

MAGISTRATES COURT

JUDGE M P IRWIN, Chief Magistrate

VALEDICTORY CEREMONY FOR
MAGISTRATE MICHAEL JOSEPH HALLIDAY

BRISBANE

..DATE 03/04/2008

Also present

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The Honourable the Minister for Justice and Attorney-General and Minister assisting the Premier in Western Queensland, the Honourable Kerry Shine MP

On behalf of the Bar Association of Queensland:

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Mr Murphy Senior Counsel

On behalf of the Queensland Law Society:

Ms Mahon the President

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HIS HONOUR: Good afternoon, and welcome to this valedictory ceremony for Magistrate Michael Joseph Halliday who retires on the 12th of April this year, after attaining the age of 65 years.

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I would like to commence by acknowledging the traditional owners and custodians of the land on which we meet and to acknowledge their customs and their wisdom.

I acknowledge the presence here today of the Honourable the Minister for Justice and Attorney-General and Minister assisting the Premier in Western Queensland, the Honourable Kerry Shine MP, Mr Murphy Senior Counsel representing the Bar Association of Queensland, and Ms Mahon the President of the Queensland Law Society.

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I would like to extend a special welcome to Magistrate Halliday's wife Anne and also to his children, some of whom

might still be on their way here, but hopefully will arrive before the end of the ceremony: Genevieve, James and Richard, and also his Honour's sister, Geraldine.

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I welcome Justice Carmody from the Family Court of Australia, and also former Supreme Court Judges Glen Williams, Bill Lee - I understand Tom Shepherdson is here - as well as Judge Boulton retired from the District Court of Queensland, but still presiding in the District Court in New South Wales. I welcome all of your Honours from all jurisdictions, Mr Trickett the President of the Land Court, and Ms McDonald a member of the Land Court.

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And of course I welcome all Queensland Magistrates who are able to be with us this afternoon including Magistrate Taylor who has journeyed down from Maroochydore to be with us, and of course while it is not possible for every Magistrate in Queensland or even in Brisbane to participate in this ceremony, I speak today on behalf of all Queensland Magistrates.

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And I also welcome his Honour Magistrate Field who has travelled all the way from South Australia to be with us today on this special occasion.

The Acting Director-General of the Department of Justice and Attorney-General, Ms Julie Grantham, is with us; the Assistant Director-General, Ms Ulla Zeller; the Court Administrator,

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Paul Marshcke; and Conrad Lowe the Crown Solicitor. I welcome
all of you and I also welcome all of our distinguished guests.

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I feel like I am giving an address at a wedding or a 21st
birthday because I have also got a number of apologies to
give.

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Other members of the Family Court of Australia and the Federal
Magistrates Court have expressed their apologies for being
unable to be with us today because they are all at present
attending a conference interstate. The Chief Justice and the
Chief Judge have sent their apologies. The Chief Judge may be
here later, and I know her husband John is here today.

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Also Deputy President Hack of the AAT is in Sydney. Justice
Thomas, formerly of the Supreme Court and Court of Appeal
sends his apologies as does former Chief Judge of the District
Court, Pat Shanahan. Judge Hoath, Mr Shadbolt from the
Aboriginal and Torres Strait Islanders Legal Service, the Law
Deans of QUT and the University of Queensland, and also Mr
Paul Everingham have all specifically been in contact with me
to express their apologies.

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Your Honour, you leave the Magistrates Court Bench in nine
days' time after 40 years of distinguished service as both a
barrister and, more recently since 1997, as a Magistrate of
this Court.

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In addition to that work you have taken an active interest in legal education and in particular the training of legal practitioners. Not surprisingly you are a member of the Ethics Committee of the Bar Association of Queensland, and you were actively involved in a number of their other committees. You have been a lecturer and a tutor with the Queensland University of Technology. You have been admitted as a barrister since 1968 in Victoria, and in the following year you commenced practice in Queensland, and your master was the redoubtable Jack Kimmins, later a Judge of the District Court of Queensland.

