

SUPREME COURT OF THE NORTHERN TERRITORY
STATE SQUARE, DARWIN

CEREMONIAL SITTING FOR
THE HONOURABLE JUSTICE DEAN MILDREN RFD

TRANSCRIPT OF PROCEEDINGS

COURTROOM 1, FRIDAY 15 FEBRUARY 2013 AT 10:00 AM

PRESIDING JUDGES:

THE HONOURABLE THE CHIEF JUSTICE, T. RILEY
THE HONOURABLE JUSTICE D. MILDREN RFD
THE HONOURABLE JUSTICE J. KELLY
THE HONOURABLE JUSTICE J. BLOKLAND
THE HONOURABLE JUSTICE P. BARR
THE HONOURABLE JUSTICE J. MANSFIELD AM

IN ATTENDANCE:

THE HONOURABLE AUSTIN ASCHE AC QC
THE HONOURABLE JOHN F GALLOP AM RFD QC
THE HONOURABLE DAVID ANGEL QC

Transcribed by:
Merrill Corporation

SHERIFF'S OFFICER: Silence. All stand and please 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 his Honour, Justice Dean Mildren.

RILEY CJ: Your Honour the Administrator, the Honourable Sally Thomas and Mr Duncan McNeill; the Honourable John Elferink, the Attorney-General; Ms Delia Lawrie, the Leader of the Opposition, the Lord Mayor of Darwin Ms Katrina Fong Lim; Ms Lynne Walker, the shadow Attorney-General; former Administrator Tom Pauling and Mrs Tessa Pauling; Mr John McRoberts, Commissioner of Police, Fire and Emergency Services; Magistrates, distinguished guests, members of the legal profession, family and friends of Dean and Elizabeth Mildren, welcome.

We gather here today, in great numbers I should say, to say a public farewell to Dean Mildren J who will be retiring on 26 February 2013. I am joined on the Bench by Judges of the Court Kelly, Blokland, Barr and Mansfield JJ. Southwood J was to have been here but he has been detained by a jury in Alice Springs and missed the flight.

I wish to extend a special welcome and a very warm welcome to those who have joined us on the Bench, the Honourable Austin Asche, formerly a Chief Justice of this Court; former distinguished Judges of the Court, the Honourable John Gallop and the Honourable David Angel, each of whom served with Mildren J and I understand, but I have not seen him yet, that former Michael Maurice J, who has returned to the Bar, is now sitting in the body of the Court.

The Judges of the Court will privately say farewell to his Honour, Mildren J. This sitting is to provide an opportunity for the profession and the public to recognise and celebrate the outstanding service provided by his Honour to the people of the Northern Territory.

His Honour was sworn in as a Judge of the Court on 28 June 1991 and has been a Judge for a period in excess of 21 years. As I have remarked on other occasions, his Honour was always destined to be a Judge and a good one at that. It was impossible to imagine him in any other role. He has been a great success in the office. He has served the Territory and this Court well.

In addition to being the source of quality judgments, he has been the historian of the Court, bringing to the Bench a perspective not otherwise available. His fellow Judges recognise Mildren J as a fine Judge and we have all sought advice from him on legal problems from time to time. He has a detailed knowledge of the history of the Territory and such a strong appreciation of the position of the Court in a democracy, and in particular the democracy that exists in the Territory, that his

guidance has been sought and welcomed whenever an issue concerning the whole of the Court arises.

Of course, he has ensured his place in the memory of the Court by being the entertaining author of the history of the Supreme Court of the Northern Territory, entitled *Big Boss Fella all same judge*. In the words of Professor Alan Powell, 'he is a philosopher, historian by nature with a touch of the maverick strain.'

His Honour, as we all know, has been the source of many of the lighter, more entertaining moments of the Court. Although those moments are full of interest this is not the time, for me at least, to revisit them. The Court will miss him.

Mr Attorney, do you move?

MR ELFERINK: Thank you, your Honour. May it please the Court.

It is a privilege to rise on behalf of the Northern Territory Government and the citizens of the Northern Territory to pay tribute to the service of your Honour, Mildren J. Your Honour has given outstanding service to both the legal profession and the broader community from the time of your arrival in the Territory in 1972 through to your appointment as a Judge of the Supreme Court in 1991 and continuing to the present time.

Your Honour was born and educated in Adelaide and graduated with degrees in Arts and Law from the University of Adelaide in 1966. You entered into Articles with James Henry Muirhead QC who was later to be appointed a Judge of this Court and subsequently Administrator. Your Honour was admitted as a legal practitioner of the Supreme Court of South Australia in 1968 and the Supreme Court of the Northern Territory in 1970.

