

SUPREME COURT OF THE NORTHERN TERRITORY  
STATE SQUARE, DARWIN

CEREMONIAL SITTING IN MEMORY OF  
THE HONOURABLE JOHN FOSTER GALLOP AM QC RFD

TRANSCRIPT OF PROCEEDINGS

COURTROOM 1, FRIDAY, 24 NOVEMBER 2017 AT 3:30PM

PRESIDING JUDGES:

THE HON CHIEF JUSTICE MICHAEL GRANT  
THE HON JUSTICE JUDITH KELLY  
THE HON JUSTICE JENNY BLOKLAND  
THE HON JUSTICE PETER BARR  
THE HON JUSTICE GRAHAM HILEY

IN ATTENDANCE:

THE HON AUSTIN ASCHE AC QC  
THE HON SALLY THOMAS AC  
THE HON JUSTICE RICHARD REFSHAUGE SC

**GRANT CJ:** Welcome ladies and gentlemen. The Court sits this afternoon to honour the late Honourable John Foster Gallop, a former member of this Court who sadly passed away on 24 September this year, aged 87.

On the Bench this afternoon, together with the permanent Judges of the Supreme Court of the Northern Territory, are former Chief Justice Austin Asche, former Justice Sally Thomas and the Honourable Justice Richard Refshauge of the Supreme Court of the Australian Capital Territory.

The Court will be addressed today by former Administrator and Solicitor-General, the Honourable Tom Pauling on behalf of the Attorney-General, Ms Suzan Cox speaking for the President of the Bar Association, and Mr John Stirk, Gallop J's third Associate, speaking for the President of the Law Society.

We are honoured today by the presence of Justice Gallop's partner, Judith Breen, his daughter, Cathy Gallop, and her partner, David Turnbull. We thank them for the efforts they have gone to in travelling a great distance to be here today.

We are also very pleased to welcome and acknowledge certain special guests including the Administrator, her Honour the Honourable Vicki O'Halloran and Mr Craig O'Halloran. This is her Honour's first attendance at a Ceremonial Sitting of this Court. We congratulate her on her appointment and thank her for her attendance.

We also welcome the Reverend Bishop Eugene Hurley, the Acting Chief Judge of the Local Court, her Honour, Elizabeth Morris, and their Honours, John Neill and Greg Macdonald. We welcome the President of the Northern Territory Bar Association, Mr Miles Crawley, and the President of the Northern Territory Law Society, Ms Maria Savvas.

John Gallop was an important figure in the life and history of this Court. I will leave it to our speakers to detail his life and the nature of that contribution in greater detail. I will only say by way of introduction that he was appointed to this Court on 10 March 1978, at a time before it became an institution of the Northern Territory as a newly created body politic. At the same time he was appointed as a Judge of the Federal Court of Australia. He also held commissions as a Judge of the Supreme Court of Christmas Island and as a presidential member of the Administrative Appeals Tribunal whilst holding appointment to this Court.

His Honour went on to hold other judicial appointments, most notably as a Judge of the Supreme Court of the Australian Capital Territory over many years. His Honour continued his association with this Court as an Additional Judge, and then an Acting Judge, until as recently as 2002.

In this jurisdiction his Honour's name was a byword for dignity, efficiency, intellect and humour. He has left a lasting legacy.

Mr Pauling.

**TOM PAULING QC:** May it please the court.

I appear on behalf of the Attorney-General to speak in memory of the late Honourable John Foster Gallop. He served, as Your Honour the Chief Justice has noted, as a resident Judge of this court from 1978 until 1982 when he became a Judge of the Australian Capital Territory Supreme Court where he served until his 70th birthday in July 2000.

His was a keen forensic mind, honed as a prosecutor and refined at the ACT Bar. I often appeared in his court and noted that being ill prepared was not a fault to be passed lightly. One can see the gimlet gleam in his eye as he saw that counsel missed the point or missed the mark.

He would call on counsel to cut to the chase. To one of my opponents who doesn't practice here I might say, who was all over the place, he said in almost stentorian tones, *'Mr X, you are playing first grade now, not under 16s. If you can't perform at this level, find something else to do. Now get on with it'*. This may not be word perfect but it's very close.

