

THE SUPREME COURT OF  
THE NORTHERN TERRITORY

FAREWELL TO THE CHIEF JUSTICE  
MR BRIAN MARTIN

BAILEY J

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON WEDNESDAY 29 OCTOBER 2003 AT 15:09 PM

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HIS HONOUR, BAILEY J: Welcome distinguished visitors, members of the legal profession and other friends of Brian Martin and Lorraine Martin. We are assembled to publicly mark the imminent retirement of Brian Martin, the longest serving member of this court.

Particularly I would like to thank some of the members of the audience today and particular welcome the Honourable Attorney-General, the Minister for Justice, Doctor Toyne, Her Worship the Mayor, Ms Fran Kilgariff, Doctor Ted Egan and their Worship's Ward, Birch and Little.

It was my pleasure as a lowly government lawyer to meet His Honour in early 1981 when he arrived in Darwin to take up his appointment as Solicitor-General, succeeding Mr Ian Barker, QC, who I am delighted to see is here today. His Honour was appointed as a judge of this court, of course, in 1987, and Chief Justice from 1993.

I worked closely with His Honour between 1981 to around about late 1985 and I was delighted to work again closely with him when I took up my appointment to this court in January 1997. The Territory will deeply miss His Honour's contribution to the law and administration of justice. On this occasion, however, I am not going to make a speech.

It is appropriate to invite others to address the court concerning His Honour's services to the law and to the Northern Territory.

Mr Attorney, do you move?

DR TOYNE: Thank you very much for the welcome and it is good to see the Chief Justice for the last time in this formal setting in Alice Springs. I will not repeat all the honorifics, but I would just like to welcome all the distinguished guests here today, particularly those who are involved in various roles within our justice system. I think we have a very representative group for the justice community here in Alice Springs.

We are gathered here today at a ceremonial sitting of the full court to honour the Chief Justice of the Supreme Court of the Northern Territory, on the occasion of his impending retirement on the 31<sup>st</sup> of this month. As Brian Martin retires from a career of distinguished public service, it can be said that he will have left the Territory a lot better than he found it.

Brian Martin moved to Alice Springs from Lithgow in 1963 and he was a barrister and solicitor. Whilst in Alice Springs he became a member and chairman of the Alice Springs Town Management Board, and later deputy mayor and mayor of Alice Springs Town Council during the period 1972 to 1975. He was appointed Solicitor-General and relocated to Darwin in 1981.

He was appointed Queen's Counsel in 1983 and as judge of the Supreme Court in September of 1987. He became Chief Justice of the Supreme Court of the

Northern Territory from March 1993. Prior to taking up judicial office, Brian Martin was appointed by the government of the Northern Territory to chair wide ranging public inquiries through the Northern Territory, in such diverse matters as pastoral land title and the welfare needs of the Territory.

From 1980 to 1989, he was the Director of the Australian Bicentennial Authority and chairman of the Northern Territory Council. Since his appointment as Chief Justice, he's served as a chairman of the Northern Territory Parole Board and appointed as acting Administrator. Martin CJ was appointed as a member of the Order of the British Empire in 1982 and as officer in the Order of Australia in 1989.

I said earlier that the Chief Justice will leave the Northern Territory better than he found it. His lengthy service to the law as private solicitor, Solicitor-General, judge and Chief Justice, and his many contributions to the greater community speaks for themselves. His legacy is sound, experienced, highly respected courts system. It is the cornerstone of the administration of justice, the importance of which I don't need to remind the audience here today.

The Chief Justice has consistently and fiercely defended the independence of the judiciary and the need to maintain the separation of powers that create the environment that allows us to live safely, freely and in harmony in the healthy, dynamic democracy. And I'd like to take this opportunity to reaffirm my commitment to those principles from our side of the democratic processes that we're involved in.

Throughout his time as Chief Justice, he has demonstrated compassion, balance and justice in the courts of the Northern Territory. Notwithstanding the normal passionate debates in society about such matters as sentencing, human rights, land rights and many other matters that touch mostly ordinary Australians, the administration of justice in the Northern Territory is in a very robust and sound state, and our courts enjoy the genuine support and respect of the public in general, except for the NT News, I have to add that bit.

This is in no small measure due to the steady, principled and wise leadership of the Chief Justice over the last ten years. Brian Martin has much to reflect on from his years of stewardship over the courts, and he should take great pride in his achievements. We, his friends and colleagues, and the people of the Northern Territory have much to thank you for, and we will certainly see you for a long time in the Territory through the legacy that you've left behind.

We thank you for the many years of private, public and judicial and community service in the Northern Territory, and wish you and Lorraine all the best in your retirement.

HIS HONOUR, BAILEY J: Mr Pauling, do you move?

MR PAULING: Yes, thank you, Your Honours. I rise on behalf of the Northern Territory Bar Association of which Your Honour is a life member. And Your Honour has given considerable support to the Bar and it was my pleasure

16 years ago in Darwin to appear on behalf of that association to welcome Your Honour to the Bench on your first appointment.

