

SUPREME COURT OF VICTORIA

AT MELBOURNE

TRANSCRIPT OF SPEECHES DELIVERED BY:

1. MS P TATE SC
Solicitor-General for the State of Victoria.
2. MR P. RIORDAN, SC
Chairman of the Victorian Bar
3. MR A. BURKE,
Vice-President, Law Institute of Victoria
4. SPEECH IN REPLY BY HIS HONOUR

AT A GATHERING IN THE BANCO COURT

on

THURSDAY 3 APRIL 2008

of

BARRISTERS, SOLICITORS, LAW OFFICIALS AND OTHERS

TO FAREWELL THE HONOURABLE JUSTICE COLDREY

UPON HIS RETIREMENT FROM THE BENCH OF THE SUPREME COURT

HIS HONOUR: Yes, Solicitor.

MS TATE: May it please the court. It is my great pleasure, on behalf of the Attorney-General, to express his gratitude for your service to the State of Victoria on this occasion of Your Honour's retirement from the Supreme Court Bench.

Your Honour has served as a judge of this court for 17 years and immediately before that you gave over six years of service to the State of Victoria as the Director of Public Prosecutions.

Your Honour has given this service as part of 43 years dedication to the law. Your Honour's commitment to the administration of justice, as well as Your Honour's natural wit and delightful nay mischievous sense of humour will be sorely missed.

Your Honour was educated at Essendon High School. Already showing your leadership abilities, Your Honour was a prefect and captain of the debating and hockey teams. You then attended Melbourne University, graduating in 1965 with degrees in Law and Arts. At both high school and university level you excelled in hockey as well as law and you have maintained your connection to the Melbourne University Hockey Club ever since.

After serving articles and another six months with Ray Dunne, you went to the Bar where you read with Kevin Coleman, later Judge Coleman, and signed the Bar role in 1966. While at the Bar you were a regular contributor and member of the editorial committee of the Victorian Bar News, a part time teaching fellow at Monash University, a member of the inaugural committee of the Criminal Bar Association, and of course a member of the Bar hockey team.

Your Honour was an enthusiastic and key participant in the Bar Reviews, and while many have said that you missed your calling as a comedian, I have it on good authority that the professional world of comic theatre has benefited from material you supplied to the legendary Irish comedian, Dave Allen.

You quickly built a reputation as a first rate criminal barrister.

However, if asked, Your Honour described yourself as a commercial barrister, saying that you only practised in criminal law for the money.

Your Honour appeared in many of the leading cases of the day, including appearing before Justice Murray to extract no more than a very slim additional sentence for a second offence in the notorious Eastwood case. This was the serial kidnapper who after escaping from Geelong prison abducted nine students and a teacher from Wooreen State School. However, Your Honour really came to public attention when you were appointed junior counsel assisting the Beach Inquiry into police corruption in the mid-1970's. A contemporary newspaper report described your cross-examination as nuggetty and tenacious, and you have been affectionately known as "Nugget" ever since.

Inspired by your now brother judge, Justice Vincent, you were a key member of a group of dedicated Victorian barristers who ruffled the feathers of the Northern Territory legal establishment in the early 1970's and early 80's. Your assemblage was described somewhat unkindly as the "Melbourne Bar Mafia." I believe you preferred the term "Young Rumpoles," keen to protect individual rights.

During this time you used your formidable court craft and legal expertise to represent Aboriginal defendants in the Northern Territory charged with serious crimes. On one such trip you represented a 13 year old Aboriginal co-defendant in the Hercutta Station murder trial, the matter of *Collins*. The chosen and it seems standard method by the police of obtaining evidence, was to arrange for the re-enactment by prisoners of their offences while the police took photos.

You challenged the voluntariness of the re-enacted confessional material, or urged its rejection in the exercise of the court's discretion. The case was ultimately lost by majority in the Full Federal Court, but the dissenting judgment in your favour of Justice Brennan led later to a clarification by the High Court of the principles governing the discretionary exclusion of voluntary confessions in *Cleland's* case. From that time of your

excursions to the Northern Territory, a great many of your colleagues were, like you, appointed to the Bench.

In 1982 you were appointed the Director of Legal Services for the Central Land Council in Alice Springs. Your decision to take up this post was a very brave move. You were advised by many that it would disrupt your burgeoning barristerial career and it was a big step to take with a young family. This advice fell on deaf ears and you quickly became involved in negotiating land rights claims, an area of new and complex law. Despite the very demanding work and difficult conditions, your successes were many, including involvement in the historic handing back of freehold title of Uluru to the traditional owners, as well as many less high profile claims.

