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THE SUPREME COURT OF
THE NORTHERN TERRITORY

ALICE SPRINGS FAREWELL CEREMONIAL SITTING FOR
HIS HONOUR JUSTICE DAVID NORMAN ANGEL

MILDREN J
ANGEL J

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON FRIDAY 27 NOVEMBER 2009 AT 9.00 AM

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THE ASSOCIATE: The Court's farewell to his Honour David Angel J.

HIS HONOUR, MILDREN J: Ladies and gentlemen, honoured guests, members of the legal profession. We are gathered here today to say farewell to Angel J who will be retiring on January 18th next year, after having served as a Judge of this Court for over 20 years.

I would particularly like to extend a warm welcome to Dr Pat Miller AO, the Deputy Administrator of the Northern Territory; to Mrs Anita Angel; to Superintendent Sean Parnell, from the Northern Territory Police Force, Southern Command; Mr Dick Kimber; Mr Paul Sweeney, the manager of Papunya Tula Artists Pty Ltd; Ms Marg Bowman, Ms Serita Quinliven and Mr Luke Scholes, all from Papunya Tula Artists Pty Ltd.

Angel J was appointed as a judge of this Court with effect from 8 May 1989. He is the longest serving resident Judge in the history of this Court, having passed the previous record of 18 years, 215 days, set by Judge Wells on 11 December 2007.

He has been the senior puisne judge since the retirement of Sir William Kearney J in 1999 and has on numerous occasions filled in as the Acting Chief Justice.

I have known his Honour since Law School days. We both attended the University of Adelaide at the same time and during our early years as junior practitioners, from time to time we represented clients with opposing interests. We exchanged correspondence and telephone calls about our cases, and his Honour was a tough negotiator, but always a gentleman and a pleasure to deal with.

The Northern Territory has produced its fair share of characters and more than its fair share of unusual cases. As it is often, 'only in the Territory'. The case of *Cook v Saroukos* (1989) 97 FLR 33, which his Honour heard shortly after his appointment is a good example of both and a good example, also, of his Honour's ability to write both an entertaining as well as a scholarly judgment.

The circumstances of that case were that in 1979 the plaintiff leased a workshop from the defendant for a furniture manufacturing business. For some time the business prospered. In 1980 the business was transferred to a company which the plaintiff controlled. In 1981, the business having started to struggle, the plaintiff borrowed money which was secured by a floating charge over the assets of the company and by a third mortgage over the plaintiff's home. As to this, Angel J said, 'One might be pardoned for being reminded of George Ade's quip about houses being more covered with mortgages than with paint.'

By mid 1982 the company was unable to pay its debts. Anxious to save it, the plaintiff approached the first defendant, Saroukos, to buy some of the plant and equipment. A list was drawn up which both parties signed subject to a formal agreement to be prepared by the defendant's solicitor. A draft agreement was prepared and the parties attended on the solicitor. However, knowing that the plaintiff had already arranged to go overseas and having already received

assignments of some of the leased equipment, Mr Saroukos reneged and offered only half of the previously agreed price. The plaintiff left the goods where they were and departed for the Philippines in order to escape his creditors.

In mid 1983, his Honour wrote, 'After an adventure involving capture by terrorists and release upon payment of a ransom, the plaintiff, by then a broken and broke man, requested the return of his chattels from the first defendant. The first defendant would not release the chattels unless arrears of rent were paid and in the meantime the first defendant had permitted the goods to be used in the business of the second defendant. The plaintiff sued in contract or alternatively in conversion.

Angel J held that there was no claim in contract but that the plaintiff succeeded in conversion and awarded damages. However, the defendant had argued that the goods had been abandoned, thereby depriving him of title. The plaintiff submitted that abandonment of chattels was a legal impossibility. Angel J referred to a number of authorities on this topic including, he said, this, 'In *Moorehouse v Angus and Robinson Number 1 Pty Ltd*, Samuals JA found it possible by the exercise of some resolution to deny himself the indulgence of considering the rights of property in shrouds, coffins and diseased pigs in an endeavour to resolve the possible conflict of doctrine between Viner and other learned writers on the one hand and Blackstone on the other, as to whether chattels can be abandoned in law.' Ultimately his Honour decided the case on the facts, very wisely, holding that even if chattels could be abandoned, there was no abandonment because the plaintiff had not denounced the value of the goods for all purposes.

His Honour's contribution, and that of his wife, Anita, for the Court's art collection both here and in Darwin is well known. Whoever takes on that role from hereon will have some very large shoes to fill.

I know that I speak for all members of the Court when I say that his Honour will be greatly missed when he retires and that we wish him and Anita a long happy retirement.

I will now invite Mr Bamber, SM, to address the Court.

