Chief Justice Murray Gleeson

An interview by Rena Sofroniou

Rena Sofroniou: Did you enjoy the High Court Centenary Conference in Canberra last weekend?

Chief Justice Gleeson: Yes I did, I was pleasantly surprised. I have a vivid imagination for things that can possibly go wrong. I had a long list of potential disasters in my mind, but none of them seemed to happen.

Rena Sofroniou: Has celebrating the court's centenary been a drain in addition to your normal workload? Has it involved a lot of socialising?

Chief Justice Gleeson: It has involved a lot of socialising. I wouldn't describe myself as a party animal, but I enjoyed the socialising.

Rena Sofroniou: It must be quite wonderful to hold the position of Chief Justice of the High Court at the time of its centenary. I gather that you were already quite interested in Australian legal history. Has the court's centenary provided an opportunity for you to look into that more deeply?

Chief Justice Gleeson: Yes it has. When looking at material for the purpose of preparing speeches I found a number of things that came as a surprise to me. For example, I had never realised that there were strong political attacks upon the appointment of Sir Samuel Griffith as the first chief justice of the High Court. I had known from other reading that there were grievances about the role that he and Chief Justice Way of South Australia played in relation to clause 74 of the Constitution. I had been aware that each had used his position as state lieutenant governor to communicate with the Imperial authorities in a way that was regarded as undermining the negotiating position of the Australian delegates in London. But I hadn't been aware of the extent to which the ill feeling spilled over into the process of appointment of the first members of the High Court.

Rena Sofroniou: Would that have been a somewhat defensive start for the new justices?

Chief Justice Gleeson: Sir Samuel Griffith doesn't seem to have been a particularly defensive person. So far as I can tell from my reading, there was quite a deal of conflict and controversy about appointments to the court and about arrangements between the court and the government in its early years.

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I only learned recently that one of the people who strongly criticised the appointment of Griffith as chief justice was a protégé of Andrew Inglis Clark, who had himself been regarded as a candidate for appointment. As I understand it, the position on the court that ultimately went to Sir Edmund Barton was one that many people had expected would go Clark. However, being prime minister himself, Barton seems to have been in a position to choose to be appointed, although people told him at the time that it would be inappropriate to choose to be chief justice.

Rena Sofroniou: It is interesting to see the course that history took. Given the degree to which Griffith and Clark had been involved in the drafting of the Constitution, would it have been more of an advantage or a disadvantage to have both of them as first justices of the High Court? In that case one might have forgiven them for taking an entirely subjective approach to the interpretation of the Constitution that they had drafted. We would have obtained a very acute insight into the 'intentions of the framers'!

Chief Justice Gleeson: Both Griffith and Clark were closely involved in the early stages of the drafting but then Griffith was appointed chief justice of Queensland and Clark was appointed a justice of the Supreme Court of Tasmania. Their involvement in the later stages of the drafting was less immediate, though still important. But all three of the first members of the court adopted a method of interpretation of the Constitution that reflected their participation in the negotiations, and the compromises that had been made.

Rena Sofroniou: Acknowledging the 'federal compact'?

Chief Justice Gleeson: Yes. The change in direction, culminating with the *Engineers case*[1] began when Isaacs and Higgins were appointed to the court as its fourth and fifth members.

It is interesting to reflect on personalities and the role that they play in constitutional interpretation. Isaacs had been excluded from the drafting committee at the constitutional conventions and was resentful of that. Higgins had opposed federation on the basis that the Constitution didn't go far enough towards giving power to the central government.

When Griffith, Barton and O'Connor were together they found, as Clark would have done, implications in the Constitution in favour of state powers and immunities that reflected their view of federation as a negotiated compromise. Isaacs and Higgins, however, took the line that the Constitution should be interpreted on the basis that the grants of power to the Commonwealth were to be taken literally and widely. They didn't favour implications supporting state reserved powers and immunities, and ultimately that view prevailed in the *Engineers case*.