You have written of the campaign to prevent the roll-back of the Aboriginal Land Rights Northern Territory Act and of your continuing and passionate commitment to Aboriginal land rights.

Those who know you say it is simply your rigorous commitment to fairness that drove you to take on those roles in the Territory. Many colleagues from this time recall your hospitality on their trips up from Melbourne, and local Territory practitioners have recalled your respect for the local bar, despite its initial alarm and the example you set with your hard work and dedication.

While at the Bar you had five readers. Probably the most famous of these is Professor Mick Dodson. He recalls the privilege of reading with you and described you as "pure gold", despite the fact that you abandoned him mid stream to go and work in Alice Springs.

He recalled a time that you and your colleague Vincent took Dodson out to lunch. Your colleague asked what words of wisdom you would like to impart to your young charge before letting him loose on the unsuspecting public. Your Honour paused thoughtfully and then said, "Son, forget your fancy notions of rehabilitation and reformation because recidivism is the lifeblood of the criminal law".

Upon your return from the Alice in 1984 you were appointed Director

of Public Prosecutions, you took silk the same year. As DPP you chaired high profile advisory committees on committal proceedings and what became known as the Coldrey Committee on Police Powers of Investigation. The reports of those committees shaped State government policy and resulted in important legislative amendment. These reports have also been cited approvingly by the High Court in Pollard and more recently in Kelly.

Perhaps most significantly, one of your committees' recommendations led to the now standard legislative requirement that confessions and admissions be electronically recorded before being admissible in evidence. This landmark reform has virtually eliminated allegations of verballing against police. As you stated in your preface to the committee's report on s.460 of the Crimes Act, "This reform serves to protect a suspect from any abuse of police powers. And equally importantly it protects the police investigator from unjustified allegations by a suspect".

As DPP you took seriously your role as a model litigant protecting individual rights and introducing a new and more stringent test to determine whether a prosecution should be brought. This was a test that was ultimately adopted across Australia. You showed exemplary fierce independence of spirit in public office.

In 1991 Your Honour was appointed as a judge of the Supreme Court. From the start you were highly regarded for your ability succinctly to outline legal principle and demonstrate how to apply it in a ruling. One example of this is Li's case, dealing with the exclusion of a record of interview where the accused did not understand the caution given to him by police.

You were known as an extraordinarily fair judge and your record of sentences as either not being appealed or being upheld on appeal speaks for itself. Amongst the difficult cases Your Honour has heard include such high profile and sensitive matters as the trial of Matthew Wales in the so-called "Society Murders", difficult cases of assisted suicide involving inevitable public debate about euthanasia, and very recently the case of a woman on trial for the murder of her four children. Your ruling on the admissibility of

medical evidence in that case led to the Crown entering a nolle.

Although best known as a criminal judge Your Honour has also handed down many important civil judgments. Your decision on constructive trusts under the Torrens system, *Rasmussen v Rasmussen* is standard reading for Victorian law students. Indeed, Your Honour has achieved the distinction of demonstrating to no less an equity lawyer than Roddy Maher that it is as an equity judge that Your Honour should be known.

In one of Your Honour's early decisions re *Keitley* Your Honour held that a wife, who had pleaded guilty to manslaughter of her husband in circumstances where her moral culpability was markedly diminished, should not be deprived by the forfeiture rule from taking benefits under her husband's will.

A year or so later Your Honour's decision was referred to by the New South Wales Court of Appeal in the case of *Troja v. Troja*. President Kirby approved of Your Honour's approach but Justice Meagher was troubled. How could equity judges know anything about moral, criminal culpability? In his own words His Honour said, "The appellant, seeking to avoid the forfeiture rule, has pointed to various other decisions by equity judges including *Re Keitley* a decision of Justice Coldrey. These are to the effect that the rule is not to be applied where to apply it would be unconscionable. However there is something a trifle comic in the spectacle of equity judges sorting felonious killings into conscionable and unconscionable piles. It follows that I would regard the decision of Coldrey J as incorrect".

As well as real life court room dramas Your Honour is justifiably proud of your role as the presiding judge the famous retrial of Ned Kelly held in May 2000. I have no doubt that Mr Kelly got a fairer trial on that occasion thanks to Your Honour's efforts.

Your Honour will be missed for your kindness, generosity, wisdom and humour. There may be less sorrow shed for Your Honour's willingness on more than one occasion to present a cake in the shape of a wooden spoon to a fellow judge whose football team had come last.

Relief may also be had for those unwise enough to compete with Your Honour in the ancient game of petanque, as Your Honour is alleged to have a particular fondness for a shot where your ball is launched high in the air to come crashing down on the balls of your opponent. I'm reliably informed that this is the closest Your Honour ever comes to aggression.

