

TRANSCRIPT OF PROCEEDINGS

**SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY**

**THE HONOURABLE CHIEF JUSTICE MURRELL
THE HONOURABLE JUSTICE BURNS
THE HONOURABLE JUSTICE ELKAIM
THE HONOURABLE JUSTICE MOSSOP
THE HONOURABLE JUSTICE LOUKAS-KARLSSON
THE HONOURABLE ACTING JUSTICE ASHFORD
THE HONOURABLE ASSOCIATE JUSTICE McWILLIAM**

CEREMONIAL SITTING

**ON THE PASSING OF THE LATE CHIEF JUSTICE
JEFFREY MILES AO**

CANBERRA

9.34 AM, FRIDAY, 29 MARCH 2019

Mr Gordon Ramsey MLA, Attorney-General for the ACT
Mr Steven Whybrow, President of the ACT Bar Association
Mr Chris Donohoe, President of the ACT Law Society

MURRELL CJ: Tricia, Anna, other family and friends of the late and great Jeff Miles, judicial officers of the ACT Magistrates Court, former judicial officers of this and other courts, Attorney-General, legal practitioners and other friends of the court, the court acknowledges the traditional custodians of this land who have lived here for over 20,000 years and we pay our respects to their elders, past and present.

We gather today to honour former Chief Justice Jeffrey Miles who died on 11 February 83 years young. We remember Jeff as a modest man of great integrity. He was a fine jurist, a strong judicial leader and a committed advocate for social justice. At this court he created a friendly and supportive small community. He led the court in accordance with his creed that it is the public and, in particular, the litigants for whom the court exists.

Jeffrey Allan Miles was born in Newcastle on 20 March 1935. After attending Newcastle Boys' High School he studied arts and law at Sydney University. In 1954 he was admitted as a solicitor. He worked in a Sydney law firm for five years. He spent the next two years as a volunteer English teacher with the Indonesia Civil Aviation Institute. His Honour lived with an Indonesian family and became adept at the language.

From Indonesia his Honour travelled to London where he developed an interest in litigation work as well as contacts that resulted in his first appointment of note as solicitor for the Beatles on their Australian tour. Unfortunately, despite the massive show of screaming and fainting fans that met the band each night, the tour gave rise to no litigation.

In 1965 his Honour was called to the New South Wales Bar. He became a public defender in 1978. In 1976 Jeff married Tricia, a true kindred spirit. They had two children, Anna and James and five grandchildren. Their journey through life led Tricia and Jeff on many adventures.

His Honour's first judicial appointment was to the National Court of Papua New Guinea where he sat for two years from 1980 to 1982. Former Chief Justice Higgins who himself later became experienced in that jurisdiction has observed that unlike Australia, in PNG the sources of uninformed criticism of the judiciary are not confined to the shock jocks and politicians, but extend to locals bringing out their bows and arrows and waving war axes.

Upon delivering a verdict in a judge alone trial held in a remote area, Miles J found it prudent to have the departing aircraft already warming up on the airstrip, leaving the translation of the verdict up to local authorities after his departure.

In 1982 his Honour returned from PNG to become a judge of the New South Wales Supreme Court. Three years later on 17 June 1985 his Honour was sworn in as a Federal Court judge and as the third chief justice of this court.

5 His Honour said that his appointment as chief justice seems to have come as a surprise having not practised in the ACT nor been on any Commonwealth list of preferred counsel. It should not have been a surprise. His Honour's intellect, experience and, most importantly, his temperament defined him as a model judicial leader.

10 His dear friend, John Purnell, of senior counsel recounts a story concerning a two week attempted murder trial over which his Honour presided. The colourful Ken Horler QC appeared for the accused. Each day there were heated exchanges between Ken and his Honour no doubt fuelled by Ken's usual luncheon beverage. At the end of the trial Ken complained bitterly about Jeff's courtroom behaviour saying, 'That bastard is supposed to be a mate of mine. He does not need to be that fair.'

