Interview with The Honourable Chief Judge Raymond Wyant *

BRYAN P. SCHWARTZ, DARCY L. MACPHERSON

Bryan Schwartz (BPS): Tell us whatever you'd like to tell us about your early life. Where did you grow up? What brought you to university? What brought you to journalism?

Chief Judge Raymond Wyant (CJRW): I see the first question is "Where did I grow up?" I didn't grow up in Manitoba. I was born in England. My family moved to Chicago for a while, and then to Saskatoon. So, I call Saskatoon my boyhood home; that's where I grew up, that's where I went to high school and, in fact, started university. To be honest with you, I was never going to be a lawyer. I was always destined to be a doctor. My dad was a doctor. He was Head of the Department of Anesthesia in Saskatoon, and he always told me that's what my future was. So, until grade 12, I grew up without thinking about doing anything else in my life other than I was going to be a doctor. I don't think that that they do this anymore, but back in my

* Interview conducted in two parts by Bryan P. Schwartz and Darcy MacPherson on August 3rd and 16th, 2022. The Honourable Raymond Wyant is the former Chief Judge of the Provincial Court of Manitoba. He was appointed as a Judge of the Provincial Court of Manitoba in 1998 and appointed for a seven-year term as Chief Judge in 2002. Wyant holds a Bachelor of Laws degree from the University of Manitoba.

Before being appointed to the Bench, Wyant worked both as a defence lawyer, a Crown attorney and served as Acting Deputy Director of Prosecutions on several occasions. He served on the University of Winnipeg Board of Regents for almost a decade, from 1992 to 2002, and was Chair of the Board from 2000 to 2002. He actively served on every standing committee of the Board. He led a team that won the 2006 United Nations Public Service Award for Improving Delivery of Service for leading an innovative, coordinated approach to processing domestic-violence cases that earned national and international attention. He is also a continuous community volunteer, having coached and managed neighbourhood softball, ringette, soccer, and hockey teams for many years. He was designated a Senior Judge of the Provincial Court on 16 September 2014 and is also a Deputy Judge of Yukon Territorial Court.

day, the last [20th] century, they used to have guidance counsellors. I don't know if any of you guys ever had guidance counsellors. These were the people who were going to tell you what you were going to be when you grew up. We used to have to write national aptitude tests[1] when we were in grade 12. So, I wrote the national aptitude tests, and afterwards, the guidance counsellor called me into his office and asked me if I had any career plans. I said, "Yeah, I'm going to be a doctor." "No, you're not going to be a doctor." "Oh, how come?" I said. He said, "You don't have the aptitude to be a doctor, you scored in the top 1 percentile of mathematicians, so you're going to be an accountant or an architect." And I said, "I don't want to be an accountant or an architect." He said, "Well, that's really your only talent, in mathematics, so give up this dream of medical school and pick between being an accountant or an architect. You could be an engineer, maybe, but that's what you're designed for." It messed me up, because I had a complete career plan. So, after grade 12, I decided I was going to bum around England and Europe for a while. This was back in the 60's, which was during the Iron Curtain.[2] This is probably getting way far afield already and you're probably deciding you're going to end the interview right now, but anyway, I bummed around Europe, went behind the Iron Curtain: East Berlin, East Germany, Czechoslovakia while the Red Army was occupying Wenceslas Square,[3] trying to figure out what I was going to be when I grew up. I decided, after all of that, that I was going to have a career in politics and political science. I came back and started my degree. I was doing a master's in political science at the University of Saskatchewan[4], with the intent of—if I qualified—getting my doctorate and seeing where things went. Then

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1 An aptitude test is a detailed questionnaire given to high-school students. The responses are collated to determine in which career(s) a given student might be successful.

2 The Iron Curtain refers to the political, military and ideological barrier erected by the Soviet Union after World War II to seal off itself and its eastern and central European allies from open contact with the West and other non-communist areas.

3 Wenceslas Square is a major public square in the city of Prague. The country in which Prague is located has changes its name over the decades. In the period referred to Judge Wyant herein, the country was known as Czechoslovakia (1945-1992). It later split into the Czech Republic (where Prague in located) and Slovakia (1993-2016). The Czech Republic later renamed itself Czechia as of 17 May 2016.

4 The University of Saskatchewan is a Canadian public research university founded in 1907. It is located in Saskatoon, Saskatchewan, Canada.

suddenly, we were going to have a baby. I was sitting in graduate school, and I don't know what graduate school was like when you guys were going, but for me, it was like maybe one class a week where we drank sherry and talked about world politics for three hours and then I worked on my thesis. And I thought, "I better get a job," so I wrote the LSAT.[5] I didn't realize you could study for it, and I didn't even bring a pencil for it, but I wrote the LSAT. I thought if I can't be a doctor, I guess I should be a lawyer, but I didn't have any grand designs or passion to be a lawyer. After that, I applied to about four different law schools and got in. I didn't apply to Saskatchewan because at that point in time I thought, "I have to get out of town. I've been here at the same university for a while. I need to go somewhere else." My money took me as far as Winnipeg. That's the reason we moved to Winnipeg, because it wasn't that far from Saskatoon. It turned out that we had twins, and they were three months old when we moved. So, we moved here to Winnipeg with no money and no job, and I went to law school here.

BPS: Let me just take you back to what brings you to law. You know, there's a joke, I don't know if you ever heard of it but it's that "the definition of a law student is a grad student who can't do math." You can do math! So, something that brings people to law—one would be an interest in politics, which you either had or intensified by your trip to eastern Europe and the other one is, lawyers tend to be word people. And that's what we do, we mostly push words around. Was there something about the verbal nature of the profession that attracted you?

CJRW: Absolutely not. In fact, I was the student that sat in the back of every class and never said a word. When the professor was calling on you, whether it was undergrad—couldn't avoid it in grad school—but undergrad or in law school, I was the one who thought, "Geez, I hope they don't ask me a question because everyone else in this class is smarter than me and they can talk well." So, I didn't speak in public. I didn't even speak in front of my classmates because I thought that as soon as I open my mouth, they're going to find out that I don't belong here. So, you may find it surprising that I ended up in litigation considering the fact that, I wasn't—certainly from that

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5 The Law School Admission Test (LSAT) is a standardized test administered by the Law School Admission Council (LSAC) for prospective law-school candidates. The purpose of the LSAT is to aid in predicting student success in law school.

perspective—the kind of person that would speak, unless I had to. Although, certainly in journalism, the written word was an easier thing for me.

BPS: In those days, it just seems quaint now, but my understanding was that in the time you came to law school, you had to do the LSAT and so on, but you didn't have to have a 3.9 or 4.2 GPA. So, in some ways, there was more diversity; people had different experiences, who didn't necessarily focus on courses as they get the good grades and all that stuff. There was a wider diversity of people coming to law school. It wasn't as narrowly elitist as it is now. Is that right?

CJRW: I think so. For certain, the people that I went to law school with came from an incredible wide diversity of backgrounds; some older, some younger. I had been around for a while, so I was older than some of my classmates. I think in that sense, you're right. The nature of the students was certainly different, at least the ones I went to school with, for sure.

BPS: Having done many oral histories, most people's lives are, "one thing leads to another." Often, people have a plan, "I always wanted to be a family lawyer" but then they ended up practicing commercial real estate in their first job and they end up doing that their whole life. Not that it worked out badly, but a lot of serendipity tends to lead people to choices. Was there something about law school, that you experienced there, that lead you to eventually go litigation, or did you have some kind of law you wanted to do when you started?

CJRW: I didn't even think about being a lawyer, frankly. I was just going to get through law school. But you know what it was—I don't know if you remember Gordie Dilts.[6]

BPS: Oh, yes!

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[6] Charles Gordon Dilts held a Bachelor of Arts degree from the University of Manitoba then served three years as a Flying Officer during the Second World War. He held a Bachelor of Laws (LLB) degree from the University of Manitoba, and became a civil litigator with E. K. Williams, later becoming a partner in 1953. He was made a Queen's Counsel in 1963. He left private law practice in 1969 and became a full-time member of the academic staff of Robson Hall, Faculty of Law at the University of Manitoba. He filled this role for 18 years.

CJRW: Gordie Dilts taught Litigation[7] in second year. I've had a lot of unbelievable professors in law school, but Gordie Dilts was the one that ultimately turned things around for me because I got into litigation, and then into moot court and the Solomon Greenberg Moot Court Competition.[8] So, this kid that didn't want to talk in class, ended up being turned on by litigation. I credit Gordie with that. The well-known author, Guy Gavriel Kay,[9] and I, in the Solomon Greenberg, were the two battling it out. He won the Solomon Greenberg, and I was the runner-up. Then, the two of us combined to go to the University of Victoria[10] and we won the MacIntyre Cup[11] for U of M[12]. I give all credit to Gordie Dilts. That course is what turned me onto advocacy and litigation.

BPS: I knew Gordie when I was a very young prof, he was a remarkable individual. He came from the older generation of litigation; they were colourful figures, charismatic, outspoken, extroverts. Gordie won one of our highest teaching awards university wide. He was a fighter pilot during the

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7 The equivalent course is now called Introduction to Advocacy.

8 The Solomon Greenberg Trial Moot Competition is the internal moot competition in second year. It leads to the Western Trial Moot Competition (also known as the "Westerns" or the "MacIntyre Cup", the latter of which is the trophy awarded to the winner of this competition.. At the time under discussion, this was prior to the creation of the Sopinka Cup. Now, the top two teams from the Western Trial Moot Competition continue on to the Sopinka Cup, a national trial moot competition.

The Solomon Greenberg was, at the time discussed here, the highest competition given to students in the law school. There was no appellate mooting program at the time. If a student wanted to do any mooting at the time, the Solomon Greenberg was the only choice. Thus, the best students were in the Solomon Greenberg competition. The best two student advocates went onto the Westerns, and winning the Westerns was the pinnacle of advocacy at the time.

9 Guy Gavriel Kay is a Canadian writer of fantasy fiction. He is an international bestselling author of fourteen previous novels. He has been awarded the International Goliardos Prize for his work in the literature of the fantastic and won the World Fantasy Award for *Ysabel* in 2008. He holds a Bachelor of Arts degree in philosophy from the University of Manitoba, and a Bachelor of Laws degree from the University of Toronto.

10 The University of Victoria is a public research university located in the municipalities of Oak Bay and Saanich, British Columbia, Canada.

11 The cup is named for Dr. Malcolm MacIntyre, a well-loved and respected professor who formerly taught at UBC's Faculty of Law.

12 The University of Manitoba (U of M) Is a public research university in Winnipeg, Manitoba, Canada. Founded in 1877, it is the first university of Western Canada.

Second World War.[13] I asked him about it, but he never wanted to talk about it. I think it was very traumatic. Just tells you something about life; people think of Gordie as this incredible litigator, but they don't realize he was one of the people who put his life on the line to save the world. He never talked about those experiences with you, did he?

CJRW: He did a little bit. He and I personally got close through the MacIntyre Cup. I recall when we went out and had a few drinks after we won, he talked a little bit about all of that. I remember Gordie, he did a lecture with a cigarette — because we could all smoke in the law school back then — I picked up smoking because I couldn't afford to eat while I was bumming around Europe. He'd always be doing a lecture with a cigarette hanging out, we'd all be smoking in the class and butting out our cigarettes on the floor in the Moot Court room. He talked a little bit about it, but he wasn't the only one; there was other profs we had, Keith Turner,[14] Dale Gibson,[15] and people like that. Whether you like them or not, or like the subject or not, they were rigorous in holding your feet to the fire. I would say it wasn't a kinder law school back in the day as it is now. Where it's now probably a little more student-focused—maybe a bit too student-focused—back then, it was kind of sink or swim. But I learnt a tremendous amount from all the profs I had, and it was a great experience. Honestly, I was kind of sad when my third year was over. I know normally now, students can't wait for third year, they've got one foot out the door already because they can't wait and want to go practice law. Quite frankly, I was sad when it was all over because it was just a tremendous experience.

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13 The Second World War (or World War II) was a global conflict between two alliances: the Allies (France, Great Britain, United States) and the Axis (Germany, Italy, Japan) powers, from 1939 to 1945.

14 Keith Turner graduated from the Manitoba Law School in 1950. He practiced law in Winnipeg, was made a Queen's Counsel in 1969, and served as President of the Law Society of Manitoba from 1981 to 1982. He was a Professor in the Faculty of Law of the University of Manitoba, and associate counsel to the firm of Pitblado and Hoskin.

15 Dale Gibson was a Professor of Law at the Manitoba Law School and University of Manitoba from 1959 to 1991, and later also at the University of Alberta in the capacity of Belzberg Professor of Constitutional Studies. He practiced law in Manitoba from 1959 to 1991 and in Alberta from 1991 to 2008.

Darcy MacPherson (DLM): I want to go back for just minute to your days as a reporter because I've heard some interesting things that you did. Were you a reporter during law school?

CJRW: Yes.

DLM: Okay, so that was your way of supporting yourself and your young family then.

CJRW: It was pretty much the only money that I made. I also worked for the Manitoba Law Reform Commission[16] for one summer as well. I worked under Frank Muldoon,[17] who you may remember was the Chair of the Manitoba Law Reform Commission.

DLM: Before Cliff Edwards.[18]

CJRW: Before Cliff Edwards. Right.

DLM: And Frank Muldoon went onto be a federal court judge, right?

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16 The Manitoba Law Reform Commission is an independent law reform agency created in 1970. Its role is to improve, modernize and reform law and administration of justice in Manitoba.

17 Francis Creighton "Frank" Muldoon practiced law for 14 years and served as a Bencher of the Law Society of Manitoba. He was a Liberal candidate in the 1959, 1966 and 1969 provincial general elections, but was defeated each time. He was appointed Chairman of the Manitoba Law Reform Commission in 1970 and, seven years later, was named Vice-President, and later, President of the Law Reform Commission of Canada. He was made a Queen's Counsel in 1971. In 1983, he became a judge of the Federal Court of Canada.

18 Clifford H.C. Edwards was appointed a Professor of the Manitoba Law School in 1958, and Dean of the Manitoba Law School in 1964, leading the transformation of legal education in Manitoba, which saw the adoption of a full-time Bachelor of Laws program, a new curriculum, the creation of the University of Manitoba Faculty of Law, the recruitment of new faculty, the development of the E.K. William Library and the building of Robson Hall. Dean Edwards served terms as President of the Canadian Association of Law Teachers, Chair of what is now the Council of Canadian Law Deans, and member of the executive committee of the Commonwealth Legal Education Association. He also served as a Manitoba member of the Canadian Uniform Law Commission, and as a director of the Federation of Law Reform Agencies of Canada.

CJRW: He did.

BPS: One thing you're telling me is you were good at multi-tasking, right? You must've just had a natural talent for logistic organization to do all that at the same time while raising a family.

CJRW: Yes, I don't know. I don't consider myself a great multi-tasker.

BPS: It's just that you eventually became a Chief Judge, which I imagine has all the administrative burdens of being a Provincial Court judge — which, from my point of view looked very daunting, scheduling everything, and so on and so forth — and then managing the whole system. Some people have a talent or some satisfaction in putting together all the moving parts.

CJRW: I'm best if I'm busy. I'm best if I'm on the verge of being overwhelmed. Maybe it's called organized confusion, I'm not sure, but I don't do well if I don't have a lot of things on my plate. It probably sharpens your priorities and gives you the opportunity to make quick decisions and focus your thinking. I don't know. It was tough. That's why sometimes I'm a little less sympathetic to students that tell us, as teachers, that they've got a lot of things on their plate, or this and that. I mean, I had three-month-old twins, my wife didn't have a job, I didn't have a job, we didn't have a lot of money, and I was going to law school, trying to work when I could, and I never found it overwhelming, I never had to go to a prof and say, "I just can't handle this" or ask for special consideration. I had to write exams in those three hours in the Common Room[19] just like anyone else, without any special consideration.

BPS: Unquestionably, there's been a cultural shift.

CJRW: I'm not saying it's necessarily bad, but it was very much a sink or swim thing.

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[19] The "Common Room" at a law school typically refers to a shared space or lounge area where students can gather, study, or relax. During exams, law schools use such spaces as exam venues.

BPS: People, in the profession, now will ask an articling student, "We got a file that just came in, we've got to turn it around by Monday," and they'll respond, "I'm sorry, I already scheduled my canoe trip". It's not even up for debate, right? I'm not saying which generation is right or wrong, but it's my perception that 'work-life balance' was a phrase you wouldn't have heard in your generation. If you were articling and said "Sorry, I have to spend some quality family time," people would've looked at you wrong.

CJRW: You're right. I think the expectation of the law firms were, particularly if you were articling, that you work for 24 hours a day, seven days a week and you didn't have a private life. You had to earn that through your articles and as a young lawyer. I'm not necessarily saying that was good, because I think there was a lack of work-life balance back then, but anyway.

BPS: You were a journalist. You were a reporter/journalist, right?

CJRW: Right.

BPS: I think the widely understood convention of your job in those days was that a reporter is assembling facts and viewpoints and not interjecting their own perspective and politics into the rapportage, which may sound quaint now, but that was my recollection of journalistic ethos of your time. Did you find that the experience of interviewing people ultimately helped you in your legal practice?

CJRW: Yes, I think they helped me in a number of ways. Funny enough, it helped me marshal an argument because you're supposed to write to the level of a grade five reader, that's what we were told, and studies showed that after the first paragraph you lost a great percentage of your readership. So, unless you could engage a reader in whatever you were writing, you lost them. Quite frankly, I learned how to write succinctly, and try to write in a way that would grab the reader and hold the reader. As easy as that sounds, it's quite difficult to do that.

BPS: I haven't gone to "judges' school",[20] but when I read judgments now, that's basically what they're trying to teach new judges, "Don't hold them in

[20] New federal and provincial judges are sent to one or more educational seminars early

suspense. Tell them what the story is about. Give them the big picture." And you're writing to be read — if you're more succinct, than if you're more voluminous in your output. Sounds like your journalistic training steered you in that direction, which I think is now the ethos that's officially taught in judicial education. Does that sound about right?

CJRW: It is. Oftentimes, the people who are teaching judges to formulate written or oral judgments aren't lawyers or judges; they are journalists or former journalists, and English profs. Those are the people who are teaching people how to write, how to organize your thoughts, and as you said, be readable and intelligible.

BPS: I'll just jump ahead and then we'll go back chronologically. When you're writing as a judge — because when I talk to people about writing, I always say that the first question you must ask is, "Whom are you writing for? Are you writing for the litigants? Are you writing for a potential appellate court? Are you writing so that the general public will actually have a shot at understanding what you're doing here? Were you writing so that an ordinary person could pick up your material and read it or were there constraints in judging and you were thinking more that 'the Court of Appeal has to know I ticked off the boxes.' Who did you understand your audience to be?"

CJRW: All of them were the audience, but sometimes, some more than others. For example, if you were doing a judgment on something that had particular public notoriety and it had been in the paper, that you know a lot of people were paying close attention to — and I'm only speaking for myself — I would write for the public first on that one, to hopefully make it as understandable and commonsense for the public. That doesn't mean I wasn't necessarily writing for the Court of Appeal or for the litigants, or even for other judges. My focus would be, "the public really has to understand what I'm trying to say." If you're writing a legal argument, you're making a decision on a *Charter*[21] motion for example, which probably has less impact or less interest for the public, you're probably writing more for

in their judicial tenure to assess and help with, among other things, judicial writing. This is referred to as "judges' school" by some.

