CHAPTER I

SIGNING THE WARRANT

1997

My dilemma has lain not in knowing what to say but where to begin saying it. If I follow the traditional path then this autobiography would start at the beginning. I would take you swiftly through my boyhood years pausing briefly to regale you with stories of a young man who fell deeply in love with his high school sweetheart and who set about moving mountains as proof of that love. Yet this would only lead to a tantalisingly voyeuristic journey as I indulged the innocence of my new-found passions with the sensualness that flowed from the girl I would one day marry.

No… after much thought I decided to start many years from there at a time when events in life had become dictated by a different form of intensity. A time when the lives of many hung precariously through the damaging effects of injustice.

However, it is not my wish to deny you a glimpse of those extended hours after school as I tarried with my bride-to-be in the shadowy recesses of the station shelter oblivious to the trains pulling in and leaving, each destined to depart without the personage so anxiously awaited by her family. Nor would I deny you even a hint of the moments we stole as we took risks that only the blindness of love could cause. I will get to all of this soon enough.

For the moment, the author is just three months beyond his 50th birthday.

I had been summonsed to appear before Mr Justice Spender, Judge of the Federal Court of Australia. The time of appearance had been set down for the morning of 26 February 1997 at 10:15. I arrived at court early in the presence of a man who would go on to prove his friendship repeatedly as the years passed. He was a powerfully built ex-detective senior sergeant from Queensland police who had been forced into early retirement following a severe car accident. Before entering the ranks of police he had gained mechanical engineering qualifications which made him the right man for a job which few could carry out. It was our committee's recognition of these dual competencies and his extreme intellect that caused us to engage his services.

Terry and I entered Court 1 and walked down a crimson carpeted incline which lead to the court's Bar table. It was at this table that I had spent so many hours in defence of innocent Australians. Nothing had changed. The opulence of the court was just as

sobering. As we sat waiting for the judge, Peter Toy of the Australian Government Solicitor (AGS) joined us some distance to my right. He was the government lawyer appointed by the Australian Competition and Consumer Commission (ACCC) to instruct Mr Phil Hack who had been retained by the AGS as counsel. Their joint role had been to collude with a patent attorney and mount a civil prosecution against my wife and myself, our companies, directors, franchisees and staff.

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Terry and I had become engrossed in our own thoughts as the minutes passed. There was no way that we would be discussing matters of any importance within earshot of others who had attended court that day. Of particular concern was the Assistant Director of the ACCC, Terrence James Guthrie, who had taken up his favourite ringside seat along with his junior sidekick whose unfortunate demeanour indicated to all that his character was rapidly being fashioned into that of his much older mentor.

Guthrie possessed all of the outward characteristics of an overly demonstrative primate. Each word that was uttered by him, and each action taken, threw him further and further from the imposing title of Assistant Director. But then I had learned long ago that such lofty titles, held by many within government agencies, belied their real job descriptions. Guthrie was no more than an overzealous, unthinking henchman who acted ruthlessly under the sophisticated gestures and almost undetected eye contact of his master, the Regional Director of the ACCC, Mr Alan Ducret.

As I sat there with former Det Snr Sgt Terry Rice at my side, my thoughts were interrupted by a heavy Dutch accent which hung like a shroud even over the violated lives of those absent. It was the villain of my story, Willem Van Der Horst. He was a former employee of mine who had convinced staff and myself that he was the inventor of a unique mechanical carparking system. Long after being sacked, he and his lawyer who had gone into business with him, filed a false complaint with the Trade Practices Commission (TPC – became ACCC in November 1995) charging that we were selling worldwide franchises based on his patents. No charge could have been more remote from the facts. Yet here I was waiting for a judge to bring down his judgment following the ordeal of a trial many months earlier.

We were anxious to restart our business activities after almost three years of being brought to a halt by the ACCC pending the outcome of that trial. To add to our pain, State police had still not brought fraud charges against *our* Mr Van Der Horst; although, they were almost there.

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As the judge's associate began handing out the Reasons for Judgment I felt strangely uneasy and it wasn't nervousness. It was a feeling of foreboding, as if something was about to alter the direction of my life and not for the immediate better. I couldn't help but reflect on some of the stories I had heard about the judge. His career was seemingly shrouded in dishonesty and intrigue, but could the severity of the accusations be true of a federal court judge? His conduct had pervaded the conversations of legal practitioners. One mention of the name Justice Spender was enough to involve myself in a discourse well worth listening to. And I wanted to listen. I had been through a shocking ordeal during trial only ten months earlier.

There was something about Spender J's overall demeanour that was out of kilter with my impressions of federal court judges. And as National President of the National Corruption Tribunal I had, over many years, investigated numerous complaints against judges within all jurisdictions yet no single judge drew as much criticism nor fitted the almost caricature profile of *this* judge.

I'll take a brief moment to share just one of the stories which will serve to typify the cavalier arrogance of Spender J. It's a matter which occurred in the early 1980s. He was a prominent barrister acting for the Crown Solicitors Office (now ODPP) as Crown prosecutor in what was known as the Russell Island conspiracy case. This matter involved sixteen defendants at the commencement of committal proceedings during the course of which seven were freed on the grounds that a prima facie case had not been established.

