Getting justice wrong

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argued that the plans, later implemented in a modified form, were an attempt to curb the Director's powers. Bongiorno had previously threatened to lay contempt of court charges against the Premier for his public comments about Paul Denyer, who pleaded guilty to the murder of three women in the Frankston area in 1993.

In NSW, according to Cowdery, government quickly accepted the necessity for an independent Director of Public Prosecutions and neither he nor his predecessor, the current Chief Judge of the District Court, Reg Blanch, has had any significant difficulties on that score.

As inaugural Director, Reg Blanch had responsibility for establishing the Office and creating relationships with other agencies.

This latter task is ongoing, Cowdery said. "The Attorney General's Department tries but is fairly ineffective in bringing agencies together. We should be able to generate freer exchange of information."

He worries about the danger of burnout that threatens many of his staff because of the volume of child abuse they've been swamped with.

"Dealing with children and family relationships is incredibly wearing for prosecutors."

A hundred more weeks of sittings in the country by the District Court and a 57 per cent increase in the sittings of the Court of Criminal Appeal in 2001 adds to the workload of his 320 lawyers and 210 administrative staff based at 11 offices around the State.

Nonetheless, "I'm still enjoying working with a terrific team," the Director said (looking remarkably free from burnout, himself) and he will certainly continue with the task of educating the community to take a more rational view of crime in society and the ways to respond to it.

Getting justice wrong: myths, media and crime, by Nicholas Cowdery, Allen and Unwin, Sydney, 176pp, $19.95, published 9 March 2001.

This article was reprinted with permission from the Law Society Journal of the Law Society of NSW, March 2001, Vol 39, No.2, page 23.

ADVOCACY
Objective Counsel

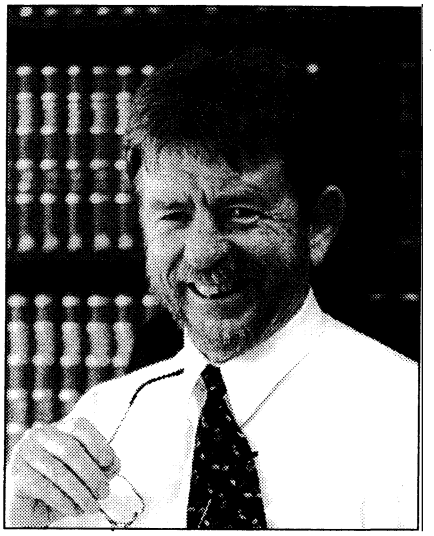
"The trouble with lawyers is they convince themselves that their clients are right."

Charles W. Ainey

We are familiar with the proverb that he who is his own lawyer has a fool for a client. The logic behind that observation also applies to the advocate who fails to maintain a professional distance between him or herself and the client. The extent to which a client is dependent upon the advocate is obvious. Any appearance in Court is likely to be important for a client. The more serious the issue to be resolved at that hearing the greater is the significance of the occasion to the client and the greater is the demand upon counsel. When you appear you do so with a view to achieving the best outcome available for the client. The best outcome may be something less than the client would wish for and often expect when you commence to take instructions. Counsel must be in a position to provide clear and firm advice as to what is and is not achievable.

In a lot of cases it will be difficult not to feel sympathy for your client. In many cases such feelings are to be expected. In most of those cases there is no reason why you should not express your feelings of sympathy to the client. Similarly it is often easy to accept in its entirety the version of events provided to you by the client, however you would only do so after a critical appraisal of the evidence of the client and an assessment of all of the objective evidence surrounding the matter.

Notwithstanding your feelings of compassion for your client, in order to fulfil the obligations and responsibilities undertaken when you appear for someone as counsel it is necessary for you to maintain an emotional distance from the client and the circumstances in which the client finds himself or herself. You must do so to enable you to make informed and balanced decisions and to provide objective advice.



Hon Justice Riley

If you allow yourself to become too emotionally involved in the cause of your client, too enmeshed in the client's troubles, too caught up in the sense of grievance the client is experiencing, the danger will be that you are no longer able to provide objective counsel to your client.

In the course of a trial and in the preparation leading up to a trial, the advocate must make many difficult and important decisions. To allow an emotional involvement in the matter to develop is likely to result in your judgment becoming clouded or affected in a way that is not in the ultimate interests of the client. You may be less able to identify points sought to be made, or arguments put, that are in satisfaction of some emotional need but which, when the interests of the client are objectively assessed, should not be raised at all. You may be less likely to identify inconsistencies in the case you are instructed to present. It may not be as clear to you that settlement on terms less than a full victory to your client is desirable.

