

FOR THE LOVE OF THE NORTHERN TERRITORY

There is only one daily newspaper in the Northern Territory. Each morning most people in Darwin engage in an act of exquisite parochialism by reading the *Northern Territory News*.

The *News*, as it is referred to, keeps its loyal readership informed of the crafty activities of the salt water crocodile and the annual pilgrimage of the sea wasp. When the water buffalo that starred in "Crocodile Dundee" died, the *News* engaged in an outpouring of grief. There is nothing like a good human interest story to entertain and it seems to me that is just what the *News* is much of the time: entertainment. It is the written equivalent of Mike Monroe's *A Current Affair*. Almost as informative as *Frontline*. The outside world rarely intrudes into the copy of the *News* unless the story is about sexual deviance or lurid violence. That is where the legal profession and the courts come in. Real life tragedy. Like an episode of *Neighbours* directed by Sam Peckinpah.

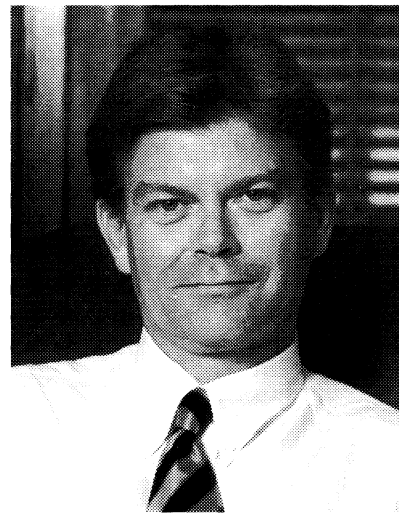
On a good day if the *Northern Territory News* had removed from its pages the daily business in our courts and that courageous correspondence from "name and address withheld" there would be little else, if anything, to read. The law is pivotal to the paper's copy. Once upon a time there was tarring and feathering, now there is the *Northern Territory News*. Of course there is some merit to the overblown reporting of cases that come before the courts. It may go some way to giving vent to the legal fiction of general deterrence and it certainly gives the rest of us a righteous glow when we read about some poor sod who has just got his or her comeuppance. Unfortunately many of the "criminals" in our community either can't read or don't get the newspaper. Certainly one thing such reporting has helped foster is the folklore that the legal system is not working properly, hence mandatory sentencing. The politicians have been quick to make use of this "cunning" but age old device. The problem is, however, that the mutual suckling which

appears to routinely take place between our daily newspaper and government has prevented this community from assessing and developing its true position in the wider Australian context. The idea of the "Territorian" being an entirely unique creature may have a cavalier resonance with the past but it is not one that is likely to assist us in shaping our future.

Over the last few months the Australian press and public opinion has not been kind to the Northern Territory. Our legal system has been the subject of scathing criticism principally because of our mandatory sentencing regime. The Sydney Morning Herald in a blistering editorial observed:

"The Territory's law, even after Howard's intervention, amounts to a declaration of no confidence in the Territory courts".

Our legal system has been condemned by seven former High Court judges and countless other people of eminent legal standing. The very significant work that the courts have engaged in over the years in seeking to redress disadvantage suffered by Aboriginal Territorians and others has been lost in a maelstrom of condemnation. The high regard that our profession has erstwhile accumulated has been significantly eroded. I was told by one practitioner who had been called upon to address a national conference that all he had to do to get a laugh from the assembled throng was to say "that is how we do it in the Northern Territory". The whole thing reminds me of a line in that old Bee Gees song "I (We) started a joke and the whole world started laughing". While the *Northern Territory News* may have us wallowing in our own idiosyncrasies, the rest of the country's press is questioning our right to be self-governing, let alone to become a state. Bellicose chesting that has recently taken place about the right of "southern do-gooders" to have a voice in our affairs has consigned the issue of statehood from a burgeoning reality to a hypothetical and extravagant abstraction. The term "southern do-



Mr Jon Tippett, President

goder" was used extensively during the trial of *The King v Tuckiar* in August of 1934. It didn't do the Northern Territory any good then and it appears to be doing us even more harm now. If we are to be a state, and I very much hope that is an event I will see in my lifetime, the votes of "southern" politicians will be crucial to facilitate that circumstance. It is incumbent upon us to make their job as easy as possible by acting like grownups.