Rena Sofroniou: So the minority two were vindicated?

Chief Justice Gleeson: Well, they prevailed. The *Engineers* case is not a fine example of judicial reasoning but, subject to the qualification expounded by Sir Owen Dixon in the *Melbourne Corporation case*[2], it has represented the orthodoxy ever since.

Rena Sofroniou: All of this recalls to mind the discussion about schools of interpretation of the Constitution that one sees from commentators, but also now explicitly in the High Court judgments themselves. In light of what you've said, I wonder whether you are interested in following certain specific approaches to constitutional interpretation at the expense of others?

Chief Justice Gleeson: There is no single problem of constitutional interpretation and therefore there is no single solution. There are some issues of constitutional interpretation about which history and an understanding of the context at the time provide much assistance. There are other issues of constitutional interpretation about which the opposite is true.

Let me give a particular example. One of the puzzles about constitutional interpretation has always been the relationship of section 122 dealing with territories to other provisions of the Constitution. It seem to me that it does assist a resolution of such an issue to understand what was in contemplation at the end of the nineteenth century or the beginning of the twentieth century. One could see then the kinds of territories with which Australia would be concerned. It would be a mistake to interpret the Constitution as though the Australian Capital Territory was regarded as the only kind of territory with which the instrument was concerned.

At the other extreme, take the post and telegraphs power. The framers of the Constitution were interested in and aware of technology and understood the potential for change and development. It was plainly not the intention that that power was to be confined to apply only to the technology that was available at the time.

Rena Sofroniou: This leads me to refer to the paper you delivered in Melbourne to the AIJA on the 3 October this year[3]. It contained, quite beguiling, if I may say so, references to the maintenance of public confidence in the High Court by means of what you describe as 'a collective reputation for independence and impartiality', which you suggested is what sustains judicial review and makes that sort of exercise of power tolerable.

Chief Justice Gleeson: That's right.

Rena Sofroniou: In a similar vein there was something almost soothing in the way you assured your audience that even 'noisy criticism', when a decision of the court might have frustrated political objectives, gives no cause for alarm. It's just, you said, simply what you'd expect in a democracy. You referred to Sir Owen Dixon's promotion of 'close adherence to legal reasoning' and to Alfred Deakin's vision of the Constitution as a document flexible enough to adapt to modern times. There is a question here somewhere! I guess it's this. To what extent are you glossing over the fact that, as long as the court keeps to quite orthodox legal reasoning and process, it has a huge scope to make choices in its decisions, the content of which may have a huge political impact? Is your seductive invocation of that careful, orthodox, principled approach taken by the court really going to be sufficient to defend the court from criticism if it delivers drastic outcomes, given the 'criteria of selection' that are available to you within even quite orthodox judicial approaches?

'I had tended to assume...that there is something novel about strong criticism of judicial review of legislation and administrative action. When you look back at the reaction to some of the leading decisions of the court, it is clear that such an assumption is wrong.'

Chief Justice Gleeson: There are two things about that. The first is that we all tend to assume, or at least, I had tended to assume, that in the past, as a general rule, the decisions of the court had been accepted calmly by government and by the public and that there is something novel about strong criticism of judicial review of legislation and administrative action. When you look back at the reaction to some of the leading decisions of the court, it is clear that such an assumption is wrong.

Starting from the early part of the twentieth century you will see that there were strong and sometimes almost hysterical reactions to judicial decisions. For example, in 1908 the court gave a decision[4] that invalidated some legislation promoted by the Labor Party and labour unions on an issue that was called, at the time, 'new protection'. It is probably impossible now to capture truly the economic and political significance of that issue. But the consequence of the court's decision was to lead to a demand from the Labor movement that the Constitution be amended to take away from the court the capacity to invalidate legislation.

The decision in the *Engineers* case in 1920 was said by a leading commentator to have caused 'consternation' in the state camp. Well, a lot of decisions of the court have caused consternation in the state camp.

