

SUPREME COURT OF THE NORTHERN TERRITORY  
STATE SQUARE, DARWIN

FAREWELL CEREMONIAL SITTING FOR  
THE HONOURABLE JUSTICE SALLY THOMAS AM

TRANSCRIPT OF PROCEEDINGS

COURTROOM 1, THURSDAY 30 JULY 2009 AT 3 PM

PRESIDING JUDGES:

THE HON CHIEF JUSTICE B R MARTIN  
THE HON JUSTICE D MILDREN RFD  
THE HON JUSTICE S THOMAS AM  
THE HON JUSTICE T RILEY  
THE HON JUSTICE S SOUTHWOOD  
THE HON JUSTICE J REEVES  
THE HON ACTING JUSTICE T OLSSON AO MBE RFD ED  
THE HON ACTING JUSTICE H OLNEY AM

IN ATTENDANCE:

THE HON AUSTIN ASCHE AC QC  
THE HON BRIAN F MARTIN AO MBE QC  
THE HON JOHN GALLOP AM RFD QC  
THE HON JOHN NADER RFD QC

Transcribed by:  
Merrill Legal Solutions

SHERIFF'S OFFICER: All stand, please, and remain standing.

All persons having any business before this honourable Supreme Court of the Northern Territory now draw nigh and give your attendance and you shall be heard.

God save the Queen. Please be seated.

THE ASSOCIATE: The Court's farewell for her Honour, Justice Sally Thomas.

MARTIN CJ: Your Honour the Administrator, Mrs Tessa Pauling, Thomas J, Attorney-General, Judges, ladies and gentlemen, welcome to this special ceremonial sitting of the Full Court of the Supreme Court of the Northern Territory.

We gather to recognise and celebrate the outstanding service given to the law and to the wider community of the Territory by her Honour, Justice Sally Thomas.

In a few days the legislature will declare that Thomas J is no longer fit for office as a permanent judge. It is commonly, as you all know, called statutory senility. I cannot let this occasion pass however without noting that contrary to her oath as a judicial officer to apply the law faithfully, today, as we all know and can observe, her Honour defies the statute of senility by retaining both her youthful countenance and her active and perceptive mind. This Court and all in it will miss her Honour very sorely.

The Judges have and will express their individual and collective gratitude and best wishes on other occasions. This sitting is for the voices of the community and the profession to be heard.

Madam Attorney, do you move?

MS LAWRIE: May it please the Court. I rise on behalf of the Northern Territory Government and, indeed, on behalf of all Territorians to pay tribute to the service of your Honour, Thomas J. It is a great honour to be here today to speak in celebration of an outstanding career with numerous achievements. It is a career brimming with firsts.

Whilst your Honour would be far too modest to make the claim, it is fair to say that you have been a trailblazer for women in the legal profession and in the Northern Territory, a profession that was until relatively recent times largely comprised by male practitioners.

Your Honour arrived in the Northern Territory in 1978 after taking up the position of magistrate, and so began your Honour's career of firsts, as you were the Territory's first female magistrate. In 1985 your Honour became the first woman appointed as Acting Chief Magistrate and then the Territory's first female Chief Magistrate following the retirement of Mr Gerry Galvin CM the following year.

After six years as Chief Magistrate, on 30 July 1992 your Honour became the first female appointed to the Bench of this Court. Your Honour's tenure as a judicial officer has been characterised by your courtesy, your patience and your sense of calm. These are qualities that are universally admired and appreciated by those practitioners who appear before your Honour and those litigants and witnesses who come before the Court.

Your Honour is also renowned for your common sense, your commitment to social justice and your ability to sort out where the true merits lie in a particular matter from among all the legal technicalities. These traits have been the hallmark of your Honour's long and distinguished career in the Territory's justice system.

But your Honour's first achievements are not limited to the legal profession. In 1993 your Honour was appointed as an honorary Colonel in the Australian Army Cadet Corps, Northern Region, the first female not in a vice-regal position to hold such an appointment. Your Honour was also one of the inaugural members of the Northern Territory University's Council.

Your Honour's strong sense of community service is also illustrated by the many positions and roles you have undertaken including as chair of the Northern Territory Legal Aid Commission, regional chair of the Northern Territory Branch of the Winston Churchill Memorial Trust and a council member of the Australian Institute of Judicial Administration.

Your Honour is also the patron of a number of charitable and other organisations too numerous to list here but it would be remiss not to mention, in particular, your Honour's work with the NT AIDS Council, the Women Lawyers Association, the Cancer Council and the National Association for the Prevention of Child Abuse and Neglect.

