

**CRIMINAL LAWYERS' ASSOCIATION
OF THE
NORTHERN TERRITORY**

11th Biennial Conference

Bali 2 – 6 July 2007

THE DOCK BRIEF ¹

by John Mortimer

A play-reading for two players, presented by Tom Pauling QC,
Ken Conway and Rex Wild QC

¹ Performed under licence from the author's Australian agent Dominie Pty Ltd on condition inter-alia that the performance is by amateur players.

THE DOCK BRIEF

Introduction to the play

I was returning from the Korumburra Court, in the South Gippsland region of Victoria, in the early seventies. I cannot remember what battle I had won or, more likely, lost. I listened to the ABC radio on the drive back to Chambers. I was enthralled by the lunchtime radio play. It was by John Mortimer and it was called *The Dock Brief* I found it immensely entertaining. I didn't then know of John Mortimer, already well-known in England². His *Rumpole of the Bailey* character was created in 1974, at about this time.

Many readers of this introductory piece will be unaware of the expression Dock Brief. It is, or was, as far as I am aware a purely English procedure and long gone, now we have proper public legal aid systems in place. It is defined in these terms:

*Dock Brief (formerly) the selection and instruction of a barrister by the accused from the dock, permitted as a means of providing legal representation for an accused on indictment without the resources to employ a solicitor*³.

I first became aware of the procedure in Henry Cecil's *Brother – in – Law*, written in 1955. (I have lent and lost at least three copies of this wonderful little book over the years and am presently bereft.) Cecil's young barrister hero, Roger Thursby, introduces the reader to the dock brief as he bumbles his way through the courts in his early days.

So, it was a legal custom which allowed an accused person who had not yet appointed a lawyer to obtain the services of a member of the Bar, *between cases*, as it were. These Barristers would attend the Old Bailey in the morning when, by arrangement with the presiding judge, the unrepresented defendant would be brought into court. He would then look around and choose to represent him any one of the gowned, bewigged, unemployed barristers sitting there like a rank of taxis plying for hire. The fee for taking on a dock brief was only two guineas (plus the clerk's fee) and the case might last for several days. The taxi-barristers parked in court and trying to catch the accused's eye tended to be the young and enthusiastic, but entirely inexperienced, beginners or the old, desperate and incompetent.

It was this quaint procedure, then, that inspired the radio play that was to launch Mortimer as a celebrated playwright. In *The Dock Brief*, Herbert Fowle, a shopkeeper accused of murdering his wife, looks around the court and chooses just such an old hack barrister to represent him despite his tattered gown, frayed cuffs and the hole in his sock. The broken-down old hack barrister was Wilfred Morgenhall. In Morgenhall, Mortimer had created the prototype of the most famous of all his characters, Horace

² John Mortimer, *The Devil's Advocate*; the unauthorised biography by Graham Lord (Orion, 2005), 175.

³ The CCH Macquaria Concise Dictionary of Modern Law.

Rumpole. After ten years of writing novels, he felt that he had suddenly found his true voice and that writing for radio was exhilarating and challenging because the writer had to tell the entire story simply with voices.⁴

The play, which was written for radio, was first broadcast on the BBC Third Programme in May 1957. Michael Hordern played the barrister and David Kossoff the client. Both took the same roles again in a BBC television musical version for which Hordern won the Television Actor of the Year Award. The play “was a perfect jewel”, said Hordern – and it ‘touched that rare dramatic level at which comedy and tragedy are indistinguishable’, said *TheTimes*. It was to transform Mortimer’s life, for it won a prize, the Italia, inspired London’s leading theatrical agent, Peggy Ramsay, to take him on as a client and a theatrical producer, Michael Codron, to commission him to adapt it for stage.⁵

It will be realised that *The Dock Brief* is a period piece. The language is old-fashioned. It was written in 1957, originally for radio, and by reference to a now outmoded legal procedure or custom. Even then, it would have been necessary to suspend belief that a man accused of murder would have to choose a bargain-basement, free on the day, barrister to represent him on such a serious charge. The custom was of course intended to allow comparatively simple charges to be dealt with inexpensively and giving employment and experience to new barristers (at no great cost, hopefully to the cause of justice.) The obvious drawbacks of such a system presumably hastened its disappearance.

Mortimer adapted *The Dock Brief* in 1962 into a film starring Peter Sellers as Morgenhall and Richard Attenborough as the client. Other characters were invented for the film (including the dead wife) which was re-titled *Trial and Error*. Some of you may have seen it. Those of us involved in presenting this performance for you have tried in vain to find a current copy by *googling*.

The CLANT Production

Some of you know that a play- reading is presented at each CLANT conference (at least since 1995). Many of you have taken part in them. I thought a year or so ago that I might have difficulty in preparing something for your entertainment in 2007. Remembering my enjoyment of *The Dock Brief*, I resolved to obtain the necessary performing rights to allow its presentation this year. A surprisingly modest royalty or license fee was payable, given that this is not a ‘professional’ performance. Having said that, I hasten to inform you that CLANT’s presentation will in fact be by two very professional and experienced thespians who I will introduce to you as follows (bearing in mind, of course, that they are here performing as amateurs)

⁴ *The Devil’s Advocate* (Supra), 75

⁵ *Ibid.*

Tom Pauling QC plays Wilfred Morgenhall. He is superbly self-cast as a broken- down old barrister. You will know Tom as the Solicitor-General for the Northern Territory since 1988, former Magistrate and still a live performer. He has played a leading role in each of the six play-readings presented at CLANT conferences. He is, after all, our profession's leader in both High Court advocacy and entertainment. He really needs no further introduction. However, the following modest notes provided by Tom are informative

Tom Pauling left Sydney for Darwin in 1970 and apart from running away to the theatre in Far North Queensland in 1974 has been there ever since. He established the independent bar in 1974 with Michael Maurice, and later Ian Barker. He proposed the motion for the formation of CLANT and is a life member. He married his love of the theatre to the law and has spent the rest of his life (so far) juggling these energies. If, as Shakespeare tells us through the melancholy Jaques, "All the world's a stage", Tom has been on it.

Ken Conway plays Herbert Fowle. Some of you will remember Ken directing CLANT's performances of our own Tuckiar play (Bali1999) at Fannie Bay gaol for Law Society week in 2000. In 1972, while in the Territory, Ken took *a year or so* off legal practice (yes, he is/was a lawyer as well) to establish Browns Mart as an intimate theatre and community performance space. Ken recently retired as full-time executive officer of Browns Mart after 33 years with the organisation which spawned Tracks Dance, the NT Writers' Centre, Corrugated Iron Youth Arts, Darwin Fringe Festival and many community-based arts projects. He has performed in many strange places (including, now, Bali) and has acted professionally and as a volunteer in many dozens of theatrical events. He has often collaborated with Tom Pauling. They are acknowledged as the co-founders of *Clipboard Theatre*, an art form dear to the hearts of CLANT players as it does not require the learning of lines!

I sincerely hope you enjoy this *clipboard* production. Perhaps in 2009 we will return to a more inclusive theatrical event involving more of the CLANT delegates. I thank on your behalf Tom Pauling and Ken Conway for their commitment to providing you with the best possible production. This has not only required a number of rehearsals but also the construction (and importing) of necessary props.

REX WILD

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28 June 2007