Your retirement should bring you more time to spend with your family, your wife Karin, whom you married the same year that you signed the Bar role, and your daughters Anita and Vanessa. No doubt your considerable talents are already being sought in a variety of roles.

On behalf of the Attorney General I wish you all the very best for your retirement and for your future. May it please the court.

HIS HONOUR: Thank you very much Ms Tate. Mr Riordan?

MR RIORDAN: Your Honour, in 1985 in your editorial capacity on the Bar News you described the content of the welcome for Justice Vincent as "the usual obsequious drivel".

I was so taken by Your Honour's insight that I wondered whether you'd had any views about farewells.

A little different, perhaps. Without that same concern that one might be facing the judge on the Bench in the near future, one could approach it in a slightly less fawning manner.

If it was Your Honour's welcome I would start by talking about Your Honour's outstanding university academic record. But as it's a farewell I can tell the truth.

I understand that Your Honour was not the keenest of students. More interested in journalism, you resurrected the magazine, "Summons" as a co-editor, and when you did attend lectures I'm told that you sat in the back row, writing limericks.

I'm told that the only gong that Your Honour got at law school was when you sang "Sweet Violets" on 3UZ Radio Auditions. In fact, you got three gongs and a guinea for the event. But it wasn't just you. There was eight students, all of whom worked at Halls Bookstore. Your Honour creatively

called the group "The Hallicords".

Each of you were entitled to one eighth of a guinea which Judge Frank Shelton, a fellow Hallichordian, remembered was two shillings, seven pence halfpenny, which he said he hasn't got. I suspect he's a little bit out of time now, so that shouldn't concern Your Honour too much.

In final year law with articles and professional servitude looming, you decided that you would toy with some teaching of English at Essendon High School. You decided, at least, to complete your articles and as we've heard you fell under the spell of the legendary Ray Dunn before, deciding to come to the Bar and read with Kevin Coleman.

You became a formidable defence lawyer. A defence lawyer to the core, where it was said that you never took the King's shilling. Your views about prosecutors were well known. They found voice to the tune of the Gendarme's Duet in your 1974 Bar dining in night ditty about prosecutors which went like this:

"We work in panelled cushion comfort
With pensions when we all retire.
But when we meet a helpless felon
A wretch the storms of life have wrecked - ~~We~~ prosecute! We prosecute!
Put in the boot! Put in the boot!
The thieving classes must be checked."

Your personal flexibility was demonstrated when you were offered the position as the Director of Public Prosecutions. However, you maintained your disdain for the judiciary, such that in 1973 to the tune,

"There's No Business Like Show Business" you wrote

"There's no judges like law judges
And they'll all tell you so.
See their joy in hearing learned counsels plea.
They seem to listen attentively
Then they holler for the birch and six with three
There's no business like law!"

Another gem which, in your editorial capacity, you attributed to the lips of an alter ego at the Bar News of 1981, was, and I quote: "I've met a few judges at cocktail party over the years. I've seen them sidle in from their

sheltered workshops and try to be human for an hour or two. Some of them damn near succeeded."

As counsel, you incisively describe the judicial decision making process as rationally isolating the issues in order to objectively bring one's own prejudices to bear upon them.

However, in 1991 you had another road to Damascus experience which enabled you to accept the invitation to cross William Street and climb the stairway to heaven to the judicial chambers on the first floor of this building. Not everybody was convinced that those earlier writings were entirely facetious, but we all hoped that your time with the gods in the judges chambers, if not heaven, has, at least, been a genial workplace for the last 17 years. But I've got ahead of myself.

Becoming DPP and then judge were not the first times in your professional career that you were called by moral duty. The humour and quick wit, the lightness of touch in your after dinner speeches, as well as in your ditties for the Bar dining-in nights, belie the utter seriousness, unsparing conscientiousness that applied to your work in the law. This is the obsequious bit.

In 1975 and '76 you were junior to Cairns Smith QC as counsel assisting Barry Beach QC, in the Board of Enquiry into Allegations against Members of the Police Force. Your close analysis exposed the repetition of particular phrases and confessions claimed by a police officer to have been made to him numerous, and disparate people accused of different armed robberies. Each confessed saying that "On being seen in the robbery I took off with a speed of 1000 gazelles." And later each of them said to the same officer, "Gee, officer, you know I done it, but I can't say."

Nearly ten years later as DPP and through the reports of your consultative committee, you in a way completed the work that had been begun by the Beach inquiry when, as we've heard, this class of verballing was addressed by mandating the recording of police interviews in indictable matters.

