



CHIEF JUSTICE'S CHAMBERS
SUPREME COURT OF THE A.C.T.
LAW COURTS BUILDING
CANBERRA CITY, A.C.T. 2601

**CEREMONIAL SITTING FOR THE RETIREMENT OF
CHIEF JUSTICE JEFFREY MILES
MONDAY 30 SEPTEMBER 2002**

SPEECH BY: CHIEF JUSTICE MILES

Minister representing the Attorney-General and Chief Minister, Mr Solicitor-General of the Commonwealth, Vice-President Redpath, President Harris, Chief Justice Black, Judges, colleagues and distinguished ladies and gentlemen all.

Unemployed at last! With these words Joseph Furphy began the first great Australian novel. In a similar vein, I make my departure from a great Australian Court.

These occasions do not happen often enough for me to get used to them. I listened to the generous words of you gentlemen who have just addressed the Court and it was as if you were speaking of someone else. I have often thought that persons being sentenced must listen to the sentencing remarks of judges in the same way as if they were in a different world. However, in the case of the Solicitor-General some of the remarks were so lacking an evidentiary basis that he appears to have come to conclusions of fact that could not be reasonably held.

17 years in the same job is a long time. 22 years on the bench is even longer. I first began in a solicitor's office at the end of 1954, the year after a certain photograph was

taken at the University of Sydney. Copies of that photograph appear to have been circulating in legal circles in this city in recent days.

I have been fortunate enough to have a wide variety of experiences in what has been a lifetime career in the law and now is the opportunity to thank those who made it such a stimulating life.

There are some remarks I wish to make first.

The Court I joined in 1985 had acquired a formidable reputation. The previous Chief Justice Sir Richard Blackburn was greatly respected as a lawyer, admired as a Judge and loved as a person. With Justices Kelly and Gallop and some fourteen additional Judges the Court was a strong one. If the Court has continued to uphold its strength in the meantime it has been because of the contribution of the two Judges I have just mentioned who have been followed by Justices Higgins, Crispin and Gray. I am happy that all are present on the bench this morning.

The number of additional Judges has shrunk in the meantime to seven. I am honoured all the more by the presence of Justices Madgwick and Gyles, both of the Federal Court and resident in Sydney who have made the effort to be here today.

I am particularly honoured by the presence on the bench of Chief Justice Black. The co-operation and generosity of Chief Justice Black in the sensitive arrangements that need to be made from time to time between the two courts cannot be over-rated.

The two outstanding developments in the administration of justice in the Territory in my time were, in the early stages, the appointment of a Master, and later the appointment of a fourth resident judge. In each case the Territory was particularly fortunate in the selection of practitioners who filled those offices.

The most important change in the administration of justice was the transfer of responsibility from the Commonwealth to the self-governing Territory which took place over a number of years between 1989 and 1992. The ramifications of the transfer as far as the Supreme Court is concerned as still being worked out. Government includes self-government and, in the sort of democracy which we know, sometimes cherish and sometimes take for granted, it consists of three branches. There is the legislature, theoretically the strongest branch since it is directly elected by the people. There is then the executive branch, that which is able to command a majority in the legislature. Then there is the judicial branch, sometimes called the least intrusive branch. It will not function well unless it does so independently of the other branches.

There is inevitably tension between the judicial branch and the other branches of government, no less in a small community such as the ACT than in larger communities. Adherence to the rule of law, essential to democracy as we understand it, is the special responsibility of the judges and magistrates to be applied without fear or favour and always in a public forum.

I am confident that a proper degree of judicial dependence has been achieved in this Territory and will be maintained for the benefit for the people who live, work or just happen to be here. But it should not be assumed that it may not be eroded.

When I took office in this room 17 years ago I was very conscious of the Court as the superior Court of first instance in the National Capital. The Territory is a creature, but not a member of that one indissoluble Commonwealth formed by the Federation 101 years ago by act of the Imperial Parliament of 6 Australian colonies. Canberrans are first and foremost Australians. I came to office in that frame of mind and thus I leave it.

As I have said before, the chickens of self-government have not yet all come home to roost. And that is especially so with the appellate jurisdiction.