HIS HONOUR, Mr Bamber, SM: In your 20 years on the Supreme Court Bench, your Honour has presided with distinction. We are fortunate you have spent a significant amount of that time on circuit in Alice Springs.

You have brought to this Court attributes of wisdom, commonsense, courtesy, compassion and good humour. All who appear before you are assured a fair hearing. Your judgments are legally sound, articulate, well written, and never unnecessarily long. You have a special empathy and compassion for the Indigenous people who come before you, no doubt informed by your great interest in Indigenous art and particularly the art of the Western Desert. This interest has given your Honour opportunity to travel to remote desert communities and see for yourself the circumstances of those who live there. The rich culture amidst the extreme conditions. Your interest in art can also be an advantage to Counsel who sometime

appear before you unprepared and request a short adjournment to finalise their case. Instead of a rebuke from an annoyed judge, they resume before a kindly, happy judge who has contentedly spent an hour or two in the back room of Papunya Tula discovering canvasses.

On your many visits, you have fostered cordial relations with Magistrates and practitioners. It has always been a pleasure to be in your Honour's company, whether chatting in chambers, over a curry at Sybils or a beer at Sean's Bar, when it existed. The dinner your Honour invariably hosts at Casa Nostra is always well attended and a highlight of the sittings. It is fitting on your Honour's Alice Springs farewell there is both an opening at Papunya Tula this day and a dinner at Casa Nostra.

On behalf of the Alice Springs Magistrates and Court staff, may your retirement be long and rewarding and include many returns to the Alice. Thank you.

HIS HONOUR, MILDREN J: Mr Svikart, do you move.

MR SVIKART: Your Honour, happily I'll be followed by a number of speakers who will have a lot to say about you, so I will reduce it to this; on behalf of the Law Society members of Central Australia, we say farewell and we wish you well. Thank you.

HIS HONOUR, MILDREN J: Dr Rogers, do you move.

DR ROGERS, SC: Thank you, your Honour.

My very first encounter with your Honour was when you admitted me to practice in the NT Supreme Court almost 20 years ago. I had an affidavit from Ian Barker QC with whom I had worked in the capacity as servant when I was at Redfern Legal Centre. Your Honour read Mr Barker's affidavit saying that he knew me and you then observed 'there's a typing error in line 3 page 2 first paragraph. And I thought to myself, hello, what have we got here? Some crazy obsessive judge? Some crank? But of course your Honour proved to be none of those things, quite the opposite.

I was duly admitted to practice and as was their wont, the senior CAALAS lawyers gave me what proved to be very valuable advice – whenever you do a plea in front of Angel J incorporate where at all possible that the accused person or his/her mother, father, sister, brother, grandparent, uncle, aunt, you get the general idea, is a well known Central Australian artist, the more famous the better.

So I studied up on dot paintings of the Western Desert that your Honour loves so much, the masters of the Papunya Tula art movement – Ananjara Tjakamara, Karpa Tjampitjinpa, Turkey Tolson, (some of whose are in the Court foyer – they used to have little plaques on them for people to read). All of that went terribly well for a day or two, the first couple of days I was at CAALAS, until your Honour displayed a knowledge of and interest in the Hermannsburg school of watercolourists - Claude

Panka, Ewald and Maurice Namatjira, Otto Pareroultja – was the accused related to Otto? And so on.

So then we fast-forward 18 or so years. I was involved in a complicated and very serious trial involving a large number of Aboriginal witnesses from Kintore and Kiwikurra. Your Honour was in heaven. Absolute heaven. Your Honour asked few questions during the course of their evidence except to inquire of a witness' skin name – are you Johnny Tjuupurrula or Johnny Tjakamara? Or the age of a car occupant who was not called to give evidence but your Honour was unclear as to whether they were the actual famous painter or the next generation down. These questions were designed for your Honour to work out where people fitted into the painting movement, but your Honour did it so sweetly and so innocently – I am sure it was only I who suspected your Honour's ulterior motives.

HIS HONOUR, ANGEL J: Sweetly, but not innocently.

DR ROGERS: Your Honour has always enjoyed sitting in Alice Springs and it has been a real pleasure to appear before you. Your Honour has shown patience and courtesy, wry humour and assisted practitioners appearing before you with your insights and guidance on the law. Your love of Alice Springs and the country has been appreciated by all of us.

And of course, your Honour has provided your very own fiscal stimulus. Every single time your Honour has visited here there has been a significant contribution to the economy of Alice Springs by way of prolific purchases from a certain Aboriginal Art gallery.

We will miss you sitting back in your chair with your pen in a vertical position tapping your lips as you throw out some curly question. And we will miss you and the Casa Nostra dinners of such longstanding history that John Stirk and his wife Karen, who met at such a dinner, I believe in November 1990, now have children in year 10!

