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THE SUPREME COURT OF

WESTERN AUSTRALIA

FAREWELL TO THE HONOURABLE JUSTICE McKECHNIE

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON WEDNESDAY, 22 APRIL 2015, AT 4.32 PM

**MARTIN CJ:** The Court sits this afternoon to mark the retirement of the Honourable Justice John McKechnie, whose service as a member of the Court for more than 16 years will conclude later this week, prior to his Honour taking up his appointment as Corruption and Crime Commissioner. I'm very pleased to welcome members of his Honour's family, including his Honour's wife, Beth, their children, Fiona, Reynold, Moira, Sheila, Ailsa, Sheila's partner, Cyrus, and his Honour's grandchildren, Stateley, Alison, John-Jesse and Dace.

I would also like to particularly welcome the Honourable Justice Robert French AC, Chief Justice of Australia, who honours us by his presence on the Bench today, the Honourable Justice Stephen Thackray, Chief Judge of the Family Court of Western Australia, his Honour Judge Kevin Sleight, Chief Judge of the District Court of Western Australia, his Honour Chief Magistrate Steven Heath, Miss Cheryl Gwilliam, Director General of the Department of the Attorney General, and many other distinguished guests, too numerous to name, including many past members of this and other Courts.

I would also like to particularly welcome those who will address the court this afternoon, being Mr George Tannin SC, representing the Attorney General of Western Australia, Mr Matthew Keogh, President of the Law Society, and Mr Peter Quinlan SC, President of the West Australian Bar Association.

At the risk of being thought to boast, this is the third occasion upon which I have been given the opportunity to publicly address his Honour's professional achievements. The first occurred in 1990 when, as the most recent member of the WA Bar Association, I was called upon to address his Honour's recent appointment, with others, to the office of Queen's Counsel, at a Bench and Bar dinner.

I'm afraid that, with the impetuosity of relative youth, and the encouragement of those who lack your Honour's sober habits, my remarks descended to the level of my audience. In that year's Annual Report for the Bar Association, the then President, the Honourable Tony Templeman QC, suggested that my observations deserved to be recorded somewhere. His suggestion was in a statement of claim.

The second occasion upon which I had the privilege of addressing your Honour's conspicuous contribution to the profession and to the community was when I represented the

WA Bar Association at the ceremonial sitting, held on 2 March 1999, to welcome your Honour to the Court, following your receipt of your commission as a Judge of the Court from his Excellency, the Governor, earlier that morning.

Having reviewed the transcript of that occasion, I'm pleased to note that, like the occasion nine years earlier, my observations were tailored to my audience although, happily on that occasion, both the audience and my remarks were significantly more dignified.

I hope to achieve the same distinction on this third occasion upon which I have the opportunity to again address your Honour's singular contribution to the administration of justice in this State. If I lapse a little from that objective during these short remarks, I trust that our friendship of more than 40 years might enable your Honour to forgive those lapses, and I promise that there will be no similar lapses on the next occasion I have the opportunity to address your Honour's contribution to the community, which will be as early as next Tuesday, when I will have the privilege to administer your Honour's oath of office as Corruption and Crime Commissioner.

Now that I trust I've made your Honour suitably nervous, I will turn briefly to the highlights of your Honour's professional career, which roll rather readily off the tongue given the number of occasions I have extolled their virtue.

Despite attending Scotch College, your Honour succeeded in gaining entry to the Law School at the University of Western Australia, which was much easier in those days, graduating in Law in 1972. It's one of life's mysteries that, even though you're obviously much older than I am, we were at Law School together, perhaps partially explained by your sojourn to the United States as a Rotary Exchange scholar between leaving school and attending university. At all events, despite the age difference, I'm pleased to record that we have been friends ever since those halcyon days at Law School.

Your enthusiasm for leadership was evident all those years ago, when you were elected President of the Australia and New Zealand Association of Law Students in 1972. The primary function of that organisation was to organise an annual conference of law students. Your Honour's valiant attempts to push that conference in a more cerebral and less social direction were not crowned with success, however.

After leaving Law School, your Honour served articles at Jackson McDonald and Co, under the pupillage of the Honourable Paul Seaman QC who was, of course, later a distinguished member of this Court. During that time, your Honour's forensic skills were sharpened, collecting moneys due to a large motor vehicle insurer following motor vehicle collisions. Your Honour's enthusiasm for that cause was of great advantage to the members of the insurer, but something of a disadvantage to those who I represented on the receiving end of your Honour's diligent debt collection practice.

