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THE SUPREME COURT OF

WESTERN AUSTRALIA

FAREWELL TO THE HONOURABLE CHIEF
JUSTICE MARTIN

FULL BENCH

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 20 JULY 2018, AT 4.36 PM

LE MIERE J: The court sits this afternoon to celebrate the judicial career of the 13th Chief Justice of Western Australia, the Honourable Wayne Martin AC, upon the occasion of his retirement from the bench, which will take effect from midnight next Friday 27 July 2018. On behalf of the court, I acknowledge the traditional owners of the lands on which we meet, the Whadjuk people who form part of the great Noongar clan of South Western Australia. We pay our respect to their elders and acknowledge their continuing stewardship of these lands.

I welcome his Honour's family to share this occasion. I welcome his Honour's wife Margie, his Honour's son Nick and his wife Anna, his Honour's daughter Emily and granddaughter Isabel, his Honour's son Henry and daughter Lucy. I am particularly pleased to welcome his Honour's daughter's Anna. At his Honour's welcome on 1 May 2006, we were joined by his wife Margie and four of his Honour's five children.

At the time, it was reported by Michael Murray J that young Anna, who was then aged a tender two years, was "deemed insufficiently reliable and was being held incommunicado elsewhere until morning tea". It's good to see that in the intervening years, Anna is now considered sufficiently reliable to be allowed to attend this important occasion. I also welcome his Honour's sister, Dr Cherry Martin, his Honour's parents-in-law, Joe and Gemma O'Halloran and sister-in-law Cecilia.

I am also pleased to welcome the Governor of Western Australia, the Honourable Kim Beazley AC and his wife, Ms Susie Annus; the Honourable Malcolm McCusker AC, former Governor of Western Australia; the Honourable Robert French AC, former Chief Justice of Australia; the Honourable Acting Chief Justice Andrew Greenwood of the Federal Court of Australia; the Honourable Justices Michael Barker, Katrina Banks-Smith and Craig Colvin of the Federal Court of Australia; the Honourable Stephen Thackeray, Chief Judge of the Family Court of Western Australia; his Honour Judge Kevin Sleight, Chief Judge Kevin Sleight of the District Court of Western Australia; her Honour Judge Julie Wager, President of the Children's Court of Western Australia; his Honour Chief Magistrate Steven Heath; Mr Peter Quinlan SC, Solicitor General of Western Australia; Ms Amanda Forrester SC, Director of Public Prosecutions for Western Australia; Mr Chris Dawson, Commissioner of Police; and other distinguished guests, including many members of this and other courts. I also welcome those who will address the court this

afternoon: the Honourable John Quigley MLA, Attorney General of Western Australia; Ms Hayley Cormann, President of the Law Society of Western Australia; and Mr Matthew Howard SC, President of the Western Australian Bar Association.

When his Honour was appointed to this court, he came at the peak of his legal powers and with a formidable legal reputation. He was a partner at age 32, joined the Bar at age 36 and was appointed Queen's Counsel aged 41. He had served as President of the Law Society of Western Australia and the WA Bar Association, Chairman of the Law Reform Commission of Western Australia, Director of the Law Counsel of Australia and counsel assisting the HIH Royal Commission.

His Honour came to the court with a reforming zeal to achieve prompt, efficient and affordable resolution of disputes in a modern environment and to improve access to justice in this State. His innovations quickly brought changes to the court and early on, members of the legal profession referred to the court as Wayne's World.

The Chief Justice has overseen many significant developments in the Supreme Court during his tenure, including the commercial and managed cases list or docket case management by judges. This development alone has dramatically changed the way the court deals with civil litigation. It has expedited cases, reduced costs and simplified matters. These changes have had a significant and positive impact on people's lives.

His Honour's tenure has seen the modernising of significant rules of the Supreme Court and promoted the use of mediation in both civil and criminal cases. Judgment days have been reduced. Judgment delays have been reduced. His Honour led the charge to discontinue the wearing of wigs and to extend the use of modern black judicial robes to all areas of the court's work. This initiative reflected the modern, forward-looking approach of our Chief Justice from the moment he entered his new role.

Under his direction, criminal case management was introduced through the case of the Stirling Gardens Magistrates Court, and sentencing remarks were published on the court's website to allow greater transparency of sentencing and to help improve the public's understanding of the factors that go into sentencing an offender. His Honour oversaw the Supreme Court General Division move into this modern court building with state-of-the-art

technology. It was a goal long sought after by his predecessor, the Honourable David Malcolm AC.

Those of us who have enjoyed the benefits of the move know that the hearing room facilities here in the David Malcolm Justice Centre are as good as any in the country. In a move towards a paperless court, the Chief Justice has overseen the introduction of electronic filing of all documents in the Supreme Court's civil jurisdiction. And in a reflection of Chief Justice Martin's forward-thinking approach, the court this week livestreamed a trial for the first time in the court's history.

The Chief Justice said that the case, which arises from the bushfires at Mount Helena, Parkerville and Stoneville in January 2014 was selected to be the first trial to be streamed, as it involves multiple plaintiffs, many of whom live in the Hills region, and by streaming the case, those individuals and other interested parties will be able to view the trial without having to attend court in Perth.

The Chief Justice bears a heavy responsibility. Wayne Martin accepted that responsibility from the moment he took office. He has given a total commitment to the role, so much time and so much of himself, for more than 12 years. It should be noted with grateful thanks that in doing so, it was a burden that also fell upon his family, particularly on his wife Margie, as his work has taken him away from home on many occasions and demanded so much of his energy. A person does not successfully carry out the role of Chief Justice alone.

