

THE ALICE SPRINGS SUPREME COURT OPENING  
CEREMONIAL SITTING

TRANSCRIPT OF PROCEEDINGS

COURTROOM 1 ON FRIDAY 5 MAY AT 10:28AM

PRESIDING JUDGES:

THE HON CHIEF JUSTICE M GRANT  
THE HON JUSTICE S SOUTHWOOD  
THE HON JUSTICE J KELLY  
THE HON JUSTICE J BLOKLAND  
THE HON JUSTICE P BARR  
THE HON JUSTICE G HILEY  
THE HON JUSTICE B R MARTIN AO  
THE HON JUSTICE T RILEY  
THE HON JUSTICE J REEVES  
THE HON DAVID ANGEL QC

Transcribed by:  
DTI

THE SHERIFF'S OFFICER: Silence. All stand and please remain standing.

All persons having any business before this Honourable Supreme Court of the Northern Territory, now draw nigh and give your attendance and you shall be heard - God save the Queen.

Please be seated.

THE ASSOCIATE: The ceremonial sitting to celebrate the opening of the new Northern Territory Supreme Court Building in Alice Springs.

HIS HONOUR, GRANT CJ: Ladies and gentlemen, the court sits this morning to mark and celebrate its occupation of new premises in this building.

On the Bench this morning are all the permanent judges of the Supreme Court of the Northern Territory, together with former Chief Justices Brian Ross Martin and Trevor Riley; Additional Justice John Reeves; and former Justice the Honourable David Angel QC.

On behalf of the judges, I would like to welcome all who have taken the trouble to attend this morning and to welcome in particular those who have agreed to address the court. They are the Solicitor-General on behalf of the Attorney-General; Mr Stirk speaking for the President of the Law Society; Mr Goldflam speaking for the President of Bar Association; and Ms Collins speaking for the Central Australian Aboriginal Legal Aid Service.

We are also very pleased to welcome and acknowledge our special guests, including the Administrator, his Honour, the Honourable John Hardy AO and Mrs Hardy; the Chief Minister, the Honourable Michael Gunner MLA; the Deputy-Leader of the Opposition and Shadow Attorney-General, Ms Lia Finocchiaro MLA; the member for Namatjira, Mr Chansey Paech MLA; the Mayor of Alice Springs, his Worship, Mr Damien Ryan; the Chief Executive Officer of the Northern Territory Department of the Attorney-General and Justice, Mr Greg Shanahan; the Northern Territory Director of Public Prosecutions, Mr Jack Karczewski QC; the Director of the Northern Territory Legal Aid Commission, Ms Suzan Cox QC; the Anti-Discrimination Commissioner, Ms Sally Sievers; the Chief Judge of the Local Court, his Honour John Lowndes; and Local Court judges, their Honours John Birch, David Bamber, Daynor Trigg and Sarah McNamara; and the President of the Northern Territory Law Society, Mr Tass Liveris.

We would also like to welcome a number of special guests who were involved in the substantial project relating to the design, construction and fit-out of the court's premises. I will, however, defer listing any of them by name until I come to that portion of these remarks in which we express our appreciation to the people instrumental in bringing this important project to completion.

This sitting marks a significant milestone in the life and history of this court. The Alice Springs Supreme Court has had an important part to play both in the history of this town and in the constitutional history of the Northern Territory.

The Supreme Court commenced sitting in Alice Springs in 1936 in the lovely old courthouse which sits roughly opposite this building. That remained the court premises for almost half a century. For most of that time, the Territory was administered by the Commonwealth. Former Alice Springs resident, lawyer and first Solicitor-General, Ian Barker QC, recalls during that time somebody in the Commonwealth bureaucracy sent up a book for use by Alice Springs legal practitioners. It was titled *The Law of Collisions at Sea*, which was as good an argument for self-government as you could get.

As most present here today will be aware, the Northern Territory achieved self-government on 1 July 1978. At that time, the Territory assumed executive authority for almost all the ordinary functions of government. Fewer will be aware of the fact that the Territory did not assume responsibility for courts until 15 months later, on 1 October 1979. One of the reasons for that was the Territory's insistence that the Commonwealth build a new courthouse in Alice Springs as a condition of self-government. The Territory was concerned that if it assumed responsibility for courts before then, the Commonwealth might seek to shift responsibility for that matter to the new body politic.

It was not until the construction of the new courthouse by the Commonwealth was well underway that the Territory agreed to the transfer of executive authority for courts. Even then, the Territory insisted that the relevant self-government regulation be qualified to provide expressly that although the Territory now had responsibility for courts, that did not include the construction at Alice Springs of a building for use as a Supreme Court. That qualification remained in the regulations until very recent times.

The new courthouse was opened in 1980 and housed both the Supreme Court and the then magistrates courts. It quickly became the focus of national attention, with the conduct in close succession of hearings concerning the death of Azaria Chamberlain and the Ti Tree shootings. The old building served the town well, but the business of the two courts quickly outgrew it.