15 His Honour accepted the appointment as chief justice of this court on the understanding that the ACT judiciary would continue to be a Commonwealth responsibility and that the Commonwealth would proceed with established plans for a new Commonwealth Courts building which would include the Supreme Court. Alas, neither of these events came to pass.

20 In 1989 the Australian Capital Territory became a self-governing territory. His Honour oversaw the transition and stalwartly advocated for safeguards to ensure continuing judicial independence. It was not until 1992 that the Supreme Court became the responsibility of the territory and both the Commonwealth and the newly constituted ACT legislative assembly enacted legislation ensuring the continuing independence of the ACT judiciary including security of tenure.

25 His Honour said:

30 The rule of law in a democracy requires that judicial officers who stand between the citizen and executive government should be free to adjudicate without the threat of removal by that government. Indeed, in a federal system where it is the duty of the judicature, from time to time, to rule on whether a legislature has exceeded its powers, the power even of a legislature to remove a judge or magistrate should be clearly defined and not exercisable lightly.

35 From the judicial perspective, his Honour's advocacy for judicial independence, which is essential to the rule of law, is his most important legacy.

40 His Honour's retirement in 2002 was short lived. Thereafter he worked for three years as an acting judge in the ACT and New South Wales. Notably, his Honour presided over the first Eastman inquiry, a challenging task that took its toll.

5 In December 2008 his Honour agreed to write a history of this court, a feat that he achieved in a matter of months. A History of the Supreme Court of the Australian Capital Territory; The First 75 Years, remains the definitive reference tool concerning the history of the courts and the judiciary in the ACT. Much more recently, his Honour agreed to oversee the drafting of our jury handbook.

10 When he retired, his Honour reflected with sorrow that during his term the Supreme Court had not found a new and more fitting home. He said:

15 I once had fanciful thoughts that like Sir Christopher Wren I would come one day to be able to say with pride, 'If you want to see my memorial, look around you.' I read and digested quite a lot on the subject of court architecture both here and overseas and spoke to many people with skills and experience in that area. Suddenly, it occurred to me about two years ago that I might not see anything achieved in my term of office.

20 He urged his successor to seek a firm undertaking from the government in writing, in concrete if possible, made known to the world that this court will be provided with the premises and facilities that are necessary for the proper discharge of its role in the public interest.

25 That dream may not have been realised during his Honour's term but it was realised during his lifetime. This year his Honour toured the new Supreme Court building which was constructed on the foundations of his Honour's efforts. It is a fitting memorial to him.

30 Of course, the law was only one of many facets to his Honour's life. His Honour loved Canberra and its beautiful natural surrounds. After his retirement, he remained a dedicated Canberran and, renaissance man that he was, he enriched the Canberra community in many ways.

35 He was founding member of the ACT chapter of the Australian Academy of Forensic Sciences and became a life member of that organisation. He was a dedicated member of the Australian Decorative and Fine Arts Societies. He was a passionate civil libertarian and served as chair of the ACT chapter of the International Commission of Jurists. He was an avid gardener and volunteered in the rose gardens at Old Parliament House for 14 years and he
40 was a habitué of Costco.

45 Jeff and Tricia enjoyed bushwalks most weekends. Once a year their walking group undertook a longer walk and the highlight was said to be the evening poetry reading by Miles and Patricia and animal impersonations which had the rest of the group in fits of laughter with tears streaming down their cheeks. His Honour was also a cyclist and once road from Washington to New Mexico.

His Honour may have missed out on the trip to the Kimberly that he and Tricia had planned to take this year, but there is not much else that he missed out on in a life that was well and fully lived.

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Mr Attorney.

MR RAMSAY: May it please the court. On a day that we are gathering to acknowledge and to pay tribute to one of our community's true elders, can I start by acknowledging the elders of the judicial custodians who have been caring for this land for thousands of years and pay my respects to their elders past, present and emerging.

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It is with a sense of sadness but also a deep sense of honour that we are called together today and it is very appropriate that we gather with such an illustrious body of people in this courtroom. But in particular, I would like to recognise former Chief Justice Jeffrey Miles' family and friends. Whilst we are all gathered here to remember a man of exceptional professional achievement, I appreciate that you are the people who suffer the most at this time.

