

THE SUPREME COURT OF
WESTERN AUSTRALIA

WELCOME TO THE HONOURABLE JUSTICE EDWIN MICHAEL CORBOY

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 19 APRIL 2010, AT 9.32 AM

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MARTIN CJ: The Court sits today to welcome to the Bench his Honour Justice Michael Corboy, who took the oath of office as a Judge of this Court at Government House at 9 am last Friday. I would like to particularly welcome this morning members of his Honour's family, including his wife, her Honour Judge Shauna Deane; his mother, Daphne Corboy; his parents-in-law, Kevin and Hilda Deane; and other members of his Honour's family.

I also extend a warm welcome to his Honour's many special guests. I would also like to welcome Justices Tony Siopis and Neil McKerracher of the Federal Court of Australia; his Honour Judge Peter Martino, Acting Chief Judge of the District Court of Western Australia; his Honour Chief Magistrate Steven Heath; the honourable Professor David Malcolm AC, QC, former Chief Justice; Cheryl Gwilliam, Director-General of the Department of the Attorney-General; and all the other distinguished guests too numerous to name, including former members of this and other Courts.

I would also like to particularly welcome those who will address the Court this morning, being Mr Robert Meadows QC representing the honourable Christian Porter MLA, Attorney-General of Western Australia on behalf of the Government who is unable to join us this morning; Mr Hylton Quail, President of the Law Society; and Mr Grant Donaldson SC, President of the WA Bar Association.

It must be said that the law was not his Honour Justice Corboy's first choice as a career. With the folly and indiscretion of youth, his Honour first studied and graduated with honours in economics from the University of Western Australia, after which he lectured in that subject at Curtin University.

However, during a period as a research associate and tutor in economics at Edinburgh University in Scotland, his Honour saw the light, perhaps assisted by a dram or two of the drink for which the Scots are famous, and returned to Perth to study law while lecturing part-time in economics.

Following graduation, his Honour was articled to Mr Robert French, as the Chief Justice of Australia then was, at the firm of Warren McDonald French and Harrison, which in due course became Deacons, and most recently Norton Rose. His Honour became a partner at that firm in 1982 and practised in both civil and criminal litigation until July 1985, when his Honour joined the firm then known as Stone James, now known as Malleon Stephen Jacques.

It seems to have been a characteristic of your Honour's earlier years in practice that each firm which your Honour joined felt the need to change its name either before or after your Honour left, sometimes twice.

I won't pause to speculate upon the question of whether there's any connection between your Honour's time at those firms and the changes of name, but I do venture to suggest that it's unlikely that your Honour will have the same effect on the institution you are now joining, which has borne its current name for 149 years, since 1861.

In due course your Honour practised as a litigation partner at Malleson Stephen Jacques and served as a member of the National Board of Partners of that firm for a number of years and as head of the Perth litigation group between 1992 and 1996. In 1996 your Honour joined the WA Bar Association, practising from Francis Burt Chambers.

You practised mainly in the commercial area, receiving instructions from a wide variety of firms, at least until you became a little preoccupied by appearing for the liquidator in *The Bell Group Ltd v Westpac Banking Corporation and Others*. Your Honour is of course not the only counsel engaged in the trial of that case to have escaped the daunting prospect of the appeal by taking refuge on the Bench.

Your Honour was appointed Senior Counsel in 2002 and has practised in that capacity for some eight years. Prior to your appointment as Senior Counsel, your Honour was given the nickname of Claude Erskine-Brown by some of the less charitable members of Chambers, which did not of course include me.

The source of that nickname will require a little explanation, I fear. Those familiar with the series of *Rumpole of the Bailey* will recall that Claude Erskine-Brown was a diminutive, almost foppish barrister known as an opera buff and dreadful cross-examiner. Of course he shares none of those characteristics with your Honour, so what then was the connection? The connection was that Erskine-Brown was married to Phyllida Trant QC, who had been appointed to the ranks of Queen's Counsel while her husband had not. So it was for a short time with your Honour and Shauna Deane QC, and hence the nickname.