The seeds for the construction of this new Supreme Court building in Alice Springs were sown initially and bluntly by our colleague on the Bench here today, Brian Ross Martin. During the course of the ceremonial sittings held in Alice Springs in February 2004 to mark his appointment as Chief Justice, his Honour remarked upon the disparity between the outstanding Supreme Court facilities in Darwin and the inadequate facilities in Alice Springs. His Honour went on to suggest that the facilities in Alice Springs would be best improved by the use of a bulldozer.

So began the long process to get where we are today; and from today, Alice Springs has Supreme Court facilities which are in relative terms the equal of those in Darwin.

The members of this court are keenly aware that court buildings are important symbols in a community governed in accordance with the rule of law. We are also aware that different people and groups may respond differently to structures and built environments, and draw different conclusions concerning their symbolism.

By its size and singularity of design, this building might suggest to some that the court seeks to place itself above the community. Any such impression would be entirely mistaken. Every judge of this court performs his or her judicial function on the basis that this court and its judges are here to serve the community, not the other way around. The power of the law is not vested in the judges personally. That power is vested in the exercise of the law in an independent, impartial, transparent, accessible and fair manner, with particular regard to the interests of the more marginalised in society.

There has been welcome and considered public debate concerning these matters of symbolism and functionality surrounding the new building. As part of that debate, I have recently read a thoughtful evaluation by local architect David Havercroft. The article starts by making the point that the pressures and shortcomings of the existing facilities require the provision of new facilities. There can be no doubt of that matter. The author goes on to describe this building – almost poetically – as a “muscular enunciation of the pillars of state, law and commerce”. This is perhaps unsurprising, given that in the Western tradition buildings in which the business of the criminal law is conducted have sought to symbolise the power and authority of that law.

While acknowledging that the design of the building has considerable élan, the author goes on to make some highly educated observations concerning its physical manifestation and functionality in the cross-cultural context. He makes those points against the well-acknowledged background that Aboriginal people constitute a high proportion of the key parties to legal proceedings conducted before this Supreme Court. Ultimately, however, the author concludes quite correctly that fairness and justice are functions of the performance of the judiciary and the legal practitioners involved in the proceedings of the court.

With that in mind, we acknowledge here today that this building sits on land and in an area in which the Arrernte people have lived since time immemorial. We also acknowledge that Alice Springs is a place in which people from many language groups congregate, including Pitjantjatjara, Luritja, Pintupi, Warlpiri, Warumungu and many others. This court has long extended its respect to their elders and to their laws and customs, to the extent that those laws may be taken into account under laws passed by the Commonwealth and Northern Territory parliaments.

This court has long acknowledged the continuing stewardship of those peoples over the various lands in Central Australia. This court has long-recognised the social, economic, cultural and other disadvantages to which Aboriginal peoples have been and continue to be subjected. Since the time of its establishment in 1979, and in its earlier manifestations, this court has always sought to take those matters into

account in dealings between Aboriginal people and the justice system, and it will continue to do so.

While accepting that different people may have different views in relation to matters of priority and choice, court premises of this quality do not occur by chance. They only come about as a result of a lot of sustained work and effort by a large team, and we are very pleased that a number of members of that team have been able to join us this morning in order that the judges may express our personal gratitude for their very considerable efforts.

First of all, we thank Michael Sitzler, who has been the developer and driving force behind the project. We also thank the rest of the governance committee who have overseen the construction of the building since its commencement back in January 2015. We would like to acknowledge in particular Chris Cox, the Director of Northern Territory Courts and Tribunals, and David Bryan, the Director of Northern Territory Property Management, for their efforts in that respect and their interface with the court.

We thank the architect, Mark Bell, who is no doubt delighted to hear his building described as a “muscular enunciation”. When I was just starting out as a barrister in a tiny, windowless room at the top of the Qantas building in Darwin, Mark was just starting out as an architect on his own account in the tiny, airless office next to mine.

I know that everybody involved with the court would like to extend particular thanks to Gonzo, the site manager. I had always assumed that his parents had a highly developed sense of humour; but I found out last night that his real name is Allan Brown. His good nature, his sense of humour and his willingness to help have been appreciated by all of us.

We would also like to thank all of the contractors involved in the project for the quality of their work. The members of this court are very pleased with and proud of the new premises. We feel certain that they will provide the court with an improved capacity to meet the needs of the community which we serve.

Madam Solicitor-General?

MS BROWNHILL SC: May it please the court, I appear on behalf of the Attorney-General, the Honourable Natasha Fyles, and the Northern Territory government. The building that has, until now, served as the Alice Springs location of the Supreme Court of the Northern Territory was officially opened on 9 July 1980. After almost 37 years of administering justice to the people of Alice Springs and the central region of the Northern Territory from that building, the court will now do so from this brand new building and location.

This is an important event within the Territory’s legal sphere and for the Alice Springs regional community; and more broadly, for the people of the Northern Territory as a whole.

