

THE SUPREME COURT OF
WESTERN AUSTRALIA

FAREWELL TO THE HONOURABLE JUSTICE NEVILLE JOHN OWEN

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 2 JULY 2010, AT 4.31 PM

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MURRAY J: I must say, I always think that's the major exercise of the afternoon, finding that there is nobody actually standing behind me looking embarrassed without a chair.

I approach this occasion with very mixed feelings. I'm delighted to have the opportunity to preside over this sitting in the absence of his Honour the Chief Justice, who is bravely essaying holidays on the Gibb River Road with wife and a carload of children. It's also with great sadness that I find myself presiding in a sitting to farewell from the Bench a person to whom I make no apology when I refer to him as another member of the old guard about to fall off his perch.

It's a pleasure, however, to be able to report that unlike the resting parrot in the skit, his Honour goes at a time of his choosing, breaking the shackles of a very long period of public service, if not servitude, as a member of the Court.

I am pleased to be able to welcome to sit on the Bench with us today his Honour Chief Justice French of the High Court. As I look out at the courtroom I see it filled with distinguished guests whose presence pays tribute to the high regard in which his Honour is held. The District Court is represented by his Honour Judge Fenbury and other members of the Court. Judges of the Federal Court are here, as are the Honourable John Toohey AC, QC; the former Chief Justice of this Court, the Honourable David Malcolm AC, QC; a number of former Judges of this Court, too many to mention, many of whom had the pleasure of serving with his Honour on the Bench.

At the bar tables I see senior counsel and other members of the Bar. Leading members of the profession are here, as are many friends of his Honour and senior members of the Department of the Attorney-General. Finally, I am delighted to record the presence in Court of his Honour's wife Juliet, his children and their partners. His Honour had five children. Incidentally, so did Juliet. Of course we sadly miss Justin, but those of you who can see will see that we have made a place for him. Christian, Alicia, Timothy and Ariane are here and all of them are welcome.

I was a little disappointed to see that his Honour's nerve failed him when it came to the attendance of six grandchildren. One is present, however. The list I received describes him as "Number 7 due at the end of August". I do not wish to introduce a note of criticism in these remarks but surely those responsible can do better for the child than to name him "Number 7".

My pleasure at the opportunity to preside over this sitting and my sadness at having to do so both stem from the same circumstance. I was appointed to this Bench with effect from 1 February 1990. His Honour was appointed with effect from 1 February 1991, so we have served together for a very long time and although I appreciate that it involves a drop in the personal standards of one of us, we have become friends.

I hope he will forgive me the observation that in what remains of my term of office I shall miss greatly his Honour's wisdom, commonsense and gentle, often thankfully inappropriate, good humour. Over the three years 1988 to 1991, during which his Honour and I were appointed to the Bench, there were a number of new appointments, including a new Chief Justice, Chief Justice Malcolm, and Justice Nicholson, Walsh, Ipp, Wallwork and Anderson. There were retirements, not as many as the appointments that were made, and so it was a period when the Court was in something of a transition and its numbers were expanding.

During the last three years, commencing with the resignation of the Honourable Len Roberts-Smith QC to take up the post as head of the Corruption and Crime Commission, we have seen seven retirements from the Court, and his Honour is the eight. There have been seven new appointments. I have described this process on another occasion as an unprecedented process of renewal.

When one gets the job of presiding over a sitting such as this, you are provided with the transcript of the retiring Judge's welcoming sitting. I think it probably reflects an attitude that anything interesting in a Judge's life happens before the date of the Judge's appointment to the Bench.

Recently on this Court we debated what some felt was a paucity of information about the serving Judges appearing on the Court's web page. I expressed my agreement with the proposition that little could be said about a serving Judge. I tested the proposition in my mind by imagining an entry which would go like this:

His Honour may perhaps be best described as a generalist Judge, a specialist in very little who likes nothing more than a short, simple case argued by junior counsel who can be bullied into submission, appearing for clients who are too impecunious to trouble the Court of Appeal.

I knew his Honour before appointment to the Bench, although we practised in substantially different areas of the law. Our association was in the context of our interest in the public affairs of the profession, expressed through our involvement in the Law Society. It is undoubtedly right to say that since his appointment to the bench his Honour has been a generalist rather than a specialist, although not of the sort represented by my imagined character.

Rather, his Honour's approach to the work of a Judge is well described by his habit of referring to both of us as, and I quote, "life's lance corporals", an expression which no doubt dates from his national service in the Army during 1971 to 1972. Incidentally, I'm told that the defence force is recovering well from his Honour's time.

Although his Honour had little experience in the criminal Court, as a practitioner he embraced the criminal jurisdiction as a Judge and if he will forgive me for saying so, he became a significant contributor to the work of the Court in that jurisdiction, as he was when on more familiar territory dealing with commercial cases, particularly involving the doctrines of equity.

Those who refer to the records of the cases with which he dealt will find standard fare of a variety of judgments until about 2002, and then the event happened that his Honour was taken from the Court to do what came to be referred to as the HIH Royal Commission, which occupied him for 228 sitting days from September 2001 until the report was finally delivered on 4 April 2003. In that endeavour he was ably assisted by counsel, the relatively youthful Wayne Martin QC.

Typically of the man, his Honour had no sooner finished that task than he undertook The Bell Group case, over which he presided for 404 sitting days, between 22 July 2003, about four months after presenting his report on the HIH Royal Commission, until 22 September 2006. His Honour then had to work on the judgment, which

ultimately ran to 2643 pages and was delivered on 28 October 2008.