The result has been that the people of Western Australia have grown to know, like and respect a man who is our senior judicial officer. His down to earth approach and his approachability has meant that he has genuinely engaged with the community. He may be the top judge, but he has striven to stay in touch with the community the court serves. At the court's regular open days, which attract thousands of people, the Chief Justice would literally be found at the front door of the courthouse greeting members of the public as they entered the building. It was not what people expected, and they loved it.

In addition, his preparedness to go on live radio, respond to media promptly and directly, and to speak at a huge variety of forums has meant that the judiciary have had a clear and respected voice in the community. Given the level of criticism that so often befalls the judiciary

these days, his open but forthright defence of the justice system in this State and of the judiciary has been vitally important.

The Chief Justice has brought his standing to raising awareness of important public issues. One that has been close to his heart is that of the problems faced by Aboriginal people, both in relation to the justice system and in our community in general. He has often spoken of the gross overrepresentation of Aboriginal people in the criminal justice system. In doing so, he has played an important role in ensuring this issue cannot be ignored.

At times, I am sure there are some who would have hoped he might remain quiet on the topic. But he has not been afraid to speak out, nor has he been afraid to raise other important topics regarding our justice system, even to question whether our justice system could better serve our community by having a different approach. He has been a true leader in our State. And if his workload wasn't already under strain, his Honour has been an active patron or board member of more than 20 not-for-profit organisations.

The Chief Justice has been a colleague and friend at the Supreme Court, both to his judicial colleagues and to the court staff, for whom he has always shown the greatest respect. He is well known for his good humour and his enjoyment of social occasions, both at the court and elsewhere. His easy and formal manner led some court staff in the early days to refer to him as "Call me Wayne".

He is also renowned for his hard work and judicial rigour within the courtroom, sitting in both the general division and the court of appeal. Early in his judicial career, word filtered down to the court that some practitioners were not keen to appear at the court if they were to face the new Chief Justice. A new word entered the lexicon: to be "Wayned". There was no room to hide inside his courtroom if you were not completely prepared. Those in that category feared their impending fate.

Outside of the courtroom, the Chief Justice has also borne the overwhelming task of administration that comes with this role. It is a part of the job that is not well recognised, but it is as unrelenting as the task of judgment writing. One key initiative under his leadership in this field has been modernising the management structures relating to all areas of the Supreme Court's work, which has seen significant improvements across the board.

It has to be said, however, that on occasion outside of the courtroom, our Chief Justice has lacked the impartiality and fairness that he shows inside the courtroom. I refer to his devotion to the West Coast Eagles and how he sometimes expresses that support. Whenever his team is doing well and their Port cousins are less successful, tact and discretion can fly out the window.

I'm sure that at least one judicial colleague was not unhappy when the general division moved into this building, leaving the court of appeal judges in the 1903 building. It meant the Chief Justice couldn't bound down the corridor first thing on a Monday morning to share the weekend's footy score with Mazza J. We all have our flaws.

And so it is now time for Chief Justice Wayne Martin to hand over the baton and to move onto the next stage of his brilliant career. It remains for me to express on behalf of the court our gratitude to your Honour for your outstanding contribution to the administration of justice in this State, and to wish your Honour every best wish in your future endeavours. Mr Attorney.

QUIGLEY, MR: May it please the court, it is with great pleasure that I appear on behalf of the Government of Western Australia on this important occasion to acknowledge and celebrate your Honour's enormous contribution to the administration of justice in this State as the Chief Justice of Western Australia.

I too acknowledge the traditional owners of these lands, the Whadjuk people of the Noongar nation, upon whose land we meet this afternoon, and pay my respects to their elders past, present and future. I also acknowledge the Governor, the Honourable Kim Beazley AC, and his wife Ms Susie Annus, and the Honour Robert French AC, former Chief Justice of Australia and his wife, Ms Valerie French.

I particularly acknowledge and welcome your Honour's family here present today, your wife Margie and your children, your Honour's daughter Emily and granddaughter Isabel, your son Nick and his wife Anna, your son Henry and daughters Lucy and Anna. I also welcome the many other members of your Honour's friends and family, including your sister Dr Cherry Martin, parents-in-law, Mr and Mrs Joe and Gemma O'Halloran and sister-in-law Cecilia Calder.

Your Honour graduated from the University of Western Australia in 1973 with a Bachelor of Laws with First Class Honours, and it was prior to that in 1970 that I first met

your Honour at the Law School of the University of Western Australia in the infamous law school common room. There was a wonderful symmetry that, having used your Honour's notes to assist me in many units and examinations whilst I was at law school, when I became Western Australia's 39th Attorney General last year, your Honour was Western Australia's 13th Chief Justice. It was sort of like being back at law school in a way, because I was able to once again crib off your Honour's notes as to law reform and benefit from your Honour's wise counsel.

At law school in those days, your Honour was the undisputed intellectual leader of our class. In addition, with your Honour's sharp, if somewhat ribald sense of humour and grounded sense of humanity, your Honour was also a natural leader within the law school community, a role which set the pattern for the rest of your life and career.

