



SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA

CEREMONIAL SITTING
ON THE OCCASION
OF
THE FAREWELL TO
THE HONOURABLE SIR WILLIAM FORSTER

AT

DARWIN

FRIDAY, 8 FEBRUARY, 1985.

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TRANSCRIPT OF PROCEEDINGS

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MUIRHEAD J: This special sittings has been called on the occasion of the retirement of Sir William Forster, who has served firstly as the judge and later as Chief Justice of this court since 1971. My licence to speak this morning is derived from the opportunity I have had to serve on this court, under his calm and wise leadership, for 11 of those interesting and somewhat challenging years.

The Chief Justice presented his Commission to this court in June 1971. Some of you, too few now, will remember that occasion. The contrast today must make its impact upon you. His Honour then sat alone on this bench, his predecessor, Sir Richard Blackburn, destined for cooler climes, seated in the jury box with other friends. I have little doubt that counsel on behalf of the profession and government then uttered welcoming and encouraging words, perhaps wondering in so doing what lay ahead. I am confident that His Honour would have replied, undertaking to do his best. This he has done and it has been a fine best. That was indeed a significant day, more significant than those then present could possibly have anticipated. It was in fact the start of a somewhat startling era in the evolution of this court.

Today His Honour does not sit alone, he sits as chief of seven puisne judges, five residential, the other two once resident members of the local team. Six of those judges are present today and the lost sheep, Mr. Justice Toohey, who I saw recently, has asked me to tell you all how much he regrets his inability to be with us today.

His Honour, with the help of visiting judges, soldiered on alone until early in 1974 when I was appointed as the second residential judge, an occurrence which he accepted with imperturbable resignation. In October of that year, Mr. Justice Ward joined us, and in the all too short a time he was with us we learned to appreciate the capabilities, the humility and the courage, of that distinguished Territorian. The significant of his appointment was, of course, that he was the first true Territorian to be appointed to this bench, and I know how much satisfaction the Chief Justice, who is shamelessly parochial in his thoughts and utterances as to the future of this court, I know how much satisfaction he gained by the recent appointment of my brother Maurice, whose background in the law also lies in this place. So matters developed, difficult and unusual years lay ahead.

Few Chief Justices have been called upon to

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face the changes and problems wrought by natural disaster and the constitutional developments we have witnessed. I doubt if many could so adequately have sustained and encouraged the local profession in the difficult post-cyclone period, at times when his own health was far from good, doggedly persisting in the assumption of his full work role, never losing his sense of balance and judgment, his courtesy and his ever present sense of humour.

It is not appropriate for me now to dwell further on the past, you will all have your own memories as I have mine. It is interesting to note that when His Honour presented his Commission there were about 38 signatories to the roll of legal practitioner of this court. Today, on our current roll, I am told by the Deputy Master, there are 780 signatories, most of whom, of course, practise interstate, an indicator of the development in this Territory and the work of this court over the past decade.

I remember many years ago sitting rather worried by the Chief Justice's hospital bed when he told me there were two things he wished to see whilst he was still in harness. The first was the construction of adequate court facilities for Alice Springs; secondly, the emergence of a self governing Territory with its own Supreme Court. These things, and many more, have been attained, or almost attained. Of course a tremendous amount of work remains to be done, but we have been fortunate that His Honour's presence and supervision lent long term stability to this court, which has thus been better equipped over past years to copy with the changes and developments I have mentioned.

I have spoken of the encouragement His Honour has given to the profession in this Territory, but his essential interests and responsibilities were of course far wider. As a judge one learns something of so many facets of Territory life, the efforts of commerce to set up viable industries and businesses, the problems of pastoral industries, the difficulties of new government; the many problems of the people themselves, so many of whom lend such colour to this place, and who have particular and unusual difficulty by reason of their diverse aspects, origins and outlooks. One tends to become very fond of this part of the world and its people.