So intense was police feeling about the Beach inquiry that the Law Institute, the Bar and the police created a liaison committee to work on defusing the situation.

The committee's first social occasion was held at Russell Street in the dining room and, striving to ensure the success of the night, the committee decided to find the most humorous entertaining after dinner speaker they could. At the dinner, upon you being introduced, the Police Association representatives en masse got up and very noisily walked out of the room. They missed a brilliant speech.

In 1977 you accepted Frank Vincent's invitation to join him in Alice Springs to represent Aboriginal defendants there. From vilification by police you went to vilification by the press in the Territory over the Huckitta case. Your instructing solicitor, Pam Ditton was evicted from her flat when the landlord discovered that she was instructing you. For weeks at a time you went up to the Territory, in what you described as a time of very great racial prejudice to the culture shock of Australians being treated and living in the conditions that Aboriginal people experienced in Alice Springs and surrounding areas in 1977.

In 1982 you went full time as Director of Legal Services for the Central Land Council and you took your family. Your friend Frank Vincent spelled out the risk to your professional future. He said, this was not the time to go away on the verge of being appointed as a silk. Others at the Bar, likewise, said it was madness. You went anyway and you went for two years. You said that you saw the trial work that you had been doing as band-aiding only and went on and said, the people really needed to get the land back to get that sense of identity and self esteem and to get an economic base from which they could properly decide their role in society.

There's a great article by your successor at the Central Land Council, Bruce Donald, and the work of so many who worked to bring about the grant of freehold title of Uluru to its traditional Aboriginal owners. There are many Victorians including Geoff Eames, Ross Howie, Mark Hird, the late Ron

Castan QC, of course, and yourself.

Of course Your Honour sat with distinction on many occasions on the Full Court although the former Chief Justice recalls the first time sitting with him on the court was not with as much dignity as others. Justice Marks, who suffered from back pain, had overseen the installation of ergonomic, whiz bang, gas-fired Bench chairs. During the hearing of the appeal your chair sprang a leak and started deflating. You started descending from view. It's not said whether that descent was an answer to prayers from counsel to whom you were asking questions. God knows how often we wished we had a remote trap door in the Court of Appeal.

The Chief Justice said he fought off the thought of letting events take their course and called one of the fastest adjournments of all times and enabled Your Honour to preserve your judicial dignity. Well it should happen to Your Honour because you have never eschewed a little bit of drama. On behalf of the Victorian Bar I wish you and your wife, Karin, all the best. We hope that we see you on many more occasions at the Essoign Club.

HIS HONOUR: Thank you very much, Mr Riordan. Mr Burke?

MR BURKE: May it please the court. I appear on behalf of the Law Institute of Victoria and the solicitors of the this state to pay tribute to Your Honour's service to the law and to the court. You were one of a number of eminent criminal barristers who served articles with the legendary Ray Dunn. The late Bill Lennon, later QC served his articles with Ray Dunn many years before you. George Hampel, later QC and a judge of this court and now a professor at Monash was several years before you.

Robert Redlich, later QC and Commonwealth Special Prosecutor and now a judge of the Court of Appeal followed you. Like you, Ray Dunn had been a pupil at Essendon High School. Ray Dunn was a Richmond supporter. He was president of the Richmond Football Club when you served articles with him. I'm sure that as an Essendon supporter this was an area where the two of you agreed to disagree. After last Sunday's 99 point thrashing by Geelong perhaps you might consider in your retirement doing for Essendon

what Ray Dunn did for Richmond. After all, under Ray's presidency the Tigers took the flag in 1967 and then in 1969.

The Dons haven't had that long a dry spell but down by 99 points isn't good. Although his last lectures were in 1965 many still in practice today remember Ray Dunn's colourful criminal procedure classes at the Melbourne Law School. You also taught criminal procedure but not at Melbourne. You taught in the practical training course at the Leo Cussen Institute. You had taught English part-time at Essendon High School and you were brought into teaching criminal procedure at the Leo Cussen Institute by David Ross, now QC, who was then director of its practical training course.

With you, David Ross co-authored some of the ditties about Prosecutors and Magistrates that Mr Riordan has spoken of today. You taught at the Leo Cussen Institute for some six years, essentially, until you left for the Territory in 1982. Although you very quickly went to the Bar you did practice as a solicitor with Ray Dunn for six months after admission. You did your own appearances in the Court of Petty Sessions, now the Magistrates Court. In a 1982 Bar piece entitled, "Why not a law conference in Alice Springs" you wrote, "What follows is a background briefing. If it is inadequate merely regard it as you would a Magistrates Court brief from" - and I quote, "you average suburban solicitor."