In relation to the presentation of the case and to the desirability of settlement your client is entitled to receive objective and practical advice. Sometimes that advice will not be welcome and will need to be put firmly and even forcefully. An effective presentation, or a settlement

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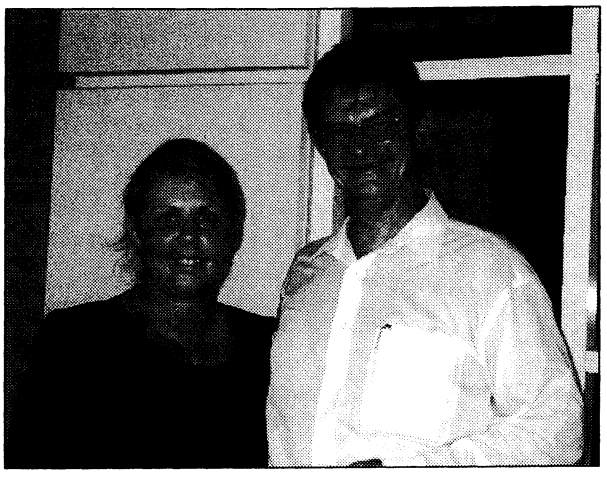
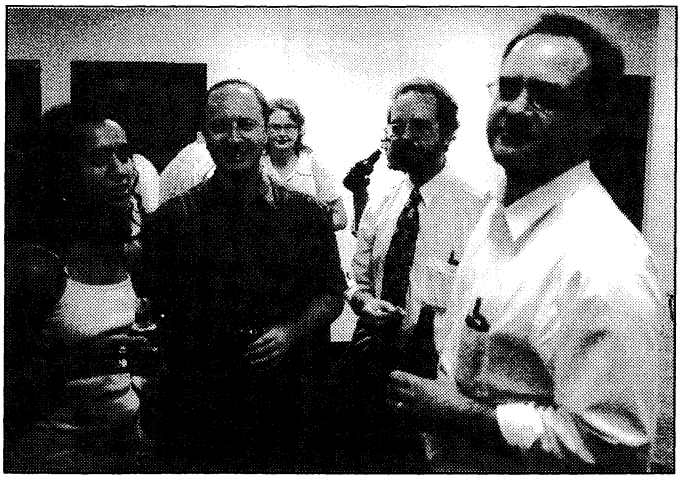
CASES BOOK LAUNCHED AT DARWIN & ALICE COURT HOUSES

A collection of previously unpublished early judgements of the Northern Territory Supreme Court was launched at functions in Darwin and Alice Springs. Titled *Northern Territory Judgements 1918 - 1950* the book was compiled by Supreme Court judge and Adjunct Professor of Law at NT University, Justice Dean Mildren. See page 10 of *Balance* for an order form.



Elizabeth Leahy and Justice Dean Mildren at the Darwin launch which was held on 8 March 2001



Ragni Mathur, George Georgiou, Chris Roberts and Mark O'Reilly

John Kelly, John Stirk, James Wardern and Katrina Budrikis

Janet Neville, Paul Ewens and Melanie Little in Darwin

ADVOCACY: OBJECTIVE COUNSEL Continued from page 17

that is in the best interests of the client, often includes concessions that the client is reluctant to make. They may involve abandoning arguments that the client wishes to air. Settlement will mean that the client does not have that desired "day in Court". Counsel needs to be sufficiently removed from the emotional aspects of the matter to permit the provision of appropriate advice to the client at a time when the emotional stress on the client is at its greatest.

Joseph A. Ball, a former president of the American College of Trial Lawyers, is reported to have said that:

> "The more I become involved emotionally in my client's cause the less I am able to (do) for him".

In my view that is generally so.

What I have said above does not mean that you should not feel compassion for your client. It does not mean that you should not, after proper assessment, accept fully the version of events provided by your client and the witnesses. It does not prevent you from conveying those impressions to the tribunal in an appropriate way. I do not suggest that you should go so far as Marshall Hall who is reputed to have, on occasions, allowed tears to stream down his cheeks whilst addressing a jury. However sometimes such emotions cannot be avoided. I clearly recall two cases of my own where tears have welled in my eyes whilst I have led plaintiffs through their evidence in chief. However the sadness or injustice of the circumstances of your client and the impact those matters have upon you as an advocate must be kept in proper check. Your most important function is to provide your client with an objective, unemotional and professional source of advice throughout the trial.