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Farewell

THE SUPREME COURT OF
WESTERN AUSTRALIA

FAREWELL TO THE HONOURABLE JUSTICE MURRAY

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 7 DECEMBER 2011, AT 4.29 PM

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THE ORDERLY: Please remain standing for his Excellency the Governor Mr McCusker, and Mrs McCusker. Please be seated.

MARTIN CJ: The Court sits today to farewell the Honourable Justice Michael Murray who will officially retire from office on 15 January 2012. I would like to particularly welcome today and in a warm way members of his Honour's family, including his wife Dale, their children Timothy, Christopher and Abigail, daughter-in-law Samantha and grandchildren Ben, Isaac, Sarah and Emma, although apparently Max and Zachary are not able to be with us, his Honour's stepmother Mrs Margaret Murray, and his brothers David and Robert Murray. Unfortunately, his Honour's brother Mr Richard Murray is unable to be present today, but I would also particularly like to welcome his Honour's brother-in-law Dr Peter Randell and Mrs Gail Randell and his Honour's niece Lindy Murray.

I would also like to warmly welcome the Governor of Western Australia, his Excellency Mr Malcolm McCusker AO QC, and Mrs Tonya McCusker, their Honours Justices Siopis, John Gilmour and Michael Barker of the Federal Court of Australia, Justice Stephen Thackray, Chief Judge of the Family Court of Western Australia, his Honour Judge Peter Martino, Chief Judge of the District Court of Western Australia, and the many current members of the District Court who are with us today, President Denis Reynolds of the Children's Court and her Honour Deputy Chief Magistrate Libby Woods, Ms Cheryl Gwilliam, Director-General of the Department of the Attorney-General, and many other distinguished guests too numerous to name, including former members of this and other courts.

I would also like to welcome those who will address the Court this afternoon, being the Acting Solicitor-General Mr Robert Mitchell SC representing the Honourable Christian Porter MLA, Attorney-General of Western Australia, who is currently overseas and therefore unable to join us today, Mr Hylton Quail, President of the Law Society, and Mr Theo Lampropoulos SC, President of the WA Bar Association.

Your Honour was welcomed to the Court at a ceremonial sitting which took place on 1 February 1990 when your Honour had a full head of hair of a different colour. Present on the Bench were Justice Toohey of the High Court of Australia and Justices French and Lee of the Federal Court of Australia. Present also was Sir Ronald Wilson who had retired from the High Court the previous year. It is therefore of particular pleasure that we are joined this afternoon by the Honourable John Toohey AC and Mrs Loma Toohey and Lady Leila Wilson.

It is noteworthy that Acting Justice Lee has achieved the distinction of being the only person who was on the Bench both at the time of your welcome and on the occasion of your farewell almost 22 years later, this time in his capacity as a member of this Court, but I think on both occasions squeezed somewhere into the back row for which we apologise.

Chief Justice French would very much have liked to equal that distinction. Unfortunately, commitments in Canberra have precluded his presence but his Honour the Chief Justice did write a letter which includes the following passage which I will read:

I am very sorry that I will not be able to be present. My association with Justice Murray goes back over many years, including those times in the 1970s when he was prosecuting and I was defending or I was appealing and he was responding.

As counsel, he was an exemplar to younger practitioners. He combined high competence with courtesy and efficiency that made it a delight to appear against him even on the many occasions in which he emerged as the winner of the contest.

His reputation as a Judge fulfilled the promise of his standing as counsel. He contributed substantially to the profession and also to law reform, not least through his review of the Criminal Code of Western Australia many years ago.

I have no doubt that even after his retirement, he will have a role to play in public service for the people of Western Australia. I wish him well in his retirement.

Now, of course, the doctrine of precedent requires all the courts of Australia to apply what falls from the High Court. Occasionally, that is a duty performed with some reluctance. On this occasion I have no hesitation in fully endorsing everything said by the Chief Justice of Australia. His Honour has put it so well in fact that it leaves me with little more to say, but I am not so easily discouraged.

Chief Justice French is not the only interstate guest who has been unable to join us this afternoon due to the tyranny of distance. Others include the Honourable Bruce

Debelle and the Honourable John Coldrey, both of whom have sent me letters apologising for their inability to attend and speaking warmly of your Honour's prominent role in a variety of capacities serving the judiciary of Australia.

That role is reinforced by the presence here today of her Honour Justice Debra Mullins of the Supreme Court of Queensland and her husband Pat. We are honoured that you have taken the trouble to travel the not inconsiderable distance from Brisbane to be with us today.

Your Honour, in February 1990 you were welcomed to the Court by Chief Justice David Malcolm. It's a matter of great regret to him, and to us all, that his recuperation from a short spell in hospital precludes his attendance this afternoon.

Other speakers on that day in February 1990 included Rene Le Miere, the President of the Law Society and now of course a judicial colleague, and Tony Templeman QC, then President of the WA Bar Association and later a judicial colleague for many years.

