Tony's speech was straightforward and even sycophantic. It consisted of praise for every aspect of the Attorney-General's term in office to date — specifically his legislation, his administration and his judicial appointments. Then Mary rose. Again she was about nine months pregnant and, but for the fact that it would be sexist to refer to her clothing, I would tell you that she was wearing a magnificent white maternity pantsuit. She began by attacking the Attorney-General's legislation and administration, particularly in the area of civil liberties. She then told us that she was coming to his appointments. The room was deathly silent. Most of his appointments were conservative members of the Bar and many were present. The unthinkable, criticism of recent appointments, appeared to be about to occur.

Mary then proceeded to inform the gathering that she had checked all his appointments in *Who's Who*. That check had revealed that his appointments all had a single common characteristic. It was not their religion, their politics or their schooling but it was something so apparent that one should be able to use it to predict future appointments. She paused and again the room was filled with breathless anticipation.

At this point, Justice Ray Reynolds of the NSW Supreme Court rose to his feet. 'Mr Chairman', he said loudly, 'I do not propose to listen to any more of this rubbish'. So speaking, he conspicuously walked out.

Mary paused. For perhaps the only time in her life she appeared dumbfounded. After about 30 seconds she said, 'After that, what can one do for an encore? I ask you to drink the health of the Attorney-General'. The speech was over; its secret unrevealed.

Needless to say, as soon as people started leaving their seats, a group of us approached Mary and interrogated her about the undisclosed characteristic. It was a completely innocent mild feminist comment and revealed Mary's impish sense of humour. In relation to every one of the appointments, *Who's Who* had identified the appointee's father but in no case was the mother identified. 'Presumably', she had been going to say, 'to be eligible for appointment to judicial office under this Attorney one needs to be motherless'.

It was a shame that on this one occasion, Mary allowed herself to be silenced. One can draw one's own conclusions about the merits or otherwise of the conduct of the other parties involved.

IN MEMORY OF DENYS NEEDHAM

JANE NEEDHAM[5]

The writing of this essay comes with mixed emotions, in no small way due to the variety of roles in which I could write it. I am my father's daughter, former Associate,

5. Jane Needham was admitted to the NSW Bar in 1990 after completing a BA in Linguistics and Mediaeval English at the University of New South Wales and her LLB (Hons) at UTS. She has taught law at UTS and currently practises in probate, equity and administrative law. She worked as her father's Associate for four years while studying law.

professional colleague and, now, biographer. This essay will, necessarily, involve some mixing of those roles.

The biographical details are easily ascertained. George Denys Needham was born in Brisbane on 7 April 1919, the youngest son of Canon John Stafford Needham, described on the birth certificate as 'Clerk in Holy Orders'. In a biographical note on the establishment of the Canon JS Needham Memorial Library, his father was described as 'an outstanding preacher with a single-hearted enthusiasm for the cause he espoused and an abundant sense of humour. He was gifted with administrative ability of the highest order'. It is tempting to think that those qualities, although in a rather more restrained way, were passed from the father to the son. He grew up in Westmead and moved to Carlingford, eventually spending the last 23 years of his life in Dural. Having lived most of his life in the western suburbs was so unusual for a judge that he was included in a local Hall of Fame.

He attended Canberra Grammar and The Kings School, and obtained a BA at Sydney University in 1942, and LLB with first class honours in 1949, having commenced his studies while waiting to be returned from Balikpappan at the end of the Second World War. He was a gunner in the AIF and saw active service in New Guinea and Borneo. He, unusually, reverted to dodgy tactics to enlist; having notoriously poor eyesight, he managed to memorise the eyesight test by the third attempt and passed. During his service, particularly in New Guinea, he often had cause to regret this descent into infamy. When, at a rugby match after a minute's silence was observed to mark the 50th anniversary of the end of the Second World War, I asked him what he had been doing 50 years ago, he replied: 'I was considering all the women I could have asked to marry me before the war, since married men got priority in being shipped home'.

