

# Criminal Justice - Diagnosis Terminal?

## Report on CLANT's 12th Biennial Conference

By John Lawrence, President, CLANT

CLANT held its 12<sup>th</sup> Biennial Conference at the Bali Hyatt Hotel in Sanur Bali from 29 June to 3 July 2009. Of course we all know it as "The Bali Conference" and it has now become unequivocally the prime Australian conference for criminal lawyers on issues regarding criminal law.

This conference had the largest number of delegates ever with 163. The demographic spread was truly national in that there were delegates from every State and Territory of Australia. As usual, and even more so at this conference, the Western Australia profession came in large numbers: namely 42. WA and the NT made up 102 of the numbers with the rest from all over Australia.

For only the second time ever we were graced by the presence of the NT Attorney-General Ms Delia Lawrie who was good enough to formally open the conference and deliver an address as regards her Government's views and policies on criminal law. Sadly, through other pressing commitments, she was unable to remain for the whole week but her presence was important and creative, not only during the conference hours but in post session gatherings and discussions. Her representation throughout the conference was retained by Ms Hannah Clee, her official advisor, and Mr Greg Shanahan the CEO of the

Department of Justice.

The conference theme, chosen by the CLANT Committee, was not mucking around: "Criminal Justice – Diagnosis Terminal?" We had two Keynote speakers, Mr Julian Burnside QC and Mr Pat Dodson. Both were big in stature and reputation and both delivered the goods in their respective presentations given on day one. Other notables attending were the Honourable Administrator Mr Tom Pauling QC and his wife Tess; Justice Mildren; Justice Lazry of the Victorian Supreme Court; Chief Magistrate Blokland and her brother Mr Carey SM. Once again Ian Barker QC attended and delivered a stirring paper and one has to mention the fabulous contributions (day and night) of Mr Tom Percy QC from WA and Mr Grant Algie from Adelaide.

The conference went as planned with no major hitches, despite the fact that I was shouldering some of the responsibilities (minor!). The major contributors to ensuring the conference did stay on the rails and avoid the Cassandra Crossing were the ever reliable Lyn Wild and our redoubtable Secretary Jodi Truman. Again as President I take this opportunity to personally and publicly thank them.

To give you some idea of the issues that were addressed and



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discussed through the week I now present an amended version of my summing up which was delivered at the last session on Friday 3 July 2009 and was an attempt to sum up some of the aspects and issues which the 12<sup>th</sup> Conference covered.

*"As with all previous conferences this conference had a general theme which was directly addressed by our two Keynote Speakers as well as some of the subsequent speakers.*

*Further to the theme during the week more traditional utilitarian aspects of criminal law were addressed by expert speakers. A good example of that being Tom Anderson's paper on our*

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Territory Government's ever-growing revenue earner, the Criminal Property Forfeiture Laws.

Also this week, as always at the Bali Conference, we had a couple of sessions aimed as much at entertainment as learning.

Austin Asche's clever analysis of Banjo Paterson's poem "The Man from Ironbark" and the use of it as a vehicle to refresh us on criminal law was a hoot and certainly an eye-opener for one who is more versed in Sweeney Todd than Banjo Paterson. Still we are all here to learn.

Similarly Justice Mildren's hypothetical of a criminal trial with Judge, Prosecutor and three defence counsel, was both amusing and instructive. My thoughts as I observed were mainly thank Christ Tom Percy is not prosecuting any of my clients. It looks like Stephen Odgers has got a fine judicial career ahead of him: wasn't it interesting to see Stephen as Trial Justice Serious give the Crown Prosecutor everything and anything he applied for. "Yes Sir, No Sir, Three Bags Full Sir". "Anything else Mr Crown? Two more weeks in Bali perhaps?"

Serious belly laughs were to be had listening to Rex Wild QC's contribution: "Serving it up in Court: Volleys, lobs and smashes"; a dozen or so vignettes of actual court cases from all over the common law world which had Barristers and Judges

behaving seriously badly.

Tom Pauling QC as maniac of the century defence counsel Mr Caffrey was priceless.

I can't work out why we bother giving Tom a microphone at these sessions, he certainly doesn't need one.

Of course the conference wasn't all fun and games. It had a theme. The CLANT Committee chose that theme. However the pursuance and analysis of any theme is only as good as the speakers you have: this year we had two Keynote Speakers of platinum worth.

To then follow up such substance with other speakers like Ian Barker QC, Tom Pauling and Justice Lex Lazry illustrates how blessed we have been.

As regards our theme: can I say this: it was clearly pretty broad and fundamental. Further, I stress that the theme Criminal Justice – Diagnosis Terminal? was never a statement and always a question.

How we came to it was that a year ago the CLANT Committee discussed, over a period of months, various themes. Eventually the Committee decided upon this theme.

Once that happens yours truly by correspondence invites lots of various potential speakers and Keynotes and in so doing

explaining to the same the intent and purpose of that theme.

The theme emerged from observations of Committee members over recent years that our criminal justice system has been regularly and systematically amended by successive and different NT Governments. These regular amendments have led to a dangerous incremental dismantling of our criminal justice system. This manifests, for example, in the changing of the onus of proof within the Bail Act or the recent mandatory sentencing provisions brought in; also amendments to Evidence Act provisions which significantly lessen the scope for defence counsel to test evidence and cross-examine evidence of certain classes of witnesses.

Lets not kid on here. The ultimate effect of all of those amendments, this incremental dismantling of our criminal justice system, and indeed its intention, is that it assists the securing of convictions and increasing the length of terms of imprisonment.