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You practised widely including in administrative law, and that served you well as a presiding member of the Misconduct Tribunals, the Chair of the Social Securities Appeals Tribunal, and as a senior member of the Veterans' Review Board.

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You have also taken an active interest in medico-legal and social issues, and that was undoubtedly of benefit to you when you were the Brisbane Coroner between 1999 and 2003.

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Before that, having been appointed, as I said before, in 1997, you spent 12 months in Brisbane before spending another 12 months in Dalby, and then after your term as Coroner, you have been the resident Magistrate at Petrie since January of 2003.

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You will probably not miss the increasingly perilous drive from when you live in Brisbane across the city to Petrie, but

you will miss the opportunity to be the first Magistrate sitting in the Pine Rivers Courthouse which will be open at Strathpine, we believe, in June, and I acknowledge the presence of the local Member for that area who is with us today, Ms Linda Lavarch MP, formerly the Attorney-General of Queensland who has been an active mover in the development of the quite magnificent Court which is being built for the local community.

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You have also been closely involved in education. I know that you have been actively involved with the Pine Rivers State High School, especially during their education week when you have adjudicated debates.

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Yours has been a significant contribution as is apparent from what I have just said, in many different capacities.

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Importantly you are also a wonderful person, and I am sure that that is why there are so many people in this Court today. I have seldom seen the Court as full as it is on this occasion, perhaps not since former Magistrate Dean's valedictory.

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You are also a very collegiate and professional member of our Bench. You have always actively and readily involved yourself in Magistrates Committees and even as you leave the Court you are taking on the co-editorship of the Chief Magistrates Notes which are a very important part of the work and the knowledge compiled in this Court.

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In the apologies I have received there are comments like these:

"I acknowledge with admiration the considerable service you have provided to the Queensland public. You have contributed a lot to the profession and the community both at the Bar and Bench."

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That came from former Justice Thomas of the Supreme Court. And from your long time friend from Victoria, Aaron Schwartz:

"I know Michael as a devoted servant of the people of Queensland who has done himself and the community proud."

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I know that you do not see this as a retirement, and that you are moving from one facet of your active life to another, and that we will continue to see you working in another capacity, whatever that may be in the future. And of course we will at least continue to keep our contact with you through your editorship of the Chief Magistrates Notes.

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I would like to finish by quoting from the former Chief Justice of the High Court of Australia, Sir Gerard Brennan. It was a quote that I used at a recent swearing-in ceremony. His Honour was speaking at an orientation program for newly appointed Judges. And he said to those Judges:

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"I congratulate you on your acceptance of an office which is of pivotal social importance and your willingness to expend much of your time and energy and all of your talents in performing its duties."

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You will work hard and longer than most of your non-judicial friends. Your every judicial word and action, and some other words and actions as well will be open to public criticism and the public esteem of the Judiciary may be eroded by attacks that are both unjustified and unanswered.

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But, if at the end of the day, you share with colleagues whom you highly esteem a sense of service to the community by the administration of justice according to law, you will have a life of enormous satisfaction."

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So, your Honour, you can make the journey from our Bench with that sense of service and satisfaction. You can leave knowing that yours has been a job well done.

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I wish you and Anne and your family every happiness for the future, which I know will continue to be a fulfilling one for you in whichever path you choose to take, or paths you choose to take over the years to come.

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I now have much pleasure in inviting the Honourable the Attorney-General and Minister for Justice to address the Court. Mr Attorney.

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THE ATTORNEY-GENERAL: Thank you. May it please the Court, I too would like to acknowledge the traditional owners of the land on which we gather this afternoon.

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Chief Magistrate, Judge Marshall Irwin, and the Deputy Chief Magistrate, Brian Hine, Magistrates present and path Judges, Land Court representatives, other distinguished guests, Mr

Murphy, representing the Bar, Ms Mahon representing the Queensland Law Society and my Parliamentary colleague and predecessors Attorney-General, the Honourable Linda Lavarch, ladies and gentlemen, we join here today to farewell from this Court a highly respected person Magistrate, in the form of Michael Halliday, and to acknowledge with gratitude his most distinguished service to the Magistrates Court.