His Honour's judgments and sentences indicate how careful he has been to strive to ensure that justice, insofar as the courts can achieve it, was

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administered on an even handed basis, and that each member of the community of whatever colour or creed, rich or poor, be given a protection to which he or she is entitled by our law; His Honour's authorship of the Anunga Guidelines will remain as evidence of that determination.

Finally, and perhaps unusually, may I add a personal note. I have worked with the Chief Justice for many years now in a small court, in a small community, in some difficult times. Naturally our personalities are different, our views in some areas may not coincide. But over those years, and whilst I have little doubt that I have perplexed him at times, we have not, within my memory, had a cross word. That may not say much for His Honour's wisdom, but it speaks eloquently of his forbearance.

Chief Justice, I know I speak for my brethren when I say to you quite simply, we will miss you and we wish you and Lady Forster much happiness in the years ahead.

Thank you, Chief Justice.

FORSTER CJ: Thank you. Yes, Mr. Solicitor.

MR. MARTIN: May it please the court, I address the court on behalf of the Honourable, the Attorney-General of the Northern Territory, who apologises for his unavoidable absence.

On 30 June 1971, the then William Edward Stanley Forster, presented his Commission as a Judge of the Supreme Court of the Northern Territory. Some 14 years later I appear before you, Sir William Forster, to say farewell upon your retirement as Chief Justice of this court. I speak on behalf of the Attorney-General, as a representative of the people of this now self governing Territory, Your Honour, to say that we have been privileged to have you serve us with such distinction, both in your time as a judge of the then court, and more recently as the first Chief Justice of our own court. If, as you have said on the occasion of the presentation of your Commission as Chief Justice on 1 December 1979, that it was Mr. Justice Kriewaldt who set this court on the right path, it is you, Your Honour, who have illuminated that path and guided the court much further along it. Under your direction, and to your credit, this court has gained respect, both within this and other jurisdictions. You have also been conscious of your judicial oath and have been aware of the responsibilities that your high office

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brings. You have surely done right to all manner of people according to law, without fear or favour, affection or ill will.

We acknowledge, Your Honour, the patience and practicality you have shown in this court. Many of those appearing before you have been young, inexperienced and less than expert; you have dealt with the members of the profession with tolerance and helpful advice, no doubt with a view to the betterment of the legal profession, and you have nurtured that profession for the benefit of the people it serves. You have maintained a strongly independent bench, unafraid to criticise on occasion when you consider it necessary, but giving praise when it has been considered warranted.

Your Honour said on the presentation of your Commission as Chief Justice, and at the time you first took your place on the bench, that you would make no promises, but would undertake simply to adhere to your oath. You have done that and much more. Both you and Lady Forster have through grace and dignity earned the trust and respect of all the people of the Northern Territory. On behalf of those employed within the Department of Law, and in particular the Supreme Court staff, I give you thanks. You have been a source of encouragement and of great assistance to them.

We welcome your appointment as a judge of this court; we look forward to those occasions which bring us together again and we trust that you and Lady Forster enjoy a long, happy and peaceful retirement.

FORSTER CJ: Thank you, Mr. Martin. Yes, Mr. Pauling.

MR PAULING: If Your Honour pleases, I rise on behalf of the Northern Territory Bar Association; not divorced from the Law Society but rather existing under it. Your Honour had a close association perhaps not quite with the birth of the Bar Association but at least you were handy and willing with advice to us in those early days.

Your Honour, six residents of the Northern Territory have been appointed Queen's Counsel, all in Your Honour's time and all on Your Honour's recommendation. Of the five survivors, excluding the late Mr. Justice Ward, they were all members of the Bar Association. That association, Your Honour, earnestly presses on me that not only do I adopt those nice things that have been said that have fallen from His Honour, Mr. Justice Muirhead, and also from the Solicitor-General, but assure

Your Honour as we have in private that Your Honour has had a great and continuing respect.

