

**Speech given on 16 August 2024 at Trans-Tasman Bar Conference,
'The Timeless Value of Insight & Wisdom'**

Good evening ladies and gentlemen and thank you for the very warm welcome.

I'll do my very best to reciprocate, as follows:

E ngā mana, e ngā reo, rau Rangatira mā, tēnā koutou

He mihi ki te iwi e tau nei, Ngāi Tahu, tēnā koutou

Ki a tātou e tau nei, ka nui tāku mihi

Nō reira, tēnā koutou, tēnā koutou, tēnā tātou katoa

The title of this session is 'Mental Health at the Bench and Bar'. I have to admit that I didn't know the precise title until more recently than you might think; but all of this comes about because of my speech last year to the Victorian Bar Readers.

It's traditional in that speech to tell some amusing war stories; and my speech certainly started out that way. But I ended up using the occasion to open up about the suffering my family and I endured while I was at the Bar. I did that because I thought it was important for the Readers to hear it.

My suffering increased gradually and over time. I couldn't tell it was happening until I came to be consumed by a crisis. My family suffered for a long time without me, or them, knowing why. My heart still aches when I think about that; and saying it out loud is considerably worse.

The reaction to my speech was very great, and completely unforeseen by me. I heard from

judges, barristers and other people from all over Australia, and elsewhere, including this amazingly beautiful country, New Zealand.

Some of the people I knew; many I didn't.

Many took the opportunity to tell me their stories. A lot of those were much more heartbreaking than mine.

A young barrister told me she'd been sexually harassed. She thought she'd have to leave the Bar to escape it. She was talented, balanced and resourceful. She sought support and found a way to confront her harasser and end it. Quite frankly, her story was amazing, as well as alarming. I'm glad she had the courage to tell it.

An experienced commercial barrister told me of a dinner party at which, in an unguarded moment, almost everyone there came to disclose that they had been prescribed medication to deal with the suffering induced by commercial practice.

A very eminent silk told me he'd suffered in a very difficult case. His suffering got worse; so bad that he ended up getting treatment and taking time off. He recovered and has since had more than a decade at the very pinnacle of the profession.

A very experienced and respected judge approached me personally. She told me of a period in her time at the Bar in which she'd endured a very busy practice while caring for a sick child. When telling me her story, even in respect of something that happened some years ago, she broke down in tears. It's sad that even though I'd had the words to give that speech; in that moment, I hadn't been able to find words adequate to comfort a colleague in real distress.

When I gave that speech, I didn't realise that suffering at the Bar was as prevalent as it plainly is; even if, like my own, it's largely private and so out of ready view.

I also didn't imagine that a conference like this would ever take place. I barely went to conferences while I was at the Bar. The only one I can remember certainly wasn't directed to things like representative democracy, diversity, inclusion, climate change or wisdom.

Since attending this conference I've heard more stories from even more people, some of whom, I imagine, are at this session.

A common theme in many of the stories I've heard has been the strain of needing to bring it and take it, day in day out, in the course of practice at the Bar. It caused me to reflect: how can a barrister find it, and bring it, for a career?

In my last speech, I spoke about a trip to the High Court with Jeremy Ruskin KC. In this speech, I'm going to tell the story of another one.

Our client had been rendered paraplegic by a tree branch which fell on him in the Tasmanian wilderness. He won at first instance, but lost in the Full Court.

In a miracle, the High Court granted special leave to appeal.

The defendant was represented by David Curtain QC. Among other things, David had been the Chairman of the Victorian Bar between 1998 and 2000, and President of the Australian Bar Association in 2002. At the common law Bar in Melbourne, however, he was widely referred to as 'Curto'.

As an advocate, Curto was brave, provocative and not always tactful. But make no mistake

about it, he could be deadly.

Cleverly, Curto called us and suggested a chat. To that point, our client hadn't been offered anything, and he was in dire straits. But now – completely out of the blue – he had special leave on his side.

Curto prised away at every weakness in our case and suggested that if he was lucky he might be able to get us an offer. He pitched it perfectly; it might be slightly less than barely enough, but something could be preferable to nothing. He suggested we discuss the idea with our client; and later we did.

Our client sat in his wheelchair and pondered the situation. After a heavy silence, he looked up and said: 'tell 'em to get stuffed'. In truth, he might have used a similar word, starting with 'f'.

We went back to Curto and said the answer was 'no'. But his instincts were aroused. He probed our answer and ended up asking: 'what, exactly, did your man say?' Jeremy and I looked at each other and shrugged our shoulders. After all, the client had told us to tell him. After a long pause for effect, we did.

Curto took it magnificently. Firstly, he raised a sort of procedural objection and said: 'I'm not sure that's entirely called for'. Then he tried to rescue the situation and said: 'I think we might be at cross purposes here'. But we weren't; and the discussion was over.

Later, the appeal was heard by the High Court of Australia sitting in the Supreme Court of Tasmania. Remarkably, there was a rolling list of multiple appeals. Ours got on about 3 in the afternoon.

Shortly before the end of the day, the Chief Justice asked Jeremy a question. It was more than just a question though. It was more like an arrow shot from a hundred yards through the heart of our case.

Jeremy played for time. We walked out of the courtroom at 4.15 winded, searching for a response; or a miracle. The opportunity to discuss a resolution had been rejected and we were now on the brink of potential annihilation. Both of us hardly slept that night.

In the morning, we were no closer to answering the Chief Justice's question than we had been at 4.15 the previous afternoon; but we cobbled together our very best non-answer.

When the case re-started, the atmosphere in the courtroom was somehow different: the need for an answer to that devastating question seemed less immediate. Mercifully for us, the argument moved on.

But Curto had seen blood and soon it was his chance to bring it in argument, and he did. Headwinds came for him, and he took it, and responded with great skill.

