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THE SUPREME COURT OF

WESTERN AUSTRALIA

WELCOME TO THE HONOURABLE JUSTICE ANTHONY DERRICK

FULL BENCH

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 16 MARCH 2018, AT 9.01 AM

MARTIN CJ: The court sits this morning to welcome the Honourable Justice Anthony Derrick to the bench. The court acknowledges the traditional owners of the lands on which we sit this morning: the Whadjuk people who form part of the great Noongar clan of South-Western Australia. We pay our respects to their elders past and present and acknowledge their continuing stewardship of these lands.

Just Derrick received his commission as a member of this court at a ceremony conducted at Government House on 1 March 2018, and the commission took effect on 6 March 2018. I'm pleased to report that his Honour has now settled happily into his new chambers, from which there is a nice view of the District Court building. And a much greater chance of seeing his home in the Darling Ranges than he had from his chambers in that building, given the recent construction of a rather large hotel to the east of that building. I hope I haven't touched on a raw nerve, for our many colleagues from the District Court who are with us this morning.

I would like to particularly welcome his Honour's family: his wife Lisa Derrick and their sons Lachlan and James; unfortunately their son, Hamish, can't be with us this morning. I would like to welcome also his Honour's mother and father, Anthony and Patricia Derrick; his sister, Suzanne Montandon; brother-in-law, Mark Montandon; and their children Julia and Oliver. His Honour's aunt and uncle, David and Marie Blake; and his father-in-law, William Mullany. Unfortunately his Honour's mother-in-law, Valerie Mullany, couldn't be with us today.

I would also like to welcome the honourable justices Michael Barker and Katrina Banks-Smith, of the Federal Court of Australia; Her Honour Judge Julie Wager, President of the Children's Court of Western Australia, on, I think, her second day in that role; Mr Peter Quinlan SC, Solicitor-General; Ms Amanda Forrester SC, Director of Public Prosecutions; and Ms Ros Fogliani, State Coroner; Dr Adam Tomison, the Director-General of the Department of Justice and other distinguished guests including many past member of this and other courts.

I would also like to welcome those who addressed the court this morning, being the Honourable John Quigley MLA, Attorney General of Western Australia; Ms Hayley Cormann, President of the Law Society of Western Australia; and Mr Steven Davies SC, Vice President of the WA Bar Association.

Your Honour's secondary education included a period at St Ignatius College, Riverview in Sydney, although the bulk of your secondary education was undertaken at Aquinas College in Perth. You attended the University of Western Australia between 1985 and 1989, graduating with the degrees of Bachelor of Jurisprudence with honours, and Bachelor of Laws. Some years later you undertook part-time study at the same university and obtained the degree of Master of Laws with distinction. And, in fact, you achieved either an A or an A+ in every subject which you studied for that degree.

After graduating from law school your Honour undertook articles at the firm then known as Freehill Hollingdale & Page, now known as Herbert Smith Freehills. After being admitted to practice in 1990 your Honour worked as an employed solicitor in that firm another two and a half years practising in a number of areas and in a number of courts, including serving as the instructing solicitor in a case of Permanent Building Society v Wheeler & Ors which was a significant commercial case of the day.

In May 1993 you decided to increase your experience of advocacy by moving to the office of the Director of Public Prosecutions where you served as a prosecutor at different levels within the office over the next seven years or so. You then served as Assistant Crown Counsel in the Crown Solicitor's office, as the State Solicitor's Office was then known, for a bit over a year before joining the Independent Bar in 2002. You practised in a wider variety of areas of law than is usual at the bar, ranging from criminal law, town planning, regulatory matters including allegations of professional misconduct and medical negligence matters.

In a case in the latter field I was the fortunate recipient of the benefit of your services as my junior counsel in a long and complex, and at times emotionally demanding case before Kiefel J, as the Chief Justice of Australia then was, in the Federal Court. Although the claims against our clients, a very senior and respected cardiologist and a very senior and respected cardio thoracic surgeon, were brought in tort, we were in the Federal Court because there was an associated claim against the manufacturer of a prosthetic device pursuant to the provisions of the Trades Practices Act.

