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IN THE DISTRICT COURT

ADELAIDE

SPECIAL SITTING

CORAM: CHIEF JUDGE EVANS, JUDGES BOYLAN, CHIVELL, TILMOUTH,  
SOULIO, CUTHBERTSON, STRETTON, DAVISON, MUSCAT, TRACEY,  
DAVID, SCHAMMER, CHAPMAN, O'SULLIVAN, DEUTER AND DURRANT

ON THE PRESENTATION OF THE COMMISSION BY HER HONOUR JUDGE  
FULLER

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 29 JANUARY 2020 AT 9.34 A.M.

ATTORNEY-GENERAL FOR STATE OF SA

MR T. WHITE FOR LAW SOCIETY OF SA

MR M. HOFFMANN QC FOR SA BAR ASSOCIATION

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READING OF HIS EXCELLENCY THE GOVERNOR'S COMMISSION. 1

MS CHAPMAN: May it please the court. I rise to 2  
 acknowledge the commission of your Honour Judge Joana 3  
 Fuller as judge of the District Court. 4

Your Honour's skills within the criminal 5  
 jurisdiction are well known and, indeed, widely 6  
 respected, especially when it comes to road traffic 7  
 matters. 8

I have been advised by many of your colleagues that 9  
 yours is the first name mentioned if anyone seeks their 10  
 advice on who would be best to handle a drink driving 11  
 charge - obviously for their clients. 12

Indeed, your Honour's expertise in this regard can 13  
 be seen in your editing of what has been described as 14  
 the 'Magistrate's Bible' on road traffic matters - the 15  
 Thomson's loose leaf service, Motor Vehicle Law South 16  
 Australia. 17

Importantly, many of the matters that you have 18  
 handled and that have been handled by your Honour have 19  
 led to legislative and policy areas of reform and I 20  
 thank you for that. 21

You are well known for your diligence in researching 22  
 matters before and during and after court. 23

I am advised that it is not uncommon for judges to 24  
 request Word versions of your Honour's written 25  
 submissions, perhaps that is to assist them to 26  
 effectively cut and paste them into their judgments, 27  
 such is the comprehensive nature of your research. 28

In addition, your Honour is widely known for your 29  
 advocacy on behalf of those who enforce the law as 30  
 counsel for members of the South Australia Police who 31  
 are charged with disciplinary and criminal offences, as 32  
 well as those who appear before the Police Disciplinary 33  
 Tribunal. 34

However, your Honour's real passion lies in the 35  
 field of animal welfare. Indeed, it is a quality of 36  
 which caught my eye. 37

Many of your colleagues have advised me of their 38

relief that most animal welfare matters are heard in a different jurisdiction, as your Honour takes a very dim view of those who abuse animals.

Your Honour has not only chaired the Law Society's Animal Law Committee since its inception in 2010, but you have also worked on what are commonly referred to in the profession as the 'Death Row Dog' cases, matters where councils are looking to put dogs down.

I am advised that if you become aware of any situation where a dog may be hurt or harmed, you are on the scene, ready to act pro bono and in the best interests of man's best friend.

The value of companion animals is well documented. Our very own Zero, a black labrador member of our Witness Assistance Program, is testament to this and I trust he will be welcome in your court.

Your Honour has also worked to support animal rights activists, most notably after the arrest of South Australian, Ralph Hahnheuser, in 2003. Mr Hahnheuser had been charged with causing an economic loss after adding pig meat to a feedlot near Portland, stopping the export of some 70,000 sheep bound for the Middle East - not behaviour I condone, I might add.

However, your novel approach to the defence case exemplifies your skill as counsel and is to be commended.

To successfully try the matter, the prosecution had to demonstrate that the defendant had set out to cause an economic loss.

Your Honour helped successfully argue that he was not out to cause an economic loss but was, in fact, acting to protect the welfare of the sheep and prevent the wholesale cruelty those animals would have experienced had the shipment proceeded. It worked. The case your Honour helped put forward resulted in an unanimous jury verdict in favour of your client.