Your Honour has also had a longstanding involvement in sport and the arts. You have been a member of the board of the Darwin Theatre Company and you are a longstanding member and Territory President of Aussie Masters Swimming. Your Honour's dual interest in swimming and theatre came together in 1992 when the Darwin Theatre Company put on a piece titled 'Overcome by Chlorine' which the publicity blurb that almost was 'a play about men, mania, swimming and pool maintenance'.

Your Honour's extensive service to the community was recognised through your admission as a Member of the Order of Australia in June 2000 for service to the community, particularly through the Territory Winston Churchill Memorial Fellowship Committee to Tertiary Education and to the Law.

Together with all those other achievements, your Honour has raised two sons, Chris and Nick, both of whom are here in Court today to join in celebrating your Honour's career.

On behalf of the Northern Territory Government, I thank your Honour for more than 30 years of distinguished service not only as a judicial officer but also to the

broader Territory community. We wish your Honour every success and happiness for the next chapter of your life.

MARTIN CJ: Mr President of the Northern Territory Bar Association, do you move?

MR BARR QC: May it please the Court. On behalf of the Northern Territory Bar Association, I join with the people present today from all walks of life who have come together to above all show their respect to your Honour, Thomas J, to say well-done and farewell.

The thing I wish to congratulate you on most sincerely is the achievement of more than 30 years of service to the legal system of the Northern Territory as a magistrate for almost 14 years, seven years as Chief Magistrate and, more recently, as a Supreme Court Judge for almost 17 years.

The Attorney's speech has given a very good summary of your Honour's career as a judicial officer and your record of service to the community outside of the law. What a Judge does outside the law has great significance in ways that aren't generally well-known but your Honour's extensive involvement in the wider community, its institutions and organisations - whether they be educational or social, professional, welfare, the arts even defence, your Honour, if serving in the army cadets can be considered a contribution to the defence of the nation.

All of these things put lie to a common misconception that is held about Judges that they live in ivory towers, that they are removed from the real world, that they do not understand ordinary people. In a sense the misconception is that somehow or other they are completely insulated from bad noise and bad smells. It is a nonsense. It really is a nonsense, but it still pervades. It emerges from time to time. The only way it will disappear finally is if our Judges continue with their approach to being out there in the community, to be seen with their children and their grandchildren, to support community endeavours as your Honour has done thereby making loyal and firm friends, enlisting lifetime support not only for you, your Honour, but for the Judges personally who sit alongside you and for the Court itself and the legal system in which you all serve. It is an extremely important aspect that we cannot overlook today.

Your Honour, throughout your service, you have always regarded yourself as a servant of the law. You have done so without ego, without things to prove, without baggage, as it is often called. On the Bench, your Honour has always been an attentive listener, genuinely more interested in listening than speaking. You assert yourself quietly, only when it is necessary and again always very courteously to the lawyers who have the pleasure of appearing before you.

You have all of the qualities spoken of by the Attorney and some still. You have great empathy and compassion and you have an unerring sense of and commitment to achieving justice in every case that you decide or preside over. As a criminal Judge, your Honour has successfully maintained the delicate balance between providing justice to victims of crime and their families, all the while ensuring

scrupulously fair trials for accused people and just sentences for those found guilty. It is a hugely difficult task which the community asks of you and your fellow Judges every working day. It is a task which your Honour has steadfastly carried out with great dedication.

On 10 August 1992, your Honour made a brief and gracious speech at a ceremonial sitting to mark your Honour's appointment as a Judge of this Court. At the very end of that speech you said these words 'I hope most of all that I will be a wise and good Judge for the community of the Northern Territory'. Your Honour, there is no doubt today that your Honour's mission has been accomplished.

The Bar bids you farewell for now and wishes you the fine retirement that you truly deserve.

May it please the Court.

MARTIN CJ: Mr Vice-President of the Northern Territory Law Society, do you move?

MR STOREY: Your Honours, at the outset I would like to present the apologies of my president, Mr McConnel, who is unfortunately overseas today.

Your Honours, I recently had the pleasure of appearing before your Honour, Thomas J, and moving the admission of one of my former students as a legal practitioner of this honourable Court. I had a win that day. The motion was successful but basking in my success, it caused me to reflect on what makes us refer to a Court as honourable.

Clearly, the constitutional duty of a Court to determine disputes before it according to law is a key element. More than this though, it occurred to me that really it is the quality of the Judges of a Court that lead us to consider it as honourable. On reflecting on this point further, it seemed to me there were five attributes that were important.