Your Honour has generously provided your time and energies to the advancement of the legal profession over many years. You have served as a member of Bar counsel and of the Board of WA Chambers Ltd, including a period of three years as Chairman of that board. You have also been a member of the Legal Practitioners Complaints Committee since 2002 and were, prior to your appointment, Deputy Chairman of that committee. You were a member of the Law Society Ethics Committee for more than 20 years, between about 1986 and 2008. You were convenor of that committee for approximately seven years. In addition, you have been an occasional lecturer in legal ethics at the University of Western Australia and at the articles training program.

I regret to have to report that your Honour's appointment further increases the numerical ascendancy of Dockers supporters over Eagles supporters on this Bench, an ascendancy which the Dockers have also been displaying on the football field within recent weeks. Your Honour has also played Australian Rules Football at an amateur level, hockey and Rugby. You have been, in your Honour's words, a very occasional windsurfer.

I doubt that your Honour's busy practice at the Bar has allowed much time for sporting or leisurely pursuits and I'm afraid to advise that not much has changed. Later this morning your Honour will commence presiding over your first trial which will run until you commence a six-week trial in early May. Normally we try to give new members of the Court at least the morning to find their feet, but I'm afraid the current pressures on the Court are such that in your case that has not been possible.

However, we are all confident that your Honour's well-known aptitude and enthusiasm for hard work and long hours will enable you to take these burdens in your stride. Of course, keeping long hours was something for which your Honour was notorious at the Bar. I remember one evening Phil Eaton and I were leaving after a long day which we had rounded off with a refreshment or two in the common room - Diet Coke I think it was. We were travelling down in the lift when Phil exclaimed, "Oh drat" or some words to that general effect, "I forgot to turn Corboy off." That was because there was a general instruction at the time that the last one to leave Chambers at night was to turn your Honour off on the way out.

It only remains for me to again congratulate your Honour upon your appointment to this Court and to welcome you and your wife Shauna into the community of the Court. Mr Solicitor?

MEADOWS, MR: May it please the Court. It is my pleasure to represent the Attorney-General and appear on behalf of the Government and the people of Western Australia to today welcome your Honour Justice Michael Corboy as a Judge of the Supreme Court. We congratulate you on your appointment and wish you well as you venture into this new aspect of your legal career.

Your Honour has had a distinguished legal career both in the amalgam and at the Bar covering more than 30 years and you are, without doubt, one of the most experienced and renowned members of the Bar at this time. I think I can confidently say that yours is a meritorious appointment, and I say that in the best sense of that term, and that the State is fortunate to have secured your services as a Judge of the Supreme Court when you are at the height of your powers.

As the Chief Justice has mentioned, you were nearly lost to the law in taking up your tertiary studies in economics. Now, fortunately you obviously saw the light, as the Chief Justice said, but I suspect that your background in economics has enhanced your career in practice and at the Bar, particularly in the area of commercial litigation and in the trade practices field, where you are an acknowledged specialist.

Your Honour also mentioned the fact that you were articled to the present Chief Justice Robert French when you were at Warren McDonald French and Harrison and it is clear that you made a good impression early on because it was only a very short time after completion of your articles that you were admitted to partnership, and when you joined Stone James in 1985, again it was not long

before you were admitted to partnership, so it is pretty clear that from the very beginning you were able to impress your principals and to gain admission to some very distinguished firms as a partner.

Of course, you joined the Bar in 1996, where you practised mainly advising on and appearing in commercial litigation matters. It has been said already, but it is a notorious fact, that your Honour has appeared for the liquidator in the Bell Group litigation and I think it is right to say that this has spanned more than a decade. Indeed, your Honour was working on the impending appeal in this matter right up until the time of your appointment, but I don't think I would be telling any secrets in saying that it seemed to me that you showed some distinct signs of relief at being released from the burdens of that case when you were offered a position on the Supreme Court bench.