Your Honour is, of course, the longest serving member of the Court, having been on the Court more than nine years longer than the next most senior member of the Court. Your Honour will formally retire the day before your 17th birthday - 70th birthday - it's your youthful visage that caught me out - as required by law.

Your Honour is the first Judge to have served until 70 since the retirement of Justice Geoffrey Kennedy more than 10 years ago. Since your Honour's appointment almost 22 years ago, only three Judges have retired from the Court at the compulsory retiring age, whereas 19 have left before reaching that age. I would draw two conclusions from this observation. First, the stresses of judicial office are considerable. Second, your Honour's sense of the obligations attaching to public service is very well entrenched.

The second observation is reinforced by the briefest consideration of your Honour's professional career, which has been entirely devoted to the service of the State of Western Australia since your graduation in 1963. As counsel representing the State, you appeared in every conceivable Court and Tribunal, and some that were almost inconceivable, working with such eminent figures as Sir Ronald Wilson, the Honourable Kevin Parker QC and Mr Oliver Dixon.

You served as Crown prosecutor between 1973 and 1980, when you were appointed Crown Counsel, taking silk in 1984. Unusually for a State lawyer, you were an extremely active member of the Law Society, serving on many of its committees, on

its council, executive, and ultimately as President of the Society in 1988.

Amongst the many achievements of your professional career prior to judicial appointment is that already mentioned by Chief Justice French: the general review of the Criminal Code which your Honour completed in 1983. Many of the recommendations contained in that review have passed into law. Appointment to the Bench has not diminished your Honour's interest in the statute laws governing the criminal law and you have continued to give valuable advice to government in that area.

Within the first month following your Honour's appointment in 1990 you had published reasons in two cases, the first of many in which the significance and erudition of your Honour's views attracted the attention of the law reporters. Both cases can be found in volume 1 of the Western Australian Reports.

My first significant exposure to your Honour's judicial temperament came later in 1990 in the course of two lengthy and complex commercial matters involving some chicanery within a group of companies variously associated to differing degrees with a company known as Industrial Resources Ltd.

The transactions revealed in the course of the evidence were convoluted and complex and were not of a kind likely to have been encountered by your Honour during your service of the State. Nevertheless, your Honour's now renowned capacity to master detailed evidence and grasp its significance was readily apparent, as was your Honour's good humour and unflappable demeanour.

Your Honour has, of course, served the Court in many ways other than the disposition of cases. Your Honour has been the senior Judge of the Court since the retirement of the late Henry Wallwork a little over nine years ago and has acted as Chief Justice on many occasions throughout that period.

Your Honour has served on many committees of the Court including committees relating to criminal practice, the acquisition of art, and accommodation. It is no fault of your Honour's that the adequacy of the accommodation provided to this Court has been a significant issue during your entire 22 years of service.

Your Honour has devoted countless hours, effort and energy to the detailed consideration of the many and various plans that have been hatched in order to provide the Court with adequate accommodation, none of which came to fruition. It is perhaps ironic that your Honour's retirement coincides closely with the recent long-awaited announcement from Government which we hope will address our accommodation needs

adequately for the foreseeable future, although much planning remains to be done.

I am sure that I speak on behalf of all the members and personnel of the Court when I say that your Honour will be sorely missed. The personnel of the Court who have served longer than your Honour can be counted on the fingers of one hand and none of the judicial officers have ever been required to serve without ready access to your Honour's wisdom and sage advice.

Those outside the Court may not know how much I have relied and depended upon that wisdom and advice since my appointment five and a half years ago. As the senior Judge and as my neighbour in Chambers, you have always been ready and willing to put aside what you were doing to listen to the many and varied problems which I presented to you, before providing me with the benefit of your experience and insight. It is impossible to overstate the benefit of that advice and the encouragement which you provided to a Chief Justice on trainer wheels.

Your loyalty and support, not only to me but to all members of the Court and to the Court as an institution and to the administration of justice in this State, has been unwavering and profound. I'm sure there have been times during your judicial career when you have had every right to be a little disgruntled and to consider taking your bat and going home. However, your Honour's conspicuous devotion to duty has overridden any such temptation and you have always remained an enthusiastic and energetic contributor to the work of the Court and to the administration of justice.

It is customary on occasions like this to conclude by wishing the departing member of the Court a happy and enjoyable retirement, but in your Honour's case the word "retirement" would be apt to mislead. Like Chief Justice French, I have no doubt that your Honour's departure from this Court will be seen by you as an opportunity to provide service to the State and people of Western Australia in other ways.

I very much look forward to continuing our association in whatever capacity or capacities you continue your public service. I would, however, conclude by expressing the perhaps forlorn wish that you might try to find a little more time for Dale and your beach house than you have until now. At the very least I would encourage you to take a little time for a moment's reflection, and perhaps a wee dram of single malt, to look back on an outstanding career of public service including just under 22 years as a distinguished Judge of this Court. Mr Mitchell?