Needless to say that those released were lawyers and persons of political and social standing who had been involved in profiteering from Russell Island land sales; thirty percent of which land, I will add, was tidal. That's a polite word for 'subject to flooding' even at low tide. A whole range of misleading statements had been employed to attract buyers; many buying the land 'sight unseen'. And many of those who did visit the properties (estates) were shown land which was not the land they were purchasing – anything to get buyers on contract.

The scams went on for a decade much to the eventual delight of Jeff Spender. *His* method of unlawful profiteering would end up making the fraudulent efforts of the accused look ineffectual and puerile. None of the property developers, lawyers, surveyors, sales staff, and high profile public servants he was prosecuting could possibly have matched his own dishonesty. He took the act of 'cost building' to its highest possible plane. That is, instead of taking the shortest most feasible and inexpensive route, he took the longest, most difficult and financially draining, for the State. He then seized on every possible argument and point of law to zigzag his conspiracy case into the annals of Australian criminal case history. It ran for over twenty months. In all, a record 316 sitting (court) days and millions of taxpayers' dollars

of which a healthy slice went into the pocket of one, Jeff Spender. I'll take just a brief moment to qualify my remarks.

It was argued by defence counsel at the outset of this trial that if the charge of conspiracy against the remaining nine defendants was dropped and fresh charges of 'false pretences' were laid against them, then the individual trials would have had a combined life expectancy of no more than three months. And the reason was straight forward. The conspiracy charge embroiled the conduct of all nine defendants variously over a period of ten years. Some of them didn't even know each other, particularly in the instances where some were alleged to have acted unlawfully in the late 1960s and others throughout the 1970s. Linking them all to a conspiracy, irrespective of their individual acts being similar or the same, is an almost impossible task.

So why did the Crown prosecutor, Jeffrey Ernest John Spender, become notoriously synonymous with the Russell Island conspiracy case?.. Because, by refusing to alter the charges to false pretences – and he had all the authority to do so – he was able to rapaciously milk the cow for the duration of that marathon twenty months, not a paltry three. And milk it he did. He was not a government employee working for the Crown Solicitors Office as an in-house prosecutor. He had been commissioned by the State government from the private Bar. Or put another way, he was in private practice as a barrister and was paid generously for his services in the role of Crown prosecutor.

Many years later I had occasion to speak with one of the defence counsel (barrister), Jim Barbeler, who told me that "Jeff Spender was passionately in favour of the conspiracy charge." And why wouldn't he be! But then Jim did admit that Jeff's obstinacy had a rewarding spin-off for himself. The length of the trial also prospered him as one of the defence counsel and as a result he was able to renovate his home. At the time of speaking to Jim he still referred to one section of his home as the "Russell Island wing".

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I was holding my copy of the Reasons for Judgment when Spender J began talking, and as he did I began flicking through the twenty-five pages of his judgment pausing only in an attempt to come to terms with comments such as:

> "Mr Van der Horst impressed me as a decent and honest witness who genuinely felt deeply wronged…"

This "decent and honest witness" had lied thirty-one times in a witness box. And then there was:

> "The claim [by Mr Eaton] that of the $145,000 franchisee fee, $125,000 would be for 'tax deductible expenses' is untrue."

The Taxation Office could have confirmed all that I said under oath. It would have taken one phone call to prove that pre-paid expenditure was fully tax deductible. Where was this fool coming from? I kept flicking back and forth, again stopping at:

> "I have no doubt that the marketing programme of the franchises is a scam."

How was I going to explain this pernicious comment to many of the fifty-two franchisees, investors and key staff who had helped develop our marketing program and who knew it wasn't a scam?

And finally:

> "Mr Eaton, on the other hand, in my assessment, is a glib grandiloquent rogue."

At this point I looked up at the judge. He quickly directed his eyes to his former tag team partner, Phil Hack. I returned to sifting through more of his bile. Could it be possible that he believed the **false identity** I had been given by Corporate Affairs in the early 1970s? I thought I had straightened that matter out in a Brisbane District Court in 1989!

Or had he been offended so badly during trial? Had his inability to get his own way as he tried time and time again to overturn facts – facts he didn't want to hear – provided by expert witnesses incense him so much that he was now stamping his feet? Could it be possible that a federal court judge could spit the dummy? I was reading a nightmare. My mind was racing as to why the judge had taken the tack he did. I knew there was a possibility that he simply didn't understand the matter during trial – it happens.

There is a great deal asked of a sole judge in coming to terms with the nuances of varying industries which change from case to case. I recall one instance alone when Peter Applegarth, a Brisbane barrister, (now Justice Applegarth of the Supreme Court of Queensland), was lamenting the outcome of a federal court trial during which he had defended the respondents. These clients were proprietors of a business which had been in their family for some sixty years. They had employed approximately one hundred staff and suddenly found themselves curiously injuncted (frozen) from trading pending the outcome of a trial which had been instigated by a major competitor.