There is one aspect of this though that your Honour will have to be wary of. You will have to get used to subsisting on a judicial salary. Another thing you will have to get used to is the scrutiny that befalls judges as they go about their business and provide reasons for their judgments.

As former Chief Justice Murray Gleeson once observed, the corollary of the obligation of judges to conduct their business in public and to give reasons for their decisions is that they are exposed and are regularly subjected to public comment and criticism. The practical importance of this should not be underestimated, especially in an age when attitudes towards authority are no longer deferential, and frequently the opposite.

Being a judge is not a suitable occupation for the thin-skinned. Happily, we do know that your Honour is not thin-skinned and I am sure the same goes for the rest of your Honours on the Bench there today.

Again, it will not be necessary for you to heed the advice of Lord Mansfield which he offered to a retired Army general who was appointed as a Governor of Ireland in the West Indies but in addition to his duties as Governor had also to sit as a judge. Lord Mansfield wrote to him:

Be of good cheer. Take my advice and you will be reckoned a great Judge as well as a great Commander-in-Chief. Nothing is more easy. Only hear both sides patiently, then consider what you think justice requires and decide accordingly but never give your reasons, for your judgment will probably be right but your reasons will certainly be wrong.

Again, happily we do know that your Honour need not have any fears in this regard as we have every confidence that not only will your decisions be probably right but your reasons will almost certainly be right as well.

His Honour the Chief Justice has recounted many aspects of your career and I won't go over that same ground again but I do want to mention your commitment to the profession and to the community through your service as a member of the Legal Practitioners Complaints Committee going back as far as 2002 and your Deputy Chairmanship of that Committee in more recent times. People don't really seem to appreciate that service on that committee is voluntary and requires a great commitment from members of the profession who give of their services willingly to undertake what is a very onerous task. The same I think can be said of your Honour's service on the Law Society Ethics Committee, where you were not only a member of that Committee but the convener of it for many years.

Your Honour the Chief Justice has mentioned some of your Honour's sporting interests. One of my spies suggested that you were a very keen runner, jogger. It is said that you claim to be a slow runner. Whether that is true or not I don't know, but according to my spy you are one who is prepared to push your way through the pain barrier, albeit with the aid of anti-inflammatories and pain-killers.

I understand also that you profess to be a semi-retired and ordinary hockey player. That's a condition with which I can closely relate, so your Honour has maintained an interest in sporting activities over a wide cross-section of sports, and I think that's a very healthy thing in a Judge because the balance which that brings to one's life I think is a very useful factor in the life of a Judge, even if you are a Dockers supporter.

Your Honour has an impressive track record, both as a partner in major law firms and as one of the leaders of the Bar in this State, and the Government is very confident that you will be a great asset to the Supreme Court, and it now remains for me on behalf of the Government and the people of Western Australia to again welcome your Honour to the Bench of the Supreme Court and to wish you well for a fulfilling and what we are sure will be a distinguished career on the Bench. May it please the Court.

MARTIN CJ: Thank you, Mr Meadows. Mr Quail?

QUAIL, MR: May it please the Court. It's a privilege for me to welcome your Honour to the Supreme Court on behalf of the Law Society of Western Australia. After 30 years as a lawyer, your Honour has earned a reputation for integrity, intellectual rigour and hard work. Your appointment has been applauded and warmly received across the profession.

Your Honour was, as we have heard, initially an economist. Fortunately for us, that proved only a brief career before you returned to UWA. Your Honour was articled to Robert French, then all of 33 years old. There can't be many better introductions to legal practice. As we have heard, within two years you had become a partner at Warren McDonald and French and in the same year as the Chief Justice was appointed to the Federal Court, you joined Stone James, became a partner in 1987 and within five years you were elected to the national board of partners before in 1996, as we know, going to Francis Burt Chambers. You took silk in 2002 and have since become one of Perth's most respected and sought-after commercial and litigation senior counsel.