MITCHELL, MR: May it please the Court. It is my pleasure and privilege to appear

on behalf of the Executive Government of Western Australia to farewell your Honour, Justice Murray, from the Bench of this Court. May I firstly convey the apologies of the Attorney-General, the Honourable Christian Porter, for his inability to personally attend this sitting of the Court. May I also convey the Attorney-General's personal gratitude for your Honour's service as a Judge of this Court.

Over the period in which your Honour has sat as a Judge you have been part of significant changes to the Court and the manner in which it conducts its business. When you came to the Court you were its lucky 13th member. You leave as one of 22 Judges.

One demographic change in the composition of the Court over that period concerns the professional background of its Judges. Your Honour held the office of Crown Counsel immediately prior to your appointment to this Court. Your Honour had the wisdom to spend the whole of your legal career in the public sector since taking articles with the Crown Solicitor in 1963.

While an appointment of an officer of the Crown Law Department of the Court was by no means unprecedented, in 1990 it had been some time since such an appointment had been made. Your Honour's appointment may have been to a degree a litmus test. Well, you certainly were the hope of the side. Indeed, if things hadn't worked out with your Honour, then it might have been again some time before an appointment to this Court was made from the public sector.

The success of the test and the diligence and ability with which your Honour paved the way for an eminently qualified group is reflected in the succeeding appointment to this Court of no less than seven Judges, Justices Scott, Parker, Wheeler, McKechnie, Johnson, Jenkins and Pritchard, who spent much of their careers working in what is now called the State Solicitor's Office. Your Honour's public service to the State therefore extends almost over half a century.

Over that time you have demonstrated your commitment to the Court, to the profession, to the community, and to the education and development of legal practitioners and students.

Your commitment to the Court is reflected in your reputation for hard work and commitment to equality.

When your Honour arrived as the Court's 13th member, the former Chief Justice seemed excited by the prospect of being able to field a Rugby team of Justices. He may have been a little disappointed by your retort that, and I quote, "If there is to be

a Rugby team, I was very good at carrying the lemons."

Your Honour has, of course, done far more than simply carry the Court's lemons over the succeeding 22 years. Many significant civil and criminal trials and appeals have been entrusted to your Honour's capable hands and they have not been found wanting. You have demonstrated the highest standards, dealing with the most difficult of cases with a relaxed efficiency, interjected with a dose of wit.

However much your Honour's patience has been challenged, you have always maintained a disposition of good humour which, as far as the formal setting of the Courtroom allows, places those appearing before you at ease and so facilitates communication with the Court. That engenders a confidence in those who appear before your Honour that their argument has been heard and understood, even if it is not ultimately accepted.

Your commitment to the profession is reflected in the leadership which your Honour has provided to professional associations. I shall leave it to the representatives of those associations who are here today to expound that aspect of your professional life.

Your commitment to the community is reflected in your enthusiasm for law reform. Your Honour is a member of the International Society for Reform of the Criminal Law. You have been an advocate for reform and a contributing member of this Court during a period of procedural change which has greatly increased the efficiency with which the Court deals with its case load.

The Murray Review of the Criminal Code has been mentioned by both Chief Justices, but the significance of that work is such that I do not apologise for mentioning it again. It remains essential reading for those who seek an understanding of the criminal law in this State and the manner in which, and reasons for which, it has developed.

Your Honour's commitment to professional education and development is reflected in the bestowal by Murdoch University in 1999 of an honorary doctorate. The university recognised your contribution to the institution as a member of the university senate and later as pro-chancellor from 1993 to 1998.

While some things have changed over the course of your Honour's judicial career others have remained constant.

When your Honour was appointed in 1990 the inadequacy of the Court's accommodation must have been readily apparent to you as you sat in the junior Judges'

basement Chambers, conveniently located next to the cells of the detention centre, reflecting on the river views of Crown Counsel's office which you had recently left behind. Your Honour would no doubt, have been consoled by the planning for improvement of Court facilities which was then being undertaken.

It may not have occurred to your Honour that a period of only 22 years on the Bench would not be long enough to see that project through. Although not earlier than it should, the project to construct new accommodation has at last assumed more concrete form, even if actual concrete is yet to be poured. As the Chief Justice has noted, your tireless efforts have been an important contribution to that project.

Your Honour has been heard to joke that you would be the old man celebrating the opening of the new Court building from his wheelchair in the back after a long pursuit of appropriate accommodation. One can at least express confidence that the new Court building will be consecrated to the administration of justice while your Honour is still on your feet.

There has been one constant feature of your Honour's life, both in the profession and on the Bench which has been the envy of those who have observed your Honour's work. That is your Honour's great facility for the use of language. Your clarity and elegance of expression regularly produces judgments which not only convey your reasons but are a real pleasure to read for their legal and literary merit, a combination which is only rarely achieved by legal writing.