Your Honour's love of animals extends beyond the courtroom and I am advised you never miss an opportunity

to work from home to spend more time with your beloved German shepherd. 1  
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You are also a master of time management. I understand that when your Honour is not in court on Friday, you take every step imaginable to make an early getaway. Appointments are scheduled for other days as well as conferences. All so that you can take your sojourn to your home in Middleton. 3  
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Another of your Honour's passions is hockey, and I am advised that the ruthfulness you exhibit in the courtroom extends to the sports field. As the old saying goes 'work hard, play hard', and I understand there is no-one who plays harder than your Honour. I am even led to believe that your loyalty to your team is so fierce that you even took the league to court when your team was threatened. 9  
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Gifted, loyal, professional and thorough; these are just some of the kind and well deserved words that have been used to describe your Honour. 17  
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In fact, in my dealings with your colleagues, I have only heard one bad thing about your Honour and that is - to put it bluntly - you are 'cheap'. 20  
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Many colleagues have expressed their frustration at how little you charge your clients. Indeed, one went so far to describe your billing practices as 'embarrassingly cheap'. 23  
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Even when you have had those who might be able to afford it, I am told that you have never charged more than you should. Such dedication to the principle of fairness is acknowledged and noted. 27  
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I am sure that many in the legal profession are heaving a sigh of relief, knowing that one of their far less expensive yet incredibly gifted colleagues will no longer be competing for their services. 31  
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However, that relief may be short lived if they end up appearing before you on a matter relating to the welfare of an animal, in which case, heaven help them. 35  
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May it please the court. 38

MR WHITE:                    May it please the court. It is my great                    1  
pleasure to rise today to offer the congratulations of                    2  
the profession and the Law Society of South Australia                    3  
upon your Honour's appointment as a judge of this                    4  
honourable court.                    5

                  Many years ago, your Honour achieved an incredibly                    6  
high score in year 12, namely, 99 out of 100, and                    7  
decided to commence studying a Bachelor of Laws at the                    8  
University of Adelaide.                    9

                  Following completion of your degree, you commenced                    10  
employment at Caldicott & Co. You remained with the                    11  
firm for three years and clearly during that time                    12  
developed a passion and commitment for assisting                    13  
individuals charged with criminal offences.                    14

                  In 1997, at just 26 years of age, your Honour was                    15  
offered the opportunity to join Bar Chambers. You                    16  
remained at Bar Chambers for about 23 years until your                    17  
appointment to this honourable court.                    18

                  Throughout your career, your Honour has worked in a                    19  
number of areas of law, but you have primarily                    20  
specialised in defending people being prosecuted with a                    21  
large variety of criminal offences.                    22

                  Your Honour has been a leading and sought-after                    23  
advocate for an endless number of individuals charged                    24  
with drink driving related matters, speeding offences,                    25  
death or serious injury resulting from dangerous driving                    26  
or driving without due care and endless other criminal                    27  
activities.                    28

                  You were, for an extensive period of time, readily                    29  
called upon to assist South Australian police officers                    30  
with a range of discipline matters dealt with in the                    31  
Police Disciplinary Tribunal and in the Supreme,                    32  
District and Magistrates courts.                    33

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In addition to your work in the criminal field, as we have heard, your Honour has shown an exceptional commitment to animal rights activism in the law. Just a few examples of your professional commitment to animal rights include your Honour undertaking pro bono work for the Animal Liberation Movement, appearing as counsel for the RSPCA in prosecution under the Animal Welfare Act, and previously being the chair of the Barristers Animal Welfare Panel.

Your love of animals, not surprisingly, results in your own dogs being possibly the best cared for animals in South Australia. I understand many of your own dogs post surgery have gone through a human-like rehabilitation regime which has often included daily hydrotherapy sessions to improve their mobility and recovery.

The vets must love seeing you walk into their clinic.

As an avid vegan your commitment to animal rights extends well beyond limiting the type of food you eat. Your Honour also closely scrutinises a wine bottle's label prior to agreeing to drink any part of it making sure that no animals were involved in the production of the said wine.

Your vegan principles extend to influencing many other purchases you make. It is well known that any shoes or handbags you own definitely do not have any animal component to them. I understand that it has led to the purchases of many high-grade plastic work shoes and vegan handbags.

Lastly and most recently on this topic, I believe your Honour had to provide very clear instructions that your government-issued car have seats and a steering wheel that were vegan friendly.

In terms of the Law Society your Honour was a member of council from 2011 to 2013. You were the inaugural chair of the Animal Law Committee until recently.