Your average suburban solicitor takes no offence. The irony is that when you wrote that you yourself were a solicitor, but not even a suburban solicitor, you were a country solicitor in the back of beyond at Alice Springs which would have made you at the time, may I suggest, a bush lawyer. Since 1977 you'd gone to the Territory as a barrister to appear in trials, however your appointment in 1982 as Director of Legal Services for the Central Land Council, was solicitors work for which you took leave from the Victorian Bar. As a solicitor in this position, which you held for more than two years, you were involved in serious administrative and policy work.

You headed a staff of about 60, including anthropologists, environmentalists and medicos. You flew many hours in light aircraft. You

made frequent visits to Canberra to present the Aboriginal point of view. You were responsible, as we have heard, for negotiating commercial agreements on behalf of the Aboriginal people.

These were complex legal agreements in relation to mining and gas. They were complex not only in the financial arrangements, but in protecting sacred sites and the environment.

Not long after your return to Melbourne from being director at the Central Lands Council, you were appointed Director of Public Prosecutions. That was on 8 November 1984. You were then still a junior barrister, albeit a senior junior. Then, on 29 November, before the month was out, you were appointed QC. No doubt the then Attorney-General, Jim Kennan, had some inkling this might occur when he made you DPP.

The Victorian DPP has always been a barrister, but the Office of Public Prosecutions was and remains also a major employer of legal practitioners. It had at the time a staff of 170 of whom 100 were solicitors. As you observed at the time, it was "effectively one of the largest specialist litigation firms in this State." Heretical as this may be to some counsel, that comes close to making you effectively an amalgam for those six years.

Your Honour has given extraordinary service at so many levels in the law. Your outstanding good works for the Aboriginal people of Australia were mostly in the Northern Territory, but you also became a member of the Aboriginal Cultural Awareness Committee in 1966 and you have been a member for more than 40 years.

Your other good works include your work in the early days for the Fitzroy Legal Service. You were also one of the earliest volunteers in the Broadmeadows Legal Service, which was a shopfront service operated at night, and your influence extends internationally through Board membership of the International Society for Reform of Criminal Law, whose gold medal you received in 2004.

On behalf of the Law Institute of Victoria and the solicitors of this State, I wish Your Honour and your wife, Karin, every happiness in your

retirement. May it please the court.

HIS HONOUR: Thank you, Mr Burke. Ms Tate, Mr Riordan, Mr Burke, Your Honours, ladies and gentlemen, I can honestly say that from this moment until the end of my judicial career, I'll never hear any more attractive and compelling addresses than those delivered today. I thank each of you for your kind remarks.

I was particularly pleased that you used so much of the material that I sent you.

I have attended several of these farewells and I think there is much to be said for the pre-death eulogy.

Many people have asked me why I'm retiring. In the words of that great philosopher and wicket keeper, Adam Gilchrist, "You just know when it's time to go."

There was one other reason. It was when my tipstaff recently informed me that a jury thought I resembled Bud Tingwell. Now Bud Tingwell is, no doubt, a lovely man and a fine actor, but he's aged 85.

It has been interesting listening to this Cook's Tour of my life. It is, of course, a topic that I've always found fascinating.

At university I was exposed to the Socratic method of teaching. I remember a dear old lecturer name Frank Maher (he was probably only aged about 55), using this technique in Introduction to Legal Method. To his question, "What do you think Mr Coldrey?" I'd reply with some garbled and barely articulate proposition. This kindly man would then respond, "Well, that's a thought. Anyone else?"

Dick McGarvie, later one of the great judges of this court, lectured in contract law. In response to one of my stumbling answers he remarked in a voice filled with disdain, "Mr Coldrey agrees with the House of Lords." This had such an effect on me that I've had difficulty doing so ever since.

By the time I attended the equity lectures of Professor Harry Ford, I just kept my head down, and when my name was called pretended I wasn't present.

But I should acknowledge that the lecturer who inspired my love of the criminal law was Professor Louis Waller, right from the moment that Dudley & Stevens put cabin boy on the menu.

Mention was made by Mr Riordan of the "Hallichords", a group which unfortunately never kicked on, but we did sing that novelty song, "Sweet Violets". It probably would have never got a red bullet, but I remember some of the words:

"There once was a farmer who took a young miss
Outback of the barn where he gave her a
Lecture on horses and chicken and eggs
And told that she had such beautiful
Manners which suited a girl of her charms
A girl that he wanted to take in his
Washing and ironing, and then if she did
They could get married and raise lots of sweet violets"

and so on. And I did give Frank Shelton the money.