For me the demands of the case were reduced significantly by the calm, thorough, measured, diligently researched and strategic assistance which I received from your Honour throughout the case. Which, of course, ended

in a forensic triumph, otherwise I wouldn't be mentioning it this morning. In 2009 the standing and respect with which you are held within the profession were recognised by your appointment as senior counsel. Although regrettably you served in that capacity for only a relatively short period before your professional skills and personal qualities attracted the attention of government and you were appointed as a judge of the District Court.

Prior to that appointment you were extremely active in legal and professional education. You served as honorary visiting fellow to the Faculty at Law at the University of Western Australia between 2002 and 2010. And from 1999 until your appointment to the District Court you were extremely active in the field of advocacy instruction. You conducted programs in that field for the Director of Public Prosecutions, the University of Western Australia, the Law Society, the Western Australian Bar Association, Murdoch University and the Australian Bar Association.

Your Honour's capacity as an instructor in that field reflected the extensive experience which you gained as an advocate during your period as a prosecutor and at the bar. Your Honour has served with distinction as a member of the District Court for almost eight years. Because of the breadth of your forensic experience you have no difficulty undertaking work within any area of that court's jurisdiction, including criminal cases, personal injury claims and commercial cases.

Despite your active discharge of cases in all those areas of the court's jurisdiction, your name has seldom been seen in appeal books. Because of your relative youth at the time of your appointment to the District Court, notwithstanding almost eight years service on that court, you were still nine years away from the statutory minimum retirement age required to receive a full judicial pension. The breadth of the forensic and judicial experience to which I have referred will be of great advantage to you as you undertake the variety of work which this court will provide over that period, and we hope much longer, and will be of very considerable assistance to the court in the discharge of its demanding and ever increasing case load.

In your case there is no element of uncertainty with respect of your likely response to judicial appointment. Given your fondness for cricket, if I might use a metaphor drawn from that sporting arena, you already have the runs on the board and might now be said to be heading to the crease for your second innings having carried your bat through the first innings. I and your colleagues on this

court have every expectation that your dig in this innings will be every bit as prolific and successful as your first innings in the District Court.

It only remains, again, for me to congratulate your Honour upon your appointment as a judge of this court and to reiterate my welcome to your wife Lisa and to your sons Lachlan, Hamish and James into the family of the court. Mr Attorney?

QUIGLEY, MR: May it please the court. I too would like to acknowledge and honour the people of the Whadjuk tribe of the great Noongar Nation upon whose lands we meet this morning, and pay my respect to their elders past and present. It is with great pleasure that I appear on behalf of the Western Australian Government and behalf of the people of Western Australia to welcome your Honour Judge Anthony Derrick as a judge of this honourable court.

I will also want to commence by thanking your Honour for giving me the permission to take your nomination forward to the cabinet, which was unanimously accepted by the cabinet in view of your Honour's already proven judicial experience. I also wish to honour, to acknowledge and congratulate also your Honour's family that are present here today. Especially your wife Lisa, your sons Lachlan and James and the absence, of course, has been noted by the Honourable Chief Justice, Hamish, not present with us this morning and your parents Anthony and Patricia and your extended family.

Your Honour of course is no stranger to occasions such as this today, having been welcomed as a judge to the District Court of Western Australia on 15 June 2010 a little shy of eight years ago. As with today your Honour's significant achievements in the law were acknowledge and celebrated on that occasion. Upon that acknowledgement we can now build upon your Honour's success and contribution already as a judge of the District Court. As a former judge of that court, your Honour joins other former members of the District Court, being Mazza J, Jenkins J, Chaney J, Pritchard J and Martino J, although your Honour only served on the court at the same time, I understand, as Martino J.

Prior to your Honour's distinguished service on the District Court, of course, your Honour had a distinguished legal career of over 20 years, following your secondary education at Aquinas College and undergraduate studies at the University of Western Australia in which, as the Chief Justice has said, your Honour excelled. In that career your Honour practised in an extraordinary wide variety of

fields from your time in commercial litigation at Freehill Hollingdale & Page, now Herbert Smith Freehills, where you were involved in a large range of civil actions arising from commercial disputes, breaches of the Trade Practices Act, breaches by company directors of corporations law provisions and their fiduciary duties and company liquidations.