Rena Sofroniou: That underscores the point a little, doesn't it? While perhaps no-one doubts the legitimacy of the reasoning adopted in the judgment, look at the political outcomes.

Chief Justice Gleeson: Yes. Now the second thing is that it's true that within the bounds of proper legal technique judges have choices. But they have to give reasons for their decisions. They have to justify their choices and the methodology that they employ can always be tested against accepted principles. For all the fuss that is often made about the exercise of judicial choices, judicial reasoning is, by the standards of most decision-makers in the community, enormously conservative.

What is increasingly borne in on me, when I listen to argument in the High Court, is how conservative legal argument is. The barristers will almost immediately go to precedent. When did you ever hear a barrister get up in the High Court and say: 'Don't worry about what all these other people have said in the past, this is the principle and this is what you should do'? When did you last see a judgment written by anybody who said 'I don't care what all these judges have said in the past, I think that this is the way to go, and whatever people have done in the past, this is the direction we should now take'? That's just not the way barristers argue cases and it's not the way that judges reason their decisions.

Rena Sofroniou: Is it a phobia about 'committing' palm tree justice'? Now isn't that an example of applying a methodology insufficiently in keeping with the traditional approach to precedent? Doesn't it just depend upon how ingenious a given judge is in being able to present their judgment, however radical it may be, in a sufficiently traditionally accepted manner? Such a judge might then decide anything they like. And surely they can't just say, 'Look, this is the inevitable outcome of my 'close judicial reasoning'. You can't be worried about the political outcome of my judgment.'

Chief Justice Gleeson: Sometimes you read commentaries about the technique of judges where the commentators don't make it clear what kind of judges they're talking about.

Rena Sofroniou: Types of judges?

Chief Justice Gleeson: Sometimes you read theories about judging which seem to assume that the only judges who matter are judges of ultimate courts of appeal. There are only seven judges in Australia whose decisions are not potentially subject to appeal. So the first constraint on a judge is appeal. All judicial decision-makers except the seven members of the ultimate court of appeal have the possibility of judicial review of their own decisions.

Rena Sofroniou: Sure.

'Sometimes you read theories about judging which seem to assume that the only judges who matter are judges of ultimate courts of appeal. There are only seven judges in Australia whose decisions are not potentially subject to appeal. So the first constraint on a judge is appeal.'

Chief Justice Gleeson: And that is a powerful force for conformity to legal technique and methodology. Now if you turn to the seven who sometimes seem to be the only ones that commentators are interested in, they operate in a collegiate manner. Their decision-making is by majority. No single one of them can ever prevail and the pressure of collegiate decision-making is again a force for conformity.

But the best test of the constraints under which judicial decision-making operates is to look at the techniques by which judges justify their decisions, and look at the techniques by which barristers seek to persuade them to make their decisions. By the standards of most decision-makers, those techniques are highly conformist.

Rena Sofroniou: And I suppose it follows from that, that even my hypothetical 'ingenious judge' is not going to fool all of those people all the time?

Chief Justice Gleeson: Exactly. The other thing that I think you need to bear in mind is that the concern about what you call 'palm tree' justice is really a reflection of a wider legal and ultimately political principle. The political philosopher Hayek[5] pointed out that freedom of individual action is best preserved by the formulation and application of general rules. The opposite of that is ad hoc discretionary decision-making. Most people feel free to conduct their personal affairs and their business with confidence and security because they know what the law is. Most legal questions never get near a court. A solicitor ought to be able to answer most legal problems that are raised by the solicitor's clients and shouldn't have to say to the client, 'If you get involved in litigation about that matter the outcome will depend on the identity of the judge or magistrate before whom the case comes'. The law is working best when the solicitor can say to the client, 'If that case goes to court then this is going to be the outcome.' In the case of the great majority of legal questions that affect the day to day lives of ordinary members of the public, that's the way the issue is resolved, not by the case going to the High Court. The High Court only deals with about seventy appeals per year.