The first of these is conscientiousness – the commitment to attend to one's duties with diligence. The second was intelligence – the legal and analytical skill to identify and resolve the matters in dispute before one according to law. Third, it occurred to me was considerateness – the ability to appreciate that life is not perfect and at times neither a counsel, their instructors and their clients. Fourth to me was politeness – having appreciated the weaknesses of those appearing before one, to deal with those foibles in a civil manner. And fifth was effectiveness – the ability to get the job before one done, despite the absence of the perfect world as I have indicated.

Your Honours, I have not had the pleasure of appearing before your Honour, Thomas J, other than in ceremonial sittings, but in speaking to my colleagues about your Honour, Thomas J's time on the bench, inevitably the adjectives I have just described or their synonyms were used to describe your Honour's work. However, while these attributes are important and will lead a practitioner to consider a Court

honourable, to me the final key attribute is engagement with the community. It is this engagement that will lead the community that we all serve to also recognise their Court as honourable.

In this regard I am much more familiar with your Honour's work. Your lengthy service as a council member and deputy chancellor of the Charles Darwin University and its predecessor, of course, to which I have some affiliation, is but one example of this that I am personally familiar with and the Attorney has outlined many, many more.

For these reasons, your Honours, without hesitation I can submit that her Honour, Thomas J's time on the Bench has continued and enhanced the reputation of this honourable Court.

May it please the Court.

MARTIN CJ: Just before I invite Thomas J to respond, I think one of Thomas J's grandchildren might have made a noise and been taken out. Please ask her to return. I think we have gone beyond the stage of a little child noise distracting the Court. I hope it is possible for her to return.

Do you want to start without your grandchild?

THOMAS J: Well, she bosses me around in every other way, so why not?

Chief Justice, Madam Attorney-General, Mr Peter Barr, President of the Bar Association, Mr Matthew Storey, Vice-President of the Law Society of the Northern Territory, thank you for those words.

I am very honoured today that the ceremony has been organised to farewell myself as a retiring Judge.

A farewell ceremony such as this is part of a longstanding tradition of the Supreme Court. We have many such traditions. Early in 2008, I was the presiding judge in Alice Springs. During the course of my sittings, we had another traditional ceremony participated in by Supreme Courts all around Australia that is called the Opening of the Legal Year. Nowadays it is probably a little odd to call it an opening because, in fact, we never close. We just keep rolling along all year through.

We still, however, maintain the ceremony that has existed for centuries of having an opening of the legal year. We don all the regalia that we are wearing today. We invite members of the legal profession and others in the community to join us. In the Northern Territory we form a procession and process from a point outside the courthouse into Court.

The actual ceremony is held in a courtroom, presided over by the officiating clergy of all denominations. Under their guidance we reflect on our role as Judges and as members of the legal profession as to how we should best serve the community in the administration of justice.

In Alice Springs it means those in the procession will don their robes of office and walk from the back entrance to the Court a short distance along a main street in Alice Springs, rounding the corner of the building, mounting the front steps and through the front entrance into a courtroom. It does mean on this short journey that we have to pass through a bus stop. Now, this can result in some members of the local community making comments as we swoop past that could not always be described as complimentary.

At the time of this ceremony early last year, I asked a young woman lawyer if she was intending to participate in the opening of the legal year. 'Oh, no' she said. 'I don't believe in tradition'. She was, of course, fortified in her stand by the comments of the famous American car maker, Henry Ford, whose interview was published in the Chicago Tribune on 25 May 1916. Henry Ford said:

History is more or less bunk. It's tradition. We don't want tradition. We want to live in the present and the only history that is worth a tinker's damn is the history we make today.

Perhaps it is only with the passage of time and participating in various traditions we have in our society that we start to value them. I believe traditions can bind our society together and provide opportunity to acknowledge significant events and to celebrate. There are, of course, traditions that can be offensive or divisive. We just need the wit to distinguish between what we should keep and what we should abandon.

The Russian composer, Igor Stravinsky, said in his work, Poetry of Music:

Tradition is entirely different from habit, even from an excellent habit, since habit is by definition an unconscious acquisition and tends to become mechanical, whereas tradition results from a conscious and deliberate acceptance. Tradition presupposes the reality of what endures.

We, in Australia, are all bound by the one law. I would not think it appropriate to do otherwise. Whilst we are all under the same laws, underpinning this is a wide-ranging tapestry of traditions of many cultures, ranging from celebrating Chinese New Year to the festival of Diwali celebrated in the Indian community, a celebration for American Independence Day, the Storming of the Bastille, the Blessing of the Fishing Fleet and many others.