On going to the Bar, he lectured in law and there met my mother, Anne Cunningham, then a law student (and later a solicitor). In his swearing-in speech, he made reference to his mentors of his early years, being John Holmes, A B Kerrigan (his master) and Geoffrey Stuckey, the two last-mentioned being colleagues in the old Chalfont Chambers. From the first two he gained his love of constitutional law and equity, the two fields in which he made his professional name. He assisted Stuckey in the preparation of the annotated edition of the Conveyancing Act, a more modern edition of which, I can say with feeling, is sadly missed. He said in his swearing-in speech:

> The publishers had told [Stuckey] that he could have an assistant who could be offered £100. This appeared to be an enormous sum for such a trifling task. Three years later I became entitled to payment ... It was one of the strokes of good fortune in my career that the appearance of the book mistakenly led to the assumption in the right quarters that the learning encased within those covers was attributable not only to Stuckey but also to me.

He was, of course, being far too modest. It is fair to say that a decision of Needham J is usually taken as being persuasive. I have had the interesting experience from time to time of arguing that a decision of Needham J is correct; or, more interestingly still, that it is not. Luckily for family honour, the former is far easier to argue and far more often upheld.

When Wentworth Chambers opened for business, he was one of the founding members, having chambers on the 12th floor. He stayed there until his elevation to the Bench in 1974. I am reminded when I visit that building today that the black-and-white tiled entrance, and the terrifying view down the lightwell, are some of my earliest memories. The visits of my father's five children must have been, I now realise, regarded with terror by both his fellow members of chambers and of his staff, but they never gave any hint to us at the time. Other members of those chambers at that time remember the regular Friday night drinks, which I gather were rather more lively occasions than our own trips to chambers.

He took silk in 1967 and his practice in constitutional law flourished, with appearances in the Privy Council and before the High Court. He had a practice of naming his cars after cases which enabled him to buy them; it was only when I was studying Constitutional Law at university that I realised that 'Hughie', a long-gone Holden, was a by-product of *Hughes v Vale* (1954) 93 CLR 1.

He served the Bar on its Council for many years, and was a Vice-President and President (in 1974). He was always reticent about his presidency, due to its short duration, and thus resisted the charms of David Bennett QC when President, who wished to have photographs in the boardroom of all former presidents. As Bennett QC mentioned in the eulogy at the memorial service, he and I were reduced to subterfuge in having a family photograph photocopied, and thus my father appears on the boardroom wall in evening dress, smiling happily, in relaxed contrast to the more formal portraits of the other presidents.[6]

As Vice-President of the Bar, in 1972, he gave a speech at the farewell of the Chief Judge in Equity, Mr Justice McLelland, and praised his Honour in words which could equally have been prophetic for his own time on the Bench:

> The attributes which had built for your Honour such a reputation at the Bar were evident in the conduct of the Court. Pomposity, sham, humbug became complete outsiders. Some people are impatient with such pretences — your Honour was just not accessible to them. In time those who practised in your Honour's Court came to know that what was to be debated was the heart of the matter. Despite the speed with which your Honour's acumen and legal instinct laid bare the real problem in a case, I have never known any occasion in which those of slower perception were treated as inferiors ... The law was applied with a unique sense of fairness and justice, recognising that, if the law was entirely intransigent, it had to be accepted.

He also worked actively with the New South Wales Council of Law Reporting, and brought his careful and scrupulous approach to that endeavour. He had a number of pet peeves, such as the decline in use of the honorific 'Mr' in judicial titles. In 1977 he wrote to the editor of the New South Wales Law Reports in typical acerbic style to complain about the use of the phrase 'as he then was', and in particular about the insertion of those words into a judgment of his (*Lloyd v NSW Mutual Real Estate Fund Ltd* (1977) 1 NSWLR 33 at 37). He wrote:

6. See the photograph of Needham QC in the illustrations to this book.

> ... I am led to assume that (the insertion of 'as he then was') accords with editorial policy. Is it so? If so, I pray for exemption from the necessity of suffering this excrescence. I try to write good coherent English without stylistic defects.
>
> My objections to the use of this phrase are many. First, it is meaningless ... Secondly, it is presumptuous. Everybody reading a New South Wales Law Report knows that Dixon J became Dixon CJ ... Thirdly, it is irrelevant ...
>
> I hope you will agree that the addition of 'as he then was' suffers from all these failings, but even if you disagree, could you recognise me as a conscientious objector?