The association of this Court with the Federal Court goes back to the very commencement of that Court in 1976 when it became the Court of Appeal from judgments of this Court. That appellate system was appropriate for a system of courts of the Commonwealth of which this Court was one although it did not and does not exercise the judicial power of the Commonwealth conferred under Chapter 3 of the Constitution. The system worked well when members of the Supreme Court were also members of the Federal Court. I must place on record the contribution of the Federal Court in that regard. That contribution finally had to come to an end when the Commonwealth government, for reasons that have never been clear, decided that Judges appointed to this Court were no longer to be appointed to the Federal Court. A Court of Appeal has more recently been created, comprising the members of this

Court, including the additional Judges, and with Justice Crispin as its first President. The Court of Appeal has not yet much work to do and will not until the Commonwealth government proclaims the commencement of the amendments to the Federal Court Act which has already passed both houses of Parliament. I had frankly expected that that would have occurred before today and I timed my departure in that expectation. I express my personal thanks to Chief Justice Black for his great patience, courtesy and co-operation in making additional Judges available for first instance work on this Court and in making ready for the approaching loss of jurisdiction in his Court. The additional Judges, of course, have taken on work in this Court over and above their duties in the Federal Court and their necessary contribution must not be over-looked.

I am honoured by the presence of former Judges of the Federal Court, present Judges of the Federal Court and the Family Court, Magistrates, Judge Maguire of the New South Wales Compensation Court, I thank them all and those whom I have not named but not over-looked for their attendance and their support in the past. I am also honoured by the presence of the Honourable Rae Else-Mitchell, my lecturer in constitutional law in I think 1955. He had retired from the Supreme Court of New South Wales before I joined it 20 years ago. He taught me all I ever knew about the nature of the power of the Commonwealth to legislate on matter of excise and all of which I expressed in a judgment overturned by the Federal Court.

From what you have heard from the bar table today you might have thought that whatever positive developments that have been in this Court in recent have been due to my own efforts. Nothing could be further from the truth. The support, co-

operation and positive assistance of the members of the Court – and in that I include the Master - has been vital. Few know how much work out of court is required of Judges these days. My colleagues know how much I have appreciated their comradeship but their contribution to the administration of justice must be recorded publicly.

To that I add that all of this would be impossible without the co-operation and assistance of the administrative staff of the Court and the Registry, headed by the Registrar Mrs Circosta, the library, those in the Department of Justice and Community Safety whose duties are concerned with some aspects of the courts, the sheriff and the sheriff's officers, the court reporters.

I give special thanks to Mr Drago Ridjic, the janitor of the court whose efforts in keeping the Court premises clean and tidy have been unsurpassed. Since the unfortunate injury to his wife, he has carried on that work virtually alone and unassisted. I thank also the staff of what I think is now called Urban Landscapes which is a branch of the ACT Government which used to be famous under the title of Parks and Gardens. The garden beds and shrubs around the Court, and particularly in the courtyard, which is really the jewel in our crown, have long gone unthanked but certainly not unnoticed. I had hoped to add to some of their labours by the extension of the photinia hedge on the southern side of the building, with the intention of having some outdoor space for jurors whose quarters are otherwise extremely cramped. I have been frustrated by the attitude of the National Planning Authority in that regard and I think am out of time for an application for review in the Administrative Appeals Tribunal.

The many friends my wife and I, and our children, have made in the Canberra area have been a great source of continuing support and comfort. Many of them are here today. I am sorry that there will be many whose invitations we over-looked.

I acknowledge as I must that is the public and in particular the litigants for whom the Court exists. I have always had the feeling that the Court has had and continues to have the support of the general public in Canberra. To the litigants I can only say that I know some of you won and some you lost and that most of you who lost did so in good humour. I am particularly touched that a man I sent to prison continues to send ^{me} the seasons greetings year after year long after his release.

To the legal profession whose hospitality I enjoyed but lived to regret a little late last week I simply repeat the sentiments I expressed then and the sense of mutual support and fellowship we enjoy.

With my personal staff over the years I have been extraordinarily fortunate. Many of them were good enough to have me to lunch last Sunday, some coming considerable distances. Again, I do not wish to repeat what I said but I think I must publicly acknowledge the wonderful efforts of Ann Cooper who was on my staff for all but the first few months. She moved from being secretary or personal assistant to becoming associate a couple of years ago and performed her tasks as always with distinction. I told her that she was not allowed to move across until she found me a suitable replacement and that she did in the person of Robyn Erickson whose cheerful loyalty

and efficiency I publicly acknowledge. Will Lehane, the last in a distinguished list of recent graduate research assistants, has simply been a delight.

When I was sworn in in 1985 my parents were still alive and able to be present, and no doubt proud to do so. I am sure mother would be delighted to know that her life long friend Mrs Esme Perry is here to witness my departure. Es has in fact known me all my life.

To my forbearing wife and children I owe a debt that not even they can recognise. 17 years in their lives has been longer than in mine.