As a Magistrate and then a Judge I have been exposed, as have many of us in the legal system, to the many traditions held dear in Aboriginal communities. I have always felt very privileged as a Judge to have presided over so many cases that involve people who come with traditions of a culture different to mine. A number of those involve Aboriginal culture. Communication in Aboriginal societies and the passing down of traditions has been essentially oral through the telling of stories, through painting and through dance.

Recently I concluded a mediation involving elders at the Aboriginal community in Ngukurr and the Northern Territory Police Force. It was initiated by a civil claim brought by one of the elders against the Northern Territory Police Force. It was

scheduled for many weeks of court hearing time. The parties and the presiding Judge asked if I would conduct a mediation prior to the trial commencing in endeavour to find an agreed solution. The mediation involved three day trips to Ngukurr and much discussion with the elders and with senior members of the Northern Territory Police Force.

Eventually an agreed resolution was achieved after a lot of hard work by the lawyers for both sides and thanks to the great spirit of co-operation on the part of the Aboriginal elders and senior members of the Northern Territory Police Force. A protocol was established for police and community relations, agreed to by all parties and duly signed by the 14 elders at Ngukurr community and the Deputy Commissioner of Police.

On the day of the signing of the agreement, the community at Ngukurr had organised a celebration. Hundreds attended including a group of about 40 Aboriginal men, women and children, painted on body and face who performed a number of dances. I asked David Daniels, the Aboriginal elder who had been at the centre of the dispute if he could tell me what a particular dance meant. He did and then he said it was a dance that talked about the significance of the event for the whole community. He said, 'It's a tradition, you know'.

I thought afterwards that whilst we are all governed by the same laws, it is an understanding and respect for each other's traditions that binds us together. It behoves us all to understand the traditions of others. As David Daniels himself said when he addressed the community at Ngukurr on the day of these celebrations 'We must respect each other. It is the only way to move forward'.

I intend to conclude my response this afternoon with a few thank yous. In fact, I have so many people to thank through my career that I cannot possibly mention them all this afternoon.

I have been a judge for almost exactly 17 years. During that time there have been three Chief Justices, the Hon. Austin Asche, the Hon. Brian Martin or 'B4' as the staff refer to him, and the present Hon. Brian Martin. To them and all the Judges of this Court both past and present, I give my thanks for how much they have taught me, their willingness to share their knowledge, the assistance and guidance they have so readily given, but most of all for their friendship over many years.

My thanks also go to members of the legal profession in the Northern Territory. I have on previous occasions made mention of the importance to the role of a Judge is the integrity, diligence and expertise of the members of the legal profession. We in the Northern Territory are well-served by them. I extend my congratulations to Ms Judith Kelly SC of the Northern Territory Bar who is to succeed me on the Bench. Her appointment has been met with great delight.

To the staff of the Supreme Court, including our court reporters, I give my thanks. You have always been ready and willing to provide every assistance and you have been a lot of fun to work with. You are the face of the Court to the general public and it is you who ensure the Court performs its primary function as a service to the community.

I must make special mention of my personal assistant, Ann Kempster, who has been with me the whole of the 17 years I have been a Judge and, in fact, a few years before that time when I was Chief Magistrate. Ann has given me enormous support and assistance in every area in which I have been involved over this time. I am not quite sure how I am going to function without her doing everything for me.

I thank members of my own family. To my late husband, Ted Rowe, for his love and support at all times and as father of our two wonderful children, Christopher and Nicholas Rowe.

Today I have heard kind words spoken about my career. I know however that my greatest achievement has been to be the mother of two sons, Christopher and Nicholas, and now two beautiful daughters-in-law, Miko and May-Soon and four wonderful grandchildren, Justin, Jeremy, Sama and Yaffa, the last of whom is obviously destined for the law. Like all lawyers, she cannot stop talking in Court.

They have all provided me with so many happy times. To them and to my partner, Duncan McNeil, I give my thanks.

Finally, I do thank each and every one of you for being here today and participating in this farewell ceremony. It is, after all, a tradition.

MARTIN CJ: Thank you, Justice Thomas.

Ladies and gentlemen, the Judges would be delighted if you would join us for refreshments in the foyer at the conclusion of this ceremony.

Would you please now adjourn the Court.

SHERIFF'S OFFICER: Silence. All stand. This honourable Court now stands adjourned. God Save the Queen.

ADJOURNED 3:38 PM INDEFINITELY