Your Honour has been a longstanding member of the Law Society and, as we have heard, served on the Ethics Committee for 22 years continuously. You convened the Committee for seven years. The Ethics Committee was and is one of the important committees of the Society and for many years was charged with the responsibility for professional conduct rules for the profession. Consequently, the Committee has a diverse range of members and interests.

As convener, your Honour managed the agenda and personalities with aplomb. Everyone was allowed their say and consensus was almost always achieved. Even on contentious matters which provoked considerable debate in the profession and media, your Honour always took a measured approach.

The Committee made many difficult decisions, perhaps none less than that relating to the media rule, otherwise known as the Trowell rule. Although the society disagreed with the Bar and now Chief Justice, then I think President, it did so based on the careful and principled consideration given to the proposal by the Ethics Committee. Your Honour's support of the Law Society is very much appreciated. Your Honour has given much to the profession over many years and will now be giving more to the community in your new role.

When speaking to people who know you well, two personal qualities of your Honour are mentioned time and again. You are described as one of the most courteous lawyers in Perth and someone who makes time for everyone who approaches you, even when your commitments more than fill the day.

During the most arduous days of the Rothwells and then Bell litigation which followed your Honour through your professional life for almost two decades, you still managed to find time to speak to lawyers who approached you unannounced for advice or to discuss Chambers matters.

When your Honour farewelled the Bar last week, you said that you were sure it wouldn't be long before one or other of the counsel before you would come back to Chambers and describe you in less than glowing terms for the benefit of the common room. Such, after all, is the nature of barristers.

Your Honour will, I expect, be the rare exception to that rule - maybe - such is the regard in which you are held, at least in our Chambers. We have no doubt that your qualities as a Judge will be the same as when you were counsel. We could not ask for more and we wish you well. May it please the Court.

MARTIN CJ: Thank you, Mr Quail. Mr Donaldson?

DONALDSON, MR: May it please the Court. The Bar welcomes your Honour's appointment and it is a very special privilege for me to represent the Bar at this ceremony. I know of no appointment to this Court that has been greeted with greater joy and satisfaction by the Bar. Your Honour's appointment has, for at least two reasons, been met with acclamation by your erstwhile colleagues.

The first of these reasons is that your Honour is one of the Bar's most prominent and accomplished members and it is right and proper that members of the Bar of your Honour's prominence and accomplishment be appointed to this Court.

As to your Honour's accomplishments, they are many and varied. For some of us, prominent amongst those accomplishments are recollections of your Honour the footballer. Your Honour was a truly hopeless footballer, combining the skills of, say, a Shaun McManus with the ferocity of, say, a Steven Smeath.

For some others, enumeration of your Honour's accomplishments involves recollection of your Honour's first career as an economist. In this respect the profession in this State owes much to the great nation of Scotland, in addition to the mere declaration of Justice Gilmour and State Solicitor Tim Sharp. A winter or two teaching those most canny of peoples economics at the birthplace of Adam Smith happily for us had your Honour scurrying back to Perth to embark upon study of the far less dismal discipline of law.

After inevitable success at the Law School, as we have heard, your Honour served articles with Chief Justice French and his Honour left a lasting impression on your Honour, which you have commented upon many times. Your debt to the example that he set for you and the guidance given to you as a junior practitioner has been, in your Honour's typical way, constantly and lavishly

acknowledged. The rumour that your Honour married a District Court Judge so that you could be more like Chief Justice French is of course untrue.

Your Honour served for many years as a partner of Malleson Stephen Jacques and your Honour practised in that firm with great distinction among a group that have gone on to provide great service to the profession and to the community. Your Honour's cohorts included Justice Newnes, Judge Stevenson, former Attorney-General Peter Foss QC, Robert Ainslie and Chris Humphrey.

Your Honour gave tireless service to that firm and to its clients and your work as a solicitor was of the highest quality. Your Honour seemed always to be in the office and for every minute of it your door was always open for any query, for advice on any matter and for an endless stream of kindly support.