I want however to distance myself immediately from the views of some that Your Honour has had more farewells than that operatic dame after whom a peach delicacy was named. After 40 years of service in the Northern Territory, it's well deserved, and we're working on a mango confectionery in Your Honour's honour.

The Attorney-General's versed your background and contributions and they speak for themselves. In the 1970's, you were an enthusiastic supporter of the Northern Territory Bar, which was commenced in 1974, and aided the careers of many, some of whom have been your colleagues on the Bench, and we thank you.

Some mention, I think, should be made of a remarkable coincidence of names. It may have missed the attention of some, but the Channel 7 race caller for the Cox Plate and part-owner of the winner, Fields of Omagh, is, you guessed it, Brian Martin, and I thought that it mustn't go unremarked.

Your Honour, we wish you and Lorraine and long and happy retirement and Lorraine, we acknowledge on behalf of the Bar Association your tremendous contribution at William Forster Chambers, and we're very happy for it, and the Bar extends to Your Honour it's congratulations on your achievements.

May it please the court.

HIS HONOUR, BAILEY J: Mr Barker, do you move?

MR BARKER, QC: If the court pleases. We honour the Chief Justice, wondering as I was and have been about how to balance the respect due to our retiring Chief Justice with the raucous goodwill one sometimes offers to a former partner. I reflected on Your Honour's career.

Arriving in January in Alice Springs in 1963, I was grateful for your decision, because for some time before then I had been the only lawyer between Port Augusta and Darwin, it was a large, if not conspicuously wealthy electorate. We were both in much the same position until competition arrived in the form of Paul Everingham in 1966. Looking back on it, I wonder why either of us stayed.

You remember that it was the middle of an awful drought. I think we were lucky to score two inches of rain a year for some years, and every day was marked by a catastrophic dust storm during which half of South Australia deposited itself in the Todd River valley. It seems to me that Your Honour was the ninth lawyer to take up residence in Alice Springs.

As I understand it, the first was Lewis Abbott, father of Michael Abbott, QC, followed by his associate, Ted Pick. Then of course, there was Dick Ward, whom we all knew and loved so well and Philip Rice, another object of much love by those who knew him. Neil Hargrave, whom I joined. Nick Carter. Cameron Stewart, and then

me, and then you, and we all came in various times and in various ways and we went in various times and in various ways.

I think you were here longer than any of your predecessors. You were here for 17 years from '63 until '81. Even to your local purists, living in the Northern Territory from 1963 until 2003, must, I think, mark you out as a Territorian. Some hold that one has to establish a multigenerational dynasty to acclaim such a title, but it seems to me that 40 years is more than adequate.

Worldwide, it has been a vastly travelled and cataclysmic four decades. Locally, you have seen the Northern Territory grow from being a badly administered colony of the Canberra bureaucracy, to a place probably better administered than any other democratically governed part of Australia, and that is due in no small measure to your own contribution to the Territory's constitutional history.

From being on the Town Management Board in the old days of direct rule, to deputy mayor to mayor, to Solicitor-General, to judge, to Chief Justice; that is a career on which you can reflect with pride, but I will not let you escape without reminding you of just a few old anecdotes, and this is probably my last chance.

As anyone who's practiced law in Alice Springs knows, the practice of law is not always attended by solemnity. I noticed John Reeves in a recent publication, a published tribute to you, referred to some long running litigation involving the Jervois copper mine, in which you were involved.

You'll no doubt remember an Alice Springs magistrate, who whatever he lacked in legal expertise, he compensated for in colour, and startlingly lateral thought. In one of the cases collateral to the Jervois litigation, the magistrate as mining warden, you may remember made an order which seemed to enjoin a well known northern businessman from travelling north of the Tropic of Capricorn, or something like that.

Some thought the order was perhaps beyond power, and the businessman applied to the warden to dissolve the injunction. He was represented by (inaudible). The magistrate listened politely and promptly dismissed the application and rose to leave the Bench. The businessman's counsel, with great dignity if not (inaudible), said, 'I take it, Your Honour, that Your Worship will publish reasons for this decision'. The magistrate kept on walking and over his shoulder he said, 'What? So you can appeal?' and he said, 'Not likely'.

It was said that he made Baron Munchausen look like John Howard. So idiosyncratic was he. You may remember the clerk, yours and mine, who once dropped a small explosive device into the Glen Helen gorge to gather some fish. Seemed an odd thing to do. When asked why he thought it was necessary to blow up the fish in the Finke River, he replied, 'Well it was Good Friday', and that was something with which I could not argue, but it didn't seem to me that (inaudible) any sort of offence, in law.

Your Honour, there are many anecdotes of those times, most of which are mercifully concealed by the mist of time, and my increasing fragile memory, but permit me to remind you of a time when the Northern Territory Police Force was not quite the efficient machine it now claims to be.

The Alice Springs CIB was sent to investigate a murder. Unfortunately it was at night, and as the detective didn't have a torch, they couldn't search the scene, however they remedied that by borrowing a torch from a neighbour and ultimately found a dying woman who was the victim of a violent assault. So they then treated the matter as, quite properly, as a homicide and instituted a protocol for further inquiries and investigations.