The provision by the Executive to the Judiciary of a court building constructed and furnished with public monies allocated to the purpose by the Legislature demonstrates the necessary relationship between the Judiciary on the one hand and the Legislature and the Executive on the other.

The relationship exists because the Courts are dependent upon the Executive and, ultimately, the Legislature for provision of the physical infrastructure and equipment, the consumables and the human resources required to perform their judicial functions. The relationship is governed by principles which are analogous to constitutional conventions sourced in the doctrine of separation of powers and directed to ensuring the independent and impartial administration of justice. While there is no legally enforceable doctrine of separation of powers in the Northern Territory, the independence and impartiality of the Judiciary is accepted as necessary for the effective functioning of a Westminster system of government and the rule of law.

The reasons of the Full Court of the Federal Court in *Skuse v The Commonwealth* (1985) 62 ALR 108 make the point. The case involved the notorious 1975 shooting in the old, old Supreme Court building in Alice Springs of a legal practitioner whilst he sat at the Bar table by a man who had actually intended to shoot a different legal practitioner. The Court considered, amongst other things, whether the Commonwealth executive, as the provider of the court building and its security, owed a general duty of care to safeguard its courthouses and people within them. Lockhart J said, with the agreement of Northrop J, at 118:

The independence of the Judiciary from the Executive and the Legislature is an essential part of our society...

Judges, not the Executive or the Legislature control activities within their courts. They control the conduct of the proceedings within them and the behaviour of those who are before them for the purpose of performing their judicial functions.

His Honour went on:

To say that the Judge controls his [or her] Court and its precincts (a concept well recognised in the law of contempt of court) does not, of course, give a precise definition of the nature or extent of that control...

The line between [the Executive's responsibility for overall control ... of its courthouses] and [the control of the Judges over their courts] is necessarily blurry and it is sensible that this is so. These are delicate matters requiring care and respect on the part of all concerned.

As an example of the delicacy of these matters, I have taken a tale from the book, *Big Boss Fella All Same Judge* by the Honourable Dean Mildren AM RFD, who was a Justice of this Court between 1991 and 2013 and is currently an Acting Judge. It is said, at page 203 of the book, that compared with the old facilities used by the

Supreme Court in Alice Springs (the court in which Mr Skuse was shot), the building opened in 1980 (now the old building), was “luxury indeed”.

However, the building did have some important design faults, the most significant of which was that the air conditioning for the Court came from condensers situated in the Greatorex Building, which housed most of Alice Springs’ civil servants. Those condensers supplied that building, the police station and the Court. The Court suffered the consequences of the air conditioning being turned off when public servants went home. His Honour says that working in chambers at night, in the middle of summer, “could only be achieved wearing bathers”. Whether that practice was confined to his Honour or was one generally adopted by all Justices of the Court is not revealed.

His Honour relates that one hot, summer’s day in the 1990s, he was conducting a criminal trial before a jury and the air conditioning suddenly went off. Inquiries were made and his Honour was told that a condenser had failed and there was only enough power to supply the Greatorex Building and the police station. His Honour summonsed the supervisor to his chambers and was told that the condenser could take several weeks to repair because the parts had to come from inter-state. His Honour told the supervisor that, without air conditioning, the Court could not function. The supervisor seemed unimpressed. His Honour then told him that he had 24 hours to restore the air conditioning to the courthouse; otherwise, he would be held in contempt of court. Remarkably, the air conditioning was back on in half an hour.

It is undeniable, as your Honour, the Chief Justice, observed, that court buildings should be both functional and symbolic. At the opening of the High Court of Australia in Canberra on 26 May 1980, a building which is described on the High Court’s website as an outstanding example of late, modern, brutalist architecture, the Prime Minister, Malcolm Fraser said in a speech in the public hall of the court, and I quote:

This building bears testimony to [then Chief Justice] Sir Garfield [Barwick]’s vision, energy and imagination and will stand as a memorial to the high standards of Australian designer and builders, craftsmen and artists. It is a building which will attract a growing national pride as years pass. All too often in the design of modern buildings we are left with a functional result with little else to commend it.

On this occasion, the pursuit of function and excellence has been rigorous and successful. Indeed, I submit, that function and excellence can coexist as this magnificent structure proves beyond reasonable doubt or at least on the balance of probabilities. [emphasis added]

The final sentence has to qualify as the legal equivalent of a ‘Dad joke.’

Barwick CJ’s vision might be said to have been overly-focused on the symbolic aspect of the building. According to David Marr in his biography, titled *Barwick*, at page 295:

From the start, the structure was not imposing enough for [Sir Garfield Barwick's] purposes... He wanted his building to dominate Parliament and the buildings around it and he wanted this symbolic dominance to be clear to the public which, he said, must see the court as somewhere to turn for protection from the 'tyranny' of parliament...

In a singly, pithy sentence, Barwick summed up his approach to the project [as follows]: "It can't be big enough."