As we have heard your Honour balanced your civil experience with practice on the criminal side as a Crown Prosecutor with the Office of the State Director of Public Prosecutions from May 1993 through to 2001. Following a brief period as Assistant Crown Counsel in the State Solicitor's Office, your Honour joined the Western Australian Bar Association in 2002 practising at the St Francis Burt Chambers. As a member of the Independent Bar your Honour was able to bring together the difference strands of your Honour's practice, being briefed in a wide variety of criminal matters and civil matters. In this your Honour benefited from the advantage described by the former High Court Justice, Michael McHugh, that:

Ideas acquired in one branch of the law are transferrable to other branches of the law. Practical examples of working of the law in one of its branches frequently provide persuasive analogies in other branches. The wider the scope of the lawyer's practice, the better a lawyer he or she is likely to be.

With this background of practising extensively both in the criminal and civil jurisdiction, and now having served as a judge across the jurisdiction of the District Court, your Honour comes to this court ideally suited for the diverse jurisdiction of the court and the wide range of matters which you will have responsibility to hear. Your reputation as counsel, as the Chief Justice has noted, was calm, thorough, measured and diligent. Those traits as counsel have carried through onto the bench in your judicial career thus far. Your Honour has a reputation as the judge for being polite, patient, thorough and, as your Honour's academic achievements foreshadowed, your Honour brings great scholarship to your written judgments.

As one of your fellow judges at the District Court said upon hearing upon your appointment to this court "He is such a hard worker, and what's more, amazingly after so many years, he still loves the law". The government is delighted that you have accepted the appointment to this court. Your Honour's service to the State of Western Australia in your judicial career thus far, gives the

people of Western Australia the assurance that your Honour will continue to serve them with great distinction as a member of this court.

I extend my own personal congratulations and best wishes for your Honour, in your next phase of your Honour's distinguished judicial career. May it please the court.

MARTIN CJ: Thank you, Mr Attorney. Ms Cormann.

CORMANN, MS: Thank you, your Honour. May it please the court. It is a privilege to appear this morning on behalf of the Law Society of Western Australia to welcome the Honourable Justice Tony Derrick to the bench of this honourable court. Like the Honourable Chief Justice before me and the learned Attorney, may I also welcome the members of your Honour's family and acknowledge the friends and colleagues who are present here this morning.

In the only very short time I have been the president of this organisation, I have already had the most extraordinary opportunities to appear at a series of judicial welcome and also farewell ceremonies and across all our jurisdictions. This has given me the enormous privilege to speak at ceremonies for some of the most eminent, well respected and admired, now current and also former judicial members in this state. And in your Honour's case, today is no exception and I am very grateful for this privilege.

As the Honourable Chief Justice and learned Attorney this morning have outlined, your Honour has a distinguished legal career. As we have heard when your Honour took your skills and experience to the Independent Bar, your Honour developed a wide practice becoming a respected and sought after barrister across both criminal and civil matters. And because of this - like the example or like an example given by the Chief Justice already today - this broad practice meant that myself and many of my close colleagues too, were the beneficiaries of your Honour's service to our profession from the bar.

Unlike the Chief Justice's example, however, for me this was at the other end of the scale. I was at the time a very junior instructing solicitor at my firm in the medical negligence field. As to my experience, though, in instructing your Honour, may I repeat and wholeheartedly endorse the Chief Justice's particular comments about his experience with you. And I need not repeat them again. But in mine and in my colleagues' experience, your Honour's approach was, of course, not reserved only for the senior

and leading members of our profession, but rather it was the same experience that is widely reported.

I remember it being noted from the bar table, at your Honour's welcome ceremony to the District Court, that during your time at the bar your Honour was briefed regularly by even the most discerning of instructors including in Mr Dominic Bourke, then a partner of Clayton Utz. To this day he recalls your Honour as being a pleasure to brief in the meticulous, disciplined and strategic approach taken to the case at hand. Your Honour's engagement with your instructors, together with your communication style also set up a very good and effective team relationship between counsel and instructor to the benefit of the clients and, of course, to the courts and to the administration of justice overall.

Ultimately, the lasting memories of your Honour as a barrister in chambers by our profession, are respectful, sincere, approachable and overall an excellent barrister. These various traits of your Honour translated, of course, perfectly to your judicial role. And by 2009 your Honour was exceptionally well suited for elevation to the bench. Your Honour, at that time, was an enormous loss to chambers and to the day-to-day work of the profession at and behind the bar table.

