

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

JUDGE IRWIN, Chief Magistrate
KILLEEN, Magistrate

IN THE MATTER OF THE SWEARING-IN OF
MS DIANNE McGRATH FINGLETON AS A
MAGISTRATE OF QUEENSLAND

CALOUNDRA

..DATE 12/09/2005

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HON LINDA LAVARCH, Attorney-General

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MR S COURTNEY on behalf of the Bar Association

MR R DAVIS on behalf of the Law Society

HIS HONOUR: Good morning, and welcome to this ceremony to mark the occasion of the swearing-in of Dianne McGrath Fingleton as a Magistrate of Queensland. I would firstly like to acknowledge the traditional owners of the land on which this courthouse is built. I welcome the presence here today of the Honourable, the Attorney-General and Minister for Justice; Mr Courtney, of the local Maroochydore Bar who is representing the Bar Association of Queensland; Mr Davis, the President of the Queensland Law Society. I also welcome the Director-General of the Department of Justice and Attorney-General, Ms Rachel Hunter and, the Court Administrator, Mr Paul Marschke.

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I appreciate the trouble that both the Attorney-General and Mr Davis have taken to be here this morning. The Attorney-General has had to take a break away from community cabinet at Cleveland to be at Caloundra, and Mr Davis has had to take a break away from annual holidays with his family.

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I also recognise Magistrate Judy Daley, who is with us from Kingaroy - a pleasure to see you here this morning, Magistrate Daley; Mr Michael Bauman, the Federal Magistrate at Brisbane has apologised that he is unable to be here this morning, as has Mr Martin, the President of the Bar Association, who has other Court commitments.

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Also on the Bench with us this morning is Magistrate Tom Killeen, who is the Regional Coordinating Magistrate for this area.

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I also have much pleasure of welcoming the family and friends of her Honour. I particularly recognise her husband John McGrath; her brothers, Harold, John and Ron and also, nephew Mark; her mother-in-law Moya McGrath and her brother-in-law, Shane McGrath. It is also very pleasing to have with us this morning the former Attorney-General and Minister for Justice of Queensland, Mr Matt Foley.

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And, of course, I welcome each and every one of you, members of the legal profession and others of our distinguished guests.

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Magistrate Fingleton, could I please ask you to stand and to take the affirmation of office.

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MS FINGLETON: I, Dianne McGrath Fingleton, solemnly affirm that I will properly serve her Majesty, Queen Elizabeth the Second, her heirs and successors in the office of Magistrate and that I will treat everyone fairly and without bias according to law.

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HIS HONOUR: Thank you. If you could please sit and inscribe the affirmation.

MS FINGLETON: Thank you.

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HIS HONOUR: It is a pleasure to be back in Caloundra almost one month since the opening of this impressive Court facility and, in particular, to swear in Caloundra's first magistrate. Magistrate Fingleton will be the first Magistrate to operate from this Courthouse.

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This is not the only first. To my knowledge, this is the first time that a person who has previously been a Magistrate of this Court has been reappointed to this Court. As is well known, her Honour was appointed as a Magistrate in 1995. She was appointed to the then title of Senior Magistrate in 1998. During her career, she gained experience in working in a single Magistrate's centre at Dalby. She was Chief Magistrate of this State from 1999 to 2003. In this position, she was instrumental in a number of innovations, including the Murri Court and public swearing-ins, an area where we were in advance of Victoria, which has only recently introduced this for the County Court.

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But, she did not have an opportunity of a public swearing-in in any of her capacities and this is remedied this morning. I add that her Honour was admitted as a solicitor in 1984. She was the legal coordinator at the Caxton Legal Service from 1985 to 1989 and she was solicitor in charge of the Ipswich Legal Aid Office until her appointment. That is an office that has also provided us with Magistrates Lock and White, so it has a distinguished pedigree.

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Her Honour therefore brings considerable wealth of experience of the law and life to this Court.

For the benefit of the local legal profession, the Caloundra Court presently has a callover each Tuesday. For one Thursday of each month, it also has a civil callover. Already, trials are being set down. We will grow the work as more trials are identified. The work of this Court will continue to grow in this area, which currently has in excess of 80,000 people.

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Within a couple of months, we expect that the workload of this Court will grow to three days a month until, through a process of evolution, this Court, we expect, will operate every day of the week. For the interim, Magistrate Fingleton will also be presiding in Maroochydore as part of the team there. She will also be responsible for the coronial work and the after-hour applications which arise in the Caloundra City Council area.