We thank you for the contribution you have made as a unique judge of this Court and we wish you and Anita the very best.

HIS HONOUR, MILDREN J: Mr Stirk, do you move.

MR STIRK: Your Honours, the Deputy Administrator, colleagues, practitioners, friends of his Honour, and more particularly people of Central Australia; as Dr Rogers said, your Honour follows a procession of very distinguished South Australians to come to Alice Springs. Amongst them are South Australian reds, of which your Honour and I have a great passion, but in respect of the law, Kriewaldt, Blackburn, Forster and Muirhead JJ and now your Honour and your Honour, Mildren J, who followed not long after your Honour's appointment in 1989.

HIS HONOUR, ANGEL J: Don't forget Rice J.

MR STIRK: And Rice J, in particular. Rice J was a very famous person, your Honour. Mr Barker QC, who has been mentioned, told me that in South Australia many years ago at 4.00am in the morning he and Mr Rice QC knocked on the door of a public house and were met by a man with a large dog and a shotgun, who said, 'Mr Rice, please come in.' Mr Barker QC realised that Phil Rice was a very important man in South Australia.

Your Honour, along with those other judges, you came to the Territory, I think, and practised in a couple of cases, S & Y and Commercial Union springs to mind and also the Ah Toy estate matter involving the Herbert brothers, and your Honour has, with respect, perhaps taken to the Territory like a duck to water and along with many of those South Australian judges I've mentioned, the Territory has formed a special place in your heart, and the heart of Anita, and with respect I think all of us have found a special place in our hearts for the way in which your Honour has practised.

Twenty years is a long time. Mildren J when he welcomed your Honour said it was a bit like the Shakespearian play. I was reading what his Honour Dean Mildren QC, as he then was, said yesterday, and he said, 'It's like the seven acts', and I think your Honour was up to act 5 at that stage, and I think, fortunately for us, I think your Honour's done acts 5 and 6 in the Territory and is now the longest serving judge we've ever had continuously.

Your Honour, can I also perhaps comment on the fact that your Honour has always been very conscious of the role of judges, the separation of powers, and the separation in particular between the executive arm of government and the judiciary. These have been interesting and trying years while your Honour has served.

Your Honour was appointed 10 years after self government. Consequently, administration of the law was handed to the Northern Territory. For some reason, health and law were delayed by one year from 1978 to 1979. Cabinet papers have revealed that the Commonwealth decided that it was going to need an extra year to fix the problems with Aboriginal health so therefore we moved health from 1978 to 1979. Why we moved law for that extra year, I'm not sure, your Honour, maybe we can pontificate, but your Honour within ten years of that event you became a judge of this Court and effectively you've served for roughly two thirds of the time since the Territory had a self governing body politic dealing with legal matters.

Your Honour, perhaps at this stage we need deal with the ongoing problem that I suppose the Court faces in terms of the difficulties the Territory as a body politic faces, the very sad fact that probably much of the work of this Court is dealt with criminal matters involving Indigenous people. It's a matter that your Honour has dealt with, with compassion. I know, again by reading the welcoming speeches to your Honour twenty years ago, at that stage it was talked of your Honour's great skill in matters of commercial litigation, which are without a doubt, but the reality of court work in the Territory, is unfortunately most of our work these days is in the criminal jurisdiction.

But for all of us, your Honour, I can certainly say that I am going to miss your Honour's knowledge, skill and wit on the Bench in those very occasional commercial matters we now get before this Court and on behalf of all of us, we wish you and Anita well.

HIS HONOUR, MILDREN J: Mr Goldflam, do you move.

MR GOLDFLAM: Your Honour's judgments are notable for their pithiness, and they're notable for their pith. Accordingly, I will proceed directly to the substance of my submissions. So far as my researches can tell, the first judgment delivered by your Honour in the Court of Appeal of the Northern Territory was *The Queen v David Dixon Jabaltjari* (1989) 64 NTR 1. And at paragraph 7 of the Northern Territory Reports report of that case, your Honour said this;

Whilst a degree of standardization of penalties for particular crimes in similar circumstances may be desirable, in my respectful opinion, since each case requires the application of established principles of sentencing to particular facts, it is not for this Court to lay down any predetermined general practice.

From the very outset of your Honour's judicial career, a clear concise statement of fundamental principle, affirming that individualised, independent discretion is a touchstone of the exercise of judicial power.

Eight years later, the primacy and prescience of this dictum was starkly exposed, when in 1997 the Northern Territory Parliament enacted laws for compulsory imprisonment, or as it was more widely known, mandatory sentencing. These provisions at a stroke expunged the exercise of discretion by magistrates and judges dealing with property offenders.