As an advocate your Honour was of the highest standing with a national reputation for excellence and industry. Your Honour's practice has been immense. You appeared both as a junior and as a silk in all Courts on a regular basis and there are few practitioners in recent times who have had the breadth of practice of your Honour, at home in crime, personal injury, professional negligence, and of course in the largest and heaviest of commercial matters.

Your Honour also appeared in many of the largest public law matters and you have been for many years the favoured counsel of the Commonwealth in this state and attracted Commonwealth briefs of great prestige. The scuttlebutt that you were the only person prepared to accept the rate paid by the Commonwealth is only partly true, but that your Honour was willing to do work of such complexity for next to nothing exemplifies something notable about your Honour.

Financial reward from practice was wholly unimportant to you. Indeed, your indifference to money is such that I doubt that until it was announced by the Solicitor-General just then, you were aware that you were about to take a dramatic drop in income.

I noted earlier that there are two reasons why your Honour's appointment to this Court has been acclaimed by the Bar. Proficiency and excellence as a legal practitioner and advocate was one, but subordinate to the principal reason why your appointment has been greeted so warmly. Your Honour has been one of the Bar's most popular members and the regard in which you are held by your colleagues at the Bar, and the profession more generally, unrivalled.

This regard derives from respect for your Honour's character and admiration for the way that you have gone about practising as a member of the profession. The example that you have set for us all in terms of integrity and fairness has been an inspiration. Your Honour was a scrupulously fair and honourable opponent and you were incapable of taking a cheap point.

Even in the face of the most churlish of provocations, your Honour was incapable of acting impolitely or unkindly, whether to an appointment, a witness or even to a Judge. To my eternal shame, I tried many times to ruffle you, if just for the sport, but every time I got nothing but a smile at the time and a laugh afterward.

The regard in which your Honour is held by your colleagues is exemplified by the truism that for years you have been, with Zelestis QC, the final port of call for those at the Bar who require assistance or advice or help of any kind. I know of countless acts of kindness and assistance that your Honour has offered to members of the Bar and the professional more generally over the years.

Every one of those countless acts has been unheralded and has been treated with complete discretion by your Honour. I know of some of them because I have so often been the recipient myself but I am far from being alone.

It would be wrong, however, to think that your Honour has no vice. Your Honour is an avid acquirer of cars of offensive masculinity. Your Honour for many years owned and drove an MG Midget. In more recent times your Honour has driven a car of legendary machismo, an Audi TT. Hopefully the government car fleet will extend to a Toyota Corolla or perhaps a Daihatsu Charade so that your Honour's reputation in this respect can be maintained.

As your Honour knows, because we have played this game, when a colleague is appointed, those of us who are left behind oftentimes speculate as to what it would be like to appear before our erstwhile colleague. Those of us who are left have missed these sorts of idle speculations upon announcement of your Honour's appointment because everybody knows exactly how you will be.

As a judge you will be as you were as a practitioner. You will be fair to all. You will hold and display no bias or ill-will to any. You will appreciate and forgive the failings of those less capable. You will determine matters that come before you with unrelenting industry and your great intellectual gifts will be applied in full to your task. Your sure judgment will be applied to every problem with compassion and humility and you will doubtless agonise over your decisions, but we hope not too much, and you will be right very often.

Your Honour will no doubt bring great lustre to this court, as you have to the profession and in particular to the Bar, and the Bar will miss you as a colleague more than you know, but we reflect with great pride upon your appointment and with great anticipation at what lies ahead. We know that your Honour will fulfil what Holmes J asserted should be the aspiration of all judges, "To see as far as one might and to feel the great forces behind every detail. To hammer out as compact and solid a piece of work as one can, to try to make it first rate and to leave it unadvertised." Good luck. May it please the court.

MARTIN CJ: Thank you, Mr Donaldson. Justice Corboy?

CORBOY J: Chief Justice. I thank counsel for their overly generous remarks. No doubt somebody should admonish you for disregarding your duty of candour but it won't be me. I would add only two footnotes. First, the Chief Justice was in fact the source of the nickname Claude.