You have presented endless number of CD seminars for

the benefit of the profession over an extensive period 1  
of time. There are too many articles and CPD papers to 2  
list but they of course covered the areas that you had 3  
practised passionately in as an advocate. 4

In addition to all that you have achieved in private 5  
practice, your Honour has also managed to fit in a heavy 6  
commitment to the Defence Force as a member of the RAAF 7  
Specialist Reserves. You became a member of the South 8  
Australian RAAF Specialist Reserve Panel in 1999. In 9  
that capacity you have advised endless Defence Force 10  
members in relation to disciplinary charges laid against 11  
them and appeared regularly as an advocate at the event 12  
hearings. 13

Of course, last year in March, reflective of your 14  
Honour's commitment to the military and your 15  
achievements within it, you were appointed as a judge 16  
advocate and Defence Force magistrate. Your Honour I 17  
understand is only the second female in Australia's 18  
history to be appointed to that position. 19

In doing so you were commissioned the rank of Wing 20  
Commander. I was fortunate to be present at that 21  
appointment and the dinner at the Naval and Military 22  
Club, as were many other individuals within the 23  
courtroom today. Since that appointment you have, on 24  
several occasions, sat as a Defence Force Magistrate. 25

From the inner circle of the RAAF Specialist Reserve 26  
Panel your Honour will be remembered for all of the skit 27  
performances at training weekends where, with the 28  
assistance from Magistrate McLeod, you both skilfully 29  
impersonated Margaret and David from the TV show At The 30  
Movies. They were hilarious performances. 31

Your Honour, your friends and colleagues have 32  
gathered here today to wish you well and, on behalf of 33  
the Society's members, staff and the wider South 34  
Australian legal community, I offer my sincere 35  
congratulations and best wishes as you embark on this 36  
role in the South Australian judicial system. May it 37  
please the court. 38

MR HOFFMANN: May it please the court, it is my 1  
pleasure on behalf of the South Australian Bar 2  
Association to welcome your Honour and congratulate you 3  
on your appointment. 4

Your Honour signed the bar roll in 1997 and joined 5  
Bar Chambers and practised at Bar Chambers until 6  
December of last year. Your Honour's areas of law have 7  
been described: appellate advocacy being one, coronial 8  
inquests, criminal law, the Police Disciplinary Tribunal 9  
and of course matters involving animal rights. 10

Your Honour considers yourself a person of some 11  
sporting prowess and in hockey, as I understand it, your 12  
Honour played Metro 1 for Adelaide University and you 13  
still play at that level for St Peters Old Collegians 14  
who have two teams. 15

More recently your Honour has taken on surfing 16  
together with your partner Peter and are quite 17  
passionate as I understand it. 18

There is one thing that has not been mentioned thus 19  
far this morning and that is your Honour's career in 20  
motor sport. 21

Perhaps before going to that and the background to 22  
it, your Honour will recall the orange roughey case in 23  
the Supreme Court of Tasmania before Chief Justice Blow. 24  
I think you were junioring the Chief Justice, who is 25  
present in court. I am told it was 28 weeks of hearings 26  
and no jury was empanelled. Many members of the South 27  
Australian profession were involved in that fun and 28  
ultimately the prosecution collapsed and there was a 29  
celebration in Port Lincoln. 30

Your Honour was in Port Lincoln celebrating the 31  
result and there was an opportunity to drive Michael 32  
Coates' rally car and on that occasion your Honour said 33  
that you wished to have a go. You did not get a go at 34  
that point but you and Matthew Selley set about a rally 35  
career. You started with a Datsun 260Z and then went to 36  
a Subaru Imprezza and ultimately won the State 37  
championship in 2007. 38



Now it might seem I am labouring the motor sport point but there are a number of aspects and qualities of your Honour that one can take from your Honour's career.

Firstly your Honour is fearless. Having seen Matthew at the wheel - he is a very good driver of course - but one needs to have a certain fearless streak to be prepared to sit in a car at 200 km/h roaring through a forest.

Your Honour is tenacious and tough, and all your colleagues will speak of that on both sides of the bar table, in your career and your approach to any matter before the court.

In your rallying career there was a rollover on stage 1. You righted the car, you continued, you came fourth but your Honour was holding the windscreen up with your feet while reading the case notes. That is tenacity if anything.

Your Honour is thorough and prepared, and all of your colleagues repeatedly speak of that. I think members of the profession need to be well and truly aware of your Honour's preparedness and thorough preparation when appearing before you going forward.

But of course in rallying your Honour was across the case notes. It was absolutely essential that your Honour be across them and there is a level of trust between driver and navigator, and again as between yourself and your colleagues and those who briefed you there was absolute trust, which is a repeated theme and a wonderful quality for any judicial officer.

Your Honour is principled. Indeed in your motor sport career that principle extended to there being one rule: if Matthew hit an animal it was over.

