

# The Judges of Western Australia: Part IV



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*This is the fourth in our series of pen portraits of the judges of Western Australia.<sup>1</sup> Here we provide short biographies of a former Chief Justice, Sir Francis Burt, and a current District Court judge, Shauna Deane.*

## SIR FRANCIS BURT

Francis Theodore Page Burt (known to his friends as ‘Red’), former Chief Justice and later Governor of Western Australia, was born in Perth on 14 June 1918. He was the youngest of four children.

The Burt family had a long association with the legal profession. Sir Francis’s great grandfather was Sir Archibald Burt, first Chief Justice of Western Australia,<sup>2</sup> and his grandfather, Septimus Burt, was the first Attorney-General of Western Australia under responsible government.<sup>3</sup> Even though Sir Francis was brought up on his father’s sheep station near Morawa, he has a clear recollection from an early age that the family expected him to become a lawyer. Consequently, upon completing his education at Guildford Grammar School in 1935, Sir Francis enrolled in the Law Faculty at the University of Western Australia, which at that time had only one full-time teacher – the Dean, Professor Frank Beasley. He graduated with first class

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<sup>†</sup> Members of the Student Editorial Board, UWA Law Review, 2001.

1. Previous pen portraits appear in UWAL Rev, vols 27(1), 27(2) and 30(1).

2. 1856-1879.

3. 1891-1897.

honours in 1940.<sup>4</sup> At the same time that Sir Francis was studying law at the University he was articled to Sir Walter James KC at the Perth firm of Stone James – formerly his grandfather's firm of Stone Burt. He was admitted to practice in 1941.

At the beginning of World War II, Sir Francis enlisted in the Navy. Being tone-deaf, his intention to work as an anti-submarine operator was thwarted. With some skilful manoeuvring he was discharged from the Navy and joined the RAAF where he piloted Short Sunderland flying boats with Number 10 Squadron, based on Plymouth Sound in Devon, England.

Having survived the War, Flight Lieutenant Burt returned to Perth at the age of 27 and began work as a solicitor with Northmore Hale Davy & Leake. This did not mean he was financially well off. When his returned serviceman's payments ended, his net weekly income was £3 10s, exactly what he paid in rent. Later he moved to Muir Williams, the precursor of the modern Freehill Hollingdale & Page.

Sir Francis recalls that his early days as a lawyer were a lot of fun, and he still regards the legal profession as 'an honourable service industry'. In his early days he did a lot of work for migrants. On one occasion he represented an immigrant client, an agricultural clearing contractor, in front of the Chief Justice, Sir John Dwyer, who was a particularly tough judge. Unfortunately, Sir Francis's client was not fluent in English, and the Chief Justice became increasingly impatient as he was requested to repeat his questions. Eventually, quite angry, the judge asked, 'How did you clear the land? Did you use tree fellers?' to which the reply came, 'No, your Honour, four fellas'. 'After that', Sir Francis recalls, 'we couldn't lose the case'. Sir Francis also did a lot of work for trade unions including the Musicians' Union where he came into contact with another well known Perth figure, Rolf Harris.

Sir Francis's legal career was influential and innovative. He was elected President of the Law Society of Western Australia in 1960.<sup>5</sup> He was instrumental in establishing the Independent Bar Association of Western Australia in 1963, the same year he was briefed to act for Darryl Beamish in his appeal to the High Court and Privy Council against a conviction for wilful murder.<sup>6</sup> In 1967, Sir Francis was appointed as counsel assisting the second Royal Commission inquiring into the 'Voyager' disaster, in which 82 crew died after the ship collided with HMAS Melbourne. Between 1968 and 1976 he served on the Senate of the University of Western Australia. He was appointed to the Bench of the Supreme Court of Western Australia in 1969, and became its Chief Justice in 1977. He retired from the Bench in 1988.<sup>7</sup> In

