

SUPREME COURT OF THE NORTHERN TERRITORY
STATE SQUARE, DARWIN

CEREMONIAL SITTING TO WELCOME
THE HONOURABLE JUSTICE PETER BARR

TRANSCRIPT OF PROCEEDINGS

THURSDAY 30 SEPTEMBER 2010 AT 9.37 AM IN COURTROOM 1

PRESIDING JUDGES:

THE HON CHIEF JUSTICE T RILEY
THE HON JUSTICE D MILDREN RFD
THE HON JUSTICE S SOUTHWOOD
THE HON JUSTICE J KELLY
THE HON JUSTICE J BLOKLAND
THE HON JUSTICE P BARR

IN ATTENDANCE:

THE HON AUSTIN ASCHE AC QC
THE HON BRIAN FRANK MARTIN AO MBE QC
THE HON JOHN GALLOP AM RFD QC
THE HON SALLY THOMAS AM

Transcribed by:
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C1/all/mf
Barr J[Edited]

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

All persons having any business before this honourable Supreme Court of the Northern Territory now draw nigh and give your attendance and you shall be heard.

God save the Queen.

Please be seated.

THE ASSOCIATE: The Court's welcome to his Honour, Justice Peter Barr.

RILEY CJ: Your Honour, the Administrator, Mr Pauling and Mrs Pauling, Madam Attorney-General, Judges, former Judges, distinguished guests, members of the legal profession, ladies and gentlemen, welcome.

We gather for the presentation of the commission by his Honour, Justice Peter Barr, and to welcome his Honour to the Court. I'm joined on the Bench, as you can see, by the Judges of the Court, Justice Mildren, Justice Southwood, Justice Kelly and Justice Blokland.

I wish to extend a special and warm welcome to those who have joined us on the Bench being the distinguished former Judges of this Court; the Hon Austin Asche, the Hon Brian Frank Martin, the Hon John Gallop and, most importantly, the Hon Sally Thomas.

Justice Barr.

BARR J: Chief Justice, I have the honour of announcing that I have received from his Honour, the Administrator, a commission appointing me a Judge of the Supreme Court of the Northern Territory.

RILEY CJ: Thank you. I invite you to take your affirmation of office before his Honour, the Administrator.

BARR J: I, Peter Martin Barr, do solemnly and sincerely promise, affirm and declare that I will bear true allegiance to Her Majesty, Queen Elizabeth II, her heirs and successors according to law, that I will well and truly serve her in the office of Judge of the Supreme Court of the Northern Territory of Australia, and that I will do right to all manner of people according to law without fear or favour, affection or ill will.

THE ADMINISTRATOR: I invite you to subscribe your affirmation.

RILEY CJ: Please take your seat, Justice Barr.

Master, would you please read the commission of his Honour.

THE MASTER: *To the Honourable Peter Martin Barr.*

Know ye that reposing full trust and confidence in your loyalty, learning, integrity and ability, I, Thomas Ian Pauling, Officer of the Order of Australia,

Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council of the Northern Territory of Australia in pursuance of section 32(1) of the Supreme Court Act 1979, do, by this my commission, appoint you, Peter Martin Barr, one of her Majesty's Counsel, learned in the law of the Northern Territory, to be a Judge of the Supreme Court of the Northern Territory of Australia from and including the thirtieth day of September in the year of our Lord 2010 to have, hold, exercise and enjoy the said office of Judge of the Supreme Court of the Northern Territory of Australia under and subject to the provisions of the Supreme Court Act 1979, as amended from time to time, during good behaviour with all rights, powers, privileges, advantages and jurisdiction hereto belonging or appertaining.

Given under the Seal of the Administrator.

RILEY CJ: Master, please place the Commission and the Affirmation of Office with the records of the Court.

Madam Attorney-General, do you move?

ATTORNEY-GENERAL: May it please the Court. I rise on behalf of the government and the people of the Northern Territory to welcome your Honour, Justice Barr as a Justice of this honourable Court.