So, your Honour, there are numerous other cases: the prosecution of Peter Martin where you successfully defended him against multiple charges of abuse of public office; more recently, in the motor vehicle territory, Police v Butcher, the LIDAR prosecutions, which resulted in numerous matters falling over, even in the

environment where there are extensive legislative changes as we have heard. 1  
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So your Honour comes to the bench more than ably qualified with the respect of the profession, with the best wishes of the profession and personally I heartily congratulate you on behalf of the bar and all members of Bar Chambers. 3  
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JUDGE FULLER: Chief Justice, Chief Judge, members of the court, Madam Attorney, President of the Law Society, President of the Bar Association, friends, family and everyone present today: this appointment is a tremendous honour and I am touched by the things that have been said about me this morning. I have been overwhelmed by messages of congratulations and support that I have received since December last year. 8  
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Like many things in my life, I feel that this is yet another stroke of good luck, just like getting my first job as a lawyer and then joining Bar Chambers. 16  
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In 1994, having completed my degree, I did the Graduate Certificate of Legal Practice, part of which included a placement at a law firm. We were given a form to fill out and we had to pick a box. There were four boxes: north, south, east and west. You had to tick the one for your preferred location of your placement firm. In what could possibly be best described as a blonde moment, I picked north thinking 'North Adelaide might be a nice place to work for a few weeks'. 19  
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When I was told that I would be doing my placement at a law firm at Elizabeth, I realised my mistake. Hurriedly, I came up with a reason why travelling to and from Elizabeth every day would create unusual hardship for me and, as luck would have it, I was then told that someone had dropped out and there was a place available at a firm by the beach, Caldicott & Co.

I arrived on my first day at Caldicott's to find some rather large and hairy men in biker jackets with tattoos in the waiting room, sitting uncomfortably close to an old lady waiting to sign her will.

It was then that I met Craig Caldicott. He looked at me and he handed me a green file and he said 'Right, we're off to the Adelaide Magistrates Court. When we get there, can you go to court 3, please, and get an adjournment.' I had no idea how to do that or what I was supposed to say and it was then that Craig told me everything I would ever need to know 'Just say you need an adjournment for instructions. If you get asked any questions, just say you don't have those instructions.'

So, of course, most magistrates were very sympathetic to the plight of a GCLP student seeking leave to appear and standing in front of a packed courtroom. My first adjournment was duly granted by Magistrate Ted Iuliano without a single question, for which I am eternally grateful.

Of course, Craig's sage advice did not adequately cover all situations and all magistrates, and I quickly learnt that the response 'I don't have those instructions' would be met with 'Well, Miss Fuller, I'll adjourn so you can get some instructions'. It was a steep learning curve.

After my placement, as luck would have it, Craig offered me a part-time job and it turned into a full-time job. Craig was a wonderful boss. I never endured the misery of billable units. I spent every day in suburban Magistrates courts. Often I would drive from Christies Beach to Elizabeth to Holden Hill to Port

Adelaide all in the one day. 1

I spent a lot of time in gaol - seeing clients, of 2  
course - and the experience of walking through Yatala 3  
and past the exercise yards full of prisoners was always 4  
eye-opening. I had only ever done that once before and 5  
that was on a law school tour, when I thought that an 6  
appropriate wardrobe choice for such an outing was 7  
T-shirt and denim shorts. 8

At Caldicott & Co I was thrust into the world of 9  
criminal law and I loved it. I met police prosecutors, 10  
other lawyers, sheriff's officers and I got to cut my 11  
teeth on criminal cases where, if I made a mistake, the 12  
stakes were not too high. 13

I developed an excellent working relationship with 14  
police prosecutors that I met in those early years and I 15  
enjoyed getting to know the sheriff's officers, who were 16  
always cheery and friendly and who I quickly learnt were 17  
instrumental in the smooth running of the court and they 18  
possess the necessary people skills to deal with 19  
defendants, members of the public and perhaps the most 20  
difficult class of all, the lawyers. 21

In my 22 years at the bar, I have been lucky to work 22  
with some of the most respected members of the 23  
profession from whom I have learnt the importance of 24  
thorough preparation, professionalism, courtesy and the 25  
heavy responsibility owed to each client to do your best 26  
job possible whilst still remaining an officer of the 27  
court. 28

I wish to acknowledge and thank the following 29  
people: David Edwardson QC for encouraging and 30  
supporting me to join Bar Chambers when I had only been 31  
practising as a solicitor for three years; Lindy Powell 32  
QC for her humour and her wealth of knowledge and 33  
down-to-earth manner; Simon Lane for his humility and 34  
integrity; Marie Shaw QC for her incredible work ethic 35  
and compassion; and Judge Sophie David and Sam Abbott QC 36  
for their friendship and advice and many laughs while we 37  
shared chambers together. 38

To add to this list, I have had a wonderful group of solicitors, many of whom are here today, who regularly briefed me and took a big chance on me in the early days when I was so junior that I had never even done a jury trial. I remember, in particular, Morrie Bailes and Nic Minicozzi.