Your Honour relocated permanently to Darwin in 1972 and became a partner in the firm Thomson & Company. The firm was soon renamed Thomson, Mildren & Company in recognition of your Honour's leadership, and this was instrumental in the restoration of legal services to the Darwin community following Cyclone Tracy. In 1976, your Honour became the In-House Counsel and in 1980 you joined the Northern Territory Independent Bar.

Your Honour was appointed as Queen's Counsel in 1983 and has had a diverse practice at the Bar. You conducted jury trials in criminal matters. You were an expert in personal injury matters and you were also acknowledged as the Territory's leading commercial silk. Your Honour also held a number of offices and appointments in addition to your practice. I will mention just a few.

Your Honour was elected President of the Law Society on two separate occasions. Your Honour was Vice President and then President of the Bar Association over an unbroken period of ten years between 1981 and 1991. On the national scene, your Honour was Vice President of the Bar Association between

1989 and 1990. Your Honour also held an appointment as Chair of the Northern Territory Planning Appeals Committee between 1979 and 1985.

It is of course well known that your Honour's contribution was not limited to the narrow practice of law. Your Honour was a part-time lecturer in Torts and Legal History at the then Northern Territory University following the establishment of the Law Faculty in Darwin in 1988. In that capacity you educated and then taught many students who have since graduated and established successful careers in the law in the Northern Territory, interstate and overseas. Your Honour was appointed as an Adjunct Professor of Law in 1997 and held that position until 2002.

In 1974, your Honour joined the Army Legal Corps as a reserve officer and rose to the rank of Colonel. You served as Chief Legal Officer for the 7th Military District between 1975 and 1986, as a Defence Force Magistrate between 1986 and 1991 and as a Judge Advocate between 1986 and 1996. Your Honour was awarded the Reserve Force Decoration Bar in 1995 in recognition of your service and you have remained a member of the Defence Force Discipline Appeals Tribunal since 1996.

Your Honour was appointed as a Judge of the Supreme Court of the Northern Territory on 28 June 1991. Since that time you have become recognised as an outstanding jurist and a leader in many areas of the Northern Territory law. Your judgments are noted for their academic depth and intellectual acuity. They have been reported extensively in national services such as the *Australian Law Reports* and *Federal Law Reports*.

Among your many other qualities as a jurist, your Honour has a particular interest in Aboriginal justice issues and is sensitive to the difficulties that confront the Courts in attempting to meet the legitimate expectations and entitlements of Aboriginal and Torres Strait Islander people in their dealings with the legal system.

As part of that concern, in 1997 your Honour formulated pro forma directions to a jury for cases involving Aboriginal witnesses. Those directions were designed to assist a jury in assessing the evidence of Aboriginal witnesses and/or an accused's record of interview. The application of those directions has significantly advanced the cause of Aboriginal participants in the justice system.

Your Honour has also written extensively on Aboriginal justice issues. Your writings are too numerous to list here today, but they have appeared in such publications as the *Australian Bar Review*, the *Criminal Law Journal*, the *International Journal of Punishment and Sentencing*, the *Adelaide Court Review* and the *Northern Territory Law Journal*.

In the practical application of that interest, your Honour has been instrumental in the development and maintenance of an Aboriginal interpreter service for the use in the Courts and training of Aboriginal interpreters.

Your Honour has also given diligent service as part of your service to the people of the Northern Territory as a law reporter and as a legal historian.

Your Honour became Chair of the Council of Law Reporting for the Northern Territory in May 1999, following the retirement of Sir William Kearney. You continue to hold that position. In 2007, your Honour was responsible for the establishment of the *Northern Territory Law Journal*.

Your Honour also edited the *Compendium of Northern Territory Judgements* from 1918 to 1950, which was published by the Northern Territory University Press in 2001.

Your Honour is without doubt the foremost authority on Northern Territory legal history. Your Honour's comprehensive account of the Courts' history, which is colourfully entitled *Big Boss Fella all same judge*, was published by Federation Press in 2011 to coincide with the centenary of this honourable Court.

Your Honour's other writings on the Northern Territory legal history have been published in the *Australian Bar Review* and the *Journal of Northern Territory History*.

I know that your Honour is held in the highest regard by your judicial colleagues and the members of the legal profession. The extraordinary breadth and depth of your knowledge of the law is well recognised. Your Honour's contribution as a barrister, a fearless advocate on matters involving the administration of justice, and as an exemplary judicial officer have been both recognised and valued by successive members of the Territory Executive as well as the Legislature.