The other point that has recently been made by a French professor[6] who was out here about a year ago in relation to ultimate courts of appeal is that the authority of ultimate courts of appeal depends upon the predictability of their decision-making.

Rena Sofroniou: I think you echoed that in your AIJA paper?

Chief Justice Gleeson: The court influences judicial decision-making only insofar as judges of other courts believe that they know what the court would do.

Rena Sofroniou: Is that always so? This may just be about my own shortcomings but I have to confess here that when *Perre v Apand*[7] was handed down I, for one, became a little anxious and despondent about precisely how on earth I could predict not only the outcome of a case involving purely economic loss but even the correct approach sanctioned by the High Court in dealing with the question. There appeared to be differences of approach that the court did not appear to have resolved by the time this judgment was handed down. Is the predictability to which you refer intended to apply at individual case outcome or is the best that we advisors can hope for, some general approaches? Because if I may say so I think it would have been very difficult to advise a client the day after that decision was handed down!

'If what a court needs is constant attention, critical comment and constant suggestions for improvement from the profession and law teachers, then in that respect the High Court is freakishly fortunate!'

Chief Justice Gleeson: Up until the decision of the House of Lords in *Hedley Byrne v Heller*[8], people thought, or lawyers thought, that, as a general rule, the circumstances in which a person would be found to have a duty to take care to protect somebody else from what was called pure economic loss would be extremely limited. *Hedley Byrne* opened that up. I tried to argue this with painful lack of success in the Privy Council in the *Candlewood case*[9], where I endeavoured unsuccessfully to support the decision of the High Court in *Caltex*[10].

If you look at the argument and the decision in *Candlewood* you can see a strong resistance on the part of the English courts because of their understanding that the decision in *Hedley Byrne* had let the genie out of the bottle.

Ultimately, of course, the great fear is of indeterminate liability, which is only another way of expressing the problem that you've just mentioned: people don't know what they're liable for and you can't confidently advise people as to their responsibilities. That had always been the fear about allowing for a duty of care to take reasonable steps to protect other people from economic loss.

When you think about it, the circumstances in which some act or omission of yours might cause foreseeable financial harm to somebody else are almost endless. You might be negligently driving a motor car in heavy traffic and as a result of a collision you cause, somebody four or five cars away, who isn't injured personally, and whose property isn't damaged, might miss an important business appointment and suffer financial loss as a consequence of that. When a ship ran into a bridge in Hobart and it interfered with supplies of gas and electricity and other services, the economic loss that would have radiated out from that occurrence was virtually limitless. I don't expect that this problem is about to be put to bed.

Rena Sofroniou: Perhaps not, but I gather that you are not giving up on 'predictability' as a foundation of the High Court's influence? I also gather that you are not offering sure-fire methods for reining in the law of negligence, either. What do we then do? Are we to say 'well, there's not much point even advising on this, the High Court will do something or another and never fear they will do it in conformity with close judicial reasoning, but what the outcome is I can't tell you?'

Chief Justice Gleeson: I thought that the author of the headnote in the CLRs did a very good job with *Perre v Apand*. A remarkable job, actually *(smiles)*. If you look at the reasons you will find at least some common factors and then if you look at later cases in which the court has refused to find a duty of care to prevent economic harm you can work towards greater predictability. 'Incrementalism' is a word that is often used: it's an interesting word in relation to the law of tort

because it seems to imply that the scope of the liability of defendants is always on the increase - nobody ever talks about 'decrementalism'. It's an interesting assumption that all progress in tort law is in the direction of expanding the rights of plaintiffs, because the corollary is that it always operates in the direction of expanding the liability of defendants.

Now when you look at the potential responsibility of people to be liable for causing financial harm to others, there are quite large implications for the security with which people can conduct their affairs are quite large. When a company like HIH fails it causes a lot of fuss, but it also reminds some lawyers that not all people are effectively insured against all forms of potential liability.