Your Honour has been described as an innovative jurist, a scholar and a man of deep humanity. Your Honour's modesty and humility may lead you to deny the accuracy of that description, but that denial does not make it untrue. Your friends speak of your humour, your devotion to your wife and family and your appreciation for music, travel and the arts. On behalf of the Government and people of Western Australia I thank your Honour for nearly 50 years of diligent public service as a Judge and officer of the Crown Law Department and I wish your Honour and your family well for the future.

MARTIN CJ: Thank you, Mr Solicitor. Mr Quail?

QUAIL, MR: May it please the court. It is a very great privilege for me on behalf of the Law Society of Western Australia to farewell your Honour Justice Murray from the Bench today. As we have heard your Honour retires as the Senior Judge of the Supreme Court, indeed now the longest-serving Judge in Western Australia. You were appointed to the court in 1990 as then the youngest member of the Bench and prior to that you

were Crown Counsel and before that Chief Crown Prosecutor for eight years. Your Honour was also, as we have heard, one of my predecessors as President of the Law Society in 1988 about which I will say more in a moment.

In the almost 22 years since you were appointed to this Court you have earned a reputation as one of our best and hardest-working Judges. Along with your contemporary recently retired Justice Miller you will be remembered as one of the giants of Criminal Jurisprudence in Western Australia. For decades the Criminal Bar has looked to you and Justice Miller for leadership, when you were in the profession from your respective prosecution and defence perspectives and once you were together on the Supreme Court for your increasingly unified approach to the thorny problems posed by the criminal law. I should say you were the one that was consistent, your Honour.

Speaking personally, it was always a great pleasure for me to appear before your Honour at trial or on sentencing. I knew, as all practitioners did, that thorough preparation was essential and that your Honour would quickly identify the weaknesses in cases and legal propositions which others might not. Your Honour was always unfailingly courteous and pleasant to appear before. You always thanked counsel and, most importantly, never criticised counsel for the sins of the party.

After almost a quarter of a century on the Bench your Honour could be forgiven for slowing down as you approach retirement. You have, however, continued to lead by example. Your workload has for many years been, and continues to be, one of the highest on the Court.

Your involvement with and support of the profession has continued unabated. In the two years of my presidency your Honour has attended more profession functions and given more speeches and lectures than any other Judge except for the Chief Justice. This has always been a hallmark of your Honour's character.

When you were interviewed in 1989 at the end of your Law Society presidency you were asked whether you had exhausted your interest in the affairs of the profession. You answered, "I have a sneaking feeling that I wouldn't mind starting at the bottom and staying the distance all over again." Today I suspect that is also true of your Honour's judicial career, although I would not confess it to Dale if I were you.

As President of the Law Society your Honour achieved a great deal for the profession. In preparing for today I went to the Society's archives and read Your President's columns from 1988 and realised, as my friend Mr Mitchell has said, that at

least for my part how poor a writer I am.

How little has changed in that time. Much of your Honour's time was taken up by insurance, costs, defence of the judiciary and expanding membership categories to make the Society more inclusive. Your Honour was also primarily responsible for establishing the Law Society Resources Scheme which has now grown into the Civil Litigation Assistance Scheme administered by Legal Aid WA.

You were ahead of your time and instrumental with Daryl Williams QC, who is here today, in initiating a continuing professional development program for the profession which has now become our excellent and popular mandatory regime. You ushered in compulsory professional indemnity insurance and like many Presidents had to deal with what is now called National Legal Profession Reform.

I was interested to see that your Honour led national opposition to the imposition of a graduate tax which would have seen a financial burden imposed on new law graduates, substantially reducing their starting employment salaries. Your Honour though was a more effective lobbyist than me because you were able to persuade Law Council to Western Australia's view that such a burden was unfair.

Unfortunately the new national law starting in 2013, but not in WA, is to be paid for by newly admitted graduates. Your Honour also persuaded Law Council to adopt the scheme of paper admissions which was central to mutual recognition and which has served us so well in interstate practice for the last 20 years. I sometimes wonder why the present round of national reform was necessary at all given the reciprocity that was achieved so long ago.

Your Honour, as we have heard now twice, was also much concerned with Court accommodation and lobbied for the construction of a dedicated District Court. In your Honour's April 1988 column you told members of the profession about positive discussions with the government which would see a new District Court built opposite the Central Law Courts building and ready for occupation in about three or four years.

Your Honour was wrong, exponentially so and I don't often get to say that. We are now though finally to get a new Supreme Court building and whilst the profession is extremely pleased that this government have committed to construction where so many previous governments have not. Nevertheless, it is disappointing to the criminal bar that the new building will not accommodate criminal courts.

Criminal work is half the practice of the Supreme Court and not the least important half either. I know your Honour is one of those who would like to see a truly

unified court in a stand-alone building, accommodating jury trials as well as the civil needs of the court. Unfortunately this is not to be, although it may well have the long-term effect of encouraging the Court to divisionalise.