In addressing this Court today I took counsel, as I have on other occasions, from the Solicitor-General.

Your Honour was born and raised in New South Wales. Your father was a teacher who moved around country schools until he eventually settled in Sydney with his young family.

Your Honour attended Sydney University and graduated with degrees in arts and law. You university classmates remember that even at age 18, your Honour had a voice like Australia's answer to Barry White. You were admitted to practice in July 1976 and came to the Territory to take up a position as a solicitor with Cridland and Bauer.

You adapted quickly to the Territory lifestyle which, in those days, consisted of a morning's work, a long lunch and an afternoon of quiet reflection under the calming influence of George Cridland. During this time, your Honour somehow managed to spend considerable periods in France. You learnt the language and spoke it like Australia's answer to Charles Aznavour. Your Honour also spent some time in Italy. You again picked up the language and allegedly said things in it like Australia's answer to Silvio Berlusconi.

After a couple of years with Cridland and Bauer, your Honour started practice on your own account. Your Honour's skills were quickly recognised and your clients came to include many of the Territory's leading businesses.

In 1991, after 13 years as a sole practitioner, your Honour decided to take a sabbatical and sold your practice. Your Honour travelled to Europe and took up

work as an English teacher in Prague. You made many friends there, picked up the Czech language and no doubt spoke it like Australia's answer to Václav Pavel.

You returned to Darwin and in January 1993 commenced at the independent Bar. Your Honour was appointed as one of Her Majesty's Counsel in 2004. Your Honour had a varied practice at the Bar. If you had a speciality it was sniffing out cases that had some international element requiring you to appear or proof witnesses overseas. Your Honour's selfless pursuit of these matters commenced with Rosecrance in 1995. It is of some note that the presiding Judge in that case was his Honour, Justice Mildren, and your leader was Trevor Riley QC, now Chief Justice Riley, which means that one wouldn't want to be standing in the way when the next case involving international sittings comes to be allocated.

Your Honour sometimes accepted briefs in Australian cases, Racecage, Chaffey and Renehan, to name just a few, which demonstrate that your Honour's range ran from personal injuries through administrative and trade practices law up to constitutional issues.

Your Honour was educated in the Jesuit tradition which dedicated to producing men for others. True to that tradition, your Honour has led a life dedicated to providing service and assistance to others. Your Honour has been a specialist legal officer in the Royal Australian Navy Reserve since 1977 and head of the Darwin Reserve Legal Panel. Your Honour was a long time member, Deputy Chair and Chair of the Northern Territory Planning Authority. Your Honour had an appointment as Chair of the Public Sector Disciplinary Appeal Board. Your Honour is the immediate Past President of the Northern Territory Bar Association.

You were also Honorary Counsel for Belgium from 1989 to 2007. Your Honour's modesty is such that it is not widely known that in 2008 your Honour was made a Knight of the Order of Leopold. This is an award conferred by the King for meritorious service of immense benefit to the Belgium nation. In fact, I am informed that the proper form of address for your Honour in Belgium translates roughly as 'your Immensity'.

As a member of the Bar, your Honour was always generous in making your time and expertise available to your colleagues and solicitors. Your Honour has always taken a subtle, thoughtful and considered approach to the practice of law. Even when you were still a junior counsel, your colleagues sought you out for advice on difficult ethical and legal matters. Your Honour's considerable intellect is leavened by a sense of humour and lightness of types that set people at ease.

Finally, and probably most importantly, your Honour has always set great store by the ties, joys and obligations of family. It is no doubt a source of great pride to you that your sister, Patsy, has travelled from Sydney to be here for this ceremony and that your children, Edouard and Mary Rose, and your partner, Christine, are here in Court today.

Your Honour brings all of these qualities to your new position and we have no doubt that you'll be an ornament to the Bench. We congratulate your Honour and wish you well as you embark upon this next chapter of your legal career.

May it please the Court.

RILEY CJ: Thank you, Madam Attorney.

Madam Vice President of the Northern Territory Bar Association, do you move?