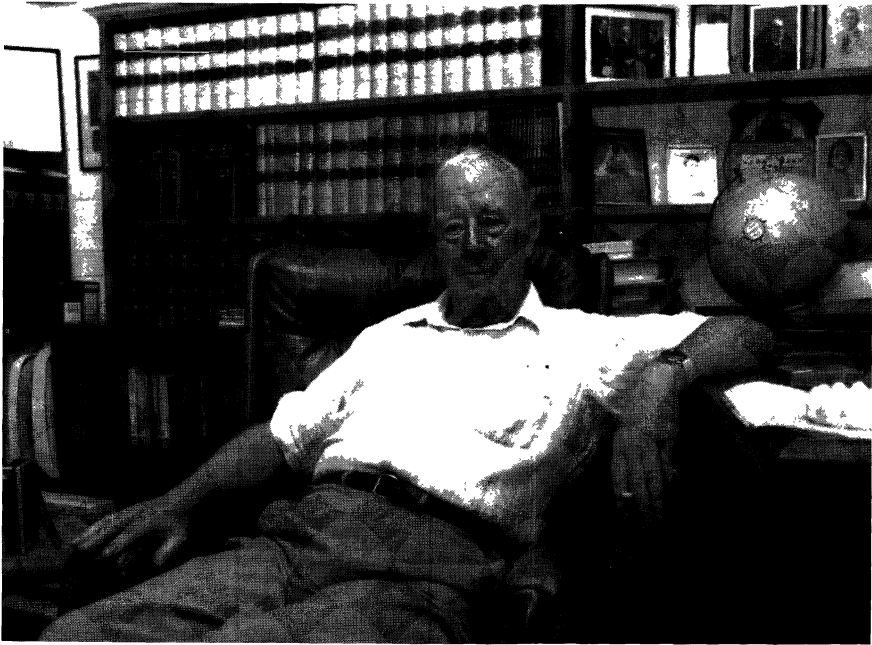
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4. Sir Francis was also awarded an LLM in 1948 and an honorary LLD in 1987, both from the University of Western Australia.

5. Sir Francis was appointed Queen's Counsel in 1959.

6. [1962] WAR 85. See the discussion in D Payne 'The Beamish Case' (1966) 7 UWAL Rev 576; P Brett 'The Beamish Case: A Rejoinder' (1967) 8 UWAL Rev 115.

7. Sir Francis was made a Knight Commander of the Order of St Michael and St George in 1977 and a Companion of the Order of Australia in 1988.



1990 he was appointed Governor of Western Australia, a position which he held for four years.

Sir Francis has always had a keen interest in legal education. The heavy demands of legal practice did not prevent him from working as a part-time lecturer at the University of Western Australia from just after the end of the War until 1965. Amongst his students were the present Chief Justice of Western Australia, David K Malcolm, and the former Prime Minister, Bob Hawke.

Sir Francis recalls that, as Chief Justice, he was asked to endorse a wage claim by articulated clerks who at the time were expected to work without pay. While he did not stand in their way, he took the view that articling was as much a part of legal education as time spent at university. He believed that if practitioners paid their articulated clerks they would not be prepared to spend time training them, but would insist on their doing work which would earn the practitioners money.

Sir Francis is also of the view that good law teachers receive too little recognition. He is critical of the modern emphasis on research and publication which he thinks has shifted the focus away from teaching. While he was on the Senate of the University of Western Australia he became aware of the extent to which academics will go in order to flesh out their résumés, noting that one applicant for a senior academic position in the University proudly proclaimed that he had co-written a letter to *The Times* in London!

Sir Francis has at all stages of his career expressed himself forcefully on matters of public concern. For example, while he was Chief Justice he presented a paper to

the Australian Legal Convention which focused on the inaccessibility of the law to ordinary Australians.<sup>8</sup> He believes that lawyers still delude themselves about the accessibility of the law to the average person. He has also expressed his dissatisfaction with the overlaps, inefficiencies and conflicts in the Australian mixture of State and federal jurisdictions. At the opening of the Notre Dame Law School in Fremantle in 1997, he described some lawyers as 'profit driven' and willing to discard ethics 'in a bid to win at all costs'. This view has been resoundingly endorsed by High Court Justice Michael Kirby.<sup>9</sup> Sir Francis considers that too many lawyers see their clients as 'just there to be carved up'. He attributes much of the problem to the financial pressures exerted on people by a greedy and materialistic society.