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The evidence is without question that his Honour was an outstanding husband, father, grandfather and friend. My thoughts and my sympathies are with you today and especially my condolences to Patricia, to other members of the family and the close friends. The grief and the pain that you experience at this time is a clear demonstration of the love that you have for him and that he has had for you. The pain is, in a true sense, a manifestation of the immense value that he has in your life and in all of our lives.

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Whilst his Honour's personal accolades are perhaps most important to his family and friends in remembering him, at this sitting it is appropriate for us to look back on some of his many professional achievements. His Honour studied law at the university of Sydney. He worked in London as a solicitor and returned to Australia to work at a commercial firm.

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In 1965 his Honour was called to the Bar at the time that Australia reintroduced conscription. His Honour acted for a number of conscientious objectors and for activists who were arrested at anti-war and anti-conscription demonstrations and his commitment to the protection of civil liberties was clear at that time and in the future as well.

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This commitment is reflected in comments that were made by the Honourable Justice Kirby about his Honour. When speaking on the role of the New South Wales Council for Liberties he commended his Honour for his valued membership to the formidable team of youngsters who are prominent in civil liberties well before it became fashionable.

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As has been noted that possibly one of the lesser known highlights was his brief engagement with the entertainment law and as your Honour has mentioned, he acted as solicitor for the Beatles during their tour of Australia and I am advised that he did meet the iconic band. I would daresay this is quite a unique experience for a judicial officer and I choose not to speculate at the moment about the modern bands that the current members of our Supreme Court Bench may wish to meet.

His Honour served as ACT's chief justice from 1985 until 2002 and during this time the territory underwent significant changes; perhaps most noticeably, self-government. His Honour was strongly and passionately committed to defending the rule of law and ensuring the independence of the judiciary. His work in this space clearly improved the constitutional arrangements between the territory and the Commonwealth and is one of the reasons that we have such a robust and independent judiciary in the territory today.

During his time as chief justice he developed a reputation as a person of compassion and deep respect for litigants, particularly those whose rights and liberties had been threatened. He made an enormous contribution to the jurisprudence of the ACT on proceeds of crime, bail, forensic science and legal resources.

His Honour has been rightly recognised in our community and in Australia in a number of ways. He is a recipient of a plaque in Canberra's Walk of Honour recognising his leadership in the Supreme Court, his dedication to law reform and his impartial dispensing of justice for the Canberran community. He was awarded an Order of Australia and the Centenary Medal for his services to Australia and, in particular, to the territory.

As your Honour has noted, he was a passionate advocate for the expansion of the courts building and I am glad that Justice Richard Refshauge had the opportunity to show him the new courts building last year.

In remembering his Honour, it is right to acknowledge the recognition and the achievements of our past judicial officers, to recognise the present and the future judiciary that we have and will have who will continue to shape the ACT's judicial system as part of the ongoing legacy to his Honour Jeffrey Miles.

His Honour has left an incredible legacy and one which has permeated the halls of the ACT Supreme Court. Again I extend my condolences to his Honour's family. I give you my thoughts and my sympathies during this period of bereavement.

5 As your Honour has referenced, there was a quote from Sir Christopher Wren that his Honour referred to regarding the building and thinking about his legacy. It is truly fitting for that quote to be used today more broadly than simply a building as we consider the justice system, the rights, the freedoms that we enjoy, the strong regard for families, friends and colleagues that his Honour lived out and we can truly say about his Honour Jeffrey Miles, if you want to see his memorial, look around you.

10 May it please the court.

MURRELL CJ: Thank you, Attorney.

Mr Whybrow, the president of the Bar Association.

15 MR WHYBROW: May it please the court.

20 Distinguished guests, family and friends of his Honour and particularly Gray and Higgins JJ who sat with the Chief Justice for so many years on this court, I have the honour today to speak on behalf, at this ceremony, of the - on the passing of the territory's longest serving chief justice, Jeffrey Miles.

25 As the Chief Justice and the learned Attorney, I too mark and would like to note that we are having this solemn and important ceremony on the lands of the Ngunnawal people and I too would like to acknowledge the traditional owners, past present and emerging.

