



THE SUPREME COURT OF
WESTERN AUSTRALIA

FAREWELL TO THE HONOURABLE
JUSTICE GEOFFREY MILLER

TRANSCRIPT OF PROCEEDINGS
AT PERTH ON FRIDAY, 11 DECEMBER 2009, AT 9.30 AM



MARTIN CJ: The Court sits this morning to mark the retirement of Justice Geoffrey Miller from the Bench of this Court. We are very pleased to be joined this morning by his Honour's wife, Rhonda; his son, Julian; daughter-in-law, Ingrid; grand-daughter, Ellen; step-daughter, Marisa, as well as other family and friends.

I would also like to welcome Justices Tony Siopis, John Gilmour, Neil McKerracher and Michael Barker of the Federal Court of Australia; the Hon Stephen Thackray, Chief Judge of the Family Court of Western Australia; her Honour Judge Antoinette Kennedy, Chief Judge of the District Court of Western Australia; Mr Robert Meadows QC, Solicitor-General; Ms Cheryl Gwilliam, Director-General of the Department of the Attorney-General; Professor the Honourable David Malcolm, former Chief Justice; 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 morning, being the Honourable Michael Mischin MLC, representing the Honourable Christian Porter MLA, Attorney-General of Western Australia on behalf of the Government, and unfortunately the Attorney cannot join us this morning; Mr John Prior, representing Mr Dudley Stow, President of the Law Society; and Mr Grant Donaldson SC, President of the WA Bar Association.

Justice Miller joined this Court on 3 August 1998. That is, of course, almost 11 and a half years ago. 11 and a half years does not seem like a particularly long time, although it probably would if you were standing in the prisoner's dock at the time that term was pronounced. Some measure of the change that has occurred within the legal profession and the judiciary of this State over the period of his Honour's service on the Court is provided by a roll call of those who attended his Honour's welcome ceremony in August 1998.

Professor the Honourable David Malcolm presided as Chief Justice. Present in Court were the Honourable Michael Holden, then Chief Judge of the Family Court; the Honourable Kevin Hammond, then Chief Judge of the District Court; his Honour Judge Fenbury, then President of the Children's Court; Mr Con Zempilas, then Chief Stipendiary Magistrate; the Honourable Peter Sharkey, then President of the West Australian Industrial Relations Commission; Mr Alan Piper, then Director-General of the Ministry of Justice; Mr Richard Foster, then Executive-Director of Court Services; Mr Peter Panegyres, then Crown Solicitor; her Honour Judge Kate O'Brien in her capacity as then President of the Law Society; and Justice McKechnie in his then capacity as Director of Public Prosecutions. I was also present and spoke in my capacity as President of the WA Bar Association.



Absent were the State Attorney-General, the Honourable Peter Foss QC, and the Commonwealth Attorney, the Honourable Daryl Williams QC, although I am pleased to see that he has been able to join us this morning. In fact the only person present on that occasion and who continues to occupy the office which he then held, aside from Justices Murray, Owen and Wheeler, was Mr Robert Meadows QC, Solicitor-General, and who was in your Honour's year at Law School.

We are all very pleased to see Mr Meadows here again today and I hasten to assure him that I am not trying to make any point by this observation. Rather, my point is that during your Honour's term in office there has been an almost complete turnover in the various offices held within the legal profession and the heads of Courts in this State.

Your Honour joined the Bench after a stellar career as a solicitor advocate and then as a barrister. Your Honour was one of the many graduates of Perth Modern School who have gone on to distinguished careers in the law. Your Honour's academic success as a schoolboy was followed by similar success as a law student and you graduated with first-class honours in law from the University of Western Australia in 1963. During your university career you achieved a Full Blue in athletics, which is of course no mean feat, if you will pardon the pun.

After graduation, your Honour practised in a variety of capacities before joining the Bar in 1980. You were appointed Queen's Counsel in July 1980 and practised in that capacity for 18 years prior to your appointment to this Bench. At the time of your appointment as Silk you were President of the Law Society and later served as Vice-President of the WA Bar Association.

During your time at the Bar your Honour practised in a variety of professional areas, including especially personal injury litigation and increasingly the criminal area. You gained renown as an outstanding advocate and your Honour's services were in strong demand, particularly from those who had a difficult criminal defence to present.

I was fortunate to have the privilege of acting as Junior Counsel to your Honour on a number of occasions, and later as opposing Counsel. I learnt a lot from your Honour in both capacities. Your Honour was well known as a very worthy opponent both inside and outside the Court.