Today's appointment to this court is a reflection of your Honour's capabilities to tackle some of the most complicated and difficult of civil disputes as well as the difficult and emotionally charged criminal matters that will continue to come before you. It is also a reflection on your Honour's strength and capacity to give careful, considered, independent judgments over a range of matters in both criminal and civil proceedings. And, as has been referred to today, your name has seldom seen in the appeal books.

In speaking with some judicial colleagues of your Honour's before today, the overwhelming attitude is that of course this appointment is now the District Court's great loss. While your Honour may have physically worked with a closed door, your Honour I am told, has a very generous open door availability at any time to confer with colleagues. Always has time for others, is polite, considered and highly disciplined. Your Honour is also well known by colleagues and advocates as being extremely well prepared when going to court.

Overall, the assistance and guidance provided by your Honour to your colleagues will be greatly missed in the

District Court, where you remain highly regarded. As to your Honour's other contributions within the profession, your Honour first joined as a member of the Law Society in February 1990. To this day your Honour remains a valued member of the society and the society and our members are grateful for your Honour's many contributions to our organisation and its membership, including to our continuing professional development program and in the chairing of a number of our criminal law seminars.

Your Honour has also had significant involvement in our advocacy weekend for junior practitioners, as an instructor for a number of years. We are very grateful that your Honour has consistently passed on your expertise to the next generation of upcoming practitioners. The advocacy weekend has proved the ideal forum for junior lawyers to receive one on one instruction from the judiciary, senior practitioners and members of the bar. And your Honour's contribution in educating and preparing young lawyers for their future has been invaluable.

Your Honour, the numerous achievements of your career to date have been built on hard work, on integrity and on discipline. These are some of the greatest characteristics that any person can have. And in a profession such as ours are those which we all endeavour to live up to. In closing, on behalf of the Law Society, I congratulate your Honour on this appointment and I offer to you our support and very best wishes for your time in this place. May it please the court.

MARTIN CJ: Thank you, Ms Cormann. Mr Davies?

DAVIES, MR: Your Honours, on behalf of members of the Western Australian Bar Association, may I present our compliments and congratulations to your Honour on the occasion of your Honour's appointment as a judge of this court.

The President of the Bar Association is unable to be here and has asked me to send his apologies and congratulations. His absence is my good fortune because it's a very great pleasure to have the opportunity to speak on behalf of the Bar Association at your Honour's welcome to this court. Your Honour's career has been outlined by others and I associate the Bar Association with the complimentary remarks that have already been made and confine my observation to three matters.

The first is to record that in your Honour's career at the bar, your Honour represented all that a barrister

should be. The Chief Justice has accurately described your demeanour as calm, thorough, measured, diligent and strategic. Your Honour in practice was what is sometimes called a lawyer's Lawyer, an expression with various connotations including the epitome of a lawyer, a lawyer that other lawyers admire or seek to emulate and a lawyer that other lawyers would have as their own lawyer.

All of those meanings applied to your Honour, but combined with those qualities where your Honour's unassuming nature and modesty, neither of those characteristics being particularly obviously in surplus among your Honour's colleagues at the bar. At that time. Your Honour will know, of course, that the bar is now a softer, kinder, gentler, more inclusive place.

Your Honour's abilities as a barrister were evidenced by the fact that your Honour was sought after as counsel by the most sophisticated and discerning of clients: medical, defence unions, prosecuting agencies for their most demanding matters, and for matters involving the LPCC. And for a lawyer there can be no more meaningful compliment than to be sought after by clients who are highly qualified consumers of advocacy and advice.

That brings me to my second observation concerning your Honour's appointment. And that concerns your Honour's manner of practice as a prosecutor at the bar. To that task, whether appearing for the State or a prosecuting authority such as the LPCC, your Honour brought not only the skills which have already been mentioned, not only scrupulous fairness, but also the reticence, the restraint and the absence of relish in the task that is characteristic of the best prosecutors.

Those characteristics sit in comfortable companionship with the qualities that make for our finest judges. Your Honour is, of course, no unknown quantity in that regard. The unanimous acclaim of the bar at your Honour's appointment to the District Court was unsurprisingly prescient, and your Honour has already had a distinguished career as a judge. And your Honour's appointment to this court will serve only to extend and amplify the service that your Honour has already provided to the community of this State.