Your Honour is the Northern Territory's longest ever serving resident judge and you have contributed to the Northern Territory community for over 40 years. Your Honour's influence on the development of the law and the legal profession in the Northern Territory stands unsurpassed. We commend you on your achievements. We thank you for your contributions to the fabric of this community and we wish you and your wife Elizabeth all the best in the next stage of your lives.

May it please the Court.

RILEY CJ: Thank you, Mr Attorney.

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

MR LAWRENCE: May it please the Court.

Firstly, on behalf of the members of the Northern Territory Bar Association, I stand here to pay tribute to the distinguished service of your Honour and offer to your Honour our thanks and best wishes upon your retirement.

I also convey the same on behalf of the many humble Court advocates who have regularly appeared before your Honour over the years in this honourable Court who are not members of the Bar Association, and in that regard I am referring to the many fine advocates who regularly appear in this Court from the Aboriginal Legal Aid

Service and the Northern Territory Legal Aid Commission, as well as the private practitioners who are not members of the Bar Association.

Secondly, your Honour, on a personal note, I must say I consider myself honoured and privileged to present on such an auspicious occasion some remarks, albeit inadequate, to convey our thanks, to be of some testament to your Honour's significant contribution to our legal system, its jurisprudence and to the wider community.

Once again, the Courts records will be broken in this valedictory because your Honour retires today as the Northern Territory's longest ever serving judge and that as they say in the Latin; *ipsa loquitur*.

In those years, your Honour's output in industry has been prodigious and, like your approach generally, your high level of industry has been a constant and you leave behind a serious body of not only written judgments, but contributions by way of papers delivered and published on the law and its history.

Your published history of the Court, *Big Boss Fella all same judge* from 2011, is of course the obvious testament to this, but there are also many, many other publications in learned journals including your Short History of the Northern Territory Bar Association, which is to be found in the *Australia Bar Review* of 2001 at volume 21.¹

Your most relevant and indeed influential article in volume 21 of the *Criminal Law Journal*, entitled 'Retracing the Imbalance against Aboriginals in the Criminal Justice System' has added to the general history of the Territory justice system and its jurisprudence.² And I use that word 'jurisprudence' deliberately, because it needs to be stressed that your Honour's legacy is not figures or statistics, but substance. It applies to all areas of the law, both civil and criminal and procedure. Example one of this contribution in the civil jurisdiction includes the recent High Court decision in *Alcan (NT) Alumina v Commissioner of Territory Revenue* to be found in (2009) 239 CLR 27, where your original judgment of first instance was thrown out by our Court of Appeal, but then was upheld five-zip by the High Court of Australia.

Other important contributions which should be acknowledged on such an occasion has been your role as Chairman of the Supreme Court Rules Committee. From '91 to '97 you were President of the Northern Territory Law Reform Committee. Another contribution from your Honour was from '97 to 2002, you were the Adjunct Professor of Law of what is now the Charles Darwin University where you lectured in both Torts and Legal history. Further, as a member of the Army Legal Corps from 1974 and while serving as a Judge of this Honourable Court, you filled the position of Judge Advocate from '86 to '96. You were also a member of the Defence Force

¹ Justice Dean Mildren, 'A Short History of the Bar in the Northern Territory', (2001) 21 *Australian Bar Review* 81.

² (2007) 21 *Criminal Law Journal* 7.

Discipline Appeal Tribunal. Indeed, for your endeavours there in 1995 you were bestowed the honour of a Reserve Force Decoration.

Your Honour's interest in writings on the history of our legal system has added considerably to the body of law that the Territory has produced. History is important and from it we can learn so much.

Prior to your appointment to the Bench as a Judge, you had an illustrious and highly successful career both as a solicitor and partner and then as a barrister here in Darwin.

As earlier stated, you first moved up here from Adelaide in 1972. Speaking of history, that was when Gough Whitlam won the Federal election, the play 'Don's Party' was first staged and the great jurist Sir Owen Dixon passed away.

In 1980, you moved from a partner of Mildren's to join what was then a six year old and growing Northern Territory Independent Bar. That was the year of course where the infant Azaria Chamberlain was taken by the dingo at Ayres Rock and your Honour, I suspect by design, managed to avoid that case and all its repercussions.

In 1983, you were appointed Queen's Counsel. You were President of the Bar Association from 1987 up until your appointment in 1991, to be replaced somewhat ironically perhaps by Mr Hiley QC, who will indeed be replacing you on the Bench next month.

