decessor as Chief Magistrate, who was later convicted of corruption. Walmsley follows the story from the dinner which coincided with an illegal phone tapping operation that focussed on Ryan, and traces it through the two Senate inquiries that preceded the trial. And as legal sagas go, this one had everything: high political scandal, underworld figures, a prosecutor who later sat on the High Court with two of Murphy's character witnesses, a premier convicted of contempt, some complex points of law, an interview with the foreman of the first jury on talkback radio which revealed the jury's deliberations, references to a judge's sexual drive, a who's who of the best advocates of the 1980s, a misconstrued suggestion that the High Court would go on strike, and eight Supreme Court judges who were involved in the trials and appeal writing to a Crown witness (Briese) to assure him that Murphy's acquittal did not warrant any action being taken against him as had been suggested by the premier.

... as legal sagas go, this one had everything: high political scandal, underworld figures, a prosecutor who later sat on the High Court with two of Murphy's character witnesses...

One revelation from the book is the doozy of a question posed by the jury to the trial judge at Murphy's first trial, namely that '[w]e have no evidence concerning the probity, legality or otherwise of whether or not a Judge, High Court or otherwise, is permitted to discuss current matters before another judge with that other judge. Please comment'. This question went to the heart of this tale, and it is perhaps its only continuing relevance. How this question was dealt with at the trial and the ensuing debate about whether that involved a misunderstanding of the question are well covered in the book. But it is a topic that warrants serious thought and I would have been interested to read the author's view on the jury's question. (After judgment has been delivered, the following conversation often takes place between judges. Judge 1: 'Have you read my [implicitly fabulous] judgment in [totally forgettable case]? Judge 2: 'No'.)

Does the Murphy family have their own 'untold story' that never came out?

Not surprisingly, Walmsley's coverage of the trials is the strongest part of the book. Drawing on the original sources and having spoken to many of the players, he explains the course of the trials and the tactics in a style that is accessible for practitioners and non-practitioners alike. We learn that Ian Barker QC, who appeared for Murphy at the second trial, banned trolleys, folders and documents from the courtroom. No frills. Unlike the first trial, the defence case in the second trial was over in two hours: Murphy gave a short dock statement, there was some brief evidence from his secretary and no character witnesses. The focus was left firmly on the Crown case. Walmsley also refers to a wide array of press commentaries to paint the atmosphere in the courtroom during the trial, even allowing for the fact that a number of them had skin in the game. From that, the prosecutor (Ian Callinan QC) emerges as someone to avoid being cross-examined by.

My only grumble with the book is the perspective of the chapters that precede the first trial. The author tells us early on that he is Flannery's son-in-law and he admired Briese as a whistle-blower. Still, these chapters take it from their perspective, so we start by thinking that Murphy did it and then we learn how he beat the charges. Whole chapters are devoted to Briese and Flannery respectively. Mini-portraits of their personalities are littered throughout the book. Murphy only exists through his actions. Walmsley tells that when Flannery was thinking of speaking up, he was in a 'moral dilemma' and concludes that '[u]ltimately [Flannery] chose the truth'. In this search for truth, we are told no less than three times that Flannery's son received a call in Sydney from Murphy seeking his father's contact details at a hotel in Brisbane, even though this was never adduced in evidence at the trial. The author tells us that Flannery did not want his son called as a witness. What are we to make of this apparently 'new evidence'? Was it investigated or tested? Does the Murphy family have their own 'untold story' that never came out?

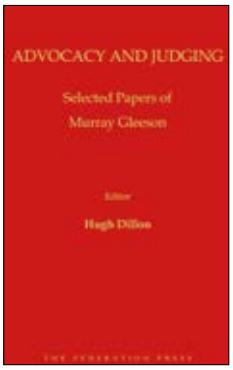
In the end, we learn a lot about what happened to Murphy but not much about who he really was. Despite all that has been written about Murphy including this excellent book, he remains elusive. A realistic assessment of Murphy appears stuck in the no-man's land between, on the one hand, the odd combination of (once) radical journalists whose certitude that he was a crook never waivers and those who despised Murphy and anything he stood for, and tribal warriors who have canonised the avowedly atheistic Murphy on the other. The scenario that Murphy was a gregarious but undisciplined personality who simply would not stop talking about current cases that were before a judge but did not intend to nobble them appears to have been a case theory that no one had an interest in running or writing about. [1]

Read the book over summer. Make your own mind up, or maybe just let the jury verdicts stand.