21 *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule "B" to the *Canada Act* (UK), 1982, c 11

the Court of Appeal and for the parties than anyone else. But I think it's a bit of a balance. As I said, I think it depends on the case. But really, most times you're writing for all of them and always for the parties.

BPS: I don't think the economics of journalism support this the way they used to, but my understanding is that in your day, you wrote something, and you'd have stern editors giving you feedback. Kind of like being an articling student, you were constantly getting feedback on how you were writing, whether you were grabbing attention, whether you were readable, whether anything was ambiguous, whether you were being balance, and so on and so forth. Editors were pretty tough, but that was useful for journalists, many character-building experiences. Not always clever, but probably quite helpful in the long run.

CJRW: Oh yes, when you used to write copy to begin with, and I'd get what I thought was a beautiful story back, just hacked to pieces with red marks and crossed lines and stuff like that. It was very educational, quite frankly, and the longer you did it, the less you saw that kind of editorializing or editing, which meant you were getting it; you were understanding what they were trying to do. It was great. Back in my day, we were all on Carleton Street in the *Free Press*[22] building, and the newsroom was full of manual typewriters and copying machines. It was a noisy, exciting, smoke-filled place. And now, most reporters are off in the field with their computers. I wouldn't think it was quite as exciting these days.

BPS: The thing about journalism that would be compatible with legal practice and judging is the demands of meeting a deadline. If anybody would understand that early in their career, it would probably be a journalist; "I need more time," "That's too bad, we've got to get this thing by such and such a time, and wrap it up. We've got to do what we can with the resources we have." This is a very valuable skill in the actual practice of law.

CJRW: Yes, the presses were rolling at a certain time and that was the end of that.

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[22] The *Winnipeg Free Press* is a daily newspaper in Winnipeg.

DLM: I understood, that you as a reporter, as a journalist, did something very unusual related to the law, in that you spent the night in jail.

CJRW: Three nights.

DLM: Three nights in jail! How did that come about? Why did you want to do it?

CJRW: I wanted to do it because it was my editor's suggestion. They wanted to send a reporter in undercover to Headingly Jail[23] to write about the life of an inmate. There's no way this would ever happen today. What they did was the editor negotiated with the Deputy Minister of Justice at the time, to have me go in undercover as an inmate. The only people that knew I was going in were my editor, the Deputy Minister of Justice, and the Warden of Headingly Jail. Oh, and my family. It was set up that I was booked in as an inmate: taken there, handcuffed, subject to the protocol of a new inmate, which included some very invasive searches of my body, to being issued prison clothing and having to carry my mattress up the stairs to the top range that I was on, being issued a cell, and there I was.

DLM: What was that like?

CJRW: It was terrible [Laughs]. In fact, the first evening I was in Block 8, which is up in the older part of the Headingly Jail, and it housed a certain number of individual cells, which they now double bunk people in. I was accosted by several inmates who grabbed me by the shirt, held me up against the wall, and accused me of being a narc, accused me of being an undercover police officer. I was scared shitless. So, I then confessed to these guys that I wasn't a cop, but I was a reporter. They then suggested that they were going to "burn me out" perhaps overnight. Now, what that involved was they literally take a match, reach around the bars of a cell, and set your mattress on fire. So, the first night, I sat up against the back of my bunk with my mattress wrapped around me so they wouldn't burn me out. It was humiliating stuff, to have no privacy, to have no watch, to have your life's routine mandated by bell ringing for meals, for lights out etc. It was quite

[23] Headingly Correctional Centre in the Rural Municipality of Headingly, Manitoba, Canada is a combination of a minimum-, medium- and maximum-security correctional facility.

the interesting experience. Some of the inmates found out why I was there because I told them, but not every one of them. I was there for three days, and I had nightmares for months afterwards about the experience.

DLM: So, you wouldn't recommend doing it? [Laughs].

CJRW: No. [Laughs]. But a funny story, later after I graduated from law school and I was articling doing criminal law, my principal was Hersh Wolch.[24] Hersh notoriously always double-booked himself for cases. And Bryan, you'll remember Hersh. He discovered at 1:30 in the afternoon one day that he had two different trials, and one of them was a guy in custody, charged with some theft offenses and possessed goods charges at the Public Safety Building, because back then, that's where the Remand Centre was, the Public Safety Building. There were four courtrooms that were used for trials. I went running down to the Public Safety Building to do a trial on a guy by the name of R. S. I hadn't interviewed him, all I had was the file. I got to see him about ten minutes to two o'clock, before the trial began. He was brought down from the top floor of the Remand Centre in behind the courtroom. I went to see him, and I recognized him as one of the guys from Headingly Jail when I was there. And he saw me—and I knew him as Smiley. First thing he said, when he saw me, "Hey man, how you doing? When did you get out?" My response was, "Get out? I'm your lawyer." Well, the guy thought I was a con, he didn't believe it. He went completely crazy, refused to see me, and the trial had to be adjourned. He just thought I was one of his former inmates.

DLM: You obviously did your job well if people took you seriously.

BPS: It seems to mean that having that experience was the kind of experience that almost every Provincial Court Judge should have. I mean, a

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[24] Hersh Wolch was a Crown Prosecutor for the Province of Manitoba from 1965 to 1971 and for the Federal Department of Justice from 1971 to 1973. Wolch was the Director of the Bar Admissions Course for Manitoba as well as the Director of Education for the Law Society of Manitoba. He was a past president of the Manitoba Trial Lawyers' Association as well as a board member of the Canadian Association of Criminal Defence Lawyers and a Member of the International Society for was the Reform of Criminal Law. Wolch was also a Fellow of the American College of Trial Lawyers and a Member of the International Society of Barristers. Late in his career, he would move to Calgary and continue his well-earned reputation in law.

lot of what they do is sentencing. My guess is it seems pretty abstract, right? The Court of Appeal sets a range based on a bunch of factors. But you had the experience of knowing how long a minute in custody could be. I'm wondering whether that had an enduring impact on your practice as a prosecutor and then ultimately as a judge.

CJRW: Absolutely, for sure. Now, the National Judicial Institute[25] has a program for judges, which is optional, called "Judges to Jail." You can sign up for this course and they'll take you on a tour of a jail, whether it's a provincial institution or federal institution so you can see life in a jail. I can tell you though, it's a bit sanitized compared to being there. You're being subjected to what the jail authorities want you to see, or for lack of a better term, I shouldn't use propaganda, but I'll use propaganda, they want to show you. Having the firsthand experience, it was unfiltered. I think it had a tremendous effect on me. And to this day, I think it's fair to say that you remember that experience in jail when you're thinking about the effect of sending someone to jail. It's easy to say, "Yeah, you're going to jail for … two weeks, or six months, or ten years," but the effect on an individual can obviously be profound. Of course, there's been lots of studies on that. Interestingly enough, that story was written back in 1977, I think. I have my mugshot here; do you want to see it? [Retrieves picture from desk].

DLM: Absolutely.

CJRW: That's my mugshot. I got a copy of my mugshot. So, the *Free Press* ran a story, it was two successive Saturdays, printed my mugshot, I've got it framed here on the wall. It says, "Headingly: A Powderkeg Ready to Blow", which it did, but about 20 years after I was there. On the 40th anniversary of this story, I was contacted by Paul Samyn,[26] who was the Editor of the *Free Press*, and Paul asked me if I would be interested in writing a follow up to the story that I wrote in 1977 — this is 2017 — now having the experience of being a lawyer and a judge, on how corrections had changed or how the inmate population had changed. I jumped at the opportunity and said, "I'd love to do that." Of course, I can't go back in undercover because the type

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25 The National Judicial Institute is an independent, judge-led organization that provides educational programs and resources to Canada's judges.

26 Paul Samyn is an editor for the Winnipeg Free Press.

of inmates in a provincial jail now are completely different to when I was there. Back then, there were a lot of property offenders; there weren't gangs as we know them now. There wasn't the kind of violence you see now. It's just a different, more dangerous place now. But he wanted me to go back, tour around, and write a story, and I said I'd be happy to do it. So, he wrote to Gord Mackintosh,[27] who was the A.G. at the time. He said, "We want to send in Ray Wyant, along with one of our reporters and a photographer, so he can go around and give us his impression on how things have changed or are different after 40 years." I wasn't going to be writing the story, I would be making the observations and a reporter and a photographer would be doing the work. Anyway, I guess the things went back and forth and finally Paul got a hold of me and said, "Ray, I'm hitting a brick wall. They're not allowing us to do this. Do you know Gord very well? Do you think you could maybe persuade him?" I said, "I know Gord really well." So, I called up his office and said I'd like to go see him. And Gord and I had been friends since his days as Minister. So, I went to see him and said, "Gord, I understand that there's a problem. The *Free Press* wants me to go do a story." He says, "Ray, you wouldn't believe it. I don't mind, I think it's a great story, but a lot of people don't want it to happen. They're absolutely opposed to it. No way a reporter is coming in or me either. I decided, "I'm going to find a way to do this." I don't know why I didn't look up the legislation to begin with, but I looked up the legislation in terms of their ability to say "no" to the public coming in. There is a section in the provincial legislation that says that members of the public "may" be allowed to visit a provincial institution, subject to the regulations and rules of the institution.[28] But, it's up to the administration of the institution to decide.[29] But it also said MLAs and judges, as a matter of right, can attend, at any time.[30] So, I went, "Oh, shit. I should've read this before". So, I talked to Paul Samyn and said, "I'm going to request that I go as a judge, they can't say no." So, they had to say, "yes," but they said no reporter was allowed to come with me, and no photographer. In fact, they stopped the *Free Press* at the gate, because I had

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27 Gord Mackintosh served as a Member of the Legislative Assembly of Manitoba for more than 20 years. He served in a number of Cabinet posts, including as the Minister of Justice and Attorney General.

28 *The Correctional Services Act*, CCSM c C230

29 *Ibid*, s-s 49(2).

30 *Ibid*, s-s 49(7).

a photographer with me. They wouldn't allow them to go past the gate to go into the institution. So then, I'm ushered in, and I'm meeting with one of the senior people in Corrections and the Warden in their boardroom. And we start to talk, I said, "I hope you don't mind. I'm going to take out my recorder, I'm going to record this conversation." They said, "No recording. No pen and paper. You can't take anything down." So after about an hour of chatting, I said, "Well, I want to go see the jail." "Well, we don't think that's a good idea." "No, I want to go walk around." They couldn't say no, but I had no recorder and no pen and paper. I'm a man of very few talents, you should know that, and I mean that sincerely. I have a shitty long-term memory, but I have a very, very acute short-term memory. That's the only way I got through law school, because I could memorize everything 24 hours before the exam, and I'd forget it 24 hours after the exam. Anyway, I walked around, and I make mental notes of everything. Everything. I asked to go see where I stayed. I went and saw the range and cell I stayed in and toured the jail. What happened was, instead of the *Free Press* writing the story, I wrote the story. And I wrote a whole story, a feature story 40 years after, even though I was still a judge, about my experience in Headingly Jail. We juxtaposed stuff from 40 years earlier. A lot of it was exceptionally complimentary, as it should be, because the job that Correction Officers do, and some of the programs they have, are amazing. Some of the programs are cutting-edge. So it wasn't that I was going to dump all over them, quite the contrary, actually. It was a very complimentary thing. Although, the way they treated me in doing all of this made it into the press which, I'm led to understand, angered a number of people there

BPS: That's one of the things we want to come back to. By temperament, by character, you're prepared to do what you think ought to be done in the circumstances even though it's going to cost you popularity and criticism. When people say, "I don't care what they say about me," no one actually feels that. It takes an unusual temperament to just call them as you see them, knowing that some people are going to criticize you, it may be career-impacting, and still do it. It sounds to me that that is kind of your nature. The story you're telling, your life was kind of doing it your way.

CJRW: I think some people would say it's not very bright. And some people would say, with some truth, that it can be career-limiting. I think it's true, I made some controversial decisions that people, the public, haven't liked.

But I take the view that in this job, it's not a popularity contest. I'm not suggesting I was always right, because sometimes you're just wrong. But you try to do the best you can, and it's got to be "damn the torpedoes" because if you hear and react to the footsteps, then it seems to me you've corrupted the whole system of justice. If you're doing it because you don't want to be criticized by the people or you don't want to lose friendships then you shouldn't do the job. You must call them as you see them. And I do worry, Bryan — and I'll say this without giving any specific examples, and I could give you — I do worry sometimes that some people hear the footsteps and that it may affect the job that they do. You can't do that. I've lost friends in this job. I recall going to a dinner party where people attacked me over a decision that I'd made, because that's what they'd read about in the paper. What are you going to do? That's the nature of the game.

BPS: That's the tricky thing I want to explore some more. It seems to me that the challenge of a judge being faithful to what they think is justice is harder than anything, with some kind of paradox. We have all these institutional assurances now, judicial commissions on Valente, all kinds of training and all kinds of things we didn't have. On the other hand, it seems to me there are social pressures judges didn't have. We have it in the academy. It's harder than ever to speak your mind as an academic, which is supposed to be what we're doing. I just want to explore some of the "footsteps" that you can hear. One footstep could be whatever reviewing court is applicable in this case. I remember once administrative, somebody who did a lot of labour arbitration steps, say, "well, if the judiciary reviewed me and told me I was wrong, I can live with that. But if you told me I was unreasonable, that hurts my feelings." As a provincial judge, how sensitive — you can talk about yourself or in general — are judges to, "well there's someone always standing over my shoulder who's going to review this and it's really embarrassing to get reversed and told that you erred." Is that something that people can put out of their minds, or are you always writing to the examiner, "Don't reverse me"? How much of an issue is that in the actual practice?

CJRW: I can't speak for other people. I can say that certainly when a decision is corrected by an appellate court, it's hard not to take that a little personally. The longer you're in the job, the less personal you take it. A lot depends on the reason why it may be overturned, right? But yes, I think

there's always a little bit of personal stuff. At the end of the day, you've got to go, "It's not about me. That's what they've said. They have a different point of view. That's the nature of the game. Move on. Don't start crying about it." I think it's human nature to probably take a correction — even when it's a correction that isn't personally driven — a little personally. We're all like that.

BPS: You must do what you think is just according to the law. If the Court of Appeal or Supreme Court of Canada has a different view, well, let them do their job, but in the meantime, you're doing yours. In terms of journalism and the press, I think there was a thing in the *Winnipeg Sun* …

CJRW: The Eight-Ball Award.[31]

BPS: Yeah! Marvin Garfinkel[32] used to win those. You know that as a judge, the tendency now for people to think is, "this offender did some terrible thing and is not getting jail, just getting probation!" You know the whole story, you know the law, you've got way more information than a reporter can review under time pressure and you may be made to look like an insensitive person. How do you shrug that off?

CJRW: It's hard to shrug it off. The guy who wrote that award, Tom Brodbeck,[33] now a columnist for the *Free Press*, and doesn't do the justice stuff now. I won the Eight-Ball Award twice, I won the Pre-Eight Ball Award once. I never met Tom, he's a nice guy apparently, but for some reason he always seemed to have it in for me. I'd write my annual report as the Chief Judge, and I put in something about the fact that the press needs to be a little more balanced in their reporting, and of course he'd go after me for that. And then he'd regurgitate some of what he thought were my more egregious decisions. It's tough. It's particularly tough when you know what the headline is going to be the next day, but you can't let it affect you. I

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31 The Eight-Ball Award is an award given by the *Winnipeg Sun* to criticize judges for poor decisions and highlight some of the worst perversions of justice in the court system.

32 Marvin Garfinkel was appointed as a Judge of the Provincial Court on December 5, 1979.He was a designated Senior Judge of the Provincial Court on July 31, 2014.

33 Tom Brodbeck is a columnist for the Winnipeg Free Press, joining their news team in 2019. He has been a news reporter and a columnist since the early 1990s, covering city, provincial and federal politics.

remember getting the Eight-Ball Award for a sentencing I did on a manslaughter involving four youths in Gimli[34]. It turned out to be joint recommendations for these four youths. The victim's fiancée was in the courtroom and made an impassioned plea for me not to accept the joint recommendation, which was understandable. And after court was over — it was quite an emotional day, she was with her family and was crying. Once the sentencing was over, I took my robe off, and I went and talked to her. We shared a hug, and I talked to her as a person about my job and what I had to do, but that I understood her pain. Anyway, I ended up being eviscerated in the newspaper, got the Eight-Ball Award about, "another example of Wyant's incompetence," that kind of stuff. About six months later, I got a letter from this lady, who had moved to Edmonton. She told me — and it's one of the treasures I have in my life — about how the conversation I had with her had changed her life and her attitude afterwards. Up to that time, she felt that she had been treated by a very cold and impersonal system, that all the people paid lip service to the pain she was in, but that I seemed to be the only one who understood. She said that because of that conversation, she went into therapy and had really started to turn her life around. She said, "It's all credit to you ... I still don't agree with your decision" [Laughs]. But she wanted me to know I'd had a tremendous effect on her. That was one of the most treasured things I've ever received because, in this business, you don't exactly get letters thanking you.

DLM: Particularly when they don't agree with you [Laughs].

CJRW: Particularly when they don't agree, yeah.

DLM: The Eight-Ball Award, what is that? Why is it named that way?

CJRW: Ron Meyers[35] sentenced a youth on, I don't know, assault with a weapon, or assault causing bodily harm, or maybe an aggravated assault. The

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[34] Gimli is an unincorporated community in the Rural Municipality of Gimli on the west side of Lake Winnipeg in Manitoba, Canada.

[35] The Honourable Ronald Jerome "Ron" Meyers began practising law in 1962, specializing in family law. In 1969, he became Secretary of the Legal Aid Program of the Law Society of Manitoba. He became the first Executive Director of Legal Aid Manitoba

youth had used what was called an "eight ball". It's literally a billiards ball in a sock. So, they put the billiard ball in a sock, and then they used the sock as a weapon to attack people. You can do a lot of damage and a lot of injury with that. Ron Meyers had sentenced a youth, who was charged with using an eight ball, given him some sentence, I think it was probation, I don't recall all the details. As a result of that, The Winnipeg Sun[36] invented the Eight-Ball Award for what it called, "the worst perversions of justice." He would announce this award to any judge, who, in his view, had perverted justice.

DLM: Usually to the lower side, to the benefit of the offender.

CJRW: Of course, always.

BPS: At certain levels, the Supreme Court of Canada judges, there's a fair amount of academic commentary, going in, coming out of a decision. I think there's a responsibility in the academy to keep an eye on what's going on in our own community. My guess is, if you're a judge, that's not a significant audit. We, in the academy, are not writing about what's going on at the Provincial Court level, and that's not a significant factor in gauging reactions. Is that correct?

CJRW: [Nods in the affirmative].

BPS: One of the things that helps us get through is the ability to respond. My understanding is that a judge doesn't really have an ability to respond. If you get blasted by a newspaper story — you can't say, "excuse me but he didn't realize that this was a joint recommendation," or you didn't know. You can't express all kinds of things that you knew and adverted to, expressly or implicitly in your judgment, and you pretty much have to sit there and take it. Is that especially hard?

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when it was formed in 1971. The next year, he was designated a Queen's Counsel. He was appointed a judge of the Manitoba Provincial Court in 1977. He also helped organize the first family-violence court in Canada, in 1990.

36 Tom Brodbeck, "Manitoba Bar Association can't get its facts straight" *Winnipeg Sun* (20 October 2012), online: <https://winnipegsun.com/2012/10/20/manitoba-bar-association-cant-get-its-facts-straight> [perma.cc/3KTK-NVW9].