30 We have already heard at some length of the achievements of his Honour and his practice in the law but it is worth noting again simply how devoted not only to his family he was, but to the service of the law. His Honour was admitted as a solicitor in 1958 and worked in that capacity for some seven years before he was called to the Bar in 1965.

35 For thirteen years he toiled away as a barrister before he was a public defender, which is probably even more toil, until he was appointed a judge in 1980, working in Papua New Guinea until 1992 until his appointment on the Supreme Court of New South Wales in 1982.

40 As the learned Chief Justice has already noted, in 1985, to some perhaps out of the blue, he was appointed Chief Justice of the Australia Capital Territory and a judge of the Federal Court of Australia. His Honour served as the Chief Justice for 17 years on this court until his retirement in 2002. Even after stepping down from the Bench, his Honour continued his service to the law as an acting judge and in other capacities until 2007. A career in the law spanning almost 50 years.

45 Those who attended the funeral service for his Honour heard the wonderful eulogies of the life of Jeffrey Miles AO from his wife Tricia, Mary Gaudron,

Paul Stein and his close friend and the ACT Bar's own John Purnell SC. To someone like myself who had largely only known Jeff Miles in his judicial capacity, it was wonderful to hear of and appreciate the depth and breadth of life, love and experience his Honour had outside the law.

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Although today's ceremony marks his Honour's achievements as the Chief Justice of this honourable court, it is now much more apparent to me just how much some of his Honour's other passions in life leaked into his day job. For example, his Honour was passionate about the federal Coat of Arms in this building and once threatened to deal with workmen who were going to remove it with contempt. Many present, and particularly long serving members of the court staff, will remember with fondness the topiary of the federal Coat of Arms that his Honour was attempting to promulgate in the internal courtyard of the original Supreme Court building.

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As a young practitioner, I often wondered what this rather odd looking wire framed kangaroo and emu was doing in the courtyard of the Supreme Court. Now knowing a lot more about his Honour's passion for nature and gardening and, indeed, the law and this court, his Honour's work of trying to grow this living federal Coat of Arms is entirely explicable.

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With construction still continuing in courts one and two, the portraits of former chief justices have been taken down and placed in storage pending completion of this building. Anyone spending any length of time in court one would have also spent some time examining the portraits and noticed that the portraits of Chief Justices Fox, Blackburn and Higgins are traditionally posed portraits of the subject sitting in their robes on a chair or in their chambers.

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The portrait of Chief Justice Miles, however, has him standing on City Hill behind us, the small park across the road contained within Vernon Circle. To many who worked here it was well known that his Honour would regularly walk across the busy three lane road to sit and have lunch in that small nature sanctuary in the middle of the city where he presided as the chief judicial officer. It was a small escape from the stress of his world and it was fitting that his portrait has him posed against City Hill.

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We have heard in the various eulogies since the passing of his Honour of his kind and generous nature and of his dry sense of humour, his passion for the law and his family and nature. It would be rather remiss of me, however, as president of the Bar if, on behalf of the Bar, I did not note that on the Bench his Honour could be, at times, rather irascible and a difficult judge to appear before.

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He was, however, never a bully, never descended to personal attacks or denigration, but his Honour could become very frustrated with practitioners and it was not uncommon to see him wrenching his wig off - the judges, in

those days, still wore wigs - as if he was pulling his own hair out at times in frustration with those appearing before him.

5 His Honour was acutely conscious of the limited time available for this court to serve the community and provide justice and the long delays in hearing dates becoming available and was particularly intolerant of parties asking for time to discuss settlement or if he felt time was being wasted or issues not being properly explained or addressed when it was now before him.

10 Jack Pappas tells me of an occasion where he was in a particularly fractious debate with his Honour and the Chief Justice eventually said, 'I can't deal with you anymore at the moment, Mr Pappas,' and proceeded to adjourn the court and walk off the Bench. Now, of course, his Honour would hardly be the only judicial officer to have felt like that when faced with Mr Pappas.