Your Honour's practice as a barrister was wide ranging, it was prodigious and it was very successful. In those days, it was well known of your spats with Mr Ian Barker QC, both in the civil and criminal forums.

So all those 22 years ago it really was no surprise that in 1991, your rise continued and it took you up to the Bench behind the purple curtain.

I personally recall your appointment your Honour, and I then was a young reckless prosecutor shoving the proverbial down in the Magistrate's Court, occasionally to let loose and commit various shemozzles and shenanigans up here in this honourable Court. And I must say I recall wondering at the time, a mere apprentice criminal lawyer, just who was this guy, Dean Mildren QC. Now a judge, quite frankly, I was somewhat in awe.

I find this gentleman now a judge a tad enigmatic, if for no other reason that his mode of transport in those days, from the elite suburb of Fannie Bay into the Northern Territory Supreme Court, was nothing less than a very large brown Rolls Royce. And if you were lucky, of a morning before work or perhaps at the end of the day after stumps were pulled, if you happened to be in Mitchell Street, you would sometimes see this somewhat surreal vision. I witnessed it. I was struck, dumbstruck with this large brown Rolls Royce cruising up like a sailing ship into Mitchell Street. The only thing that was missing I used to think was Lady Penelope.

That was style. Real Territory style, as in: 'I fish, I vote', 'I shoot, I vote', 'I drink, I vote', 'I drove a roller, I judge'. It's the quiriness of the Northern Territory and it is why probably we are all here. So now, and back then, I signed up, I was a fan. It was the way to go.

I mentioned earlier in the general, your Honour, that your contribution and legacy to the Territory legal system exists through many, many judgements and I also mentioned at the beginning that your Honour has been a constant; a steady hand on the rudder. And speaking for all practitioners whom I have consulted before today's proceeding and who have appeared in your Court and if I can be forgiven in using the expression 'to a man', your Honour has always been a pleasure to appear before. Your Honour has consistently displayed to all practitioners, young and old, male and female, patience, courtesy, and lent assistance to all of us.

Your contributions and your observations made during the course of cases have helped us all and we all thank you. All have said this, your Honour, and I quote: 'You will be truly missed'. Throughout, you have been a constant defender of the rule of law and the independence of the judiciary who works for fair democracy, which is constantly and ever increasingly under threat. There has been no complacency or indifference from your Honour; on those fronts again you are constant.

The Territory's jurisprudence is nothing less than unique in the common law world and this is largely by virtue of its interface with indigenous culture and customary law. Although, sadly, the main product and tragically increasing interface with Territory Aboriginal people is gaoling them. Over the years, especially since Kriewaldt J in the 50's, followed by Forster CJ, this honourable Court has created and developed highly enlightened legal principles by firstly forensically examining them, then appropriately accepting and accommodating Aboriginal Customary Law into our own legal system, from which it has improved its uniqueness, and your Honour has been very much a part of that jurisprudence.

Your Honour has been a continuum of Kriewaldt J and the Forster approach, and this can be found in many of your Honour's judgements, as well as the article referred to earlier. A couple of cases can be mentioned: *R v Warramurra* (1999) 105 A Crim R 502; *R v Minor* (1992) 2 NTLR 183, both two examples. Only last year, your Honour was heavily involved in the Language and Law Conference held here in the Supreme Court, which addressed a very important question: the role of Aboriginal interpreters in our Court system.

Similarly, your Honour has fronted with a constant and straight bat when it comes to the much vexed issue of mandatory sentencing, whether that be from Commonwealth Legislation concerning people smugglers or Territory Legislation in various and ever-increasing areas. Your Honour has consistently pointed out the inadequacies and the downright unfairness which such laws produce. And if I can quote your Honour, from the Court of Criminal Appeal Decision of *Trenerry v Bradley* (1997) 6 NTLR 6 175, page 187, your Honour makes these points:

Courts are often described as 'Courts of Justice' and Judges are entitled 'Justices', because it is fundamental that, above all, they are expected to dispense justice equally to all those who come before them, without fear or favour, and according to law.

It is a principle of law that it is the fundamental duty of sentencing Courts when imposing punishment for breaches of the criminal law not to impose a punishment which exceeds that which justice demands in all the circumstances.

You go on to rely on the Magna Carta no less, for such an important and fundamental principle and you state later:

Prescribed minimum mandatory sentencing provisions are the very antithesis of just sentences.