Your Honour, much has been said about the qualities that Your Honour has brought to the bench. Sometimes when we talk of these qualities in an abstract way and without reference to some concrete factual situation, it maybe difficult for others who do not practise in these courts or perhaps fully appreciate what was said. There is a quality that sticks in my mind, and if Your Honour will permit me to remind you of the occasion, it concerned a vessel called the good ship "Marianna" which almost entered Australia from Bali with a cargo of marihuana. There were 4 men on board, but due to an excess of enthusiasm, customs and others decided to rush out beyond the 12 mile limit and apprehend it in international waters, which created no end of difficulty. But there were arguments which went all the way to the High Court as to whether there might still have been in all the circumstances an importation.

Being less busy than I am these days, in those days, I happened to wander into the back of the court when a submission was being made to Your Honour which involved Mr. O'Sullivan, as he then was, going through a series of cases to try and explain how courts in the past have dealt with the upper limit of the waters and lower tide marks and all those sorts of things. He was on to a case about a jetty, a wharf or jetty at Green Island. The words remain forever in my mind because Mr. O'Sullivan had a large typed script from which he was reading.

Your Honour said: "I've read that case, Mr. O'Sullivan". He said: "Thank you, Your Honour", and proceeded from where his finger had stopped to talk on about wharves and jetties but then he got on to the bit, "It was prohibited, Your Honour, on this wharf or jetty to use a loud hailer. A loud hailer, Your Honour, is an electro-mechanical or mechano-electrical device for projecting the voice." Your Honour, not surprisingly, said: "Yes, I am aware of what a loud hailer is, Mr. O'Sullivan", to which he said: "Thank you, Your Honour. Now, a loud hailer, Your Honour, is a mechanico-electrical device or electro-mechanical device", at which stage my patience, I am afraid was exhausted and I left. But, Your Honour, unfortunately was stuck there, but Your Honour, that wonderful character of patience and whilst sometimes one detects perhaps a rolling of the eyes heavenward, for people have a long and tedious tale to tell, Your Honour, has always shown the great forbearance to sit there and listen.

Your Honour will be greatly missed, as will Lady Forster, and as I say, on behalf of the Bar Association, please take with you our best wishes for the future.

FORSTER CJ: Thank you, Mr. Pauling. Yes, Mr. Loftus.

MR LOFTUS: May the court please. I address the court on behalf of the Law Society of the Northern Territory. Your Honour, there is a deep sense of loss amongst the legal profession at the retirement of His Honour as Chief Justice of the Northern Territory. His Honour has presided over this court with great distinction, dedication, always displaying his customary erudition in the law, and if I may say so, his great humanity.

Since His Honour's appointment, he has had an excellent rapport, as you are all probably aware, with the legal profession, particularly the junior members of that profession, including myself. Throughout his career on the bench, he has invariably shown patience, courtesy to the profession; although, from what fell from His Honour, the Chief Justice, the other day, a couple of southern counsel may raise an eyebrow at that.

The Law Society, Your Honour, acknowledges his great influence on the law in the Northern Territory and his assistance and encouragement to the profession generally. During His Honour's time in the Northern Territory, there have been many changes as have been detailed by my learned friends, and His Honour does not forget his wide experience. A cyclone Tracy veteran, His Honour was able to demolish in a sentence a Crown submission in one of the Don Hore cases - not the one allegedly quoted by Mr. Justice Murphy to Judge Flannery - the Crown submission that a demountable is a fixture, rather like a suburban brick bungalow, was greeted with words like, "Well, Mr. Gaffey, they must have changed. When my wife and I lived in one for months, they were more like a circus trailer or a gypsy shed dumped without its wheels." Perhaps at this stage, Your Honours, I point out the pivotal role played by His Honour, the Chief Justice, at the time shortly after the cyclone, when the immense pressure being put on the profession and the court, with a view towards moving the court to Alice Springs for the time being; and Your Honour had a pivotal role in rejecting that move.