I have enjoyed working with each and every one of you.

I want to acknowledge and thank Peter Alexander, the former President of the Police Association and current President, Mark Carroll, and Tindall Gask Bentley for the faith they placed in me at an early stage of my career to represent their members in disciplinary and criminal cases, many of which were serious, complex and challenging.

It is often unfathomable to a police officer, whose job it is to uphold the law, to be charged with breaking it and those cases require a degree of compassion and sensitivity and support that the Police Association and Tindall Gask Bentley deliver in spades.

Those cases have been many of the most memorable cases in which I have been involved and, as a result, I have developed a great respect for the Police Force, its members and the protection that the Police Association affords them.

Although I have loved the criminal law, my passion, as is probably obvious, has always been animals. In my world, every animal is equal and there is no animal - to adapt an Orwellian phrase - that is more equal than any other. It has been an absolute privilege and honour to be able to use my legal skills to promote the cause of animal rights and animal welfare and, on an individual level, to save the lives of animals.

It has been a source of great joy to me in recent years to meet so many practitioners, many of whom are young, who are passionate about animal welfare and are committed to using their legal skills to promote animal law reform. In my view, those practitioners possess the

singular most important quality a lawyer can possess - 1  
empathy. 2

I have been humbled by the dedication and work ethic 3  
of many of the solicitors who have briefed me and 4  
counsel with whom I have worked. This includes 5  
solicitors who have been prepared to take on cases dear 6  
to my heart for no financial reward but for the chance 7  
to make a difference and save a life. 8

I wish to particularly acknowledge Joseph Henderson 9  
and Rachael Shaw from Shaw & Henderson and Nic Linke of 10  
Fisher Jeffries, three of the most dedicated, 11  
hardworking and empathetic solicitors I have had the 12  
privilege to work with. 13

I also want to thank Chad Jacobi for agreeing to 14  
work pro bono on animal welfare cases for which I have 15  
sought his administrative law expertise. 16

Rachael has selflessly dedicated much of her 17  
professional and personal time to causes dear to my 18  
heart. She and I have worked together for 10 years on 19  
the Animal Law Committee and in the process have become 20  
good friends. And she, Joseph Henderson and Nic Linke 21  
have never said no to me when I have come to them with 22  
do or die cases - dogs and cats unfairly ordered to be 23  
destroyed by local councils and owners who did not have 24  
the money or ability to challenge those orders. 25

Together, using our legal skills and experience, we 26  
have been able to save lives. Dogs like Tank, Ozzy, 27  
Luna, Diesel and an entire rock cat colony at West 28  
Beach. I remember each and every one of those animals 29  
and I feel privileged that my choice of career helped to 30  
save them. 31

One regret I have is that I will no longer be able 32  
to advocate for animals in the way that I could at the 33  
bar. I hope that volunteering for Adelaide Koala Rescue 34  
and helping to save koalas and other wildlife will go 35  
some way to making up for that. 36

Another significant aspect of my legal career has 37  
been my time in the Air Force. As a legal officer and 38

more recently, as a military judge, I am so pleased to see so many of the Adelaide ADF Legal Panel in court today, resplendent in their uniforms.

I was encouraged to join the RAAF Specialist Reserve as a legal officer by Annie Trengove and David Edwardson QC in 1999. They had joined a few years before and they said the legal work was interesting and other aspects of reservist service were great fun. So, with the Skyhooks song 'Women in uniform' ringing in my head, I put in my application.

It was accepted and in 1999 I was Flight Lieutenant Fuller presenting for duty. My 20 plus years in the Air Force have been a fantastic experience.

I want to thank, firstly, Group Captain David McLeod, aka Magistrate McLeod, for his first class leadership of the Adelaide Specialist Air Force Legal Panel and for being a great mentor and friend over the years.

My good friend and colleague, Annie Trengove, stepped into his big shoes some years ago when she took over as panel leader and she has done a stellar job. Her fame has spread nationwide and senior officers travel from interstate to attend mess dinners that she hosts. Locally, she is renowned for organising the best training weekends at the Edinburgh RAAF base, involving live firing, riding around in armoured trucks, mock video shootouts in the weapons training facility and all capped off with a movie night watching classics like 'Top Gun' or 'A Few Good Men'.