Despite the tantalising lure of a career in automobile collisions, your Honour succumbed to the temptation of serving the State, the temptation which seems to have become something of an addiction. Your Honour joined the Crown Law Department in 1976, rapidly rising through the ranks, and regularly appearing in the most significant cases involving the State, often as junior to the then Solicitor General, the Honourable Kevin Parker AC QC, who was, of course, also later a distinguished member of the Court, and I am very pleased to see him join us today, together with his wife, Joan.

As I have already mentioned, you were appointed Queen's Counsel at a relatively young age and, shortly thereafter, appointed Chief Crown Prosecutor. In that capacity, you were responsible for the most difficult State prosecutions and in December 1991, following the creation of the office, you were appointed the State's first Director of Public Prosecutions.

It is, I think, something of an understatement to observe that, during your eight years of service in that office, you came to public attention. Some indication of the extent of your Honour's public persona can be gleaned from the media coverage of your Honour's appointment to the Court. A few excerpts from that coverage will suffice. First, and now displayed on the screen in the Court, is the banner headline and photograph from the front page of The West Australian the day following the announcement of your Honour's appointment.

The article occupied the entire front page. I think it's fair to say that no appointment of this Court, either before or since, has attracted sensational media coverage of that kind. The text of the article reporting your appointment, on the inner pages of the newspaper, was prefaced by the heading which is now also displayed on the screen:

McKechnie embraces judicial good life.

That heading was, no doubt, drawn from a quote attributed to your Honour in the text of the article, in which you apparently observed:

Goodbye, long hours. Hello to more sailing and opera.  
I'm looking forward -

he says, with a smile -

to a more tranquil existence -

set off by the jaunty, coatless air of the photograph in front of the pediment of the Court. I suspect your Honour may have come to regret those remarks, not least when you discovered that your apparent expectations of a quieter life were unlikely to be achieved. Nevertheless, your Honour was, as always, self-effacing in your dealings with the media, as the picture and associated quote reveal, including your admission that you're only human and occasionally made mistakes, a proposition which litigants have tested from time to time in the Court of Appeal.

It may be that the sensational media coverage of your Honour's appointment had a little to do with the attitude of the then editor of The West Australian, Mr Paul Murray, who was reported in that journal as having expressed his delight that you were leaving the Office of DPP, for reasons which would not be polite to repeat on this occasion. I'm sure that Mr Murray's delight was entirely unconnected with the proceedings for contempt of court which were brought against that newspaper during your term as DPP. At all events, there's no doubt that your Honour's appointment to this Court was warmly welcomed, although perhaps for differing reasons in different sections of the community.

Now, none of these observations should be taken to suggest or even obliquely hint that your Honour ever courted the attention of the media. I have no doubt that, on the occasion upon which your Honour strode purposefully to the Central Law Court building in order to prosecute a former Premier of the State, carrying a Bible, it was simply the most convenient way of getting that text into the Courtroom, and I'm sure that the Attorney General of the day, the Honourable Peter Foss QC, was entirely genuine when he observed, during his remarks upon your welcome to the Court, that he was sure you were looking forward to a less publicly prominent position on the Bench.

The only person who was a member of the Court at the time of your appointment in March 1999, and who remains a member of the Court today, is Master Sanderson. Over more than 16 years of conspicuous service to the Court, you've served in all areas of the Court's jurisdiction, at both first instance and appellate level, and I'm sure I speak on behalf of all members of the Court when I say how much we regret the loss of your very considerable judicial experience.

However, we have the consolation that your Honour has left behind a tangible memento of your time on the Court in the form of the unsightly - no, let's be honest - hideous contraption which you arranged to be installed in the corridor connecting this building to the newer building next door. The device is very hard to describe. It's a kind of travelator, or moving platform, which can be used to move heavy objects, or people, up the four steps which accommodate the differing floor heights.

On the very rare occasions when it is used, it blocks off most of the corridor. Most of the time, when it's not at use, it gives the area the semblance of a C-class hospital. At all events, I'm very pleased to announce that the device will henceforth be known as the Justice John McKechnie Memorial Travelator, and a plaque bearing that inscription will be installed shortly.