The third and final matter I wish to mention is that your Honour is one of only two people, or at least two people who anyone can remember, whose appointment to judicial office was preceded by financial windfall. There was a former member of this court who won Lotto before his

appointment, and as is fairly well known, your Honour was the beneficiary of winning first prize on Australia's Funniest Home Videos. Now, of course, for your Honour - for a lawyer at your Honour's level, judicial appointment is certainly no Lotto win.

And it is, of course, a testament to the very well-known persuasive skill of our Attorney General that he has been able to fill so many of the vacancies that have recently required appointments. But we don't feel very sorry for your Honour on that front and we think your Honour has the experience to bear it, because although first prize on Australia's Funniest Home Videos is certainly financial handsome it's somewhat less than your average Lotto win.

I do have to say a certain irony became apparent in your Honour winning that prize as I sought to recall myself, or seek out from others funny anecdotes about your Honour. People did offer up anecdotes about your Honour's brother-in-law who, at the time that your Honour was with us, was also one of your colleagues at the bar. I explained to the offerees of those stories that despite the latitude allowed on these occasions, I really did not think I could weave in stories about Nicholas Mullany.

I suspect, however, that your Honour is pleased rather than disappointed, but I have no funny anecdotes to tell. And that is, of course, a mark of the quality of your Honour's character and the fitness for this high office. May it please the court.

MARTIN CJ: Thank you, Mr Davies. Justice Derrick.

DERRICK J: Chief Justice, current and former judges of this court, members of other courts, Mr Quigley, Ms Cormann, Mr Davies, members of the profession, my family and friends, ladies and gentlemen, thank you all for your attendance today.

I know how difficult it is to take time out of the busy day to attend occasions such as this, particularly given that this time of year appears to be the season for welcoming ceremonies. Therefore, I'm most grateful to all of you for your attendance today. Mr Quigley, Ms Cormann and Mr Davies, I thank each of you for your kind remarks. The fact that you were all able to make me sound as good as you did, is a testament to your skills as advocates.

I'm sorry, Mr Davies, that you couldn't find any funny anecdotes about me, I know that that makes making a speech

far more difficult. I also commend all three of you for making me sound as you did, given that much of what could possibly have been said about me was said at my welcoming ceremony to the District Court, a little over seven and a half years ago.

Ms Cormann, I should say, I have fond memories of our times working together. I always greatly appreciated being given the opportunity by you and your then supervising partner, Mr Dominic Bourke, of acting as counsel in the challenging and interesting area of medical negligence. It is a great honour and a humbling experience to be appointed to the Supreme Court. I am very conscious of the responsibilities that come with my appointment.

As a young counsel appearing in this court, I occasionally wondered, as I suspect many young practitioners do, what it must be like to be a judge of this court and whether one day I might find out the answer to that question for myself. That is not to say, I hasten to add, that I ever held any sort of positive belief that I would be appointed as a judge of this court or any court for that matter. I have never benighted from that degree of self-confidence; it was more just a case of idle speculation, I suppose.

Therefore, to be sitting here now as a newly appointed judge of this court, at my welcoming ceremony is, I must confess, somewhat of a surreal experience. As has already been said, I have for a little over the last seven and a half years, had the honour and the privilege of serving the people of this State as a judge of the District Court. Without in any way wishing to diminish the honour that has been bestowed upon me by being appointed to this court, I confess to feeling a degree of sadness about having left the District Court. I very much enjoyed my time on the court.

The District Court does important and often difficult work. Of course, much of that work consists of presiding over trials of serious criminal charges before a jury; a type of work that I very much enjoy. I am a supporter of the jury system; I am a firm believer in the proposition that the ability of a jury as a whole is greater than the sum of its parts. Further, I have always found observing and interacting with juries to be particularly interesting. I have watched jurors, who at the beginning of a trial reluctantly dragged themselves into the jury box when their number is called, become obviously engaged in and stimulated by the important task that they are asked to then perform over a few days.

Dealing with juries also has its lighter moments. I recall that in one of my earlier trials after my appointment to the District Court I received, within a short time of the trial starting, a note from the rather Bohemian looking foreperson inquiring if I had given any consideration to the damage that I was doing to the environment by leaving all of the lights on in the courtroom. After speaking to this gentleman I thanked him for his service to that point and discharged him given my concern that he was perhaps not properly focusing on the issues at hand.