One of our areas of ideological difference at the Bar was in respect of the head gear and robes appropriately worn by Counsel in Court. My various attempts to persuade a majority of a general meeting of the Bar to support change in that regard failed ignominiously in the face of your Honour's strident opposition. I will say nothing of



the renewal of that ideological difference when I joined the Bench as I would not want to spoil this occasion for your Honour.

As a consequence of your Honour's appointment to the Bench, you felt obliged to give up a number of non-professional activities for which you were well known. Your Honour's fleetness of foot had been followed by an enthusiasm for fast cars and horses and you were prominent in the fields of motor racing and horseracing. The detective skills of Sherlock Holmes were not required to identify your Honour's car in the basement at Bar Chambers. It was usually bright red and a hotted-up, high-powered Falcon or Holden.

At the time of your welcome to the Court, your Honour's aptitude for completing work in about half the time taken by others was the subject of much comment. That has also been a characteristic of your Honour's work on the Bench. One of the challenges of sitting with your Honour on the Court of Appeal has been to try to arrive back at Chambers after the completion of the hearing before the arrival of your Honour's first draft of the judgment.

Your Honour's vigour has not been constrained to judgment writing. Following my arrival at the Court, I received the inestimable benefit of your views on a wide variety of subjects by memos delivered on average three or four times a day. This gained you the honorary title of Judge in Charge of Ideas. Some of them were very good ideas. In your capacity as Judge in Charge of the Criminal List you suggested a form of mediation of criminal cases. This was a novel idea.

Until your Honour's proposal there was a widely held view that mediation, which had become such a central feature of the civil work of the Court, was inappropriate to the criminal work of the Court because of such principles as the presumption of innocence, the burden of proof resting at all times on the State, and the right to silence.

But more detailed analysis revealed that notwithstanding those principles, which are of course very important principles that must be respected, there was still significant scope for a modified form of mediation process to facilitate the narrowing of issues to be tried and the possible resolution of a case by way of a plea of guilty, perhaps to a modified charge.

The process commenced under the name of Voluntary Criminal Case Conferencing, and your Honour successfully recruited Mr Ron Cannon, a very senior and experienced criminal practitioner to conduct the programme in the first instance, and you drafted the protocol governing the



operation of the programme. The programme has proven to be a great success and Mr Cannon's services have been augmented and in due course replaced by retired Chief Judge Hammond and retired Judge Jackson. If I were to take on the invidious challenge of attempting to identify a single characteristic of your Honour's judicial career, I would nominate your Honour's prodigious capacity for completing large volumes of work in a fraction of the time taken by ordinary mortals.

The success of this programme has attracted interest from other jurisdictions, and a number of States are looking carefully at the programme with a view to emulating it in their own jurisdictions.

This was evident during your Honour's time in the General Division, particularly when serving as Judge in Charge of the Criminal List, when a busy list of status conferences or pleas would be dealt with by your Honour with a degree of military precision, made possible by your Honour's capacity to assimilate the facts and legal issues in all the cases in that list in a very short period of time.

The same characteristic was evident following your Honour's appointment to the Court of Appeal where the case load is unremitting. Your Honour shouldered a major portion of the criminal work of the Court of Appeal and despatched a large volume of that work with the same characteristic efficiency and expedition. Your encyclopaedic knowledge of criminal law, procedure and evidence, reflected in your many published decisions in the area, was not only of great assistance to the Court in the disposition of cases but will be a valuable source of learning for judges, practitioners and students for years to come.

During argument your Honour has always been quick to let counsel know your tentative thoughts on any and indeed every issue in the case. In my experience, this was never done in an overbearing manner but rather for the purpose of elucidating the issues and providing counsel with the opportunity to put argument in opposition to your Honour's tentative views which could often be swayed during the course of debate.

Your Honour has also been a strong contributor to a number of extra curial facets of the life of the Court. Your service on the Art Committee has resulted in the acquisition of some prized and admired works which hang in the lobbies and corridors of the Court, and you played a significant part in the project relating to the portraiture of the Chief Justices. In the presence of the former President, I say with some hesitation that it must be said that the portrait of the former President is not one of



your crowning achievements in this field, but I think, with the greatest of respect to the former President, the fault lies with the subject who refused to sit for the painter.

I know from our discussions that your Honour has had retirement under consideration for a little while. It is regrettable that your decision was precipitated by major surgery conducted a few months ago, but we are all very relieved that the surgery was successful and will enable you to look forward to a long and active retirement which you will share with Rhonda and the other members of your family. On behalf of the Court can I take this opportunity to express our gratitude for your service to the Court and to the community of Western Australia during your time on the Bench of this Court and to wish you a well earned, long and enjoyable retirement. Mr Mischin?