Most recently, your Honour has served as Senior Judge of the General Division, since the retirement of Justice Michael Murray in 2012. In that capacity, we have worked closely together in the administration of the General Division of the Court, and I wish to publicly record my grateful appreciation to the exceptional contribution which you have made to the administration and organisation of the Court in a variety of capacities, which time does not permit me to enunciate.

Although your Honour is retiring from the Court, you are not, of course, retiring in the generally accepted sense of that word. Rather, you are leaving the court to again serve the State and community of Western Australia, this time in the onerous position of Corruption and Crime Commissioner. Your Honour's appointment to that position was also marked with significant media approval, this time for only wholesome and genuine reasons.

It has been correctly noted that your experience as the leader of a significant and complex organisation during your term as DPP will stand you in good stead in your future office. In your capacity as DPP, you were, of

course, a frequent litigant in this court. There is a risk that you will return to the role of litigant in your future office, hopefully more often as prosecutor than as defendant.

It only remains for me to again thank your Honour, on behalf of all members of the Court, for your outstanding contribution to the work of the Court over more than 16 years, and for your fellowship over that period, and to wish you every success in your future endeavours.

Mr Tannin.

**TANNIN, MR:** May it please the Court. It's a very special pleasure today to appear, representing the Attorney General, to farewell his Honour Justice McKechnie from the Bench of this Court. It's also a pleasure for me personally to acknowledge his Honour's family, who I am very privileged to know. The Attorney General expresses his regret that he can't be here. There was a sitting of Parliament.

The list of his Honour Justice McKechnie's achievements is impressive, and it's long, but the sustained level and character of his Honour's service and commitment to the community of Western Australia through the instruments of justice is what is extraordinary. His Honour, as has been noted, was born in Western Australia. He graduated from the University of Western Australia and was articled at Jackson McDonald, and admitted to practice in 1974.

He joined the Crown Solicitor's Office in 1976, and practised as counsel in a very wide range of areas, including constitutional, administrative law, town planning, commercial arbitration, common law and criminal law. And the sheer breadth of his Honour's practice, from a very early stage, provided an excellent perspective on the workings of justice and, particularly, the workings of Government.

The Crown Solicitor's Office then had, and retains, a strong collegiate and professional teaching culture. His Honour was the beneficiary of guidance and example from many exemplary practitioners. I will do him the service of letting him name them himself.

What is of great significance, perhaps of more significance, is the fact that, throughout his career, his Honour has assiduously maintained that professional tradition by training and passing on his knowledge and skill as an advocate, firstly, to those in that office, but

later, to the wider profession of this community, and he has done that throughout his career, to the very day of this proceeding. I trust it will continue.

In 1989, his Honour was recognised as counsel and he took silk. In 1991, his Honour was appointed the State's inaugural Director of Public Prosecutions. His Honour, to quote him then, was:

Determined to create and establish an office of excellence.

The challenge then was enormous and the workload huge. On occasion, the personal toll was awful. His Honour was entirely steadfast throughout. The enthusiasm and the camaraderie of that office was very special. The record is quite clear. His Honour was a very bold, effective and truly independent DPP for eight years.

On 2 March 1999, his Honour was appointed as a Judge of this Honourable Court. At the welcome that day, Chief Justice Malcolm presided, and noted, with bemusement, the very articles that his Honour Chief Justice Martin has referred to this afternoon, particularly the headline:

McKechnie embraces judicial good life.

Chief Justice Martin, with some bemusement, assured the Court and his Honour that that would not be the case. Judicial work, however tranquil, would be unremitting. So it was. Over 16 years, literally thousands of hearing days, Justice McKechnie has presided in more trials than I can count or he could count, and as many appeals.

His Honour has been a consistent model of fairness and justice over a very long time. His Honour has earned and maintained the trust of all of his judicial colleagues, the wider legal profession and the community of Western Australia. I noted at an earlier hearing this week - and it's entirely and equally true today - that we are privileged, as a society, to be granted such enduring excellence of judicial service.

This is not an occasion only of farewell. It's a time to note that there is a transition in his Honour's career. Justice McKechnie is leaving the Supreme Court Bench to become the Corruption and Crime Commissioner. That next stage is indicative of the level of service that he is prepared to grant. That is the next stage of his Honour's contribution.