Your Honour's attachment and interest in history is important. Often from history we can compare, crystallise and learn. When your Honour was appointed a judge in June 1999, the combined population of Berrimah and Alice Springs Gaol was 377. Today, Alice Springs Gaol holds 648 and Berrimah holds 830, a total of 1478. History is something that we draw on and learn from and your Honour has reminded us constantly.

Your Honour has not only enjoyed fame within the Territory, but you have also enjoyed it nationally and indeed internationally as a jurist. So typical of the modern mass media, it only took a minor, arguably a pithy observation and comment that fell from your Honour's lips one historic day in this honourable Court in 2004. It put the spotlight not only on your Honour and this honourable Court, but the Northern Territory as a whole. Your Honour's observations on that day planted a seed that grew into an albeit brief but frenzied bout of media attention.

The proceeding was a mere run of the mill breach of a suspended sentence, and for the sake of accuracy and to avoid being accused of hyperbole, I probably should quote from your Honour's typically transparent and self-effacing version of this historic moment in the learned text *Big Boss Fella all same judge*, published by Federation Press 2011, page 272. Your Honour's words:

In 2004, a young serial thief whom I previously released on a suspended sentence came up before me for breaching the terms of his release order. The breach alleged was very minor, but, when I came to hear the facts, it turned out that, after the initial minor breach, he had committed numerous further stealing and burglary offences on a regular basis. On each occasion, he had been charged, taken into custody and presented to the Magistrates Court and released on bail, only to commit further offences. Exasperated, I asked: "Who was the bloody idiot who granted him bail?" It turned out that I was the last person to grant him bail....

And this went round the world and was quoted in newspapers in Australia, Europe, Asia and the United States of America. David Haddock, the English QC, writing for

The Times in London, bestowed upon him his Judge of the Year Award 2004. It even featured on the *Naked News*. Your Honour concludes with typical self-effacing manner, and I quote your Honour again:

I got what I deserved.

Now the *Naked News* - that is fame. And I probably should inform the Court if they're not already aware of what the *Naked News* actually was, and indeed, thankfully, I believe still is. It's a very revolutionary news program born in Canada where the news of the day is broadcast by either naked women or women in the course of stripteasing. It is a rather bizarre show, but anyway, this momentous moment made itself on to the *Naked News*.

Now, of course, being a diligent barrister, I have researched in-depth the preparation of this somewhat inadequate valedictory and, of course, by necessity I have obtained a recording of the *Naked News*' somewhat exotic report on this judicial observation and I have to say, as news broadcasting goes, it sits right up there. It is there with the best of them; Walter Cronkite, David Frost, Edward Murrow; this is the type of broadcast it is. And, of course, for the benefit of all my intentions, noble as ever to play this magnificent piece of broadcasting starring your Honour, Mildren J, I however, due to technical difficulties in the Court, and I see his Honour the Chief Justice breathing a slight sigh of relief, sadly, indeed tragically, I am unable to do so and so I must conclude this address to your Honour.

Time dictates, and forgive me because I am only able to touch on a fraction of your Honour's contribution; you have contributed, you have created, you have left a genuine legal legacy and one which has benefitted and also improved our legal community, our legal system and the general community and our legal system's reputation.

Again, we all wish you and your wife, Liz, the very best for the future in your retirement and if I can just end with a somewhat national note, there was a dreadful event in Scotland in 1715 which I will name briefly, Culloden. It was probably the equivalent of a fat wife that we know from Scottish nationalists, but the consequence was that Bonnie Prince Charlie had to leave, and the people that he left behind did what you only can do in such a situation; they wrote a song. Do not worry, I am not going to sing, but the chorus I do believe is apt:

Will ye no come back again, will ye no come back again, better loved ye cannae be, will ye no come back again.

May it please the Court.

RILEY CJ: Thank you, Mr Lawrence.

Madam President of the Law Society of the Northern Territory, do you move?

MS CHEONG: Thank you, your Honour. As your Honour pleases.

Mr Lawrence is a very hard act to follow. Your Honour, it gives me great privilege to be here today on behalf of the Law Society of the Northern Territory and the legal profession of the Northern Territory on this occasion of your Honour's farewell sitting. I was lucky enough to be in Alice Springs on Wednesday this week and have had the opportunity to observe the farewell speeches there to your Honour where the practitioners in Alice Springs thanked your Honour for your years of service to the Supreme Court.

I have been further enlightened by your Honour's background, history, vast knowledge and your lengthy relationship with the law in the Northern Territory. Being the last on line of the speakers, although there is a lot of material on your Honour, there are some attempts to not be repetitive about all your Honour's achievements. However, I have to say I stand all of your Honour's very and many achievements throughout your time in Alice Springs and Darwin.