And one day a detective instructed a young policeman to go to the scene to see, the detective said, if the CIB missed anything. The young policeman went to the scene and he was asked, 'Did you find anything the CIB missed?' He said, 'Yes, he did'. He was asked, 'What was it?' He said, 'Well, it was a bloodstained lawnmower'.

Of course, it wasn't a terribly big lawnmower, and such machinery is often bloodstained, but it did seem to be a significant oversight. Apparently things have since improved. Finally, Your Honour, let me not forget our Tennant Creek practice, attended to once a month in Alfie Chittock's betting shop, where between client's we read Miller's Sporting Guide.

Our landlord was known as Alf the Ant, but notwithstanding that, he became the first mayor of Tennant Creek, so you always seem to walk with greatness. Your Honour, the Northern Territory and the administration of law have been the better for your presence. In retirement, I've no doubt that you and Lorraine will continue to contribute significantly to the community as you always have done, and I wish you both well.

HIS HONOUR, BAILEY J: Mr Whitelum, do you move?

MR WHITELUM: I appear on behalf of the Northern Territory Law Society. Chief Justice, Bailey J, our local magistrates, the honourable Attorney-General, and other distinguished guests, the Chief Justice has done many great and wonderful things over the years.

One thing that hasn't been mentioned, though, is that he spent five years as the Alice Springs representative on the Northern Territory Law Society council, and I can tell you that that is not an easy job, dealing with the practitioners in country areas. Perhaps there weren't so many in those days, but we do have very wide and diverse interests.

I'll concentrate on the Law Society aspect of the Chief Justice, as that is my job. There has been a very close working relationship between the Law Society and the Chief Justice. We've worked together to see the introduction of the streamlined

process in civil claims in the Supreme Court, and that was at the instigation of the Chief Justice.

He's also introduced what was then a novel procedure in the Northern Territory to have the judicial case management of civil matters, which has no doubt streamlined things further. In addition, he has worked with the Law Society in the introduction of the priestly twelve, in relation to the admission of practitioners in the Northern Territory.

The Chief Justice has also introduced the electronic reporting of judgments on the internet, which again was a novelty when it happened, and is now a great success. I know that the Chief Justice enjoys his times here in Alice Springs sitting as a circuit judge. He has told me so, and I've seen him out walking and he has his earphones on and a smile on his face.

On behalf of the Law Society and the local profession, Chief Justice I'd like to congratulate you on your distinguished career and many achievements, and we all wish you and Lorraine a well deserved, happy and long retirement.

HIS HONOUR, BAILEY J: Doctor Rogers, do you move?

DR ROGERS: May it please the court. I speak on behalf of the Director of the Office of Public Prosecutions and staff, and may I extend my thanks to Your Honour on behalf of all of us here in Alice Springs for your hard work as Chief Justice, especially in relation to the Alice Springs sittings.

You have demonstrated a preparedness to listen to our concerns regarding the apportionment of Supreme Court listing time down here. This has been greatly appreciated by the Crown and others, and I'm sure has ensured a more effective delivery of judicial services to the region, and on a personal note, I will miss you to haggle with and cajole with at arraignment day.

HIS HONOUR, BAILEY J: Mr Bamber, do you move?

MR BAMBER: If Your Honour pleases, I appear before you today on behalf of the Central Australian Aboriginal Legal Aid and the many lawyers from that service who have appeared before you over your many years as a Supreme Court judge and Chief Justice. From a lawyer's point of view, it's been much appreciated your courteous, straightforward, no nonsense approach in court.

We all come to court knowing that we'd get a good hearing and a considered decision without unnecessary formality or extra unnecessary legalese. You have been extremely patient with the many young lawyers appearing before you over the years, many appearing in the Supreme Court for the first time, their first day in big court, nervously saying Your Worship, Your Worship, Your Worship, throughout their Justices' Appeal.

They have and we have appreciated your knowledge and understanding of Central Australia, the bush and its inhabitants. We have been confident when we've been making submissions about goings on at Kintore or Docker River or Larapinta Valley camp, that Your Honour can draw up a picture of where we're talking about, what we're talking about and the circumstances of the person in the dock.

CAALAS exists because of the special needs of its clients. Unfortunately, they are greatly over represented in the justice system, and they appear before you as defendants, victims and witnesses. To many, especially from the bush, coming into your court, or the court, is like entering a foreign land. Your Honour has always done your utmost to make them feel as comfortable as possible in this foreign place.

You have spoken to defendants and witnesses alike in plain, clear terms, and have dealt with all with respect, empathy and fairness. In so doing, you have greatly enhanced the administration of justice in the difficult circumstances pertaining to our clients.

Lastly, Your Honour, like many, I've had the opportunity to mix socially with you at functions and conferences. I know Your Honour has an ability to have a very good time. Retirement will offer no peril to you. I'm sure you will enjoy it. On behalf of CAALAS, I wish you a long and healthy one.

HIS HONOUR, BAILEY J: Mr Goldflam, do you move?

MR GOLDFLAM: Yes, if it please the court, I appear on instructions from the Northern Territory Legal Aid Commission, but I hasten to add, Your Honour, that the libels I'm about to utter are entirely my own. I was one of those people who came to the Northern Territory and in fact came to Alice Springs just as Your Honour was leaving it, in 1981.