Following your Honour's completion of a Master of Laws degree at the University of London in 1975, your Honour was admitted to practice in 1977 and soon progressed to the partnership of Keal Brinsden, it was then known, before joining the independent Bar in 1988. It was at the Bar that your Honour's conspicuous leadership and legal profession came to the fore. Your Honour was appointed a Queen's Counsel in 1993, and was the President of the WA Bar Association between 1996 and 1999, President of the Administrative Review Counsel, President of the Law Society of Western Australia and a Director of the Law Council of Australia.

Your Honour was also from 1996 to 2001 Chairman of the Western Australian Law Reform Commission. It was during that period under your Honour's leadership that the commission commenced and completed project 92, a review of the criminal and civil justice system in Western Australia. In leading that review, the largest project ever undertaken by the Law Reform Commission, your Honour cemented your well-deserved reputation as a reformer.

That report was delivered 20 years ago next year, and it is worth reflecting upon how ground breaking it was and how much it shaped the reforms in the law over the last two decades. To name but some of the reforms that now seem to have always been part of the legal and justice landscape in this State, I cite the enactment of the new Magistrates Court Act, the creation of the Western Australian Civil and Administrative Tribunal. This recommendation ultimately led to the creation of the State Administrative Tribunal.

Also, the development of the Comprehensive Code of Criminal Practice, now reflected in the Criminal Procedure Act. There was the structured form of case management in civil matters and the abolition of preliminary hearings in criminal matters. That these and many other reforms are now so familiar as to be unremarkable is a testament to how much the civil and criminal justice system has changed under your Honour's leadership.

Of course, this reputation for reform was continued with your Honour's appointment on 1 May 2006 as the 13th Chief Justice of Western Australia. When announcing your appointment, the Attorney General, the Honourable Jim McGinty who I am pleased to see is able to be present with us today, described your Honour as "a forward thinking practitioner who is eminently qualified to bring the courts into the 21st century and who could see our courts modernised and made accessible to the public so that the justice system is more easily understood by all". That assessment has certainly rung true.

Over the 12 years at the apex of Western Australia's court system, your Honour has moved to modernise the judicial system itself. Oft-mentioned in the media has been the abolition of wearing the wigs by the bench and bar, and the modernisation of court dress. Your Honour's reforms, however, have been a far cry from a simple change of appearance.

For example, your Honour introduced the commercial and managed cases list from 1 September 2006 with the aim to manage civil cases in the most efficient and cost-effective way, to identify the issues and bring them to a speedy resolution. A more recent innovation has been the innovation has been the introduction of electronic filing of all documents in the civil jurisdiction.

On the criminal side, your Honour has brought together participants in the justice system to ensure that there was a coordinated approach to resolving criminal matters, such as the Kimberley Task Force in 2007. For the first time in 2006, the court offered voluntary case conferencing in criminal matters. The creation of the Stirling Gardens Magistrates Court has been a significant advance in criminal case management.

Your Honour has also overseen changes leading to the greater availability of information in relation to the work of the courts, publishing sentencing remarks online and championing the live streaming of court proceedings which

has, of course, become a reality in the trial before your Honour Le Miere J this week as earlier mentioned.

The judgments produced in the course of your Honour's judicial workload have also demonstrated a great clarity of thought in relation to matters of particular difficulty and sensitivity, including the decisions in Bridgewater Care Group v Rossiter, an important decision about the right to self-determination in relation to the continuation of medical treatment, and significant litigation concerning projects affecting Aboriginal heritage in the Kimberley region around the proposed Browse Basin developments.

With your Honour's consistent work of reform and modernisation, it came as no surprise that in 2007, your Honour received the WA Citizen of the Year for the Professions Award, and in 2012, was appointed a companion of the Order of Australia for eminent service to the judiciary and to the law, particularly as Chief Justice of the Supreme Court of Western Australia, as well as to legal reform and education and to the community.

Your Honour's reputation and passion for reform has not, however, confined itself to the courtroom. Over the period of your leadership of the court, your Honour has become an effective and respected ambassador of the entire justice system, advocating not only for its practitioners but also for its users. The Supreme Court's website is a treasure trove not only of your Honour's judicial writing, but your thoughtful and intelligent contributions on diverse aspects of the law and society, including community justice, interpreters, mediation and arbitration and mental health.

Particularly compelling has been your Honour's work on indigenous disadvantage, most especially the unacceptably high levels of indigenous incarceration that beset our legal system. I personally have found this work particularly instructive and helpful in addressing this extremely difficult problem.

As a Member of Parliament and in my role as the Attorney General, perhaps your Honour's most instructive paper was that entitled "Contemporary Assessment of the Ethic of Mutual Respect", discussing the proper relationship between the Parliament and the courts. It is a paper that I have also highly recommended to my fellow Members of Parliament.

Your Honour, the people of Western Australia have indeed been fortunate to have your Honour's service over

such a long period of time as their Chief Justice. The energy, enthusiasm, commitment to reform and passion for justice have been, in the truest words, an inspiration. I note that your Honour has recently disclaimed the suggestion that you are a retiring, but rather that you are repositioning.

Therefore, on behalf of the Government of Western Australia and of the whole of the community of Western Australia, I thank your Honour for an outstanding contribution to this State and wish you all the very best in your future repositioning, which will hopefully include more well earned time spent with your family. May it please the court.

LE MIERE J: Ms Cormann.