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As has been mentioned, you were born and completed your schooling and legal studies in Victoria, where you were admitted as a barrister and solicitor in 1968.

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Shortly thereafter you moved to Queensland where you worked for Neil O'Sullivan and Rowell, prominent solicitors of Brisbane at that time, before being admitted to the Bar. I can vividly remember briefing you when I was an articled clerk in those very early days. And my recollection is that your first Chambers may well have been near this current site, but I might have that wrong.

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You were appointed as a Magistrate, as his Honour mentioned, at Dalby, serving the surrounding towns of St George, Oakey, Chinchilla and Taroom, before moving back to Brisbane where you were the Brisbane Coroner.

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You may recall when the then Chief Magistrate asked you to
move to Dalby, he apparently told you that you would have to
do more than just be a Magistrate. You were expected to fly
the flag for the Court, to which apparently you replied,
tongue in cheek, that you didn't know that the Magistrates
Court had a flag, and what were the rules for flying it. You
were also known as the Kerry O'Brien of the Magistrates Court
after being spoken to by the same Chief Magistrate for using a
green pen.

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You are married, of course, to Anne, and her commitment and
support has assisted you in your career, playing an important
role in the administration of justice in what is a very large
and diverse State. I'm delighted that Anne has been able to
join us today for the ceremony, together with your children,
James, Genevieve and Richard, and your sister, Geraldine. As
I understand it, your other children are interstate.

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Not one to be idle, you leave this Court on Friday to travel
to China as part of a delegation of Australian and New Zealand
Judges who will take part in an exchange with Judges from that
country. There you will lecture to the Chinese Judges legal
and cultural topics as part of this exchange of ideas and
knowledge.

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Magistrate Halliday, your contribution to the judicial life of the State, because of that contribution, I feel honoured to be asked to recognise it today. I wish you the best for a long and very healthy retirement. To you and your family, you take with us the most - my most sincere thanks and my warmest good wishes for the future.

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HIS HONOUR: Thank you, Mr Attorney. I was glad to be reminded about the flag, having gone down the track of moving to robing the barristers in our Court - It sounds like a rather good idea.

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MAGISTRATE HALLIDAY: But it wasn't my idea.

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HIS HONOUR: Mr Murphy, could I please ask you to address the Court on behalf of the Bar Association of Queensland?

MR MURPHY: Your Honour, the Chief Magistrate, may it please the Court, I rise to speak on behalf of the whole of the Queensland Bar to farewell a well-respected and hard-working Magistrate of nearly 11 years, Michael Halliday.

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At the outset, may I offer the apologies of our President, Mr Stewart of Senior Counsel, who is unable to be present, and wishes to be associated, as all barristers do, at these remarks.

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Over the years, your Honour, you've served as a Magistrate of this State, it's been made extremely clear to those who have appeared before you, or those who have been involved in the hearings in which you've presided over, that your earlier career at the Bar was not only a fulfilling one but prepared you well for the job that you've done so well on this Bench. Of course, you had already practised in both civil and criminal jurisdictions, and you'd also had extensive experience in the administrative laws field.

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You are also remembered for your extreme dedication to an academic side of the professional life, having been a lecturer and tutor at tertiary level, and also participated vigorously in the Bar Practice Course as a lecturer, and in the conduct of Moot Courts. Those are things which go together with a professional career which are always remembered by those who follow.

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You were also a distinguished member of the Bar cricket team, something which I'm sure many others in this room will remember as being an important aspect of life at the Bar, particularly on days when we were playing against our colleagues south of the border.

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You've served on a number of Tribunals, as has been mentioned, and your role as Magistrate, of course, has taken you far and

wide from the beginnings at Dalby to St George, Oakey,
Chinchilla, Taroom, and, of course, more recently, not quite
in the "Big Smoke", but very close to it.