MISCHIN, MR: Thank you, your Honour. May it please the Court. When your Honour was appointed to the Supreme Court in 1998 the Solicitor-General Mr Robert Meadows, who has already been referred to, speaking on behalf of the then Attorney-General, predicted a most distinguished and successful career as a Judge of this Court. As lawyers know, predicting the course of human events can be like predicting the outcome of litigation; it is always fraught with risk, but I'm delighted to be able to record that Mr Meadows had been proved correct.

Indeed if I might borrow a racing term with which your Honour may be familiar, going by your Honour's form, a distinguished and successful career was a pretty safe bet. Educated at Perth Modern School, your Honour graduated with first-class honours in law from the University of Western Australia in 1963 and you were admitted to practice in 1965 and appointment a Queen's Counsel in 1980. Having tackled and excelled in the full diversity of cases in all jurisdictions, your Honour was ideally suited for your appointment to the Supreme Court and in 1998 as a Judge of the Court of Appeal in 2007.

Since your appointment to the Court I am informed that your Honour has dealt with more than three and a half thousand matters, presided over nearly some 5000 hearings and written some 700-odd judgments. Furthermore, I am reliably informed that as a Judge of the Court of Appeal your administration of the criminal list has transformed it into a model of efficiency. Waiting lists of criminal matters awaiting appeal were reduced from a significant backlog to virtually immediate hearings.

As one of the State's most accomplished criminal lawyers while in private practice, your Honour specialised in criminal law during your time on the Bench, presiding over many complex and many highly-publicised cases. As both lawyer and a Judge, your Honour has had a finely-honed



skill on cutting through to the core of a matter and the ability to guide juries towards understanding the issues at trials in which you were involved.

In fact by the time that I made my first foray into the legal profession, your Honour had already established a formidable reputation as a leading criminal barrister, being one of the handful of private counsel at the time that the Crown was prepared to brief to prosecute its cases. Your experience and breadth and depth of legal knowledge gave you the reputation of being among if not the most learned of our senior learned counsel of the late 1980s and early 1990s.

Your skill also made you much in demand from some of the more famous or infamous defendants of the time, including one Laurie Connell and one Alan Bond, as well as many witnesses who appeared before the then long-running saga of the Royal Commission into Commercial Activities of Government, otherwise known as the WA Inc Royal Commission.

During your career your clientele was not limited to those with means. As a founding member between 1977 and 1980 of the Western Australian Legal Aid Commission, your Honour defended those who could not otherwise afford any lawyer, let alone a Queen's Counsel. You put into practice your philosophy that lawyers have a responsibility to ensure that the financially disadvantaged should also have access to proper representation in any trial, and particularly one involving their liberty.

Your profound knowledge of Australia's criminal law also was a strength that you brought to the Supreme Court in the many years you sat on appeals. Your colleagues, who hold you in the highest esteem and affection, have described your Honour as a traditionalist who has a clear understanding of the history and traditions of the law and their importance to the administration of justice. I digress to say that it may be no coincidence that we are now moving away from certain traditional forms of dress on the occasion of your retirement towards perhaps more modern garb.

By way of temperament, your Honour has had a quick sense of humour and has been quick to make up your mind on issues and has never been shy in making your views known. On one occasion, as part of a Bench hearing an appeal in a criminal matter, your Honour had taken the view that it was devoid of any merit. Calling on the appellant's counsel, you informed him, "You have a job ahead of you. What's wrong with this direction?" Counsel, who I understand was Mr Bob Richardson of counsel, responded, "Well, when your Honour gives me the chance, I will tell you." He proceeded to do so with the result that the Bench, including your Honour, delivered an extempore judgment,



something pretty rare nowadays anyway, but an extempore judgment allowing the appeal unanimously.

This modest example to my mind illustrates several things: firstly, your Honour's quickness of mind and sharpness of intellect in confidently grasping the issues at hand; secondly, your Honour's eagerness to get to the point; and lastly, your Honour's capacity to nevertheless listen with an open mind and be persuaded to the rightness of the cause, whatever your initial thoughts may have been. Although your Honour did not bear fools gladly, your Honour was always consummately courteous and respectful of counsel and people appearing before him and a delight to appear before, and a lawyer cannot ask much more of a Judge.

Your Honour's contribution to the Supreme Court has not been limited to the jurisprudential. Your involvement in the art acquisition and portrait project has already been mentioned and over the years that modest collection has been shaped into a small but thoughtful representation of Western Australian art.