CJRW: Yes, you're not allowed to respond at all. You must leave it up to others to perhaps respond for you, from time to time. The Bar Association,[37] in egregious cases, may come to the defence of a judge and write something. Usually what happens is that it begets yet a further negative comment from the reporter, because you can't fight someone who buys ink by the barrel. Generally, yeah, you just have to take it.

DLM: Right. Can I go back just for a couple of minutes because I don't want to miss out on something that I've heard you say before, but I wanted to talk to you a bit about your legal career. Most of your legal career was spent involved in criminal law, correct?

CJRW: Right.

DLM: But you did both sides.

CJRW: Yes.

DLM: You started as a defense lawyer[38] and then you went to the Crown,[39] which in my experience, is relatively unusual. Am I right in that?

CJRW: Nowadays, no. Nowadays, I think there's a lot of that transference from the private bar to the Crown's office. In my day, yes, that was unusual. Usually, if there were people transferring, it was the other way around. People would start at the Crown's office, and then they would go to private practice. That's how people like Greg Brodsky,[40] Hersh Wolch,[41] did it.

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37 The Canadian Bar Association (CBA) is the largest professional association for lawyers in Canada. The Manitoba Bar Association is the Manitoba chapter of this organization, and is most likely to respond in the event of a Manitoba being unfairly maligned in the press.

38 In this context, a defense lawyer is a lawyer specializing in the defense of individuals and organizations charged with criminal activity.

39 Crown attorneys represent the Crown and act as prosecutor in proceedings.

40 Greg Brodsky was a criminal defense lawyer, spending more than half a century practicing law.

41 *See supra* note 24 and accompanying text.

They all started as Crown attorneys and then they became defense lawyers. So, to go the other way, back in my day, was very, very unusual.

DLM: Right. I would assume that most people, who start in the defense bar, do that for the reason of defending the little guy against the coercive power of the state, that becomes a bit of an ethos in the private defense bar. Am I right in that?

CJRW: I don't know. I think some people do that. Some people, I think, very much want to defend the little guy against the power of the state, and they have a passion for doing it. And I think for some people, honestly, it's just a job. I'm not sure everyone goes into criminal-defense work because they have a passion for it. Maybe, for some, it's just, "I want to do litigation. This is a job. This is a good job."

BPS: My sense is that it's a tough job to be in criminal defense. It explains some of the flow from the private sector to the Crown. I look very admiringly at the defense bar because it just seems to me the pragmatics are so tough. We don't have a big white-collar crime industry in Manitoba, so there's no economic basis to make a whole lot of money in it. You're mostly dealing with people who don't have many resources, or are on Legal Aid certificates, so the economy is tough. You must look after your own administrative support. And when you're doing 300 cases a year, that's a challenge. You have to run the office. Sometimes people are mad at you because of what the client did, and sometimes you're mad at the client because these are people with problems. Those problems are often why they're in this system. So, it seems to me, the most important part of the practicing bar is, defending people, like Darcy said, against the power of the state. Whatever the outcome is, we need people who make sure the system is operating under scrutiny and as righteously as possible, but in a province like ours, it's a tough way to make a living.

CJRW: There is an attraction of going to the Crown, because you do have the administrative support, you get paid vacation time, somebody does the investigation for you — the police — so you don't have to go out and worry about and assembling facts. Maybe dealing with bureaucracy is tough. I think it is tough dealing with the bureaucracy, but you don't deal directly with the people and their problems, getting them to show up for court,

getting them not to lie to you, all the problems you have when you're a criminal defense lawyer.

BPS: Is there any way we can make the actual practice of criminal law more sustainable for people as a career choice in this province?

CJRW: It's a great question. This could be a whole article on its own because frankly, I really worry about the death and dearth of criminal defense lawyers, not just in this province, but across the country for a number of reasons. One is, it's not a popular job. Oftentimes people think criminal defense lawyers are no better than the criminal, sometimes even worse than the criminal that they represent. People have a difficult time differentiating between the two. And secondly, because there's no public support for it whatsoever. Many criminal defense lawyers make their money off Legal Aid certificates, by doing volume business, which means that they're running from pillar to post all the time, representing far too many clients, but needing to do so to make a living. Meanwhile, the tariff hasn't changed significantly since the time that I was a lawyer doing criminal law. People just can't make a living doing it. There aren't enough practitioners anymore. Many of them aren't staying in the business, and not just in this province, it's across the country that this is happening. That has a profound effect on the quality of justice in our courts. Because sometimes, an underrepresented accused can be in worse shape than an unrepresented accused, if you get that.

DLM: By that you mean, when there's unrepresented accused, the judge is at least aware of the power imbalance, and he or she is at least trying to somewhat modify — not advocate on behalf of the defendant — but be sure that they're not making decisions that exacerbate the power imbalance that's clear when they're unrepresented. When they're underrepresented, on the surface to a judge who's dealing with seven, twelve cases a day, they think, "you've got a lawyer, that's their job, I'm doing mine."

CJRW: Right, and it's hard to tell, obviously, because you're not in these conversations, exactly why a lawyer might or might not be doing something that you might do if you were the lawyer in question. Anyway, I think it's a significant issue. I think the state of the criminal defense bar is something we should all be concerned about. Attracting bright young people to the

practice of criminal law, to me, is essential to have a healthy adversarial system, and to ensure there's some balance. Because, of course, it's the state with all their resources here — investigative powers, police, Crown attorneys with relatively unlimited resources — and the poor single defense lawyer on a Legal Aid certificate trying to balance that.

BPS: Framing is everything when we're lawyers, you know, if you frame something as "tough on crime" or "making neighborhoods safe, can't go wrong", it's pretty hard to convince the public you want to invest more. There is another framing, which is we have massive over-incarceration of Indigenous people. If you frame it that way, sounds like you might get some pull for that. But I often hear politicians — doesn't matter what party — making the "sound bite" argument, rather than a nuanced, balanced argument.

I guess we'll talk about keeping your humanity, it's tough while doing a lot of things we do as lawyers. Let me start with being a defense lawyer. I've heard lawyers give two oversimplified views on how you withstand the emotional pressure of being a lawyer. One is, "I'm doing my job, and if I get emotionally invested in the outcome, I'm not helping anybody because I'm going to burn out; I'll lose my objectivity." So, after a while, it's just like, "I'm doing a job, okay? Guy goes to jail for two years. Next." Another view is, "You'll do a better job if you're emotionally invested." I don't know that I have an answer how to balance all these things. But you were a defense lawyer. How do you deal emotionally with trying to both be a professional and thinking, "Man, if I lose this, this person's going to be in a cage." Do people learn how to shut that out after a while, or how do you cope with that?

CJRW: I think that the successful long-term lawyers do that, Bryan. They're able to separate themselves from the job that they do so that they don't become emotionally invested necessarily in the client. They may become emotionally invested in winning or losing, as they determine winning or losing as doing the best job they can. I think if you look at the people who've survived in the business so long, they often don't get emotionally involved with their client. Having said that, there were clients that I had, I really liked those clients. Years afterwards they would call me, even after I was appointed, "Ray, I need a quart of milk, can you bring me a quart of milk?

My kids need milk." You got to really like some of your clients, but for the most part, you try to separate that. Otherwise, for me anyway, I'd drive myself crazy being emotionally involved with every client because then, when you really don't like your client, or you don't like what your client has done, you can't separate being emotionally involved and that can pervert the way you handle their case. Whether you like them or not, or don't like what they've done, you still have to act for them to the best of your ability. Otherwise, again, you compromise the process, right?

DLM: Near the end of your career as a defense lawyer, I remember the year that you and I taught criminal law together.[42] You shared with the class a very poignant story about one of the reasons you decided to switch sides. I don't know if you put it quite that way, but it seems as though it would be a very powerful motivator to go into the public side of things. Would you mind sharing with our readers that story?

CJRW: Yes, and it really was the reason that I left private practice. At least, it was the straw that broke the camel's back, I suppose. Looking back, I think there had been a case in the months before this particular incident where, for the first time, I'd actually declined to represent someone. It happened to be a particularly serious and gruesome child sexual assault and I, for the first time ever, determined that I didn't think I could do the best possible job for that guy, so I asked one of my partners to look after the case. That was the very first time that had ever happened, which had started me thinking about whether things were starting to get to me. Simply put, this is the story of Michael and Michelle Jewell. So, Michael Jewell had been a client of mine for many years and he'd always been involved in — we used to call it "chicken shit" stuff — thefts,[43] possessed goods,[44] drives suspended,[45] you know, those kinds of things that might bring him short periods of jail, fines, probation, that stuff. In and out of trouble, just a little bit of a rounder... bad boy.

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42 In the 2008-2009 academic year, Chief Judge Wyant, Professor MacPherson and Ami Kotler, a Crown attorney with the Manitoba Public Prosecutions Service, taught the

43 *Criminal Code*, RSC 1985, c. C-46, ss. 322 and 334. The sections between these two sections (those are sections 323 through 333.2) are other provisions involving specific examples of theft.

44 *Criminal Code*, *ibid*, s. 354

45 *Criminal Code*, *ibid*, s. 320.18

He was married to Michelle Jewell, his wife, who was a nurse in the cardiac unit at St. Boniface Hospital. A lovely woman. She used to come to his meetings in my office and always came to court with him. He wasn't a legal aid client; those were always the good ones because you get paid for something. She would always pay his bills in full. Because I represented him a number of times, I got to know her pretty well. I could never figure out why this lovely woman was with this kind of rounder, bad boy. In any event, for a period of time, I lost track of them. He didn't become involved in anything before the law. Then, one day, I got a call from him. He'd been arrested on, I think, a driving charge or something in Selkirk. He was in custody, and he was appearing for bail the next day, and he asked me to represent him. I said, "Of course I would." Then, I got a call from Michelle. These were the days past, prior to cell phones, I got a call at home from her. She told me about what had been happening in the year or two that I hadn't seen the two of them and how they had separated. Michael was drinking a lot and had become quite violent towards her, and she'd filed for divorce and was afraid of him. In fact, the next week on Monday morning, she had her divorce hearing in Queen's Bench, but she was fearful of him. She asked me, specifically, to ensure that he didn't get out of jail. And, of course, my response, as a friend, at that point in time, was, "I'd certainly not represent Michael in anything involving you." He was going to get out of jail on bail whether it was me or someone else, he wasn't going to get kept in but I was certain that he would never do anything to harm her. The usual kind of reassurances you give to someone you know, to a friend, to calm them down. As I recall the conversation, it lasted at least an hour, where we talked about a lot of things. I had been surprised by her revelation about the violence and the breakdown of the marriage, but I took the view at that point in time, that my job as a friend was to reassure her, to calm her down, to tell her I would certainly have nothing to do with him if he did anything to her. We ended the call, and it was quite positive, and I think she felt relieved and reassured, as she told me. The next week on the Sunday night, Monday morning of the day of her divorce, he went to her apartment on Henderson Highway in Winnipeg. He brought with him repelling equipment, and tools, and other things. He scaled up the outside balcony, up twelve stories of her apartment building, broke in, and savagely raped her and murdered her slowly, very viciously in the early morning hours. Some neighbors had heard some scuffle and hadn't reported it. The medical evidence showed

that she'd been anally raped and vaginally raped, that he cut her neck in the bathtub, that he probably sexually assaulted her as she was gagging. He then bled her body of blood, cut her up with a saw that he brought with him into body parts, put them into garbage bags, walked down the stairs, and left. He drove to Emo, Ontario, where he had lived with his brother, with the intention of using a backhoe to bury the rest of the body parts after using a chainsaw to cut them up. Three days later, his brother found a bag on the property, opened it up, saw a human torso, called the Ontario Provincial Police. They came, determined that it was the remnants of Michelle Jewell, he was arrested. On his way back to Winnipeg the police asked, "Do you have a lawyer?" "Yeah." "What's his name?" "Ray Wyant." They called me. I went down to the remand centre, the Public Safety Building. My memory of it is that I sat there for an hour, probably, it was only five or ten minutes. Didn't say a word to him other than, "I can't represent you. You'll get another lawyer." Went home, got drunk, and decided that was the end of my criminal-defense career, and shortly after that applied to the Crown's office. That's the story. I think, for the longest time, and probably still, and I've said this to people — and I don't say it for the purpose of exaggeration, but I think it's the truth — you really cannot get the blood off your hands, no matter how much you try. You replay it in your mind, "Would I have done anything different?" Probably not, knowing me, but it doesn't help.

DLM: It doesn't make things easier.

BPS: When you've got a file, you may be thinking as a criminal defense lawyer, "We'd all be better off if this person was incapacitated for a while in a correctional facility." But if they can't prove the case, or there is a Charter violation, it's still your job, as I understand it, to put in the case. And that's got to be very emotionally conflicting at times.

CJRW: Well, it is. I've often said to people, as I look upon my nine years or so as a criminal-defense lawyer, I thought I maybe met two people who I thought were not guilty of the offense they were charged [Laughs]. I think my record of getting people off was a little better than that. But the truth of the matter is, you don't meet a lot of people who are probably factually innocent, right? Sometimes what your satisfaction is in doing a good job as a lawyer, is doing a good cross-examination, and raising reasonable doubt,

or trying to mitigate the sentence that your client is going to receive. Those are the wins that you get, to feel that you've done the best job you can.

BPS: Let's talk a bit about the emotional pressures of being a Crown now. I think people go into litigation, partly because they're competitive, and, you've mentioned it already, the official ethos of the Crown is, "I'm not here to get a result. I'm here to see that justice is done." Everybody makes that speech. But the reality is, and I'm speculating somewhat, but my guess is that you're just as competitive as a Crown as you were as a defense attorney. You have to be on guard sometimes, I think, making decisions on inconvenient facts, quite apart from *Stinchcombe*[46]. As a Crown, did you feel those kinds of tensions between winning and seeing that justice is done? Is that a tough thing to deal with?

CJRW: You're absolutely right. As human beings, we want to win. You could say, "Oh, my job is to ensure that justice is done," but you just want to win, right? Particularly if the other person is as competitive as you are. The toughest thing oftentimes is to look at your case and make a real determination, "Is there a reasonable likelihood of conviction?", not whether you want to win or lose this case, but is there a reasonable likelihood of conviction? And, what's a just result as a result of that? The Crown wields a tremendous amount of power, and more so, I would say, now than when I was there. Their ability to make decisions in the era of mandatory minimums, for example, gives them a tremendous power over defense lawyers to make it compellable to make a deal, perhaps, that you might not ordinarily make. I think having the right stuff as a Crown attorney can be difficult. There were always Crown attorneys that have reputations of giving "no quarter", who feel that every defense lawyer is no better than their client. Fortunately, I think, over the years a lot of that has disappeared and most of them, I think, are quite professional about their job. From the point of view of practicing, I didn't enjoy being a Crown attorney anywhere near to the extent I did as a defense lawyer. Because, as a defense lawyer, when you're cross-examining people, you're cross-examining people who are generally telling the truth. You're trying to speak to sentence for someone

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46 *R v Stinchcombe,* [1991] 3 SCR 326. In *R v Stinchcombe*, the Supreme Court of Canada, in a unanimous decision, held that the Crown is under a duty to disclose to the defence all evidence that could possible be relevant to the case, regardless of whether the Crown plans to call that evidence at trial, or whether it helps or hurts the Crown's case.

who sometimes has few positive things to say about them. As a Crown attorney, you're often putting professional witnesses on the stand, police officers to recount what they had to do, you have a file someone has prepared, you have support. It certainly, I don't think, was as challenging from my perspective as it was being a defense lawyer.

BPS: What's your view about the duty of a Crown here, if you think, subjectively, as a Crown, about four years is right, but there's an arguable case for A, and the judge might give effect to it. Is it your job to make the best case you can for the A? Or should you only be asking for something that you believe?

CJRW: You should only be asking for something you believe is appropriate in the law. You shouldn't be asking for more because the defense is asking for less. You should always be asking for exactly what you think is appropriate. It's a long game, too, Bryan. I think in the practice of law, and I'll say criminal law particularly, your reputation, no matter which side of the bar you're on, is really all you have. We teach this to the students. I'm not sure if they understand that. But if you get a reputation, say as a defense lawyer, of being a straight shooter, someone who doesn't exaggerate, who tells the truth, that's going to make a difference down the line in the kinds of decisions you get and in the kinds of sentences you get. And the same thing as a Crown attorney. If you're known as the person who exaggerates, always asks for a little bit more than it's worth, judges aren't going to listen to you as much. Whereas, if you get the reputation, "That guy Wyant, he's always justified, he's never unreasonable," they listen to you and, as a result, you're going to get a lot more of the decisions going your way, I think.

BPS: Going back to when you were a young lawyer, and thrown into court with very little preparation — I wasn't in court much decades ago, but just my occasional appearance in court, and just people who went to court a lot would say, "There was a time when a lot of judges, I think, were pretty stringent with lawyers. You would get yelled at a lot, especially if you were a young lawyer. And that was the ethos: 'It's character-building, we'll toughen you up.'" I think that the ethos has very fundamentally changed in that regard, right?

CJRW: Absolutely. Judges are kinder, gentler now, probably for several reasons. One, the appointment system is better. The education system is better. There's more accountability in terms of the ability of the profession or the public to hold you to task for things that are inappropriate. We can sometimes laugh at some of the things that happened to us when we were young lawyers. I remember a judge who routinely, when they didn't like what you were saying, turned their chair around on you, or said, "I can't hear you," or would yell at you. I had a judge yell at me one time when I was a first-year lawyer and ask me if I'd ever really gone to law school. Some of them were rude, impertinent, omnipotent. They could do anything and say anything, no matter how inappropriate, and you just had to take it. Slowly, over the years, we've had now accountability changes to hold people accountable and judges accountable. But some of them were in the day, for lack of a better term, complete and utter assholes. They were just mean-spirited people. Mean-spirited to the people they dealt with in court, and mean-spirited sometimes to the lawyers. Not everyone, but there were a fair number. As we're talking, there's a few faces that flash right in front of my eyes [Laughs].

BPS: Usually in our careers, there's somebody that kind of impresses us as a role model, whether we're teachers or practicing lawyers. Even in the old, rawer days of judging, were there particular judges you thought to yourself, "Gee, if I'm ever a judge, that's the kind of judge I want to be?"

CJRW: Graeme Garson.[47] Graeme Garson was my role model and my hero. He was — I don't know if you remember Graeme — he ultimately ended up being CEO of the Law Society here. He went up and he was Deputy Minister, I think, in Yukon. Graeme Garson was a gentleman, he was an intelligent, articulate, soft-spoken man, always fair in his judgments, never rude. My eldest son is named after him. He was one of those guys, to his dying day I just admired the man. I always thought, "If I could ever be like

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47 Alan Graeme Stuart Garson practiced law with the Winnipeg firm of Martens Falk and Steen. He was a Liberal candidate for the Selkirk constituency in the 1965 federal general election but was defeated by Eric Stefanson. In March 1973, he was appointed a Provincial Court Judge and served until September 1977. He was then Chief Executive Officer of the Law Society of Manitoba, for which he was appointed to Queen's Counsel in 1982 and received the Lieutenant Governor's Award for Excellence in Public Administration in 1992.

someone, I'd like to be like Graeme Garson." I think I probably failed him in many respects. He was just an amazing man. I was surprised when he left being a judge, because my way of thinking was, and I think most judges view it as, the greatest dead-end job in the world, right? You get appointed, somebody puts a robe on you, they pay you a shitload of money, everyone treats you with respect and pretends they like you, even if they don't — I know that's the case with Darcy, he really doesn't like me [Laughs].