In a possibly similar vein, the Supreme Court Building in Wellington, New Zealand, was reported in 2008 as having run into something of a cost blowout. The building is a two-level glass shell, surrounded by an elaborate, bronze screen. It contains an ovoid-shaped courtroom, but this one has a copper-panelled exterior and an interior clad with silver birch. The Justice Minister is quoted in the *Dominion Post* as saying:

I've made it very clear to justice officials that I am not interested in anything which exceeds the bounds of practicality and functionality. There had better not be unnecessary trimmings at \$81 million.

Thankfully, this building displays a more moderate approach to symbolism.

Indeed, the design concept sought by government required simply that the building be architecturally impressive, iconic and convey a style commensurate with the dignity of the Court and reflect the building's role as an instrument of justice for the Northern Territory. The concept was otherwise focused on functionality, notably: meeting the Court's functional requirements, providing easy accessibility by users and members of the public and, as an aspect of that, ensuring that they feel confident they are in a safe place.

In my submission, this building fulfils its brief. It will, for the first time, enable the running of two jury trials in Alice Springs, simultaneously, and it will enable sittings of the Court of Appeal or the Court of Criminal Appeal in Alice Springs. It is intended to serve the needs of the Supreme Court for the next 20 years and many more beyond. In providing this new building to the use of the Supreme Court, I submit that the executive government of the Northern Territory is upholding the independence of the judiciary; and notwithstanding the distinction I have drawn between the somewhat ostentatious symbolism and rhetoric associated with other court buildings and this one, the observations of Barwick CJ on the opening of the High Court building in Canberra can be adapted on this occasion to this building as follows:

[This new Supreme Court building] provides a fitting embodiment of the Court, emphasising its ... significance and its independence. It is well-suited to express the supreme importance of the law. ... It is a standing reminder that the law, its just administration and its observance by the citizen are fundamental to the maintenance of civilised life and the mutual freedom of [Territorians].

May it please the Court.



HIS HONOUR, GRANT CJ: Thank you, Madam Solicitor.

Mr Stirk?

MR STIRK: May it please the court. I appear on behalf of the Northern Territory Law Society at the opening of this splendid, new courthouse for both the Alice Springs practitioners and, more particularly, for the public of Central Australia. I would like to thank the President of the Law Society and the Society itself for the honour you've given me in making this speech. It is also pleasing that the ceremony is being broadcast to those lawyers assembled in Court 3 in Darwin and I wish to thank the court for bonding those of us in those two locations.

While others are going to be dealing with present and the future, I would like to take the opportunity of perhaps reflecting on the past in this presentation on what has occurred in the 37 years since Canberra's gift to the Northern Territory was opened on 7 July 1980. This is obviously the third of the courthouses in Parsons Street. Parsons Street, interestingly, triangulates the various locations in which the courts have sat. It has been said to me that that triangulation is not a masonic conspiracy; it is just something that has occurred.

The old courthouse on the corner of Parsons and Hartley Street had originally been designed as a residence and then became administrative offices as a consequence of a limited measure of self-government for Central Australia which was consequential in the separation on 1 March 1927 of the Northern Territory into Northern Australia and Central Australia, divided at the 20<sup>th</sup> parallel of south latitude. The building itself was constructed in November 1928 and the following June, legislation gave complementary authority to the Supreme Court of Central Australia as that of Northern Australia and sittings were to be held in Alice Springs on the same basis as those held in Darwin.

Sadly, for some of those who aspire to a different political arrangement, on 1 June 1931, the *Northern Australia Act* was repealed and the Northern Territory was, once again, administered as a single entity. Interestingly, the Local Court had been held at the Alice Springs telegraph station until then and it was moved into the old courthouse and retained the name of the Local Court of Alice Springs, rather than that of Stuart, which had been the original proposal of the then number one boss of Alice Springs, one Vic Carrington.

As of 30 August 1933, the town of Stuart was officially changed to its name of Alice Springs. On the diagonal of what is now referred to as the courthouse lawns was the home of the district engineer, one D. D. Smith. Where the 1980 courthouse was erected was a residence inhabited by a number of local figures, one in particular, I think, is very familiar to Jamie Gallacher in Creed Lovegrove.

There were also stockyards for holding horses and camels for police mounted patrols. I, unfortunately, diverge with the Chief Justice on what I have been told, 6 July 1935, was the first sittings of the Supreme Court of the Northern Territory, but

we will sort out whether it is 35 or 36 on some other occasion. Given those changes, a courtroom was added to the original building for its ongoing use as a courthouse. Matters progressed by a slow but steady pace until 19 February 1942, when Darwin was bombed and the then-Administrator, Aubrey Abbott, moved into the residency across the road from the courthouse and the Clerk of Courts and court staff in the old courthouse were shuffled out to accommodate the needs of the administration which had moved from Darwin to Alice Springs.