Your Honour was also responsible for nurturing and encouraging the start-up of Murdoch Law School at a time when the profession was desperately short of young lawyers and UWA was the only law school in the state. Throughout your professional life you have been committed to passing on your knowledge and experience to younger practitioners.

Your commitment to Murdoch extended well beyond your presidency and, as we have heard, for nine years you served on the senate of the university, six of them as pro-chancellor and in 1999 you were awarded an honorary doctorate of laws for services to education and law by the university.

Your Honour has always been a reformer and remains so. The substantive criminal law of this state owes much to the recommendations proposed by your Honour in the Murray Report of 1993 which I also could not have neglected to mention. It was the first truly comprehensive review of our Criminal Code and written by your Honour it ran to more than 650 pages and shaped criminal legislative reform in this state for more than a decade.

Your Honour deserves much of the credit for a process of modernisation which included the radical overhaul of sexual offences so as to better reflect contemporary attitudes and values and, at the other end of the scale, repealing the offence of being the keeper of a bawdy house, although the latter took 20 years to achieve and I suspect the Chief Justice might also want some credit for it consequent upon his own review of the criminal justice system, a review far less detailed than your Honour Justice Murray's.

Just this year you delivered the Sir Ronald Wilson Lecture for the Society in which you proposed, amongst other things, the radical reform of parole and also a different approach to sentencing, focusing on back-end, therapeutic and rehabilitative mechanisms and potential expansion of the operation of dangerous sex offender legislation to other types of offending. It is a measure of your Honour's argument that I as a dyed in the wool defence lawyer have changed my own views on some of these issues after considering your Honour's.

In conclusion, your Honour, I was originally due to be fishing at Quobba this week but I changed my booking so that I could be here, not just because your Honour is a former President of the Society and the longest serving judge in this state but because

you are held in the very highest regard by all members of the profession in Western Australia.

Your Honour has set an example to all, particularly those of us in criminal practice. With Justice Miller and now you retired, we have lost out leaders. In saying so, I do not mean to underestimate the contribution of other criminal judges of this Court past and present. They though will not be offended if I describe you and Justice Miller as irreplaceable because of your ability, gravitas, all-round excellence and the esteem in which you are held by the profession.

I hope your Honour is not embarrassed by what Donaldson would no doubt describe as gushing on my part. Fortunately though, he is not following me, and I'm sure Mr Lampropoulos will not be so critical. I have now had the opportunity to get him back.

It has been a great privilege for me to appear before your Honour over the course of my career and I am sorry that this will be the last time. On behalf of the Society, I wish you and Dale a long and happy retirement.

MARTIN CJ: Thank you, Mr Quail. Mr Lampropoulos?

LAMPROPOULOS, MR: May it please the court. I am especially pleased to be here this afternoon, representing the WA Bar Association, because I am one of the lawyers who was greatly assisted by your Honour early in my career. Indeed, your Honour has generously assisted many young practitioners over a long and illustrious career. Mind you, that career almost didn't get off the ground.

I'm told that as a teenager your Honour had a strong interest in engineering, so much so that after high school your Honour attended the University of Western Australia to enrol in engineering. However, when you got there you found a rather long queue waiting to enrol in engineering.

Being ever alert, your Honour noticed the queue for law was much shorter, hence the legal career was launched.

As we have heard, after law school your Honour joined the Crown Law Department, which at that time handled both criminal and civil work on behalf of the State and government departments. It didn't take long for your Honour's ability to be recognised and you soon became Chief Crown Prosecutor, the equivalent of the current office of DPP, which is now held by Mr Joseph McGrath SC.

Your Honour discharged that office with great dedication, enthusiasm and integrity. You had a reputation for being firm, but always fair. Your friendly nature

was well known and your chatty style made your Honour a very formidable jury advocate.

When I joined the Crown in about 1980 your Honour was part of an all-star line-up, which included Ronald Wilson QC as Solicitor-General, and the Honourable Kevin Parker QC as Crown Counsel. There were also there at the time Ron Davies QC, his Honour Jim Whelan, John McKechnie, Graham Scott, Christine Wheeler, Mary Ann Yeats and Jeremy Allanson, to name but a few, a fairly handy line-up.

When Sir Ronald was elevated to the High Court your Honour took up the position of Crown Counsel for WA, undertaking both criminal and civil work, especially appellate work. It's well known that your Honour took a keen interest in helping young lawyers to advance their careers. Your Honour was always approachable and available to provide guidance and encouragement, something your Honour provided with good humour and great insight.

I recall that as a young lawyer I managed to be successful in a particular civil case. The other side weren't all that gracious because they appealed to the Full Court of this Court. As Crown Counsel your Honour argued the appeal on behalf of the respondent. I thought that your Honour did a marvellous job. Apparently, so did you, because immediately after the hearing your Honour announced that if we lose that appeal, "I'll take it to the High Court for you."

Six months later you were on the way to the High Court as appellant, and such was your Honour's versatility that two days after that appeal, which was in Canberra, we were due in the High Court sitting in Sydney on a wilful murder appeal.