Nobody will be surprised about that, of course. Secondly, I did play Rugby for a number of years but the high point in my sporting career was to win the Most Improved trophy for H-grade Old Scotch at the age of 32.

I wish to thank all of you for attending this morning. Your presence means much to me and to the Court. I especially wish to thank those who have taken the trouble to travel from the Eastern States to be here. I greatly appreciate the efforts that you have made to attend.

I'm pleased to see Malcolm McCusker QC here because one of my earliest appearances in this Court was instructing and appearing as junior counsel with Mr McCusker. In those days the chairs at the Bar table had a seating swab that could be pushed back up into an upright position. The swab didn't automatically go back; it had to be pushed back. It had to be pushed, say, by a junior counsel expending nervous energy by pushing the swab up and down.

It was possible in fact that the same junior counsel could become distracted as his leader reached the climax of his address and forgot the position that the swab was in. On this occasion Mr McCusker had reached the high point of his address, demolishing our opponent's case, when the following sequence occurred in very rapid succession: McCusker finished his final and clinching point; he then sat down triumphantly and somewhat emphatically; he then disappeared from sight; a dull thud was heard as coccyx hit carpet; an expletive involuntarily escaped; I tried to look as though all of this was of great surprise to me but failed dismally in feigning surprise and three judges immediately deduced what had occurred and as McCusker struggled to regain his seat with a dignity befitting senior counsel, all three judges turned and scowled at me. Regrettably that was a look that I was to come to see often when I appeared in this Courtroom.

This was not an auspicious start to a career as an advocate and I would have been greatly surprised had I been told at that moment that I would one day sit here looking down into the well of the Court. That day having arrived, I am still most surprised.

My wife, who knows me only too well, gave me some advice about my address - wives do that - "Keep it short, keep it direct and don't thank everybody you have met." Somewhat unhelpfully, she didn't indicate whether I could exclude her from the list of thank yous, but to do so would be entirely inappropriate. We last week celebrated our 26th wedding anniversary and I'm deeply grateful for her love and support throughout those years. I do regret, however, that in the future I will not be able to complain to her, as I have in the past, "It's all right for you; you are the judge."

We are also blessed to have a nephew and two nieces who we love dearly and who so generously reciprocate. I am perhaps more fortunate than Shauna because they have always been willing to tell me things that they wouldn't tell their parents or their aunt provided, particularly in the case of the girls, that I buy them enough expensive champagne.

This occasion is of course an opportunity to thank a number of people who have, through their guidance and friendship, contributed enormously to the advancement and enjoyment of my career. I was lucky to have as a principal the honourable Chief Justice Robert French. In a delightful moment of synchronicity, the Chief Justice's son has agreed to be my first associate. Tom, however, has already achieved the pinnacle by doing the one thing that I always wanted to do. He has played guitar for several years in a band called Hot Pants.

I graduated into partnership with, among others, Chief Justice French, Rod Warren, Ross Harrison, and an old and very good friend, Ashley Macknay. It was a very hearty partnership and I missed the comradeship for many years after I left and joined Mallesons.

At Mallesons I was privileged to be in partnership with and work with an illustrious group that included Justice Newnes, Acting Chief Judge Martino, Judge Stevenson, Grant Donaldson SC, the current Regional Director of the Australian Securities and Investments Commission, Bruce Dodd, the current Chairman of the Insurance Commission of Western Australia, Michael Wright, the current State Solicitor, Tim Sharp, Kevin Edwards, Robert Ainslie, and again another very old and very dear friend, Greg Pynt.

I was also most fortunate to serve on the National Board of Partners of Mallesons at a time when the managing partner was the now Chairman of ASIC, Tony D'Aloisio. These were obviously colleagues and friends from whom I could, and did, learn much.