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So, I have much pleasure in welcoming such an experienced Magistrate back to this Court as part of our team. As I said, Madam Attorney-General, it is very pleasing that you have been able to join us this morning, and I now invite you to address the Court.

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ATTORNEY-GENERAL: At the outset, may I acknowledge the traditional owners of the land on which we gather here today and may I say good morning, your Honours, Queensland Chief Magistrate Judge Marshall Irwin; Regional Coordinating Magistrate, Mr Tom Killeen, Director-General of the Department

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of Justice and Attorney-General, Ms Rachel Hunter; Steve Courtney, representing the Queensland Bar Association; the President of the Queensland Law Society, Mr Rob Davis; legal practitioners, ladies and gentlemen. Can I say, I am delighted to be here this morning for your swearing-in, Di, and I hope that you do not mind me being informal in calling you Di this morning. If I ever appear before you again, it will be "your Honour".

Can I congratulate you on your return to the Magistrates Court Bench. For you, Di, life has come the full circle. The very fact that you accepted my offer of reappointment to the Bench demonstrates to all that notwithstanding what you have been through, you have maintained your competence in the rule of law, the Courts and the justice system and, you are prepared to use your expertise, commitment and dedication to the law to once again serve the people of Queensland.

Your Honours, I believe it is fitting on an occasion such as this to reflect upon and reinforce the fundamental role of the rule of law in our free and open society. The formal sitting of a Court upon the taking of an oath or affirmation of office of a Judge or Magistrate is an important and symbolic occasion for the institutions of Justice. It marks a significant milestone in the professional career of the individual who is joining the Court. But, even more importantly, the sitting of the Court is a public affirmation of the fundamental role of the rule of law in supporting our free liberal and civil society.

There are a number of golden threads which are woven into the fabric which comprise the rule of law. One is that the law applies to all persons, irrespective of social standing and power held by that person. Another is that the exercise of power by the executive government and the division of Courts should be subject to review to ensure the correct decisions are made. In other words, there needs to be a check and balance on power.

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Essentially, the rule of law is part of the theory of government which holds that the institutions of government, that is, Parliament, the Executive and the Courts, do not exist as an ends in themselves, but as a means to protect the rights of individuals and promote the interests of society.

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Di, can I say to you the circumstances leading to your reappointment are well known to each of us here today. The last two years have been difficult for you personally, but you have remained resilient throughout this tumultuous period of your life. Equally, this period reflects a number of aspects of the workings of the rule of law, to which I have just referred. The High Court unanimously ruled in your favour. It was the very workings of the rule of law and the workings of our legal system which provided you with justice in the end. Your pursuit of justice through the system signifies to me that your confidence, your faith in the system, never wavered.

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While reflection is always necessary, today is not the day to dwell on the past, for it is a joyous day for you as you embark upon your new future. Today is the commencement of a new period in your professional life. This courthouse is the latest addition to the State's physical infrastructure for the justice system. It is fitting that it will be your base to restart your service to the people of Queensland.

Can I say that I am very proud of this new facility and I know that you will forgive me if I just spend a moment to dwell on its qualities. The facility in which we now gather will propel the administration of local justice well and truly into the 21st century. Cases that would previously have been transferred to Maroochydore will now be heard here in Caloundra. In fact, all police matters in the Kawana Waters area will now be directed to Caloundra rather than Maroochydore. And, with the local population booming, the case load will undoubtedly increase in the coming years. A Magistrate with your experience, Di, is ideally suited to take on the challenge of a new Court in a fast growing area.

And can I say here, on a personal note, as proud as I am of this Court facility, as someone who has watched your career from afar, I can say today that I am equally, if not more so, proud of you. Having been recently appointed as Attorney-General, I can share your sense of enthusiasm for the challenge that this new position brings. Congratulations on your reappointment as Magistrate and the strength that you have shown to get back on your feet.

And can I say also, congratulations to your family and friends who are here today to witness this swearing-in ceremony. You have all seen Di's resilience at close quarters in recent times, and it must be extremely gratifying for you to see her return to the Bench and the work she has dedicated herself to with such commitment over a very long period of time.

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And from my discussions with you, Di, I know you are very much looking forward to starting work here in the next few days.