Post-war, the original courthouse continued to service as a Court of Summary Jurisdiction, the Local Court and the Supreme Court. With the addition of an extra magistrate in the 1980s, overflow court space was arranged opposite the ANZ Bank further down Parsons Street, while the Registry staff continued to work from the enclosed verandah of the old courthouse. My recollection of the space goes back to 1980 when I came to Alice Springs as an associate to Justice John Gallop. In those days, there was a judicial flat out the back of the building and a judicial garden with its lemon tree, under which gin and tonics were served after court on summer's evenings.

The last sitting in the old courthouse was in May 1980 when Andy Kirkham and Mick O'Loughlin prosecuted Gus Forbes in a murder trial. I can remember it well because there was a plea to precede it and Gus was represented by the then Frank Vincent QC and John Coldrey, both of who became judges of the Victorian Court of Appeal; and the latter, its first DPP. As was usual perhaps in those days, there had been no preparation done and Lenny Hartnett was asked to extend his plea for three days while Frank Vincent and John Coldrey could get up to speed. Perhaps things haven't changed in that regard.

Back in Canberra, Sir Garfield Barwick was keen for the construction of his High Court building and plans were commenced for the brutalist structure that was opened by the Queen in May, 1980. Senator Durack, as Attorney-General, progressed the construction of the new Alice Springs courthouse and it was said, using some of the structural features that would then appear in the High Court. Generally, we prepare models. In this case, we understood the Commonwealth was going to construct a real building; hence, the building in Alice Springs.

On 9 July 1980, we had a very flash opening of the courthouse. Senator Durack was present. There was some over 200 guests invited and I thank Freda Evans, in particular, for ferreting out from the archives some details of what occurred. The actual Supreme Court sittings that we are having today did not formally occur until August of 1980 when the four judges of the court, Sir William Forster; Justice James Muirhead; and the two 50-year old young fellows, John Toohey and John Gallop, conducted the first sitting of the Supreme Court. By that stage, the two magistrates who were down the road opposite the ANZ bank, Dennis subsequently 'Dingo' Barrett and Jack Towers, had moved from their accommodation to the new courthouse.

In relation to the opening on 9 July, we have managed to unearth a very stern letter from the Deputy-Secretary of the Department of Law, one Arthur Sidney

George Hook, who was subsequently a magistrate in Alice Springs and, in those days, the Deputy-Secretary of what was called the Department of Law. Mr Hook was commonly known as 'Swamp' for his predilection in every hearing to say: 'Sergeant, what are my powers?'

The grand opening had been organised for 200 people. A letter of complaint on 14 July from Mr Hook, for which I quote, complains that the morning tea was to include tea, coffee, fruit juice, fresh scones and cream, hot savouries and fresh sandwiches with mixed filling. The letter complained that:

The actual catering provided was stale, unbuttered scones with no cream, a poor selection of mixed sandwiches, packet biscuits, no savouries and no fruit juice. The catering was extremely poor and an embarrassment to the Department of Law and to the host, the Acting Northern Territory Attorney-General, the Honourable J.M. Robertson.

Very wisely, I understand the court this morning has decided not to go to a morning tea.

Things with the Hotel Alice Springs did not get much better. Obviously, the Chief Justice can recall working there as a young man when the Chamberlain Inquest was occurring late in 1980. Telford had leased the premises from its owner; one Abe Saffron of Kings Cross. In 1984, the hotel burned to the ground with a large insurance payout to Mr Saffron. And, somewhat bizarrely that same night, the man who had originally constructed it; one Ly Underdown died at the Old Timers. None of that has anything to do with Abe.

The legal profession in the 1980s was both colourful, diverse and extremely peripatetic. Many came to learn and contribute to organisations such as CAALAS and the Central Land Council and then returned. I have spoken with Roger Bennett, a newly anointed lawyer at Martin and Partners. That practice had the rich pedigree of providing the first two solicitors general for the Northern Territory.

Maxwell Ferris Horton was always looking forward to the phone call that never came. Ian Barker had come and gone to Darwin and by, I think, 30 June 1980 he had relocated to Sydney. The now Justice Reeves was a partner of Peter Howard who was soon to change from a career of being a lawyer to that of a full-time gardener.

The administration of justice was often considered rough and that resulted in a horse by the name of Rough Justice being raced at Flemington with as much success for its owners, Dyson Hore-Lacy and John Reeves, as they had before Gallop J.

I can just run through perhaps the names of those who were at the 9 July 1980 sittings. Ian Barker was there with Phil Rice QC who had grown up in Alice Springs. Both of them would reappear in the Chamberlain inquest and trial that followed.

Obviously in August 1980 when the court was having its opening, 17 August was the day that Azaria was taken at Ayers Rock.