It is not appropriate that I single out any particular person from my time at the Bar. However, over the years the routines of coffee, lunch, shared glasses of champagne on a Friday evening, the ladder tipping competition with one member of Chambers involving bottles of red wine and the relative positions of the Dockers and the Eagles, endless discussion about cases and problems have evolved into a strong personal and professional set of relationships that enriched enormously my life over the last 13 years.

In particular over the last five years I have been privileged to work with a wonderful group of barristers on the 19th floor of Allendale Square. I will miss the camaraderie of everybody on that floor and throughout Chambers. I would also like to thank my secretary, Margie Wright, for organising the whole of my life over the last 12 years or so, writing all of the best opinions and doing everything else. As Shauna observes, I am going to find it hard without Margie doing everything for me.

Any attempt by me to justify the length and conduct of what is sometimes termed "mega litigation" would deservedly be treated with considerable suspicion, given my involvement in Bell. Justice Owen barely recognises any reference to the case unless it is accompanied by the expletive that so often prefaced any mention of the case by all of those who were involved. That's the second expletive that I have deleted so far and the Chief Justice will no doubt counsel me about my language if I keep deleting the expletives.

Large commercial litigation is a product of an increasingly sophisticated and mature economy. Disputes in this state may concern resource projects of extraordinary importance to the welfare of the state and the nation. Recent examples of so-called mega cases indicate that they are often instituted by or involve regulatory bodies such as ASIC or the Australian Competition and Consumer Commission or others such as liquidators who in each instance perform an important public function.

Regulation by statute is a fundamental feature of a modern economy. Public interest in the system of justice being able to effectively identify and adjudicate on the rights and obligations created by such legislation is overwhelming, although not, it seems to me, sufficiently, appreciated and understood.

The need for procedural reform and managing and conducting such litigation is self-evident. However, it is, in my view, important that the Courts do not by default abrogate their role in the resolution of significant commercial disputes because of issues about resource allocation or because a perception that it is too hard and unmanageable is allowed to prevail.

I first recorded time on Bell on 26 February 1998. It was, "Review brief, 1.5 hours." If only life in Bell had remained that simple and short. I can hear Justice Owen sighing in weary agreement. However, two matters that I wish to mention about Bell can be put in the context of the concluding stages of the trial.

Approximately nine months from the scheduled completion of the hearing it was decided on my side that I should take responsibility for overseeing the preparation of the closing submissions, and any of you who have read the judgment of his Honour will see some of the statistics that were involved in those submissions for better or worse.

What followed proved to be the most arduous and yet satisfying time in my professional life. My day would commence at about 7.30 am, when I would be picked up by my then junior, Julien Castaldi, driving a canary yellow 1974 Peugeot 504 - very offensive against the Audi TT - with the steering wheel apparently affixed somehow to the steering column by bulldog clips. We would listen to Jeff Buckley sing the Leonard Cohen song Hallelujah, which seemed suitably inspirational and otherworldly. I would then spend the day and most of the night in a boardroom flaying about in a sea of paper, red ink, paper coffee cups, food wrappers, polystyrene takeaway food containers and empty Lean Cuisine packets.

I was surrounded by hundreds of lever arch files spilled across the rest of the floor of the building. That floor was occupied by what was known as the Bell team. This comprised 40 or more solicitors, paralegals, word processor operators, secretaries and other assistants. The solicitors would feed me submissions to settle, the word processor operators would work in shifts from 7 am to midnight or later, feeding me submissions that I had drafted, and others would keep me alive by constantly feeding me food and coffee.

I would stay mainly seated at a boardroom table until about 11 pm, when generally everybody had left except for the last word processor operator. I would then raid the fridge and have two glasses of wine, drunk in unseemly haste, and settle down for another three hours or so of work to eventually catch a cab home at 2.30 in the morning.

It is, I accept, not immediately apparent how that could represent the most satisfying experience in my professional life. However, it was made so by the people with whom I worked and who formed the team. It started with the secretaries, paralegals and other assistants who were so kind and considerate to me, who cleaned the mess I daily created, who got the coffee and food without complaint, and the word processor operators who worked six or seven days a week under enormous pressure. Their dedication, their humour and their generosity was extraordinary.