I must say, I thought your Honour would spend your time in the hotel room preparing and fretting about the hearing the next day. Instead, your Honour prepared by taking in a movie and then going out to dinner.

I thought at the time that that was a rather civilised approach, but also rather brave. The answer of course was that your Honour, as usual, had thoroughly prepared the appeal well before travelling to Sydney.

Your Honour was a well-known and popular figure at the Crown, but, as we have heard, you didn't restrict your professional activities to the Crown Law Department, and you were heavily involved in the wider profession and the Law Society. It was no surprise that your Honour's elevation to this Court in 1990 was warmly received by the profession.

Now, I don't say this to embarrass your Honour but it is the fact that you are a

keen supporter of Swan Districts in the WAFL and a rabid supporter of Collingwood. I don't suppose there's any other type of Collingwood supporter, but in any event, with that sort of pedigree there may have been a concern that your Honour would become an unreasonable and irrational Judge.

Of course your Honour has been quite the opposite. You have invariably been good-natured and courteous in court and obviously concerned to give the parties a fair hearing at all times, and it is also clear that your Honour has undertaken an enormous amount of work during your time as a Judge of this Court. I am told that your Honour is and has been very much involved in the life of the Court, and with your long and extensive career, you are considered to be somewhat of an oracle.

Your Honour's sense of public duty is well known. You have always had a great appetite for work and taken on difficult tasks cheerfully. At the same time your Honour is a modest person and I expect you would be somewhat embarrassed by all this praise, but I think you deserve to be embarrassed.

I know that your Honour is retiring reluctantly. You have of course well and truly earned your retirement, but I expect that you will be actively involved in the law in some way in the future. Whatever your Honour decides to do, on behalf of the WA Bar Association I wish you all the best in your retirement and your future endeavours. May it please the Court.

MARTIN CJ: Thank you, Mr Lampropoulos. Justice Murray?

MURRAY J: Your Excellency and Mrs McCusker, Chief Justice, a roomful of distinguished and very special guests, I hope you will forgive me if I don't mention many of you by name. It is marvellous what you can see from an elevated position in a room like this and I am just overwhelmed to see all of you present, and for that I thank you very sincerely.

This is not going to be a traditional response. If I, perhaps, were to start by saying that Mr Lampropoulos's thought that I might be embarrassed by the remarks that have been made is quite wrong. I find that I am rather fond of what a dear friend of mine, the Honourable John Coldrey QC, describes as the pre-death eulogy. I don't know if you have got full commitments next week but we could arrange something.

I think I ought to say that there is another matter to which I might refer, in case this discreditable episode becomes more generally known. I always find it better to confess right up-front rather than be caught out, but Mr Lampropoulos was kind enough to mention my fixation about black and white and I have to say that it has not been

entirely straight down the line.

Many years ago, while doing some industrial advocacy in Melbourne, I had the opportunity to stay over the weekend and I thought I would go to see Carlton play Collingwood at Princes Park. Of course AFL hadn't been thought of in those days. These were VFL teams. I got off the tram at Princes Park, which (I don't know if you know it), is a very small and, as it was wet, very muddy ground.

I entered by the nearest gate and found myself in a complete pack of people, absolutely jammed. So close was the jam of people that I discovered that as the game wore on one had to adopt innovative means of attending to one's plumbing. Perhaps I won't go into that, but I did discover that as I had gone into a different gate from the one I ought to have, the serried ranks around me were all Carlton supporters, and vociferously so. I changed my allegiance.

I don't want to spend any time in these remarks in making complaint about anything. I have had a marvellous time on the bench. I have enjoyed it enormously. I think I was silly enough to say, when I was appointed a judge, that I was delighted to find that I had an increase in my salary when I came, which I thought was generous because, had I been asked, I would have come without salary. I haven't told Dale that. Perhaps she might not have been so keen.

I received advice when I was appointed to the bench from another dear old friend, his Honour Jim Whelan, whom I am delighted to see here today. He told me to observe three rules: keep your mouth shut, keep your bowels regular, and always decide on the facts. Well, after 22 years, Jim, I think I have managed one out of three.

The practice of the law can be a stressful occupation, but I have found it rewarding whilst being stressful. I comforted myself with the fact that for an advocate, stress and sheer terror at times, is perhaps the only signal you get that you have done some reasonable preparation.

At least you have got far enough to know what you don't know, and to know how many ways you can get into trouble. That was a valuable lesson, and I have found it a valuable lesson on the bench.

It is a stressful occupation and my enjoyment of my time on the bench I wouldn't want you to think masks that, or takes a casual approach to it. But it is a different sort of stress and pressure and one learns to cope. I am often reminded, when I think about matters of that kind, of a meeting of the Governing Council of the JCA that I attended in Melbourne.