I realised that I probably made the right decision when my advice to the rest of the jury that I had discharged one of their number was met with furious nods of agreement. When the issue of a ceremony welcoming me to this court was first raised by the Chief Justice, I did think about whether I deserved a welcoming ceremony at all. Given that I had experienced the combination of pleasure and discomfort which comes with such an occasion on my appointment to the District Court.

However, the fact is that these ceremonies are not all about the newly appointed judge. They are also about the people who helped him or her get to this position. They provide the new judge with the opportunity to say thank you to the people who have helped him or her along the way. I therefore ask you to bear with me while I do just that. At my District Court welcoming ceremony I thanked those legal practitioners, barristers and judges who had played an influential role in my career to that date.

I do not propose to repeat what I said on that occasion. Those people know who they are. If I have not received their assistance and support back then, I would not be where I am now. And my former colleagues at the District Court, a good number of who are here today, thank you for the support that you gave and the friendship that you showed to me during my time on the court; you all, in your own individual ways, contributed to making my time on the court as rewarding and as happy as it was.

I would also like to say thank you to the secretarial and administrative staff that I worked with while on the District Court; without their considerable and good natured assistance it would have been far more difficult for me to perform my work as a judge. During my time on the District Court I had the pleasure with working with three Ushers, Ms Mary Kirkby, Mr John Corbett and most recently Ms Poppy Coldicott. I thank each of them for their help and support, I am happy to say that Ms Coldicott

has agreed to accompany me to this court as my research associated orderly.

My sincere thanks also to Ms Catherine Parker, my associate, who has been with me from the beginning and who I am glad to say has also come with me to this court. Given that Catherine was, over many years, the associate to three Supreme Court judges before she commenced to work with me, I suspect that she sees her return to this court as somewhat of a home-coming. To my new judicial colleagues, thank you sincerely for the warmth of the welcome that you have extended to me. You have all gone out of your way to make me feel comfortable as a member of the court. Your efforts in this regard are very much appreciated.

I turn now to my immediate family. To my sister Suzie, how like me, has been brave enough to pursue a career in the law. Thank you for the love and support that you have provided to me over the years. Mum and Dad, when I was appointed to the District Court I expressed my gratitude to you both for the love and support that you have provided to me over the years. Of course, nothing has changed since then and I am grateful to once again have the opportunity to publicly acknowledge my love and gratitude to you both.

I am very lucky to have three wonderful sons: Lachlan, Hamish and James. When they last had to sit through a similar occasion to this, all three were in school uniform. Indeed, Hamish, who is currently away and therefore unfortunately unable to be here today, very nearly caused me to be late to my own District Court welcoming ceremony because he had left his school blazer at school and he and I had to divert to pick it up. You can all imagine how joyous that car ride was. I seem to remember, as we were caught in traffic on Kwinana Freeway at 10 to nine, using phrases such as "I will never forgive you if I am late for my own welcoming". That was not my finest moment as a father, I know.

Anyway, time marches on and now Lachlan and Hamish are pursuing their chosen fields of study and James is nearing the end of his school career. Needless to say, I am immensely proud of each of you, Lachlan and James, and Hamish also. All three of you, in your own individual ways, have given and continue to give great joy to Mum and me. The joy which you have given to me has helped me to remain balanced and achieve what I have in my work. Being your dad has always been, and will continue to be, my most important role in life.

Finally, I come to my wife, Lisa. Seven and a half years ago I said to Lisa that she was the one who had been required to share with me the daily stress and strains that come with the life of a barrister, and that she would, no doubt, have to share the stresses and strains that would inevitably come with my work as a judge. That has, of course, proved to be the case and will, no doubt, continue to be the case.

Words cannot adequately express my gratitude for your unwavering love and support, Lisa, without which I would not be where I am today. As I have already said, I am very conscious of the honour of being appointed to this court and of the importance of the work that I will be required to undertake. I will endeavour to justify the faith that has been shown in me by performing my work to the very best of my ability. Again, thank you sincerely all, for your attendance this morning.

MARTIN CJ: Thank you, Justice Derrick. Now that completes this morning's sitting. The court will now adjourn.

AT 9.34 AM THE MATTER WAS ADJOURNED ACCORDINGLY

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