And so I first came to know Your Honour by repute. Or to be more precise, I came to know Your Honour first by ill-repute. Because over several years, and well into the 1990's, a special welcome was provided to members of this honourable court when their peripatetic duties circulated them here to the Red Centre, because there, camped on the DD Smith lawns behind us, beneath the graceful date palms, will be a well known Alice Springs identity and enthusiastic litigant seated truculently behind a boldly hand lettered placard proclaiming, and I here seek to tender by way of an exhibit, a documentary photograph of the placard, which I'd ask to be taken into the custody of Your Honour.

HIS HONOUR, MARTIN CJ: I hear no objections.

MR GOLDFLAM: Please the court. NT establishment is entirely rotten. Rotten is the criminal bastard, Brian Martin, the Chief Justice of the Northern Territory Supreme Court. Rotten are the Attorney-General, the Solicitor-General, the police and the Law Society. Hang them all.

The unsuccessful object of this provocative exercise was to incite the aforementioned (inaudible) criminal bastard to commence proceedings against the author of these spectacular phrases with a view to agitating various collateral grievances arising from some litigation involving a chook farm.

Now, Your Honour, regrettably that wasn't the only occasion on which Your Honour was obliged to withstand the slings and arrows from the community, neither is it unfortunately true to say that that was the last time in which Your Honour was the object of an accusation by a person well known in the community, that the legal system was corrupt, but Your Honour bore those slings and arrows with great fortitude.

Going back, though, to that chook farm dispute. That was at the time when Your Honour was in private practice here in Alice Springs. Unlike Mr Barker, QC, I'm unable to provide any personal memories of that period, and so I was obliged to turn, unfortunately, to a law book. Volume 5 of the Australian Law Reports, in fact, and therein one can find the report of Forster J in *Jervois Sulfates NT Limited and others, and (inaudible) Explorations, NLN Johanssen and others*.

A matter in which one B.F. Martin instructed by a firm known as Martin and Partners, appeared for the joint and several defendants. It would appear that *Jervois v Johanssen* was the Central Australian equivalent of *Jandis v Jandis*. Like its bleak predecessor it involved enigmatic points of equity, complex issues of fact, claims of slander, allegations of malice and above all, protracted, indeed extraordinarily protracted proceedings.

*Jervois v Johanssen*, at least in its incarnation before Forster J, extended for no less than 42 sitting days. And although it would appear that none of the plaintiffs emerged with much to show for their pains, one might infer that the same could not be said of their legal representatives.

Although the substantive legal issues in the case far too obscure and obtuse to bear analysis on this occasion, one noteworthy point in the decision, and an indication of Brian Martin's redoubtable forensic skills, was that despite findings and orders against Your Honour's clients, that they told lies in court, were actuated by malice, acted in contumelious disregard of another's right and were guilty of misrepresentation, negligence, trespass, conversion and possible conspiracy, Your Honour pulled off the surprising coup of avoiding the making of a costs order against them.

Your Honour has presided over all manner of cases emanating from this neck of the spinifex. One such notorious matter arose from an occasion in which a hot air balloon fell with disastrous consequences. In *Sanby v R* (1993) 117 FLR 218, the Chief Justice admonished us as follows:

The words of the Criminal Code may not be particularly stimulating

Can hardly argue with that:

but they avoid any need to resort to emotive words and phrases. Counsel are under a (inaudible) obligation to the courts to assist them in the fair administration of justice and are not to knowingly deceive or mislead them.

It would of course be ungracious for me to note that these particular remarks were directed specifically at the Crown prosecutors. Sanby was delivered on 19 October. That date is significant in local legal history as being a day on which a record number of arrests were made in Alice Springs on the occasion of the 1987 Pine Gap protests, an event incidentally which took place just days after the appointment of Brian Martin as a justice of this court.

In due course, Martin J, as you then were, was called upon to answer a case stated to the full court by Nader J in *Limbo v Little* (1989) 65 NTR 19. Your Honour's decision ranged over points agitated by Mr Lenin Limbo from the insolently vexatious to the deadly serious. Your judgment is one of the few in the law books which deals with the rare but important defence of necessity, as applied to political protests.

Your Honour's judgment discusses the legality of weapons of mass destruction, a topic which is of course entirely topical today. It also discusses the applicability of the Nuremberg principles to domestic Australian law and other related matters. Disappointingly however, not only for Mr Limbo, but also for the Alice Springs tourist industry, Your Honour rejected the attempt to summons to the Alice Springs courthouse to give evidence in Mr Limbo's defence against his charge of trespass the entire Australian staff of Pine Gap, the mayor of Alice Springs, the Chief Minister of the Northern Territory, the Prime Minister, the Governor-General, the Director of the CIA, the President of the United States, the Secretary-General of the Communist Party of the Union of Soviet of Socialist Republics, as it then was, and many others, including for some obscure reason, the President of the Canadian Bar Association.