On his elevation to the Bench — which was met by a torrent of letters of congratulation, pleasure, and surprise that it took so long — he immediately settled in to his chambers in Macquarie Street and his new court, now the upper level of the Hyde Park Barracks restaurant. He had chambers in the present Supreme Court building on Level 7, and his idiosyncratic morning teas of cheese and biscuits in his room overlooking the park are recalled fondly by many counsel.

He took an interest in law reform. In particular, during his eight years of conducting the company list, he formed the view that:

> the time has come, in my opinion, to abolish proprietary companies; that is, I think it is time that the considerable benefits of limited liability should be reserved for those enterprises which, by virtue of their size and public support, need those benefits in order to raise sufficient capital ... To allow single traders, tax dodgers and commercial raiders those benefits has, I think, been clearly shown to be against the public interest (letter to Chairman, Law Reform Commission, 31 August 1984).

His personal charm engendered a loyalty in his staff and in those who came in daily contact with him. I took over as his Associate in 1986 due to the retirement of his former Associate, formerly his secretary, who would no doubt have been with him until the bitter end were it not for her health. I worked with him until his formal retirement in 1989, when he stayed on as an acting judge. After his various stints as acting judge ended, he maintained his connection with the law by conducting arbitrations and mediations, and was an honorary member of the 13th Floor, St James' Hall. He took advantage of this status by working his charm on my floor staff, and his appearance in chambers was met by a flurry of the clerk and the receptionist vying for the opportunity to make him a cup of tea.

He did not court, and indeed actively avoided, the glare of publicity. He agreed, at the request of the Chief Justice, to talk to the *Sydney Morning Herald* for a series on 'Who are the Judges?' in 1984, but did so 'off the record' and was most annoyed — as demonstrated by a letter of remonstrance — that he was quoted, even anonymously, when the article appeared. He resisted the siren call of publications such as *Debrett's Handbook of Australia* and *Who's Who,* and in his personal correspondence I have found numerous letters to the effect that (after correcting the supplicant for having omitted the 'Mr' in his title) 'I have given no permission for my name to appear in your publication and I have no desire that it do so. Kindly remove the reference'.

He suffered from ill-health on occasions, but did not allow himself the luxury of time off when it would have been acceptable or even medically advisable. He was acutely aware of the time and cost devoted to legal proceedings, and the effect on

litigants were he to be unavailable at short notice. A spectacular instance of this was when, hearing an arbitration after his retirement, he cut his leg at lunchtime on a deceptively sharp glass coffee table. He prevailed upon my clerk to patch his leg up with a teatowel and masking tape, and continued the hearing in the afternoon, on the basis that 'the plaintiffs came all the way from Wagga for this!' and, when taken to the doctor in the evening, had 16 stitches.

Domestically, he was devoted to his wife and five children, in his quiet, undemonstrative way. He loved the family home at Dural and hated to be away from it and from his wife; many were the holidays when he would grump around saying, 'I'd rather be at home'. When away on his own, he would often come home early. The departure of two of his sons to live in California and North Queensland, and that of his daughter Emma to far-western New South Wales was difficult for him, and he loved nothing better than the rare occasions when the entire family was at home for Christmas.

He enjoyed cricket and rugby, both of which he played well at school and university, and had an abiding love of classical music, in particular of Beethoven. He attended Musica Viva concerts regularly since being introduced to them by my mother in 1954, and his collection of LPs (and the record player) now grace my study at home. He attended, with varying degrees of satisfaction, many matches played by the Parramatta Rugby Union Club. His devotion to the club led to him prevailing upon the Mayor of Parramatta to give the team a ticker-tape parade on winning the Grand Final one year, when he read that such an honour had been proposed for the Parramatta Rugby League team on reaching the grand finals (the Two Blues won, the Eels didn't, a fact which gave him no little degree of satisfaction).

