing scene. We were surrounded by tv cameras and lights. There was a large crowd surrounding the court and crammed into the court. There seemed to be hundreds of people. There were lights and cameras all around, journalists and reporters were shouting questions at us. It was bedlam.

The jury filed in. The foreman was asked to stand. He was so nervous and over-awed that he was trembling and shaking. The Associate read the first charge and said "how do you find the accused, guilty or not guilty". The foreman couldn't speak. He said oh oh "guilty". I turned and looked at Sinclair who was sitting behind us. He was ashen. We had misheard.

The Associate read the second charge and asked the same question. By this time the foreman had collected himself and said firmly "not guilty". The remaining charges were also found to be not guilty. I had an overwhelming feeling of relief and elation. It was the best of times.

Whilst I endeavoured to emulate Murray, and learn from him my efforts fell very short. A comparison between us as barristers is like comparing as tennis players, my Auntie Marge with Roger Federer. He was the best advocate I ever heard.

I appeared as junior to Bill Deane QC in the Privy Council when Keith Aiken QC was our opponent. I was with Murray in the Privy Council when Robert Alexander QC was our opponent. At that time, Robert Alexander was the absolute doyen of the English Bar; - he who charged Lee Kuan Yu a fee on brief of £1,000,000.00 for a defamation brief in Singapore.

In London, before our case started, Murray said to me "when you hear Bob Alexander's submissions to their lordships just remember we do have a case".

On this day presiding in the Privy Council was Lord Diplock who had a fearsome reputation for savaging, humiliating and destroying Barristers who appeared before him, as well as their submissions.

We were waiting to get started, a Queensland Silk was ahead of us. As you may know, in the Privy Council the Bar table is very close to the Bench. In these circumstances their Lordships can appear quite overpowering even though they are not robed.

As the Queensland Silk, who shall remain nameless, stood to announce his appearance, Lord Diplock, who had emphysema, said to him:

"Mr Smith, their Lordships have read your petition with amusement."

There was no prize for second. It was the worst of times for that Queensland Silk.

It was the worst of times when I frequently appeared for the Law Societies of New South Wales and ACT, and the Bar Association, in proceedings against members of the legal profession who had committed professional misconduct in all of its many and varied forms. Each case was always a tragedy as disbarment was often the result. It was a tragedy not only for the legal profession but also because of the devastating consequences which followed for the practitioners, their spouses, their children and their extended families.

Occasionally I get into a taxi and the driver says:

"You don't recognise me do you". When I say "no". He says "you acted for the Law Society when I was struck off as a solicitor".

It is always a conversation stopper.

It was the worst of times after I cross examined Alan Jones, of shock jock fame, who gave evidence on behalf of Robbie Waterhouse and the Waterhouse family in one of their unsuccessful attempts to have the warning off orders against them lifted by the Australian Jockey Club; arising out of the notorious Fine Cotton Ring In affair.

Jones, who knew nothing of the facts of the case, had no knowledge of the evidence and had not read the judgments of the A.J.C Committee or Judge Goran of the Racing Appeals Tribunal but never the less he got in the witness box and tried to bully and filibuster the committee hearing the application.

There was a large crowd of journalists and members of the public present at the hearing. Jones did not present well in the witness box or perform well under cross examination. The audience started to laugh at his evidence and at him. The laughter became louder. He became extremely irate, which just made it worse. Jones left the witness box in a steaming rage. He felt I had made a fool of him; when in fact he had made a fool of himself. This event is recorded accurately in the book *Jones Town* by the Australian author and journalist, Chris Masters.

Thereafter, day after day, Jones attacked me on his national radio program. He was relentless and unremitting. He abused me, defamed me, mocked me using unrestrained vituperative language. It was greatly upsetting and distressing. It was the worst of times. I eventually got sick of it and sued him for defamation. I believe I was the first person to sue him for defamation. Before he filed a defence, he offered to apologise. I said "I don't want your apology; I want your money". The defence was never filed and he paid up. It was the best of times.

Finally, in the past 50 years the best of times far outweighed the worst of times. It is a source of pride that my son Hamish is a barrister. I have greatly benefited from the friendships I have made over that time with many many members of the Bar, such as Peter Capelin QC who was opposed to me in a large number of cases over a long period of time. In all of that time, even though our cases were always hard fought, there was never a word in anger or hostility between us. I have been privileged to be a member of our honourable profession, which is practiced by learned friends in an environment of mutual respect and professional collegiality. This protects and fosters the rule of law. We are all hand maidens in the Temple. May it continue for at least the next 100 years.

Thank you for your company today. **BN**