CORMANN, MS: May it please the court. Excuse me. It is a privilege to appear today on behalf of the Law Society of Western Australia at this special sitting to farewell the Honourable Chief Justice Wayne Martin AC. In 2018, there have been many occasions already to celebrate both the welcoming of new judges and to celebrate and acknowledge farewells and retirements. Each of these occasions have been extremely important and for those at the bar table, they are a particular special privilege. But none can be more so than this appearance today, being to mark your Honour's farewell from your position as Chief Justice of Western Australia.

In March 2007, when your Honour presided over my admission to the Supreme Court, never could I have imagined that 11 years on, I would have this special privilege. It is perhaps important to note that sometimes where we begin can be very similar to where we end. In the months leading up to your Honour's appointment in 2006, our State witnessed a complete change of leadership in the three arms of Government: a new Premier, a new Governor and then, of course, a new Chief Justice.

In Western Australia presently, although over a slightly longer period, we soon again will have witnessed the same at all levels in a new Premier elected in March 2017, a new Governor appointed in June 2018 and shortly, a new Chief Justice of Western Australia. These roles, of course - they are critical to the proper order and good governance of our State, and while indeed separate, they are inextricably linked.

While these roles also have different criteria that candidates must fulfil in order to be suitably qualified

for the position, there are also many similarities; leadership, good judgment and empathy are but a few of the characteristics required for those who fill these roles. When one thinks in particular about the suitability of a candidate for the role of Chief Justice when this post was last filled in 2006, there was no doubt that on the criteria, your Honour was an outstanding candidate for a number of reasons. This was so in both academic and career record.

Furthermore, as was articulated by the Attorney General, the Honourable Jim McGinty, at your Honour's welcome ceremony - and I paraphrase - ultimately, it was your Honour's outstanding, long-term commitment to reform, his energy and exceptional expertise at the most senior levels in developing the law which makes the decision clear, and the capacity to effectively utilise various positions of leadership within the profession to identify barriers to the delivery of justice and push this change and reform.

Since that time, it is widely known that your Honour has never faltered in the pursuit of nor lost your passion for justice, for law reform and for the concise development of the law. 12 years after your appointment, we gather today to reflect on the role, your contribution to it and perhaps even to think about the challenges that still lay ahead for our community after we leave today. May I digress for a moment.

When thinking of the occasion that was your welcome in May 2006, it was noted by the Attorney General that in taking up the appointment, your Honour had left your post as President of the Law Society and Director of Law Council part-way through your term. Being perfectly candid, one can only hope 12 years on this was, in fact, the setting of an important precedent. In case I'm being too subtle, with the benefit of the Attorney sitting to my right, might I say I'm available and ready if I can be of service. For the benefit of partners of Clayton Utz in the courtroom today, of course, I am kidding and I will be heading straight back to the office.

But in more serious terms, and speaking of precedent, in this 12 years, your Honour has been a member of the court in over 500 published decisions. In deciding matters such as these, your Honour is known for in an appropriate way cutting through the processes to get to the heart of what is required - that being the delivery of justice. This was in addition to the enormous workload as Chief Justice, which role includes being both the judicial and

administrative head of the court and, of course, external figurehead and leader of our judiciary.

During your Honour's welcome, the Attorney also said your Honour had been appointed to lead this court into a new era, adopting new technologies and techniques, and embracing new ways of operating, without compromising the court's integrity or independence. Your Honour has fulfilled that objective, maintaining the court's well-established reputation for integrity, while keeping pace with a rapidly changing world.

This includes, as we have heard, from this week, the broadcast of the first trial live online from a West Australian courtroom. And today's ceremonial sitting, like that for the Honourable John Chaney three weeks ago, is also being streamed. These innovations significantly improve the openness and transparency of the justice system, providing greater insight and understanding to the community, as well as accessibility to it.

The court's processes have also undergone change with the introduction of the docket case management system by judges in the CMC list. This has promoted significant improvement in efficiencies and in the process of civil litigation conducted in this court. In the criminal jurisdiction, case management and voluntary criminal case conferencing have enable more seamless and timely access to justice.

Both in your role as Chief Justice of Western Australia and prior to it, your Honour has also made an enormous contribution to our profession. This included, of course, as a former president of the Law Society and now a life member. Even throughout your short tenure as our president, your Honour was highly effective, approaching that role with pragmatism, commerciality and efficiency.

I understand that in both case law and legislation there is very little that defines the role of Chief Justice and, in fact, the prescribed powers of this role are quite limited. However, the power that does come is through leadership and through action, and these qualities and these capacities have been central to your Honour's time here. One essential area of necessary reform your Honour doggedly pursues is the relationship between our justice system, our laws and aboriginal members of our community.

Your Honour has shone, and will continue to shine, a spotlight on the gross overrepresentation of aboriginal

people in our criminal justice system. We have not fixed this problem and it continues to remain a national crisis. Even though you will finish your term as Chief Justice, your Honour remains committed to this priority and will no doubt continue the important work on making inroads to the injustices that are suffered.

For today, ultimately, on behalf of the Law Society, I am delighted to congratulate your Honour on a very successful judicial career. And the Society and our members wish your Honour and your family all the very best for your next steps together. May it please the court.

LE MIERE J: Mr Howard.

HOWARD, MR: May it please the court. It is a particular privilege for any president of the Bar to be able to speak on such a significant occasion. The retirement of such a towering figure from such a significant role may be expected to produce an address of somewhat melancholic disposition. However, given your Honour's evident delight at the prospect of the next phase of your illustrious career or, as we've been told, the powers that be have nominated as repositioning, I will approach this rather as a celebration of your Honour's time as Chief Justice.