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You've always been known to have had a great sense of humour,
despite most people remembering you as simply being a scholar
and a gentleman. We knew you were always a gentleman by the
way you held your pipe in the old days.

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You became part of Scottish legal history in August 2002 when
you presided in Court here in Brisbane for evidence to be
taken from a Scots musician to be televised to the High Court
in Scotland in a rape trial. In one report I read, you were
noted to have said - and I take this to be your sense of
humour coming to its fore - to the witness in a very loud
voice, "Keep your voice up so that people in Scotland can hear
you."

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Your interest in legal issues concerning the medical
profession and forensic science has held you in good stead in
your role as Coroner for those years. And, of course, your
willingness to talk about such issues at many conferences has
been well noted all over the world, but I shall not mention
more than that lest there be journalists hovering.

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It's always difficult to know what to say at such an occasion
when time is of some essence. May it suffice to say, your
Honour, that we, at the Bar, are extremely grateful for all
the good things that you've done and done well in your
judicial office. In your years on the Bench it is thought
that you have not changed, still the gentleman and still the
scholar.

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I remember not long ago, as my learned friend, Mr Morris,
reminded me, you were eager to participate in the 100th
anniversary of the capture of the Kenniff brothers, west of
the Divide. You may well be the only sitting at the moment
judicial officer to have sat in on a capital appeal.

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On behalf of the Bar, I thank you for your service, and wish
you and your family well for the future.

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May it please the Court.

HIS HONOUR: Thank you, Mr Murphy. And, Ms Mahon, happy
birthday to the Queensland Law Society for this week.

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MS MAHON: Thank you, your Honour.

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HIS HONOUR: I invite you to address the Court.

MS MAHON: May it please the Court. It is with great pleasure
that I represent the Queensland Law Society and its members
today, to farewell your Honour.

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You have had a particularly distinguished and very active
career capped by almost 11 years as a Magistrate in, as the
Attorney has mentioned, Dalby, St George, Oakey, Chinchilla,
Taroom and, most recently, at the Petrie Magistrates Court.

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Admitted as a barrister in Queensland almost 40 years ago, in 1969, your Honour appeared in all jurisdictions including the High Court and generously contributed your time and expertise to, as has been mentioned, the Bar Association of Queensland as a member of the Ethics Committee and as their nominee to the Legal Aid Review Committee.

Your Honour, there are, no doubt, many younger practitioners who have good reason to thank you for your conduct of lectures as part of the Bar Practice Course and for conducting moots and at both QUT and the Queensland University Law Schools, as well as for your many presentations at State, National and International Medical and Forensic Conferences.

Your work as a visiting lecturer at the Police Academy and the Queensland University of Technology as presiding member of the Queensland Misconduct Commission of the former Criminal Justice Commission and as Chairman of the Society of Security Appeals Tribunal, among other appointments, marked you as a practitioner with a primary developed sense of justice and this was certainly demonstrated during your career on the Bench; an active career as I noted.

It is my pleasure to also extend to your Honour the well wishes of your friends and colleagues at Lawasia and their hope that you will continue your membership during your retirement.

I beg the indulgence of the Court to mention that Lawasia
which is based at Law Society House is privileged to have The
Honourable, the Chief Justice Paul de Jersey AC as chair of
its judicial section, and all judicial officers are very
welcome to participate.

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Your Honour, please accept the best wishes of the solicitors
of Queensland for a long and happy retirement. May it please
the Court.

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HIS HONOUR: Thank you, Ms Mahon, and I also welcome Chief
Judge Wolfe who I believe has just been able to join us in
time for me to invite his Honour to respond to the addresses
that have been made today.

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MAGISTRATE HALLIDAY: Your Honour, Chief Magistrate, I thank
you for this occasion and the ceremony. Mr Attorney, Mr
Murphy, Ms Mahon, your Honours from the Family Court of
Australia, the Supreme Court of Queensland, the District Court
including Chief Judge Wolfe, retired Judges of those Courts,
distinguished guests, fellow members of the Bench, ladies and
gentlemen, it's a very sad for me, today, but looking around
this room and the faces that are so familiar to me, it brings
back very pleasant memories.