Michael Kirby had just given a paper on judicial stress at a conference and the JCA were solemnly discussing whether we should have a position about judicial stress and its management. One of the local people present was then a member of the Court of Appeal of Victoria, the Honourable Bill Ormiston QC. He rose at one stage when there was a pause in the debate and he said, "I think this is nonsense. This ought to be a topic that we don't discuss again." He said, "Stress is not something from which one suffers. It is something one gives to counsel." You can imagine how Simon Sheller, the President of the JCA, received that.

I have been very fortunate on this Court. I have been able to participate in all the work of the Court, both at first instance and on appeal, and I am sure that for me that has been a thing which has enhanced my enjoyment and my involvement on the Court. I like to think that the capacity to be a generalist judge is something that we might adhere to.

Specialisation can occur of necessity at times, but I am very much convinced that the more we can keep the judges operating across the whole spectrum of the Court's jurisdiction, the better will be their capacity to produce judgments and results which are of the quality that the community ought to be able to expect.

The Chief Justice reminded me of an early form of specialisation. It was in the case to which he referred, an oppression action: Spargos Mining.

MARTIN CJ: That's right.

MURRAY J: I was reminded as he spoke that it was an unusual sort of action, not only for me because, as the Chief Justice remarked, it wasn't something to which I had been exposed in Crown practice, but it was unusual of itself.

It was an action which was able to be brought under the Companies Code by a shareholder who wanted relief and a remedy for damage to the shareholding caused by the conduct of the board. He could sue the company and there was a range of results that could be obtained.

The petitioner was represented by a young chap called Wayne Martin, the NCSC intervening were represented by one E M Heenan QC and the company was represented by one A.J. Templeman QC.

I am delighted that the Chief Justice said that it looked as if I knew something about what was going on. It perhaps shows that I was, even at that early stage, able to learn the value of keeping your mouth shut and at the same time presenting a wise, learned and contemplative demeanour to the court.

What they didn't know was that when I made my notes, I would then rush back to chambers at the end of the day's proceedings and consult such a learned tome as Ford's Company Law and find out what they hell they had been talking about.

At the end of the case I decided that the petitioner should have relief and I found a power which it should have occurred to me I ought to approach with caution, because nobody had asked me to exercise it. It was a power to dispose of the board, which I did with some alacrity, and appoint a board of my own choosing, which again, having taken advice from the lawyers present, I did.

The board that I chose, an independent board of course, reported to me on a periodic basis. I had the pleasant experience of running Spargos Mining while it traded out of its difficulties and I found it a very interesting experience.

I am a little troubled, even all these years down the track, to learn that that was apparently the first time that power had been exercised and, so far as I am aware, it was never exercised again. Perhaps it says something about my conduct, that so far as I am aware it was a power not repeated in later versions of the statute. Anyway, there it is.

You remind me of my Chambers when I first started on the Court, which are now a jury room (if anybody had the foolishness to try to run a jury trial in No 6 Court), across the corridor, looking out over the courtyard that in those days was the external courtyard just outside the detention centre under No 2 Court. The detention centre then was not the closed environment that it is now. The cell bars opened out on to a sort of verandah affair which opened out on to the courtyard.

The chambers that I was in had a magnificent bathroom which had windows which opened out into the courtyard. I could pass sentence, go back to my chambers, and as I attended to my toilet, which, in less salubrious circumstances, I might describe as a process of addressing the porcelain, I could hear observations from the cells.

Perhaps, if you will forgive the expression, an early form of empirical research into sentencing levels was able to be undertaken.

Another matter that I did want to talk about is that very much has changed over the years and I think a lot of the work that has been done has actually been remarkable in its beneficial effect. The capacity of the Court to develop a process which enables a result of real worth to be provided in the most cost-effective and time-efficient way, has been much worked-on, and of recent years particularly the measures that have been introduced have grown apace.

And yet there is a difficulty and the difficulty, it seems to me, is becoming

more pronounced. I don't want to say anything particularly about it but it seems to me that the burdens and the pressures upon the Judges currently serving are considerable.

It seems to me that the electronic processes which we are now able to take advantage of have not assisted to reduce markedly those pressures and, in fact, the electronic means of recording material in the business world and elsewhere, and the disclosure processes that have been introduced in relation to criminal cases have actually, it seems to me, increased the burden of battling away to avoid going down under an enormous pile of paperwork.

I recently completely a murder trial for which the paperwork comprised ten lever arch files of statements and other material that had been disclosed and no less than seven lever arch files of exhibits or potential exhibits. I think the difficulty is this: you can see it, I think, in the way in which the Courts are having now to insist that parties use all other avenues that may be open to settle their differences and resolve cases before coming and being able to utilise the processes of the Court.

On the criminal side I think it has got to the stage where the difficulty in dealing with cases and the blow-out in the time that is taken for trials has put real pressure on the jury system.

I know there are different views about the worth of preserving the jury system, but if you accept that it is, for at least serious crime, a valuable mode of trial which allows the community direct participation in the trial process, then I think we have an enormous amount of work to do as a profession to preserve the system, to enable the jury to be able to function effectively within the community and in the performance of that very important task. So there you are; an irrelevant view from the back end of a period of judicial service.