MS McMASTER: May it please the Court.

Please firstly accept an apology from the Northern Territory Bar Association's President, Ms Webb QC. She is interstate working.

It falls to me on behalf of the members of the Northern Territory Bar Association to congratulate your Honour, Justice Barr, on your appointment to the Northern Territory Supreme Court and to wish you welcome.

Also present in Court are Ms Fiona McLeod SC representing the Bar Council of Victoria, and Mr Dan O'Gorman SC representing the Queensland Bar Association.

Might I start with this thought? The thirtieth of September is already a monumental day in US legal history, as it was this day in 1981 in which the first woman, Sandra Day O'Connor, was appointed to the US Supreme Court. And today, you have three women speaking in your welcome.

As to your Honour's appointment, the news was warmly received by the Bar Association, if not so our chambers for the loss is a big one. Your Honour's appointment to the Bench is genuinely welcomed and supported by the Northern Territory Bar and a just reward for a long career with notable achievements.

As we have heard, your legal career began in 1976. You were called to the Bar in 1993, immediately after a spell as an English teacher in Czechoslovakia. From that time, you had a start-studded career including a trial in Santa Barbara, reliving the Cannon Ball Run, by curiously climbing and falling off rigging on replica First Fleet sailing ships, brushing shoulders with swimming stars like Peter Garrett - it could have been Michael Klim - and offering advice to traditional Aboriginal elders not to feed crocodiles, if they didn't want to have to shoot them.

Whilst preparing this address, I've been inundated with anecdotes from your colleagues which, for the main part, relate to your strong sense of the ridiculous and keen sense of humour and are stories for another time and place.

Your Honour holds dual citizenship in Australian and Ireland which permitted you to work in the European Union. There are two points to make about that. Firstly, as has already been said, that your contribution in building and maintaining Australian/European ties saw you awarded with the knighthood from Belgium, Chevalier de l'Ordre de Léopold. Secondly, your surprise that such dual citizenship did not extend to entering the United States earlier this year. A delay of some hours in Customs with calls from the US Customs to the Embassy in Canberra to vouch your veracity finally settled the matter of a small error of the word 'work' on a form.

Your Honour has a full plate at the moment: a new job with a new boss, a new set of rules, a new uniform and a new house being built. No doubt being one-time acting chair of the Planning Authority has given you the good oil for a fast-tracked house. As for your Honour's new position, my research has revealed that:

Peter Barr's practice is restricted to criminal law including, but not limited to, crimes of violence including murder, manslaughter, assaults and sexual assaults and on it goes.

The biggest surprise was not the secret work that you had been doing, but the photograph of a man with woolly hair, glasses and a suit. I deduced that he must be a relative, as I could not find Ontario anywhere on the map of Australia. As for your future contribution to the Supreme Court, your Honour has a very handy book which you are taking with you as you begin your foray into the criminal jurisdiction, Roger's Profanasaurus. I expect you will be able to assist members of the jury if they do not comprehend some choice words here or there and perhaps even lend it to your brother and sister Judges if they get caught in a tight-worded moment.

Your Honour, as the immediate past president of the Bar Association, you have shown strong dedication to a small profession. It is to the Territory's credit that you chose to accept the appointment, rather than retire from the Bar. The Bar Association applauds your appointment and its members look forward to advancing the interests of justice in your Honour's Court.

In your new incarnation, we hope you retain your old values for which you are well known and widely respected: your warmth, wit, compassion, your even temper in the most difficult of situations, a keen eye for detail and an astute appreciation of the bigger picture.

May it please the Court.

RILEY CJ: Madam Vice President of the Northern Territory Law Society, do you move?

MS CHEONG: Thank you, your Honour. May it please the Court.

On behalf of the Law Society of the Northern Territory, it is with great pleasure that I welcome your Honour, Justice Barr, to the Supreme Court Bench. I have to confess that it is a testament to your Honour's popularity that I have had to wrestle with the President of the Law Society to enable me to speak on this special occasion. Mr Story was more than prepared to come to the front.