Much has been said about your Honour's interest in cricket (although I think no-one has mentioned it today here in Darwin), your success as a barrister, your Rolls Royce and your ongoing excellence as a Judge of this honourable Court. Your Honour is also a keen historian and an author, although I do note that the NT Bar Association has offered to assist your Honour with your next literary work, although I do not think your Honour needs such assistance, and Mr Wyvill was probably being a bit ambitious about trying to help your Honour in that regard.

So instead of going on about your Honour's other achievements, I thought I would outline shortly your Honour's role within the Law Society in your time in the NT.

Your Honour commenced full-time legal practice in the Northern Territory in 1972. In 1973 your Honour was elected as the President of the Law Society following upon the presidency of Mr Ian Barker. You were re-elected in 1974. Your Honour's first presidency spanned Cyclone Tracy and in early February 1975 your Honour was involved in the first post-cyclone contested matter to be heard before Mr Michael Ward, the Stipendiary Magistrate at that time and I am reliably informed that an extract of your Honour's presidential report of 1975:

Man's ability to accept a new challenge and to work in adversity towards a better life rests upon his faith in himself and his hopes for the future.

In May 1974, the Legal Practitioners Ordinance was passed after lengthy debate, with some 58 amendments. These were the formative years of the Society, your Honour, and the Ordinance meant that the Society became an incorporated body; the Society was able to establish a fidelity fund from the interest on solicitor's trust accounts; statutory recognition of the standing of the Society to appear in matters involving a practitioner; requirements to have practicing certificates and the reduction in the articles of accounts from two to one year. Your Honour was influential in those changes coming about for the Law Society.

The Legal Practitioners Incorporation Act was also passed at this time which made the NT the first jurisdiction in Australia to have such legislation. Your Honour was keen to foster communication and cooperation with the then federal Attorney-General, Mr Lionel Murphy. Your Honour was also pleased to see that the Attorney-General took up the Society's suggestion of appointing Mr Dick Ward as the first Territory QC, followed a few months later by his appointment as a Judge. Your Honour was instrumental in seeing the establishment of a public defenders scheme and your Honour also recoured efforts to encourage practitioners from the Crown to join the Law Society.

From 1979 to 1981, your Honour served a second term as President. In late 1979, the Council appointed its first executive officer, Mr Ted Rowe. The need for permanent staff and offices has been on the agenda in your Honour's first term as President.

So that is a very short summary of your Honour's contribution to the Law Society in its formative years and again, we thank you for that. Without those initial steps we would not be where we are today. So rather than expounding on your Honour's many virtues and achievements and, of course, no speech is complete without the special research tool, Google.com, I was able to find a passage which describes what is a Judge, what is meant to be a Judge, and I wish to say this:

The Judge is the pillar of our entire justice system, the Supreme Court of Canada has said, and the public has the right to demand virtually irreproachable conduct from anyone performing a judicial function. Judges must strive for the highest standards of integrity in both their professional and personal lives. They should be knowledgeable about the law, willing to undertake in-depth legal research and be able to write decisions that are clear and cogent. Their judgment should be sound and stand up to close scrutiny. Judges should be fair and open minded and should appear to be fair and open minded. They should be good listeners, but should be able, when required, to ask questions that get to the heart of the issue before the Court. They should be courteous in the Courtroom, but firm when it is necessary, to rein in a rambling lawyer, a disrespectful litigant or an unruly spectator.

Your Honour has all these qualities in abundance and has in your time on the Bench demonstrated your keen interest in the law, your in-depth legal knowledge, your integrity and your kind and considerate conduct of matters before your Honour in your Court. Your Honour has determined matters judiciously, fairly and without fear or favour.

In conclusion, your Honour, the Society was proud to have been also able to make some contribution to your Honour's first literary work, published by Federation Press, and we look forward to your Honour's next literary work with anticipation. Despite your Honour's tireless efforts as a Judge and your Honour's many other interests, your Honour has continued to support the Society and its efforts in representing the NT legal profession and this is evidenced by your extensive and unwavering assistance providing CBD to local practitioners.

The Law Society and the practitioners of the NT take this opportunity to offer a simple but heartfelt thank you to your Honour for your many contributions to the law profession in the Territory. We wish your Honour and Mrs Mildren all the best in your retirement. We are sure that your Honour will not be idle and we will see you again in this Court or on the cover of your next book in the very near future.

May it please the Court.

RILEY CJ: Thank you, Ms Cheong.

Mildren J, do you wish to respond?