Many openly condemned these laws as a direct attack on the authority, and the independence, of the judiciary. Your Honour did not do so.

As I apprehend, with respect, your Honour's judgments in a series of cases dealing with these laws, this was not because your Honour welcomed or approved of mandatory sentencing. Far from it. But I infer that your Honour vigorously and rigorously approached this very serious threat to the integrity of our constitutional arrangements – and specifically the threat to the doctrine of the separation of powers – by setting a disciplined example of the independent judicial office, which, in your Honour's firm view, necessarily entailed resisting the impulse to engage in either political commentary, or in political activity.

As so in one of these cases, *Trenerry v Bradley* (1997) 6 NTLR 175, your Honour said this:

Whatever else may be said about these provisions, Parliament, it appears, intended the Courts to impose the blunt instrument of imprisonment in lieu of other sentencing dispositions which might more truly reflect the circumstances of

the offence and of the offender, in the hope or expectation of lessening property offences, and, perhaps, of making victims feel better about something.

Your Honour here affirmed two important things: that Parliament has its job to do and had done it; and that judges have their job to do, and would do it, notwithstanding any difficulties or controversies arising from these laws.

And accordingly, your Honour refused to read down these provisions to ameliorate their harsh effect, saying, in the same case, and with typical acerbity:

We are to construe the words used, not surmise as to the size of the bludgeon.

Ultimately, your Honour considered yourself obliged to interpret and apply the law according to principle, because that, as your Honour sees it, is the judges' job. It is not to indulge in rhetorical flourishes, or, as your Honour also said in that case, 'to invent fancied ambiguities'.

Because for your Honour, first and last, comes the law. Without the law, as your Honour very movingly reminded members of the profession in your address to us on the occasion of the opening of the legal year this year in Alice Springs, without the law, in the apocalyptic words of Yeats,

Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere,
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.

As a practitioner who has on occasion laboured in vain to persuade your Honour of the correctness of a legally unsustainable proposition by resorting to passionate intensity, I was suitably chastened when your Honour recited that last line.

Your Honour's address that night was really quite extraordinary: no amusing anecdotes from the speaker's days at the Bar. Your Honour doesn't go in for that sort of thing. Instead, after a characteristically self-deprecating introduction, you treated us with an erudite but intimate summing up of your Honour's deeply considered, compassionate, humane world view: an unashamed affirmation that the law is underpinned by absolute moral values which must not be compromised in the name of pluralistic relativism, and a commitment to the profound importance of personal autonomy. And then your Honour said, quoting Octavio Paz,

We must cultivate and defend particularity, individuality, and irregularity – life.

Which is just what your Honour has been doing on and off the Bench for many many years. Out of Court, you have made friends here in the Centre, many of whom are here today, not just amongst the profession, but with people from many walks of life,

because you love company, and you take a genuine interest in people – in their particularity, their individuality, their irregularity.

In particular, is the passionate support by the Angels, husband and wife, for the visual arts. And we've already heard other speakers address your Honour about that aspect of your contribution. And I've seen your Honour in Papunya Tula, cheerful as a child in a chocolate shop, and as conversant as a true connoisseur with the canvases and their authors. Your Honour is a patron of the Arts Law Centre of Australia; together with Anita you are Patrons of the National Gallery of Victoria's Masterpieces for Melbourne campaign; you have been generous benefactors to many public collections and have encouraged many private artists.

On occasion, your Honour has had the opportunity to combine your love of the arts with your life in the law. One such occasion was your decision in *Wildash v Klein* (2004) 16 NTLR 66, which commences crisply as follows:

The plaintiff and the defendant used to be friends. Each creates craft work by hand. Each claims copyright in the products of her handicraft. Each claims the other has infringed that copyright and has passed off her own goods as that of the other.

Your Honour went on to record how that particular friendship had been kindled at the Humpty Doo markets, where the parties first collaborated, but then later competed, in the production using leadlighting techniques of green ants, frogs, geckos, frill neck lizards and dragonflies. It was a delicate case in which artistic sensibilities had evidently become grossly inflamed. Your Honour's decision (which, by the way, was to dismiss everything against everyone) was a model of tact, and indeed, judicial discretion: great restraint was shown in not passing judgement on or even advertent to the aesthetic qualities of the works the subject of that dispute.