Perhaps all of us here, especially His Honour, the Chief Justice, have two things in common: a love of the Territory and a love of the law. It is

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often said, particularly by visiting counsel, and we locals tend to take it for granted, the Northern Territory is blessed with a bench of judges of quality; and that statement is not made in anyway in a sycophantic or brown-nosing way. As we all know, it is a fact, and we are indeed fortunate, in a small, mixed community with a huge space and even bigger potential, to have a bench of judges to exert such a positive beneficial influence and to balance the public interest with individual civil liberties.

Over the years that I have been practising here myself, Your Honour, I have spoken to many and various experienced counsel from all over Australia, and a common theme from those counsel, including senior counsel, has been admiration for our Northern Territory judges. Indeed, some of those who have lost had nice things to say. I am doing no more than stating the truth, as we all know it, and I remind you all that a big influence on this excellence has been His Honour, the Chief Justice.

Sir William Forster, - Bill, as he is known affectionately and privately to us all in the profession - has been the leader, the pace-setter, the main source of this excellence. As we are all here aware, in addition, this Supreme Court bench is a happy bench and that is a benefit to the practitioners and the litigants themselves and the high morale and high quality of our judges. If I may say simply, we will miss our Chief Justice. The Law Society extends its warmest wishes to Your Honour and your wife on your retirement as Chief Justice of the Northern Territory.

FORSTER CJ: Thank you, Mr. Loftus. Yes, Mr. Gardner.

MR GARDNER: May it please the court, I appear on behalf of the Commonwealth of Australia. It is with some trepidation that I announce that appearance because I fear Your Honour, the Chief Justice, I may be proffering myself as the sacrificial lamb. The Commonwealth did not, it has been said by a number who have gone before me this morning, always accord to the members of the bench during the days when it owed its existence to Commonwealth legislation the appropriate degree of recognition of the status of its judges and of their needs, in particular the last or so I am instructed.

One immediately recalls, I am told, the old court building in Alice Springs; the provision of vehicular transportation for judges particularly after the cyclone. I understand in that regard

that Your Honour, Mr. Justice Muirhead, is perhaps more informed than any, and the priceless - I am told the emphasis is there on the price - the provision of priceless gardening services at official residences. I understand also that Lady Forster was particularly aware of those services. I am bound to say, however, that I now have no instructions in relation to any of those allegations.

However, despite all that, Your Honour, the Chief Justice, has always extended to the officers of the Attorney-General's Department who have appeared before you every appropriate respect and courtesy. With respect, Your Honour, has always striven tirelessly to promote the local profession and has dealt patiently and even generously with young practitioners who perhaps not always properly prepared have appeared before you. Your Honour has always brought to all matters before you Your Honour's great knowledge of the law and Your Honour's great compassion.

May I respectfully observe this court and this Territory will suffer enormous loss by you and by Lady Forster's departure, although the Commonwealth and South Australia will enjoy the benefit of Your Honour's presence continuing on the bench of the Federal Court of Australia.

On behalf of the Attorney-General for the Commonwealth and the Secretary for his Department on behalf of my colleagues both past and present, I join in wishing Your Honour and Lady Forster farewell.

May it please the court.

FORSTER CJ: Thank you, Mr. Gardner. I thank my brother Muirhead; the Solicitor-General, Mr. Brian Martin Q.C.; Mr. Tom Pauling Q.C.; Mr. Pat Loftus, and the Commonwealth Director of Legal Services, Mr. Terry Gardner, for the kind things they have said.

Without wishing to seem either churlish or ungrateful, I must say that at times I have found some difficulty in recognising as me the splendid person being described. Judges are sometimes given to a certain lack of modesty I must confess and no doubt I have been affected in this way myself but I feel bound to say that some of those who spoke so kindly were guilty of what one young counsel once described to me as hyperbole. Hyperbole or no, it was very kind of you all to speak in the way that you did and it would need a much harder heart than mine not to be intensely moved by it and I am most

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grateful. I also thank all the rest of you in this room for listening to what has been said without, so far as I was able to observe, any audible dissent.