There were then the solicitors who worked such long hours producing draft submissions in a multitude of areas and who, even when they were exhausted, still cared about the case and about each other. They were led by some remarkable partners; Ashley Wharton, Wan Zhi Lim and Fiona Hudgson, all of whom are here today and who have travelled from the Eastern States to be here and whose professionalism I greatly admire, whose friendship has come to mean much to me and who formed the bedrock around which the conduct of the liquidator's case at trial was built.

Finally, there were my fellow counsel who provided the leadership and I am sure many of the best points and submissions. Ross Robson QC, now the Honourable Justice Robson of the Supreme Court of Victoria, was our leader. Terry Tobin QC led me for large parts of the case. He has a courtroom style and presence that I could only dream of emulating. Jim Peters SC and Julian Svehla assisted Justice Robson in particular, while Elizabeth Cheeseman and Julien Castaldi assisted Tobin and myself.

There were many others who should be mentioned, including Ian Adrian and Mary Nixon among the solicitors and Stephen Davies SC and James Barber, who provided me

with invaluable assistance in closing and on subsequent argument about the relief to which the plaintiffs were entitled.

I want to publicly acknowledge and thank all of those who I have mentioned and the many others who I have not but who formed part of the Bell team over the many years that the case ran and I was involved.

The second thing I want to say about Bell concerns the manner in which Justice Owen discharged the duty that was cast upon him as trial Judge. I have deliberately put it that way because I am sure that that was how his Honour saw it. It was not a pleasant duty to discharge.

In outlining my experience in preparing closing submissions, I wanted to highlight that it was a team effort but I also wanted to contrast my experience with that of Justice Owen. He did not have a team. On the last day of the trial, my team and that of the defendants celebrated, and celebrated very long and hard, and then disappeared on a long holiday.

His Honour, on the other hand, retired to what has been described by Chief Justice Gleeson as the Judge's private Garden of Gethsemane. He remained there for two years writing largely alone, although both sides think that his Honour may have received some assistance from his usher, affectionately known as Judge Ted.

However, what made my time in Bell worthwhile was the number of people with whom I was privileged to work. His Honour, on the other hand, had no-one with whom to share the burden apart from a family that no doubt came to quickly resent how intrusive and all-consuming Bell was. Whereas the trial was three years for me, his Honour endured the trial and then wrote for two years to produce a 2700-page judgment. While his Honour toiled wrestling with his reasons, Bell for me was no more than the occasional get-together with colleagues to reminisce about purported forensic triumphs.

I do not think that his Honour has received sufficient acknowledgment for the service that he performed in undertaking the trial of Bell and the sacrifices he made. It would seem to me that he was determined to demonstrate that the system could cope no matter how large and complex the dispute and regardless of the problems that were entailed.

His Honour succeeded in that and in doing so, discharged a most important duty. He performed that duty with patience and courtesy and, above all, with a sense of fairness that pervaded every aspect of his management of the trial.

When I first started at Mallesons, we were involved in a trial of a difficult equity issue that was being heard by a newly appointed Judge. At lunchtime on one of the hearing days, counsel were conferring in the foyer of this building when his Honour appeared on his way out to lunch. He stopped, shook his head and observed, and again I am deleting the expletive - the Chief Justice is now really going to be angry with me - "This is hard."

I thought it was hard at the time. I have thought it was hard nearly every day since and from where I sit this morning, it has never looked harder. I am, however, privileged and honoured to be given the opportunity to continue to grapple with the complexity and beauty of the law in its application from a different perspective, one that encompasses not just the private interests of the parties but the public interest in the administration of justice. I am grateful to be given that opportunity and hope that the confidence that is being shown to me will not be misplaced. Thank you.

MARTIN CJ: Thank you, Justice Corboy. The Court will now adjourn.

AT 10.14 AM THE MATTER WAS ADJOURNED ACCORDINGLY