You may recall that about a year ago we had a case concerning the vicarious liability of employers for sexual abuse of children by their employees[11]. That just provides a practical example of what we are talking about. I don't know whether kindergarten operators can obtain insurance against liability for that kind of conduct on the part of their employees, but it's a significant question. It's wrong to assume that all kindergarten operators are wealthy individuals or large corporations. The assumption is often made that affordable insurance is readily available against all kinds of potential liability. That assumption is often false, and judges may not know whether it is true or false.

Rena Sofroniou: It's not every man or woman who has the experience of having an era of a court named for them. You've referred to the impact of decisions upon people's ability to conduct their affairs at large. How conscious are you in day to day decisions of the extent to which commentators, academics and practitioners are immediately looking to identify directions, leanings and tendencies of the court? Are you conscious of laying down and guiding the Chief Justice Gleeson High Court or is the nature of the Gleeson High Court just a matter of how the accumulated cases play out on a day to day basis?

Chief Justice Gleeson: *(Laughs)* That question assumes that a court is amenable to guidance, which, thank God, it is not.

Rena Sofroniou: Do you care at all about such a 'macro' view?

Chief Justice Gleeson: Yes, we get a lot of feedback. To paraphrase a remark that a District Court judge made many years ago on his retirement, if what a court needs is constant attention, critical comment and constant suggestions for improvement from the profession and law teachers, then in that respect the High Court is freakishly fortunate!

'One of the aspects of judicial independence that people often overlook is the independence of judges from one another. Once again in that respect the High Court is very lucky!'

Rena Sofroniou: There was a wonderful visual metaphor in seeing the seven members of the court literally squeezed in elbow to elbow at the Supreme Court of Victoria Banco Court, in a recess designed to fit three! Is *esprit de corps* an important factor in the day to day operation of the court as far as you are concerned, as its chief justice?

Centenary sitting of the High Court, Melbourne, 6 October 2003.
Photo: AAP Image/ Jason South.

Chief Justice Gleeson: One of the aspects of judicial independence that people often overlook is the independence of judges from one another. Once again in that respect the High Court is very lucky! I don't think there has been within my memory a time in the High Court when the members of the court have not been very independent of each other. My memory doesn't extend back further than the 1960s, but ever since then all of the justices of the court have operated as individuals - and they still do. On the other hand, obviously, in terms of its day to day functioning and administration, the court has to operate in a collegiate fashion.

The High Court is administered by all of its judges collectively. The responsibility for the financial aspects of the court's affairs does not reside in the chief justice, but in the justices collectively. So we have to meet once a month to discuss aspects of the running of the court. We have to work together in what I call the judgment production process as distinct from the judgment writing process. We have a judgments meeting once a month to discuss reserved decisions. On most sitting days the justices meet in my chambers for a cup of tea or coffee at the conclusion of argument.

In addition you barristers won't have failed to notice that during the course of argument the justices will often express tentative views. So there is a constant process of discussion when a hearing is going on.

Rena Sofroniou: In that regard could you provide any tip or advice for practitioners addressing the court, particularly when the judicial smirking, whispering, or interrogation starts, that might make it easier for said practitioners to survive the experience?

Chief Justice Gleeson: If you ask, if I were a barrister now or again, whether I would do some things differently in light of my experience as a judge, the answer is yes. What would I do? It is hard to be precise about that. Perhaps I would be less deferential but not, I hope, inappropriately tenacious. One of the essential skills of a barrister is to strike the right balance between saying or writing too much and saying or writing too little. It's natural I suppose that most people err on the side of saying too much rather than too little. It requires a good deal of self-confidence to make economical submissions. But if that can be achieved, it has a great impact.

Rena Sofroniou: Do you ever find junior barristers addressing the court?

Chief Justice Gleeson: We probably have more juniors who appear in criminal cases than in civil cases. But the answer is, not many.

Rena Sofroniou: Was it ever thus?