DLM: Please note the sarcasm of that statement. It just doesn't come across in writing [Laughs].

CJRW: Who wants to leave that job? People don't leave that job, right? No matter what, they don't. And when Graeme left, it was one of those, well I was just shattered, and thought, "Why would anyone want to leave this job of privilege?" But he never wanted to get stale in what he was doing. He was just one of those guys who had "happy feet", five-year plans. You know, "I want to do this, and I want to do this." I admired him even more for that. It was part of the reason why I left full-time judging in 2014. I thought, "I could do this job and get paid a lot of money and increase my pension and whatever," but there were still hills that I wanted to climb. I never regretted doing it. I credit Graeme Garson with that.

BPS: Let me ask you a bit about emotional stamina as a judge. I don't know if this is right or not, I don't know if you've ever had the same subjective impression, but I see people get appointed as judges, and they seem to be a lot older in five years than five years. We're on the outside thinking, "This is an easy job, a lot of cases get canceled, get paid vacations, get paid a lot of money, people do have to be, at least directly, respectful to whatever they're saying." I always say, "If you're going to insult me, can you at least do it behind my back?" It seems pretty good. Do you have that sense, Darcy or Ray, that being a judge, it seems to age people? I don't understand exactly why.

CJRW: I think it does. I've seen a lot of people just end up being very unhappy. Despite all the perks of the job, and the fact that they would acknowledge they're very privileged and honoured to have the job, they get very tired. If you're dealing in criminal law, you're dealing with human misery all the time. That's all you're dealing with. Where are the jollies in

this job? I defy anyone to say that they get pleasure out of sending someone to jail. Victims aren't satisfied, no one is satisfied at the end of the day in a criminal-law setting. It's a hard job. People are starting to talk about vicarious trauma to judges. First-line responders, you can see that they have trauma. Cops and firefighters, people who come across the scenes of some of these terrible things. But how about the people who are living them vicariously through pictures, or pictures of child pornography, or whatever it may be? After a while, that's just got to get to you. That's got to seep right into the bones of your soul and change who you are. Part of my realization was that I think it had changed me, and not for the better.

DLM: I think what you're saying is, "I'm dealing with the worst 20 minutes of everybody's life, every time."

CJRW: Every time.

DLM: That's remarkable at one level. I'm trained as a corporate lawyer. One of the reasons I like it is that it's bloodless, right? I do some criminal law, but it's corporate criminal law. Yes, there are undoubtedly workers that die, and the corporation could be responsible, but it's not somebody putting their hands around somebody's neck, or cutting them up, as we talked about earlier, or things like that. That must have an effect at some level. So, how do you wash that off? Or can you?

CJRW: Individuals, I think, must answer that.

DLM: How do you do it?

CJRW: I don't know that I have, honestly.

BPS: After a while you make a move.

CJRW: Try to do some other things. I got the feeling that I was worried about me, I was worried about becoming routine, or bitter, that crotchety old judge. Because no one tells you when you're out of touch, or you've become a bit of an ass.

BPS: The sheer repetition must be a problem. The Crown and the defense, they're in front of their clientele. The Premier's not there, but there'll be police, and so on and so forth. So, it's not like you could say, "You know the law, Judge. I've got to at least tell you the same thing you've already heard three times today and fifteen times this week." Does that make it hard to stay engaged? Is that another source of emotional fatigue?

CJRW: Absolutely. I think the longer you do this — for me, we're talking about 45 years of the same stuff, and I'm not just talking about the judicial part of it. The faces have changed, but a lot of the same stuff, right? Yes, somebody's telling you something that you know, or you've heard, or not doing it as well as you think you would do it, for example. It's hard, sometimes to keep your patience, even internally. As soon you as you start feeling that, I think as a human being, you must step back and go, "Am I really putting my best foot forward?" because every individual should be treated with fresh eyes. It's tough after a while. Now, there's a lot more emphasis for judges on EAP,[48] on counseling services. That stuff never existed before. Nobody ever talked about that in my career, or even part of my career as a judge but there's a lot of it now. I think now people are talking about vicarious trauma and effect on judges; as they should, right?

BPS: We talked earlier about the emotional investment that a criminal defense attorney makes. So, you're a judge, and you appreciate that it makes a big difference in somebody's life whether this is probation, or three months, or a year, or two years. Certain thresholds would make the difference which correctional facility they are sent to. There's a lot of work involved. Most of criminal law is not that glamourous. It's detailed. Sentencing is a lot of detail and nuance, so you must motivate yourself to work hard. At the same time, after every case, if you're thinking over the weekend, "Was six months right? Was three months right?" you're going to burn out. How do you balance professional detachment from motivating yourself to carry each case? Is that sustainable in the long-term?

CJRW: I'm not sure I understand it correctly. Remember sometimes when you're doing a docket court, you might be sentencing half a dozen people

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[48] An Employee Assistance Program (EAP) provides free short-term counselling for personal or work-related problems as well as crisis counselling.

in an afternoon. It's bam, bam, bam making decisions. When the accused comes up, and they have their chance to say something, this is what almost everyone says, some more articulately than others, "I'm really sorry, I apologize, I'm going to make it better, you won't see me again, I take full responsibility, yadda yadda yadda." Everyone says the same thing, right? Which, of course you're having a kodak moment with these guys, you have no way of judging their sincerity because you know some of them are just laughing. Their buddies are telling them, "Oh, remember to tell the judge this." It's hard because you still have to treat each individual sentencing, even late in an afternoon, individually. That takes a lot of mental energy and a lot of physical energy to make sure you've got it right because you don't have a lot of time to reserve on judgments, and the more you start reserving, the more they're going to pile up. You need to make decisions and pile onto the next.

BPS: You do have to motivate yourself to focus. Sometimes when a guy tells these stories, he's actually sorry, right?

CJRW: Right.

BPS: Even if you've heard it five times before, you still have to force yourself to try and figure out, "Is this the one case where this person actually did act out of character in a really bad moment?"

CJRW: I usually say to these guys, I thank them for what they have to say, and I tell them I have no ability to judge whether they're being truthful or not. I'm not suggesting that they're being untruthful. I say, "You should be saying all those things because it means something to you, not because you think it's going to change my mind because I hear the same thing from everyone." Yes, sometimes you get the feeling some people are being truthful. Some of them are being untruthful, some of them are being truthful, but don't have the supports or the guts to carry through with their intentions, and some people are being truthful and really have reached the end of the line and you know they're going to change their life. Most of that just rubs off.

BPS: Are there cases where you were thinking three weeks, three months, three years later?

CJRW: No, I rarely ever — maybe on a couple of occasions — have ever thought about a sentence after I gave them, as to whether or not it was right or wrong. Thank goodness I don't second-guess myself. I'm sure there are people who do, but I don't. As far as I'm concerned, if I'm comfortable at that point in time that I'm giving a decision, or issuing a sentence, then I'm comfortable. I'll say it as best I can and impose the sentence, and I never have a second thought. I never think about them after. I think you'd drive yourself crazy if you did.

BPS: Oh, you would. That's why I'm asking. You have to motivate yourself to be in the here and now. There's a lot of cases and there's a lot of repetition, and a lot of detail, so it's hard mental work. It's also hard physically. We all wake up with days where we just don't want to do anything, but you're not allowed to do that as a judge. It's a person's life on the line here. You have to get yourself "up for the game". And somehow, you must have the kind of personality where you got up for the game, but you don't replay it in your mind afterwards.

CJRW: You can't.

BPS: Coming in, there's judicial education now, and a lot of it, frankly, about footsteps that you might want to listen to. You're going to anger this advocacy group — I'm not saying advocacy groups are always wrong, it could be a victim's rights group, it could be an equality rights group for some particular thing, all kinds of things. Is anybody telling you, that you have to the conscientious thing at the end of the day, even if you get yelled at? That seemed to be who you were coming in but is that something that is talked about in judicial education? That "at the end of the day, you have to call it in accordance with the law as you see it," is that anything they even talk about? For example, the Supreme Court of Canada qualifications and one line about moral courage, a whole bunch of other intellectual stuff. Seems to me one of the most important qualities in a judge is moral courage. "I'm going to get ripped apart the next day in the *Sun*, but you still don't give somebody three months to keep Tom Brodbeck[49] happy." Is that part of judicial education nowadays?

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[49] *See supra* note 33 and accompanying text.

CJRW: I can't say if it's a significant part of new judges' training programs because it's been a while since I've been involved in them, but I know that I had a privilege of giving — three times now — the keynote address to newly-appointed provincial and territorial judges. That's been my message on all three occasions: never to compromise your values and to be courageous. It's one thing to say, "be courageous," and it's another to actually be courageous, right? I'm confident that there's probably discussion about that. To the extent that there is, I don't know. Do they do anything more than say to be morally courageous? I don't know if they do.

DLM: Moral courage may look different depending on your predisposition. If your predisposed to be the hanging judge, the moral disposition won't be Tom Brodbeck, or ignoring Tom Brodbeck, because that's where you would end up anyway. The moral courage may be saying, "This isn't the time to throw the book at this particular accused." I wonder if that's some of the things we get ourselves into trouble with. Is there a difference when your predisposition is one way or the other? How do you figure that out? I don't know what your predispositions are. I haven't sat down and read your judgments in detail, but are you cognizant of your personal leanings?

CJRW: Yes and no. Do I think I'm cognizant of my biases and my leanings? Yes. Would an objective person agree with me? I can't say that for sure. I can't look at myself objectively. If I'm looking at myself, I'm going to say, "Yeah, I'm pretty in tune with myself." Other people may disagree with me. I do know I have a certain reputation in the profession for certain things, and if the lawyers are smart, they should know what my reputation is, but the only way I can judge whether I'm getting it even half-right is lawyers aren't trying to avoid me.

DLM: They're not asking to avoid you. "Oh, I got Chief Judge Wyant, oh God let me out of here."

CJRW: Yeah, usually you can tell by that. It's not that you're necessarily the most popular kid on the block, but generally, I think people when they get me are going, "I'm okay with that."

BPS: It sounds to me like you have a robust capacity to engage in an internal dialogue. You don't need somebody to tap you on the shoulder. You're asking questions about what you're doing and why you're doing it as you go along, which, in my view, is what we're supposed to be doing in higher education, including the law school. You teach people to look at things from a different point of view, so that ultimately, they can ask themselves hard questions and monitor themselves as they go along. You were asking yourself questions, as I hear.

CJRW: Yup.

BPS: "Am I wearing out?" "Am I still able to get up for each game and still listen?" "Am I still in touch?" That seems to be a very hard thing in late career for any judge. A lot of our judges spend a long part of their career trying to be a judge, and it is very comfortable, in some ways: materially, job security, deference, and so on and so forth. There's no kind of programs or anything where judges can have confidential conversations about themselves. Is there any kind of form where a judge can bat around or even start to ask themselves these kind of questions?

CJRW: There are some courses you can sign up for, with limited membership, that talk about "your sophomore years as a judge," and your pre-retirement years where you can talk about retirement planning, but people don't talk generally to a group of people about those things that they're thinking about that may bother them. They may talk to people they're close to. If a couple of people share a similar job that you do, and they're good friends of yours and you trust them, you might talk to them, but I think a lot of people don't generally talk about stuff. There's a couple of people on the Bench that I would feel quite comfortable talking about that stuff to. I've said to people, "I just don't know whether or not I'm putting my best foot forward anymore." Their answer always is, "Yes, you are," but then of course you don't know whether they're just saying that to make you feel better [Laughs]. There are some practitioners that I've talked to about this, people in the practice that I trust. I say, "If you hear or you think that I'm starting to not listen, be impatient, be bitter, I hope you would actually tell me something."

BPS: It's an occupational hazard of being a judge, that people are more dissident of criticizing you. Darcy and I are professors, people seem to have very little inhibition about telling us where they think we have fallen short. Maybe not when they're still in the class, but certainly in the evaluations and the chat forms or interpersonal interactions. I think there are many appealing things about a judge where people are not criticizing me directly, but I would be worried about if they just telling me what I want to hear after a while. I think that'd be a trap you could get into as a judge if you're not naturally self-questioning.

DLM: Let's talk a little bit about what made you transition to judge. Becoming a judge is not the easiest. It's not like, "I wrote a letter to the A.G.[50] and the A.G. says, 'here's your judgeship, Sir'." So, what made you say to yourself, "it's time for something different." You're in the Crown's office for how long before you applied?

CJRW: About 12 and a half years.

DLM: So, you did just over 20 years as a criminal lawyer, and said, "I think I might want to be a judge." What other than the obvious material things like money and certainty of tenure, what's the thing that says to you, or to anyone, "this is why I want to be a judge"? You don't strike me as somebody who is driven by, "I want to be materially more comfortable."

CJRW: This is going to sound like a terrible answer, because it's probably the answer everyone gives, but I didn't apply because I was interested in more money or status. Darcy, my life has been a series of — I haven't planned it out very well [Laughs]. I never planned to go to law school, never thought about being a lawyer, never thought about being a criminal lawyer. And then, here I am in the Crown's office, and I never thought about being a judge. I must tell you, and I mean this honestly, I never thought there was

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50 A.G. stands for Attorney General. The Attorney General of Canada provides legal services to the Government, oversees federal prosecutions and is supported by the Public Prosecution Service of Canada. The federal Attorney General appoints judges to federally-staffed courts (the Manitoba Court of King's Bench, the Manitoba Court of Appeal, the equivalents in other provinces, the Federal Court of Canada, the Federal Court of Appeal, and the Supreme Court of Canada). The Attorneys General for each province or territory appoints judges to provincial or territorial courts (the Provincial Court of Manitoba, and its equivalents across the country).

any way in the world that someone like me would ever be appointed, because I thought there's just better and brighter, more articulate, smarter people than me. After I'd been at the Crown's office for a while, I thought that I had something that few people had and that is that I'd been on both sides of the Bar. I thought that should count for something because I think being a criminal defense lawyer made me a much better Crown attorney. I always thought that if I ever went back to being a criminal defense lawyer, I'd be better after being a Crown attorney because you really should be a pure advocate, right? You should be able to do one job one day and one the next. I just thought, "maybe I should throw my name in and apply," but I never really thought I stood much of a chance getting it. I did have a fair amount of community involvement volunteering, especially as a coach, and I had been a school trustee for many years. Through of that, it was important to me, it made me a better applicant. It's a funny thing what happened with my interview. It was 1998, and I was one of the organizers for the Western Canada Crown Attorneys Conference. So, I was off in Banff[51], and the interviews were scheduled for right at the end of April. I got the last interview spot because I was flying back from Calgary from organizing this conference. When I got back home, the plan was that I would get in my suit and drive down to the Law Courts Building for this interview. When I got back to my place, there'd been a fire and my clothes all smelled of smoke, and then my car didn't start because the battery was dead. I called the Chief Judge's assistant, and I said, "Can they wait? I'm going to be late because I'm waiting for a cab." "Oh, they're not going to wait for you." I said, "Okay, I'll be there as soon as I can." And I was 20 minutes late for the last interview slot. As I later found out, the committee had all met and they had drafted their list of recommended people for the Minister, and I show up. They decided to go through this interview, to my benefit, because I'd had such a horrendous day flying from Calgary, and my car didn't start, and I was late for the interview. Judy Webster[52] was the Chief Judge at the time. She told me afterwards that I gave the best interview of anyone, and I think it was because I was so relaxed. I probably didn't give a shit. Apparently, I pushed someone off the list because of this interview, and what happens over the Minister's office, I don't know, but I think there were a lot of political things

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51 Banff is a resort town in the province of Alberta, located within Banff National Park.

52 The Honourable Judith Webster served on the Provincial Court of Manitoba from 1989 to 2006. She served as Chief Judge from 1993 to 2001. She was one of the first female Provincial Court judges in Canada to be appointed a Chief Judge in 1993.

going on, which I'm happy to tell you guys about off the record sometime. Apparently because there were certain Ministers of the Crown that were fighting over their candidates, they finally decided, "Well, with this guy Wyant, yeah, I guess we could. No one's getting pissed off with us." Apparently, I was everyone's second choice to get appointed, and that's how it happened.

BPS: Have you seen *Shawshank Redemption*[53], Ray?

CJRW: A thousand and one times.

BPS: There's this scene near the end where the Morgan Freeman character, he's gone up for parole a billion times and never gets it. All the times he's gone for parole, he gives the official spiel about, "Yes, I've been rehabilitated." Last time is just something like, "I don't know what you're talking about, using all these fancy words." And just cuts through the crap, for the first time and gives a dead serious, "I don't care what you guys think anymore."

CJRW: "You just mark your papers, Sonny, 'cause quite frankly I don't give a damn."

BPS: Yeah, that's it. That's how he got parole. Finally, he just dropped everything and said, "I don't care anymore."

CJRW: And I think that's what works [Laughs].

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53 *The Shawshank Redemption* is a critically-acclaimed thriller/crime film released in 1994, directed by Frank Darabont and based on a novella by Stephen King.

I. PART II

DLM: What do you think the most rewarding part of being a Provincial Court Judge was for you? What was the thing that made you keep coming back? You did it for quite a while, so I'm assuming it wasn't complete and utter drudgery each day, so what was the best part of it?

CJRW: The best part I think — this is going to sound a little corny — was thinking you were helping people even though you knew, on many occasions, you weren't. You were helping people somehow. You were reaching them on a personal level, whether it was empathizing with a victim and a victim's pain, or trying to reach the soft spot in someone who has been accused of a criminal act, no matter how hardened they might be, you're trying to reach them on a human level and trying to understand them. Perhaps, if they're an accused, why they committed an offence, their background, their upbringing, their trauma, things of that nature. If you're a victim, to try to, even though you can't ever put yourself in the shoes of a victim because you weren't the victim yourself, but to try to understand, on an emotional level, the impact of the crime on them, no matter what the crime was. I think that's probably the most rewarding thing, trying to feel like you've made a connection with someone, not that you've made a connection with everyone all the time.

BPS: A lot of what Provincial Court Judges do is sentencing, and sentencing isn't just a number, it's usually accompanied by comments by a judge. Those comments can be quite harsh, they can be condemnatory, they could be trying to find some element of redemption and hope in the person being sentenced. What's your sense of how important those comments are? Is your sense that, "this may be something a person reflects on in their years in the correctional facility." Are the people in such shock when they're being sentenced that they're not paying attention and mad about much? What was your approach to sentencing comments?

CJRW: I think it's all the above. I think that for many people, I suspect that all they really want to know in the sentencing is, "What am I getting?" If they're going to jail, "How long am I going to jail for? Did I get probation? Am I getting out today?" Those are the questions. Most of what I think many

people hear from the judge is, "Blah, blah, blah." It's not that they don't care, but really what the judge has to say to them really isn't important to them. What's important to them is what's happening to them. "Did the judge go along with the joint recommendation," or when there wasn't a joint recommendation, "What did the judge do?" "Did he go along with my lawyer saying I should get time in custody?"[54] "Am I getting a year or more like the prosecutor asked?" I think, for the most part, people concentrate on that. I think the problem is too that despite our efforts, we still often speak at a level that's difficult for people to understand. We talk a lot about plain language, and there are moves to use plain language in our oral skills, our oral judgments, and in our written judgments, but the fact remains, we still write and speak at a level that's probably much greater than the average educational level of most of the people who come before us. They have difficulty understanding some of the ordinary words that we use. It's why some of my colleagues wonder why I haven't been disciplined for some of the plain language I use, because I use some plain street language. Some might call it offensive, or even vulgar language because if you say to a guy, "you got to get your shit together man," he will understand that phrase, but it's not appropriate to say it. I will demur as to whether I've said that on many occasions [Laughs]. It's very hard for a judge, if you're really trying hard, to talk at a level — and I'm not talking about a lower level — that the person you're speaking to understands.

