

A Christmas Message

It is Christmas time. It is a time when the cultural absurdities of the broader "European" community are most apparent. Fake snow in the windows of Darwin stores, decorations that are intended to invoke visions of moonlight on ice, a very dead Bing Crosby singing *I'm Dreaming of a White Christmas* in bars.

Outside it's 35 degrees and the humidity hovers at 80%. Are we all mad?

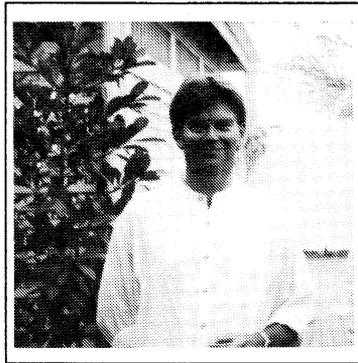
Christmas in Darwin really means putting your cyclone kit together and cleaning up the back yard. Some people go to church. However, I don't think even the deity figured on Tracey's erratic movements. "It was just a little test," some Christians say.

For lawyers Christmas means getting out of the place or staying put depending on the extent of your tax liability. It is a season of screaming kids and waiting for rain, shopping at Big W and getting the best hearings on adjournment applications that you have had all year. Wonderful.

It is also the season of yuletide which was once a heathen feast lasting twelve days and which usually takes place over the entire period of November to February in Darwin.

The thought of Christmas and cyclones reminds me of a story told by Ian Barker about his experiences after Cyclone Tracey. It goes like this:

Barker and a number of callow blokes celebrated Christmas Eve in Territory style. The availability of all kinds of liquor was much greater than that of food. Everybody had a good time until the wind got up a bit. In the morning not much of Darwin was left. Barker set out to investigate. He went to those places that held some sentimental attachment for him. The old Supreme Court was the first building he visited. There it still stood. He walked through its battered front door. He strolled into Courts 2 and 3. Debris was everywhere. It looked like the remnants of a defence argument on the



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voir dire before Gallop J. He picked his way into Court 4.

As his eyes wandered over the room he spied a dead (bush) turkey. The turkey lay sprawled in death just where the judge would ordinarily be taking notes. Barker's gaze settled upon the dead turkey and where it lay. Then he thought to himself, "the cyclone hasn't changed things all that much. I've seen plenty of turkeys on that bench before."

To those of you who, with your partner and tribe in tow, are soon to file onto widebodied aircraft to meet with relatives and engage in the obligatory family argument, adieu. However, be sure to tell those abroad the gifts that this legal community has been given in 1997. Tell them that people are sent to gaol for any property offence, no matter how trivial, in the Northern Territory. Tell them the foundation of our democracy – the right to silence – is under threat. Tell them that no longer is the Coroner to be chosen by the Chief Magistrate but the Attorney-General personally, a circumstance redolent with conflict of interest. Tell them that all government legal work will be distributed to the local profession on the sole prerogative of one person – the Attorney-General. Tell them that children go to gaol if they can't pay a fine for failing to wear a bicycle helmet.

Tell them that the Chief Minister of the Northern Territory appointed him-

self Attorney-General, then appointed himself to the office of Queen's Counsel, an office which he has said in Parliament he does not believe in.

It is certain we are all hypocrites. Only some of us are able to perceive the true extent of our own hypocrisy.

Christmas is a time for celebration and reflection.

It is worth a moment, therefore, to reflect upon our legal community and its state of health. Presently it is under threat by an autocracy.

A famous criminal lawyer in a speech entitled *Independence of the Bar and the Rights of the Individual* said:

"The criminal law does not exist to capture crooks and thugs and punish them. It is merely its by-product. The criminal law exists to ensure our freedom. And without the freedom that we allegedly cherish (despite the fact that every three years we continue to elect politicians to govern us) there can be no laws that matter a damn. If we do not have the freedom to exercise what we perceive our rights to be, then we have nothing.

The criminal law exists to ensure that we do not live under the burden of the whim of the two-faced, tightfisted and avaricious state.

There must be due process at law. It exists to ensure that we, as a people in our individual states, do not live at the hands of arbitrary decisions with respect to our freedom."

So let us drink the wine and feel free. But consider the thought that every mandatory sentence imposed is an attack upon the liberty of each of us and the self respect of our legal community. Like Peter Finch's character in *Newsfront* we should proclaim, "We're mad as hell, and we're not going to take it any more!" Let's fight in 1998.

Oh, hell! It's Christmas time in a place punishment can be greater than the crime!

– Jon Tippett