His Honour will bring undoubted integrity, ability, wisdom and clear focus to his new commission. So daunting, no doubt, is his Honour's reputation that the brilliant thing we call a newspaper yesterday reported that the Corruption and Crime Commission was now proposing to focus on serious matters. Some of us thought that might be about time, but it's indicative, I would respectfully suggest, that his Honour's effect upon that organisation precedes him. Most of all, his Honour's commission will be genuinely independent. Those who appointed him can be assured of that. Whether they are grateful for that ultimately is another point.

If I may quote some contemporary guidance for the new Commissioner from probably an unusual source, this is taken from the 2015 Running Guide for Visually Impaired Runners in the Boston Marathon:

If you're going through hell, keep going. It's the only way out.

On behalf of the Attorney General and the State of Western Australia, I thank your Honour sincerely for your judicial service and I wish you well in the new commission.

**MARTIN CJ:** Thank you, Mr Tannin. Mr Keogh.

**KEOGH, MR:** May it please the Court. I have great pleasure today in conveying the thanks of the Law Society of Western Australia and the West Australian legal profession to his Honour Justice McKechnie for his great service on the Bench of this Honourable Court. We also congratulate your Honour on your appointment as the Commissioner of the Crime and Corruption Commission.

In addition to your years of service as a Justice of this Court, your Honour is, of course, most recognised for your service as the first Director of Public Prosecutions of Western Australia, a daunting task, no doubt, to which I will return later. However, it would be remiss of me not to note, of course, that your Honour joined the Law Society in 1974 and made an important contribution to the Society and the profession by being a member of a number of its committees, including several years on the Brief Editorial Committee.

As the Senior Judge of the General Division of the Court, your Honour has also undertaken some of the administrative tasks of the Court, as well as providing a pastoral care for other members of the General Division and, on occasion, you have assumed the role of Deputy

Governor of Western Australia. Your Honour has also presented courses run by the National Judicial College of Australia, and regularly presented on matters to the judiciary in the Supreme, District and Magistrates Court. We are sure that your depth of experience and insight will be sorely missed by those remaining on the Bench.

Outside of the Courtroom, your Honour has taught the Forensic Advocacy course at the University of Western Australia since 1987, as well as at Murdoch University in more recent years. Your Honour was also the Chair of the once derided, but now, in hindsight, cherished institution of formative legal training, the Articled Clerks Training Program. The Law Society is particularly grateful that you have presented a number of seminars as part of its CPD program for the profession.

The criminal profession as a whole has, of course, also benefited greatly from your Honour's contribution, not only to the development of the criminal law in your judgments, but also your explanation of it through your joint authorship of the third through to the current edition of Criminal Law in Queensland and Western Australia.

Outside the law altogether, your Honour is known to be an avid sailor, spending as much time as possible, with your wife and children, on your beloved SKINT, aka Spent the Kids Inheritance on a New Tug. We understand that you particularly enjoy sailing catamarans. And who wouldn't? And I understand that your Honour's tug takes precedence in the McKechnie home. Your Honour is also the State Racing Officer of the Australian Yachting Federation.

Your Honour has been very generous with your time, skill and expertise to various charitable activities and not for profit groups, including the Samaritans Crisis Line, as Chair of the council at PLC, Trinity University College and the Uniting Church Property Trust.

Of course, in wishing your Honour farewell from this Court, unlike on many similar occasions, we will not also be wishing you well in retirement but, instead, we congratulate you on the appointment as Commissioner of the CCC. Your Honour is aptly placed to take up this appointment, bringing to the role not only the temperament and experience of a Justice of this Court, but also the skill and experience obtained from years as the responsible officer of a public service agency and, in particular, being responsible for the management and work of a team of staff.

Your Honour is no stranger to corruption, but before people raise eyebrows at that, I am, of course, referring to that which has been mentioned before, which was your involvement in the prosecutions of many cases falling out of the WA Inc era. As a result, you oversaw the prosecution of a number of high-profile political personalities.

In establishing the new Office of the Director of Public Prosecutions, your Honour, of course, worked closely with the police, but also worked to alter the culture of the office to provide a separation of prosecution and police, to ensure independence of decision-making in the prosecutorial process.

Your Honour now gets to take on a new role on the other side of that divide, in the conduct of criminal and corruption investigations independent of prosecutors, but at the same time ensuring a healthy distance from the bodies over which you will now have oversight, including the police.