DLM: I think, and maybe I've got this wrong, but it seems like you're also saying it's not just the words you choose, but it's something that needs to resonate with this person.

CJRW: Right. So, what I try to do is I try to find that little crack in their armor. Sometimes it's easy and sometimes it isn't, because for the most part, almost every accused comes out and says the same thing to you when you ask them if they have anything to say: "I'm sorry I did this, I apologize, I'm not coming back here again, I'm going to turn my life around, yadda, yadda, yadda." They all say that. Some of them just say it because they know that's what they're supposed to say. Some of them say it because they really mean it, but once they hit the street don't have the wherewithal or the supports,

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54 Sentencing judges have a degree of discretion with respect to whether, and the degree to which, they "count" pre-trial confinement or "time in custody" prior to sentencing.

or even the intestinal fortitude to carry through. Some of them really have changed their life around. It's like an alcoholic, sometimes you must hit rock bottom before you decide that you aren't going to have another drink again. You can make up your mind if you're not going to drink, but if you haven't hit that life-altering experience, for many people it just becomes a circular routine of sobering up, getting drunk, sobering up, getting drunk. I think for a lot of people involved in crime, many of them don't want to be there. They don't want to be in jail. They tell you, "I don't want to be in jail,"; they're being sincere. They don't like being involved in crime, they don't like being addicted to drugs, they don't like the lifestyle they have, but they have no other experience. They've been raised in a life of trauma and deprivation, they have few skills, and the acquaintances, or the people they hang around with, are in a criminal lifestyle. It's just almost inevitable that that's where they fall back to at the end of the day, despite what they might want to do differently in their life. This is a long way of answering. I really firmly believe that most accused, unless they are sociopaths, there's something about them that's redeeming. We all like to think we have redeeming features, even you, Darcy.

DLM: The students might not agree with that [Laughs].

CJRW: Sometimes reaching that thing that's in our soft underbelly is hard because you don't know who they are. You're having a Kodak moment with them in court. But I've often found that if you can reach that, some of them are incredibly grateful when you say that you value them as a human being. Because many of them come in, and they feel that they're not valued as a human being, that they're judged solely by the crime that they've done, as opposed to as a human being. If you can sometimes say, "I don't agree with what you did. What you did was horrible. It was terrible but that doesn't mean you're without redemption as a human being." Many people will respond to that, but we do judge people by what they do, despite the fact we say we don't, we do judge people by their actions.

BPS: You're talking about the use of vocabulary that can communicate with people, I want to follow up on that a little bit. This is just my view — and you can tell me if you agree, disagree, or no comment — I think we've convoluted some of the vocabulary of the criminal-justice system in a way that's very distant from the way it's perceived and experienced. "We're not

punishing you; we're denouncing the offence." To me, I'm going to jail for two years, I don't know what you're talking about, "denouncing the offence?" To me, that kind of sounds like everybody goes to the town square and says, "Bad offence!", not taking me and putting me in custody for two years. It feels like punishment. Seems to me that some of the reformist movement in criminal law didn't really change what we do, it just wrapped it up in euphemisms, which I wouldn't think a lot of ordinary folks understand.

CJRW: I think they still don't understand, even though our forms are more plain-language, and we try to talk plain language, you're right; but there's ways of communicating those concepts. For example, instead of saying, "I agree the principles of denunciation and deterrence are primary here," you could turn to a guy and say, "I don't believe that you need to be punished," or "You've learned your lesson. I get that, I don't need to send you to jail to punish you or have you learn your lesson, but you have to understand, this isn't just about you. This about what you've done and how I tell other people that this is a bad thing." So, there are ways, and it takes a lot of energy because you have to take your time, and you have to make a quick judgment on the person you're speaking to considering their level of understanding, their level of interest, even. Oftentimes, I don't think you know whether you've had an effect on the individual, but I suspect more often than not we do, even those people who come back and recidivate doesn't mean your words haven't had an effect on them. I've seen a lot of really hardened people soften up when you tell them, in essence, "I don't have anything against you, you're a person with worth, but you can't do this," because their whole life, many of them have been told they're just worthless and that's all they'll ever be. I think I mentioned the other day when we were talking, you get very little feedback. It's not like they come back and five years later call you up and say, "I'd like to take you to coffee because you've changed my life," but I'll often say that to people. They'll give me flowery words and I'll say to them, "I judge people by their actions, not their words. So, if you come back in two or three years, and you come back through the open doors of the courtroom, and tell me things are going well, I'll buy you lunch, I'll buy you coffee. Good for you." Many of them say, "Yeah, I'm going to do that." Well, not too many have, but I think I mentioned that I had one instance where I got a letter from a woman, although that was a victim. I've had a couple other instances that have been really touching. I was actually

sitting in a courtroom mentoring a new judge, just watching the new judge so that I could assist them and give them pointers, and some guy pled guilty and turned around—and I wasn't even paying attention to what the offence was—and said, "I just wanted to say that the guy who changed my life is the guy sitting in the back of the courtroom today. Judge Wyant changed my life by what he said to me two years ago." And I'm sitting there going, "Wow." He was sincere and really moved. He thanked me and he came over and he shook my hand. He said, "I didn't know how to reach you. I've never had an opportunity to say you had an effect on me." There's only been a few occasions that are similar, you get something in writing, but they're worthwhile and they may be indicative that there may be other people out there that you have reached. Who knows.

BPS: I'm remembering an interview with a London police officer who was asked by an American interviewer, "When you arrest people, you call them sir. Why do you do that?" He said, "It may be the first time in their life anybody has actually spoken to them in a respectful manner." It could be the beginning of rehabilitation, right? This person is recognizing that I'm a human being, I'm a moral equal in society. I'm going to go through a process, and they end up going to jail or something, but somebody's finally recognized me as a legitimate citizen and human being.

CJRW: Let me tell you a story, if you don't mind. I'm a storyteller, so you're now prisoners of my storytelling. A few years ago, I was sitting in the office. This was after my term as Chief Judge. My assistant sends me a voicemail message she had received. It's from a probation officer and it goes like this: "Hi, my name is so-and-so, I'm a probation officer in Winnipeg. I've got a client who wants to meet with Judge Wyant to thank him for changing her life. I've told my client that Judges don't meet with people, but I'm making this call just to say that I've made the call. If you could let Judge Wyant know." I get this message, and it was the probation officer who left her phone number. I had never met the probation officer. I pick up the phone and I phone the probation officer directly. I say, "Hi Shelly, it's Ray Wyant here." And there's this dead silence. "Who?" "It's Ray Wyant." "Judge Wyant?" "Yes." "You're calling me?" "Yeah, I'm calling you." "You're calling me, Judge Wyant?" "Well, you left a voicemail with my assistant." "Yeah, but I didn't expect you to call me. Judges don't call us." "Well, I'm calling you, so what is this about?" So, she had a client who was about forty years

of age and had been through the criminal-justice system since she was thirteen. She'd done four sentences in the penitentiary. She'd spent her whole youth life in and out of youth custody and spent almost her entire adult life in and out of custody. She had, I think, seven pages of convictions, almost all for drug offences and violent offences. She was a gang member, involved in prostitution, drug dealing, had been convicted of aggravated assault on two occasions and got penitentiary terms, robberies. Just one of the most horrible records. This sounds sexist, but I always find it surprising when you find a woman with that kind of record, as opposed to a man. Anyway, apparently several years before, I had sentenced her — I didn't remember her — to something. Apparently, I had a long talk with her and told her this similar kind of thing, you know, "You're a human being with worth. It's never too late to turn your life around." Whatever. The probation officer then told me that this woman had been the most difficult that she had ever dealt with. She breached probation a thousand times. But after my sentencing, she made a commitment to change her life around. During the last three-year probation she was on, she completely changed her life around. She had gone to Red River Community College[55] and completed a course that was designed to help her go into the inner city and help young Indigenous girls to stay out of a life of crime, prostitution and drugs. She completely credited her turnaround with what I had said to her. I didn't remember. I ordered the transcript, and there was nothing remarkable about the transcript. It was the usual, trying to give her a positive spin. Honestly, it really wasn't anything I said. It was just that she was at a point in her life where I think she was tired and ready to make a change. I happened to be the guy that said the right words at the right time, that's all it was, I appreciate that. Anyway, she wanted to meet with me, to thank me. I said, "Yeah, I'll meet with her. Where do you want to meet?" "Can we come to your office?" "Oh, why do you want to come to the Law Courts Building and come through security to this mausoleum on the fifth floor? Why don't we go to Tim Horton's and have coffee?" She said, "Yeah, that would be great, I can arrange something." I said, "Here's some dates that I'm available." Then, she called back and said, "Would you mind coming to our office?" I said, "No, I don't mind coming to your office." So, we set up a date for me to come to the office. When I arrived, this was Probation

[55] Red River College Polytechnic is a college located in Winnipeg, Manitoba. It is Manitoba's largest institute of applied learning and applied research.

Services in downtown Winnipeg, every probation officer had dressed up like they were going to a religious ceremony. It was the first time a judge had ever come to their office. And, they had a whole spread, everyone had done baking in their boardroom, it was unbelievable. Anyway, so I met with this woman. We exchanged hugs. We sat down for two hours. She told me about her life, how she regained partial custody of her now-twelve-year-old from Child and Family Services.[56] It was an incredibly emotional time. She told me how she had been blocked in trying to get a job, a work practicum, because now that she had her certificate, no one would hire her because of her criminal record. The feds had a proviso that they wouldn't give money for hiring anyone with a criminal record, so she said she needed some letters of reference. I said, "Yeah, I'll write a letter of reference." Which was then roundly criticized by some of my colleagues who said, "You know what's going to happen? That letter of reference is going to be tendered as a sentencing exhibit." [Laughs]. I said, "Well, I can write a letter of reference that doesn't guarantee her good behavior but does recognize the steps that she's made." Anyway, long story short, she did extremely well. Sad story was that about two years later she got involved in drugs again and committed suicide, which was very sad, but it's an example to me that you can change lives.

BPS: I'm just wondering, you mentioned that you said that things that judges often say, and maybe it was just the time. It's possible. There's a thing that when people get married, it's just the person they're standing next to when they reach the point in life where they want to get married. It's obvious, but timing is everything. Maybe the difference was she could tell you meant it, that you weren't just going through the motions. The same words could be said by a judge and if it's coming from within with some genuineness, maybe a convicted person takes it to heart, and maybe some people are good at telling when you really mean it.

CJRW: Yeah, maybe. She obviously felt that I meant it, which was important to her. Words, we all know, are exceptionally powerful, right? Powerful in a positive and negative way. The problem I think with doing the job that judges do, and it doesn't matter which level of court you're on,

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[56] The Child and Family Services (CFS) system helps to ensure that families and communities provide for the safety and well-being of their children.

is that it's hard to understand the impact of your words on somebody. How do you know? So, I think you must be very careful. It's an exhausting process because you can't be flippant, you can't let stuff slip because you're lazy. You've got to be kind of "zoned in" all the time.

BPS: Yeah, and at least in the contemporary environment, you say something that would be perceived one way, given the body language, given the context, shows up on a transcript, shows up in the *Free Press* or the *Winnipeg Sun*, or a judicial-council investigation, and it's totally different. It's an environment with a challenge of always being genuine and constructive and thinking, "How is this going to read? How is this going to look?" Taking all that to heart, processing things at many different levels simultaneously, that would be very draining, I would think.

CJRW: And you have to be hard, sometimes too, Bryan. You must call it as it is. If it's a horrible crime with a horrible effect on a victim, you can't soften that, that's just the way it is. But at the end of the day, if you put in your energy, you're exhausted. It's not like you're going out and running a marathon. In fact, it's a very sedentary lifestyle. You sit down for two or three hours, listening to things, have a break, go sit for two or three hours and listen to things. At the end of the day, if you're doing the job properly. you're exhausted.

BPS: In some way, it's more exhausting, I would think that you experience all these emotions, all these thoughts, and a lot of it you can't act, and you can't do, you're listening. So, if we're in an environment where you say something and I find it offensive or if I'm controversial, I can respond. You can't, right? You have to listen. I would think in some ways that might be more exhausting than being in a more active, interactive environment where you can express what you think, react, and so on. I just wanted to ask two more things about the educational role of a judge. You're used to coming through, and some evidentiary doctrine is being argued. You have no idea what this is about, and the victim is there, they [the victims] often don't understand why what seems like a perfectly common-sense piece of information is being excluded. So, you got lawyers there, so I'm guessing you don't want to be too interventionist. Ordinary folks sitting there, the victim, the accused, who I would think at some point, while this is being included, or if somebody doesn't get to test it. What I don't understand at all, what is

the role of the judge to try and enable these lay participants to an understanding of what goes on?

CJRW: I think there's an important role as a judge to make sure that the litigants at the very least understand what's going. You're right, when you're getting into that type of argument then you're talking a lot of legalese, cases, arguments, and the Charter, and it's over their head. They're trying to apply a common-sense principle from their own perspective. I think it's very important as you rule to make sure that, as best as possible, you understand that not only the lawyers understand it, but the parties understand it. So, an accused understands it, the victim understands it, and hopefully if they understand it, anyone else that's watching will understand it. But it's difficult; sometimes you get some fine points of laws and it's difficult to try to put that in a way that's understandable to the general public.

BPS: Just one more thing about the language of the courtroom. We often ask judges, what makes a good advocate with an ineffective advocate? I think to some extent you addressed that in our first interview. My understanding of what you were saying was, "Yeah, give me the straight goods. You can be more persuasive to me if I think you're giving me a reasonably objective characterization. Don't pretend the case against you is heading to the Supreme Court of Canada [to be overturned]. Don't try and distort the facts. You're more effective as an advocate that way. There's no point in trying to fool the judge. The judge has seen more cases than you have. The judge might've been around a lot longer than you have. It's more persuasive if the judge thinks that what you're saying is not overstated. Maybe it's theatrically impressive to your client, but it's not effective advocating." Did I understand the first part correctly? Is there anything else you'd want to say to young lawyers about what makes an effective advocate in the criminal-law forum?

CJRW: Well, what we always say was, "Don't sacrifice your integrity for any client, or any cause, or anything else." I think if you get a reputation for being a straight shooter that's going to stay with you for the rest of your life. If your reputation is different, that's going to affect your success as an advocate. Even though it shouldn't, it does. It is a personality-based business, after all.

DLM: It seems to me that — well, I think I might get awry if I overstate this but — I'm looking five years down the road, and if I do this for every client, I'm going to be in trouble for that client five years down the road. So, how would you balance that immediacy versus long term reputational damage?

CJRW: Well, I think if you can overstate something, but have a reasonable, logical argument to back up why you're asking for something — and I don't know that that's unreasonable, that just may be effective advocacy — it's asking for something that's unreasonable that doesn't seem to have a basis in fact, or in law, or in common sense [that is problematic]. There's nothing wrong, I think Darcy, in trying to shoot for the moon occasionally. But, if you get a reputation for shooting for the moon all the time, without really any logical underpinning to that argument, then you just get a reputation of always being unreasonable. You're a Crown that always ask for more than the accused should get or you're a defence lawyer that always asks for something ridiculously low that the accused should get. But it doesn't mean that you should always play within the margins, because that's your job. Occasionally, there may be a reason why you need to go somewhere different because you really feel you have an argument to justify, go for it.

DLM: Got it. I think I understand. So, we've talked about much of the serious side of judging. Let's talk for a minute about the funnier side. You've sat in court for a long time. Has there ever been a funny moment that you recall where you laughed out loud in court, or something happened amid a case, or amid a sentencing, where you just had no choice but to enjoy the funny, lighter side of doing what you're doing now?

CJRW: There's not a lot of jollies that go on in criminal courts, but yes, there are occasions when you end up chuckling about something. But I'll honestly say that as a judge, I don't remember too many of them and they may be more related to something the lawyer has said or done, as opposed to something related to the actual case. I remember funnier things when I was practicing law than I do sitting on the Bench. Maybe it's because you're trying very hard not to show emotion of any kind, whether it's mirth, or anger, or whatever. On that, if I can just say that it would be interesting talking to other people because we're all built a little differently, too. Some of us are much more cerebral than others, some are more emotional than others. I happen to be a guy that sort of wears his heart on his sleeve, which

often makes it difficult for me to channel my emotions when you're dealing with a case that really tugs at your heartstrings. For example, some awful cases, and sometimes you have to take a walk in the snow just to make sure that your emotions are not affecting the decision that you're making. But I'll admit, that as I grow older, the number of times that I'm wiping away tears from my eyes — often when I'm addressing a sentencing, particularly a victim of a serious crime — is increasing. And I don't apologize for that, just as long as I'm confident it's not affecting my judgement, but you do get touched by this stuff after a while. In terms of funny stuff, Darcy — gee, I wish I had thought about it. I should have looked at the questions ahead of time and thought of something, but nothing pops to my mind. It probably will in the middle of the night now, at about 2:00 o'clock in the morning, I'll wake up giggling about some story that I should have said to you. But I will tell you a story about when I was a Crown attorney if I might, and again, it's going to be a long story. So, my mentor Hersh Wolch[57] represented a lot of guys. One of the guys that he represented was a fellow by the name of Joe Richards, who, in his day, was an effective thief. I think at one time, as I recall, Joe had stolen secret government documents out of a Senator's car. Joe was a quite a career criminal, but over the course of time Joe kind of slowed down, as many people do. He became involved in penny-ante crime, and I represented him on a lot of occasions on small stuff. After I joined the Crown attorney's office I was doing a docket one day. You know, these dockets in courtroom 302, where there's like 100 people on the docket. And around 10:30 in the morning, suddenly, this guy — who's half-drunk — slams open the doors, comes in, and says, "I want to speak to the Crown attorney." And it's Joe Richards. So, everything stops, and Joe then explains to the judge that, "This guy's my lawyer. I got a charge on the docket. Can you just ask for probation? I just want to get rid of this." Anyway, to make a long story short, he was charged with theft, and I turned to the lawyers on the other side, I said, "I hope my learned friends will permit me just to stand their matters down because Mr. Richards has much more seniority at the bar than they do." I read this quick file, and it was shoplifting, and this is all literally on the record, I'm negotiating in the middle of court. I say, "Okay Joe, for old times' sake, yeah, I'll ask for probation." "Alright, you're the best. Can I plead guilty right now?" And I said, "Sure, let's go." So, he pleads guilty, I read out the facts. It says he goes to some convenience store

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57 *See supra* note *24* and accompanying text.

and steals chips, and whatever. Then he said, "And a panty rose." I stopped, and I said, "Joe, a panty rose? What's a panty rose?" Bear in mind, this is in the middle of the sentencing. He said, "You've never seen a panty rose Ray? It's a stem, and the bloom is a pair of pink panties. I'll get you one." I said, "No Joe, that's okay." Anyways, it finishes, Joe gets his probation, out he goes. A few months later I'm in court, Joe comes in late again, he's drunk, and he's got something in his hands. "Your Honour, I got to speak to the Crown attorney. I knew him when he had a cardboard box for a briefcase. I got a present for you." He grabs into his jacket; he pulls a panty rose and gives it to me.