Mention must also be made of the landmark case of *Tomlins v Brennan* [2006] NTSC 23, in which the single issue in dispute was whether a dog is capable of being an offensive weapon. Your Honour respectfully disagreed with counsel for both parties who appeared before you, with former learned Martin CJ's decision in a case about hot water, with the learned authors of the 6th edition of Stroud's Judicial Dictionary of Words and Phrases, and with Lord Goddard CJ, who with the concurrence of Byrne and Parker JJ, had controversially held that a goldfish is not an article (or, by extension, I suppose, an offensive weapon). Sad to say, by the slenderest of majorities, the Court of Appeal in due course respectfully disagreed with and overruled your Honour. Nevertheless, in your Honour's defence, history records that of the five judicial officers who deliberated over this case, three of them – a numerical preponderance – came down on the side of your Honour: but of course our courts do not operate on democratic principles.

Your Honour's ratio in that case is entirely consistent with the well known maxim, dogs have masters. Which itself is a corollary of the well known maxim, cats have staff. And it is appropriate to record at this juncture that your Honour has performed with great diligence and relatively small level of complaint in an honorary capacity as

a butler for a succession of Burmese cats which have permitted yourself and Anita to reside at their household. And as a person who, coincidentally, has similar domestic arrangements in that respect to your own, I can readily and deeply sympathise with your Honour.

Other matters raising fine points of particularity which have come before your Honour over the years, have included whether the Perakary Creek was a river. Your Honour found that it was a creek and a tidal arm, and an armlet of the sea, but not a river; and whether a stock route is a public street. Yes, it is.

Perhaps the most particular, individualistic and irregular litigant to appear before your Honour was the plaintiff in *Roman v The Commonwealth* (2004) 16 NTLR 80, judgment against whom commenced with these words:

The self-represented plaintiffs are husband and wife. The plaintiffs assert at paragraph 22 of the Further Amended Statement of Claim that the first plaintiff is 'a royal and a religious Corporation Sole, namely Grand Duke of Lithuania and Archbishop President of Universal Family'.

Your Honour went on to say that whatever his royal rank might be:

he had submitted to the jurisdiction of the Court and given the equality of all before the law, any royal status he might have was irrelevant.

And your Honour therefore found it unnecessary to decide whether or not he was of royal status.

Many of the disputes which your Honour has determined have of course been of far greater importance, at least in the world beyond the walls of the royal palaces of Lithuania. As is to be expected of any member of the independent judiciary, your Honour has never shrunk from decisions because of their unpopularity, political inconvenience, or economic disadvantage, a case in point being *Lansen v NT Minister for Mines and Energy* [2007] NTSC 28, in which your decision brought to an immediate and grinding halt a very substantial zinc mining operation in the Borroloola area, an operation which your Honour found to be unlawful. Parliament was hastily recalled and made the unlawful lawful by enactment. The separation of powers in action.

I will conclude these submissions by reference to a case which, while it did not involve making new law, or changing the course of rivers, or the potential unseating of governments, seems to me to epitomise what it is that this honourable Court is about to lose with the departure from the Bench of Angel J.

It is the unreported decision of *Scott v Northern Territory of Australia* [2005] NTSC 29. Letty Scott's husband, Douglas, had been found hanging in his cell at Berrimah Prison 20 years previously. Letty Scott was convinced that he'd been murdered by prison officers despite the findings of suicide by an inquest and the

Royal Commission into Aboriginal deaths in Custody. She had managed, against the odds, to get the body exhumed and re-examined by pathologists.

And after 16 hearing days, it would have been all too easy to dismiss Letty Scott as an obsessively grieving widow with an unreasonable bee in her bonnet. However, your Honour was troubled. The police had never properly investigated this death in custody, and in the absence of the forensic material which should have been obtained, and after the passage of 20 years, Letty Scott was simply unable to adduce sufficient evidence to prove that her husband had died at the hand of another. But by the same token, by the end of the case, your Honour was unable to find that there was enough evidence to be satisfied that Douglas Scott had died at his own hand.

And your Honour, if I may respectfully say so, had the courage and the compassion and the humility to simply say, 'I just do not know'. And then, citing authority from the English Court of Appeal, to which your Honour, a common lawyer from first to last, so often turned, you regretfully dismissed poor Letty Scott's particular, individualistic, irregular claim, as the law required you to do.

That's what your Honour has always done, unflinchingly, unfashionably, unfalteringly: fall back on the law. Because that is the job of a judge. And your Honour has done your job.

If it please the Court.

HIS HONOUR, MILDREN J: Mr Betts, do you move.

MR BETTS: May I begin by apologising on behalf of Mark O'Reilly, the principal legal officer of CAALAS, who is absent today. Unfortunately, Mr O'Reilly had made other commitments prior to the announcement of these special sittings taking place today. He is genuinely disappointed that he could not appear in person and asks that I express thanks on behalf of CAALAS for your Honour's genuine affection for Alice Springs and your thoughtful concern for the plight of Aboriginal people and culture in Central Australia.

Your Honour's well deserved retirement is a significant loss for our clients.