Eventually I did articles with the remarkable solicitor/advocate Ray Dunn. His support for me in subsequent years was very important in honing my advocacy skills.

It worked in this way. You'd arrive at a Magistrates Court to confront a client who expected Ray Dunn. By the time you'd explained his absence and persuaded the irate client to entrust their forensic fortunes to you, the court hearing was just an anti-climax.

I thoroughly enjoyed my years at the Bar. One memorable case that even Mr Riordan hasn't mentioned, was doing a plea in mitigation and making the presiding County Court Judge, Judge Davern-Wright, cry. In fairness to myself I did improve a bit after that.

Appearances for Aboriginal defendants in the Northern Territory, along with dedicated barristers, such as Frank Vincent, Dyson Hore-Lacey, Bill Morgan-Payler, David Ross, David Parsons, Len Hartnett and Mark Hird was another highlight of my career. As was the land rights work following in

the footsteps of Geoff Eames and Ross Howie and working with Ron Castan. If you want to get a flavour of that time I recommend John Faine's book, "Lawyers in the Alice."

Victorian Bar reviews have been mentioned. I was reminded by Chief Justice Michael Black, who was one of the writers, of the sketch in which Fred James played the role of a sergeant of police.

He announced to the court, "Your Honour, my name is Sergeant Fred James. I am a member of the corroboration squad. I will be in court when Senior Constable Smith gives his evidence. It will be true and correct and I will have nothing to add."

At a later time when I was defending in a very stressful attempted murder trial and we'd reached the police witnesses Justice Murray McInerney enquired, "Do you mind if the members of the corroboration squad stay in court for evidence-in-chief?" It certainly helped break the tension although it didn't ultimately help my client.

As has been indicated I did write a number of songs and verses while at the Bar. As for those attempts at verse, some sensitive person remarked to me that my poems would be remembered long after those of Shakespeare, Yeats and T S Elliott were forgotten - but not until then!

Reference has been made to the Beach Inquiry where I had the privilege of working with Cairns Villeneuve-Smith. He was truly a master of the English language. I recall one occasion when a hapless policeman with a purported memory problem was met with the query, "Witness, is there no small oasis of recollection in the vast desert of your mind?"

As for my time as DPP, the most satisfying aspect of this period was the criminal law reform which involved the electronic recording of confessional evidence. This was achieved with the support of a very reformist Attorney-General in Jim Kennan.

It was during my time as DPP that I attended the Australian Legal Convention in Hobart. I was scheduled to deliver a paper in front of such legal luminaries as Chief Justice Gibb and a Law Lord. Proceedings had been

dragging a bit and I was challenged by Damian Bugg QC, who had a vast collection of exotic hats, to present the paper, at least initially, wearing a gold lamé turkey hat. This lamé covered turkey sat on one's head with the legs pointing forward and it had a fetching sprig of artificial holly affixed to its breast. Well, it doesn't look that much more ridiculous than a horse-hair hat.

Justice Frank Vincent was opposed to the idea. He apparently thought that it did not constitute a career-enhancing move. On the other hand, Justice Sally Brown (as she was destined to be) said that if I didn't do it, I was a wimp and she would never speak to me again. Naturally, I did it. But Frank Vincent was right, it did affect my career, I was never asked to sit on the High Court Bench.

And so to the Supreme Court. I have a very vivid memory of one early case. It was a personal injuries claim in which Jack Rush appeared for the plaintiff and that friend of all young judges, John Barnard, was for the defendant company.

Jack Forrest, as he then was, appeared for a third party. Just to emphasise the injustice of joining his client at all, he refused to sit at the Bar table and took up a position two rows behind it. This had an inevitable psychological affect and, halfway through the action, the third party claim was abandoned. The trial took about five weeks. Every second morning my heart would sink and my stomach would knot up as my Tipstaff, Bob Carroll, uttered the dreaded words, "Mr Barnard has asked for the jury to be kept out."

Whilst on the topic of words judges dread to hear I think I can inform you, exclusively and in confidence, that four of the worst are, "The matter is proceeding."

At the end of my charge I asked if there are any exceptions. John Barnard indicated - and here I paraphrase - that the whole charge was fatally flawed and the kindest thing I could do, not only for the sake of the parties but for my own reputation, was to immediately discharge the jury and resign. In reply Jack Rush said that this was a paradigm charge and a model which ought to be used for instructional purposes by a Judicial Studies Board. After

the most anxious consideration I accepted Mr Rush's submission, staggered upstairs for a cup of tea, a Bex, and a good lie down, while praying that the jury would not ask for any form of redirection.