He enjoyed watching the careers of his children as they chose, more imaginatively than I, very different careers from his own — the teaching of mathematics (Sam), carpentry and cattle-raising (William), languages and travel (Matthew) and rural pursuits (Emma). While his sons were at Kings and afterwards he involved himself in the life of the school, and took great pride in coaching a cricket team. He attended sporting functions and musical productions (in which all of his sons had leading roles) with great interest. Rugby was his great love — it was of great relief to our family that he died a day or so *before* the controversial changes to the Wallaby jersey, and before the exponential increase in professionalism in rugby which he would have so deplored.

He was diagnosed with lung cancer in April 1996, and died of its effects in January 1997. A memorial service was held at St James' Church in February 1997, and the sentiments there expressed, and the number of attendants, was a fitting tribute to the esteem in which he was held.

My father's legacy to justice in New South Wales lies not only in his judgments, with his intelligent approach to and grasp of the law and his 'good coherent English', but also in his influence on a new generation of judges, as is demonstrated by the words of Palmer J on his recent swearing-in to the Bench of the Supreme Court:

> Two weeks after I was admitted to the Bar I was briefed to appear in a fully contested trial in the Supreme Court. The trial judge was the late Mr Justice Needham. Trembling with nervous apprehension, I went to introduce myself to him in chambers just before

the trial commenced, as the custom was in those days. I said, 'I hope you'll make some allowances for me. This is my first trial'. Mr Justice Needham replied with a smile, 'I hope you'll make some allowances for me too. This is my first trial — I was sworn in yesterday'.

That was typical of the charm and courtesy of one of the greatest judges to grace this or any other bench in Australia. Denys Needham was a consummate Equity lawyer whose judgments command universal respect to this day. But just as importantly, he inspired in all who came into his court, both lawyers and litigants, a secure confidence that justice had been done; every argument had been listened to with a fair and open mind, an erudite intelligence had been brought to bear on the issues and all who had participated had been treated with courtesy and respect.

'MI LOYA BILONG KWEEN':[7] THE NSW BAR AND THE 1972 TRIAL OF TOVARULA AND ORS[8]

WENDY ROBINSON[9]

From February to June of 1972, long before the land rights of indigenous communities became the subject of daily political concern and legislation in Australia, some of the more visceral issues raised by such causes were being explored by an unlikely miscellany of Australian lawyers on both sides of the record in a murder trial in Rabaul, a relatively remote port of the then colonial territory of Papua and New Guinea.

A rare political assassination of a prominent member of the Australian colonial administration, which set the criminal trial process in train, was to have lasting impact, not only for the local political landscape, but also for the flock of lawyers, many of whom are or have been members of the NSW Bar. For those participants on the defence side of the record, it was a defining experience to accept briefs in a trial estimated to take three weeks but which in fact continued for five months in unusual conditions in the tropical protectorate. Certainly it was one which has left indelible impressions and a binding camaraderie. As the Queensland silk who prosecuted the trial was later to become Chief Justice of Australia at a time when land rights had moved to the top of the political and legal agenda in Australia, it must equally have been instructive.

For the populace of PNG both the psychic shock of the homicide, and the subsequent trial of 14 Tolai men, which ran from 2 February 1972 to 20 June 1972, and which effectively became a de facto inquiry into the particular land rights context of the death, combined to sound the death knell of the colonial system of expatriate governance and hastened national independence.

---

7. Lusher QC addressing the welcoming committee on the Duke of York Islands.
8. *R v William Taupa To Varula* [1973] PNGLR 140.
9. Queen's Counsel. The author was an innocent bystander who first read of these events in the *Sydney Morning Herald* in 1972. She extends grateful thanks to Michael Adams, Sean Flood, Christine Griffin, John Hamilton and Paul Stein.