Now that case, if it had been allowed to proceed, would have rivalled *Jervois v Johanssen*. In the last few years, I found myself appearing before Your Honour, and in fact, I'm one of those people that my learned friend, Mr Bamber, who described who had his first appearance in the superior court before Your Honour, and I think I called you Your Worship many times on that occasion.

And in those appearances, I have been struck by the plain speaking common sense that Your Honour has brought to the task. And I've also been struck by the compassion and the mercy with which you have unfailingly treated my offending clients, and those of my colleagues. Not a soft touch by any means, the Chief Justice, but always fair and never unkind, and you can't ask more than that.

Your Honour, I wish you a happy and long, successful retirement.

HIS HONOUR, MARTIN CJ: Anything to say before I pass sentence?

Your Honour, Bailey J, to all of you who addressed these remarks to the court and the special references to me and my doings over the years, Your Worships, all

members of the legal profession here gathered and many other people who dropped in to see what this was all about, but especially a welcome to Her Worship, the mayor of Alice Springs and Doctor Egan, who will shortly be taking over the role of administrator, thus on this occasion from the outgoing head of the judicial arm of the government I'm able to extend congratulations and goodwill to the incoming head of the executive arm of that government.

To all our friends of longstanding in Alice Springs who have come here from the town, the district and some of you, quite some considerable distance. I gather it's probably to ensure I leave the premises that so many are here to depart and see me off, but I'm not quite sure who's going to shut the door and put out the lights.

These occasions are quite remarkable for a number of reasons, not the least being the apparent furious agreement between a number of senior counsel at the Bar table in open court. It's a rare spectacle indeed. I anticipated it would be likely that you'd be kindly in your remarks, after all it's the traditional thing to bring to bear the good on an occasion such as this, bit like a eulogy really, but you get to hear it.

That which is muttered darkly about and uncomplimentary as well as untrue, is unsaid, and I thank you for your perspicacity in that. The generosity of your remarks viewed objectively may be regarded as somewhat overestimation but far be it for me to quibble. I am much moved by the spirit behind them. You may be not concerned, I think, by usual impassive and modest demeanour albeit disturbed.

My wife is here. It has been her lot for years to make sure I'm not swayed from my normal mean by blandishment. Suggestions such as, 'You're not in court now, you know', and, 'Your (inaudible) back in chambers', have not been unusual in the course of earnest, quiet, domestic discourse between us. But she's earned that right by giving me tremendous support and encouragement over many years.

My (inaudible) veneer is now about to be stripped away, but nevermore will she be emboldened to have to say, 'I'm not a jury, you know. Just because you say what the law is, it doesn't bind me'. Now although this function is directed special attention to my time on the Bench and imminent departure as Chief Justice, this is a sitting of the Supreme Court, and by your attendance you honour it, and importantly to me, you affirm its good standing.

I guess you'd not be here if you didn't respect the court, and that makes me feel good. During my term as Chief Justice I've striven to testify that the court maintains the reputation in the community as the institution on which it can rely to administer justice according to law.

That it's not open to criticism based upon perception that it lacks independence, or that any of its members are partisan, in any respect, and that they act fairly in the discharge of their judicial duties. Those ends are only met through strict adherence to principle. It's been my privilege, for the time being, to be entrusted with the office of Chief Justice, and I trust I leave it in good stead.

I want to take this opportunity to mention some matters which are of particular current interest in the public arena, and to review to some extent the achievements of the court in recent years. Judicial officers, as you know, do not, as expected by many, live in ivory towers remote from the community.

We all live in the real world, we all partake in the same types of activities which you do, but the proper discharge of our judicial functions means that we may not engage in the community in a way in which we might wish or might even enjoy or as some members of the community might expect.

Maintaining a reputation of impartiality requires judicial officers refraining from public debate on issues, unless sorely pressed, as sometimes occurs. In so doing, the judge is not being aloof or unsympathetic, but simply properly detached. That is not to say that judges are not entirely isolated from the wider world, because many are very actively involved in a variety of community based activities, often as leaders in those organisations.

I've got a little list, in fact it's not so little, and I was proposing to read it, but really when you look at all the activities in which judges of this court are involved, it is far too long on this occasion. But it serves to demonstrate the involvement of judges in the life of the community in a proper way and in a manner which doesn't see them affected by apprehensions of bias and partisanship.

The role of a judge has changed somewhat in recent years. I suppose I've been here, it's been suggested as long as any, but the cursory look at the volumes of law reports, something about which Lorraine knows, on library shelves, and the volume of legislation emanating from parliaments which are binding on us, both Commonwealth and Territory, simply show that the days of a long lunch and golf on Wednesday afternoons just can't be countenanced anymore, if ever they really did exist.

Trying to keep up with it all is becoming a very, very difficult task. The common law, as been developed through the High Court, binds us all, and with respect to their Honours, keeping with their separate reasons for judgment can sometimes be a difficult task. But nevertheless it appears that a view is reached amongst the legal profession as to just what rule the High Court has annunciated and that which binds us and all other judicial officers.