That was a case, in which to better understand the medical evidence, a model of the human body had been placed on the Bench adjacent to the witness box. "Doctor", said counsel, "would you mind looking at the dummy on the Bench."

In a desperate effort at what politicians call "damage control" I blurted out "the one on the far left please Doctor". This effort at self protection was totally misconstrued as wit and I received an award from a commercial radio station as "Beak of the Week".

My first venture into the Court of Appeal involved an identification case. My sole contribution was to inform my colleagues what was meant by the expression "Jimi Hendrix hair". Our decision was subsequently overturned by the High Court - but not on that point.

I've always been fascinated by the approach of the Court of Appeal where they commence a judgment by referring to "the learned trial judge" and proceed to demonstrate that expression to be an oxymoron. However, I've been treated very well by the Court of Appeal over the years so I won't make any snide comments about part time work or job sharing.

During my judicial career I have tried to deal with cases expeditiously. I tried not to be like the judge who was so slow and garrulous in conducting cases that, at the beginning of each new civil case, the barristers would stand up and ask the judge: "Does Your Honour have any estimate as to how long this case is expected to take?"

I have also tried to avoid ambiguous pronouncements, like the one attributed to a judge in Arkansas which was, "As long as I am sitting on this Bench every woman in this town can walk the streets in safety". Being about to step down from the Bench I am particularly glad I didn't say that.

I have found the role of judge to be intellectually challenging - that may be apparent by reading some of my judgments. I regret never having

had any of my judgments described as "luminous", a compliment once paid by Justice Callaway to Justice Hayne, but I have had one or two described as "voluminous".

So far as the judgments of others are concerned, I was very impressed by that of Lord Denning which commenced, "It was blue bell time in Kent". I always wanted to write a judgment beginning, "It was scotch thistle time in Broadmeadows". Now I never will.

But enough of this judicial rambling, there are people I wish to thank.

First my colleagues on the Bench. It has been an absolute privilege to work with my fellow judges in this court. Without exception they are conscientious, hardworking and absolutely dedicated to achieving justice. I am certain that under the vigorous and determined leadership of Chief Justice Marilyn Warren the court will go from strength to strength.

We all need mentors. As a judge I tried to model myself on Sir George Lush. However, my most immediate and important mentor was Justice Frank Vincent. I actually had a dream a couple of nights ago. The court had established a shop like at the US Supreme Court where visitors could buy court memorabilia. A range of swap cards had been created featuring the autographed photos of judges. In the dream two school boys approached each other and one said, "I'll swap you four Coldreys for a Vincent". I can't tell you what happened next. I was so disappointed I woke up. Despite all that I will always be grateful for the advice guidance and friendship Frank has given me over the years.

My only minor disappointment about the judges concerns Justice Teague. At about six o'clock one morning, at the time he usually commenced work, he heard the sound of breaking glass and went down the corridor to investigate. Any intruder had left the court by the time he reached the damaged door. When I learned he had to make a police statement I offered him \$50 to insert in his description of events the words, "I called out, 'Is that you Coldrey?'" Unfortunately for my reputation he declined.

I have been fortunate in having loyal, intelligent and dedicated

associates. They commenced as minders and over time tended to become carers. I'll mention them in order.

Monique Adifaci, who is now pursuing a legal career in New South Wales. Together we learned how the court worked. Frequently we were faced with a public gallery of male secondary students eager to view a criminal trial. On one occasion Monique announced in the anteroom, "We've got a gallery full of jangling hormones". I had a pretty shrewd idea as to who was making the hormones jangle.

Gina Schoff, now an extremely able barrister helped me navigate such complex cases as *Rasmussen v. Rasmussen*. It is found at (1995) V.R. 613. I really must cure myself of that habit, I've obviously written too many judgments.

Julie Condon, who went to the Bar before appearing as defence counsel at the War Crimes Tribunal in the Hague.

Jacyl Shaw, who now runs an Asian cultural program at Melbourne University. On one occasion on circuit at Sale and before the court commenced, Jacyl informed me that she had called out to a barrister at the Bar table who had rudely ignored her. "'Mr Brick, Mr Brick', I said, then I said, 'Phil, Phil', but he still took no notice". I had to explain to her that the barrister's name was actually John Philbrick.

Leith Condon almost single-handedly organised a Supreme and Federal Court judges conference in Melbourne 2002, and has now entered the corporate world.

Whenever I had a drink with my next associate, Emma Pelka-Caven, she would say "Cheers big ears." This almost damaged me psychologically. Emma is currently working for Baker & McKenzie in Hong Kong.