DLM: [Laughs]. My goodness, wow, stuff like that just happened. Okay, now you were a highly-respected Provincial Court Judge, and you decided to throw your hat in the ring to be the Chief Judge, which meant that you were hearing fewer cases. What would be the thing that would cause somebody like you to say, "I want to go do this"?

CJRW: I don't remember, Darcy. I had taken a certificate course at the U of M in the 1990s, in public sector management, so I thought I knew a fair amount about personnel, finances, budgets, and stuff like that. It served me well in the Crowns office, and I thought, I could do this. The Provincial Court at that time was in significant disarray and fairly dysfunctional. It was with that backdrop that the first competition for appointing a Chief Judge with a term limit in Manitoba took place. The Bench was exceptionally divided, half the people supported one candidate, half the people supported another candidate. The government was so pissed off with the Bench itself, that they opened the competition to anyone who was suitable for appointment as a Provincial Judge. So, the rumor was that the 10 people from the Bar had also applied. The only thing that unified the judges was the fear that they would get someone appointed who wasn't one of them. Anyway, there was a lot of angst about who the Chief Judge was going to be, a lot of fear that it was going to be someone from outside the Bench; there were divisions. It was with that backdrop I thought, "I'm going to apply. I get along with people. I've got a background in administration, maybe I'll throw my hat in." So, I did, and you had a sort of an internal requirement that everyone who is applying should let their colleagues know, so I let my colleagues know. And everyone thought, "You're not going to get it."

Remember the late Ron Meyers?[58] His office was next to me, so Ron and I were pretty good friends and every morning—this was the routine—Ron would come into my office he'd sit down and say, "So, who do you think is going to be Chief Judge?" And I would say, "Well you know Ron, I've applied." He'd say, "Yeah, I know, but everyone knows you're not going to get it."

DLM: [Laughs].

CJRW: That was the morning coffee routine, every morning with Ron. So, again a long-winded answer, but I thought I'd apply because I thought I could do the job, and it would be at a time when I think the Provincial Court needed some leadership. I never actually thought that I was going to get it quite frankly because I thought was someone with good political connections would likely end up being appointed.

BPS: So, in some ways analogous to being an academic leader. You've got very powerful personalities, very powerful egos sometimes. People then would be largely, "Hey, I took this job so I could be independent, now somebody else is trying to tell me what to do, and what my work hours should be and all this kind of stuff." If anything, like academic environment, the amount of leverage you have is not much. You can make people's lives miserable, but trying to get people to work harder, be more responsible, or be more engaged, is actually very hard. So, in that kind of environment, if I'm describing it correctly, let me know if I'm not, what is the key to effective leadership? Is it leading by example? Is it transparency, so people know why you want to do something they're more likely to buy in? What would work in the real-world?

CJRW: I would think academia is very similar, because you're all independent. Some judges will throw their robe of judicial independence around their shoulder basically saying, "You can't tell me to do anything," which is a bit of a misunderstanding of what judicial independence is. But, in any event, you're first amongst equals, they will remind you of that. It's the soft skills that make you successful or not. Honestly, the Bench was so divided that when I tried to order pencils — I used to say I couldn't order

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[58] *See supra* note 35 and accompanying text.

pencils without getting permission of the Bench as to what type of pencils to order, it was really like that. So, I just started a campaign of just 'peopling' them out. That's the term that I think I invented, which is probably not a proper term. You just kill them with information and with communication. That's all I did. I made it a point of spending all my efforts going and seeing somebody, every day or two; sitting in their office, talking to them about the job, themselves, sports, whatever they wanted to talk about, just building relationships individually with everyone. I sent out so many emails a day, that on every Friday I would stay late at the office and I would do a five-page newsletter to the judges on everything that had happened and everything that I'd done, and every issue that the Bench should be concerned about that week. I sent out this Friday night newsletter—which was exhausting—and it got to the point in a short period of time—six to nine months—I started getting emails back from people saying, "there's too much information," but they were exceptionally complimentary. I did other things. Every six months, I bought wine, food—out of my own dime—I'd have a wine and cheese in the office at 4:00 o'clock on a Thursday evening. Anyone who's in the office can come in and have wine and cheese, and honestly, Bryan, it wasn't rocket science; it was just taking the time to spend time with people.

You know what happened? The individual office doors started opening, old divisions started being forgotten, and people just started enjoying coming to work. The Chief Judge's door was always open. It wasn't that they always agreed with me, but any time there was a decision I always gave background information as to why, I gave them a heads-up. I had multi-level meetings, I had meetings with the Provincial Judges Association[59] on a weekly basis, I had meetings with the Bench on a monthly basis, I formed meetings with all the practitioners, we set up committees on all sorts of levels. It was exhausting, but it's just a matter of devoting energy to do it. The rest of the stuff, budgets, and all that stuff, you can handle that, but that's all it was, and most people just want to come to work, do their job, be independent, and be valued. I don't care who you are, everyone needs a pat on the back occasionally, to say, "I know you're there, and you're doing a good job." That's all it was. The best way to take over an organization is to take it over

[59] The Canadian Association of Provincial Court Judges is a federation of provincial and territorial judges' associations.

when it's dysfunctional because you've got nowhere to go but up. Anyway, that's it. That's all it was, nothing earth shattering.

DLM: Alright, let me talk to you because you've mentioned the shift from a lifetime appointment to a seven-year maximum with no chance of renewal for the Chief Judge. So, you've been through both systems, not as the Chief Judge. Which one is better and why?

CJRW: Oh, always the term-limit. Funny story, so you get to know politicians well; I got to know Gary Doer[60] well. I was having lunch with him, about nine months before the expiration of my term, and I happen to say to him, "Gary, you're going to have to start on the process of picking a new Chief Judge." And this honestly is what he said, he said, "Why do we have to do that?" I said, "Well, because the legislation says it's a seven-year term." He said, "Really? I didn't know that." I said, "Well, you were actually the one that brought it in." He went, "Oh, okay well then we'll just give you an extension." I said, "No, you can't." "Why not?" "Because the legislation says no extension." "Well, then we'll just amend the legislation." I said, "Look, I'd love to do this for a couple more years Gary, but it's not a good idea. That's the legislation, you changed it because of a personality, don't change it again because of a personality."

It was hard for me to leave, honestly, but it's the right thing, Darcy. I mean, any leader of any organization gets stale, I don't care who you are. You could be the greatest Dean in the world, you can be the greatest Prime Minister, you get stale. I mean, hopefully, what you should do is set a series of goals and objectives that you want to achieve in a certain period. Prepare for those, do them, and then get out. I don't care how loved you are, the troops just get tired of you after a while anyway, they just want to change your face. So, I think terms should be — and I'll say this honestly, you can put it on record — there should be terms for every Chief Judge, every Chief Justice in this country. It is just good and healthy for the organization.

BPS: Whatever it's worth, as a general managerial principle, I've spoken about this, I'm a very strong believer in alternation. Premier about eight years is up for anybody, even if I agree with your general program, I welcome

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[60] Gary Doer was a politician in Winnipeg, Manitoba and served as Premier of Manitoba.

alternation. People get tired, people get critical. You also get this thing though it's hard to change — and you can tell me whether this is from your experience—I think honestly after a certain amount of time people genuinely believe that they're indispensable. They know so much from having been on the job, and they do know more than everybody else, and they think the next person is going to be an idiot. What they forget is, they will have the same chance to learn, the same support that I do. So, yes, everybody does know less than I do right now, but if somebody steps into it eventually, they'll get where I am. I think in many organizations, politics, whatever it is, people after a while — because they know so much more from having done the job — think that the appeal du Roi [French: the appeal of the King]. It's not just like, "I need the powers." I'm genuinely concerned what's going to happen after me. But those are my thoughts.

CJRW: I absolutely agree. I mean we all have egos, right? So, we all think no one could do the job, no one could be as good as us. It's just going to be bad for the organization, and sometimes people will tell you that. They'll say, "I love you as the Chief Judge. I don't want you to go, I really fear for the future." Of course, there's no grounding for the fear, and I think the longer people are in those types of positions — I don't care how grounded they are — they start thinking that's the position, that's them, that's their identity. So, I agree, absolutely for the health of the organization and the individual, change him or her up, change it up.

DLM: Well, let's talk a little bit about what you did get done while you were Chief Judge.

CJRW: I got to order new pencils. That was my chief claim to fame as the Chief Judge.

DLM: [Laughs]. Really? Okay, I think the United Nations[61] might disagree. But let's talk a little bit about that. You took domestic violence as one of the things you wanted to deal with at some level. I'm assuming that wasn't by accident, that was a deliberate choice you made, and you were ultimately

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61 The United Nations is a diplomatic and political intergovernmental self-regulatory body with the intended purpose of maintaining international peace and security, develop friendly relations among nations, achieve international cooperation, and serve as a center for concerting the behaviour of member nations.

feted. You and members of the government of the day were recognized by the United Nations. Talk to me a little bit about: A) the program you set up and B) what it was like to go to New York for that purpose.

CJRW: Okay, so it was the Domestic Violence Front-End Project,[62] which later became known as the Front-End Project because it expanded from domestic violence to every type of case. It was motivated by this, Darcy. The backlogs in domestic violence cases were horrible back in the early 2000s, way past *Jordan* deadlines,[63] pre-*Jordan*, and it was longer than the backlog for any other type of non-domestic case. So, to try to get a trial date if you were in custody took months — like six or nine months for a custody trial — longer if you were out of custody. It resulted in a lot of bad things, failed prosecutions for one thing, and a lot of pressure on remand facilities or people in jail, and a lot of frustration — understandably so — for victims of crime and victims of domestic violence. It was an intolerable situation, so we just decided that we needed to try to find a different way of processing domestic-violence cases quicker. What we did was we brought together all the players in the system, from the Crown, judges, defence lawyers, Legal Aid, Corrections, and basically the challenge was: we're going to change things, and we want you to be part of the solution to change and speed up the process in domestic-violence cases. So, two things were remarkable about this endeavour. One was that the culture back in the early 2000s was that the various parties in the criminal-justice system never spoke to each other. Everyone was fiercely independent, there's no CEO of the justice system, but they're interdependent yet dependent on each other. So, the idea of getting people together to talk about shared values was difficult, and most people thought, "What about defence lawyers? What's going to be in it for them? To speed up the processing of domestic-violence cases, it means that there may be a higher conviction rate for their clients." A lot of cases were falling through when they were delayed. So, you had to find a hook for

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62 The Domestic Violence Front-End Project was created to make the Provincial Court system more effective and efficient in the processing of domestic-violence cases. The project has since been expanded to include other criminal cases that come before the Provincial Court.

63 *R v Jordan*, 2016 SCC 27 is a Supreme Court of Canada's decision establishes timelines that trials must be heard 18 months after charges are laid for a province's main entry point into the court system, or 30 months after charges are laid designed for a province's superior court.

everyone that could benefit them in addition to appealing to their better sense of commitment to service to community. Because everyone — I don't care who you are — all understands that that's one of the things that we're doing, we're providing an essential service to Canadians and the criminal-justice system is one of the pillars and foundations of the democratic process. So, we all have responsibility to ensure that it works as effectively as we can. We got people together and it was very interesting to begin with because there was a lot of, not distrust or animosity, but lack of understanding between the various organizations —the police were there as well — as to the role of the other. For example, you can appreciate that the police perhaps didn't have an acute appreciation of the essential role of defence lawyers. Defence lawyers were suspicious of the police. In any event, we got them together and we challenged them. We said, "Look we're going to change things, so you can be on the train or not; you can be part of effecting the change or not." So, they all felt that they needed to be there, as opposed to not being there. And it was through that, through an extensive amount of effort and cooperation — on all sorts of levels —through committees. They committed to a common cause to speed up the processing of these cases. There was something in it for everyone because as it turned out that defence lawyers didn't mind cases proceeding a little bit quicker because they got paid earlier. There was something for them in that. So, I think collectively, we steered the group. There was some steering obviously, we had certain goals that we wanted to obtain, but we wanted the group to come to a collective understanding and decision of what we wanted to do, and we changed the processing of these cases. It reduced the backlog significantly, in a very short period, we were able to process cases, clear cases, and started clearing cases faster than they were coming in. And so, we were nominated for the…

DLM: Was it called the United Nations public service award?

CJRW: No, that wasn't the first one.

DLM: Okay, sorry.

CJRW: No, that's okay. So, we were nominated—here's the trophy—for the IPAC award for innovative management.[64]

DLM: IPAC stands for what?

CJRW: For the Institute for Public Administration of Canada.[65] So, we were nominated for an IPAC award. The first time a Court had ever been nominated for this type of work in changing public sector processes. We had to go to Toronto, to appear before an IPAC judging board to present what we had done. At a gala dinner, we were then awarded the gold medal for Innovative Management in 2005, which was really an amazing honour because a Court had never won it, and we were up against cities who had done innovative things, municipalities, and other government groups. So, we won the IPAC award and because of that IPAC award, we were then nominated for a United Nations Award for Public Service. There were — as I recall — three geographical zones. There was a Euro-Asia zone, an Africa zone, and a North and South America zone. So, we were nominated and won in the North and South America zone for a UN award, and we were invited to the United Nations for the award and presentation in 2006.

BPS: Just an observation, because of having earlier done — we haven't published it yet — but we're working on it through the interviews on how justice was administered during the COVID period. And just the connection I make now, this is something that would obviously unfold just by ordinary institutional analysis, but what you're telling is something very similar that happened during COVID which was, when you've got the stakeholders in a room together — I'm told at least, from everyone I've interviewed — everybody responded well, in terms of the Bar, the government, and so on. So, getting everybody together against a common cause in the public interest worked. Second thing is, in both cases,

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64 The IPAC Award for Innovative Management Award aims to recognize and encourage innovation in all public organizations and across all orders of governments. It also provides an opportunity to share these good ideas with others.

65 The Institute of Public Administration of Canada is Canada's leading professional organization supporting excellence in the country's public sector. With 18 regional groups across the nation, their members include public servants, academics and others interested in public administration. The Institute also works closely with all levels of government to promote quality public services and practices.

everybody credits judicial leadership, which isn't obvious. You usually think the policy reform will come from first and foremost government, not the judiciary. If anything, the judiciary is thought of as the listeners, not the doers. So, kind of interesting; two significant cases of reform, both in response to serious problems, one more publicly pervasive with COVID. In both cases — a similar pattern — people got together, were willing to cooperate, and do something in a common cause. And in both cases the primary leadership seemed to come from the judicial branch, which I don't think if you've read the textbooks on how the system works, that's not where you expect the leadership to come from.

CJRW: But it's a natural place for the leadership because, as I said before, there's no CEO justice system, so who does everyone look to? Everyone looks to the judiciary. So, the judiciary may not have the traditional organizational power, but they do have the power, and they do have the respect of the people who work in the system. In fact, if you look at some of the reforms that some governments have done that have been instituted by governments — as opposed to judiciary — they sometimes have been spectacular failures or slow-burning failures because change came outside as opposed to from within. The reason we won the award was not necessarily as much because of what we had done — which I think was quite good and remarkable — we were the first example of a reform that had been led by the judiciary. Some of the IPAC award nominees in 2005 were just unbelievable in what they had done, reforming multi-million dollar waste sewage plants in a particular city, for example. However, what we had done was brought a group of disparate people, who were fiercely independent but interdependent, without the ability to say as a management, "you will do this" because you didn't have that ability; we brought them together, developed shared common goals, common objectives, and gave everyone a stake in the solution. So, at the end of the day, some of the decisions that were made, the Crown didn't like. In some of the decisions, the defence lawyers didn't like, but they ended up having a new perspective and understanding on the role that someone else played. The exigencies that paid, people learned about the exigencies of Corrections, for example, or the police. Everyone ended up — because they were talking to each other — understanding, and then they settled and sacrificed as well. I think it was the process that made it successful, and I would say that that's the reason discussions on COVID and everything else had to be led by the judiciary to

be successful. Ultimately, we were able — where there were differences that the parties couldn't work out — make this decision. We didn't always favour one or the other. Again, if you're transparent, and you say, "we're going to go with this, in this project, because of this and this," people might not like it, but they would appreciate it. And we kept the dialogue going so, as I said, there were meetings on all sorts of levels. It was a very time-consuming, exhaustive process, but everyone was involved.

DLM: Well, let me just go back to something else that you said. You walked into a Provincial Court that was highly dysfunctional, and this was undoubtedly part of that dysfunction, the delays that resulted, that you were fixing here, yet you seemed to get everybody on board with doing this in a meaningful way. And I note, for the record, that you have always said in virtually every time you've talked about this project — both here and in other places — you always said "we," but it seems to me there's a certain amount that must have been leadership at some level. I'm not saying that you were the only leader that did it, but it was a leadership thing because before this leadership came into focus you had a highly dysfunctional court. Suddenly, you're winning international and national awards for doing something highly focused on fixing genuine problems. That must have felt pretty good.

CJRW: Yeah, it did. Bear in mind, not everyone was always on board. There were people on the Bench who sort of took a "look and see," or a "I'll wait and see," attitude. There were a lot of people who got right into it, and a lot of people said, "I'll see what happens and how is this going to affect me," but honestly — and I've described myself, and people laugh at this — I think I'm a great vacuous front man. Frankly, often not a lot of substance, but sometimes you need someone who might — and I'm not saying I do it — but might inspire leadership.

I'll give you an example. When I go to the Law Courts even now, I go to the other floors and see the staff that are working in the other floors and say "Hi." Many people often say to me, "Judge Wyant, you're the only one that's ever come down here — since the time you were Chief Judge — and say, 'Hi.'" Those people will go to the wall for you if they like you, and they think that you value them as a person and you value the work. But I'll be honest with you, that hard lifting was done by a lot of other people. You know, without

Richard Chartier[66] and Janice leMaistre[67], that thing never would have been successful. Janice was Head of Domestic Violence with the Crown's office at that time. Richard was a judge to our court and was an amazing doer. This was a team effort; this was not one person, this was a whole bunch of people inside and outside the judiciary that made it successful. So, when I say "we," I really mean we. It really is a "we" thing and must be viewed that way.

BPS: I just want to know one thing. Again, it's not a widely appreciated thing when people talk about it a lot but, let me just draw the analogy to law firms. The productivity of lawyers is — in my observation — tremendously contingent on the administrative staff. Now, people willing to stay an extra hour when you have to rush, administrative support people who think that they are part of the team, and I think there's very much overlooked. We talked about administrative staff, or how you recruit, or retain them, or how you make them feel valuable. At a law school, I don't know, Darcy, if we've ever spent a whole lot of time, as faculty, talking about the administrator/support environment, because we don't really think about people who are at the contact point as much. That seems to be an important part of the leadership if you're running a government, you don't just think about the Deputy Ministers, you're thinking about the people staff, the administrative support people and the frontline people. It's true in legal practice now — I'm guessing, I have no first-hand experience — but from what you're telling us it's important in judicial operations. It's not just a thing that's important to judges, it's all the people behind the scenes doing the transcription and then the logistics, and so on and so forth. If we don't have them on board, or we're still there passive aggressive then not a whole lot of stuff is actually going to get done.

CJRW: Like I said, everyone comes to work and at the end of the day wants to feel like they're being valued, and lots of times, if you're in administrative

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66 The Honourable Richard Chartier was appointed a Judge of the Provincial Court of Manitoba in 1993.of the Manitoba Court of Appeal on November 23, 2006. He was appointed Chief Justice of Manitoba on March 7, 2013.