Last year, with the support and encouragement of both Group Captain Trengove and Group Captain McLeod, I applied for a position as a Judge Advocate/Defence Force Magistrate which is, in essence, a military judge. The Judge Advocate sits with a military jury in a court martial and the Defence Force Magistrate sits as a judge alone.

To my surprise and delight, I was successful and on 7 March last year, the Chief of Defence Force agreed to

appoint me as a JA/DFM. That was 20 years after joining  
the Air Force.

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It was a very proud moment for me. And what an opportunity: the chance to be a judge but not give up my day job.

Last year I presided over ADF trials and sentences in the Northern Territory, New South Wales, ACT and South Australia. Not long before I was appointed the hearings, which had previously been in secret, became open hearings so the media could attend and report.

My first trial was in Sydney and I presided over a case where a junior female sailor was charged with two counts of assaulting a junior male sailor. The particulars on the charge sheet were that she had slapped him on the bottom, count 1, and, count 2, she had given him a nipple cripple.

As the evidence unfolded I had learnt that the accused and the complainant were part of a group of recruits who regularly engaged in some pretty juvenile behaviour, which included making crass remarks to each other and grabbing each other on various parts of the body in a joking manner.

As it happened, it was only after the accused had reported the complainant for inappropriate sexual behaviour towards her that he alleged he had been slapped and had a nipple cripple. Every day the salacious details of the case, complete with photographs of the accused and the complainant, made headlines in the Daily Telegraph.

Ultimately I found her not guilty on the basis that she had accidentally touched him on the bottom while trying to usher him in ahead of her, and I found her not guilty in respect of the nipple cripple because the complainant's account was unsatisfactory, I did not think he was credible and I was not satisfied that she had grabbed his nipple, twisted and squeezed it.

After making those findings, in my carefully crafted written reasons I said this:

'I pause to note that, even if I had found that the slapping of the left buttock was intentional and that

the accused had pinched the complainant's nipple, I 1  
would have found that the prosecution had not 2  
established beyond reasonable doubt the complainant had 3  
been assaulted. I consider that, on all the evidence I 4  
have found credible and reliable, there was an 5  
overwhelming body of evidence which established that 6  
physical bodily contact, which did not have a sexual or 7  
indecent connotation, was an accepted and acceptable 8  
part of the daily interactions within the group of 9  
classmates. That is, there was an implied consent for 10  
this form of touching.' 11

Of course, in the military there is no appeal 12  
against an acquittal so it was not strictly necessarily 13  
for me to have gone on and said that, and I quickly 14  
learnt the consequences of this decision when I opened 15  
the paper the next day. The headline in the Daily 16  
Telegraph read 'No rap for bum slap'. And it got 17  
better: 'A Defence Force Magistrate has found that a bum 18  
slap and a nipple cripple is an acceptable part of 19  
horseplay between skylarking sailors'. 20

The same story appeared in The Advertiser. 21

Upon my return to Adelaide, news of the case had 22  
spread amongst the Adelaide Panel with Wing Commander 23  
Sam Abbott QC promptly declaring that I was now to be 24  
known as 'the beer man's magistrate'. 25

My next trial was in Canberra and it also received 26  
intense media scrutiny. A long-serving corporal in the 27  
Air Force was charged with prejudicial conduct and an 28  
act of indecency; the latter allegation being that he 29  
had put his hand inside the shirt pocket of a young 30  
leading aircraft woman and in doing so he touched her 31  
breast over her clothing. 32

Ultimately I acquitted him of all charges and I 33  
found him not guilty of the act of indecency charge on 34  
the basis that, when he put his hand inside her shirt, 35  
he was doing that to put \$10 inside her pocket because 36  
that day she had given him some Hello Fresh recipe cards 37  
and he was saying thank you, and he was not doing that 38

for sexual gratification. 1

Again, in carefully crafted reasons, I explained 2  
that the touching of the breast area over the clothing 3  
of a person in the complainant's position by a person in 4  
the accused's position is not inherently indecent and 5  
whether it was indecent depended on whether there was a 6  
sexual motive for the touching. 7

The headline in the Daily Telegraph reporting the 8  
acquittal read 'Wing Commander Fuller said a man 9  
touching a woman's breast was not inherently indecent'. 10