MILDREN J: Chief Justice, Administrator, Mr Attorney, members of the Bar, the speakers who have addressed me today, my friends, my colleagues, fellow Judges, I am truly astonished at the large numbers of people who have honoured me with their presence here today on the occasion of my farewell.

Some people here I know have made long journeys for this occasion and I thank them for their graciousness. Mr McDonald QC, I am pleased to see you here today, you were in Bali. I understand that one of my former partners has made the trip all the way from Sydney.

I am flabbergasted by the kind words of each of the speakers who have exaggerated my modest achievements in eulogistic terms. It is a bit like attending a funeral, but without the music. In fact, I wondered who you were talking about at times.

In recent times, some retiring Judges have taken this opportunity to express opinions about various matters affecting the Courts and the work of judicial officers, sometimes in very florid terms. I have no intention of joining this company.

What I would rather talk about is the enormous help and support which I have had during my time as a Judge. First, I have had the dubious distinction of having served under four Chief Justices; Asche CJ, Brian Frank Martin CJ, Brian Ross Martin CJ, and our present Chief Justice Riley.

The reason why I use the word 'dubious' is because it is quite rare for a judge to have served under so many Chief Justices, even in modern times. Sir Edward McTiernan served under six Chief Justices, but it took him 47 years to do it. So I am a long way from creating some kind of record, although South Australia took 100 years to have five Chief Justices, so you would have to have lived a very long time as a Judge to have equalled four.

All of our Chief Justices have been very kind and very helpful to me. I have enjoyed working with each. I have also served with a total of nine other puisne Resident Judges and seven Additional or Acting Judges who have similarly shown

me nothing but courtesy and wise assistance whenever I have needed it. I thank them all for their friendship and support.

I have also had the pleasure of working with many other Judges; the lay men and women who have courageously and diligently performed their duty as jurors. In all but one or two cases over the past 21 years the verdicts reached by jurors in my Court reflected by an opinion. My thanks go to them and also to the numerous litigants and witnesses who have been involved in cases before me. Nearly all of the people who appeared in my Court in one fashion or another did their best, and even those who did not were at least courteous and respectful.

I have been fortunate enough to have had the assistance of my personal staff and without their support I would not have been able to get through my working life without a lot of anxiety and pain. I thank them too for their loyalty, support, industry, assistance and friendship.

I would like to thank the efforts of all the lawyers, both solicitors and barristers, who have been responsible for conducting litigation in my Court. Their contribution to the successful resolution of litigation is immeasurable.

I have been particularly fortunate to have had only a few cases when I conducted a case involving an unrepresented litigant. Whilst there are some individuals who are capable of representing themselves, the vast majority are ill-equipped to handle legal material and know little of Court procedures or etiquette, which is the oil which allows the engines of legal practice to run smoothly. Some are desperate to pursue a cause no matter how hopeless and their efforts at advocacy lead to rambling, often unintelligible submissions, often with obsessive attention to peripheral or irrelevant details.

I refer to them only to make the comparison with the almost invariable assistance which I have enjoyed from the legal profession. If I have ever written a good judgment it has been a reflection of the enormous help and assistance which I have been given by the profession. The bad judgments are my own fault.

Also, I would like to acknowledge and thank the Court staff, the Sheriff, the Registrar, their deputies, the orderlies and other personnel for their help and assistance which I have received from them on a daily basis; it has been appreciated.

Thanks also Mr Attorney to the executive arm of Government which has courteously and diligently worked to assist in the proper running of the Courts. So far as I personally am concerned, I have always had good relations with the officer's of the Attorney-Generals Department and the Justice Department who have been of great assistance to me.

Last but by no means least, I would like to pay tribute to my wife and family who have helped and assisted me in every way possible and for their generous love and affection. It has not always been easy for them, especially when I have been absent

for long periods on circuit, although perhaps this would have been some relief from having to put up with my foibles.

In Darwin I have particularly enjoyed working in this magnificent Court house which was officially opened in November 1991, only five months after I was first sworn in as a Judge. Without doubt, this is one of the finest Court houses in Australia; it has been much admired by visiting Judges from other states and indeed from all over the world.

The old Court house which operated from 1965 to 1991, on the corner of Mitchell and Herbert Streets, was a great building in its day but it had never been designed to house six Judges. When I moved in there, there was only one toilet between four judges and their staff; you can imagine what it was like at 5 minutes to 10 when Court was due to start.