There are aspects of that service which have provided me with amusement and with a spark. I am reminded of an occasion recently where I had an appeal from an unrepresented litigant of the vexatious kind. This chap had been prosecuted in the country. He had had a minor traffic accident. When he was approached by the driver of the other car and asked for his name and address, he refused to give it.

When the driver of the other car said he was obliged to, he said, "No, no, not a chance." He said, "I will tell the police, but I'm not telling you. You might come around and do me." So there it was. It was left on that basis. It was reported to the police and they prosecuted him because it was an offence under the Traffic Act.

He went before the local Magistrate and the Magistrate asked him, "What is

your defence," and he told him. The Magistrate said to him, "Let's not get bogged down in the procedural aspects of this," and the Magistrate said, "If that's your defence, you're guilty" and he convicted him.

The gentleman was very cross. He took an appeal and came before me. We heard the appeal for a bit and then I said to him, "Well, I'm sorry, don't let us worry too much about the procedural aspects of it but, if that is your defence, the Magistrate was right. You're guilty. You had no defence and I'm going to dismiss the appeal."

He got particularly cross and he suggested that I must be, as I had demonstrated, a fully-paid-up member of a conspiracy with the Magistracy and the police to wreak injustice upon citizens.

I thought that if I dismissed the appeal and gave my reasons on the spot extempore, there might be trouble. He was really becoming very cross, so I took what I thought to be a sensible course. I dismissed the appeal. I made the necessary orders. I said I would give my reasons later and then I said, "I will now retire."

He leapt to his feet. He said, "My God. I wish you had thought of that before you started on this bloody case." I left the courtroom with what dignity I could muster.

The accommodation aspect is something that I just want to touch upon very briefly. Accommodation problems affect not only this Court, but other courts, and they can produce some lighter moments. I remember an occasion when I was prosecuting and the Honourable Terry Walsh QC was defending.

We were in Port Hedland in the sunny month of December. It was unbelievably hot and in those days we were dressed even more elaborately than you people at the bar table are now. We had wigs and robes and we had the whole panoply. In fact, we were even wearing a sort of soft collar, but nonetheless a fake wing collar, shirt, bands or jabot and a bar jacket.

As we prosecuted and defended and worked our way through this heat, we noticed that the trial Judge, the then Senior Puisne Judge, Sir John Virtue, who was, of course, robed in the dignified and attractive robes that were then worn by judges in the criminal jurisdiction, seemed to be swelling and collapsing, swelling and collapsing, and this went on for some time.

At an adjournment we were invited to attend upon his Honour in Chambers, the only airconditioned room in the building. When we went in, still dressed in bar jackets, of course, his Honour greeted us in a pair of footie shorts and a singlet. All was revealed. He had when he robed placed a fan under the bench so that a cooling jet of air

could be propelled up the inside of his robes.

That is enough from me about matters of weighty moment like that. Thank you all terribly much for attending.

I want to finish by just recording, if I may, very briefly some debts of gratitude. I am delighted to say that all three of the people who have operated as my associates over the years are present here today, and I thank them for that, Fay Roberts, Geoff Geoghegan and Sarah Dunkley. Three very different people, all of them with one common characteristic. Without them I could not have functioned, and I thank them all for the contribution they made to keeping me operating.

I have had two secretaries, Jacquie Cameron and Jane Hill. They also have been absolute gems. They have been kind enough to become interested, to say laudatory things when they thought I got it right, and to say nothing at all when they thought I got it wrong. Then there are the orderlies, and for the bulk of my time there are three gentlemen, all of whom, again, are present here in one form or another. That's not very well said. They are John Oag, Dennis Haydock and Dieter Medwid. I am very grateful to them.

The task of an orderly is an onerous one. It is he, or she, who keeps the judge on a level keel, and the relationship is close. If it's not close, it doesn't last long, but I have been enormously fortunate. These men have been great sounding boards. They have helped in a myriad of different ways to make my capacity to function as a judge possible. Their loyalty and discretion has been unquestioned.

I have enjoyed an enormous amount of support from my family. I don't promise to do better than I have done for my family, but I want to say one thing about that in closing. At the end of remarks like this, there is Dale, and for me there is always Dale, and there always has been.

We were childhood sweethearts. We were married on my birthday, cleverly engineered by my wife so I would have a halfway decent chance of remembering the date, on 16 January 1965. So we are approaching our 47th wedding anniversary.

It is she who has, more than anybody else, made my life an absolute joy, and I thank her very much. I have to tell her that her capacity to perform that role is not diminished by my retirement and I do not grant leave for her to make any change in the present arrangements.

Thank you very much for listening to me.

MARTIN CJ: Thank you, Justice Murray. Court will now adjourn.

10/22/sjr

Farewell

AT 5.31 PM THE MATTER WAS ADJOURNED ACCORDINGLY