Previously, I was fortunate to propose a toast on behalf of the profession to celebrate your 10 years in office. On that occasion I was comforted that it was an opportunity to speak uninterrupted before you and without your being able to publicly take the address apart. Today I do not have that comfort. The task is made much more daunting as your Honour has such a command of the vernacular and is, as we know it, not afraid to use it.

Over time, for example, counsel have been treated to such gems as, "But because of X, isn't it goodnight, nurse, for your argument?" and, "That's not a difficulty for your case. Turn around. The middle stump is out of the ground." Of course, that is not new for your Honour. While counsel assisting the HIH royal commission, your Honour was quoted in, and provided inches of columns for, the Fin Review in much the same way as Eddie McGuire now monopolises the pages of the Herald Sun.

For example, it is unlikely that those pages will ever again record counsel as saying, "I have been working up a thirst that you could photograph." Such quotability points, of course, to your Honour's larger than life persona which has been deployed in these past years to the very great benefit of the community in this state. In the

time allowed to me, remembering that I am penultimately standing between your Honour and a celebratory drink, it is not possible for me to even sketch an index of topics that need to be covered to do justice to your Honour's years of service.

To paraphrase another quotable personality in Paul Keating, when you change the Chief Justice you change the court. And that has certainly been true in your Honour's tenure. Your Honour has been a seemingly perpetual modernising force in this court and you have, in large part, been responsible for that image of the court travelling throughout the Australian jurisdictions. The live streaming project, of which we have heard, has been near to your Honour's heart for so long and is but one example of that.

Your Honour has sought to make people feel that they have a relationship with and stake in this court and the administration of justice more generally. To that end, you have been a very accessible leader of the judiciary in this state. You have spoken to innumerable groups and, importantly, many of them have not been lawyers. In being so public and accessible a figure, your Honour has remade the idea of what it is to be Chief Justice of this state.

To balance that with the administration of the court will be a very significant, if not impossible, challenge for your successor. The profession and the Bar, particularly, knew that if you were the judge on a case, then the matter would move with great speed and there would be an early resolution of the real issues in the matter. There would be no room for obfuscation or delay or, perish the thought, pettifogging; an expression not much used until your Honour revived it so as to highlight its removal from your Honour's court.

Your Honour's engagement with the community is impossible to chart with any accuracy. To sample the whole, may I refer to two important instances. To hear your Honour speak on indigenous issues in the justice system is to hear somebody viscerally affected by those issues. You have used your office to seek to advocate for different approaches to what often appear to be intractable problems. Nonetheless, your Honour, as recently as last weekend's and this morning's papers, has repeatedly expressed your deep and abiding concerns at the disproportionate impact on indigenous people of the white settlement, including the imposition of its legal system.

Your Honour has also been a great supporter of not-for-profit agencies in this state. While that has been true of community legal centres, your Honour's support has extended widely beyond them. No worthwhile cause has been too trivial. If an agency, for example, wanted to come and talk to you about a youth bail hostel in a remote part of the state, then your Honour has taken that meeting and supported the project. While it may be very significant to the people affected and allowed young indigenous offenders to remain close to their community, it had no profile attached to it and may well have been thought by others to be of lesser importance. That was not how you viewed it.

To take another unglamorous example, your Honour is a patron of the 50 Lives 50 Homes initiative which seeks in an evidence-based way to provide sustainable housing for 50 vulnerable rough sleepers in Perth, with the idea of that pilot evolving into a program to end homelessness in Perth and then Western Australia. Again, a project of great value but with little profile and to which others may not have committed. And others certainly may not have taken the time to go and meet with a newly housed person in their new home.

Your Honour is also justifiably proud of this court's accommodation in this building. In this limited respect, perhaps your Honour shares something with the Roman Emperor Hadrian. Although he is essentially responsible for the Pantheon in Rome, as constructed, that building, like this one, is graced with the name of a predecessor whose original brainchild it was. To hear your Honour lovingly describe certain features of this building, as you did in the ceremonial sitting, was to understand the personal endeavour that this building was for your Honour. It was your Honour's clear intention to make it a physical embodiment of accessible justice. This has been achieved largely by the force of your Honour's will.

Your Honour has indicated that aside from the now traditional retirement occupations of mediation and arbitration, you will continue to seek opportunities to make a positive difference in our society, particularly in and around indigenous issues. That is very much to be welcomed. The Bar thanks your Honour for your unstinting service in the administration of justice for the benefit of our community over these long years. And, as with the Attorney, the Bar wishes you very well for the repositioning ahead. May it please the court.

LE MIERE J: Chief Justice.

MARTIN CJ: I would like to commence by thanking everybody for giving up their time to attend this sitting of the court. I'm sure that some of you are here just to make sure that I do, in fact, go; but you're all most welcome, whatever your reason for attending. I would like to especially welcome Governor Kim Beazley AC and Ms Susie Annus. I'm also very pleased to welcome former Governor Malcolm McCusker AC QC. And former Governor Ken Michael AC has personally conveyed to me his apologies for his inability to be here this afternoon.

I also thank those who've addressed the court this afternoon, being the Attorney General - Justice Le Miere of course, the Attorney General, Ms Cormann and Mr Howard, not only for being here but for their overly kind remarks. Mr Attorney, I was pleased to note that you haven't departed from our mutual understanding of what can and what cannot be spoken about in relation to our days at law school. And I hope I don't depart from that understanding myself by observing that if social media had been around in those days to record an indelible record of our exploits, I very much doubt that either of us would hold the positions which we currently hold.