My learned friends have alluded to your Honour's long and illustrious career. During your time as counsel, your Honour appeared before the Privy Council and in the 20 years on the Bench, your Honour has become the longest serving judge in the history of the Northern Territory Supreme Court.

I was given the privilege of acting as your Honour's Associate in 2007 and during that time I gained many lasting memories. One of the most prominent was your Honour's enthusiasm for Alice Springs and for Central Australia and its people.

In the weeks prior to your Honour's annual Alice Springs sittings, the excitement, and dare I say, impatience from your Honour to get to Alice Springs was palpable in

Chambers and somewhat infectious so that by the time we were due to travel, I too was greatly looking forward to an opportunity to visit Alice Springs and to work in this jurisdiction. I am glad to say that I was not disappointed. In addition to the work, your Honour took great time outside of Court to show me around and to introduce me to what Alice Springs had to offer. That effect was obviously longstanding and I chose at the end of my Associateship to relocate to Alice Springs, a decision which I am still very glad I made and I thank your Honour for the input that you put into that decision-making process.

To be not only mentored by someone with over 40 years practical legal experience at the highest level, but also to be actively asked to engage in discussions and to express an opinion, was a fantastic opportunity and privilege.

I believe it is testament to your Honour's ongoing commitment and interest in those that you have provided opportunities to, that an annual dinner is held for past Associates, and I believe it's a further testament to the high regard in which those past Associates hold your Honour, that so many attend on a regular basis, and often travel significant distances in order to do so.

No doubt this longstanding appreciation stems from the loyalty and trust that you place in the staff that work immediately with you.

One such example, your Honour, occurred in the significant mining case which your Honour presided over in 2007, which Mr Goldflam has already alluded to. At that hearing, your Honour, there were a number of counsel, Senior Counsel and Queens Counsel from different jurisdictions in Australia. They, in turn, were supported by instructing solicitors. Media were present, as were some environmental protestors who were interested in the case.

Many, many volumes of documents were provided to the Court in support of the arguments of counsel and in the opening arguments, your Honour was referred to a certain volume and as Associate it was my role to have care and custody of those volumes. A brief search of the number of trolleys containing the volumes returned a fruitless search, and a second, more hasty search, again, was unsuccessful. So I somewhat sheepishly stood up and turned to your Honour and informed your Honour that I didn't believe that we'd been provided those documents. Your Honour then turned to counsel, and I quote, 'Counsel, my Associate, who is never in error, informs me that you failed to provide us with those documents.' I sat down and every pair of eyes in that room, perhaps with the exception of your Honour's, was focussed firmly on me, and I could have quite happily slipped under the table and hidden. I am happy to say that your Honour's faith and trust in me was not misguided or misplaced and that the documents had been misdirected.

More importantly, I believe it displays your Honours unquestioning support and encouragement for those with whom you worked, regardless of their role or position. I also believe it displays your Honours sharp sense of humour.

Another such incident, which displays your Honour's humour, occurred when your Honour walked into Chambers, as I and Joan Burke, who was your Honour's long time Personal Assistant, were discussing the movie Borat. In particular we were discussing the scene where Borat is wearing a 'mankini'. Somewhat unsurprisingly, your Honour was unfamiliar with exactly what a 'mankini' was and our best efforts to describe to your Honour what it entailed were unsuccessful. So when the opportunity arose, Joan and I drove your Honour to a somewhat colourful clothing retail outlet in Darwin to show your Honour exactly what it was we were trying to explain. Unfortunately, they didn't have the particular item, but they did have a similar one, which was in leather rather than latex.

True to form, your Honour took all of this in your stride. But possibly more true to form, your Honour managed to persuade Joan and I to combine that trip with a visit to a number of art galleries whilst we were out of Court.

Your Honour's passion for art is well known and has been canvassed considerably this morning. Your Honour's generosity, along with your wife Anita, by permanent donations to art galleries around Australia are significant and should be noted, although your Honour in modesty, does not make it a public matter that you wish to discuss.

Also less well known is your Honour's sporting prowess. Your Honour, as a young man, was a keen and able cricketer, who captained his school side. Some may say that captaining your school side is not a great achievement, but it needs to be considered in context, and that context is that the captain immediately prior to your Honour, and the captain immediately after your Honour, were both named Chappell. They both went on to have illustrious first class and international cricketing careers.

We are glad your Honour chose a legal career rather than a sporting career and we thank you for your efforts and your wisdom over the past 40 years.

Both on a personal basis, and on behalf of CAALAS, I wish to thank you for your contribution to the law and to this honourable Court and we wish you and Anita all the best in the future.

HIS HONOUR, MILDREN J: Yes. I'll now call on Angel J to respond.