15 I am told that his Honour in chambers also could be a stickler for propriety to the extent that at one judge's lunch in chambers his Honour directed a particular judge who had arrived with a cup of coffee to return to his chambers to get a saucer for the cup.

20 My own personal anecdote of his Honour involved me appearing as counsel for the prosecution on an appeal of a defendant who had been convicted in the Magistrates Court. I recall nothing of the circumstances of the case other than it was apparent that there had been some obvious and unarguable error which would mandate the appeal being allowed and the conviction set aside.

25 Rather than attempt to argue the indefensible before his Honour, I stood up at the commencement of the proceedings and announced that the prosecution concedes the appeal and accepts the matter needs to go back to the Magistrate to be dealt with according to law. It was as if I had announced my intention to lead a coup and overthrow the rule of law itself. It was not for me to unilaterally determine the outcome of this appeal but for the court exercising the judicial power of the territory.

30 A week later my then boss, DPP Terry Budden, called me into his office to discuss the letter he had received from the Chief Justice scolding me for my extraordinary impertinence and usurping the functions of the judiciary. I was duly counselled by the director that if the same situation ever arose again and I was faced with arguing an inarguable position I was to do exactly the same thing but perhaps express myself in a less presumptuous manner.

35 Somewhere in the personnel files of the DPP office there exists a signed letter from his Honour complaining about my conduct. It seems a little surreal that I am standing here now over 20 years later speaking at this ceremony but, of course, as soon as that matter finished - well, perhaps after the letter was dispatched, that was the end of the matter. I appeared before his Honour on countless occasions subsequently and there was, of course,

never the slightest suggestion of any animosity or partiality beyond the usual level of exasperation I could engender from him from time to time.

5 Of course, in the years to follow and particularly after his retirement from the Bench, his Honour remained a firm friend of the ACT Bar and was a regular attendee at Bar functions and always a delight to spend time with. I had many conversations with Jeff Miles after his retirement about many subjects and he was a witty and generous man with many kind words and wise advice, although I never did raise with him subsequently the letter he sent to Terry Budden.
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At the ceremony to mark his retirement, his Honour spoke of his time early on in this court with Gallop and Kelly JJ and the close relations the court had with the Federal Court and the contribution made by the then 14 additional judges from the Federal Court who sat, from time to time, as judges of this court.
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His Honour then particularly thanked Higgins, Crispin and Gray JJ who had followed Gallop and Kelly JJ. That ceremony took place 16 and a half years ago today and, as he was then, he today would have been honoured and humble, I suspect, to see Chief Justice Higgins and Justice Gray here to mark this occasion.
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His Honour steered the court through the uncharted waters of transition of responsibility of the courts from Commonwealth to the territory following self-government. His Honour was a tireless advocate for the new Supreme Court precinct that adequately met the needs of the growing Canberra community.
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Both your Honour and the learned attorney have stolen what I thought was my thunder in referring to his Honour's words about Sir Christopher Wren that one day he would come back and say with pride, 'If you want to see my memorial, look around you.' Alas, no such court was ever built in his time as Chief Justice.
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35 It may have taken a further 17 years to materialise, but we now have that new court and it hardly needs to be said that a court is much more than the physical premises in which it sits. It is an amalgam of the judges who preside, of all the staff who work for the court and, most significantly, the integrity of the justice it delivers and the standing that is held in the community. It is fitting that we sit here today in this impressive new building to pay tribute to our longest serving chief justice whose hard work and dedication has contributed so much to this most highly regarded and honourable court.
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45 On behalf of the ACT Bar Association, can I say of Chief Justice Miles if you want to see his memorial, look around you.

May it please the court.

MURRELL CJ: Thank you, Mr Whybrow.

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Mr Donohue, president of the Law Society.

MR DONOHUE: Thank you, Chief Justice. On behalf of the ACT Law Society, I acknowledge the Ngunnawal people on whose land we meet today. I pay my respects to their elders past, present and emerging and also to all Aboriginal and Torres Strait Islander people here today.