There are, of course, many other very distinguished guests here this afternoon. But as they've already been acknowledged, I won't take time by going through the long list again, other than to welcome Acting Chief Justice Andrew Greenwood and to express my own special words of welcome to the former Chief Justice of Australia, the Honourable Robert French AC.

I found this afternoon's proceedings a bit like attending my own funeral. Although I'm very well accustomed to the embellishment, exaggeration and hyperbole which invariably characterises addresses on occasions like this, I must confess that listening to this afternoon's addresses I was convinced that I was in the wrong court or that somebody else must be leaving the court because the person you've described didn't sound at all like me. But I don't want it to be thought that I'm critical of the speakers for the approach they've taken, because I would like my family to leave under the delusion that all that you've said is true. But I'm afraid my family are a somewhat sceptical bunch.

It's not uncommon for retiring judges to use the attention provided by farewell sittings to bemoan the current state of affairs in relation to some topic of their interest, such as court administration, the inaccuracy of

media reporting of trials, the impracticality of the High Court and so on. The departing judge customarily rails against whoever they regard as responsible and lobs a few hand grenades in their general direction.

I'm sorry to disappoint those who thought I might engage in that practice this afternoon, but my bomb-throwing days are over. I've had more than 12 years to speak publicly about the justice system and I've taken up that opportunity quite frequently, as some of you have observed. In that context, it's most unlikely that I would come out with anything novel or profound this afternoon. And if I haven't already said something in the course of the 150 so public addresses and papers that I've delivered during my time as Chief Justice, it's probably not worth saying anyway.

My focus today will, nevertheless, be indulgent, as I hope to provide some personal views about my experience as Chief Justice of the great state of Western Australia for a bit over 12 years. I won't, however, be undertaking any assessment of my own performance. I did that about two years ago at a dinner the Law Society was kind enough to hold in my honour and I didn't come out of it very well.

But first I must come clean. At the time of my appointment, I foolishly told everyone and anyone who would listen that I expected to serve a term of 10 years and one week. The reason I chose that period was because judges have to serve a term of 10 years in order to qualify for their pension and I thought I should add a week just to avoid any possibility of miscalculation. Of course, I must now confess that I've misled all of those to whom I spoke at the time by staying for more than 12 years and I should explain why.

Fundamentally, I stayed on longer than I first anticipated because I've really enjoyed the job, its challenges and the opportunities which it has provided, and I will say more of them later. So why am I leaving a position which I have enjoyed before I reach the statutory age of senility? The answer is that I'm a firm believer in the importance of regular renewal in leadership roles. The Chief Justice of Western Australia has general responsibility for the operation of all the courts of the state. There aren't many organisations that would relish the idea of having the same leader for 10 years or more.

For me, it has been a question of striking the right balance between the benefits of experience in the office, on the one hand, as compared to the benefits which can be

expected from the application of a fresh pair of eyes and the energy which goes with a new appointment, on the other. Last year I became the longest serving Chief Justice in Australia, the realisation of which prompted me to the view that the balance had tilted in favour of renewal.

Things were starting to look a bit the same, I didn't have quite the same appetite and enthusiasm for attending the 3000 or so committee meetings that I've attended over the last 12 years and there are only so many murder trials and child sex appeals that one can do without developing a jaundiced view of humanity. I've always had and wish very much to retain a fundamentally positive and optimistic view about people.

So trying to maintain that positive note, let me tell you a bit more about some of the aspects of the job and some of its challenges. The quality of my judicial work has been, and must continue to be, assessed by others, not me; by academics and by Courts of Appeal. I have, however, considered it important to sit in all areas of the court's work, including managing a commercial list, conducting criminal trials, especially on circuit, and I've had the opportunity to conduct criminal trials in all but two of Western Australia's regional courts. I managed the arbitration list since it was created about six years ago and I've presided over many criminal and civil appeals.

The variety that this has provided piqued an interest which was starting to flag after about 30 years as an advocate. I've also taken the view that it's important for the most senior member of the court to undertake the most difficult and contentious cases, although I soon came to appreciate that it was difficult to reconcile the many responsibilities of my office with the conduct of long civil trials. I've always tried to bear in mind that every case is the most important case ever for the people involved in it.

Turning now to my non-judicial work. Over the years I've often been asked what percentage of my time has been spent on judicial work and what percentage on the many other roles the Chief Justice is required to perform. The standard answer I give is that I spend about 80 per cent of my time doing judicial work and about 70 per cent of my time on the various other tasks involved.

In the area of public engagement I have followed the lead set by my outstanding predecessor, the Honourable David Malcolm AC. It's entirely appropriate that the building in which we sit has been named after him and I'm

very pleased to welcome David's widow Kaaren to this afternoon's ceremony. I think it was Richard Utting who said of David that he would turn up and give an address at the opening of an envelope, and I think I'm vulnerable to the same observation.

Those of you who are as old as I am might remember a TV program featuring Harry Butler, a Western Australian naturalist and environmentalist who had a great ability to describe natural processes and the science of nature in terms that people could understand. I've tried in my way to be a kind of Harry Butler of the law and the courts, because I think it's important for the community to understand what we do and why.