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Can I say that I noted that you introduced the public swearing proceedings, and that former Attorney-General Matt Foley is here today, and we all know Matt's love of poetry, and I thought that if he was about - if you had a public swearing-in when you were first sworn as a Magistrate over a decade ago, I am sure that he would have had a verse apt for the occasion. So, whilst I will not make a habit of this, I thought that it might be fitting today just to share with you the last verse of a poem that I have always found insightful and telling in my life and that poem is the Psalm of Life by Henry Wadsworth Longfellow, and I think it sums up you and where we are at, and it goes:

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"Let us then be up and doing with a heart
for any fate still achieving, still pursuing,
Learn to labour and to wait."

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And Di, as you are still pursuing and still achieving, can I wish you all the very best in your new position here at Caloundra.

HER HONOUR: Thank you, so much.

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HIS HONOUR: Thank you, Madam Attorney. Mr Courtney, could I call on you to address the Court.

MR COURTNEY: Your Honour, Judge Irwin, your Honour Magistrate Fingleton and your Honour Magistrate Killeen, on behalf of the Bar Association, your Honour, I welcome you back to the Bench, but more particularly though, as a member of the local Bar and as a local practitioner, I welcome you to the Sunshine Coast.

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HER HONOUR: Thank you.

MR COURTNEY: The hardship you have suffered over the last two years is no secret, but fate has brought you to work in one of the best places or, the best place in the State. The Coast, whilst maintaining its beauty and lifestyle, has matured and grown over the years. That growth has been reflected by the construction of this fantastic courthouse. The legal profession, too, has grown and matured. You will have appearing before you, practitioners with knowledge and expertise that is the equivalent of anyone in the State, even if I say so myself.

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As a large proportion of your work will be criminal, you will quickly get to know our Police Prosecutors; they are represented today by Senior Constable Stevens. I can say the Police Prosecutors are competent, fair and reasonable, which makes everyone's job so much easier in these Courts.

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Of course, the profession and the community will benefit from having a Magistrate of your experience here in Caloundra. His Honour Judge Irwin has already outlined your background before being first sworn in as a Magistrate. You have been on the front line - if I can put it that way - at the Caxton Street Legal Centre and the Legal Aid Office. After practice, you served as a Magistrate and Senior Magistrate for about eight years, as best I can work out-----

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HER HONOUR: Not quite, but-----

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MR COURTNEY: Not quite? Your time in practice and on the Bench in itself brings something significant to your role, but equally, what you've experienced over the last couple of years will no doubt bring an insight which will benefit all of those who appear before you.

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So, your Honour, I am sure you will enjoy your time on the Sunshine Coast. I have no doubt that the Sunshine Coast is fortunate to have you. So, welcome to the Bench and welcome to the Sunshine Coast.

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HER HONOUR: Thank you, very much.

HIS HONOUR: Thank you, Mr Courtney, for those words. Mr Davis, would you like to address the Court?

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MR DAVIS: Your Honour, Chief Magistrate Judge Irwin, Magistrate Fingleton, your Honour, Attorney-General, Mr

Courtney, distinguished guests, ladies and gentlemen. This is a historic occasion today. Magistrates are at the coalface in the legal profession. For most people who have anything to do with the Courts, it happens here in these Courts, and the quality of justice is an extremely important barometer for the fairness of our society.

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I echo completely the words of the Attorney-General, and I'd like to welcome you back to the Court. You have a wealth of experience and will well serve Queensland, and might I say on behalf of the Society and the members that we serve, we are very pleased to see you back. Thank you.

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HER HONOUR: Thank you.

HIS HONOUR: Thank you, Mr Davis. Your Honour, I now give you an opportunity to respond.

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HER HONOUR: Thank you, very much, Chief Magistrate. Firstly, I acknowledge the traditional owners of the land whom, I am told, are the Gubba Gubba Tribe. Always is, always was, your land.

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Thank you, Attorney, for your kind words. Thank you also for your courtesy in our recent negotiations. It took two women in the end to pull it all together and, I must say, a little bit of kindness at the end went a long way, and I thank you for your kind comments. Beware being the first woman of any position though. Keep your eyes well alert.

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The representative of the Bar Association, thank you for your kind words and I look forward to your appearing before me, I hope, soon.

To the President of the Law Society, Rob, I was touched recently to receive a letter from the former President and the Executive Officer, Peter Carne, welcoming me back and offering me access to a practising certificate, which I will no longer need, but it was a touching letter and I was deeply grateful.

And Tom, may I acknowledge you, and we are old friends and I look forward very much to working with you in the Maroochydhore Magistrates and the Caboolture Magistrates, should that occur.