On a more personal level, your Honour is otherwise known to be widely read with a particular interest in military history and a passion for jazz, and of course we have heard about your passion for the fast and sporty - cars, I mean - and as you were building your reputation in the criminal Bar, also building a reputation as rather a rev-head.

I think that passion has continued since only a matter of years ago I believe you took the opportunity to tear up the Barbagallo Raceway in a Holden HSV. One might say your Honour's contribution to the administration of justice in this State is probably only matched by your contribution to its carbon footprint.

Your Honour, the administration of justice in this State bears a great debt to you and the character of the Supreme Court will be the poorer for your retirement. On behalf of the State and Government of Western Australia and of the legal profession, I would like to thank you for your service to the people of Western Australia and please accept our very best wishes for a long, fulfilling and happy retirement. May it please the Court.

MARTIN CJ: Thank you, Mr Mischin. Mr Prior?

PRIOR, MR: May it please the Court. With a sense of both honour and regret I stand here representing the Law Society of Western Australia to farewell your Honour Justice Miller on your retirement after more than 11 years of providing magnificent service to the community as a Judge of this Court, and of course to the legal profession of Western Australia.



Your Honour's retirement from the Court today follows on from 33 years of legal practice as a barrister and solicitor where you rose to be a leader in the fields of criminal and common law.

My knowledge of your Honour as both a legal practitioner and as a Judge of this Court extends approximately 25 years as I have been fortunate enough to instruct your Honour as counsel, as solicitor, appear as junior counsel with your Honour as a barrister, appear before your Honour as both prosecution and defence counsel in the Supreme Court, and finally appear before your Honour as a member of the Court of Appeal.

The positive characteristics and traits which you have demonstrated as a legal practitioner have continued throughout your career as a Judge of this Court. In the mid-1980s when I commenced practice, your Honour having commenced practice as an independent barrister in 1980 and being appointed Queen's Counsel in the same year, was at the peak of your practice primarily working in the criminal jurisdiction as both a prosecution and defence Counsel.

In the 1980s and 1990s, you were a member of what I might describe as the big four: Geoff Miller QC, Brian Singleton QC, Leo Wood and Ron Cannon, all then leaders of the so-called Criminal Bar. For those of us who practised in the criminal Courts in the 1980s and 1990s, if you really wanted to learn the skills of good advocacy you could do no better than watch your Honour appear in the Magistrates Court, District Court or the Supreme Court.

The skills that your Honour demonstrated in those Courts are the type of skills that often authors of books on advocacy and teachers of advocacy have much difficulty in passing on to avid students. Your Honour's knowledge of the law and skills of advocacy influenced significant areas of criminal law in this State. The High Court decisions of **Longman** and **Harriman** are examples of this.

During that time period, your Honour not only represented your various clients to the best of your ability but made a significant contribution by way of pro bono work in regularly taking briefs for various prosecutorial and regulatory authorities and accepting grants of Legal Aid.

Your Honour had a firm view that if a person was charged with wilful murder, they were entitled to representation of Senior Counsel. Whether they could fund their own legal representation was irrelevant. I can specifically remember that I instructed and appeared as junior counsel with your Honour probably in your Honour's



last wilful murder trial in the late 1990s, representing an escaped prisoner from Kalgoorlie Prison who was involved with two co-offenders in brutally and tragically murdering a young man in Fremantle.

What is significant about that case, and indicative of your Honour's attitude to Legal Aid and the duty of counsel to provide the best advice and representation for people, in particular in the criminal jurisdiction, was when the application for Legal Aid was refused, your Honour saw fit to attend with myself at the meeting of the Legal Aid Review Committee.

I can vividly remember the expression on the late Jim Mazza's face, the Chairman of the Review Committee, when your Honour marched into the Legal Aid offices and then made a passionate submission to the members of the Committee of the importance of Senior Counsel being able to represent people on grants of Legal Aid for serious charges such as wilful murder.

In 1980 and 1981, as has been said, your Honour served the legal profession as President of the Law Society of Western Australia. This role followed many years of voluntary service as a Law Society of Western Australia Councillor. This was during, as I have said, a time period when your Honour was a very busy barrister and there were very limited administrative assistants in that role.

Your Honour can generally be described as conservative by nature, whether that has been as a barrister or as a Judge. To that extent your Honour is very proud of the traditions of the Courts. Significantly, when one goes to the Supreme Court web site and looks up the Judges of the Supreme Court, your Honour is the only person found in a photograph wearing full ceremonial robes, including a wig.