The court and I are personally greatly honoured by the presence here this morning of His Honour, the Administrator, first known by many of us when he gave such distinguished service as a naval officer commanding before, during and after the cyclone. I am honoured also by the presence of so many of the legal profession and of many friends outside the profession. It is of particular pleasure to me that my brother Gallop is able to be present. I thank him very much for making a very long journey for the specific and only purpose of being present this morning. It is a matter for regret that my brother Toohey is unable to be here because of commitments in Perth.

Retirement from the office of Chief Justice is a significant watershed in my life. As has been said, I spent nearly 14 years on this bench during which times there have been many significant changes. It cannot have been given to few, if any, presiding judges, whether properly called the Judge, Senior Judge, Chief Judge or Chief Justice, to have the establishment of his court increased by 500 per cent during his time of office.

Apart from this total negation of zero population growth, the most important change has been in the institution and growth of Legal Aid. During the first few years of my time, and indeed in my brother Muirhead's time, there was only the most rudimentary Legal Aid scheme which provided legal aid to some only of those persons who were committed for trial in the criminal court. There was no legal aid for committal proceedings or proceedings in the Courts of Summary Jurisdiction. There was no legal aid at all in respect of civil or matrimonial matters. This obviously unsatisfactory situation was remedied by government in due course so in the last 10 years or so, the only accused persons who have ever appeared before me unrepresented have done so by choice. This has been of considerable comfort and assistance to us all.

There are some who are critical of Legal Aid for various reasons, but I am in no doubt at all myself that all persons accused or convicted of any crime but the most trivial, like owning an unregistered dog or something of that sort, have access to legal aid as a matter of right. On the non criminal side, all persons who have a prima

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facie claim against some person, company, government or government instrumentality, or have claims made against them to which they have an arguable defence, should also have access to legal aid if their available means preclude them from paying for such legal advice and assistance as they may need. If more trials than usual occur, as we know does happen, and if court lists become clogged as a result of legal aid, well, some means other than diminishing legal aid must be found in order to cure those problems.

Not only has the community multiplied, but also, of course, so has the legal profession multiplied and changed. For most of my time until self government, the profession was unstable in the sense that many practitioners came for a short period, flashed across the northern skies and disappeared without trace. There was, to be sure, a solid core who remained, but it was small. Since self government and not, I think, coincidentally, there has been a greater degree of stability. It is my hope that the norm will be in the future for young practitioners to come up here, perhaps even serve their articles here, and stay on in the Territory for their practising lives. Those of quality who do court work will in due course take silk; the vacancies on the bench from time to time will normally be filled by local practitioners. This last idea, which 14 years ago seemed a wild impractical dream, should be possible of implementation before very long. It is my devout wish this will be so. There have been, as is well known, two such appointments during my time of office, including that of Mr. Justice Maurice, which gave me particular personal pleasure.

The most significant change in the profession, I think, has been the institution of the independent bar, which from its beginnings, has had the wholehearted support of this court. I have always got on well with the profession, as far as I have been able to observe, what they say and do when they get outside the door is something which is hidden from me, perhaps mercifully. They have always treated me with kindness, consideration and politeness. The basic attitude of the profession is one of those things which make judicial work agreeable or not as the case may be. I have been well treated by you all and I thank you most sincerely. I will take with me many memories; dramatic things have happened in court, and amusing and interesting things have been said and done. I am obliged to Mr. Pauling for reminding me of that tedious - never mind - it is unfair and unbalanced to pick out particular things, but I will long

remember the counsel who said 'witness, when you said this occurred after dinner, were you referring to lunch or to tea?' There was a witness who said a number of times, in one matter I was hearing just before the cyclone, that his business was going through a particular 'phrase'. When asked by me what he meant, he looked at me pityingly, thinking, 'poor stupid old man', 'you know', he said, 'a particular stage of development'.