Chief Justice Gleeson: Yes. I don't know now how often counsel appear in the High Court without fee. It's none of my business and I would have no way of knowing. In my day at the Bar, junior counsel with sufficient confidence were often willing to take cases in the High Court without fee just for the benefit of the experience. Whether nowadays it's very rare for counsel to appear without fee, I can't say.

Rena Sofroniou: Your elevation to the Bench seems to me to have continued a series of professional situations in you've found yourself at the apex of a given hierarchy. First, as a barrister providing advice, then as silk at the head of a legal team; next as chief justice of New South Wales without being a *puisne* judge first, and of course as the Chief Justice of Australia. Yours is constantly the position at the top. Does this suggest that you are not much of a team player, or that you are not comfortable in partnership roles? It must seem solitary at times.

Chief Justice Gleeson: I don't think it's so solitary. When I was a barrister there were particular solicitors from whom I used to get a lot of work, so I had the benefit of a quite a number of professional associations that I found both valuable and congenial. Of course I'm conscious of the criticism that in my day at the Bar there was an atmosphere that some people have described as inappropriately 'club-like'. I think that broke down gradually over the time that I was the Bar. But I never regarded myself as a solitary individual, although I don't think I'm notably gregarious.

Rena Sofroniou: In that regard, do you like your 'Smiler' nickname?

Chief Justice Gleeson: That nickname came from Leycester Meares, and I have no doubt that he called me 'Smiler' for the same reason that a brunette might be called 'Snowy'.

Rena Sofroniou: I think that's the general gist of it.

Chief Justice Gleeson: But it actually wasn't a nickname that was very widely used when I was at the Bar, for one reason or another.

Rena Sofroniou: You don't mind it do you? It seems to be quite affectionately meant.

Chief Justice Gleeson: No, no *(Smiles)*.

Rena Sofroniou: Well, even if you were not isolated, as such, in the positions you have held or the professional roles that you have played, do you consider yourself to be an ambitious person who wants to have the, well, the most control, however much you may work with others or may be assisted by others?

Chief Justice Gleeson: That's probably a fair comment. I really have always enjoyed taking responsibility and at the same time I have always found it a little disconcerting to be in a situation where other people are in control.

Rena Sofroniou: Was social service or civic service something that was inculcated in you as a child?

Chief Justice Gleeson: No, as it happens I come from a small country town and my father who died many years ago was very active in local government, which was an unpaid activity.

Rena Sofroniou: You don't consider that that was such an influence?

Chief Justice Gleeson: If that was an influence, it was unconscious. When I was at the Bar, I thought that it was important to attempt to give back to the profession something I had taken out of it. I was active in the affairs of the Bar Association for a number of years. I also belong to a generation of barristers that, I think, have a habit of thought that is probably now gone forever.

I can remember ten or fifteen years ago a leading member of the English Bar saying to me, in relation to the English profession, that for more than a hundred years the Establishment played a kind of confidence trick on the Bar. The Establishment managed to persuade barristers that becoming a judge is the natural culmination of a career as a barrister. He then said to me: 'English barristers don't buy that any more'.

I think that when I was at the Bar that attitude of mind still prevailed. Of course there always were barristers who never wanted to become judges, but generally speaking the view was still taken that to become a judge was the natural outcome of a successful career as a barrister.

Rena Sofroniou: The job descriptions are so different! Is the move from professional advocate to professional listener an easy one to make?

Chief Justice Gleeson: It has always been assumed that the best way to learn how to be a judge is to watch people doing it. There's still a significant element of truth in that, but it's far from the whole truth. That's why I attach so much importance now to judicial education, orientation and continuing legal education for judges. Bill Ash, who was a barrister on the Seventh Floor and who died many years ago, used to say to his clients: 'You don't need to be frightened of the judge. Judges are only retired barristers'. That retired barrister syndrome is almost unknown now but it reflected an attitude of mind in the past.

Rena Sofroniou: What do you make of the apparent trend of judgment writing that sets out in agonising detail *all* of the evidence, written and oral, and all of the competing submissions, with a concluding outcome at the end? It is so aggravating to read and to try to glean any particular principle that's being decided. Do you have any views about it?