Danielle Guesdon, who has just gone to the Bar had the unique distinction as a young girl, of having hidden under a Hobart Primary School with a fellow student who is now Princess Mary of Denmark. (New Idea may well be interested in that).

Teresa Porritt, world SMS champion, as far as I can tell, and brilliant

proof reader, corrector of my grammar, and at times my logic, holds the record as my longest serving associate. She is currently working at the Department of Human Services before doing the Bar readers course, and has come back today as my honorary associate.

Finally, Alexandra Palk, who, on secondment, was of great assistance to me in the recent case of the R v Matthey.

If I'm any judge, and I still am, all my associates will have extremely successful careers. I feel very fortunate to have had their assistance and friendship.

I have had two secretaries, Susan Young, and for the past 13 years, Barbara Rohan. Both were wonderful to work with. Barbara could not only understand my mumblings into the dictaphone, but she could expertly read my often convoluted handwritten alterations to draft judgments. She coped brilliantly with those last minute amendments I used to make five minutes before a judgment or sentence was due to be delivered.

I thank the Supreme Court librarian, James Butler, for his ever willing assistance. I also acknowledge the sterling work of the Court Registry, and all the support staff who keep this institution operating. I should also include VGRS as they're working overtime to record all this.

I turn to Bob Carroll - not just as a tipstaff, but a Supreme Court icon. I have had the assistance of Bob Carroll for over 17 years. Loved by jurors, regarded warily by bureaucrats, a man who, true to his Army traditions, never takes a backward step, unless he's performing his beloved rock and roll.

I could not have been more fortunate in my choice of tipstaff. Bob has also been very helpful in the task of sentencing. I would run a proposed sentence past him, and, if he agreed with it, I'd reduce it by two years.

Bob, I thank you for your loyalty, devotion to duty and your friendship.

Now the jury. There are one or two members of the jury that defence counsel would have done well to have challenged, but I dare not say who. I exempt from that comment my aunts, Marjie and Audrey, who are both in

their 90s. Both played a role in my early upbringing, and it's wonderful to have them present today.

I owe the greatest debt to my immediate family, my wife Karin and my daughters, Anita and Vanessa, and their partners, Rob and Curtis. I do not, of course, forget my late father and mother.

Without Karin's love and support over 40 years I would not be sitting here today. During my period in office she has fashioned her career as an art teacher and textile artist around the demands of judicial life. I cannot thank her enough.

One of Karin's hobbies is making lists. I am a bit apprehensive, as I recently noticed a new one headed "Home Maintenance". I had proposed to spend time in my post-judicial life reading books without footnotes. I understand they are called novels. I am also proposing to write some memoirs, although I can be bought off.

I leave this court with mixed feelings. There are many things I will not miss about this job. I will not miss the seemingly endless evenings and weekends of judicial work.

I will not miss the tension and stress of conducting murder trials. As Justice Teague so eloquently put it, at his farewell, "I will not miss being looked up to from the seats behind counsel by the sad eyes of mothers. Mothers of victims wanting justice, and mothers of accused and prisoners wanting mercy."

I will not miss the anguish I have so often felt when reading Victim Impact Statements.

I will not miss lying awake at night agonising over the length of the sentence I should impose, and I will not miss the responsibility of depriving people of decades of their freedom.

What I will miss is the comradeship of the other members of this court, including the Masters, the Associates, Tipstaves and support staff.

I will miss the intellectual challenge and stimulation of judicial work.

I will miss the spectacle of barristers, ably instructed by solicitors,

fearlessly performing their roles as advocates.

I will also miss the social interaction I have enjoyed with members of the legal profession.

I have always firmly believed that the judiciary is fundamental to the maintenance of the rule of law in a free society. It is essential that disputes be determined by independent judges and that the guilt or innocence of persons charged with serious crimes be determined by a jury of their peers, drawn from the community, and instructed by those independent judges.

In a paper entitled "Why be a Judge?" Sir Gerard Brennan, a former Chief Justice of the High Court, and a person for whom I've always had the greatest admiration and respect, said this: "The dignity and fulfilment of the aspirations of free men and women in our complex society depend on the faithful performance of judicial duty. In a complex society, justice would be unattainable without the sophisticated skills and unquestioned integrity of the judiciary. The high importance of the judicial office makes it a privilege to be invited to the Bench. The responsibilities of the office create a continuing challenge to proper performance. The trust reposed by the community in the judiciary is an enduring comfort."

I entirely agree with those sentiments.

For me, judicial service has been a wonderful privilege and one that, as a boy from Essendon High School, I could never have dreamed of or foreseen.

Thank you all so much for coming here today.

TIPSTAFF: All stand please.

HIS HONOUR: Thank you.