HIS HONOUR, ANGEL J: Let me start by thanking all of you for coming and doing me the honour of your presence. I want to thank, in particular, the speakers who have said some very kind things, to which I don't quite know how to respond, but the line 'And the band played "Believe it if you can"' comes to mind.

A couple of you made the mistake, at least I regarded it as a mistake, of thanking me for doing, or attempting to do, my duty. I don't know whether any of you have seen the English anti-war film, King and Country, by the famous communist director, Daniel Losey. In that case, a doomed deserter in the First World War named Hamp, was talking to his Counsel, Captain Hargraves, played by Dirk Bogarde, and Hamp

said to Bogarde, 'Thank you very much for all you've done for me.' To which he got the curt reply, 'Don't thank me for doing my duty.'

That's something that struck a chord with me, that in our public life, a lot of people are thanked for what, after all, was simply doing their job. Edmond Capon, the current Director of the Art Gallery of New South Wales, last month, published a book called, something about Duchamp; 'I Blame Duchamp.' It's a very good book, and in one chapter in that book, Capon complains that anything to do with the Art Gallery of New South Wales usually has the New South Wales Government logo plastered all over it, because the New South Wales Government gives money, of course, to the Art Gallery of New South Wales; ditto you could say in the Northern Territory. Anything to do with art in the Northern Territory has got the Northern Territory Government logo plastered all over it, but as Capon points out, it is the elected responsibility of governments to finance the arts; why should we thank them. They're just simply doing what we've appointed them to do; a point well made.

It's been an honour and a privilege to sit on this Court and to have served the Court since my appointment on 8 May 1989, and to be permitted to play a part, however small that's been, in the administration of justice in the Territory. I have, at all times, enjoyed coming to Alice Springs. Indeed, if I add up all the times I've been down here, because I used to come down two months each year at the beginning; in all I've lived, and Anita has lived, in excess of two and a half years in Alice Springs on the circuit. Regretfully, in more recent times, the Judges don't come here so frequently.

Alice Springs deserves, and one day I think it will have, a resident Judge. It may not be that well-known, but a couple of years ago, or some years ago, I offered to come down as a resident Judge, but that was found to be unattractive by the people who decide these things. So there was nothing much more I could do about it. I've always admired the demanding work done here by those at the Bar table and by the sometimes overlooked, but by no means less important, work done by those solicitors who are always beavering away behind every case. Alice Springs has been a formative experience for myself and Anita over the years. They have been more than just an escape from Darwin.

I've been involved in many cases down here; some of you will remember some of them. I'll just mention some of them. There was the German Club gas explosion case, which was a huge civil case in its day. There was the Toyne libel case, the Sanby balloon case that many of you will remember. There was the Tangentyere Council tax case and one of my most memorable experiences down here was the year of the euthanasia case, which of course was heard in Darwin, but I was down here on circuit immediately following that case and I had to write my judgement in the course of criminal sittings in Alice Springs.

In 1996 I was given the great privilege of being asked by Papunya Tula to open the 25-year show, and I'll never forget it. I met the great Geoffrey Bardon; I met Dick Kimber, who's here; hello Dick; Daphne Williams, Janice Stanton; I'll always remember Daphne wiping up the dead flies on the window of the old shop and

Janice Stanton walking barefoot over all the paintings with a cigarette hanging out of the corner of her mouth. Things have changed since then and I'm very pleased that Paul Sweeney and Luke and the rest of the mob are here to see me off today. It's a great privilege.

I also regard it as fantastic that the Darwin Court displays a lot of Papunya Tula work which is admired by many people and the staff up in Court in Darwin tell me that the one thing people want to see when they come into the Court – or the two things they want to see, are the Wikidi poles from Arnhem Land and also the Papunya Tula work. Many, many tourists go through the Court in Darwin and it's a great publicity point for the art.

I wish to thank Mildren J and his secretary, who is dutifully standing over there by the exit door, for organising today; and also Madam Registrar, who's here. She also has had a big part to play in today's proceedings. I wish to acknowledge and thank the loyal and unstinted support given to me as a visiting Judge in Alice Springs, at all times, from the Court staff down here, over the years; in particular, the librarians.

I also wish to acknowledge the loyal and devoted, and most efficient and conscientious support of my three secretaries, over the years, and my Associates. I have always had a good time with the Associates in Alice Springs. Two Associates had wild romances, almost to the point of distraction from their duties as Associates. It would be inappropriate that I mention their names; one was male and one was female.

We used always to go to Simpson's Gap and have a barbeque there. We always went to Papunya Tula. The Associates used to trip over Papunya Tula paintings on the floor of Judges' Chambers when I was down here regularly. We always went to Casa Nosta and had a get-together, as John Stirk has already mentioned.