The NT Attorney-General was no doubt talking about that in her commendable straight forward address to us on Monday when she stated that she realised full well that some of her Government's criminal law reforms would not please many criminal lawyers. My view is she might be pleasantly surprised to

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Participants enjoy the alfresco conference dinner

*know that a lot of current criminal lawyers don't mind them one little bit.*

*You see the fact is that in the Northern Territory in 2009 criminal lawyers don't, from both sides of the bar table, occupy the same trenches as we did in 1996 when virtually as one we dug in and opposed mandatory sentencing laws for property offences. Not so today.*

*Let me again thank Julian Burnside QC for his presentation. In a thoughtful and moving analysis you told your story and the story of your clients which involved the cruelty and deceptions committed against them by our Federal Executive Government and it's Agencies. From your analysis the answer to the question of our theme is that Criminal Justice is not terminal in Australia so long as it receives a good hit of medicine in the shape of a Bill of Rights.*

*Your thesis, persuasive and on the money, is very much part of a debate that now needs to be pursued onshore in Australia and I am sure it will be.*

*Criminal Justice issues necessarily concern Australian Indigenous issues big time and there is fewer greater contributors to those debates on the Indigenous struggle than the ever resilient Pat Dodson. His ability to contextualise his arguments and to talk about the Indonesian Freedom Fighter, were persuasive and valid. He, in many ways, mirrored Julian because they both outlined in their stories the breakdown in concepts like decency, respect and basic human rights into which our criminal justice system has lurched.*

*Those two general theses were supplemented at this Conference by two senior lawyers from Aboriginal*

*Legal Aid in WA and the NT (Glen Dooley and Paul Collins from WAALS). Both very much reflected, in a hands on way, what Pat Dodson was decrying; being in effect, assimilation by incarceration. What a sinister concept that is. It goes like this: don't bother about the levels of crime: just amend the laws to ensure all roads lead to jail. Consistent with that continuation the Government will literally accommodate it by spending \$320 million dollars on a new jail and to quote Mr Okazaki yesterday (Community Justice Centre, DOJ) "You have a captive audience which you can then claim will be educated, trained and rehabilitated so as to leave jail; and do what – I ask? To return to the permanent squalor and dysfunction of Yuendumu, Port Keats and Nguigu etc, with no job prospects".*

*As President of CLANT let me state our Association opposes that short-minded "same same" approach and will continue to do so.*

*It was a great aspect of this criminal law conference that our two Keynote Speakers were not directly involved in the practice of criminal law, yet their theses were totally relevant to our criminal justice situation.*

*Likewise with Russell Goldflam's (NTLAC) terrific presentation on Tuesday afternoon. His paper was great and so relevant, entitled "Oh we've got some bloody good drinkers*

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in the NT". It is somewhat ironic nowadays that when you consider Russell's compelling analysis and terrific presentation that the expression "demon drink" now sadly resonates, and similarly for Aboriginal Communities, "the wicked weed". Wicked it now surely is.

I am very proud to have been involved in the organisation of this Conference. In that regard it was truly great to hear yesterday from Mr Robert Khuana, the President of the Indonesian Bar. With the assistance of Daisy the Interpreter he outlined Indonesian procedural features and answered questions as regards the Bali Nine. To have an Indonesian lawyer tell us in Indonesian through translation was terrific re the process as well as the substance.

Concomitant with that was an invitation accepted last night by our Committee and older standing CLANT members to attend a greeting and dinner put on by our Indonesian equivalents. Our respective Associations are growing closer and the future is positive for us to develop that. Last night was a truly memorable event and something which has to be pursued.

In Mr Khuana's address he answered questions as regards the Bali Nine which reminded us of the capabilities of our Federal Government, specifically the Federal

Police, and again mirroring Julian's presentation: the deliberate actions of our police in using information given to them, in good faith by the very father of one of the Nine, to then set up their arrest at Denpasar Airport and thus sheet to them and their families the huge penalties, including execution, only illustrates that police forces, endowed with powers, need to be policed themselves, that being the role of the criminal lawyer in our democracy.

That was no better put than by Ian Barker QC in his paper on Tuesday when he said: "It is a melancholy fact of life that those concerned with the investigation of crime and the enforcement of law will eventually abuse their powers".

It is heartening to report that as this conference unfolded it generated debates and disagreements. There emerged conflicts and disagreements between delegates and presenters. That's how it works. It would be of concern if all were agreed on everything. After all, what are we? We are criminal lawyers; we are not equity lawyers whispering to affidavits or accountants. We work in a profession where the stakes are as high as they get. Ask Lex Lazry: he certainly chilled us at times with his experience in representing his client on death row all the way to his execution.

We would all do good in reminding ourselves of that aspect of our professional

responsibility: if not life and death, the liberty of the subject is quintessential: that is why as advocates we fight passionately against any attacks on that liberty and defend with vigour the retentions of the fundamentals.

Our profession requires, as well as learning, passion, vigour and commitment: that is why the issues discussed here have included controversy.

So, before pulling the curtain I should briefly mention and acknowledge the industry throughout given to the Conference without which it would have been a complete train wreck. Firstly, all the Committee members who have presented the respective speakers; and also and in particular, CLANT's Secretary Jodi Truman for her, at the coal face endeavours throughout the entire week. And further of course the indefatigable Lyn Wild whom without there would be no train, never mind wreck. Lyn caters and provides for every aspect of this Conference: micro and macro. The expression 'herding cats' is euphemistic to what she miraculously manages. It includes the hardest gig of them all, organising the President. I thank them all."

As stated earlier a well attended and successful Conference: looking forward to 2011 already. See you there. }