I acknowledge with great humility the attendance here today of my other old friend, Judy Daley, Magistrate; the former Attorney-General, Matt Foley, other barristers and solicitors. I particularly welcome my husband John, my brothers and other members of my family, my mother-in-law and my brother-in-law; my dear friends, but more of that later.

In assuming the position of Magistrate at the Caloundra Magistrates Court today, I am aware of the unique nature of this appointment. There are people here today, family and friends, who were there when I was first sworn in as a Magistrate in November 1995. Everyone here is aware of what has transpired on my journey from that first appointment, through to this moment in time. I do not intend to dwell upon

the saddest and most difficult years of my life. I had always hoped I would make a mark on the law; I was not to know it would be so famously as the recipient of one of the greatest miscarriages of justice in the history of Queensland and the Australian legal system. Suffice it to say, I see today's ceremony as part of the healing process for myself and others who have supported me through the ordeal and, indeed that system itself.

In considering whether I wanted to return to a position as a judicial officer, I had to wrestle with my deepest-held principles of social justice. Over the last few years, I have experienced total alienation from the legal system in Queensland following what now has been held to have been an unnecessary self-righteous, wrong-headed and unjust process which saw me stripped of my career, my status and my reputation.

Fortunately, part of my time in the last few years was devoted to teaching law at the Griffith University Law School. It was there and then that I realised I still loved the law, with all of its grandeur; all of its dysfunction; all of its long-windedness and, all of its conciseness.

It is this love of the law, fairly administered, that I bring back to the Bench today. Might I also say, thank goodness for the High Court of Australia, which also renewed my belief in justice.

It would not be fair to my family and friends and, indeed, the people of Caloundra, if I did not put a few things straight for the record while I have the opportunity. I am no bully. This allegation against me was never proved and I have always strongly denied it. It is important that those parties who will come before me in Court and, indeed, the staff at this courthouse, know this. Anyone coming into my Court or my Chambers will be treated with dignity and courtesy; no moods, no inefficiency, no baggage. I will be on time and I will have dry hair. I will also be, as I have always believed myself to be, competent and fair.

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I bring to the Court this time an extraordinary insight into what befalls persons who fall onto the wrong side of the law and the legal system. I am aware now, for instance, that when a Judge or Magistrate sentences a person to prison, they sentence their entire family and their friends as well.

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Knowing firsthand the tragedy of an imposed and brutal separation from one's circle of love and support, if one is lucky enough to have one, which is what imprisonment is, I feel that my role as a Magistrate will be instructed by my experience, not embittered.

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I have had much time to wrestle with issues of good and evil in my temporary expulsion from administering justice in Queensland Courts. Such issues are complex, but I believe I understand in a deeper way now the manifestation of both of these extremes of human behaviour and can pledge to the people

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coming before me in Court a balanced, even approach to issues of justice in all areas of the law, be they victims of crime, perpetrators, applicants/respondents.

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It has not been easy for me to relinquish the role as Chief Magistrate of Queensland to resume my career as a Magistrate only. I believe strongly that I was a good Chief Magistrate from 1999 to 2002. Many of the initiatives I introduced or helped evolve, such as the Drug Court and the office of State Coroner, are thriving.

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One of the proudest achievements of my time as Chief Magistrate, the establishment of the Murri Court, continues in Central Courts in Brisbane in a magnificent Murri Court, and the model is reflected throughout Queensland Magistrates Courts. I reiterate to the indigenous people of the local area what I said in the reconciliation ceremony in Brisbane in 2002. You will always be truly listened to in my Court.

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I have always strongly believed that judicial officers should be accountable to the community they serve. I was interested then to read recently the comments of his Honour Justice Sackville of the Federal Court of Australia and chair of the Judicial Conference of Australia, an organisation whose mission is the protection of judicial independence for Judges and Magistrates. His Honour pointed out that judicial officers in Australia must become more open to criticism of their performance, even in relation to day-to-day issues. This is only ever what I tried to have happen in the

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Magistrates Courts of Queensland, and I stand by that position.

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In that spirit, I was interested when I visited two Magistrate friends in a regional city recently when they said that they would be a bit late to meet me after work, because they had a stakeholders meeting that afternoon; an initiative of mine I immodestly replied.

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I look forward to meeting with as soon as possible those representatives of the various agencies and groups who appear regularly in this Court, such as lawyers and Police Prosecutors, local domestic violence groups, Department of Child Safety representatives and others, so that we can make sure that the processes and procedures of this Court ensure transparency and that justice will be done for all who come here.