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Chief Justice Murrell, members of the family and close friends of the late Jeffrey Allan Miles AO, current and retired judicial officers, Attorney-General and all members of the legal profession today, I am honoured to be invited to address his honourable court on behalf of the 2,600 members of the ACT Law Society to pay tribute to the late retired Chief Justice Jeffrey Miles AO.

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In 1985 when his Honour was appointed I was a sole practitioner. This did not then require many appearances in the Supreme Court let alone before the late Chief Justice. My own anecdotes are therefore few, but my recollections are of a very well respected careful and competent judicial officer. Others from the Law Society did appear before him and they very kindly shared some of their remembrances with me.

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Mr Bernard Collaery recalls his Honour's deep compassion in the 90s during the hearing of the Ren case; that is R-e-n, not W-r-e-n. It was a birth negligence case. When the extent of the severe disabilities of the child then six or seven years old was an issue, his Honour asked if he could meet the child in the jury room with the parents away from the lawyers. This was a very moving event for all at the Bar table.

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That sad case was not without humour. Collaery reminds us that while taking evidence in London, his Honour sat in the Royal Courts on Fleet Street and was, on occasion, addressed by expert medical witnesses, in the British vernacular, as 'm'Lord'. This produced no discernible reaction from his Honour.

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One eminent obstetrician, while giving evidence, said that he was currently working at Newmarket. His Honour inquired, 'Which hospital was that?' The witness responded, 'No, m'Lord, the stables,' and he then added, 'Birth there is attended with more considerable skill.' It is alleged by Collaery that this was a turning point in the case. I'm not so sure that we can accept that.

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Several of our former presidents have also offered words of condolence including Michael Phelps, Noor Blumer, John Faulks, Robert Clynes, Dennis

Farrar, Bill Redpath, Russell Miller, Martin Hockridge and Sarah Avery. They variously described his Honour as a decent, caring man whose courteousness, compassion and sense of justice made it a delight to appear before him in court.

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They shared a picture of a dignified, informed, unpretentious and supportive chief justice who always found the time to be kind and respectful and who was unfailingly professional, courteous and friendly; qualities that he endured throughout his life.

10 They say that friendship emerged further and stayed after his retirement. One president even added that Chief Justice Miles, as a decent and caring man, seemed to find his role onerous, a sign of how conscientious he was, and says that he seemed visibly happier when he retired as Chief Justice.

15 Martin Hockridge, president of the Law Society from 2013 to 2016, had this to share:

20 While he could be testy, he was a very fair judge and was a stickler for the law with low tolerance for platitudes. I recall in response to one of my weaker submissions, when the best I could come up with in a pre-trial application was that it didn't seem very fair to allow a piece of evidence, the Chief Justice scoffed at me and said, 'Fairness? What has fairness got to do with it,' meaning that I had to do better than to found my argument in legal terms rather than simply throwing out taxing phrases.

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Russell Miller, president 91 to 93 was also a good friend and neighbour of his Honour. He says:

30 He was an inaugural member of the Law Council of Australia's international law section observer panel. His quietly thoughtful and considerate approach to all he did qualified him well for that role.

35 Dennis Farrar, president from 2001 to 2003, recalled that, 'His Honour held dual appointments to the Supreme Court and the Federal Court, but when he retired from the Supreme Court he expected to remain a Federal Court judge. I quote:

40 On the evening of his retirement he received a phone call at home from David Bennett QC who was then the Solicitor-General. Imitating Mr Bennett's distinctive speaking voice, Jeff said the Solicitor-General told him that if he remained as a Federal Court judge he would be superannuated at a lower rate of pension when he later retired from the Federal Court than if he retired simultaneously from the Supreme Court and the Federal Court. Jeff said to Dennis,

45 'I immediately jumped in the car and drove out to Yarralumla just

before midnight and handed in my resignation as a Federal Court judge.'

5 No doubt a happy a more rewarding retirement followed. Jeffrey Miles will be long remembered and always respected. The Law Society, on behalf of its members, extends our deepest condolences to his family and friends.

May it please the court.

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MURRELL CJ: Thank you, Mr Donohue.

The court will now adjourn.

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ADJOURNED

[10.08 am]