When I first heard of your Honour's appointment, I have to confess that I wasn't sure whether I was to laugh or cry. Laugh because I was happy for your Honour's talents - as I said that an appointment as important as this is long overdue - or cry as the legal profession loses another extremely competent, intellectual and an effective senior barrister from the Bar.

I have known your Honour for a very long time on both a professional and personal level. On a professional level, your Honour has always been patient and kind with a willingness to assist less experienced barristers and solicitors. Your Honour's generosity and assistance to fellow practitioners and barristers in the Territory is well known. Your Honour has been a mentor to many junior solicitors as well as junior barristers at the Bar.

Your Honour's work ethics are very well known. To say that your Honour works very hard at each and every brief would be a gross understatement. Your Honour practically lives and eats the briefs that you accept and you were always more than fully prepared for all your cases and Court appearances. Your Honour's advices are again always detailed, considered, precise and practical.

On a personal note, I find your Honour to be as a kind and generous with your time outside the legal arena. Your Honour's passions outside of work when time permits is your family, your friends, Rugby Union - although the Irish team left the World Cup rather early in 2007 - and Rugby League. Your Honour is also a very keen and able skier. Wherever there is snow, your Honour will be skiing. Your Honour also turns his hand to gardening and more recently golf which, hopefully with your time now on the Bench, you will have more time to pursue those interests.

RILEY J: We will need to fix some misconceptions here.

MS CHEONG: Your Honour's cricket prowess is also a sight to behold. I have witnessed it at the last Law Society cricket match. But alas, your Honour will have to resist getting called up by the Australian Cricket Team, if that should come to pass.

There are not sufficient words of praise to describe your Honour's career to date. Suffice to say that your Honour is well liked by all your colleagues, well regarded by your peers for your intellect, kindness, thoughtfulness, hard work and willingness to mentor and assist other practitioners. Your Honour's character thrives on hard work and achieving the best results and outcomes for your clients. Such character in your Honour's already vast repertoire of legal skill and knowledge will no doubt be a further asset to this honourable Court.

It is therefore, with great joy and a small measure of sadness that I wish your Honour well on this latest journey and all the very best in your new role as part of our judiciary and trust that you will enjoy the challenges to come with this new chapter of your career.

It has been a pleasure to work with your Honour in the past and I am sure that it will continue to be a pleasure for the practitioners and counsel to appear before your Honour in the future in this Court. Thank you.

RILEY CJ: Thank you.

Barr J, do you wish to respond?

BARR J: Thank you, Chief Justice.

Your Honour, the Administrator, Chief Justice, your Honours, past Judges of the Court, Madam Attorney, Chief Magistrate, Magistrates, members of the legal profession, distinguished guests, ladies and gentlemen, I wanted to thank you all for attending today, for making the time and in some cases, I know, taking the trouble to be here to honour this Court by your presence.

Madam Attorney, Ms McMaster and Ms Cheong, I thank you all for your generous remarks and good will wishes. Some of your sources perhaps need to be verified, I think, for reliability, but I know how difficult it is to speak at these occasions and how many writes and re-writes of speeches take place in an attempt to get them just right. So I appreciate very much not only what you have said, but the time that you have taken to prepare your speeches. Thank you.

It is quite extraordinary after 17 years in the robust company of fellow barristers and more than 30 years, I suppose, of being generally bruised and beaten in litigation that you attract so much praise at the end of the day. I am not really used to it all and it is a little bit overwhelming and at the same time I realise that there are only a very limited number of occasions or cultural contexts where public praise of a person is actually condoned. The occasion of the welcome of a new Judge just happens to be one of them. Otherwise, it seems you have to wait for your own funeral to hear fine things said about yourself as I have heard today.