But, of course, justice has a vital social dimension which goes well beyond the law and the courts. Many of the people in our courts, especially those in our criminal courts charged with crime, have themselves been victims of injustice and disadvantage. I've tried to use the opportunity of the public platforms I've been given to emphasise that justice has a much broader dimension than just what occurs in our courts, and requires constructive responses to disadvantage as a result of things like mental illness, cognitive disability, childhood trauma and/or sexual abuse, substance misuse and dependence, homelessness and the cultural and social dislocation sometimes associated with aboriginality.

Effective responses to disadvantages of this kind are not things that can be achieved by a court order. Although, in some circumstances, courts can act as facilitators. A significant part of my purpose has been to try to draw public attention to the obvious connection between disadvantage in these areas and criminal behaviour and to encourage greater focus of attention upon the need to address the causes of crime and not just its consequences.

The opportunity which my office has provided to engage with people from all walks of life and all around our great state has been one of the great experiences of my life. Many wonderful people I've met over the last 12 years have provided a great counterbalance to the jaded impression of humanity which might be derived from seeing human nature often at its worst in our courtrooms. During the mining construction boom much was said about the value of our state's mineral resources. I continue to believe that the great value of our state lies in its human resources, and that's not just because commodity prices have gone down.

The role of government and the courts as an essential branch of government is to maximise the opportunities for everybody in our state to achieve their full potential, not just in economic terms but perhaps more importantly in human terms. I've also had the opportunity to meet and develop relationships with many exceptional indigenous leaders I now regard as friends, some of whom are here this afternoon and who I especially welcome, including Dr Richard Walley OAM, Professor Colleen Hayward AM and Dr Robert Isaacs AM, and others who weren't able to make it this afternoon.

Turning now to the challenges of my office. Before I was appointed, I had no idea what the powers of the Chief Justice were. As Ms Cormann has pointed out, I soon discovered the Chief Justice doesn't, in fact, have any real powers. Many of my judicial colleagues consider that the conventional description of a Chief Justice as the first among equals rather overstates the role.

I soon came to realise that the only way beneficial changes could be made was through the formation and development of consensus amongst my judicial colleagues and I'm pleased to report the judiciary of Western Australia is an extremely collegiate and cohesive group, for which I have my colleagues who are the heads of other state jurisdictions to thank. As might be expected, we haven't always enjoyed complete consensus with executive government, but relations have always been cordial and mutually respectful.

I also came to realise the significance of the prophetic observations made during the course of my official welcome by the Attorney General of the day who was responsible for appointing me, the Honourable Jim McGinty, who I'm very pleased to see here this afternoon. He cited Machiavelli's observation that, and I quote:

There is nothing more difficult to take in hand, more perilous to conduct or more uncertain in its success, than to take the lead in the introduction of a new order of things.

I also came to realise that I shouldn't be surprised that politicians were familiar with the work of Niccolo Machiavelli.

On a much more sombre note, one of the greatest challenges faced by the court and by me during my term arose from the tragic death of Registrar Corryn Rayney almost 11 years ago. She was a much loved member of the

court and is still sorely missed. The circumstances of her disappearance and the later discovery of her remains imposed a great emotional strain on everybody involved, including the court.

The capacity of the judges and court staff to complete the grieving process has been inhibited by our continuing involvement in a series of cases arising from her death. Although I can't claim to be unbiased, I think the court is entitled to take pride in the professional way in which our obligations to the conduct of that litigation have been performed impartially and with as much detachment as possible in the circumstances.

Another great challenge has arisen from my conspicuous inability to attract the provision of more resources from executive government. The significant increase in our caseload has placed all members of the court and staff under considerable pressure. I've been extremely proud of the way in which my judicial colleagues and the staff of the court have risen to the challenge, and have continued to resolve cases in as timely a fashion as possible by working harder and more effectively. I thank them all for their dedication to the administration of justice and for the support and encouragement which they have consistently provided to me.

There are so many other people to thank for the experience of the last 12 years that it's very difficult to know where to start. In addition to the judicial officers and staff of the court, I wish to especially thank Rob Christie, who I'm very pleased to see here this afternoon, and who served as executive manager of the court during much of my term. Rob oversaw our move into this building with the enormous assistance of Kelly Martinelli, who is now the acting executive manager and a great support to the judges and me.

I thank also the many officials within the Department of Justice for their support, not only for the work of the Supreme Court but all the other components of the state's justice system with which I have been involved. I thank also the many officials in other agencies who work closely with the courts, especially former Police Commissioner O'Callaghan, who's unable to be here today as he is again doing good work in Mongolia, and Police Commissioner Chris Dawson, who I welcome to these proceedings.

Of course, police and courts must zealously guard their independence and their independent roles. But that doesn't mean that we can't cooperate constructively with

each other for the benefit of the justice system as a whole and I'm pleased to report that we've enjoyed most constructive cooperation with WA Police throughout my term.

I've been very fortunate over the last 12 years to work in an extremely collegiate environment in chambers. Over that time, I've had many brilliant associates: Catriona Macleod, Serena Wells, Gregory Dale, Lauren Butterly, Tom Pontre, Roxanne Moore, Karina Travaglione, Tim Goyder, Chris Mofflin, Ralph Timpani, Emma Salsano, Liam Elphick, Eric Chan, Matheo Vinciullo and Emily Archer, all of whom have provided enormous assistance with legal research, case management and editing my draft judgments, many of whom are here today, some having travelled great distances to be here.