I mentioned the question of trying to keep up with the law, there's also the question of trying to keep up with the management of the matters within the court. Some judges are more successful than others, but after all, we're not appointed for our managerial skills. They're the sort of things must be learnt on the job in the light of changing rules and conditions, but with constant regard to the interest of the sundry stakeholders, and in particular, the litigants'.

Parties, as I'm sure you'll appreciate, have different agendas and expectations from each other, and of course, are diametrically opposed as to the objectives of the outcome of the litigation, but the overriding consideration in all matters involving

management of cases, and there's been some reference to them today, is their application to a particular matter.

It is the doing of justice as between parties in the particular piece of litigation that you're involved, and it doesn't necessarily mean the setting of speed as the final and ultimate priority for disposition of the case. I want to mention the advent of video conferencing. Many of you, of course, can see the screens behind me, I have to look around at each court I'm in, where is it today? But today, they're over there.

And we've had the delight over the years of good resourcing from governments of both persuasions in assisting the court and assisting the litigants to come to grips with cases without the need for expensive travel and a lot of time away from chambers or their place of work by barristers and witnesses.

I mean, this sort of technology not only allows us to receive evidence and hear submissions from even remote places like Sydney and Adelaide, but engaged in that sort of thing in involving cases with people in London and New York. The big difficulty with that is, who's going to lose the customary hours of sleep, but the fact remains it is a tremendous cost saver and I don't think we've gone anywhere near exploiting the potential for the benefit of the administration of justice of using that type of technology.

I was going to say a bit about the question of public criticism to the courts, but I think I might leave it. It's been mentioned, and many of you would be aware of a recent interchange between the editor of the NT News and I, where in going through my papers with a view to putting things away, I find further examples, usually on a year to 18 months, they roll around.

And the criticism can be put up with for a long time, sometimes, with some justification. The court's prepared to put up with that, and look at their ways and means to see if they can't resolve it and do better. But you get to the stage where they really are quite outrageous, based upon no foundation of fact.

It's suggested that those who participate in talk back radio are those who govern the general public opinion throughout the Territory, and that their views are those which ought to influence the court. Well what's often overlooked, is the sub-editorial headline in the five second grab, is that the court has a duty to do and it must do it regardless of those sorts of pressures and criticisms, many of which, as I say, are quite unfair.

The courts have to apply the law, as it is, to the facts as they've been found upon the issues which have been joined between the parties and the evidence that they produce. The courts don't make the case, the parties do. They define the issues. They define who's going to be called to give evidence, and they present the matter for the judge to decide.

Of course, we must realise that in practically every case, there are going to be winners and losers, and that is quite often those whose cause does not find favour of

the court and make the most ruckus. If the judge is wrong, it can be easily remedied within the established judicial system.

We're open to fair criticism from any quarter, and after all, usually diametrically opposed arguments are advanced on behalf of parties and the trial judge must make up his or her mind as to which of them is to be preferred and to give judgment accordingly, and the appellant courts are there to correct errors where they occur.

The courts just cannot give in to public clamour, even if it really be clamour, but public influences which are thought to be brought to bear upon the court to abandon its judgments and to take a course dictated by public through talk back radio and letters to the editor, means that the courts judgments are going to be subjected to external influences, and that's the very antithesis of judicial independence and impartiality, and it won't be done.

There's something the parliament feels that in the way the court has interpreted statutes, it wasn't what the parliament intended, then the parliament has it in his hands to fix it. The combative nature of political debate in the Territory, and I must state elsewhere, seems to engender an atmosphere in which like means are employed in order to criticise the judiciary.

We don't have the way to respond that others have. And I'm very pleased to be able to say on this occasion that it would appear that after a long and sometimes number of unsuccessful attempts, it has been agreed in principle that the court will be able to call upon the resources of a qualified person who can act in a timely way to respond to unfounded, unfair or incompetent criticism from whatever source.

In recent times, a request for funds to be made available to engage probably a well qualified journalist to assist the court in that role, to be met with a sympathetic response, and I just hope it will come to fruition shortly. The difficulty at the moment is finding the journalist who's prepared to take on the job.

I mention briefly a piece of history, but nevertheless I think it must be said, that a particularly unfair attack made on national television had a very damaging effect on my personal and professional reputation as Chief Justice, and ultimately upon the court.

It's about three years old, but some of you may remember it, and I don't propose to go into detail, because many of you will recall the tenor of the reports being made and the circumstances in which they were made. However since the subject matter of those broadcasts has not found its way into the litigation which was then pending, I now feel free to disclose that the ABC has informed me that it did not mean to convey that which is as termed a 'false impression' in the course of those broadcasts and has apologised that it did so.

The Law Council of Australia picked up on those broadcasts and published an article distributed to lawyers and judges throughout the nation, commenting on what it perceived as the adverse effects of the publicity generated by those television

programs. The Law Council also called into question the proper administration of justice by all of the judges of this court.

Having received my response, it publicly expressed its confidence in my integrity and the judicial system administered by those judges. Now thankfully that's all now behind us, but it's just an example of what can happen when critical conjecture is broadcast based on inferences which are totally insupportable by the facts.