I come as I must, not quite to the end of these remarks, but to mention my greatest lack of achievement which is of course in the area of court accommodation. I came to Canberra in 1985 with the understanding that plans for a new building to house the Supreme Court, put on hold in 1981, would be revived. The Attorney-General at the time, Mr Bowen, gave me substantial hope in that regard.

I will not catalogue the subsequent series of woes and the repeated rebuffs I have received from Governments, Commonwealth, Territory and of various political shades. Some of the records may be seen on the notice boards in the foyer downstairs.

I once had fanciful thoughts that like Sir Christopher Wren I would come one day to be able to say with pride "If you want to see my memorial, look around you." I read and digested quite a lot on the subject of court architecture both here and overseas and

spoke to many people with skills and experience in that area. Suddenly, it occurred to me about two years ago that I might not see anything achieved in my term of office. If I have one word of advice to urge upon my successor it is to get something, some firm undertaking from the Government in writing, in concrete if possible, made known to the world, that this Court will be provided with the premises and facilities that are necessary for the proper discharge of its role in the public interest.

If I say now, "Look around you", you will get an idea of how inadequate the Court building has become. You might also note that in this courtroom and in five others there are emblems or Coats of Arms in timber donated by each of the States. The timber used in the furnishings in each courtroom is in the same timber. I shall return to that.

On the matter of the Court building I am at least satisfied that we managed to resist proposals that would have severely compromised the architecture of the building such as adding an extra storey, or roofing over the inner garden and converting that area to offices. I am not sure about a recent proposal to turn the building into departmental offices. During the last years of his life I had the support of the late Roy Simpson, architect of the building, since sadly deceased and awarded posthumously the gold medal of the Royal Australian Institute of Architects.

There have of course been many memorable incidents and occasions in a life spent mostly in the courtroom. There are high points and low points. Sometimes it is hard to tell which. Take for instance where I imposed prison sentences on some of a group of dissidents who broke into the Iranian Embassy, trashed part of the building and

attacked a member of staff. Similar incidents occurred in other cities and countries on the same day. A TV film on the affair described my sentences as the harshest in the western world.

More recently when I refused to allow document to be filed in court because of lack of notice to the other parties, a voice came from the Bar table, "Talk about biased"! At least it was not the voice of a practitioner but it did confirm that it really is time for me to go.

Let me say a few words about the Court and the media, a topical subject these days. For any journalist who has her or his pencil raised, if they still have pencils, I will say nothing about sentencing, trial by media or the insurance crisis.

Generally, the relationship between this Court and the media in Canberra is very good.

The judgments of this Court probably get more media scrutiny in any court in Australia except the High Court. That is a good thing. The Canberra Times has in Mr Rod Campbell one of the best court reporters in Australia and I trust that his skills are being passed on to the younger reporters coming through the system. The ABC runs a very informative session on Friday evening about the previous week in the courts and all channels have good court coverage in their news broadcasts. On matters of media comment on the courts and the law, well, to paraphrase George Frobisher, "they have their job and we have ours".

I am bound to say that I have read some dreadful rumours about the courts in the paper. As a newcomer to Canberra I was surprised to learn that I was far too harsh on drunken drivers. A scurrilous article in a publication called "Matilda" said "Jeff knows nothing about ^{personal} person injury work because he never did any of it at the bar". If only they knew. I was puzzled when Mr Waterford, writing about judges, remarked that he would rather be sentenced by a human being than by an angel. He should have no fear on that score should he ever commit a serious crime in this Territory.

I became interested in the Coat of Arms before self-government. I consulted with the Commonwealth Attorney-General about the continued use by the Court of the Commonwealth Coat of Arms, having in mind how some of the State Supreme Courts and the High Court continue to display the Royal Coat of Arms. The Attorney raised no objection. Later the Legislative Assembly of the Territory passed a motion seeking that the Court remove the offending Coat of Arms from the building. In compliance with that resolution as it happens, but more in the spirit of judicial brotherhood and matters of history and the recognition that we are all Australians now, the Supreme Court wishes to donate to the Federal Court of Australia one of the Coats of Arms on the building which we understand the Federal Court would be pleased to place on its new premises in Adelaide. At common law a contract for the transfer of fee simple of land was completed with the handing over of a lump of dirt. That will not be necessary the Chief Justice is aware that there is a token of our earnest in my chambers.

When I left that other distinguished Supreme Court in New South Wales I was touched to receive from the sheriff's officers a gift made by the wife of one of them, a

splendid example of the art of the art of lace making which I have worn only on the most important of occasions. I will not wear it again.

Madam Registrar will you take this jabot and present it with my compliments to my successor, whoever her or she may be and please adjourn the Court.