I think of Tom Sawyer and Huckleberry Finn, those mischievous lads of Mark Twain's novels, who had been in trouble most of their lives in an era when trouble and a leather belt went hand in hand and at one stage, they hide upstairs in the church where a funeral service is being held for them. They get to listen to their very own funeral service. The community is in a state of deep grief, being under the mistaken impression that the boys have drowned and are lost to them. And the boys look down from their vantage point a little bit the way I do now and hear their many misdeeds and misadventures spoke of in a way that is surprisingly benign. Mark Twain described it beautifully, and it is a little bit the way I see it today. He wrote

The clergyman drew such pictures of the graces, the winning ways and the rare promise of the lost lads. The minister related many a touching incident in the lives of the departed which illustrated their sweet, generous natures and the people could easily see now how noble and beautiful those episodes were and remembered with grief that at the time they occurred, they had seemed rank rascalities well deserving of the cow hide.

So it seems to me on occasions of public praise, that truth is often the first victim, whether that is a factor of good will or sentiment of just artistic license in the case of some of the things that you, Madam Attorney, have said today, about my comparative linguistic skills.

But there's another aspect to it, of course. There may well be irony in praise and sometimes even, I hate to say it, disguised mockery. All of the Judges sitting with me today and the past Judges will have heard speeches directed to them that may contain examples of such mockery. I say may because one can never be sure.

But for example, often people would say to Judges 'Your Honour is persistent and tenacious' and that can mean lots of things. It could mean that Your Honour is exceedingly stubborn. Sometimes people will say in Court 'Your Honour expresses it much better than I could'. That sometimes means that your Honour is interrupting constantly and it's starting to be tedious. And then there's that very famous compliment to the Bench which I take from barrister mythology. It's the statement 'Your Honour is as wise as he is handsome'. Most of us don't need to think twice as to what that really means and I must say I've never heard it in Court, but I point out to those sitting in Court today that I'm ready for it if and when it comes.

In coming here today to the Bench, I leave memories of 17 years at the Bar: memories of clients and instructing solicitors, Judges and Magistrates before whom I've appeared and of course my fellow barristers, my former colleagues. I must say that during my time at the Bar, I received enormous support and assistance from them, both from those who were senior to me and those junior as well, and this support was fundamental to my being able to sustain my existence at the Bar. And I shouldn't overlook, in this context, the loyal band of solicitors who briefed me over the years. Sometimes they had to steel me for the fight when I was very nervous about prospects and was pleading for a settlement, but steel I got from time to time and so occasionally I ran cases that turned out unexpectedly well against my best advice prior. That's one of the ironies of the law itself.

But I want to thank you all, colleagues, for your support, encouragement and friendship. It's been very important to me for many years now.

In the warm glow of the retrospectroscope, those 17 years at the Bar were good years. Of course they were. But in reality, life at the Bar can be a lonely existence at times. Barristers and indeed all lawyers who practice as advocates, whether you are actually at the Bar or whether you are practicing as an advocate in another context, I know that you work many, many hours on your own. During those hours when normal people are at the footy or at the beach or just having a long lunch, and often when normal people are sleeping, barristers will be reading and digesting vast quantities of materials, identifying and analysing and trying to solve the problems that their cases throw up.

The balance, of course, to that somewhat enforced and stressed period alone is the elation that you get when a big case ends or when you find that a case is settled and on those occasions the anxiety recedes and you feel just wonderful until the next case comes along with its attendant struggles and difficulties.

So it cuts both ways, life at the Bar. And difficult though it may be, I truly believe that it's a great privilege to stand up in Court and to appear for a person, to actually say 'I appear for the defendant or the plaintiff', as the case may be, 'the accused' in the criminal context. To make those crucial decisions as to how a client's case will be presented and how it will be run to conclusion is an extraordinary privilege. And I don't think we should ever overlook the importance of the advocate in the overall system of justice. In the words of Sir Owen Dixon:

The honourable practice of the profession of advocacy affords the greatest opportunity of contributing to the administering of justice according to law.

So for those of you who have chosen to be advocates, those here today and those who are probably in Court somewhere, I salute you all and I say to you that I'll certainly need a great deal of help and guidance as I settle into my new role over the coming months and years and I look to you for that.