The beer man's magistrate had struck again. 11

The experience of being a judge in the military has 12  
given me a practice run at being a full-time judge, from 13  
doing trials and sentences, to enduring media scrutiny 14  
and misreporting and it has even included a swearing-in 15  
ceremony. It has taught me some invaluable lessons. 16

In some ways, I think that being a District Court 17  
judge will be much easier than being a military judge. 18

This is mostly because there is far less opportunity 19  
for wardrobe malfunctions. Wearing the correct military 20  
attire and having it in perfect order is a strict 21  
requirement for anyone in the Australian Defence Force. 22  
And there are persons called warrants officers whose 23  
single purpose in life is to enforce discipline, and in 24  
particular ensure that clothing requirements are 25  
strictly adhered to. 26

For my first hearing in Darwin, which was a 27  
sentence, I spent so much time making sure that my 28  
uniform was in pristine condition that I clean forgot 29  
that as a military judge I was supposed to be wearing 30  
robes. When I walked into court in my uniform only 31  
no-one said anything. 32

When the Registrar of Military Justice happened to 33  
send me an email in the lunchtime recounting a story 34  
about how he had tripped over his robes when he was a 35  
DFM I realised to my horror that I was supposed to be 36  
wearing robes over my uniform. I duly reported my error 37  
and asked if being incorrectly dressed would invalidate 38

my sentence, and thankfully the answer was no. 1

However the news of my wardrobe malfunction quickly 2  
made its way to the Chief Judge Advocate and he sent me 3  
a text message saying 'I hear you are ploughing your own 4  
sartorial furrow'. 5

After that I survived a trial in Sydney and a 6  
sentence at RAAF Edinburgh without any more wardrobe 7  
malfunctions so I thought that I had finally mastered 8  
the art of clothing compliance. Sadly I was mistaken. 9

In September last year I was to preside over a 10  
guilty plea for a leading aircraft woman and man who, 11  
whilst on patrol in an Air Force car, had decided that 12  
performing a handbrake manoeuvre to alleviate their 13  
boredom might be a good idea. The car rolled and then 14  
in their panic they lied and said they had swerved to 15  
miss a kangaroo. They were charged with prejudicial 16  
conduct and property damage and they pleaded guilty. 17

On the day of sentence I had my uniform pressed and 18  
immaculate. My ceremonial jacket had been dry cleaned, 19  
my robes were ready, my Air Force issue shoes were 20  
polished and I put them outside the bathroom while I had 21  
a shower. My two German shepherds had been for their 22  
morning walk and whilst I was in the shower I was 23  
thinking to myself they were unusually quiet. I got out 24  
of the shower to find that the heels of my Air Force 25  
issue shoes had been ripped to shreds. 26

Panic set in; they were my only compliant shoes. I 27  
could not walk into court with them and they were beyond 28  
repair. I was due at the base in an hour and no shops 29  
were open. In desperation I rifled through my wardrobe 30  
to see if I had anything I could wear that might look 31  
compliant. All I could find was a pair of Shoe Shed 32  
vegan black patent semi-stiletto high heels. They were 33  
just going to have to do. I would just hope that the 34  
warrant officer would not notice. Perhaps I could 35  
distract him from looking at my feet. 36

I arrived at base and met the warrant officer. He 37  
looked me up and down and said 'Ma'am, your belt is on 38

back the front' and before I had a chance to say 1  
anything he proceeded to take it off and reattach it the 2  
right way round. I gave the feeble excuse that the 3  
jacket had been dry cleaned and the drycleaner must have 4  
put it on the wrong way and I had not really noticed 5  
because I got dressed in the dark. 6

He then sighed and he looked at my hands and he said 7  
'Ma'am, you've got too many rings on. Only two rings 8  
per eight fingers ma'am'. I forgot that thumbs were not 9  
fingers and for a moment I struggled to work out how 10  
three rings on 10 fingers was a breach. I then took one 11  
off. 12

He said to me 'Ma'am, can I say you are taking this 13  
really well' to which I responded 'Before you say 14  
anything about the shoes, my dogs ate the other pair 15  
this morning'. 16

My wardrobe malfunctions became a running joke at 17  
the JAG office with the Chief Judge Advocate telling his 18  
staff not to bother sending me the administrative 19  
instruction for a trial which includes a picture of the 20  
uniform required to be worn as, in his words, 'Wing 21  
Commander Fuller likes to do her own thing'. 22