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Finally, I must now express my thanks to those people here today who have ensured that I am indeed able to be here.

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First and foremost and always, my husband John. Darling, we made it, not as a couple, but as people. We made it. Despite some opposition you may have from other husbands, I am led to believe, you are still the best husband in the world and I thank you from the bottom of my heart for your nurture of me over the last harsh three years. We spent our fifth wedding anniversary with a soft drink and a packet of potato chips in the visiting area of Wacol Women's Prison. Let's ensure that our tenth anniversary is spent somewhere more lugubrious.

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I acknowledge with great respect the love and support given to John by his mother, Moya McGrath, and his brother Shane, here today and also their love and support to me.

To my brothers Harold, John and Ronald, and my nephew Mark, who have felt so deeply what I have endured over those years. If you scratch one Fingleton, you scratch us all. It is time now, as our lovely brother Tony recently said to John and me - he could not be here today - "It is time now to begin swimming downstream."

To my special friends, some are here and some are not, their roles have been so very important over the last few years. Women friends who have been like sisters to me, and male friends who have been like brothers, I will never forget the debt I owe you for your kindness, love and support during John's and my ordeal. One of those friends recently said to me that my true wealth came from the fact that I am a deeply loved person. That is all I have ever wanted and I thank you for it.

To my friend and mentor Matthew Foley, you got me into all of this Matt, but I do not resile from any of my achievements as a Magistrate, Deputy Chief and Chief Magistrate of Queensland. Thank you for your support always, including recently, when at considerable personal cost for yourself, you went to bat for me publicly. I will honour your original appointment in the future as I have in the past.

To my lawyer friends, Matt Woods, Simon Hamlyn-Harris and Tony Woodger, who wouldn't allow a dreadful injustice to rest and represented me to the High Court, thank you for making it possible for me to resume my duties as a Magistrate today.

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John, my family and circle of supporters, I owe you an enormous debt. You are fine, fine men and truly great lawyers and all your families and friends should be extremely proud of you. I certainly am.

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To other friends who through voluntary organisations have lent me support and given me worthwhile work to do to help others in the last few years while I could not do my real job, I thank you.

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I thank my friends at the Bribie Island Golf Club who kept my eye on the ball and my feet on the ground.

Also, and with great humility, I thank those people - numerous people - who would stop me in the street, in stores and other public places, and spoke of their understanding of what went wrong for me; embarrassed me with claims that I was somehow an amazing person. Whenever I was so addressed, it would make my day and I would walk away with a smile. I thank them all for that.

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I look forward to being less of a celebrity now and to resume the role of a hard working Magistrate and I would dearly love that the media would allow me to do that.

Thank you, Chief Magistrate, for your courtesy in our recent dealings, which cannot have been easy for you. They started with me wanting my job back for a start. I can assure you that you will have my complete loyalty to your leadership. I know how difficult a role is that of Chief Magistrate of Queensland, but also how very rewarding. I pledge you my professionalism in both my work within the Caloundra Court and in our personal dealings.

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Again, thank you all so much for your attendance here today. You humble me. Thank you.

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HIS HONOUR: Thank you, your Honour, and I have one other pleasant task to perform and that is, as part of welcoming you back to the Court, to present you with this Bible which is suitably inscribed, so that you can remember-----

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HER HONOUR: John Smith still do it? No?

HIS HONOUR: Still in the same style.

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HER HONOUR: I will put it with the other one. No, thank you very much.

HIS HONOUR: And that is a memento of this occasion.

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HER HONOUR: No, that is wonderful.

HIS HONOUR: So, welcome back to the Court.

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HER HONOUR: Thanks a lot, Marshall.

HIS HONOUR: Congratulations.

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HER HONOUR: Thank you.

HIS HONOUR: I think it should also be recorded that for the first time, as far as I am aware, this courtroom is filled to capacity today. It is impossible to recognise everybody who is in the room, but I note that a number of the people who her Honour has spoken about, are with us today. I can see Mr Hamlyn-Harris and Mr Woodger down the back; I can also see Ms Mason and also Mr Wood.

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I also appreciate the trouble that Assistant Commissioner Doonan, who is the Assistant Commissioner for this area, has taken to be with us this morning.

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My other pleasant task is to invite those of you who have time to join us shortly for a morning tea and, finally, I direct that these proceedings be recorded by a mechanical device under the provisions of the Recording of Evidence Act and Matthew Maurice Jones be the recorder.

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Having said that, Court is Adjourned.

THE COURT ADJOURNED