I can hear the low gravel growl of a bar room baritone winding up to a lesson in how things should be done. *'Now Mr X, why would you not put to this witness the obvious and crucial question? You seem to avoid the central plank of your case'*. I know from conversation that when he referred to a plank he was referring to a Latin expression called *'Tabula in naufragio'*, which translates as plank in a shipwreck. He was so describing my opponent's case. Something to hang onto which counsel has let slip.

His respect for the traditions and practices of the Bar even extended to counsel's attire and he once asked me in a social setting if it would be going too far to refuse to see or hear counsel in robes with brown shoes. I let that go through to the keeper, which his Honour was at a very high level. Even playing in that position against the South African team for the Prime Minister's XI in 1964.

The Australian Capital Territory Attorney-General in a similar sitting to this described his direct nature in the court room. I suspect this is a euphemism. He kept you on your toes or perhaps the balls of your feet. He sharpened the court craft of many who appeared before him. He and I got on so well that he often included me in any speech he was making. I don't know how he managed to weave it in but he did and it went like this, *'I was hearing a building case and Pauling was for the plaintiff against the builder. His cross-examination frustrated the builder so much that he exclaimed, "You wouldn't know a girder from a joist". Pauling quickly answered, "Oh yes I do, Goethe wrote Faust and Joyce wrote Ulysses"'*. I smiled indulgently.

We socialised as we did often as a small Bar and he was pretty good at it. He did an excellent job as a resident Judge. He brought with him, as your Honour, the Chief Justice has noted, a certain devotion to skills and the practice of the Bar and he taught us very well.

On behalf of the Northern Territory Government I acknowledge the attendance of his family and of Refshauge J and we mark his passing and extend our condolences.

May it please the court.

**GRANT CJ:** Yes, thank you, Mr Pauling.

Ms Cox.

**SUZAN COX QC:** May it please the Court.

I appear on behalf of the Northern Territory Bar Association.

For those of us who appeared before his Honour the experience was always memorable and not easily forgotten. As a Crown prosecutor for the Northern Territory in 1961 he would often go down to Alice Springs to prosecute.

According to my very reliable source, Ian Barker QC, who was practising there at the time, he was known as *Boots and All*. His Honour was at the very least a formidable prosecutor and he took his prosecutorial skills with him to the Bench. I'm informed that his Honour's appointment to the court in 1978, the year in fact that I graduated from Law School, sent a slight shiver through the NT Bar as members believed, correctly as it turned out, his Honour's Court would not be a place of lightness and joy and that he would run his Court with the same intellectual rigor and forensic acumen that he ran his prosecutions.

Although it was the defence side of the Bar that were most concerned about their future as advocates in his Honour's Court, it turned out that those on the prosecutorial side of the Bar-table should have been equally concerned. His Honour was one of the last of the old style Judges on our Bench, although John Nader QC will probably come a close second.

His Honour thoroughly believed in the trial process. A trial before his Honour was a trial in the real sense of the word. In the 13th Century, trial by ordeal had been replaced by trial by jury, but for those of us who appeared before his Honour, a trial was often an ordeal.

On the Bench his Honour's long experience, his extensive knowledge of the criminal law and the law of evidence, his no nonsense attitude, his expectation of high quality advocacy and adherence to proper standards of Court etiquette was to say the least, daunting.

But at the same time he could be very understanding of junior counsel who were a bit out of their depth but trying their very best. David Parsons SC recalls being at sea with his first Court of Criminal Appeal matter before his Honour where his Honour was presiding and he was struggling to articulate his submissions. He said his Bar jacket felt rather like a wet Wettex. And his Honour kindly interrupted and said, *'Isn't your submission this'* and then eloquently put the appellant's case, which was ultimately successful. David Parsons retired as a Judge himself just a few months ago.

His Honour was as tough on prosecutors as he was on the defence. A junior Karczewski described his Honour as, *'Looking and talking like he wanted to rip your head off and that he seemed to enjoy being gruff'*. His Honour was renowned, after hearing legal argument, for making his decisions quickly. He presided over a Criminal Court of Appeal matter on 6 October 1995 and at the conclusion of the hearing, the appeal was upheld, the convictions quashed. The reasons, 22 pages of them, were published six days later.

His Honour's judgment, with whom the other two Judges agreed, roundly criticised the Crown's failure to call material witnesses. His Honour would not abide any prosecutorial unfairness nor excess. His Honour was decisive and he delivered his reasons very promptly indeed.