Mention has been made of, through Mr Bamber, to the work done in this court involving Aboriginals. The most serious criminal cases in this court involve accusations against Aboriginal people, normally relating to crimes of violence committed whilst alleged offender and more often the victim and those in the vicinity, are plainly drunk. It's a fact of life.

It's well documented in courts the distinction recognised by many who are concerned about these things. The public purse and this court will continue to have much of its resources devoted to dealing with cases of that nature until the root cause of the offending is overcome. I do not profess to have the answers to all that, but what I know is that the court sees the result, and it's ill equipped to deal with the cause.

Punishment, even punishment by imprisonment for many years, plainly does not act as a deterrent to many other Aboriginal people. It goes on and on and on. What is undoubtedly a personal tragedy often involving death and serious injuries, one must become mundane.

To matters of court administration. I want to mention because they've been to the fore much in recent times, and I'll be brief. The first is the misnomer of the Office of Courts Administration. It doesn't administer the courts. The judges and the magistrates do that, and the Chief Justice and the Chief Magistrate, in particular, have that responsibility given to them by statute.

I've been trying for some time to effect a change of name to influence those such that it might be properly called, the Office of Judicial Support Services, or something that truly reflects the work, the invaluable work, that people involved in that office do. I'd like to remind you, in case you think I'm going off a bit strongly about this, that in the 2000 Annual Report, it's been corrected since, but as an indication of the sort of thing that was being claimed by the then people in charge of that office, it had listed as its key responsibilities: trying criminal cases; deciding civil disputes; deciding work health matters; and, making decisions on certain family matters.

That was the role projected by, in words of one syllable, and I'll just finish the quote, by the Office of Courts Administration. It does none of those things. I really do think it's time for a change. The current attorney has indicated that it's not presently a matter deserving priority, which I take it to mean it hasn't been scrapped, it simply has to work its way through the priorities and one will eventually find that the true distinction of the work done by that office as opposed to that done by the courts will be established.

But my predominant thought when I think about those people is the appreciation for the work undertaken in Registry and the Sheriff's Offices, particularly by those hard working and knowledgeable people that have been there for a long time. They are, as well, the accessible public face of the justice system for those seeking information and direction regarding the courts and their procedures.

Although not part of the agency, I should also acknowledge the tremendous output and reliability for those responsible for recording and transcribing the proceedings in the courts. Having a transcript available as required is a significant contribution to the administration of justice, although it is admittedly somewhat costly.

Then there are those employed in that office whose efforts to assist the judicial officers in their work and helping to resolve all kinds of administrative issues at the interface between the executive and judicial functions, and for that they are worthy of commendation. They do what they can with such resources are available, and within the perceived administrative restraints.

The other sore point, and I don't think it's going to possibly go away quite as quickly, is the attempts by the Commonwealth, State and Territory governments to apply commercial management techniques to the administration of justice. Performance indicators are the in thing and an annual report is produced under the auspices of the Commonwealth Productivity Commission, purporting to show how each superior court compares with the others, for example, in time taken to finalise cases.

Who knows what the cost to the public is of compiling, producing and comparing the statistics which in the result, are frankly quite meaningless. Poor structures, even at the same level, vary significantly. The range of jurisdiction of any court can be quite different from another.

The figures for this court appear to show that we're a bit slack in regard to the percentage of civil cases finalised in a given period, but my investigation showed that a significant category of cases dealt with were simply not included in the count. They comprise appeals from lower courts and tribunals. They're numerous, they're very time consuming but are normally dealt with fairly promptly.

Whether the same position applies in other jurisdictions, I don't know, but what I do know is that the statistics published for this court are incomplete and misleading. In any event, counting numbers is not a true reflection of the administration of justice. Quality is the primary yardstick, not quantity.

It's important that parties have a fair go to prepare their respective cases and that a judge or magistrate at first instance get it right, rather than have parties involved in the cost and delay of appeals. I should say that those public reports even contain footnotes, which outline some but not all the differences between the courts which make useful comparison unlikely.

The raw figures are nonsensical for those purposes, and yet they are republished in other quarters as if they were reliable. I'm led to wonder what performance indicators have been adopted for indicating the performance of those responsible for performance indicators. For many years the Territory has been well served by the magistratory(?), both in major communities and in bush courts, deal with the vast majority of cases coming before the judicial arm of government.

Theirs is no easy job, bearing in mind not only the quantity of work with which they must deal, but also the range of it. The Supreme Court must, from time to time, deal with appeals from decisions of magistrates in exercising their various jurisdictions, does not reflect badly upon them in any way, notwithstanding that their decisions may be overturned every now and again.

It must be remembered that the vast majority of decisions made in that court are not subjected to review, and those that do are not all found to have erred in some respect. I wish to publicly thank them, that is, all the magistrates for their services to the Territory. They work long and hard hours, not just in the comfy, cosy places like Darwin and Alice Springs, but in many remote places in the Territory, which no doubt involves considerable hardship.

The expansion of their jurisdiction by the parliament demonstrates the confidence with which they are held by the community. But it's a matter of concern to note the jurisdiction once in the hands of judicial officers now being administered by administrative tribunals, which are not necessarily attended by the same safeguards. It's a trend which I urge be very carefully watched.