In addition to Senator Durack, Forster CJ and Gallop J there were notable figures on behalf of the Law Society, one Dean Mildren and on behalf of local practitioners one Brian Martin. Also present were Peter Tiffin, who was a Crown Prosecutor, Ashley McNay, who ran the Crown office in Alice Springs and conducted the first Chamberlain inquest, the Master of the Court, Narendra Patel, Mick O'Loughlin, a colourful figure who parked his Harley in the old courthouse for many years while prosecuting in Alice Springs, Tony Garrett, Pam Ditton, Chris Loorim, Chris Turner, who is present today, I think the only one of those still practicing lawyers who was present for that opening in 1980.

Also there was Tim Harry, Peter Dean, Sue Asenstorfer, Mark Hird, Peter Toyne and Ted Skuse who is memorialised for the shooting in the old courthouse and I only hope that the Bar table with the gouge of the bullet has been retained somewhere in this transition.

The other notable character that I will probably just reflect on before closing is Godfrey Foy Hall alias Scrubby Hall. He was a magistrate in Alice Springs for close to 25 years. He was the only magistrate, he reminded me, between the South Australian border and Darwin. He was also the licensing magistrate and took that job so seriously that he used to stay in every licensed premises between the South Australian border and Darwin every year. The late Reg Harris complained to me that his licence was suspended after he inadvertently caused an invoice to be sent to Mr Hall after a stay.

In terms of architecture I reflect 25 years ago when we opened the Supreme Court in Darwin. Much was made about the innovation of what was then characterised as northern Australian architecture. It was obviously far superior to the court structures that had existed in the past.

His Honour, the Chief Justice has already commented on considerable commentary in relation to this design and the local cityscape. It has been characterised as many things. The only thing that I would wish to reflect upon is the fact that the Commonwealth of Australia departments of Prime Minister and Cabinet now sit two floors above this court and once again look down on Alice Springs.

Most recently we have seen the Alice Springs Supreme Court sittings expanding such that there are delays in having matters dealt with in a timely manner. The Chief Justice has already indicated his willingness to sit additional judges in Alice Springs to alleviate such delays. Those of us who practise in the courts here obviously look forward to continued sittings of both the Courts of Criminal Appeal and the Court of Appeal for matters from Alice Springs.

Many things have changed since 1980 when the previous building was opened. Only yesterday Reeves J conducted a native title hearing out of Alice Springs.

Central Land Council lawyers now total 12 compared with Ross Howie and Mark Hird 37 years ago.

The Central Australian Aboriginal Legal Aid office has grown from Pam Ditton, Chris Loorim, a young John Tippett and Mark Hird working four days a week to a practice of some 24 lawyers. Much work continues to need to be done and I look forward to the opening of this courthouse facilitating the doing of the work of the legal profession both for themselves and for the community and also for the benefit of having more capacity in the old building.

Finally, your Honours, my first visit to the robing room today revealed that there is no room for wig storage. It is either a portent of things to come or a function of design by committee.

May it please the court.

GRANT CJ: Yes, thank you, Mr Stirk. And just when you had bought a new one.

Mr Goldflam?

MR GOLDFLAM: If it pleases the court, I appear on behalf of the Northern Territory Bar Association. Werte mparnterenye mape. And hello also to all the non-Arrernte people here, including pre-eminently and most unusually for Alice Springs, the heads of the legislative, executive and judicial arms of the State of the Northern Territory.

In the early 1950s the only lawyer between Port Augusta and Katherine was a fellow named Neil Hargrave. I suppose it is fitting, given he served as such an isolated outpost of the law, that they named a lookout after him on top of a pile of rocks in the scrub halfway between here and Haasts Bluff. Anyway, Neil Hargrave, talking about the unassuming tin-roofed bungalow across the road from where we are now, summed it up like this:

Well, there was only courthouse and that was very like the average residence in Alice Springs at that time, but it was fairly large and reasonably well set up - tables and benches for the audience to sit on. One of the main problems with it was that you were dealing in a criminal case with a jury that was about ten feet away from you, and nearly every one of whom you knew personally and to try to put over some cock-and-bull story to them was hopeless.

Times have not changed all that much. The foreman of the very first jury I addressed in Alice's second courthouse, over there on the corner, was an acquaintance who lived a couple of streets away from me. He also happened to be a respected local Alderman and there was no point trying to put some cock-and-bull story to him either. Or, come to think of it, to any of the other juries I have addressed since, many of which have included a vaguely familiar face or two. Alice is, after all, still a town like Alice, and long may we continue to be so.

I commenced work with the Northern Territory Legal Aid Commission on 6 May 1997 which means, as it happens, that this is effectively the very last day of my personal 20 year non-parole period. I was admitted to practice in the courthouse over there on the corner by Justice Mildren, one of the few judges of this court who is not with us today.

I have had the privilege and the associated challenges of appearing before each of the Justices who have presided in this Court over the last two decades during which the premises and facilities have become increasingly shabby, dilapidated and generally inadequate. So it is all rather momentous to be addressing your Honours for the first time in a spanking brand new courtroom.

