

by Jon Tippett, President

## Throwing in the towel

I could never quite get the whole bit about Justice.

There she was stuck up on the roof of the Victorian Supreme Court. I had seen the vision before in dozens of different forms in statues and paintings. I was on my way to be admitted to become a practitioner of the Supreme Court of Victoria. She caught my eye as I crossed the road. I remember being momentarily puzzled as I had been on many occasions before. I could understand the symbolism of the scales. That was plain enough. The sword I have always thought to be a rather campily melodramatic affectation that conveyed its purpose like a brick with a message attached to it thrown through a window. It was the blindfold that was the source of my puzzlement. I have always associated the blindfold with pin the tail on the donkey or men being dragged out of a prison cell and shot. To me that was the most disconcerting thing about the whole presentation. It still is.

I know justice is supposed to be impartial. But blind? I thought old lady Justice might have learnt a thing or two as this century draws to a close. I thought she had discovered that it was necessary to take a sneaky peak from under the blindfold to see who she is often really dealing with. If she had done so recently she would have seen a man named Kevin Anthony Cook.

Mr Cook is an Aboriginal man. During the afternoon of 15 April 1999 he stole a towel from a clothes line to use as a blanket. The towel had a value of \$15. At the time the offence took place Mr Cook was so drunk that he was taken into custody and held overnight so

that he could sober up before being spoken to. The following day he participated in an electronic record of interview in which he confessed to taking the towel. The towel was recovered. The victim suffered no loss. Lady Justice sent him to prison for twelve months.

The Chief Magistrate who heard the case said a few words before Mr Cook was taken down. A memento mori given by the powerful to the powerless. Words that echoed Australia's past.

His Worship said to the prisoner;

"Firstly stand up Mr Cook. Mr Cook you have been to court many times before. It may be that it is a person such as you the mandatory sentencing law was enacted (sic). I notice from your record that there's 15 previous dishonesty charges relating to receiving or stealing goods. And it probably would have been that you would have received a severe sentence in

any event. This constant disregard for the property of others which has resulted in the Government taking the action it has with regard to mandatory imprisonment. In this case the minimum sentence which I am entitled or obliged by law to impose is 12 months imprisonment. Looking at the situation the facts and circumstances surrounding it, I would think that no greater sentence is appropriate in the circumstances. So you're sentenced to 12 months imprisonment."

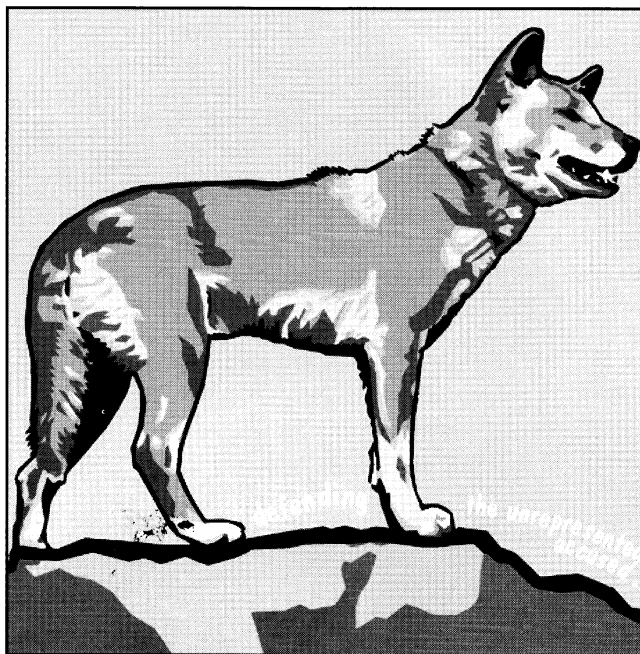
One could be forgiven for concluding that His Worship was in the business of sentencing this man upon the number of prior convictions he has and not, as is customary in the criminal justice system, upon the severity of the offence without reduction in mitigation due to the prior offending. A sentence of one months imprisonment would be regarded as severe in a case like

Mr Cook's that is if the severity of the offence is to govern the severity of the penalty.

His worship saw fit to comment upon the introduction of mandatory sentencing. He observed that "it is a person such as you the mandatory sentencing law was enacted" (sic). Many would agree. It was enacted to put poor, homeless, drunken Aboriginal people who commit petty offences against property in prison for inordinate and quite unjustified periods of time. His worship did not believe a greater sentence was appropriate in the circumstances. At least he was able to retain some balance in his approach. That is a good sign.

But what of the courts overall position? Why could it not have observed that the defendant's prior convictions were relatively minor and that they describe a man who lives an indigent existence and whose life has been disabled by liquor. What price liberty? I know that courts must do their duty as described by the legislature but does the act of briefly getting off with a towel justify the taking of a year of a mans life? If not, although bound to impose the sentence, courts should say so. It is as much the province of judicial officers to rail against the dumb imposition of bad laws as it is for the rest of us to oppose them. It is not we who need to be concerned about the likes of Mr Cook. It is he that needs to be concerned about the likes of us.

The attitude of the court in the sentencing of Mr Cook is reminiscent of the Courts of General Sessions in this  
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country in the 1870's who on behalf of the squatters fulminated against the sons and daughters of the struggling selectors as rogues and thieves. Here we sit straddling a new century and the philosophy of "a dose of Pentridge will set things right" survives serene. Lady Justice is dying without a whisper.