It's true that as an advocate you had to stand your ground, sometimes you were shaking but you did it. You had to give as good as you got, but of course with appropriate courtesy. His Honour's love of sport and in particular cricket, was well known. And I agree with my learned friend, Mr Pauling QC, that his use of language was often of sport in the Court and I recall him telling a young John Tippet, *'You're playing in the A grade son now, it's not the B grade-, get on with it'*.

His Honour respected courage and he demanded honesty at the Bar-table. And quite frankly, as an advocate, if you were thoroughly prepared and had sufficient courage, it could even at times be fun.

Being a Judge of the old school his Honour was a stickler for Court etiquette and appropriate Court demeanour. As counsel you made sure your robes were correct. You never said good morning, good afternoon or thank you. It wasn't a tea party and it wasn't a social occasion.

And you were on time. His Honour would commence without you if you were not in his Court at the stipulated hour. One particular counsel who had a reputation for being often late, arrived one day in his Honour's Court, the jury awaiting him for 20 minutes, as had his Honour, to find his Honour had commenced without him. The counsel commenced to apologise and started to explain that he was late because he borrowed his son's Mickey Mouse watch which unbeknownst to him was set at the incorrect time.

His Honour interrupted counsel rather famously and said, '*I don't give a Donald Duck about your Micky Mouse watch, Mr Waters, now get on with it*'. To this day I always do the Gallop check before I go into court. I check that my robes are covering my civilian dress and most importantly I always ensure that I've got no hair protruding from my wig. That was something that really annoyed His Honour. You would get off to a very bad start.

His Honour, a brilliant lawyer, found at times the law an inconvenience to be overlooked or ignored to achieve what he thought was the right outcome. He was also at times perplexed by Darwin juries. Geoff Eames QC did his first murder trial before his Honour. The facts of the case are somewhat famous, or infamous I should say. Both the accused and the victim worked together driving bulldozers. There had been significant competition and hostility between them. On payday at the Adelaide River Hotel the bar was overflowing. The victim came up to the accused and broke wind in his face.

The accused got up and said words to the effect, '*You'll pay for this*'. He then went home, picked up a high powered rifle, walked down the pathway to the hotel with people getting out of the way, walked up to the victim and said, '*Fart now you bastard*' and then he shot him.

Now the accused gave an unsworn statement – it was the good old days and you could do that then – I certainly miss those days. And he said that, this is the accused, that he was drunk, he was extremely upset at the victim's actions, he meant to shoot above the victim's head but the victim had stood up suddenly. So defences of intoxication, provocation, accident were raised.

His Honour was of the view, probably correctly, that the evidence was absolutely overwhelming against the accused. He summed up accordingly. The jury, much to his Honour's surprise and no doubt his annoyance, shortly returned a verdict of not guilty of murder but guilty of manslaughter.

His Honour immediately discharged the jury. But then he asked his Associate to bring them back in. His Honour proceeded to read out the accused's prior convictions which included a prior conviction of shooting another fellow in another hotel.

Over counsel's objection his Honour then asked each juror the basis of their verdict. I don't want any of your Honours to get an idea here. His Honour told counsel he was entitled to understand the reasons why they had acquitted the accused of murder, for sentencing purposes. Different jurors gave different reasons, although provocation was the overwhelming one.

Following this trial the partial defence of provocation I can tell you became particularly popular with defence counsel. His Honour had particularly firm views of what he could and could not say to jurors and he was not to be moved, except on occasions by the Court of Criminal Appeal.

But in terms of appeals I cannot recall an appeal against one of his Honour's sentences. His Honour had an innate sense of justice. He was kind although a force to be reckoned with during the trial. He was, in sentencing matters, a Judge who well understood and had empathy for the vicissitudes of life that brought people into the criminal justice system.

In particular, he disliked sending young people to prison and he would take up creative solutions and suggestions to avoid doing so. In this regard his Honour pioneered the so called *Griffiths* remand which gave offenders a chance at rehabilitation before being sentenced and so they could avoid imprisonment if they'd been good.

His Honour sentenced not according to statute and he had, it must be said, a contemptuous view of parliamentary draftsmen. He sentenced pursuant to human experience.

In one particular sentencing matter I had before his Honour I was representing a 15 year old youth on a robbery charge. He was a tough kid from a broken home. I completed my submissions and sat down and his Honour asked if he could ask my client a couple of questions. Now I didn't want that really to happen but I agreed, reluctantly.