67 The Honourable Janice leMaistre was appointed a Justice of the Manitoba Court of Appeal on June 19, 2015. Prior to her appointment, Justice leMaistre was an Associate Chief Judge of the Provincial Court of Manitoba. She was appointed to the Provincial Court of Manitoba in 2006 and appointed Associate Chief Judge in 2009.

jobs, you don't necessarily see the big picture or are not allowed to participate in the big picture, or to understand the goals of the organization. Everyone has something to contribute to the betterment of the organization. I remember, we had dozens of committees going on all sorts of things, and just to give an example, there was a committee that was formed to look at remand warrants. That's the piece of paper that travels with a prisoner — an inmate — when they go from institution to institution and to court. So, every time there's a movement, the remand warrant is endorsed, it goes from courts, to Corrections, to wherever between institutions. And there were people in the Crown's office that dealt with remand warrants, people in the Court office, people in Corrections; overall there were different levels that dealt with the same piece of paper. These people didn't know each other than by e-mail or phone. They didn't know who the other person was, but someone suggested that remand warrants — or the actual paper itself — was holding up a lot of what was causing people to stay in custody a day or two longer because of the systems. So, we formed a committee. We said, "Anyone who is dealing with remand warrants, can you guys get together, meet in person, and devise a process that would work? That would actually cut down the amount of time that we actually spend on paper traveling towards institutions, electronically or otherwise." So, they did. These group of people got together, they had never met each other; they worked for four months and developed a proposal for the efficient handling of remand warrants. And then, they asked if they could meet with the Chief Judge — who they'd never met — to present this. I said, "Sure." So, we set up a breakfast meeting at the Leg[68]— when you could have breakfast in the basement of the Leg — they all dressed up in their finest attire. This was the culmination for them, of their work life, they were meeting with the Chief Judge, and I'm not trying to be funny about this; you forget how people see you as a leader. We think, "Oh, I'm humble" or whatever. They don't view it that way; you're the Chief Judge, you're a big wheel, you're a big somebody and they're intimidated by that. You're almost like a non-person. You probably don't shit, you probably don't sleep, you're just a different human. So, I met with these people, and they made this presentation, just so much work, and it was a culmination of their career to be able to do this. We adopted what they had done. They'd done an amazing job, just talking to each other. I think we often forget all the other people that work to make

[68] The Manitoba Legislative Building.

an organization successful because without them things can go to pot quickly.

DLM: To be honest, you know that I do a lot with the Clerkship programs,[69] and if I want to get a hold of anybody important, the person I call is Aimee Fortier.[70] There are people I can call directly, but if I want to get a hold of somebody I don't know well in the Courts, I'm going to call Ms. Fortier and figure out how to get whoever I need, because some of these people are the most efficient gatekeepers in the most efficient way and they do it quietly and behind the scenes. That's why they're in those jobs.

CJRW: Those two awards, I think they were great, they belong to everyone who worked on that project for many years. As they said, it morphed into something bigger. We changed the complete processes in the Provincial Court. It was amazing, we twinned with a territorial court in Australia. I went to Australia to make presentations; this was a big deal. This was known, not just in Canada, but internationally for the work that we'd done. Last year, I got a call from the Centre for Justice Innovation in New York because they were doing a follow-up on some of the recommendations from that. So, it had an influence not just nationally, but internationally as well, and frankly, I think all of us that had worked on it are proud of it.

BPS: Okay, I just have a question about leadership at this point. Darcy probably has experiences with this, students who talk to you, it doesn't always happen today in the current environment like, "Oh. You're Dr.

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69 There are three clerkship programs that allow students at the Faculty-of Law at the University of Manitoba to work at the courts for academic credit. The Manitoba Court of Appeal Clerkship started in 2004. The Manitoba Court of Queen's Bench Clerkship Program (now, the Manitoba Court of King's Bench Clerkship Program) began in 2011. There were many people, both within and outside the judiciary, who were instrumental to implement and maintain these programs. Finally, with the support of Judge Wyant, then-Chief Judge Margaret Wiebe and then-Associate Chief Judge Anne Krahn, the Manitoba Provincial Court Clerkship Program was started in 2019.

70 Aimee Fortier is the Executive Assistance to the Chief Justices and Chief Judge working as the media relations officer for the courts and judiciary in Manitoba. Ms. Fortier provides assistance in obtaining public information from the court records of the Provincial Court, Court of King's Bench and Court of Appeal, found in the court offices throughout Manitoba. She also handles all requests for comment from specific judges and/or provides a response to requests for comment on issues affecting judicial administration.

Schwartz. You're professor somebody." And your kind of looking like, "It's just me here," right? So, sometimes uncomfortable being treated like, "I don't think I'm that important, but you're treating me like I'm responding to missions." On the other hand, you as a Chief Judge to get things done, you must project some authority, right? Is that a struggle to find the sweet spot between "I am the Chief Judge." I think this is a lot of little decisions, are you calling me Your Honor? Are you calling me Ray?

CJRW: No, I didn't find it difficult at all. To everyone I met, I told them they can call me Ray, Raymond, or Asshole. That was always my standard.

BPS and DLM: [Laugh].

CJRW: And people would be uncomfortable calling me by my name because I was the Chief Judge. So, they say, "No, that's what I call you." I never use my title. I often said to people, "I lost my name when I got my title. I don't like the title. I'd rather be known, from my perspective, by my first name." If people want to call you Chief Judge, that's something that they give — you don't give yourself the title, they give you the title. I never found — honestly — that I ever had to use the title to get something, but I think that just the position you were in probably got things. I never felt that I ever had to flex it, or say, "Well, you know, at the end of the day, I am the Chief Judge." I found that the personal connection with people went much farther than anything else, and I still believe always will.

DLM: You've talked, both publicly and privately, about what makes a good judge and what doesn't make a good judge. I'd like to get some of that on the record.

CJRW: [Laughs]. Well, good luck with that.

DLM: [Laughs]. No, but for me, it's remarkable some of the things that you've talked about, about what it takes to be good at what you did for so long, and the things that made you think that it's time to move on; not you personally, but maybe it's time that this person is. You want to talk about both sides of that coin. What makes a good judge? When do the indicators show that, "Okay, maybe you've made your contribution, thanks so much?"

CJRW: Well, humility will make not just a good judge, but will just make a good person all around. And that's a very easy thing to say, Darcy, but very hard to put into action because when you're a judicial position. Everyone — I've said this before — everyone treats you with respect, everyone pretends they like you whether they do or not, and no one ever says anything bad to you except behind your back. It's easy to see how that seeps into your psyche, right? So, you start thinking, "I guess I am pretty special," even subconsciously. So, I think the battle to keep yourself grounded is the battle that probably makes us all successful at end of day. I wouldn't say that I've been successful in that because those kinds of judgments are judgments other people can make, they're not judgments I can make. I'm sure there are a lot of people saying, "That Wyant's just snooty," and it might be right. You just hope you tried to make sure you're not, but I'm sure some people view it differently. I don't think that's anything unique to the judiciary, that should just be the way we are.

DLM: And the footsteps. What do you mean when you say that?

CJRW: Well, I do worry sometimes about it because it's human nature. When you think that you might be criticized or you're going to be criticized for a judgment, I worry that people might be influenced in the decisions that they make to avoid those footsteps. I'll give you a concrete example without naming anyone, okay? So, do you remember when Graham James[71] was charged with his sexual offences.

DLM: Yeah, I wrote about it.[72]

CJRW: And Graham James appeared for bail. I think it was a judge who heard the bail application and released Graham James. To, of course, a torrent of criticism, right? "Why this? Why was this guy let out?" I was having a casual conversation with a judge, who said to me, "I would never have released Graham James because I couldn't have stood the public criticism that would have come with releasing him." It was a remarkable

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71 Graham James is a former Canadian junior ice hockey coach who was convicted of sexually abusing players on his team.

72 Darcy L. MacPherson, "Graham James: Sending the Wrong Message?" MLJ Online: <https://themanitobalawjournal.com/wp-content/uploads/articles/OTHER/Graham-James-Sending-the-Wrong-Message.pdf.>

conversation; it was a very short one, but remarkable in its honesty where someone admitted that the firestorm that they knew would have come would have affected their decision. It's the only example I've ever had directly of someone saying to me that they would have been affected, but I think we'd be kidding ourselves — we'd be dreaming in Technicolor — if we didn't think that those things have gone through the minds of human beings at times, that the fear of being criticized might affect the decision we make. God, we hope it doesn't —and I'm not suggesting it does or ever has [affected a judgment] — but we have to be alive to the fact that we have to be concerned that the potential hearing footsteps might affect us because we are very much in the public eye and there are sometimes vicious criticisms of public officials, including judges, over decisions. So, I think it's something we should be talking about more.

BPS: Maybe, more subtly, you must be tentative to not be seeking favour either. When it could be, "Oh, look at the heroic judge, it's somebody who finally ended the revolving door. Wow, that's the kind of judge we need — ten years, most judges would have given him three," or you get a reward from an advocacy organization, or something. It's not only fear, but self-discipline to try not to be feted, celebrated in praise; it's got to be difficult as well.

CJRW: Yeah, exactly. You've got to stay away from all of it.

DLM: You've talked a bit about the fact that as you've done this job for a while, your emotional response to some of it has changed. You're more open about your emotions affecting you once the decision is made. Now, my question for you is — it goes back to when we talked about term limits — judges now in the Provincial Court can stay, unlike their federal counterparts, as long as they want. They can stay until they're carried out in a pine box, if they so choose.

CJRW: That's changing.

DLM: That's changing?

CJRW: Yeah, that's changing. The government has legislation before it right now that would cap a mandatory retirement at seventy-five for provincial judges in Manitoba.[73]

DLM: And what do you think of that?

CJRW: I think that's a good idea. I'm sure some of my colleagues who might be affected might not like that, but again, you can be seventy-five or eighty, and be as sharp as a tack, and you can be sixty-five, and be done. But studies have generally shown that once you hit seventy and above, your brain starts to be affected. You're just not as sharp, and I don't care who you are, you're not as sharp. You get more tired in the afternoon; you get more exhausted, no matter how good you are. It's because it's a mental job. I think that there's good reason to have a mandatory retirement age because at some point in time, and I'm not suggesting that you at seventy-five, you'll be a doddering fool. You can be great after that, but I think at some point in time you must recognize that it's better to have a refreshment.

DLM: What I hear you saying is, seventy-five may not be the absolute right thing for everybody, but stopping at some point is probably a good thing.

CJRW: Yes, and some provincial and territorial courts have retirement at seventy. The feds are all seventy-five. And we're going to seventy-five in Manitoba so that's changing, but some are seventy. And I'm a deputy in the Yukon, at seventy-five my term as a Deputy Judge will end. That's just the way it is.

DLM: Right. Now forty years ago, or more, Bora Laskin[74] talked about improving the quality of judging over time. The need for better judges and judging. You're looking back at a forty-year career where you've done it all. You've done the Crown, you've done defence, you've been a judge, you've been a Chief Judge. How close are we getting to getting better at it?

CJRW: We are getting better at it. We're definitely better.

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73 See *The Provincial Court Act*, CCSM, c. C275, s. 5.1.

74 Bora Laskin was appointed to the Ontario Court of Appeal in 1965 and to the Supreme Court of Canada on March 19, 1970. On December 27, 1973, he was named Chief Justice of Canada. He served on the Supreme Court for 14 years.

DLM: How are we better?

CJRW: I mean I'm not talking individual because there were great judges forty years ago, right?

DLM: Yeah, and I'm not taking issue but I get to blame the guy that's been dead for years.

CJRW: As a collective this is a brighter, more intelligent, more articulate, more learned judiciary across the board in this country. It's a more diverse judiciary, although we're not anywhere close to reflecting the society we serve. Many courts are much more diverse than they used to be, certainly the Manitoba Provincial Court over the years, and I'm proud of that accomplishment. We hit 50/50 between women and men while I was the Chief Judge. We were the most diverse court in this country, and if you look at diversity appointments, they're happening properly all over the country. So, I'm not suggesting we're anywhere near where we should be, but we're a more diverse court. I think as courts we relate better, the education of students is better, the education of judges is better, and the accountability processes on judges are much more effective. There was no accountability forty years ago, you could be — and we talked about that —you could be a drunk asshole in court and no one would ever do anything about it. There were those kinds of judges. Now, there's accountability and that makes people better. We have education programs across the board that are designed to keep people up to speed, not only on substantive law, but on soft law topics, whether it's social context, or things of that nature. There's just a plethora of courses that are available to a judge. And here's the other thing, when I was first appointed many judges refused to take any education or continuing education courses because they said, "You can't tell me to take a continuing education course, because that will taint my judicial independence when you're going to indoctrinate me. If I take a course on domestic violence I'm going to be indoctrinated in favour of victims, and then I won't be able to be independent." So, we move from not having any educational programs, or judges resisting them, to having a very sophisticated continuing education program for judges, which I think is great. So, we're just better now, but we need to get better, too. And I would say that the merit system of appointing judges — and we may criticize how

much merit there is — but it's better than it used to be forty years ago as a direct appointment process. If you were a politico, you were likely to get appointed. Not that that made you a bad judge, but at least we have some injection of merit-based appointment processes across the country. That's made the judiciary better too.

DLM: What was it like as Chief Judge to deal with looking at your potential new colleagues and trying to evaluate their fitness? Was that difficult for you?

CJRW: No, because remember, you go through an interview process; so, you had to apply, be paper-screened, and then be interviewed by a group of people — which included laypeople — so I think that interview process really was quite helpful in evaluating potential candidates for the bench. We did a lot, when I was the Chief — and I don't know what the process is now because I'm not involved in the actual interview process anymore — but when I applied to be a judge, here were the questions: Why do you want to be a judge? What do you classify as your greatest success in life? Those are the questions. You knew what the questions were going to be, so you memorized your answers. Now, what I did was introduce behavioural-based questions, so we had hypotheticals. Okay, here's a hypothetical situation, something that might have happened in court, what's your reaction going to be? So, that tested the depth of their thinking; whether they were linear thinkers, whether they could think on different levels, it tested their ethical background, and I think it separated a lot of people properly. So, at the end of the day you run a list, the government still appointed from the list, but it was it was a much better way of vetting potential candidates. I still think it's better than the federal system, where you don't have an interview at all.

BPS: I wanted to ask something, Ray. Here's my honest example, there should be a certain number of people on the Bench who aren't safe. I would be concerned about whether the screening process discourages people from applying who have screwed up at one point in their life. Now, you got to go over, and is there anything in your path — and this may sound crazy — but I think it's healthy to have people in positions made of authority, that screwed up themselves, realize that people can make mistakes and hopefully they learn from it; you don't want unreformed people. You know, you had a DUI, you had a messy domestic situation, where people would judge your

decision, whatever it is. I actually — again, I know I may sound nuts here — I would like a judiciary which has at least some representation of ordinary humans who have screwed up at some point in their life. Does that make any sense? Does this process kind of screen out for people who screwed up and learn from it? And could not get you to some extent empathise with somebody else who screwed up?

CJRW: I think it makes great sense. The more background and the more experience you have as a human being the better judge you're going to be. If you got out of law school and you practice for seven years and then you've got appointed to the Bench, you don't have a lot of life experience. That doesn't necessarily mean you're going to be a bad judge, but I think the more life experience you bring — good and bad — the better you will understand human behaviour, and the human condition without any question. You're right. I entirely agree with you, but you were also right in saying that the process does generally tend to screen out people who have screwed up because the questions has been, "Do you have a criminal record? Have you ever been convicted? Have you ever been charged? Do you have any regulatory offences or is there anything in your background that might cause embarrassment to the court?" And there are Law Society[75] checks, so if you've been disciplined by the Law Society for being late filing [documents with the Law Society], that'll be on your Law Society record. And people will look at that and they'll go, "Yeah, I don't know." That's a negative, right? But you're right, people who have gone through and had a life experience probably will understand. An alcoholic who is reformed will understand alcoholism and drug addiction in a way that someone else won't be able to understand.

BPS: Just in your example, there's a lot of DUIs in the Provincial Court. It's not a bad thing to me if somebody on the court had an alcohol problem and been charged, or even convicted, and then learned from it, and could show that experience in what it takes to reform, or how hard it is, with their colleagues. Just wondered now whether they were excessively screening out for people who had done the screwups. I might sound completely counter-intuitive or just wrong. I worry about people who never screwed up in their

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[75] The Law Society of Manitoba is the independent regulator of the legal profession in Manitoba. Their mission is to protect the public interest by ensuring that Manitoba lawyers practice ethically and competently.

life if they're in a position of judging others. It's a good thing to me if you're judging others or sending them to jai to know that we're all capable of having a bad day, lapses of judgment, and so on and so forth. It's fine to learn from it, but to know that you're fallible, it doesn't seem to be a bad thing at all when you're judging other people.

CJRW: I agree.

DLM: That leads me to a discussion of judicial discipline. You've mentioned, in a couple of places in this interview, that we were dealing with what is judicial discipline and why do we do it. It seems to me there's a lot going on, and Bryan's question — one of the places that we had that discussion — involved a Manitoba judge who was being disciplined. We asked ourselves, "Okay, this was not good," it was in their private lives, not in their judicial role, but I don't want to be judged by somebody who has no skeletons in the closet because nobody can understand better. It's hard to understand why other people can't be as disciplined as you if you've always been the buttoned up—the button down—whatever the term is, because everybody has the choice to make, right? Somebody's made a choice along the way, even the most disciplined person has always made a choice where, good or bad, I'll choose this. Anyway, so that led me to judicial discipline. I mean, one of your successors and we talked to Chief Judge Wiebe,[76] went through judicial discipline for of all things, talking to government. There was a complaint made against her and the other Chief Justices based on a program that they had entered on reforming preliminary inquiries. So, I'm assuming, that's one you would consider to be a rather frivolous example of judicial discipline, but you've also said that judicial discipline is important. The idea of holding people accountable is important, so I think I'm going to leave that very open-ended for you to talk a little bit about judicial discipline. It's hit the papers more than ever before. Certainly, early in my career, we didn't hear about judges getting in trouble, and that wasn't that long ago. I was called in '99 in Ontario, but in the last ten to fifteen years, it's been becoming a big deal and becomes very public. So, I'll just sort of leave that open for you to talk about judicial discipline as you see it.

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[76] The Honourable Chief Judge Margaret Wiebe was appointed as a Judge of the Provincial Court of Manitoba in December 2012. appointed as Chief Judge in July 2016. She stepped down at the end of her seven-year term in July, 2023.

CJRW: Yeah, well there's more talk about judicial discipline now because people are dissatisfied with judgments. Many people think that the avenue to deal with that is through the judicial-discipline process. Judicial discipline deals with behavior, it doesn't deal with your judgment in court, that's as we all know, through the appeal process. If you made a mistake, the parties have the right to appeal. Judicial discipline deals with your behaviour and your fitness to be a judge. But things that you can say, and the way you say them on the record, could be the subject of a judicial-discipline hearing if you said something that could be viewed as being misogynistic or racist. I think properly so, the only two ways to hold a judge, who's a public official, to account is through an appeal process. If they made a mistake, or an error in law, or judicial discipline to account for their behaviour in both their private and public life, I think that's legitimate.