The occasion would not be complete if I fail to record my gratitude to so many who over the years have enabled me to get on with the job of being a judge and Chief Justice. It's not possible to mention everyone by name or function, but they should not feel overlooked if not recognisable in the following list.

Members of the court who place trust in me to deal with difficult issues and have never shirked their responsibility for carrying out tasks I've requested of them.

Master, who as well as being a member of the court, has taken additional jurisdiction, and together with the Registrar, have been responsible for at least the early stages of case flow management, as well as each having a number of statutory responsibilities by virtue of their office.

Members of the legal profession, I sincerely thank them for their able assistance in court and their friendship out of it. I'd be sad if we lost touch.

Then there are my associates. Many of them did me the honour of recently joining together to mark my leaving, and a lot of them even had nice things to say, one way or another. Those who served during my term as Chief Justice have had significant responsibilities.

Trying to put together the calendar for sittings in Darwin and Alice Springs, accommodating the wishes of six judges and spreading the variety of work as evenly as possible is no easy task. Nor is it to put together registry files after they've been in my undisciplined hands for more than a couple of minutes.

My special thanks go to those who have assisted me as secretary, telephonist, personal assistant, receptionist, executive officer, travel agent, counsellor and pourer of oil on troubled waters. They are of course, all rolled up in Margaret Babington. She has stuck by me, put up with me for almost the whole of the time I've been on the Bench. She deserves a long suffering medal.

To the Alice Springs staff, my special thanks. I know that the sittings of the Supreme Court distract you from your way of life, but you've always tried to relieve the effect by inviting the visiting judge and his or her staff to mend their Top End ways and relax a bit. Well in that, you've been successful.

For myself, we've always enjoyed the visits, but the stairs between the judge's chambers and the courtroom are a work health danger. Today I descend them for the last time. I hope I get down them safely. I look forward to the day when perhaps I'm invited to perhaps inaugurate the lift.

Another job that I've had on hand now for a long, long time, it's taken a long time to come to fruition, and it was only finished yesterday. There's been a need to produce a consistent form of introductory remarks for jury panels, and I'm very delighted to be able to say that it is here, at last. The Russell Crowe look-a-like, I'm sure, will persuade you as to the rules and things by which the panel must abide, and I expect it will have it's world premiere in Alice Springs with the jury panel is next assembled.

So my commission as Chief Justice comes to an end shortly. My security card, car keys and unused cabcharge vouchers will all be handed back. One of the first things many people said after my retirement was, 'Where are you going to live?' And the common expectation, the many non-indigenous people leave the Territory after their retirement. Well it'll be our pleasure to stay.

We seem to have become accepted as part of the community. We look forward to the prospect of becoming useful in new ways. Leaving that aside, our family is very important to us, and we'd like to think they'd prefer it if we didn't go away. For the time being however, it's going to be nice to get into the four wheel drive and just go. There are many places in the Territory and elsewhere we want to visit and tour.

We anticipate endeavouring to becoming accustomed to life in the big city from time to time as a change of environment. Just a couple of weeks ago, and it was a milestone and I pointed to the date of my retirement, we finished 40 years in the Territory. It's always been a great delight to return to this court and this town in the course of our duties.

Lorraine and I recall with great affection the many years we lived here. We enjoy the opportunity to catch up with our friends during that time. We expect to be regularly passing through, spending time revisiting the scenery of the area on our way to and from Adelaide, revisiting our friends and considering our close association with this part of the Territory.

In conclusion, I wish my successor every success in taking over my role, and trust that any confusion of identity will be quickly and satisfactorily resolved for both our sakes.

HIS HONOUR, BAILEY J: I was disappointed to find out that you weren't the winner of the Cox Plate.

Chief Justice Brian Martin has provided outstanding service to this court and the public of the Territory as a judge and Chief Justice for more than 16 years. Others have spoken today of his preeminent qualities as a judge and as a person. There is no greater defender of the independence of the Northern Territory judiciary than Brian Martin. On a personal note, I will miss deeply his companionship in chambers.

Few outside of his immediate colleagues on the Bench would appreciate the exceptional workload carried by His Honour. His Honour's practice was to want to keep to himself a full judicial load without any regard at all to the additional administrative management responsibilities that came with his position as Chief Justice.

Many or even most Australian jurisdictions, a Chief Justice expects and is expected to take overseas trips, once, twice or even more times a year for the purpose of study or enlightening the ignorant by giving lectures, teachers at conferences. Chief Justice Martin very rarely availed himself of such opportunities. His Honour's commitment to his duty as a judge is a shining example to his colleagues. Personally, I would have squeezed in a few more junkets.

We should not allow this occasion to pass, and it's not, and it has not, without noting the active involvement of Lorraine Martin in His Honour's role in community affairs. We will all miss her warmth and efficiency, her charm and friendship and judicial barristers chambers will still be seeing her around the Territory.

I know the remaining members of the court join with me in saying with respect we concur in all that's been said today, and we wish Brian and Lorraine Martin all the very best in their retirement years. I hope you'll all join the Chief Justice for refreshments in the foyer, and this court will now adjourn.

ADJOURNED