His Honour then asked a few questions about the separation of my client's family and how that had impacted on him. He clearly pressed the right buttons and the otherwise tough and hardened young man began sobbing in the dock. I recall it clearly despite the passage of time, it would have been over 20 years ago, because it was such a surprise to me that this tough kid broke down and it was very, very moving.

His Honour then imposed a sentence of suspended detention that was not opposed by the Crown, nor did they appeal.

So as a sentencing Judge he was compassionate and he was always reasonable. He was a Judge of his time and circumstance. He wasn't always politically correct but he had an acute sense of what was just and how to go about achieving it. If he thought leniency should be extended then he wasn't afraid to do so.

On the plane to Bali one year, to attend the biannual Criminal Lawyers Association Conference— his Honour, then retired, was also attending the conference and he happened to be sitting behind her Honour, Blokland J and myself. Now I think we'd had a glass of sparkling wine, maybe two and we decided to tell his Honour a few home truths about what it had been like to appear before him.

So we turned around and knelt in our seats and we looked down on him and we began to tell him what a hard time he'd actually given us as advocates, young advocates. And he's gently smiled at us and he said, '*Girls, I was merely putty in your hands*'. I wish I had known that at the time I was appearing before him.

I miss Gallop J.

On behalf of the NT Bar our condolences to his Honour's beloved partner, Judith Breen, his wife, Joy, his daughter, Cathy Gallop, her partner David Turnbull and all his extended family.

May it please the Court.

**GRANT CJ:** Thank you, Ms Cox.

Mr Stirk.

**JOHN STIRK:** I move on behalf of the Law Society and thank the President and councillors for allowing me to reflect on the life and times of John Gallop as a Judge of this Court.

Gallop J sat on this Court for close to a quarter of a century. I was one of his five Territory Associates having been his Associate in 1980. When the Chief Justice asked me when we should list this Ceremonial Sitting, there was a choice between cups of tea following a morning ceremony or a stiffer drink if it were held on an afternoon. I would obviously not be true to his Honour's legacy if I had elected for a cup of tea.

One year after self-government on 1 July 1979 most governmental functions in the Territory had been devolved as a result of the *Self-Government Act*. Neither Health nor Justice had been. Until 1 October 1979 the Supreme Court of the Northern Territory was constituted by Mr William Forster as its Chief Judge with the additional Judges being Justices Muirhead, Toohey, Ward, Dunphy, Joske, Smithers, Woodward, Franki, Sweeney, Evatt, St John and the junior judge, Francis Gerard Brennan. It was quite a court.

Justice Richard Charles Ward died on 24 November 1977. It was his death that led to the appointment of John Foster Gallop as a Judge of the Federal Court of Australia and his appointment as a resident Judge of the Northern Territory Supreme Court.

Gallop J was a Deputy President of the Administrative Appeals Tribunal which at that stage was running through the deportation appeals of what were collectively referred to as a 'Griffith mafia'. There was a lot of work to be done and his Honour sat on a number of those cases.

Gallop J also sat every two years on Christmas Island. Unfortunately I was the Associate who organised the trip but didn't get the guernsey. Christmas Island of course was governed by the penal code of Singapore of 1936 which still had hanging as a sentence for murder, but we didn't need to worry about that.

As of 1 October 1979, his Honour became part of what was the separate Supreme Court of the Northern Territory in its own right. Justice Forster became the Chief Justice and the three resident Judges were Justices Muirhead, Toohey and Gallop. The additional Judges who had been a legacy of the days of Commonwealth control had simply vanished off the perch.

I of course would not be in the Territory but for my appointment as Gallop J's Associate. Some may well say that may not have been a bad outcome. His Honour's phone interview with me in Sydney on a Friday afternoon led to me embarking on a flight to Darwin to start the following Monday morning. It was an education never to be forgotten because I walked into the case at Adelaide River that we've just heard about. I wondered what parallel universe I'd landed myself in.

Dick Wallace had returned from Britain where he had been working as a Wimbledon gardener and became the Chief Justice's Associate. A retired South Australian policeman, Peter Summerton, sold Amway products from Justice Muirhead's chambers and occasionally went to Court. Graeme Neate, the Associate to Justice Toohey and the subsequent Native Title Tribunal Chairman, and I shared an office across a corridor from Justices Toohey and Gallop.