Reviewed by Robert Beech-Jones

Advocacy and Judging: Selected Papers of Murray Gleeson

Hugh Dillon (Ed) | The Federation Press | 2017



This work contains 33 papers authored by the Honourable Murray Gleeson AC during the period 1979 to 2015, covering a range of legal topics relevant to the practice of barristers and Australian law more generally.

As the title of the compilation suggests, many of the papers principally focus upon aspects of advocacy or the role and work of judges. These papers address topics such as the function and method of advocacy, cross-examination, judicial method, judicial selection and training, the nature of the judiciary, qualities necessary for judicial activity, the impact of the Constitution and legislation upon such activity and the importance of public confidence in the judiciary.

Aside from those papers that address those subjects as their principal focus, all of the selected papers address topics fundamental to the work of barristers and judges. The rule of law and the nature of the adversarial system are constant undercurrents in most of the papers. This selection includes papers on fundamental principles of the common law, such as legality, finality and legitimacy, and in relation to the criminal justice system, the presumption of innocence. Several papers address matters which are intrinsic to the work of lawyers and judges, such as legal interpretation and contractual interpretation. These papers provide a thorough foundation in an easily digestible format for those principles, the legal reception of which can often be assumed and therefore taken for granted. These works contain a valuable exposition of the basis of such principles.

Many of the papers consider aspects of constitutional law and several take the Constitution as their principal focus, including one on the constitutional decisions of the Founding Fathers, and another on section 74 of the Constitution, which prohibits appeals to the Privy Council from the High Court on constitutional matters. Other

areas of law have not been forgotten: most are of general application to multiple areas of law, and one addresses the significance of *Donoghue v Stevenson*[1]. There is a wealth of material to satisfy those interested in legal history, including a paper on 'Magna Carta – History and Myth', as well as papers considering the history of the High Court and the Privy Council, particularly as regards Australia.

Most, if not all, of the papers were delivered as oral addresses or speeches. The audiences of those addresses varied, ranging from solicitors at the Australian Government Solicitor's Office, readers and junior barristers practising in New South Wales, Australian judges, legal practitioners, academics and law students in Australia, members of the public, and the members of the Singapore Academy of Law. The range of audiences means that the papers contain differing amounts of introductory material and assumed knowledge depending on their target audience. While some papers were delivered to experienced lawyers and judges on whose part a reasonable level of knowledge on the relevant topic could be assumed, others were not, and the resulting paper could easily be appreciated by non-lawyers, or lawyers unfamiliar with the Australian legal tradition. For example, 'Australia's Contribution to the Common Law' was an address given to the Singapore Academy of Law on 20 September 2007. In it, Mr Gleeson highlighted particular High Court decisions in areas of importance in criminal law, equity, contract, tort and administrative law, where the Court could be seen to be 'acting sometimes creatively and sometimes traditionally, sometimes boldly and sometimes cautiously, but in all cases consistently in the application of a judicial method … in the mainstream of the common law tradition'.[2] That paper traverses years of the High Court's body of work across many areas of law that would be of interest to those new to Australian law as well as Australian lawyers interested in a summary of significant matters in Australian jurisprudence.