It's usual on occasions such as this to speak of one's family and I confess that I find this difficult in many ways but there are some things I can certainly say. I've been very fortunate to have had loving and dedicated parents, both of them school teachers, who understood the importance of education and learning. My one and only sister has always been there for me, loyal and generous and has braved the build up to be here today. I appreciate that very much.

I also see my much-loved children in Court. I'm obviously very proud of them both and express my gratitude and relief as a parent that thus far they seem to have avoided many of the major disasters that can befall young people and long may that continue. Your long-suffering mothers and I will be keeping our fingers crossed, let me assure you. And on the topic of long-suffering, to be the wife or the life partner of a barrister is a real trial or it can be. At times it's difficult, if not impossible, and it's also very unpredictable. So to Chris, I say a simple thank you and a sincere thank you. And I would add to that a particular extra thank you for not rubbing my nose in the dirt over the long string of Wallaby losses to New Zealand. In fact at last count the Wallabies have lost 10 matches in a row and you've been very modest in victory and I thank you for that. I just hope that I can be as modest in the event that the Wallabies finally turn the tables.

It's very early in the piece for me on my very first day on the Bench to speak of a job that I've not yet experienced, but at the risk of inviting polite derision in 10 years time or 12 years time or whenever it is that I face the Court again on a ceremonial occasion directed at me, I want to express the hope that I will have the ability in Court to always listen patiently before pronouncing the great truths that Judges are expected to pronounce.

My motivation for patient listening has been enhanced quite recently, not by Sir Owen Dixon or Oliver Wendell Holmes Jr but by an English comic poet called Pam Ayres and she has written a beautifully-titled poem named 'They should have asked my husband'. And she calls him her 'usband, but if ever there were mockery in praise it is here in this poem where Ms Ayres describes with lilting rhymes the many areas of human endeavour, and she lists them all, in which her husband is a great expert. And she then goes on to say:

*Upon those areas he brings his intellect to shine
in a great compelling voice that's twice as loud as yours or mine.
I often wonder what it must be like to be so strong,
infallible, articulate, self-confident and wrong.*

I think the clear message to me, at least, is that we should always allow for the possibility that even our most strongly-held views may be wrong, that we should leave our minds open to logical persuasion to a different or even contrary view to our own.

I'd to conclude my remarks with a special thanks to all of those who have worked so hard behind the scenes to create this ceremonial occasion. The complexities, as I now see them from inside the Court, are quite daunting but they're overcome and they're overcome regularly by the professional people who deal with these matters and I thank you all.

I feel very privileged today to sit in a row of Judges and former Judges who collectively, on my rough calculation, have amassed more than 100 years experience sitting on this Bench as well as the Benches of the Family Court of Australia, the Supreme Court of the Australian Capital Territory and, of course, the Magistrates Court of the Northern Territory. Throughout those many years they have served, they have delivered justice to the Territory community and they've maintained respect for the rule of law in this jurisdiction. I hope to be able to do likewise.

It's a great honour to become a member of this Court and as I go about discharging my duties, I will do everything I can to be worthy of the great trust which has been placed in me.

RILEY CJ: Thank you, Justice Barr.

Mr Grant, do you move?

MR GRANT QC: If it please the Court.

RILEY CJ: And Mr Wyvill, do you move?

MR WYVILL QC: If it pleases the Court.

RILEY CJ: Are there any motions from the Bar?

Thank you.

Ladies and gentlemen, that concludes the ceremony this morning. It seems to me that this is one of those significant occasions where we should have a photographic record of what has taken place and I invite those who are in Court and who are robed or who are advocates of the Court to join Justice Barr on the steps of the Court for a photograph to record this magnificent occasion.

Ladies and gentlemen, the Judges will be pleased if everyone will join us for morning tea and refreshments following the adjournment.

And would you now please adjourn the Court.

SHERIFF'S OFFICER: Silence. All stand. This honourable Court now stands adjourned. God save the Queen.

ADJOURNED 10:11 AM INDEFINITELY