The building, and the room are, of course, important. But what gives them life and what gives life to the law administered in these buildings, whether they're 1920s single storey bungalow, 1970s two storey brutalism - I just need to interrupt because both my learned friends Mr Stirk and the learned solicitor have used that term as well. It is apt to be misleading. It does not mean brutal when we are talking about architecture. It means from the French brut raw as in raw concrete exterior veneer.

Anyway, whether we are talking about the 1920s bungalow or 1970s brutalism or this latest five storey bastion, it is not their architectural style or scale that matters, but the people in them. The judges, the lawyers, the staff, the witnesses, the onlookers and, most importantly of all, the parties and, as has often been said, the losing party, which in this Supreme Court means in the vast majority of matters, the accused in a criminal proceeding.

In the vast majority of those cases here in Alice Springs, that accused is Indigenous. And what is he, and more often than ever now, she, to make of this place, and the people who lay down the law in it? Perhaps they will appreciate being somewhere flasher than they are used to although I expect their families will miss not being able to sit and wait right outside in the shade of those date palms in the D.D. Smith Park, the courthouse lawns as we all know them.

But I doubt it will make that much difference how flash the building is as long as the story remains the same. In this courthouse, when it comes to sentencing and, indeed, in most matters, generally speaking we do not notice, we do not recognise and we do not allow Aboriginal law. We used to, up to a point. But we do not much now.

An unprecedented number of the Northern Territory's lawmakers, six Members of our Legislative Assembly no less, are Indigenous - just about more than the rest of Australia's Parliaments put together - but we still have a law, a Commonwealth law I should add, that prohibits your Honours from having regard to Aboriginal traditional law or custom when assessing the objective seriousness of an offence for sentencing purposes.

As Justice Southwood trenchantly observed in *R v Wunungmurra*, that distorts the well-established sentencing principle of proportionality. It also means that for the

foreseeable future, we should expect that many Aboriginal people who enter this building will feel that they are entering a foreign country, where the law that matters to them does not matter. Perhaps it is just as well that we have not hung paintings on the walls here that might misleadingly suggest otherwise.

I do not submit that we can or should depart from the jurisprudence developed over the last 15 years or so by this Court and indeed the High Court, which has set clear boundaries to the accommodation of traditional law: as the plurality stated in the High Court case of *Munda v Western Australia*, “courts should not condone the commission of an offence or the pursuit of vendettas, which are an affront and a challenge to the due administration of justice”. But we can, and we should, do better.

Previous legislators have also decided in their wisdom that judges cannot be trusted to impose just sentences, and passed mandatory sentencing laws to ram home that message. But, as Justice Mildren said in *Trener v Bradley*, “prescribed minimum mandatory sentences are the very antithesis of just sentences”.

For a judge, it must be agonising to send an offender to prison for longer than is fair and just. That was the situation confronting the late Justice Bailey in the courthouse over there on the corner when he sentenced a very young petrol sniffer from Hermannsburg to life without parole for murder back in 1999. I was in the courtroom watching him do it.

Justice Bailey was a conventional and careful judge, but he did not mince his words, calling for the reintroduction of discretionary sentencing for murder. That has since been achieved to a very limited extent but the cruelty of our murder sentencing laws continue to produce grave miscarriages of justice and bind the hands of our judges. One only has to peruse their judgments to see the extraordinary combination of rigour and humanity that the judges of this court bring to bear when their hands are not tied.

I cite two Alice Springs decisions by way of example. Firstly, Blokland J's judgment in the civil case of *Johnson v Northern Territory of Australia* in which the unrepresented plaintiff claimed that he had been a victim of police brutality. The defendant, on the other hand, was formidably represented by our current Solicitor-General, Ms Brownhill SC assisted by junior counsel.

Mr Johnson's action was ultimately dismissed, but what struck this reader of her Honour's 168 page judgement was that the judge gave the losing litigant a fair hearing and a fair go.

Secondly, I refer to Chief Justice BR Martin's sternly compassionate remarks when sentencing the five young men who had pleaded guilty to the manslaughter of Mr D Ryder - remarks, I might add, that attracted criticism from some sections of the media that was as shrill, strident and unfair as the remarks themselves were calm, measured and meticulous.

With great respect, I acknowledge that in these and many other cases the judges of this court have conscientiously striven to steadily, creatively and purposefully construe and apply the law to take account of the lived reality of the people who come before them within the limits imposed by Parliaments.

No doubt there will be many more controversial sentences and contentious rulings handed down in the years to come from this new judicial seat. Now that the executive arm has bestowed on the judicial arm the gift of a new courthouse, one can only hope that the legislative arm will press ahead with the reforms urgently required to let your Honours do your job properly and justly and remove the unnecessary and unfair fetters imposed by statute on the exercise of your judicial discretion.

GRANT CJ: Yes, thank you, Mr Goldflam.

Ms Collins?

MS COLLINS: In speaking here today at the opening of this new Supreme Court I wish to acknowledge and pay my respects to the Arrernte people, traditional owners past, present and future of the land where we meet. This building is in the spiritual heartland of Arrernte country. Adjacent in the Todd Mall is a very important spiritual site, an old gum tree that plays a very important role in the dreamtime of this region.