To date, your Honour has spent nearly 40 years in the service of the State in law-related matters, from solicitor for the Crown through to being a member of his Honourable Court, and now on to the role of CCC Commissioner. Your Honour's experience, skill, judgment and temperament all mean that this Court's loss is the CCC's gain, and the society and the legal profession thank you for your Honour's service to date, and extend our best wishes to your Honour and your family as you take up your new role. May it please the Court.

**MARTIN CJ:** Thank you, Mr Keogh. Mr Quinlan.

**QUINLAN, MR:** May it please the Court. The young Crown prosecutor, fresh from his restricted practice year and eager to impress the then Director of Public Prosecutions, J.R. McKechnie QC, was allocated as the Director's junior in a difficult attempted murder trial involving four co-accused. Being prior to the days of videotaped records of interview, the confessional material for one of the accused was to be tendered in the form of a typed record of interview signed by the accused. In the usual course, the document would be tendered through the investigating police officer.

Objection, however, had been taken to two of the questions and answers in the record of interview, and it was necessary to redact the document prior to its tender. The preparation of the redacted document was a task

assigned to the eager young prosecutor. Indeed, it was the only task assigned to him. The following day, the young prosecutor strode proudly into Court 3, behind his leader, when it suddenly struck him. He had neglected to do the one simple task assigned to him.

"Never fear," he thought to himself, "I will simply do it during the morning break. There will be plenty of time." Justice Franklyn entered the Courtroom and the jury arrived. Much to the eager young prosecutor's surprise and horror, your Honour called the investigating officer through whom the document was to be tendered. "It's okay," the young prosecutor attempted to reassure himself, "There's no way he will get to the interview before the morning break. There will be plenty of time."

But the clock seemed to stand still and the officer's evidence-in-chief moved inexorably to the moment of tender, as the young prosecutor's sense of terror grew. There was not going to be plenty of time after all. The moment arrived. Your Honour's hand reached out to receive the document, only to find that it did not materialise.

Your Honour looked to the young eager prosecutor who, by this time, was a cowering, quivering mess. "Where is it?" your Honour whispered. "I haven't done it," the now not so eager young prosecutor ultimately confessed. Your Honour leaned closer, so as not to be heard by the Judge or jury. "Why not?" The young prosecutor's only response was a mingled look of terror and shame as he vainly hoped that the ground would open up and swallow him whole.

Your Honour sighed, inaudibly, paused and turned to Justice Franklyn. "Your Honour, there's a bit of problem. It's entirely my fault. May we seek a short adjournment?" The adjournment was granted, the task performed, and the eager young prosecutor's reputation left safely intact.

It is with great honour for me to appear on behalf of the WA Bar Association on this occasion of your Honour's retirement, to acknowledge the significant contribution that your Honour has made to this Court and to the community of Western Australia. As has already been mentioned, your Honour leaves the court having served as a Judge for more than 16 years.

I commence with the parable of the young prosecutor, as its wide circulation illustrates the high esteem in which your Honour is held. That an incident described by its subject as the worst day of his career should be

redeemed by your Honour's small moment of self-sacrifice speaks volumes as to your Honour's sense of service, responsibility and conscience, and to your Honour's style of leadership, of which I will say a little more later.

Your Honour's service to the public of Western Australia is now in its 40<sup>th</sup> year, having commenced in the Crown Solicitor's Office in 1976. After such a long period of public service, your Honour could be forgiven for leaving the public glare and the burdens of executive and judicial power for more peaceful, dare I say, tranquil surroundings, and yet your Honour embarks on a further venture into one of the most difficult public offices in the State, the Commissioner of the Corruption and Crime Commission, where the glare is brighter still and the pressures many and varied, both internal and external.

Your Honour's achievements in practice have been recounted by the other speakers and do not require repetition by me. To complete the picture, however, it is appropriate that I record, on behalf of the Bar Association, that when your Honour accepted appointment to this Court, your Honour did so as one of our own. In that regard, while your Honour practised as an officer of the Crown throughout your career after articles, following your appointment as Queen's Counsel, you were invited by the then President, Templeman QC, to apply for membership of the WA Bar Association, to which you were unanimously elected on 15 March 1990. Your Honour's acceptance of that membership served to recognise the unity of the Independent Bar as including both public and private practitioners, and to underscore the independence which is the hallmark of Crown service.