In those days of course, appeals from the Northern Territory Supreme Court went to the Full Court of the Federal Court with a single NT Judge sitting on the decision. The Toohey/Gallop relationship was always interesting. They were both 50 that year, with Gallop J being a month younger. Both were fiercely competitive whether on tennis courts and in bench/profession cricket matches and in matters of law. Toohey J always had the edge in tennis and constantly exhorted the younger man John Gallop who was 28 days younger than him to do better. In cricket I think we would have to defer to John Gallop. In matters of law, well we always knew when there was a decision from Gallop J which had been overturned and Toohey J was on the ascendency. My recollection that year was Toohey 5, Gallop, zip.

Gallop J told me that as an Associate you learn a lot about what it's like to be a lawyer, so you get the war stories warts and all. His of course were starting in Sydney as an employee of the Commonwealth, finishing off a law degree and the reputation that Ian Barker and others have often referred to as 'boots and all'.

Gallop J came to Darwin as a prosecutor in 1960 and 1961. In those days obviously it was common for there to be a two year traverse through Darwin for Commonwealth public servants.

Gallop J's recollection was that the Court in those days was the old Sidney Williams Hut. There was no air-conditioning. Air-conditioning didn't come until 1966 when we got the new Court. The Court's doors were left open, there were overheard fans and his Honour swears on many a Bible and over a whiskey or two, that regularly the odd Darwin wallaby used to wander through the Court. And his Honour used to always turn to Dunphy J and say, 'we're back in kangaroo court land'.

At the end of 1961 there was an opportunity existing in Canberra. Norm Snedden and Allan Hall had both worked for the Crown Solicitors Office and established a firm in Canberra to take into account the Menzies Government decision to relocate the Commonwealth public service from Melbourne, and to a lesser extent, Sydney, to Canberra.

At that time Canberra's population was a mere 50,000 people. It grew remarkably through the 60s and in January 1962 John Gallop joined Snedden and Hall. That firm continues to this day. John left Snedden, Hall and Gallop in 1973 to join the Bar in Canberra and by 1976 he had been appointed as Queen's Counsel.

The post self-government Supreme Court was particularly busy. Toohey J spent much of his work as Aboriginal Land Commissioner and hearing appeals from Gallop J. The court sat in Alice Springs 24 weeks a year. There was a plethora of civil work as common law was still very much part and parcel of the Bar's work. Until 1979 all civil disputes over \$3,000 went to the Supreme Court.

I remember on a Friday afternoon dealing with a legacy crash and bash matter before Gallop J over a \$4,000 dispute. His view was that local practitioners needed to sharpen their game and that the days of justifying the making of an order based on the fact that Justice Muirhead had given a similar order a number of weeks ago, would no longer pass muster.

His views on punctuality are well known. I can recall being the Associate when Mr Waters was somewhat late. His Honour also was a man who used to like to stand out in a crowd. Like former Chief Justice Riley, he had a beard and had tendencies to the ranga side. By March of 1980 he was growing a salt and pepper ranga beard that made him look very much like a country and western star called Willy Nelson who some of you might remember.

In May of 1980 the Queen opened the High Court of Australia. There is a photo of the Queen amongst her High and Federal Court Judges. Somehow Willy Nelson had sneaked into the crowd. I can obviously comment that the rest of the Judges of that court were cleanshaven.

His Honour returned from that sitting beardless and that's when we had the last sittings of the old Supreme Court in Alice Springs that's been talked about this year with the opening of the third of the Alice Springs Supreme Courts.

In August of that year we had the first sittings in what was then the new Supreme Court building and I can remember in terms of the parallel universe, the surreal experience of going to The Pines for dinner to find Ron Wyman in The Pines talking about adopting Aboriginal children from Alice Springs while driving around in a white Rolls Royce.

Much has changed since those days. The obligation of service by Judges of this Court is as much present today as it was then. Special sittings of this Court are constituted so that practitioners can pay tribute to former Judges of this court. On my behalf I want to very much publicly acknowledge, and also on behalf of the Law Society and Practitioners, John Gallop's service to both his family and the wider community.

Above all he was a servant for those communities and understood the need to dispense justice in many jurisdictions over a very long and illustrious career.

May it please the Court.

**GRANT CJ:** Thank you, Mr Stirk.

Ladies and gentlemen that concludes the proceedings and the Ceremonial Sitting. The Judges invite you to join us for refreshments in the foyer of the Court.

The Court will now adjourn.