Perhaps your Honour's conservative nature has best been described by the Honourable Mr G. Campbell, as he then was, the member of Kalgoorlie, as appears in State Parliament Hansard on 20 November 1995:

There are very few more conservative people in the world than Geoffrey Miller QC, undoubtedly one of West Australia's most eminent QCs, so when Geoffrey Miller gives an opinion, it has to be considered and taken seriously.

The member for Kalgoorlie was referring to an opinion that your Honour had given concerning a Court case and whether a Crown witness had committed perjury.

Going back to your Honour's passion for the traditions of the Court, I did read this week the



Consolidated Practice Directions of the Supreme Court, Chief Justice, to find the relevant procedure to make the application to wear my wig at a ceremonial sitting of this Honourable Court.

Unsurprisingly, there were no directions or application form. Nevertheless, I have seen fit to bring my wig along today and I place it on the Bar table because in honour of your Honour I intend retiring my wig today, 20 days short of the final day on which wigs will be worn in Western Australian Courts on any occasion. Your Honour will be aware of sporting analogies such as football jumpers and cricket bats being retired.

Your Honour was appointed a Judge of the Court of Appeal on 7 June 2007. In your judgments you will be remembered for your knowledge of the law, decisiveness and independent thought. In joint judgments or single judgments of the Court of Appeal your Honour has made rulings on very important areas of criminal law such as **VIM**, **Bosworth**, **Tulloch** and **Eves**, which presently act effectively as guideline judgments on sentencing ranges and relevant sentencing criteria for serious criminal offences in this State.

Your Honour often has decisively and sometimes passionately stated your views on controversial areas of law. Your short minority judgment in **BLM**, agreeing with his Honour Justice Buss, sets out in three paragraphs what you consider the intent of Parliament was in amending the so-called Truth in Sentencing Laws, following on from your dissenting judgment in **Yates**.

Your Honour has always been prepared to express your opinion and judgment on errors of law even if this resulted in your Honour, as it often has, being part of the minority view of the Court. Your recent decision in **Butler** evidences your continued views on the appropriate sentences for offences of culpable driving causing death.

In the early part of your legal career, your Honour co-authored a book titled *A Dangerous Life: Chum Taylor - A Western Australian Speedway Legend*. Perhaps in your retirement Mr Taylor can return the favour by authoring a book of similar title *A Dangerous Life: Geoffrey Miller QC - A Western Australian Legal Legend*. On behalf of the Law Society of Western Australia, I wish you all the best in your retirement. I trust your time away from the Bench will be filled with better health, happiness and well-deserved relaxation. May it please the court.

MARTIN CJ: Thank you, Mr Prior. Your pretext to give you the opportunity to go down in history as the last person to wear a wig in this court has not gone unnoticed. Mr Donaldson?



DONALDSON, MR: May it please the court. Can I assure your Honours that I am not wearing a wig? It is actually just a bad hair day. Though always a pleasure to appear before your Honour Justice Miller, it is my sad duty to do so on this occasion, as it will be the last occasion on which counsel from Western Australia will so appear.

There are conflicting temptations on occasions such as this. One temptation is to focus solely upon the judicial service of the Judge being farewelled and thereby overlooking that judicial service is invariably only part of the means by which senior members of the profession serve the administration of justice, yet an address on the occasion of retirement of Geoffrey Miller from the profession of the law cannot fail to record that your Honour's report card was marked from the start with a bullet.

Your Honour's scholastic brilliance as a schoolboy and law student has oftentimes been the subject of admiring comment by your Honour's contemporaries. Many of those contemporaries are in this courtroom today because your Honour was a member of a Law School class that has in this State been of some renown; not only your Honour on this Bench but Justices Murray and Hasluck, the Solicitor-General Robert Meadows QC and the former Commonwealth Attorney-General and one of the leaders of the Bar, Daryl Williams QC, to name but a few.

Legend has it that although inter partes there is some long-running controversy as to who it was who placed second in that graduating class, it was daylight between your Honour as first and that controversial second. As a practitioner your Honour was simply one of the most distinguished counsel that the profession in this State has produced. In your Honour's generation as defence counsel in criminal trials and in criminal appeals your Honour was pre-eminent.

Your Honour appeared in many of the largest and most contentious criminal trials and appeals during your time in practice. In addition to this, your Honour's practice in what used to be called common law was vast. Your Honour's spare time was spent moonlighting in the odd commercial matter. We were fortunate indeed that your Honour led this criminal branch of the profession for so long. As an advocate your Honour seemed to be, if I might say with respect, the complete package - the immense speed in absorbing material, concise, controlled and thoroughly considered cross-examination, every answer to a judicial question seemingly anticipated, and the short and direct answer seemingly prepared well in advance, and all the while a certain style.