On the Bench, your Honour's reputation has always been one of good humour, an inherent sense of justice and a straightforward attention to the issues at hand. Though your Honour served with distinction in all areas of the Court's jurisdiction, your Honour's particular skill in the criminal law was always to the fore, as was your Honour's preparedness to undertake some of the more distressing matters that have come before the Court.

Your Honour's written judgments, in particular, were known for their directness and clarity. One of the more self-deprecating members of the Association commented to me the other day that he would miss your Honour's published judgments because they were the only ones he could ever understand. In that regard, your Honour leaves a significant body of work. According to a search on AustLII, over the past 16 years your Honour has written or

participated in more than 700 judgments and, even then, it must be remembered that the AustLII database for this Court does not go as far back as your Honour's appointment.

As your Honour leaves this Court to take up leadership of the Corruption and Crime Commission, might I finally focus on two character traits of your Honour which deserve particular mention and which will serve the community well in your new role. The first is what I might describe as loyalty and leadership. All those who have worked closely with your Honour over the years, as juniors, instructors, colleagues, associates and staff, a large number of whom are here today, speak admiringly of your Honour's style of leadership and the strong loyalty it engenders.

It is fair to observe, in that context, that your Honour expects much of those with whom you work. Your Honour is known to impose high standards on others, and woe betide the poor soul when those standards are not met. Your Honour can therefore be, at times, in the privacy of your Chambers, in your expectation of others, just a little bit frightening, but there is an important corollary of this. That is this: to those who meet your Honour's standards, or at least strive to do so, your Honour is always unfailingly generous and fiercely loyal in return, and loyalty of that kind begets loyalty in return.

As the parable of the eager prosecutor shows, the buck always stopped with your Honour. This style of leadership is one which requires both humility and strength, and it has served your Honour and the community well, which leads me to the second character trait, responsibility and conscience.

Your Honour has, over the course of your career, consistently demonstrated not only the capacity to be decisive when faced with difficult issues or hard decision, but perhaps, more importantly, your Honour has brought to those decisions an acute sense of the importance of them, and of the human cost that they can involve. As your Honour once said of your time as Director of Public Prosecutions:

Every time I advised the police to charge, every time I signed an indictment, every time I signed a nolle prosequi, I was aware that I was changing somebody's life.

Such an approach is the epitome of good conscience, and it is this sense of conscience of the responsibility

attached to governmental power that distinguishes the administration of justice from mere cold calculation. And this, too, is a trait with the others already mentioned, which make your Honour ideally suited to your Honour's new position within what former Chief Justice Spigelman, of the New South Wales Supreme Court, memorably described as "the integrity branch of government".

For as important as the investigation and exposure of corruption and public maladministration is, so too is the need for extraordinary and coercive powers to be exercised conscientiously, responsibly and soberly. The community of Western Australia can have confidence that your Honour will achieve both objectives and, at the same time, provide the necessary leadership which the integrity branch requires.

On behalf of the Bar Association, can I once again extend our gratitude to your Honour for your contribution to the administration of justice, this Court and the community of Western Australia. We extend our best wishes to your Honour in your new role and, when the time finally comes, for an enjoyable retirement with family and friends. May it please the Court.

**MARTIN CJ:** Thank you, Mr Quinlan. Justice McKechnie.

**McKECHNIE J:** First of all, Chief Justice, I'm pleased that our friendship has survived your farewell words, and I thank you for them. Thank you, Mr Tannin, for your kind words and your friendship from our first days working together, some 34 years ago. Thank you, Mr Keogh, for your kind words. I enjoyed my membership of the Law Society and hope to rejoin now I'm no longer a Judge. I can't imagine where you got your information from. And thank you, Mr Quinlan, for your words also. I have known you since you were but a beardless youth. The Bar of this State is one of its most important institutions, and a strong Bar, in turn, helps an independent judiciary.

I'm especially honoured that Chief Justice French has joined us today. I'm honoured and humbled by that. It is a little-known fact that I manned a polling booth for his Honour many years ago. We didn't do too well.

I will carry on with some thank yous. My long-time and loyal associate, Kate, has been with me through thick and thin, as many of you will know, for nearly 30 years, and has proved a fierce and loyal friend, colleague and, often, protector. I thank my orderly and acting associate, Julie, for her quiet efficiency and her ability not to take me seriously. I also thank my long-term secretary, June,

who must have a degree in cryptography, I think, to read my amendments to my draft judgments.