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I thank you all for your attendance today, and I thank you for
your most generous remarks which both myself, personally, have
greatly appreciated, and also by members of my family.

Dr Johnson is reported as having said that those who inscribe grave stones are not doing so on oath. It is fortunate for the consciences of those who have spoken today that they are not on oath. However, I remember a passage from memory in Halsbury that members of the Bar do not have to be sworn when they are giving evidence from the Bar table.

It's also fortunate that those who have spoken today have not been subject to cross-examination or there's been present a devil's advocate so that the contrary point of view might be put.

Sincerely, though, I thank you all for your attendance and I am overwhelmed by the presence of numbers.

I thank you all so very much for your support being with me here today.

I ought to acknowledge a number of people. Firstly, I would like to acknowledge the presence of the Honour Dr Denver Beanland, former Attorney-General, and you can blame him for having to come here today, because if it was not for him, I would not be here. Thank you, Denver.

And I also note the presence of my long-term friend, former neighbour, and former chamber mate, the Honourable Bill Lee. Thank you, Bill, for coming.

And I also acknowledge his Honour Magistrate Fred Field from the South Australian Bench of Magistrates. He's travelled all the way from Adelaide to be here today, and Fred is a real friend. Thank you, Fred.

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And I also acknowledge the presence of the Honourable Linda Lavarch who is the local member for the Court in which her constituency stands.

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I also acknowledge the presence of a great friend of many years, the Reverend Dr James Spence, and also Inspectors Miller and Rogers, the local inspectors from Petrie.

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I also acknowledge my lovely wife, Anne, and my daughter, Genevieve and my sons, James and Richard.

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My eldest son is unable to be here today. He's a medical practitioner in Hobart and with the obligations of his practice, he's unable to be here today but I'm sure that he's here in spirit.

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And I welcome my sister, Geraldine, and Doug.

On the 16th of June 1997, I took an oath to act without fear or favour, affection or ill will. Those words are somewhat akin to the law that Moses gave his Judges. Somewhat similar, to hear disputes between your brothers and to judge fairly, do not show partiality, and do not fear any man.

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Throughout my judicial career, I have attempted, on a daily basis, to put those words into effect, to comply with the injunction that is given by them.

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The Court has changed during the period that I have been with it. This is much due, in my view, to the work of his Honour, the Chief Magistrate. His efforts to improve the status of the Court such as to hold a function such as this, for counsel to appear robed, just to mention a few.

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We've come a long way from the time spoken of by Mr Tony Morris QC. Mr Morris, if I might, with your permission, refer to a letter that you wrote to the ALJ many years ago. It's headed "What is a Leading Case", and I trust this was written with tongue in cheek. The letter refers to a particular Magistrate who is not named in the letter who was summoned to appear before the Chief Magistrate, and he asked the Chief Magistrate what was meant by leading cases because the particular Magistrate had been castigated in the Court of Appeal, apparently, for not referring to what the Court of Appeal referred to as a leading cases.

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But apparently the Chief Magistrate was unable to assist as to what was meant by leading cases. So, the Magistrate, apparently, then consulted the Supreme Court Library and acquired a copy of Smith's Leading Cases.

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And the letter goes on, and I will just read this into the record,

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"Over the years, as this gentleman's career on the Bench continued, his list of leading cases grew. Occasionally when counsel appeared before His Worship they would direct his attention to more recent decisions of the High Court, or of the House of Lords, or the Privy Council, or even of the Queensland Full Court. And they would observe that that particular decision was now, "a leading case", whereupon the Magistrate added this case to his list."