There were the regular confrontations between a certain Crown Prosecutor, who is still happily with us but no longer prosecuting, and a certain counsel who is rather small in stature, so that when he sat on the chair his feet did not touch the ground; the most telling blow was struck when the prosecutor spoke of his learned friend jumping down to his feet. I could go on for a long time in this vein, but the reminiscences of old men tend to become tedious in the extreme. I will take with me many fond memories of things such as that, which, in themselves, are not perhaps terribly important, but they do tend to be indicative of what you might described, perhaps, as the ethos of the Territory. It is no good pretending, and it is no good being arrogant about it either, but the Territory's a somewhat different place to other places, and this has been one of its charms as far as I have been concerned.

Apart from the attitude of the profession, the three other things which make judicial agreeable or not are one's colleagues, one's personal staff and the court staff. I have been singularly fortunate in all these areas. As my brother Muirhead said, it would be too much to say that we have always agreed on all occasions on the bench, but we have always managed to disagree without shouting or ill will or any actual blows being struck. The loyal support and demonstrated affection of my colleagues from time to time, all of whom but two are present this morning, have been a constant source of comfort to me. Mere words are entirely inadequate to express my gratitude to them but they are the best I can offer.

Today, I remember particularly the late Mr. Justice Ward whose term of office was so tragically short. When I first took my seat on this very bench, sitting in this very place, on 30 June 1971, I sat up here alone and terrified. Now I am surrounded by congenial and supportive colleagues. It is and has been immensely comforting to me all the time.

As to personal staff, I have always, generally

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speaking, been fortunate. I have had ten associates over the years; some outstandingly good, some just good and some quite poor. I decline to name who fits into which category. I have been assisted, however, and I have learnt something from all of them and I thank them. I have only had two secretaries and the present incumbent, Peggy Berryman, has been with me for some twelve years. In all this time, she has cheerfully put up with my variable moods, incomprehensible instructions and illegible handwriting. She has looked after me in a benevolently despotic way, and I acknowledge my great debt to her.

The Masters and the orderlies and the other court staff, I have to be honest, varied in quality but I have never had cause to doubt their good will and their willingness to help. I thank them all. I mention particularly Mr. Rod Hocking who was an orderly when I first came and is now Deputy Sheriff.

Finally, but by a massive margin the most important, I wish to make public acknowledgement of my debt to my wife. When I was appointed, she cheerfully abandoned home and garden in Adelaide and came to Darwin where she made our various homes havens of tranquility in a troublesome and occasionally hostile worlds. Next Monday we will have been married for 35 years and her constant love and loyal support have been responsible for the happiness I have enjoyed and for any success I may have achieved. I find the modern decline in the popularity of the institution of marriage utterly incomprehensible.

I thank also our friends in the Territory who in an entirely uncritical way have accepted us and opened their hearts to us and been quite unstinting in their friendship and have given practical support when it has been needed. We will miss them all very much.

On occasions such as these, judges frequently take the opportunity of delivering a homily on some particular topic which they consider important. Who am I, I ask, to depart from this well-established precedent. I enter a brief plea for the proper use of language. English is a most beautiful language capable of expressing all shades of meaning, all thoughts and aspirations from the highest to the lowest. Its proper use is already declining and will decline further if care is not taken. I urge all of you who are legal practitioners to use fully the bountiful resources of the language and to express yourselves orally or

in writing with clarity and precision. I enter a
 please also for simplicity of language and the
 avoidance of jargon which may start life as what
 seems to be a compendious or useful word or phrase
 but quite quickly leads to laziness of thought,
 sloppiness of expression and tends even to suppress
 and distort though. What I say is directed not
 only to the legal practitioners but to judges and
 magistrates as well, and also perhaps most
 significantly to those who are responsible for
 drafting legislation and regulations.

That is almost all I wish to say. I hope that
 my wife and I will return to the Territory from
 time to time and I know we will, but the time and
 frequency of such visits will depend to a great
 extent on the good will of the Chief Judge of the
 Federal Court. I thank you all for attending court
 this morning. I thank you all again for the many
 kindnesses which have made our stay in the
 Territory so satisfying and enjoyable. I bid you
 all farewell temporarily in the confident
 expectation that we will meet again before long.

Court will adjourn sine die.

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