We are not one for PDAs, public displays of affection, in our family, and Beth told me she would kill me if I mentioned her, so I won't. I can tell you that years ago, however, a friend gave Beth a fridge magnet which read, "Behind every successful man is a surprised woman." We're all grateful that all of my family are here, and there seem to be plenty of them, especially Reynold, who normally lives in South Africa. The way he combines cheffing and surfing shows a lifestyle balance that lawyers and Judges can only dream of.

I had supposed that the speech would be delivered on my 70<sup>th</sup> birthday. I had already chosen a musical accompaniment, the Wolverines, "What a great day to go sailing," but other challenges have beckoned, and I look forward to embracing them.

With my departure, the only member of the Court appointed last century, as the Chief Justice pointed out, is Master Sanderson. *Ut flatis venti, sic transit gloria mundi.* Like a breath of wind, thus passes the glories of the world. I said that in Latin especially for the Chief Justice. When he arrived at the court, he suggested we should modernise lots of things, including our language in judgments, by eliminating Latin phrases. He proposed that we should discuss this at a judicial colloquium. It was left to Justice Barker to point out that, indeed, colloquium is a Latin word.

I endured Latin for five years because my father was under the impression that it was a requirement for entry into the professions at university, and it may have been in 1922 when he graduated, but its main use now is to enable me to pretend I understand what Heenan J sometimes says.

I want to pay tribute to the Court staff with whom I have closely worked in bringing IT into Western Australian Courts and, in later years, general Court administration. It was a challenge. An early Judges meeting spent considerable time debating whether we should use email to circulate memos rather than the old-fashioned folder, initialled in order of seniority. As junior Judge, I was often asked to approve or implement rule changes and other things that had been completed weeks if not months before. Email won out by a narrow squeak. The best thing about the process was watching Ipp J learn to type.

Starting with Gavin Jones, I have watched a succession of very capable Executive Officers revitalise a creaking administration. The current Executive Officer, we pinched from the District Court, along with their Principal Registrar, their Chief Judge and lots of other Judges. Well done, us. Rob Christie is a great Executive Officer, battling the twin and occasionally conflicting demands of two powerful initials, CJ and DG.

Back in 2000, when we were conducting focus groups about what is now known as ICMS, I was told that it took eight years to train a counter clerk at the front office. This surprised me a little bit because it was two years longer than to train a lawyer. There were no women in the front office. How things have changed for the better, and that is due to all the really good people who work in the Court.

I also want to acknowledge the work of the Registrars. Over my time, their work has moved from administrative to a mainly judicial role, which they fill with dispatch and efficiency. The Court simply could not run without them and the work they do. From the Appeal Registrars to the Stirling Gardens Magistrates, to their invaluable work in mediations, without which we would surely go under, they are the unsung champions of the Court. Our clearance times in probate are a constant source of pride.

There have been many achievements and some occasional misses during the past 16 years. One major win was the decision to change the judicial attire. Brinsden J once memorably described a sitting of the Full Court as akin to a bank of faded geraniums. Our present robes are contemporary and comfortable. If we happen to look like a murder of desiccated crows, well, you can't have everything. A major miss is accommodation. Even after spending hundreds of millions of dollars, from 2016, the Supreme Court will still be operating on three separate sites.

I turn now to my colleagues. I am in constant awe of the wisdom and learning of the Judges with whom I have served, past and present. One of my greatest privileges was to serve, for a time, with one of my heroes, Geoffrey Kennedy J. He was the intellectual powerhouse of the Court. His mantle has fallen on President McLure, who is unable to be with us today, and seeing she is not here, I can say she really is a clever clogs.

I have served happily with two Chief Justices, the late David Malcolm and the present Wayne Martin, different

personalities - I think everybody would agree with that - but the same dedication to the role, and determination to demystify the law and its processes. I have enjoyed working with Wayne. It will come as no surprise that, occasionally, we have had the odd disagreement. He tells me what he thinks, I tell him, more moderately, what I think, and then we move on. I will miss his leadership, because he has been a transforming leader, but I will keep his friendship.

I have appeared or served alongside four Chief Justices. I have appeared before 27 Judges. Since I joined the Court as number 16, in 1999, in addition to those that I had appeared before, and who became my colleagues, I have served with 20 more Judges appointed since that time. And if you think this recitation of statistics is boring, kindly remember the statistics at the close of the legal year before the incoming Chief Justice mercifully killed the sitting.