Greg Willis, Dennis Haydock and Stan Carvell have each served terms as my orderly and have each been of enormous assistance and great company. Dennis has travelled from Byron Bay to be here today, for which I'm most grateful. My senior legal research officers, Dr Phillip Jamieson, Andrew Curtin, Dr Jeannine Purdy and Angela Milne have worked prodigiously, assisting me with the administration of the court and researching the many papers I've given in a wide variety of areas. They've succeeded in making me appear much cleverer than I really am.

I would like to particularly mention Dr Purdy, who's a glutton for punishment, and who served two terms in that role and who continually encouraged me to take the broader view of justice of which I've spoken this afternoon.

There are two very special people to whom such an enormous debt is owed that words are quite inadequate to express its magnitude. Val Buchanan, my media liaison officer, and Christina Curtis, my chief of staff, have been working with me since my first day on the job back in May 2006 and they've stayed the entire journey of the last 12 years or so. To describe them as my right arm and my left arm significantly understates their importance to my working life over that period, but decorum prevents me from taking the body part analogy any further.

Val Buchanan has cast an eye keenly attuned to the perception of words and phrases that could be misconstrued or quoted out of context over every public statement, paper or address I've published. She has thoroughly prepared me for all public appearances and interviews, astutely pointing out potential pitfalls. Her skills have been not so much in telling me what to say, but more in telling me not what to say. In fact, her greatest skill has been

telling me when to say nothing at all, even in the face of extreme provocation.

Val has taught me the wisdom of Mark Twain's observation that it's most unwise to pick a fight with people who buy their ink by the barrel. Her canny ability to thwart my natural enthusiasm to say things that will get me into trouble has meant that I have lived a charmed life when it comes to the media over pretty much my entire term in office, which is quite an achievement for Val, not for me.

I would also interpose that I consider that we are very fortunate in this state to have media outlets who take their responsibilities seriously when it comes to reports relating to the justice system. We haven't been subjected to the sorts of rabble-rousing campaigns that have been maintained by the media in other states. Through Val's good offices, I have always enjoyed the fullest cooperation with the media and we've developed relationships of mutual trust, which have enabled us to work together to provide the public with accurate information about their justice system.

Christina Curtis has been much more than a PA, which is the role she initially performed. She has managed the team in my chambers as effectively as she has managed my professional life. She knows me so well that she can anticipate what I'm likely to want or need well before I do. My constant challenge is to find something I can ask her to do that she hasn't already done. Between her management of my work life and my wife's management of the rest of my life, I've been spared the burden of making any decisions at all, except for the odd judgment.

Chris has been a regular source of extremely wise counsel on a diverse range of topics, from protocol through court administration to people I should avoid. Her network of contacts is exceptionally broad and her capacity to encourage people to do what she or I want them to do, using her consummate skills of tact and diplomacy, is amazing. Her skill in organising this event and many others of a similar kind is equally exceptional. So thank you doesn't even begin to cut it when it comes to Chris and Val. I will be forever grateful to both of you.

Finally, which is what I usually say when I'm about halfway through any address, I turn to my family. I mentioned at my welcome that I was very fortunate to have both my parents present. Both have since passed; my mother last year at the grand age of 94. Their loss has

been offset by the acquisition of a son-in-law, Simon, who can't be here today, a daughter-in-law, Anna, who is here today, and four grandchildren, one of whom is also here today. This is a tangible demonstration of the circle of life.

I mentioned at my welcome that my greatest fortune in life was my five children: Emily, Nick, Lucy, Henry and Anna, all of whom are present this afternoon, Emily having flown from Sydney yesterday with her daughter, Isabel, who couldn't be discouraged from attending this afternoon and who has been impeccably behaved. As you heard, our daughter Anna was deemed insufficiently reliable to attend 12 years ago when she was two. She's now a confident young woman who can be relied upon - well, most of the time.

If anything that has been said this afternoon gives my children some small measure of pride in their father, it's a fraction of the pride which I take in them and their achievements. I'm very pleased that my sister Cherry has travelled up from Denmark to be here today. My other sister Ros is on holiday with her husband Oscar in Maine, which is about as far from Perth as you can get on this planet. But they phoned this morning to convey their best wishes and I'm very pleased that my in-laws, Joe and Gemma O'Halloran, and my sister-in-law, Cecilia Calder, have joined us this afternoon.

I said at my welcome that sittings like this were not an occasion for saying things about family members that are best said in private, so I will speak only briefly of my wife Margie. Perhaps the best way of describing the debt which I owe to her is by observing that it simply wouldn't have been possible for me to discharge the responsibilities of my office over the last 12 years without her continuing love, encouragement and support.

That support has taken many forms, from wise counsel in relation to difficult issues, unrelenting advice arising from my lack of a dress sense, advice usually volunteered without request. She has also borne the brunt of family responsibilities while I've worked long hours and travelled widely and attended innumerable functions with me when I knew she would much rather have been at home, for all of which I am most grateful. I hope life will be a bit easier for both of us over the next few years.

Over the last few months, many people have asked what my future holds. Apart from trying to emulate my mother's example of longevity, I haven't been able to answer that question, and still can't, because I must wait and see what

opportunities are presented. I can, however, say what my future will not hold. It won't involve retirement, in the sense of stopping work; although, I hope it will involve a bit more time for leisure. It won't involve returning to legal practice or the provision of public commentary on the justice system. I will leave that entirely to my successor. So all I can really say about my future is: watch this space.

I finish where I began, by thanking you all for coming and for your attention. Thank you.

LE MIERE J: Thank you. The court will now adjourn.

AT 5.37 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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