I apprehend the same sort of style that has in recent times been the subject of written tribute and recounted of Michael McHugh the advocate, by amongst others Justice Kirby. Having recently read some of these observations of Justice McHugh the advocate and having clear memories of your Honour as an advocate in full flight, my imagination brings to mind a duel between your Honour in early days and a younger Michael McHugh as young, wiry gun-slingers on a hot windswept and dusty street, outside a thirsty wild west saloon. I would hate to have to set the odds on that one.

Pre-eminently, your Honour as an advocate epitomised what Sir Garfield Barwick famously observed:

We are practised in what is, in very truth, an ancient mystery. The layperson who thinks the law is commonsense might be right if he watched the consummate advocate at work in all of his deep simplicity and with that ease which conceals the great learning behind the apparent simplicity.

Your Honour made it look deeply simple. Of course the greatest contribution to the community made by your Honour has been as a Judge of this Court and in this respect your Honour's contribution has been immense. Early fears that your Honour may find temperamentally challenging the transition from the bare-knuckled brawling of the common law and criminal Bar to the more contemplative requirements of the Bench were soon dispelled.

Your Honour's time as a trial Judge of this Court was eminent indeed, though the recounting by your former colleagues at the criminal Bar of your Honour's conduct of criminal trials often involved the terms "poacher" and "gamekeeper" being uttered in the same sentence. Indeed, one eminent counsel, now a Judge, who would no doubt require that his identity be kept entirely secret, was often overheard after appearing in criminal trials before your Honour lamenting that he simply could get nothing past your Honour, complaining that your Honour anticipated every tactical manoeuvre and dealt with it all with ease and often with your Honour's characteristic chuckle, as if to say, "Not bad, Mr Mazza, but not quite good enough."

Your Honour possessed simply a complete mastery of the trial process and in particular the criminal trial process, and in this even more particularly what your Honour had to an extraordinary degree was the ability to do that most difficult and unheralded of judicial tasks: to direct a jury in a criminal trial of factual and legal complexity.

Directions in such cases are invariably poorly preserved. We don't publish them or report them and the attention given to them pales in comparison to that given to, for instance, judgments, yet it is the difficult



direction that is no doubt the most difficult of judicial tasks because the ability to explain to a jury in clear terms matters of great complexity requires skill and insight of the highest order.

It was in this most difficult of judicial tasks and in the conduct of complex criminal trials that your Honour excelled, and in respect of which your Honour's reputation was of national renown.

In this respect it is with some embarrassment that I note that the last application for special leave to appeal to the High Court from a judgment of the Court of Appeal from a verdict in a criminal trial presided over by your Honour was argued by me, unsuccessfully. The respect which that special leave panel had for your Honour was, however, clear and obvious and express.

That matter involved a trial of the most intense factual and indeed legal complexity that lasted for many, many days, yet the direction which your Honour gave, if I may say so with the greatest of respect to Justice McLure who dissented in the Court of Appeal and who led me astray, was simply faultless.

The matters that the jury was to decide and how those matters sat within the complex legal framework of the charge were identified with precision and seamlessly interwoven, but what was most clear was the respectful manner in which all of this was presented; respect not only for the jury that had a most difficult task to confront, but also for the prosecutor, for defence counsel, for the accused person, for witnesses, and for the family of the victim, which was also the family of the accused person, who had sat through the whole of a long and harrowing trial, yet directions such as this were commonplace with your Honour and given in countless trials over many, many years.

Inevitably, though, for those whose recollections of Justice Miller are primarily of your Honour as a trial Judge, in time there will be more for whom your Honour's service as a member of the Court of Appeal will be central, because in the reports of this Court many of your Honour's judgments will be preserved, read and studied long after today. That your Honour adjusted to the work of a full-time appellate Judge with evident ease came, of course, as no surprise. Just as your Honour had moved effortlessly from advocate to trial Judge, so it was that the journey from trial Judge to permanent appellate work was rather more of a step than a leap.

Your Honour's judgments on the Court of Appeal have been read with the greatest interest, and not only in this State. They have been characterised by clarity in the identification of issues, by conciseness of expression, by



a recognition that the purposes of a judgment and of a textbook are different, and in all cases by your Honour's obvious and invariably successful attempt to explain to the losing party why it was that they lost in terms that they could understand. It is a regret indeed that the community had the benefit of your Honour's judgment, and the profession the benefit of your Honour's guidance on the Court of Appeal, for so short a time.