The trial judge was Pincus J; known as Bill Pincus in the right circles. The trial went badly for the respondents effectively wiping them out. The result was even upsetting for the barrister. In fact, I recall him telling me: "It should have been a lay down mazier."

In non card-playing language – it should have been a convincing win for Peter's clients. Bewildered – in the case of his clients, financially ruined – our barrister went about his business until fate took a hand some time later at a prestigious function. It was on that evening that bewilderment was put to rest. By chance he had begun to rub shoulders with the very same judge who had caused such irreparable damage. As they exchanged pleasantries, Pincus J, in a moment of reflection – some would say guilt – turned to Peter, and as if in a confessional with a scotch in one hand and a canapé in the other, admitted in muted tones: **"You know, Peter... I never did understand that matter."**

I doubt that this judge even wrote to the respondents to apologise for destroying a business which had been built over three generations and upon which the livelihoods of so many had been dependant, nor wrote that he wilfully destroyed them by ruling in favour of a major corporation simply because he didn't have a bloody clue.

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As I walked from court, I became aware of the presence of a special services security guard sitting at the back. His eyes didn't leave me until the lift (elevator) doors closed. I mused over the necessity for Neville to block access to the judge and now the presence of heavily armed security. I knew that my unwarranted reputation in central Europe had filtered through to Justice Spender, but I couldn't help feeling that the judge was being over protective of himself. Melodramatic would be more to the point. But then, our judge had already expressed his sense of drama during trial. At times he would snort or whistle and his preparedness to bark questions and statements from the Bench often startled the more genteel.

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The *Oxford Advanced Learner's Encyclopedic Dictionary* defines the word, "grandiloquent", as using or being a pompous style of speech, full of words which ordinary people do not understand: *a grandiloquent speaker, speech.*

Having never heard or read this word before, I was naturally anxious to get hold of a dictionary given that this word had been used by a judge of the Federal Court of Australia in reference to myself. On reading, I was compelled to ask myself a question which I will now put to you. "Does this mean that I am an 'ordinary' person and the judge 'grandiloquent'?" Certainly my friends and business associates fell squarely into

the category of ordinary. Furthermore, over the past dozen years or so, I have spoken to scores of people who have never read or heard, let alone understood, the word, "grandiloquent".

And so, on the off-chance that **we** are not the only ordinary people and further that there are those who wish to be grandiloquent, I decided to prepare a home-grown *Dictionary For The Non-Grandiloquent or Aspirant* to be included at the back of this book, sandwiched – but less than unnoticed – between the body proper of this text and that section devoted solely to Appendixes.

I mean, never again did I want to run the risk of being subjected to such castigation, nor again be forced to seek refuge under the umbrella of impunity granted by discerning ordinary people. It's all right; I would have defined "castigation", "impunity", and "umbrella" in this Dictionary... 'umbly trusting that it would 'ave provided, at worst, a modicum of assistance for the needy who obviously neither practise nor apply the law. 'elping them to stumble through from cover to cover with but a basic understanding of the written words within would 'ave meant my work is done.

Yet, although the use of humour as a coping mechanism suits myself, it may have served to detract from the gravity of circumstances which eventually claimed innocent lives. And so, I decided not to include a *Dictionary For The Non-Grandiloquent or Aspirant* in this book, but to leave that part of my destiny, for the moment, unfulfilled.

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And here I was, February 1997, walking from a federal court with a document in my hand that simply spat on years of dedicated work on the part of fifty-two families who had become my life and mine theirs. The handsome prince of justice on his white steed was looking more and more like Quasimodo on his ass, and if nothing else, Themis was certainly not intact.

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THEMIS
(The Greek goddess of justice)

Carrying her infallible scales to weigh the evidence and keeping her sword accessible when required to dispense justice swiftly against all found wanting, she is imposing as you enter the courtyard of the Brisbane Supreme and District Courts; a bronze replica of the original Themis as she still stands on the Greek Island of Chios.

There are no books of law or knowledge to demonstrate that she is supremely erudite and no cornucopia beneath her right foot signifying God knows what; although the internet provides its theories. She is not blindfolded to convince us of her impartiality and nor does she carry a torch to illuminate the evidence; or is it to help her keep a wary eye on the serpent entwined around her left foot as depicted in some versions?

No… Themis, as she originally was, stands only in the full majesty and purity of justice, the embodiment of wisdom and good counsel.

The drive back to the office seemed to be taking forever. There was an urgency to accelerate our efforts in bringing fraud charges against VDH. The thought of allowing him to get away with the damage he had created ate at me like a cancer; and *I* was in the fortunate position where I had some control. The pain being felt by others in the group had reached a point where illness had set in and the only hope of immediate respite had rested on a positive outcome from Spender J.

The thought of convening a meeting with investors, franchisees and staff for the purpose of giving them the news now enshrined in the judge's Reasons for Judgment was less than palatable to me. I knew how frail some of us were after three years of seeing our work and finances being systematically destroyed. For them it had been a waiting game; one of hoping and participating at a non-legal level. None of us had legal training, just the knowledge acquired over many years of being in business. However, nothing could have prepared us for this.

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