In the end, the result was too close to call and I'm not going to ruin this story by revealing who won. That's not the point of it. The point is that every barrister in that case brought it, and took it, in the best traditions of the Bar. And that's because, at that time, we all had it within ourselves to be able to do so.

That couldn't have been clearer, later, when Curto and his junior bumped into Jeremy and I at the airport. It was no more than a couple of hours after we had fallen to the canvas exhausted; in the manner of Rocky Balboa and Apollo Creed. But Curto was indefatigable. He spied his next opponent across the airport lounge and, amazingly, still had the energy to

sledge him; mischievously he called out 'hey Dick; you seriously going on with that case?'. The front of it was astounding, although Jeremy and I barely knew where to look.

A short time later the four of us boarded the plane and, as luck would have it, sat in adjacent seats. We there embraced traditional forms of recovery. Jeremy and I slept from the very moment we sat down; Curto and his junior had a few glasses of wine. Later, when we landed in Melbourne, the four of us walked off that plane together, and from there into the next 20 years of the rest of our lives.

I started to suffer some years after that. I said earlier that I didn't know it was happening – and I didn't. But I've had time to reflect; looking back on it, there were definite signs, if I'd known what to look for.

Until about 10 years ago I was a very keen fan of AFL football. My team was Carlton – the once great mighty Blues. I went to games and talked about it enthusiastically with family and friends. But at some point in about 2014 that all stopped. No games; no television; no talking; nothing. I couldn't put my finger on why.

But it didn't stop there –

- (a) I gave up reading for pleasure;
- (b) I wouldn't watch any movie I hadn't already seen;
- (c) I gave up alcohol;
- (d) I gave up Friday lunch with colleagues;
- (e) I wouldn't socialise with anyone I didn't like – towards the end, that was practically everyone I knew;

(f) and there was more; much more.

I lost my joy for life and, at the same time, turned my life into a desert of work. I worked to anticipate the brutal and sometimes unreasonable things that can happen in courtrooms. Whether that was productive or not; it caused very considerable suffering for me, and the people close to me.

I still remember when the first pandemic lockdown was announced. I thought to myself: this is great, now I can really get some work done. I should have realised then and there that I was on the brink of a crisis from which I was ultimately saved by a professional who was every bit as serious as me.

I was saved, but I'm not the same as before. Not all of that is for the worse. After all, I was able to give that speech. But it's hard to regrow life in a desert and I've had some mixed results. In truth, I've had to accept that I'm different now.

My change of job has helped me do that – but part of me will always miss my old job. Partly that's because I feel I was better at it. But it's complicated. What's the point in being good at something in which you harmed your family and nearly destroyed yourself? Often enough, when asked, I say I don't miss it at all.

For his part, Curto walked off that plane and into a future that was in some ways not so different to mine. At that point, he was already years ahead of me in facing fraught and difficult cases. He continued doing that with great success until 2019, when he announced his retirement after more than 40 years at the Bar.

For his retirement, Curto hosted a lunch to which he invited friends, juniors, other silks and

judges. Many of his old foes were there. He greeted everyone with equanimity and laughed at himself during the speeches. It was warm hearted and magnificent.

When I was preparing this speech I thought about the similarities and differences in our pathways and decided that I was going to say something about it. I texted Curto and we met up later the same day.

Curto and his wife Sally live in a stylish city apartment overlooking East Melbourne. Curto started by gesturing out the window to the MCG and lamenting Carlton's narrow loss there the previous weekend. His longstanding and continuing passion for the Blues was undimmed as he listed the players he said needed to 'lift'. I nodded, but in truth I recognised barely any of the names.

Eventually I told him why I was there, and he said he'd read my speech. He said: 'you should've called me'. I said I would have, if I'd realised that there was anything to call him about.

We then talked about tough moments in lots of cases – including our own, on opposing sides, many years ago in Tassie.

I asked him how he'd done it all for such a long time. He told me that he'd drawn strength from his family and friends. He said he loved them. From the photos surrounding him, it was plain that they loved him too.

As to work, he shrugged his shoulders and said that he'd always just tried to do his best. He

said that he knew that he wasn't perfect. Poignantly, he referenced the Serenity prayer.¹

A couple of hours later we stood together outside his building. I was grateful for his warmth, generosity and companionship and searched for a way to say it. I ended up saying, 'I've always loved you Dave'. Pedestrians scattered as he lunged across the footpath and threw his arms around me.

When we broke, we stood together in the cool sunshine of a beautiful winter afternoon. Curto looked unusually intense and I could tell he was contemplating something profound. Eventually, he gripped my shoulders, looked me directly in the eye, and said: 'Go Blues'.

So what, if anything, does any of this mean?

To me –

- (a) life at the Bar will always be marked by acute moments of triumph and loss – often in the same case, and even on the same day;
- (b) some or even most of that we can't do anything about;
- (c) in fact, that is part of the great beauty and enduring appeal of it all;
- (d) attempts to control it, or avoid it, or to pursue perfection, risk an uninhabitable desert in which you and perhaps others will perish;
- (e) part of the answer might be in seeking to accept that there are things we can't change, while retaining the bravery required for the job;
- (f) hopefully, in doing that, we become wise and so can continue to bring it, and take it, in the interests of our clients, and the system as a whole;

¹ God, grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.

- (g) in that, I have no doubt that we each have to find a way to harness the power of connection, and the love of those around us – including our opponents;
- (h) sometimes we can't do these things on our own – and if you suspect that you might need it, don't hesitate to seek treatment;
- (i) if and when we harness the power of real connection – just like for me and Curto contemplating life at the Bar, as well as something as unexplainable as our mutual football allegiance – love and beauty will find a way to enter and enrich your life, and, hopefully, never leave it.