Chief Justice Gleeson: Well, if you ask yourself who is the intended reader of a given judgment, the answer must be, principally, the parties, the lawyers for the parties and any appeal court. Appeal judges are major consumers of the literary products of primary judges. Writing judgments can be a very difficult skill to attain and courses on judgment writing are an important part of judicial education. I have a lot of sympathy for primary judges nowadays because of the length and the complexity of cases.

Rena Sofroniou: But we don't have to experience such length and complexity first hand when we read the said judgments, do we?

Chief Justice Gleeson: Perhaps some of them write their judgments as the case goes along, almost in the manner of a diary of the day's events.

Rena Sofroniou: And we experience them in real time…

Chief Justice Gleeson: I admire concise expression in judgments, but I do understand the difficult circumstances under which trial judges operate. I think sometimes appeal judges have to share the responsibility, too. I'm thinking now not so much of reasons for judgment in civil cases, but of directions to juries in criminal cases. It is obvious that a lot of lengthy and complex directions to juries are the consequence of the apprehension of the trial judge about what an appeal court will do if it gets hold of the case, so they're looking over their shoulders at the appeal courts rather then concentrating on the jury. As I say, I think appeal judges have to take at least part of the blame for that.

Rena Sofroniou: Are there any particular judges or other mentors whom you have particularly admired?

Chief Justice Gleeson: When I first came to the Bar I read with Laurence Street and I did a great deal of work as a junior with Bill Deane. I admired them both enormously as barristers and judges. Another wonderful equity judge at the time was Kenneth Jacobs. Of course I was impressed by many of the judges that I appeared before. I always thought that the member of the High Court who seemed to have the sharpest intellect was Sir Frank Kitto. I also appeared on a number of occasions before Lord Wilberforce in the Privy Council. He was outstanding.

Rena Sofroniou: A final reflective one: In many respects the work of the court appears to be extremely gruelling. At the end of the day, is it worth it, do you ever dream of escape?

Chief Justice Gleeson: I can't answer that question because I'm not at the end of the day. Perhaps I can in five years time!

Rena Sofroniou: You have surely been at it for a sufficient time to have the beginnings of an idea! I suppose I'm asking whether you consider the rewards to make up for the sheer hard work that you are doing?

Chief Justice Gleeson: Well, if you ask whether I would do it again, the answer is 'yes'. If you ask whether I would recommend it to anybody else who had the opportunity, then I wouldn't be so sure. When I said earlier that barristers no longer assume that becoming a judge is the natural culmination of a successful practice, I think that's partly because, in some respects, barristers are now a little wiser then they were in my time. Many that I know appear to realise that there is more to life than just being a barrister or a judge. *(Interviewer gasps in alarm at this concept)*. That suggests to me that they may be a little smarter than I am!

Rena Sofroniou: *(Recovering)* Thanks very much for your time, Chief Justice.

1 *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129
2 *Melbourne Corporation v The Commonwealth* (1947) 74 CLR 31.
3 13th AIJA Oration in Judicial Administration 'The centenary of the High Court: Lessons from history' delivered by the Hon. Murray Gleeson, AC, Chief Justice of Australia, 3 October 2003, Melbourne.
4 *The King v Barger* (1908) 6 CLR 41.
5 Friedrich Hayek (1899-1992), Austrian economist and political philosopher.
6 Professor Michel Troper, 'The limits of the rule of law', in C Saunders and K Le Roy (eds) *The rule of law* (The Federation Press, 2003), pp. 81-97.
7 *Perre v Apand Pty Ltd* (1999) 198 CLR 180
8 *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465
9 *Candlewood Navigation Corp. v Mitsui OSK Lines Ltd* [1986] AC 1
10 *Caltex Oil (Australia) Pty Ltd v Dredge 'Willemstad'* (1976) 136 CLR 529
11 *New South Wales v Lepore* (2003) 77 ALJR 558