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The letter continues,

"When I came to the Bar in 1983 the list had grown to enormous proportions. As it happens my first appearance was before this Magistrate, I had been warned of his curious practice of referring to the leading cases, but I had assumed what I had been told was an exaggeration. It wasn't. At the conclusion of evidence, and after hearing brief submissions from counsel on both sides, the Magistrate delivered his *ex temporae* reasons for judgment, which read something like this, 'This is an action for damages for negligence arising out of a motor vehicle collision. I pay careful regard to the evidence, and the submissions of learned counsel for the plaintiff and the defendant. It's unnecessary to refer to the evidence in any detail, suffice it to say that I have taken into account all of the evidence before me. Having the advantage of seeing the witnesses give their evidence, and of considering their demeanour, I accept the evidence of the plaintiff, and reject the evidence of the defendant, where it's inconsistent with the plaintiff's evidence. I refer to the leading cases. And they commence with *Carlill Carbolic Smoke Ball Company*. *Donohue v. Stevenson*; *Rylands v. Fletcher*; *Woolmington v. The Director of Public Prosecutions*; *Derry v. Peek*; *The Engineers case*."

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And the list goes on and on. At the end of which he says,

"I find that the collision was caused up to - as to 20 per cent by the negligence of the plaintiff, and 80 per cent by the negligence of the defendant, and I give judgment accordingly."

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Now, I trust that our Court has advanced much since those days, and I am quite confident that it has.

Justice Brennan has spoken of the daunting burdens that are placed upon Courts in general, and I would, with respect, suggest that the burdens to which His Honour referred are equally applicable, if not more, to the Magistrates Court.

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His Honour referred to the burden of heavy caseloads; the tyranny of reserved judgements; and the unrepresented litigant and the difficult conditions in which some Courts operate; and the loneliness which is associated with the life of a judicial officer. All of which, his Honour said, may depress the judicial spirit.

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I have experienced each of those burdens during the course of my career, but I can assure you that my spirit has not been in any way so depressed. I have enjoyed every minute of my time on the Bench; and I have found my judicial duties fulfilling. I hope that I have, in some small way, contributed towards the public of Queensland by my duties.

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I have led, I believe, an active and I hope a useful life on the Bench, and I do not consider myself, on attaining the age of 65, of being over the hill. Far from it.

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Such would not be achieved, however, if I did not have the support and cooperation of staff and of the profession. I have been fortunate to have worked with staff who have been of great assistance and support. They have been loyal to me; they have done everything that I have requested of them. I thank them all for their loyalty and their support.

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I am unable to refer to them all, but I would particularly mention my more recent clerks, Jody Rogers and Merilyn Newbery. One of my staff also has travelled from Petrie today to assist in the preparations, et cetera, of the festivities that we are going to have shortly, and I thank you, Debbie, for doing that.

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Members of the profession who have appeared before me have shown both myself and my Court common courtesy, respect, and cooperation. If it was not for those attributes, I believe that my task would have been made a lot more difficult. I am indebted to all counsel and practitioners who have appeared before me, and I say thanks.

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I leave the Bench with sadness, but I look forward to the next chapter in my life, whatever that might be, and I hope that it will be as fulfilling as the previous chapters in my book.

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That leaves me with one final thing to say. Whatever I may have achieved would not have been so achieved without the full love and support of one person. It is that person who has, without any hesitation, assisted me throughout the whole of my career, both at the Bar and on the Bench. That person is my wife, my wife Anne. Thank you so very much, darling.

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I thank you all again for your attendance. Au revoir, peace be with you.

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HIS HONOUR: Well, thank you, your Honour. Can I add to what
you said about the standing of the Court: I believe that the
standing of the Court is most importantly contributed to by
the professionalism and the quality of its members and the
collegiality of the Bench, and for that I thank you. It was
always a pleasure to work with you and against you, in the
legal profession, and it was a pleasure for me to come to the
Court to find that you were a part of it.

It only remains for me to direct that proceedings be recorded
and that Michael Moloney be the recorder. To thank our
Honorary archivist, former Magistrate Gordon Dean, for
recording these proceedings; I think perhaps another first,
and to invite you all to join us in our conference area on
level 9 for the festivities to which His Honour has referred.
The Court is adjourned.

THE COURT ADJOURNED