I have already personally thanked the JAG, Justice 23  
of the New South Wales Supreme Court Michael Slattery 24  
and Chief Judge Advocate Brigadier Michael Cowen for the 25  
invaluable assistance they have provided to me in my 26  
role as a JA DFM and for their humour and understanding 27  
as I ironed out some rookie errors. 28

I want to thank and acknowledge the other members of 29  
the panel: Commander Gregory Sirtes SC, Group Captain 30  
Scott Geeves and Lieutenant Colonel Jonathon Hyde. 31

I am especially honoured that the JAG asked Group 32  
Captain Trengove to represent his office here today and 33  
in uniform. 34

I have loved every minute of serving my country as a 35  
military judge; it has been the most wonderful and 36  
rewarding experience of my career. 37

A successful career at the Bar is impossible to 38

enjoy without the support and love of family and 1  
friends. My mum and dad have always supported me in 2  
everything I have done, even if they did not fully 3  
understand it or agree with it; notably when I announced 4  
I was going to be vegetarian at 11 years of age and I 5  
insisted that Mortein was unnecessary because I could 6  
capture in my hand every blowfly and mosquito in the 7  
house and humanely transport them outside. 8

Mum and Dad are wonderful parents and I am so glad 9  
they are here today. 10

Amongst everything else she has done for me, my 11  
mother encouraged and fostered a love of literature and 12  
language that stood me in good stead during my studies 13  
and later in my professional life. 14

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My father has a tenacity and ability to withstand 1  
adversity that has never seen him lose his sense of 2  
humour or his unfailing generosity. 3

Having witnessed him representing himself in the 4  
most challenging of legal circumstances, I can honestly 5  
say he is the most capable and fearless advocate I have 6  
ever seen. I hope he is as proud of me as I will always 7  
be of him. 8

And I have to thank my boyfriend, Peter. There is 9  
only one way to describe him and that is 'he is the 10  
best'. He has made the last 12 years full of so many 11  
adventures and love and great fun that, sadly, they have 12  
gone far too quickly. He is a constant reminder to me 13  
about all the other things in life besides work that 14  
matter and he has made me so happy. 15

As everyone up here knows, the lead-up to an 16  
appointment is a strange and unsettling time. You have 17  
got to remain tight lipped, you have to avoid being 18  
briefed in any more cases without letting the cat out of 19  
the bag, you feel guilty about letting down clients and 20  
solicitors and you finally wonder 'What's the last day 21  
in court going to look like?'. 22

For me it was memorable and, in many ways, fitting, 23  
for not only did I end with a case involving a traffic 24  
offence but the defendant was someone well known to me 25  
who was becoming somewhat of a recidivist offender. 26

Only a few months before I had secured the 27  
withdrawal of his most recent traffic offence - using a 28  
mobile phone while driving. I am not exactly sure how I 29  
managed that as he had been on the phone to me at the 30  
time of the offence. 31

I then learnt that he had received another expiation 32  
notice for a red light camera offence. On my advice, he 33  
elected to be prosecuted and the summons had a return 34  
date of 2 December which was three days before my 35  
appointment was to be announced. I told him I could 36  
probably not help him as I had a voir dire before Judge 37  
Cuthbertson all day and the best I could do was ask for 38

an administrative adjournment, try to negotiate a demerit point reduction and after that he was on his own.

Happily, Judge Cuthbertson adjourned early and I raced over to the Adelaide Magistrates Court. I managed to get the matter adjourned to the next day. I wrote a quick letter to the prosecution about the compelling circumstances that warranted a reduction of the points from three to one and within hours the prosecutor wrote back saying 'Application won't be opposed nor will an application for no conviction to be recorded'. Happy days.

The next challenge, of course, was who the magistrate would be because, as we all know, they are not rubber stamps.

I checked the cause list the night before and I identified the presiding magistrate.

So on 3 December I checked in with the sheriff's officer. He said 'Miss Fuller, who are you here for today?'. I said 'Michael Fuller'. He said 'Gee, what a coincidence, Miss Fuller'. I said 'No, it's not, he's my dad'.

Ten minutes later we walked out of court, dad with his one demerit point and no conviction and dad saying 'I think the magistrate liked me' and me saying 'Don't do it again. As of Thursday I can't help you any more.'

In closing, I would like to read from an email sent to me by the former Justice Margaret Nyland following my appointment, and I am sad that she was unable to be here today. She said this:

'We are living in difficult times and the community depends on judges of your calibre administering the justice system firmly and fairly without losing sight of the need for compassion in appropriate cases.'

I will strive to be the judge that she describes.

ADJOURNED 10.20 A.M.