Sir Francis unashamedly criticises what he sees as the unhelpful expansion of legal databases, allowing access to phenomenal numbers of seemingly irrelevant unreported cases. He feels that this often diverts attention from the real problem, which is identifying the question that has to be resolved. In his words: 'The question is the important thing. If you cannot find the right question you will never get the right answer. But if you do formulate the right question then, as often as not, the right answer will be found in *Halsbury*.'

Sir Francis has some interesting comments to make about the judiciary. He recalls that some of the early judges were 'rough and tough', and could occasionally be discourteous towards witnesses, but now the increasing use of transcripts at least forces them to be polite. He is unhappy that the length of trials today means that justice is often delayed, and sometimes also denied. He remarks wryly that when judges had to prepare transcripts themselves, they were likely to be more economical and focused in their judgments. He also thinks that many judges today should take greater care over their directions to juries. He regards directing the jury correctly as a matter of paramount importance.

Perhaps the final comment is the one that sums up Sir Francis best: 'Judges', he says, 'should not pretend that they understand everything. They have to rely on the expertise and integrity of the barristers who appear before them. They should not be afraid to ask a barrister to "please explain"'. It is better to be humble and get it right than to be a know-all and get it wrong.'

[M.C.]

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8. F Burt 'The Moving Finger or the Irremovable Digit' (1987) 61 ALJ 465.

9. M Kirby 'For Today's Law Students: The Profession You Are Entering' Murdoch University Student Law Society's Annual Address (1997) <[http://www.hcourt.gov.au/speeches/kirbyj/kirbyj\\_murdoch.htm](http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_murdoch.htm)>.

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## JUDGE SHAUNA DEANE

Shauna Deane was born in Perth in 1953, the eldest of three children. She was educated at St Joseph's Catholic Primary School, Perth, and later at Brigidine College for Girls. The subjects she most enjoyed were humanities and debating. Encouraged by the school nuns and the all-female environment at Brigidine College, Judge Deane developed a strong desire to enter the legal profession, believing it would be an interesting and challenging experience. She was not deterred but attracted by the fact that relatively few women at that time pursued law as a career.

In 1972 Judge Deane enrolled at the University of Western Australia, obtaining her Bachelor of Laws in 1976. The judge did not succeed in obtaining articles immediately following graduation. She chose to spend the interim period studying for a postgraduate degree in social work, again at the University of Western Australia. Judge Deane found those two years to be fairly intense, but appreciated the practical and people-orientated nature of the coursework as compared to her law degree, in which there had been little emphasis on life in the real world. Through her work with various community organisations (eg, the Centrecare Marriage and Family Service) the judge gained exposure to 'real people's problems' – an experience which she feels subconsciously influences her work today, giving it an extra dimension.

While studying for her Bachelor of Social Work, Judge Deane's desire to become a lawyer grew steadily and working at the Crown Solicitor's Office began to appeal to her. She spent the first year of her postgraduate studies 'badgering them, writing them letters and banging on their doors, probably driving them mad'. Nevertheless, her persistence was rewarded with an offer of articles at the end of 1977, which she was permitted to defer for 12 months to enable her to complete her postgraduate degree.

Judge Deane speaks with great fondness of her time at the Crown Solicitor's Office. She enjoyed the extensive petty sessional work she undertook, and resolved to pursue a career as an advocate. Prosecuting on behalf of government departments, being involved in local court trials and working alongside excellent lawyers in a well-supervised environment gave the judge extensive experience of the criminal law. She also appeared in many workers' compensation cases.



Vivian Edwards, the first woman to prosecute before a judge and jury in Western Australia, inspired Judge Deane to continue her pursuit of court work. Her involvement with the Crown progressed to include appearances in both criminal and civil trials, as well as before the Equal Opportunity Tribunal, the Land Valuation Tribunal, the Town Planning Tribunal, and at inquests. Additionally, circuit work took the judge to numerous rural towns in Western Australia, introducing her to new experiences, new people and new challenges.