As the trial of *Tuckiar* so unpleasantly demonstrated, the issue of race was a very significant part of Territory life in the 1930s. Sadly it remains so today. The Minister for Education saw fit, for apparently little other reason than establishing himself as a controversial figure, to announce in parliament that the "Stolen Generation" is a "fraud". Under the guise of defending the actions of some old patrol officers in his electorate he descended into an ugly abyss occupied by the politics of division and race. His denigration of many Aboriginal Territorians was not complete until he had informed the house that some children had been given away by their parents for sexual purposes. What did the *Northern Territory News* find worthy of editorial comment on the day it headlined that ignorant and sweaty hubris? Recreational fishing! There lies the real problem. It is the reluctance of many, including our daily newspaper, to be prepared to question the exercise of power. There can be no doubt that if this community is to become a state it will only do so arm in arm with

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Aboriginal Territorians. The politics of race is an anathema to our independence. We may be able to build a railway but the indications are that we cannot build a future.

The legal profession has always felt uneasy about finding itself in conflict with government. Our profession is structured upon a deference to authority and the rightly held belief that we carry a heavy responsibility to preserve the relationship between the executive and the judiciary. The abuse of legal power and the abuse of executive power is equally to be deplored. However if this community is to restore itself and move forward the Territory profession will have to take a more active leadership role. The main sticking points in the last statehood debate were the form of the constitution and the manner in which the issue was taken to the people. I for one was affronted by the obvious belief by some in government that people could be bludgeoned into a yes vote. The Opposition were little better, uncritically urging a yes vote despite the obviously flawed processes. In the end, it was left to Aboriginal Territorians and the many voters who might otherwise support the government who had the courage of their convictions to reject this taudry process.

A state is formed, it seems to me, in an atmosphere of cooperation. The inevitable debate that will follow our next excursion towards statehood will take time to resolve but the end product will, and should, emerge from the people. Lawyers have always had an important role in the constitutional development of their community. It would seem incumbent upon us, even in the context of the present difficult environment, to try and kick start the process.

The most immediate hurdle in obtaining the assent of southern politicians to the Northern Territory developing into a state is the grizzled subject of our regime of mandatory imprisonment. The joint statement between the Prime Minister and the Chief Minister announced on 10 April this year was a resounding political triumph for Mr Burke. If I was able to settle a case on the basis that the other

side gave me everything I wanted and a bit of extra cash to boot I would be off to the bar quick as a flash to quaff a celebratory claret. Unfortunately there are bigger fish to fry and for the sake of clinging to a profoundly discredited sentencing regime we have lost the chance of securing an early return to the truly defining issue of statehood.

The lambasting of the Northern Territory in the nation's press over mandatory sentencing was almost universal. The Prime Minister stoutly stepped down the pitch and proclaimed the laws "silly". I suppose it is silly to send a person to prison for a year for stealing biscuits on Christmas Day. Asinine is a word that more immediately comes to mind. We are now considered a pariah jurisdiction by a huge number of influential and ordinary Australians and other jurisdictions. Even Western Australia stopped short, very short, of participating in our grand social experiment. Justice James Wood of the NSW Supreme Court was one of those who was passionate about the injustice of the regime. During an address to the Ashfield Uniting Church he said;

It is my hope that there will be judges in the next century who are prepared to dare, to listen to their consciences and their faith, and to take a stand against the unjust laws of the secular state. At least let them not allow injustice to be committed in their names.

Easier said than done, but not without merit. Justice Wood's statement does describe, however, the extent of feeling raised by the subject even within the conservative milieu of the law. It didn't stop there. The elevated arena of federal politics was also moved. Some federal government politicians found they had a conscience in the course of the national debate. One of them even stood in front of a photograph of President John F Kennedy and announced that "a man has to do what a man has to do" then shortly afterwards refrained from doing it.

It is now very unlikely that mandatory sentencing will be removed from the statute books in the short term. However other steps can be taken in the interim to return some national and local confidence in the outlook of the Northern Territory. The first thing that springs to mind is the introduction of freedom of information legislation. This community has been desperately in need of such a law for far too long. Every other state has it in one form or other. All democratic western countries have such laws. It would require little effort to pick the best legislation presently operating in this country and make the necessary changes to suit the Territory.

The Northern Territory is a wonderful place. Once we overcome the politics of division and race and iron out the bugs in our legal system it will be a truly great place. It will also become a state. I read an article by Robert Hughes published in an American magazine recently. He had been to the Northern Territory to view rock art and catch fish. He wrote to the American public, referring to the rock-art sites he saw;

It was humbling to see such places and remember how the people who saturated them in their myths and memories were despised by whites as ignorant savages. Even today, belief in Aboriginal "childishness" and cultural ineptitude dies hard. Never in my life - and I've been an art critic for 40 years - have I been granted such a powerful sense of interaction, the enlacing(sic), of culture and the natural world. And it seems right that I should have had to come back to the country I left so long ago in order to find it.

It seems to me that once the Territory as a community is able to harness the idea of interlacing the cultural diversity that is available to us with a social vision that includes a just and transparent legal system, we will be unstoppable. I want to be around to see it.