Each paper addresses the issues with which it is concerned in depth, yet concisely, and in an entertaining style. In 'The Centenary of the High Court: Lessons from History', Mr Gleeson described a judgment of Sir Samuel Griffith, then chief justice, in *Baxter v Commissioner of Taxation* (NSW) (1907) 4 CLR 1087 as being 'the most vitriolic judgment in the Commonwealth Law Reports'.[3] Elsewhere,[4] in addressing aspects of judicial style, Mr Gleeson referred to a letter from Professor Harrison Moore to Andrew Inglis Clark written in 1906, in which Professor Moore complained that during three and a half days of addressing the High Court, counsel 'never got a clear five minutes speaking', due to judicial intervention. Mr Gleeson stated in his paper (which was delivered in 2003, during his tenure as chief justice of the High Court) 'No counsel would be given three and a half days now, and a clear five minutes speaking would only happen if all the Justices walked off the Bench'.[5]

This book is an indispensable resource for Australian lawyers, particularly barristers, and will also be welcomed by those with an interest in Australian legal history or the judiciary.

In 'A Changing Judiciary', an address delivered to the Judicial Conference of Australia Colloquium, Uluru, on 7 April 2001, Mr Gleeson emphasised the importance of institutions having a 'corporate memory' to safeguard against error in declaring an existing state of affairs essential or fundamental without adequate knowledge of what has occurred in the past, or what occurs in other places. He stated:[6]

> People may be surprised to learn that what they regard as an indispensable part of the natural order of things is, in truth, a recent development, or may be quite different from the way things are done, by respectable people, elsewhere. They may be alarmed by aspects of current practice which are not really new, but are simply a response to problems that have been around for a long time.

Given that the earliest of these papers was delivered 38 years ago, and many of the papers contain a careful recitation of the historical and legal development of the relevant topic, the book in and of itself will contribute to the safeguarding of a collective memory in respect of the issues with which it is concerned.

This book is an indispensable resource for Australian lawyers, particularly barristers, and will also be welcomed by those with an interest in Australian legal history or the judiciary.

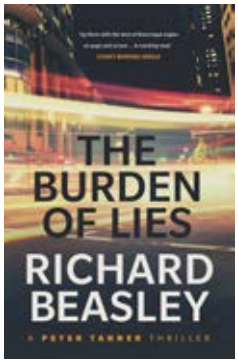
Reviewed by Victoria Brigden

ENDNOTES

1 [1932] AC 562.
2 *Advocacy and Judging: Selected Papers of Murray Gleeson* at 101.
3 Id at 133.
4 'The Centenary of the High Court: Lessons from History', in *Advocacy and Judging: Selected Papers of Murray Gleeson* at 132.
5 Id at 145.
6 Id at 53.

The Burden of Lies

A Peter Tanner Thriller
By Richard Beasley | Simon & Schuster | 2017



We first meet Peter Tanner, the barrister protagonist in Richard Beasley's *The Burden of Lies*, in the Downing Centre, where he is defending a racist. Tanner is a senior junior at the criminal bar and racial vilification, we learn, is not his bread and butter. Instead, he prefers 'not to get out of bed unless blood had been spilt'. Yet while Tanner proudly makes a living defending the low-lifes of Sydney, his sense of moral outrage at the crimes his clients commit is keenly felt. This much is made clear when Tanner asks the magistrate hearing the racial vilification charge to 'add a couple of zeros' to the $550 fine his client receives for spray-painting a racial slur on the front wall of an Islamic primary school. And clearer still when in conference later that day with a different client – a 'hedgefund sociopath' who was not, to Tanner's mind, showing sufficient remorse for his actions – Tanner smashes the client's smartphone to smithereens, using a cricket bat. It would seem that Tanner is struggling not only with his clients' choices but also some of his own. The (thrilling) backstory to some of these choices can be found in the first book of this series, *Cyanide Games*, but it is not necessary to read it to know that Tanner is more than a little bit broken and badly in need of some time off. However, in the fine tradition of the bar, rather than take the year off that his shrink has urged upon him, Tanner throws himself into his next big brief, a juicy murder trial defending a property developer charged with killing her banker. Of the trial, Beasley writes:

> The victim was an ex-high-flying banker who did nearly six years for coke distribution. He was not long out of prison when someone had fragmented his kneecaps to bits of bloody gravel and then removed the back of his head with a close-range shot. The accused was an attractive and once successful businesswoman in a man's game who'd been ruined by the dead guy and the financial leviathan he'd once worked for. There was a young hitman, and another