After the example set by my friend, Alan Wilson, of the Supreme Court in Queensland, however, at his final address, I feel it is my duty to make public a contentious issue which seriously divides this Court. There are those who are avid Eagles supporters ranged against a significant cohort of diehard Dockers fans, currently in the ascendant, and if that is not enough, in the western reaches of the jurisdiction, there is a small pocket of fanatical resistance which recognises only Liverpool Football Club. And, of course, there are those of us who couldn't care less. Seriously, this is a highly collegial Court, where respect for each other is the order of the day. No one likes being overturned on appeal, but this Court manages better than most to maintain friendship and amity despite divisions of judicial opinion.

The Court of Appeal Judges have an unrelenting workload, which they bear uncomplainingly for the most part. I served on Full Courts for nearly five years, and recall the day that the Court of Appeal was established as the day I got my life back. While the burden of reading transcripts and judgments must, of course, be done by someone, to me it has always seemed as interesting as marking other people's homework. I am thankful that we have such highly-rated Judges who are prepared to do the work. Their intellectual heft is inspiring.

I have always preferred to be a trial Judge whereas my friend and former colleague, Nick Hasluck, would say you see the whole procession of the human condition. Trial work is demanding and precise. Civil work involves a form

of problem solving to do justice to parties and, essentially, to a degree, private rights. The reality is that few judgments are ever appealed, for many reasons, so that the trial Judge is often the first and last decision-maker. This is a great responsibility and my amazing colleagues in the General Division do this every day. Our CMC list is the envy of other jurisdictions, which is not to say that it doesn't have its critics within.

On the criminal side, we do not have the intensity and the variety that confronts our friends and colleagues in the District Court. Every trial is, at heart, a life-changing experience for many of those involved. My colleagues sit, uncomplainingly, month after month, listening to the worst excesses of violence and death, and still ensure that the accused and the State receive a fair trial. It has been a privilege to be a part of and, latterly, Senior Judge of the General Division.

The work of a Judge or a Magistrate is the highest calling to which a lawyer can aspire, and two Chief Justices here today, the President and all my colleagues exemplify public service and commitment. The words spoken today about me, kind as they are, and I do appreciate them, could really be applied to any one of my colleagues. I'm actually very pleased about them. I have been telling my family this for years.

I also want to pay tribute to the thousands of men and woman I have had the privilege of observing as they carry out their functions as jurors. There is sometimes fierce criticisms of the jury system. It is, I think, a peculiar arrogance that some lawyers, and even Judges, fall into thinking that a Judge is necessarily better than the commonsense and wisdom embellished by 12 ordinary men and women. With few exceptions, I have seen them conscientiously carrying out their task, sometimes in difficult and distressing circumstances. Anyone who wishes to establish an autocracy should first abolish juries. They are a powerful, democratic corrective to tyranny.

Finally, I would like to thank all of those who have kept me firmly grounded over the years. I would mention my children and grandchildren, but we don't do PDAs. I have been teaching undergraduate students for 30 years. This has been both a pleasure and an inspiration. I treasure my time on the Council of Presbyterian Ladies College as an opportunity to see the best in young people rather than those I see in my daily work. One of the greatest pro-social factors preventing crime is a proper education.

I have also co-authored many editions of a leading textbook on crime. At least I call it leading. This has two effects. First, it is humbling to see how many great Judges there are in Australia. Secondly, it can be fun to point out errors in the reasons of certain appellate judgments. I may be less constrained in the future, but now is not the time to talk about Wongawol.

I have also enjoyed the privilege of meeting new and experienced Judges through my work in the National Judicial College of Australia, preparing them for the life ahead, and that is sometimes a shock to them, but Australia is remarkably well served by the quality of its judiciary.

My friend and colleague, Corboy J, advised me on no account to mention the two decisions in *Russell v State of Western Australia*, but I couldn't resist.

And so, now, I finally depart. People have asked me what I will do on my retirement. I will catch up on some reading, maybe go supermarket shopping with Beth, because I know she will like that, definitely do some sailing, perhaps a little travel, and then, on Tuesday, I start the new job. Thank you, all, very much, for coming.

**MARTIN CJ:** As that completes the formal part of this afternoon's proceedings, the Court will now adjourn.

AT 5.19 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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