The physicality of this new building looms over it just as our law literally looms over all Aboriginal people of Central Australia. A legal system which includes a Commonwealth law that prevents Aboriginal customary law from being considered in determining the objective seriousness of an offence for sentencing purposes. A legal system that fetters judicial discretion with the imposition of mandatory sentencing. A legal system which has led to the disgracefully large and disproportionate incarceration rate of Aboriginal people.

The reality is that the majority of people whose lives are going to be impacted by the working of this Court are Aboriginal people, be them as employees, interpreters, defendants, witnesses or victims. Now, of course, Court is more than just a physical structure. It is composed of its users.

Fortunately the judiciary and advocates on both sides of the Bar table have ensured as far as they are able, to ensure that Northern Territory jurisprudence reflects a sensitivity to the reality of the experience of Aboriginal people. I am sure that decisions from this new Supreme Court will continue the tradition of such important decisions as the Anunga rules in safeguarding, when necessary, the human rights of Aboriginal people.

The Supreme Court has led the way in recognising the importance and human rights of Aboriginal people in having proceedings explained to, and interpreted to them, in their own language. All judicial officers of this court which, like my colleagues, I have had the fortune of appearing before, have all consistently



acknowledged the difficulties that Aboriginal people face in giving evidence and being cross-examined.

Now, much to the shock and horror of southern and eastern cousins when raised at advocacy courses, many entrenched cross-examination techniques by counsel using quaint, convoluted and confusing language are prohibited in Northern Territory trial proceedings. Now, like our northern cousins, we will have the opportunity to conduct such trials in these modern and very spacious surroundings.

As an employee of Central Australian Aboriginal Legal Aid Service for nearly ten years, I have had the privilege of working with and acting for Aboriginal people from Central Australia and the Barkly Region. On numerous occasions I have stood on the steps of that old Supreme Court building in this wig and gown wildly gesticulating like a distressed crow at people gathered on the lawns opposite, asking them to come into the building, support their family members and frantically shouting up and down the streets looking for my clients around the courthouse.

Now, the extra distance that this task will probably involve will no doubt ensure my fitness levels will increase when searching for my clients and their families from this new courthouse. I am hopeful that I will be able to avoid a disorderly behaviour in a public place charge and also not cause a traffic incident as I wave to people on the lawns opposite from the corner of the roundabout.

Arguably, one of the biggest problems with the old Supreme Court, once one is able to take one's eyes off the very alluring 80s retro wood and carpet décor, was a lack of space. Muster days for juries would ensure that every available seat in the foyer was taken with witnesses, defendants and their families often jostling for room.

Now, I am actually a very clumsy person and moving obstacles in the form of jurors swarming around the courtroom entrance as I try to navigate my way to the Bar table whilst conveying an aura of professionalism, was always very challenging. As challenging as jury selection can be.

One of my favourite memories of the old Supreme Court was challenging a juror in the panel only to have her shout back at me, 'I knew you were going to do that.' Now, no counsel wants a mind reader on their jury. Now, in this new building, there is plenty of space to keep some appropriate demarcation between all the participants.

It is a privilege to be part of this ceremonial sitting representing the second oldest Aboriginal service in this country which, despite the ever present prospect of funding issues, is run by Central Australian and Barkly Regional Aboriginal people for their community. It has been staffed, and continues to be staffed, by dedicated Aboriginal and non-Aboriginal people in helping the rich and diverse Aboriginal people of this region navigate and comprehend our complex criminal justice system. I look forward to assisting them in the future in this new building.

May it please the court.

GRANT CJ: Thank you, Ms Collins.

Before concluding the ceremonial sitting, on behalf of the court we would again express our gratitude to all of those who have worked so hard and so effectively to achieve this important milestone in the life of the court and of the broader community in Alice Springs.

We would like to thank those court staff who have worked so hard in achieving what has been a relatively seamless transition from the old building to the new building. We would make special mention in that respect of Maxine Baloban, Anne Lewis, Paula Anthony and Frieda Evans.

I would like to make particular acknowledgement of Debra Carr, the manager of the Judges' Chambers. She has worked tirelessly and efficiently as always in organising this formal opening and these ceremonial sittings.

We would also like to thank all of those who have demonstrated your interest in the work of the court by giving up your time this morning to attend the official opening and this ceremonial sitting.

In a departure from the usual protocol, I would invite any of those members of the public in the court gallery to come into the area in front of the Bench here so that a photo can be taken from the back of the court to mark this particular occasion. Please come forward now. You will not be arrested – particularly counsel at the Bar table.

[PHOTOGRAPH TAKEN]

Thank you, ladies and gentlemen. If you could resume your seats again now, please.

Thank you for your attendance again, ladies and gentlemen. The court will now adjourn.

ADJOURNED 10:58 AM INDEFINITELY