History is a fascinating phenomenon. It can take us on a path of blistering enlightenment or lead into the bleak recesses of a dark age. Do we in the Northern Territory have to experience a dark age of justice before we are awoken to the mindless stupidity of mandatory sentencing? When will we understand that by recognising the pathos and hopelessness of the little people like Mr Cook who come before our justice system that we give that system and those people dignity? This is not an argument about not jailing people. Prison is an appropriate place to put serious offenders. However it is greatly over rated. The idea of deterrence is pretty much a fairy story designed to engender the belief that locking people up has a more profound purpose. The concept of deterrence is, in reality, a jurisprudential bunyip.

Clarence Darrow was a great trial lawyer although some of the fans of the more genteel English Bar might disagree. He often asked; "What is punishment and what are social crimes?" He was a man who saw further than most men. His words are as fresh now as when they were first uttered. He once addressed a jury in the following terms.

"Gentlemen because you don't believe a thing today is no sign that it is not true. There are dreams, and the dreams of today become facts tomorrow. Every effort toward humanising the world, every effort in dealing with crime and punishment has been toward charity and mercy and better conditions, and has been in the direction of showing that all men are at least partly good, and all men are partly bad, and that there isn't so much difference in men as we are taught to believe. Every effort that will last beyond the day and the year must have a humane idea, must have as it's purpose the uplifting of man, must have it's basis in charity and pity and humanity, or else it cannot live. You may not believe this way or that, but it is the aspiration that has raised man from the savage drinking the blood of his fellow from his skull, and has led him up through trials and toil and

tribulation by which he has arrived at the place where he can have mercy and charity and justice and can look forward to an ideal time when there will be no crime and no punishment, no sin, no sorrow, and when man will visit no cruelty upon his fellow man."

Mandatory sentencing will eventually disappear for many of the reasons articulated by Darrow but unfortunately not before the system has stuck Lady Justice's cheese cutter into many more so called threats to the fabric (towel) of society. The presence of political will, the preparedness to spend some money and the rediscovery of our decency are necessary adjuncts to that event occurring.

The madness of it all however is that the ability to preserve the value of liberty and to assuage the grievances of the victims of crimes (if it can really be called such) like that committed by Mr Cook is directly within our power without removing the sentencing discretion from courts. Victims of crime have already come forward in some instances to decry the severity of mandatory punishments. There will be more of that as time passes.

The pre-eminent factor in this whole debate about mandatory sentencing could very well go unnoticed. It is that not one eminent criminologist, sociologist, jurist or qualified person expert in the field of criminal justice has come forward with research or argument to support the Government line that the system will reduce crime. In a recent television program broadcast by SBS the president of the victims lobby in New South Wales rejected the idea of mandatory sentencing as being in any way a sensible or useful one. On the other hand there is a wealth of material supporting the conclusion that work in the areas of education and health have a profound and long lasting affect upon the crime rate. It is also well documented that a carefully deployed and properly trained police service will have a direct impact on the incidence of crime.

The incarceration of Mr Cook for twelve months will cost the Northern Territory taxpayer approximately \$60,000. That sum is roughly equivalent to the cost of employing a teacher, a nurse or a police officer. So for every Mr Cook we send to prison we deprive this community of the ability to spend money to secure the services of a skilled individual that it is known will make a significant difference to the rate of offending. The future is out there and so are dozens of Mr Cooks.

The proponents of mandatory sentencing bark that the laws are

popular. The problem with such a position is that it carries the faint but humid odour of the lynch mob. Simplistic ideas are very often popular. The ten second grab has made them ever more so and that abattoir of reason the commercial talk back radio program lends them a great depth of currency.

It is in that environment that we have to call upon the courage of our courts. We must be confident that they will do their duty as required by Parliament. But it would be a solemn day for Lady Justice if they were to throw in the towel and become silent partners on this present excursion into ideological futility.

Oh Lady Justice how your wisdom can grow cold. A towel as your blanket and a cell for your soul.

### BALI 1999

The Attorney-General of the Northern Territory was recently convinced that he should attend the conference. He will be delivering the opening speech. The stage is now completely set.

Tom Pauling will conduct another "Toms Terrific Tour". That will of necessity be a particularly exclusive event. Only 25 people can book for the tour. It is an experience that you will not be able to have as an ordinary tourist. The excursion will allow those who go to participate in aspects of Balinese culture that are not seen in hotels or elsewhere for that matter. Only the Balinese and the lucky few on the tour will get to see the things that Tom has in store on Wednesday 30 June. Every event that Tom Pauling has conducted to date has been met with rave reviews from those who have gone. Make sure you book if you want to see a piece of old Bali.

The T-shirts are fantastic. They will certainly become a collectors item. We have a lot to thank Chips McNolty for. He is a true artist with a dryness of wit to match.

The conference is full. The numbers attending have increased by almost fifty percent over 1997. All the hotel rooms that the conference organiser held have been booked and we have had to request more. There are now no vacancies. The program is about to be published and exhibits a fascinating lineup of speakers. So far, all is quiet in that part of Indonesia and I have it on good authority that it will remain so.