DLM: I was just curious. If you were dealing with it, would it be different? If you could just wave a magic wand and say, "This is how judicial discipline should be dealt with." These are the things that, as one of the experienced public officials both as a Crown, defence lawyer, all those things that you've done, including Chief Judge and sitting judge, in what I will call a semi-retirement. I know you're busy, so we'll get back to you post-technical your full-time retirement. And we'll get back to what you've done after that in a minute, but I'm curious about how we do it right. Because it seems to me that judicial discipline started out as something they didn't know how to do — at one level — then they did it with *ad hoc* judges.[77] I read that Justice Rand[78] of the Supreme Court Canada once did a judicial-discipline investigation with respect to a judge named Leo Landreville.[79] That was the start of, "Oh damn, how do we deal with this?" So, we got Part II of the

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77 An *ad hoc* judge is a senior puisne judge who may attend at the sittings of the Court where at any time there is not a quorum of the judges available to hold or continue any sessions of the Court.

78 The Honourable Ivan Cleveland Rand was appointed to the Supreme Court of Canada on April 22, 1943. He developed what is known as the "Rand formula," a mechanism for levying union dues, while acting as arbitrator in a Ford labour dispute. In 1947, he was a member of the United Nations Special Committee on Palestine. He served on the Supreme Court for 16 years and retired on April 27, 1959.

79 Leo Landreville was a Canadian politician and lawyer, who served as mayor of Sudbury, Ontario in 1955 and 1956, before being appointed to the Supreme Court of Ontario as a judge. He later became the first Ontario Supreme Court Justice ever to be removed from the Bench.

Judges Act,[80] that tries to deal with it. We then got provincial stuff that came across that did similar things, though did it differently. My question for you is — and if you don't want to deal with it that's fine — if you Ray Wyant, were doing it with a blank canvas, is there a way to do it better? And if there isn't, that's fine.

CJRW: Well, you know I'll beg off the question a little bit, Darcy, because I think I would probably prefer giving that a little bit more thought than one of my "off the cuff" answers. Just like everything else, I think judicial discipline will be an evolving process. Accountability will be evolving, and I would probably say, as a general rule — and this applies to all professional organizations — I think there's a rightful demand by the public for more accountability and more transparency in decisions, whether it's the discipline of lawyers, or doctors, or other professionals, including judges. And I think you've seen changes in judicial discipline over the years. It's becoming a bit more transparent because the public demands it, but I think there's going to be more demand, I suspect, from the public for more transparency, and in the discipline, or the review of judges. I think as a rule, I'd say that's a good thing. So, have we hit perfection? Not at all. I'm not sure what perfection is, but I suspect it's going to involve a lot less control by the judiciary over their own, and more public input over their behaviour.

DLM: Fair enough. Okay, so let's talk a little bit about what you've been up to lately. You are still a member of the Provincial Court. You're supernumerary at the Provincial Court now. So, you can still hear cases in Manitoba, but you've done a lot of work up north.

CJRW: Yes, so the way the program works in Manitoba is — and most provincial and territorial courts have a similar type of program — you can retire, and then for a certain period of time you can sit *per diem*,[81] or essentially as a relief judge. Our program is, from the time you retire, you can engage in the program for seven years with an option for three more years' renewal, for a maximum of ten years. And that's regardless of what age you retired, so if you retired at forty, you're done at fifty. You retired at

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80 *Judges Act*, RSC 1985, c. J-1. Part II of the *Judges Act* pertains to the Canadian Judicial Council.

81 Per diem judges are part-time judges appointed by the Chief Justice on an "as needed basis" to preside in the Court.

sixty, you're done at seventy. That's where the retirement age change is going to affect people, because if they retire at sixty-seven, they normally could have been a senior judge for up to ten years, but now they're only going to be eight years because they're going to be capped at seventy-five. So, in our program, I retired in 2014. I didn't retire because I was ready to retire, I call it "retirement" because I was leaving to do something else and the only way to do that was to retire and take my pension. If I wasn't eligible for my pension, I probably just would have resigned but I was in the position where I could take a pension, keep a judicial appointment, and go do other things; so, I did that in 2014. I already finished my first seven years, and I'm starting in September the second of the three-year additional appointment. So, I'm done as a judge in Manitoba in September 2024, so two years from now my ten years is up. I left judging in 2014 not because I was ready to retire, but only because I was looking for another challenge. I think I found the transition from the Chief Judge's position, honestly, to be difficult for me, to go from being involved in everything, to being involved in not as much. Over the course of time, I kept involved in a lot of national organizations. I was a representative on the Steering Committee on Justice Efficiencies and Access to the Justice System. [82] This is a 16-person think-tank, that was established in 2003 to look at criminal-justice reform, and I was a member of that committee as a Chief Judge. Then when I was no longer Chief Judge, I was appointed to be the Chair of that committee, and I've been the chair of that committee now for many years. So, I had that going for me. I started an initiative called the National Symposium on Criminal Justice Reform[83] in 2009. That's when it started, although the work began two or three years earlier. This was a joint effort between myself and members of the Canadian Association of Chiefs of Police,[84] following the Air India inquiry,[85] to get

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82 The role of the Steering Committee on Efficiency and Access to Justice is to examine issues related to criminal justice effectiveness and access that are systemic and national in scope and can significantly affect the justice system.

83 The National Symposium on Criminal Justice Reform is an annual forum for justice leaders to share candid perspectives and solutions regarding the challenge of fashioning a responsive, accessible, and accountable criminal justice system.

84 The Canadian Association of Chiefs of Police is dedicated to the support and promotion of efficient law enforcement and to the protection and security of the people of Canada. The Association is national in character. Its interests and concern have relevance to police at all levels including municipal, regional, provincial and federal.

85 The Government of Canada created the Commission of Inquiry into the Investigation

representatives of the criminal-justice system together, on an annual basis, to talk about criminal-justice reform. It's been a remarkable thing; we're now going into our 15th year. So, I had those things going for me. I had offers to work internationally, and so at that point in time, I thought, "I could sit and be a judge, get paid a lot of money, and enhance my pension more and work as long as I want, or I go out try to do something else." And I just felt young enough, and restless enough, that I just wanted to do something different.

DLM: So, where did you end up going?

CJRW: I took a job with the UN[86] out of Geneva to do work in Ethiopia, developing code of judicial conduct, code of judicial discipline and code of ethics for the Ethiopian federal judiciary. That was the first job that I took, and I spent several months back and forth between here and Ethiopia, working with the federal judiciary. It was quite an eye-opener for me, I'd never been to what I could call a third-world country. I travelled a lot, but never actually been on the ground in a place where there was a lot of poverty, and a lot of starvation. So, it was great, rewarding work from the point of view of working with the judiciary, but it was quite a remarkable change for me personally. So, this will be a bit of a confession. I always thought I was a grounded, open-minded, humble kind of guy, then I went to a third world country and realized that I was quite a snooty and entitled young brat because I wasn't used to deprivation. I wanted cleanliness, I wanted food that I could eat. I think I was a little bit entitled, so it was a real slap in the face for me, and a good one.

DLM: Okay, that's what I assumed you meant. So, it was a real wake up call for you?

CJRW: It was a real wake up call for me. It was great work; I met a lot of great friends. I went back to Ethiopia a couple of years ago, I worked with

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of the Bombing of Air India Flight 182. The Government gave the Commission a mandate to examine the events surrounding the bombing and the subsequent investigation, and to identify gaps in Canada's security and intelligence system.

86 The United Nations.

UofT Munk School of Global Affairs.[87] I have some friends there, and I went back to Ethiopia with them on that. We were destined to go back and do some more work but the political events in Ethiopia have made that, at least presently, impossible. You know, the civil war that's going on there. It's sad for me, there were some law professors in Mekelle that I had met, really good guys. Mekelle University School of Law,[88] and if you look, Mekelle is being the centre of a lot of the battles between the breakaway rebels[89], and a lot of the cities being destroyed. Since that time, I've sort of had a very eclectic life. I continue to sit when asked and when I'm available or want to as a provincial judge here. I have my appointment in the Yukon, so I go up to the Yukon to sit.

DLM: Do you usually sit in the summer there or do you usually sit in the winter?

CJRW: No, I sit in winter. So, a lot of judges want to go up and sit in the summer because it's beautiful up there in the summer, but I usually go in the winter and the shoulder seasons. I like the summer here in Manitoba, so I would rather stay here. So, I have that. I did have the international work, I had an offer to go out internationally a few months ago, and then there was a coup in the country that I was supposed to go, it was Sri Lanka. I was asked to consider going to Sri Lanka and I said, "Yes," and then I don't know if you've been following the political events in Sri Lanka, but the President has resigned, and the Prime Minister became President. It's quite corrupt. Anyway, so I sit, I teach at the law school, I'm involved in the national symposium and the justice-reform committee that I talked about, and I am now the executive director — have been for the past four years — of the Canadian Council of Chief Judges.[90] So, that's the Council of Chiefs and Associates of provincial and territorial courts. Of course, they

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87 The Munk School of Global Affairs & Public Policy at the University of Toronto is a leader in interdisciplinary research, teaching, and global engagement. The Munk School's mission is to be a leader in contributing innovative ideas that help to solve major issues facing the global community.

88 Mekelle University School of Law is a school of law located in Ethiopia.

89 Breakaway rebels refers to a group of individuals who separate from a larger organization or authority to form their own independent group.

90 The Canadian Judicial Council was created in 1971 to maintain and improve the quality of judicial services in Canada's superior courts.

have their own organization, kind of like the Canadian Judicial Council for the section 96 judges,[91] and I'm their Executive Director. So, I'm the one that organizes and runs that organization for them. I'm back with the Chief Judges and have been for the last four years. I have also done some private consulting as well.

DLM: I find this remarkable, simply because it sounds like you're busier now than you ever were, as certainly as a sitting judge, and probably as Chief Judge, almost.

CJRW: I think I was busier when I was the Chief Judge. I was insanely busy as the Chief Judge, but I'm definitely busier now than I was when I was a sitting judge because you've got all these things off the corner of your table. I do spend a lot more time, since the pandemic, doing work on Zoom than I ever did before. So, I travel a lot less, that's probably a good thing. Believe it or not, Darcy, I still get asked to do the odd speaking gig. For some reason people still think that this vacuous front man has something to say. I tell people I can speak on anything for about twenty-five minutes, after that people will find out I'm a fraud.

DLM: [Laughs]. Well, I'll tell you you've spoken to us for about four hours.

CJRW: [Laughs]. And now you've found out the truth.

DLM: No, that was the exact opposite of what I was going to say. It's a remarkable life that you've led. Now my question is, what does the future look like for you? Or is it just, "I want to do this and then we'll see what happens next."

CJRW: I don't know. I don't think that I can answer that. I think you probably got the impression that I pretty much sort of go wherever something sort of leads me. I'm still looking for the next opportunity, I'll be honest with you. But I don't know what it is, and I kind of hope that something will just kind of pop up and then someone will say, "Hey, this guy might be good for that," and I'll probably jump at it, but I can't tell you what it is.

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91 *See supra* note **Error! Bookmark not defined.** and accompanying text.

DLM: Fair enough. Two last questions. You've talked to the beginning of the interview about your wife and family, I mean you must have a great deal of support to be able to take on as many things as you do. Do you want to talk a little bit about that? Where I come from, my dad always said the reason he could take on whatever jobs, or whatever things he wanted to do, was that he knew my mother had him covered at home. He had a bunch of stuff he didn't have to worry about because my mother was so good at what she did. I just wanted to let you talk a little bit about how you managed to do all this stuff, maybe your experience is different.

CJRW: Yes, I have a very supportive wife and family, which is great. Quite a growing, large, extensive family now, I just had my 10th grandchild two months ago.

DLM: Congratulations.

CJRW: Yes, so it's kind of cool. You know life has always been moving at sixty miles an hour for me, probably will continue to be till I can't anymore. I probably inherited a lot of that from my dad. He was one of those guys, it was another mountain to climb. He was a doc and he was still working and doing medical legal consulting in his 90s. He just had to work, he had to continue being busy. When he died at 95, it wasn't because his brain gave out, he was as sharp as anything — could still do the Sunday New York Times crossword — but his body just gave out. So, I'm just a shadow of how my dad was because he was a great guy. My brothers are all the same way; I've four brothers, and we're all kind of just driven guys. But yeah, having a supportive family is exceptionally important, and they're the only ones really that like me half the time, I mean mostly.

BPS: [Laughs].

DLM: [Laughs]. We're going to laugh at you for that because I know for sure that there are—I can say for certain—that there's a lot of people at the law school who have a great deal of respect for Ray Wyant, judge or not.

CJRW: You two people. That's it. [Laughs].

DLM: Oh no, there are others. But yes, we agree with that too. Okay, so last question. What was the question you wished I'd ask and what would your answer be?

CJRW: I haven't even read your questions yet, by the way.

DLM: I'm sorry, I gave it to you two weeks ago.

CJRW: Yeah, but you know, why would I read them? [Laughs].

DLM: What was the question that, when you walked into the interview, what did you hope somebody would ask?

CJRW: Oh, I didn't know what you were going to ask, but I will say that I'm proud of doing some things, that I think, have been a little bit off the board. Many years ago, I gave a talk to judges — all the Chiefs, and Associates, of all the levels of court — back in 2007 or 2008 on the need for judges to be more visible and connect with the media. At that point in time, judges really had the attitude to be seen and not heard, judges shouldn't be interacting with the media, all of that. I'm proud of the fact that I was one of the first judges that went on any type of television program in this country. I've been on Steve Paikin's[92] *The Agenda*,[93] if you've ever watched it on the TV in Ontario. On a couple occasions, I was the first judge Steve ever had on. I've done an hour-long interview for CTV, and I had an open-line radio program that ran for many years on crime and punishment. I was the first judge to go on an open-line radio program and have people call in, and they called in cold. I didn't know what the questions were going to be, it wasn't that they had to submit questions ahead of time. I really enjoyed that. I remember Dick Scott[94] once telling me, that the first time he was driving home, he said, "Ray, I'm driving home on a Sunday, and suddenly, I hear

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92 Steve Paikin was a Canadian journalist, author, and documentary producer. He primarily worked for TVOntario (TVO). Ontario's public broadcaster and is anchor of TVO's flagship current affairs program *The Agenda with Steve Paikin.*

93 *The Agenda* is TVO's public affair program devoted to exploring social, political, cultural and economic issues that are changing our world, at home and abroad.

94 The Honourable Richard Scott is a Canadian jurist who served as Chief Justice of Manitoba. He presided over the Manitoba Court of Appeal from 1990 to 2013. He died in early 2025.

your voice on the radio. I almost drove into a tree." He was so frightened, and then he said to me, "You know what, it's not for me, but I really admire what you're doing." I really enjoyed that, most judges would say, "That's not for me, how can you do it? You're going to get complained upon, you're going to get impeached." I didn't find it that way, I found it very comfortable interacting with the public. People would ask you questions, but believe it or not, someone would call in and say, "So what are the benchmarks that you have to reach as a judge?" And I said, "Well, what do you mean?" "Well, you must have a certain number of convictions you have to register, a certain percentage of people to go to jail?" He said, "I'm in private industry, that's the way it works. So, you know, what are your goals and objectives?" I said, "Well we don't have any." And I realized how little people understood about the system with that question. He was an intelligent guy, but he really thought that there were quotas in the business. People would call up with those questions, and it gave you an opportunity to educate and, on a very basic level, do some civics to people. Many people would call in because they really had a complaint, because it says something like "oh I have a friend" — which means them — but it really gave you an opportunity to educate, on a basic level, about the criminal-justice system. And I think a lot of people were just happy they could talk to a judge on a radio. They were happy to do that, and I think we need to do more. When I was in Red Hook— I don't know if you've been in Red Hook community court[95] in Brooklyn but if you ever go to New York go to Red Hook community court Brooklyn — every month the local judge, the Assistant District Attorney, the local public defender, and the police captain, have meetings in the evening with the community and they talk about crime in the community, crime prevention, sentencing, what needs to be done in the community. It's a hell of a connection with the community. I've argued for years that we should be doing that. We should have judges and police go sit in Point Douglas[96] for example, talk to the people in Point Douglas about the issues that are close to them, listen to them, and bring justice. That's what the radio program did for me, and I have to say I'm most proud of the public outreach over

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95 The Red Hook Community Justice Center is a community court that was created to address the unique social and judicial needs of its surrounding neighbourhood. As a problem-solving court, the Justice Center seeks to resolve cases in ways that make amends to the community, address the needs of the victim, and endeavor to effectively change the defendant's behaviour.

96 Point Douglas is a provincial electoral district in Winnipeg, Manitoba, Canada.

the years with the media. I was never afraid of them, and turns out, touchwood, I've never been in trouble as a result. So, that's probably the question.

BPS: Just thinking the United States where they have prosecutors and recall motions, and not all their ideas are necessarily wrong but obviously, a complete breakdown in communication. I just have this image in Provincial Court compared to McDonald's with 25 billion burgers served, so that would say like 1,700,000 years of incarceration inflicted.

CJRW: Well, it's true, Bryan. I mean, you remember the old *M*A*S*H** series[97] that they called meatball surgery. That's what we do, it's meatball law. You don't have the time of niceties for a lot of written judgments because you're just dealing with a huge volume of things. It requires quick decisions. It's fun, it's exciting, there are a lot of people who just love the Provincial Court. They don't want to leave because they feel connected with the community, they are the "people's court" and it's the court that goes to over 60 communities in this province. We travel to deliver justice. Frankly, it's neat.

BPS: I tell students, because know I have a warm appreciation of the value of the defence Bar, with all its many pragmatic disadvantages, there's always action if you're a criminal defence lawyer. You're in court, you're on your feet, literally hundreds of cases a year. Most of what we do as lawyers, a lot of lawyers never get to court, and civil processes are mostly endless pre-trial processes. You've probably heard this joke before, but I always say discovery is when one of the parties discover they can't afford it anymore, and they settle. Even labour law, most stuff gets settled now. It used to be much more, a lot more with adjudicators. It's one area where there's always something happening, you wake up every morning, something is going to happen. Always on your feet, always going to be something unexpected. It's one of the areas of practice where you're still interacting with people, not paper. And a lot of excitement, if you can take all the excitement over the lifestyle

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97 *M*A*S*H** was a television series that ran from 1972 to 1983. The series was set during the Korean War. The main characters are associated with a mobile army surgical hospital in Korea, called "the 4077th". The series (starring, among others, Alan Alda) was based on a movie of the same name from 1970 (starring, among others, Donald Sutherland).

complications having that exciting profession. Just want to put that on the record because it's really stepping in the first interview. And, I think, you and I share a concern about some of our best and brightest people continuing and going through criminal defence work, just in so crucial of a system.

DLM: The thing that I am always amazed at is how much stuff provincial court judges keep in their head. Just the ability to run that, you're doing it day after day after day, every time — the mental checklist that these judges go through, when you're delivering a judgment, or orally just on the fly. Most provincial court judges do it right, to the degree of baseball umpires. They got one second to make the decision, and then forty seconds to deliver the judgment, and they've got to get it all right, and—you can't just say, "Well, that's my judgment, and see you later." It's "that's my judgement, here's my reasons," and the reasons must be right. I'm slightly in awe of provincial court judges that can do that on the fly, but I will leave it there. Chief Judge Wyant, thank you so much.

BPS: Thank you.

CJRW: First of all, I think we started by saying you're not supposed to call me by any freaking title.

DLM: [Laughs]. Right, right, well really appreciate it. Ray, this is a remarkable thing for me. When I think about what I want to do when I grow up, if I have half the reputation you do when I'm done, I will have done it right.

CJRW: Wow, well you guys have a great reputation. And I'm not quite I've done it right Darcy, but I'm trying to work on it.

DLM: Well, thank you very much.

CJRW: Take care guys. Have a great rest of the summer. Thank you, I really loved this.