Having gained considerable experience as a prosecutor, Judge Deane was invited to join the Office of the Director of Public Prosecutions in 1992. After 13 years at the Crown Solicitor's Office the decision to move (albeit within the same building) was not easy. Nonetheless, her readiness to take on a new role, combined with her curiosity and attraction toward criminal prosecutions, made the chance to be involved in this interesting development an exciting prospect. In the rapidly expanding department, she gained experience in trial, appeal and supervisory work. She presented one full argument in the High Court of Australia<sup>1</sup> – Justice Michael Kirby recognising her as one of the few women who reached this arena at the time.<sup>2</sup> She regrets not having had the opportunity to do many special leave applications in the High Court, but, as Justice Kirby has lamented, from the small pool of female advocates the most talented are quickly snapped up for judicial appointment.

Judge Deane was appointed to the District Court of Western Australia in February 1998. Notwithstanding her familiarity with the court environment and procedure, she describes her first day on the bench as 'really much worse than my first day at school'. She found it took some time becoming accustomed to her new, less active role. In the initial days of her appointment the judge had to remind herself to sit patiently and quietly, and to overcome her desire to join in with counsel and make suggestions. Her judicial role has required the judge to take a step back from the prosecutor's special position to a place where it is possible to gain a broader perspective. There have also been times when she has felt a little unnerved by the sensation of all eyes being upon her, waiting for her to comment or provide the right answer to a difficult question, and she has sometimes wondered whether she is 'acting like a judge is supposed to act'. No one is born a judge, she explains, and even those with extensive experience as counsel must learn the judicial ways in making the transition to the bench.

Judge Deane recognises the privilege and power which come with her position as a District Court judge. She believes her responsibility, as a judge, is to ensure that her courtroom operates fairly and efficiently, and she identifies judicial robes as

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1. *R v Cutter* (unreported HCA 14 Mar 1997 P63/1996).

2. M Kirby 'Women Lawyers – Making A Difference': address to the Women Lawyers' Association of NSW (Sydney, 18 June 1997).

helpful in maintaining decorum. In her opinion, a certain degree of formality in dress and language is required, not for the purpose of intimidating witnesses, but to remind all involved of their role in the courtroom and the serious nature of the events taking place there.

In her view, while female judges may bring a slightly different perspective to their role, all judges bring a degree of individuality to their work. Judge Deane recognises, however, that there may be some who feel more comfortable before a female judge, but those who assume she might be more easily convinced or intimidated, or more sympathetic because she is a woman, will quickly be dissuaded.

Since her earliest school days, Judge Deane has not allowed her gender to hamper her ambition or success. She considers herself fortunate to have had such extensive experience at the Crown Solicitor's Office, where the focus was upon doing your job properly, rather than on distinctions based on gender. She recognises that there is now much greater participation by women in the legal profession than formerly, and she finds it heartening to preside over trials (especially in the criminal field) where both counsel are female, explaining that 'there were times in my early days in law when I thought that would never happen'. Judge Deane encourages more women to take up advocacy and have confidence in their ability to speak persuasively in a public arena. She acknowledges the practical difficulties faced by women in the profession, but believes women can succeed in law if they are passionate about their work, are deeply committed to it and have the support of others.

Judge Deane married in 1984. Considering the time-consuming nature of her work, it is perhaps fortunate that her husband is a barrister, who can empathise not only with her great interest in the law, but also with her frequent need to work long hours. They do not have children. In her spare time Judge Deane enjoys being in the company of family and friends, reading, gardening, watching films or wandering in a museum or gallery. She has maintained her interest in social work, and is a board member of Centrecare. Similarly, her connection with life at the University of Western Australia continues: currently she presides over mock court sessions conducted for students enrolled in the Forensic Science unit in the Faculty of Science.

[S.S.]