The Bar farewells your Honour from this Court but in the hope that we may now see a little bit more of you around and about, and with an assurance that your Honour leaves the Bench with the admiration and best wishes of the Bar and with the firm recognition of the lustre that your Honour's service on this Court has brought to us. May it please the court.

MARTIN CJ: Thank you, Mr Donaldson. Justice Miller?

MILLER JA: Thank you, Chief Justice. Chief Justice, Mr Mischin, Mr Prior and Mr Donaldson, I thank each of you for what you have had to say about the many years I have spent in the law, both in the legal profession and as a Judge. You will be relieved to know, as will others here, that I am not going to trace my whole career. To do that would be an egocentric exercise and, in any event, it would repeat much of what has been said.

It is sufficient to say that I did begin in the law nearly 50 years ago, and in 1960 I enrolled at Law School at the University of Western Australia alongside others who are here today. As has been mentioned, they included Robert Meadows the present Solicitor-General, Daryl Williams the former Commonwealth Attorney-General, Robert Keall a former District Court Judge, Michael Murray the Senior Puisne Judge, and Nicholas Hasluck a Puisne Judge of this Court.

So it was an impressive class that began to study law in that year. Peter Johnston who was formerly at the University Law School, and who was in the year, not surprisingly described it as the greatest year ever at the Law School at UWA. This may have been an overstatement. It is a remarkable fact, I think, that three of us out of the 30 or so students who began law that year do sit on the Supreme Court today.

When I say 30 or so students began that year, many were in those days repeat students; something which is unthinkable today. A former District Court Judge, whom I will not name, worried me on that first morning at the Law School because he was sitting confidently in the common room and he said he felt very sorry for those of us who were starting law that year, as only 13 of the 30 in the previous year had passed.



I thought that he must have been a top student, but when I went in for the first lecture, there he was sitting there repeating the first year again. At the Law School and later in the course of my learning the law, I was tutored and educated by a great number of eminent lawyers. Two stand out, and it is they whom I would like to mention. The first was Sir Francis Burt. He was probably the most eminent barrister produced in this State, a towering figure as a Judge and a Chief Justice of this Court.

It was he who recommended that I should be appointed Queen's Counsel and it was he who gave me the confidence to practise at the top end of the Bar over the next 18 years, because Sir Francis did instil in me a sense of dedication to the law and the need to understand the basic precepts of the law. He also taught me the importance of identifying the issue in a case and dealing with that issue to the exclusion of all other peripheral issues.

The strength of Sir Francis Burt's judgments is revealed by the fact that even today, some more than 20 years after they were delivered, they are still regularly relied upon in argument and often quoted in judgments of this Court. The portrait of Sir Francis hangs in this Court on the left-hand side in the middle. It shows him looking benignly at the Court, and I must say that on many occasions when I have sat in this Court, I have taken time to look at that portrait and I have been inspired by his example.

The second big influence in my career was Leo Wood, who has already been mentioned, because Leo Wood was undoubtedly the leading criminal lawyer of the 1960s and 1970s. He was a great jury lawyer and had complete command of the Criminal Court when he appeared in it. For all practical purposes he was a defence counsel throughout his career and he never shifted to the other side of the Bar Table.

Leo Wood taught me most of what I know about legal practice and procedure, and I have been able to pass on some of that knowledge to lawyers who have appeared as my juniors over the years. They include Judge Kate O'Brien, Judge Julie Wager and Judge Robert Mazza, all of the District Court, Tom Percy QC, Mark Trowell QC, Paul O'Brien and John Prior. There are probably others whom I have not mentioned.

But from time to time when I sat on the Criminal Court I could look down from the elevated position of the Bench at defence counsel addressing juries, and I could see copied and in use my golden rules of the criminal law, as I called them, which I so regularly dictated and used in cases and gave copies of to junior counsel.



I also pioneered the suggestion to juries that when they retired they should go to the Jury Room and if they had a whiteboard they should write on it three fundamental golden principles: who bears the burden of proof, what the standard of proof is, and the presumption of innocence. Mark Trowell later claimed that he was the one who was responsible, but as a fact, whiteboards are now installed in all jury Rooms, so I hope that those words which I spoke in those days and which are so often repeated are regarded as they should be by jurors considering criminal trials.

Many other great Lawyers and Judges have helped me progress through the law. Some are here today. It is unnecessary for me to name them but without their guidance and assistance I could not have succeeded as I have. The practice of the law is a very hard discipline, and it does require intellect, dedication and above all hard work.