The Associates have done a wonderful job for me over the years in Alice Springs. I think I'd been a Judge but 12 months, 24 months, when a practitioner in Alice Springs – who's long since left and whose name escapes me, probably fortuitously – invited me and others along to one of his client's restaurants. We went there for dinner; we had quite a nice meal as I recall; it's a long time ago now. But afterwards, we had a photo session and the Judge was photographed with the practitioner and the client and the Associate and a couple of other local practitioners. We got back to Chambers afterwards – it was a lunch. We got back to Chambers afterwards and my very discerning Associate went into the library and ten minutes later came out with a volume of the South Australian Law Reports and my heart sank. The client had been a convicted drug dealer and had just come out of a 15-year sentence in Adelaide before setting up a restaurant in Alice Springs, which wasn't a very good look for a new Judge in town; being photographed with him.

I hope, and I trust, that I've never forgotten that once upon a time I was a lawyer. It's probably appropriate that I mention the great Villeneuve Smith from South

Australia; a very senior King's Counsel in the 1940's. He made an after-dinner speech and he said this: "I share pride in the profession to which we belong. Indeed, I think that too little praise has been bestowed upon members of the legal profession, while elaborate eulogies are poured upon Judges, whom people are prone to regard as particularly exalted persons. People seem to overlook the fact that Judges were once lawyers. It is indeed strange that where the chrysalis was so evil, the butterfly should be so immaculate. Not that one should liken a Judge to anything so ephemeral and polychromatic as a butterfly. An eminent physician, psychoanalysing a Judge, has remarked, 'You can lay bare the soul of a Judge in all its repellent nudity by the simple process of reading one of his judgments.' The idea has much to commend it, but what this physician has only lately discovered by scientific methods, we long knew by empiricism."

A very wise man Villeneuve Smith and as I said, I hope I've never forgotten that I was once a lawyer.

In my twenty plus years on the Bench, of course much has changed; even more so since my admission first to practise with Mildren J in 1967. Just to take one example: In 1967 there was published the first edition of Goff and Jones, a very famous textbook, of many subsequent editions; 'Goff and Jones on Restitution.' It was a hardback edition that consisted of 540 pages and it cost \$17.10. The current Journal of Contract Law, which is three slim volumes – three slim parts of about a hundred pages each, costs \$445.80 plus freight.

It's already been mentioned that my first reported – well, maybe it hasn't been mentioned, but my first reported decision in the Law Reports, as far as I'm aware, is in the back of volume 88 of the Australian Law Reports. The current volume is volume 259 or 260. So there's been an awful lot of judgments published whilst I've been on the Bench; mercifully not too many from me. I think there's been far too much reporting and if one leafs through those reports, and I see Dr Grace sitting back there amongst you, he will know the truth of what I'm about to say; that many Judge's egos have been thrown around and been reported by law reporters that really don't deserve reporting.

This occasion, my last Judicial sitting on the Bench in Alice Springs, is not an appropriate occasion for me to dilate on certain things, such as the long-standing inadequacies of this building for jury trials; such as the ever-narrowing of the Judicial sentencing discretion; such as the disharmony of maximum sentences under the Criminal Code; and the irritation of statutes stating the obvious. I've always firmly held, and still hold and I forever will hold, as far as I'm aware, that rights should depend on principles, not on the accidental and trivial terms of phrase one often finds in legislation.

I mention the long-standing inadequacies of this building and I won't dilate upon them, but it does bring to mind something that involves my brother Mildren J. My brother Mildren J some years ago experimented by not having Mr Colin Laporte as his Associate. He had some young female Associates, but only briefly. He found that young female Associates in Alice Springs were not good mules for carrying

heavy book-laden cases up the stairwell to Judges Chambers. One thing this building lacks, and has always lacked, is a good lift. So Mildren J reverted to Colin Laporte and here he is in all his glory today.

Uninformed criticism of the Judiciary can be very damaging to what is, after all, a vital institution of democracy. And now that Attorneys General have abdicated their traditional role of defending the Judiciary from attack, it is incumbent on the legal profession to play its part in helping to educate politicians and the media and the public about the true role of the Judiciary, and its proper place in our Western democracy and the reality that it is the ultimate safeguard of individual liberty.

The Judicial Conference of Australia has, as one of its roles, advocacy for the Judicial branch of government. But the profession has a vital role to play as well. I'm firmly of the view that the role of the Judiciary should be a compulsory part of all secondary school curricula and it should be a compulsory part of any journalist's education.

Thank you all once again for attending today. You do me great honour by your attendance and I thank the speakers for their generous remarks. Alice Springs has been, and will remain, a very large part of us.

HIS HONOUR, MILDREN J: The Court will now adjourn.

ADJOURNED 9.56 AM INDEFINITELY