A similar thing has happened to the Court house in Alice Springs, which was opened in 1979 by the then Commonwealth Attorney Senator Durack. I had the pleasure with my wife of being present at the opening ceremony. That too was a good building for its time, but now it is no longer adequate to properly enable this Court and the magistrates to conduct the business of the Courts and a new Court house is long overdue.

Even this building here in Darwin needs to be altered to accommodate the work of this Court in the future. We desperately need another jury Court room and I hope that this will not be too long in coming. I understand that the present Government has announced and given assurances that work will be done to improve the Court's needs in the near future and I look forward to seeing the results in due course.

The law has undergone significant changes since I was first appointed a Judge. The main business of the Court was still civil litigation, mostly personal injuries cases. Over the ensuing years, the criminal trials have become the major source of work of this Court. Last financial year there were 530 new matters in the Courts criminal jurisdiction and only 430 civil lodgings, mostly debt recoveries and probate matters.

Few civil cases go to trial these days because they are settled either through negotiation between the solicitors or the parties, or through mediation. The nature and type of civil work which is heard has also changed. The Supreme Court has an extensive appellate and judicial review jurisdiction which now seems to dominate the lists. An expansion of specialist tribunals and of the jurisdiction of the various Magistrates Courts has naturally changed. The Supreme Courts work with an increasing volume of appellant and judicial review litigation.

This is not necessarily a bad thing if it results in prompt and cheaper resolution of disputes. Much has been said in recent years of the high cost of litigation and how these costs impact on the accessibility of the Courts to the public. Unfortunately, the nature of litigation work is such that it demands a lot of human resources, which require skilled practitioners to gather together and filter out what is

admissible evidence and what is not. In 1974, Senator Lionel Murphy said to me that the practice of the law is the last of the great cottage industries. He's right.

The Supreme Court is not primarily designed to resolve the differences between ordinary people or small business and it never has been. Well over 90% of matters which come before Courts are dealt with by the magistrates. It is time to own up to the fact that by and large, civil litigation in this Court is primarily designed to cater for disputes involving governments, big business and other people with deep pockets, where there is much at stake. That is not to say that this Court should not make every effort to cater properly for the rest of the community and at a cost which is affordable, and a great deal of effort has gone into seeing if this can be achieved. Various methods have been adopted, but it seems to me, without huge success.

Perhaps what is needed is to simplify procedures at the pre-trial level to ensure that trials are shorter and deal only with the truly important evidence and legal issues and to leave the 'Rolls Royce' trials to those who can afford them. I do not suggest that this will be an easy task. The problem is that because of new technology, more evidence is available for consideration. The rules of evidence have become more and not less complicated when ordered to deal with it. Added to that, internet research has produced a vast array of legal precedents, which judges complain about, mostly because they are not helpful or particularly illuminating of some legal principle which is long established anyway. Nor is it assisted by the ever-burgeoning length and complexity of modern statutes and regulations which our legislatures consider necessary for a modern, ordered society. These are not easy problems to solve because there are no simple solutions, but solve them we must if we want to live in a fair and just society.

Ladies and gentlemen, I have enjoyed my life on the bench. If I could do it all again, I would.

I would like to thank each of the speakers for their very, very kind words. They mean a lot to me. When I started, I chose as my role model our first Chief Justice, Sir William Forster. I appeared as counsel before Sir William on numerous occasions. I much admired his dignified style, his empathy for the litigants, the witnesses and the jurors, his sharp wit, enormous tact and his patience. He was also a master of the English language, both written and spoken. I constantly asked myself whenever there was a problem 'what would Sir William have done?' I hope that I have been true to his memory and that his memory will live on after I have gone.

Thanks everyone for the privilege of having served as a Judge of this Court.

RILEY CJ: Thank you, your Honour.

Mr McDonald. Do you move?

MCDONALD QC: Yes. If it please the Court.

RILEY CJ: Mr Karczewski. Do you move?

KARCZEWSKI QC. May it please the Court.

RILEY CJ: Mr Tippett, do you move?

TIPPETT QC: May it please the Court. Your Honour will be greatly missed.

RILEY CJ: Ms Cox, do you move?

MS COX QC: May it please the Court.

RILEY CJ: Mr Wyvill, do you move?

WYVILL SC: May it please the Court.

RILEY CJ: Mr Read, do you move?

READ SC: May it please the Court.

RILEY CJ: Are there any motions from the Bar?

Thank you.

Well, ladies and gentlemen, that concludes the special sitting. The Judges will be pleased if you will join us in the foyer of the Supreme Court for refreshments following the adjournment.

Would you please adjourn the Court.

ADJOURNED 10:55 AM INDEFINITELY