Over the years I have worked very hard. As a Queen's Counsel I spent 18 years defending many people who were in serious trouble and in despair. Many of them were at the very bottom of their life. Some were acquitted of serious crimes, others were convicted. Most were recipients of legal aid, as has been said, and contrary to popular belief, my earnings as a barrister were nowhere near those which have been so often quoted, and when compared with my colleagues who practised in the commercial area.

The transition from the Bar to the Bench was one that I made easily. I had thought that practice as a Queen's Counsel in the most serious criminal trials of this State was the pinnacle of achievement, but I am now convinced that judicial contribution to the administration of the law is the most important contribution that one can make.

I have presided over many criminal trials in this Court, some of them the most fearsome and perhaps the worst of their type. The atmosphere in those cases has been intense. The role of the trial Judge is extremely important in those cases. The jury look to the trial Judge for guidance and assistance, and that I hope I have been able to give in the many cases with which I have been involved.

I do support without qualification the jury system. I have never seen a person unjustly convicted by a jury. Many have been acquitted surprisingly, but I have never seen the reverse. I might add that I was very rarely corrected in the Court of Criminal Appeal or the Court of Appeal in relation to criminal trials over which I presided. Some of my sentences were regarded as being too severe and were reduced, but rarely did points of law succeed on appeal.

More latterly, I have sat in the Court of Appeal and I have enjoyed this experience immensely. It has been



demanding; it has been relentless. It is a job that calls for great stamina, for discipline, and above all for intellect. There is little time for pursuits other than determining the flood of cases which are allocated to Court of Appeal Judges month-to-month. This means that Court of Appeal Judges have very little time for outside interests and that is one of the reasons why I have decided that it is time to retire.

For all that, work in the Court of Appeal is very stimulating. Many of the cases are mundane, but some are momentous. Much care and much deliberation is required in every case. Each of the members of the Court of Appeal with whom I have sat have given each of the cases that care and deliberation, and I think their judgments reveal that fact.

As a member of the Court of Appeal, I have not sought to make new law, but rather to apply the law. Most cases can be resolved by the application of established principle. In some instances, particularly where there has been amending legislation, it has been necessary to forge a new path and sometimes I have found myself in dissent in cases like this, but as the former President of the Court of Appeal said, it is a good thing for the Court of Appeal to have people who dissent because it creates a balance within the Court which is required.

It would not have been possible for me to have contributed what I have done without the support of my colleagues. That support has been given both in the General Division and in the Court of Appeal. In the early days, before there was a formal division between the General Division and the Court of Appeal, I was greatly helped by my neighbour in Chambers, the former Justice Anderson, and the former Justice Geoffrey Kennedy also gave me great assistance whenever I called for it.

More recently, in the Court of Appeal, the former President, Justice Steytler, was a constant source of encouragement and assistance. I congratulate his successor, Justice McLure, whom I am sure will be an excellent President of the Court of Appeal.

Now it is time to express my thanks to some people. First, to the present Chief Justice and to the then President of the Court of Appeal, Justice Steytler, for inviting me to sit on the Court of Appeal. Secondly, to all my fellow Judges, past and present, for their unfailing assistance.

Thirdly, to my staff over the years: to all of my associates, seven of them, from Terry Sullivan, the first, to Elisabeth Noonan, the last; to my research assistants in the Court of Appeal, from Lucinda Plowman to Rachel



Mounsey; to all my orderlies, including the long-serving ones, Bill Enright and Hank Hurkens; and to my two very long-serving secretaries, Esther Nilson and Sandra Murphy, both of whom are here today; to the Registrars and to all the Court staff who have so ably assisted me. Without the assistance of these important members and staff of the Court, Judges could not function as they do.

Finally, I would like to thank my family for their assistance to me over the years, particularly on this Court. My wife, Rhonda, has been the mainstay of this assistance. It is she who has helped me through each of the 11 years I have been here, listening patiently to tales of days in court, helping me to wrestle with problems thrown up by cases, and offering unfailing support when times have been tough.

Many people have written to me or contacted me in person to express concern and perhaps even dismay that I should be retiring from the Court at this time, but may I say there is no need for concern or dismay. I am happy to retire and hand over to someone younger, perhaps someone with more energy and more stamina than I presently have. It is always necessary in life to know when it is time to go and each chapter of my life has, I think, closed at the appropriate time.

Ladies and gentlemen, I thank all of you, particularly those who have given up valuable time, those from the Bar in particular, to be here this morning. I thank each of you for what has been said, and that will be my final word from this Court.

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

AT 10.19 AM THE MATTER WAS ADJOURNED ACCORDINGLY