It was a blessing when it was delivered. It marked the end of his Honour's harmful effect on our statistics, the number of cases dealt with. Of course the parties had access to considerable legal assistance. Corboy J could no doubt confirm the plaintiffs were represented by four senior counsel and six juniors. The defendants were represented by three senior counsel and five juniors. Both sides could call upon the resources of a multitude of instructing solicitors. The real work to decide the case then had to be done by the Judge alone with part-time assistance from a Registrar and the assistance of two associates.

It would be apparent to all that although his Honour was appointed as a member of the Court of Appeal from its inception on 1 February 2005, he has had little opportunity to contribute to the work of that Court. When he has been able to sit, the work has been fine but there is no doubt that this history is the judicial equivalent of the Isner Mahoot singles match on an outer court. That match was decided over a playing time of 11 hours, when a fifth set ran to 70 as to 68 games.

Why do I mention that? Well, the match showed up the insanity of the system of deciding a set only when one player gets a lead of two clear games over the other. The Bell Group litigation revealed the inadequacy of our judicial system and our system of trial which makes an imposition of that kind upon a single Judge. While we lesser mortals would likely have failed to deal adequately with the case, his Honour rescued the system from its inadequacies by his fortitude and quiet good humour, expressed in his adoption of Ned Kelly's statement, "Such is life."

Your Honour, you were 43 when you took up the burden of judicial office, entirely by coincidence following an amendment to section 6 of the Judges' Salaries and Pensions Act which has become outrageously in some quarters to be referred to as the Owen Amendment, but your Honour has not had to take advantage of that amendment. After over 19 years of judicial service on this Court, you retire just short of your 63rd birthday. You have not, therefore, as have one or two other members of the Court, had to wrestle with the problem of the kind expressed by a joke which is currently doing the rounds. I hope all present will forgive me if I tell it.

It's about an elderly couple who have dinner with friends at another couple's house. After eating, the wives left the table and went into the kitchen. The menfolk sat around the table talking. One said to the other, "Last night we went to a restaurant which was very good, a new restaurant, and I recommend it highly." The other men said, "What's the name of the restaurant?" The first man said - he thought and he thought and finally said, "What's the name of that flower that you give to someone you love? You know, it's a red flower and comes from a bush with thorns," and the second man said, "You mean a rose." "That's the one," replied the man and he turned towards the kitchen and he shouted, "Rose, what's the name of that restaurant we went to?"

As I say, his Honour goes to a future where he can wrestle with problems like that on his own time. You take with you the admiration and gratitude of all those who have served with you and who understand the significance of your contribution. We wish you a long and happy retirement. Mr Tannin.

TANNIN, MR: May it please the Court. Before expressing the State's gratitude to your Honour for your service to this Court, may I firstly convey the Attorney-General's apology for not being able to be present due to parliamentary commitments. He has asked me to express to you his great wish that you enjoy retirement and his gratitude to your Honour.

At the special sitting to welcome your Honour to the Supreme Court nearly two decades ago, your Honour admitted to being slightly overwhelmed at the prospect of a new career. Your words were that you were "absolutely terrified". Such was the terror that you expressed that, perhaps only in half jest, you suggested that you might be making an application for special leave to appeal to the High Court against your own appointment.

On behalf of the people and the Government of Western Australia I can express great relief that you didn't apply or succeed in that course because this State owes you a sizeable debt, not only for the invaluable contribution you have made to the Court in its general division but also to the Court of Appeal and especially for the wider work of shaping progressive thought in corporate governance, in commercial law, in business ethics, both in the academic world and in the corporate world.

As his Honour the Presiding Judge has indicated, you were appointed to this Bench at the age of 43. At that time that was the youngest appointment to this Court. It is a measure of the community and the profession's regard and trust for your Honour that in 2001 you were appointed to conduct the extensive 18-month Royal Commission into the

HIH Insurance Group collapse. Your Honour oversaw an examination of the events and practices and personalities that had triggered one of the largest bankruptcies in Australian corporate history.

This, in fact, was in the midst of commencing presiding over the long-running Bell Group litigation. That was a claim for \$1.5 billion against 20 banks for unlawfully grabbing \$280 million worth of assets out of the tottering Bell Group before its collapse. The litigation by the Bell Companies against the banks was transferred from the Federal Court to this Court in May of 2000. Your Honour's overseeing of the Bell litigation was simply gargantuan in its effort. Nobody could foresee that that task would take six years.

Your Honour heard from 166 witnesses. There were 86,000 documents, 37,000 pages of written submissions and, as his Honour has noted, 404 sitting days; culminating in a judgment of 2600 pages, a judgment thought at that time to be the longest in Australian history and, really, we hope it remains that way. This mountain of evidence was ultimately something that reflected in a wider debate. The journals record that the practical logistics of running such a Court are enormous. There was a dedicated courtroom, big enough to hold teams of opposing lawyers; there were large volumes of documents; there was the need to develop and maintain an electronic data format system that could cope with that process and all of it, in the end, had to be distilled by your Honour.

I think I can reveal that on occasions since, your Honour has sometimes ruefully and sometimes affectionately referred to that litigation as "the four-letter word." It is widely considered that your Honour, simply put, did the heavy lifting in that case and that was at considerable expense to your own life, to your health, to the wellbeing of yourself and your family.

Your Honour, speaking on behalf of the Attorney and on behalf of the State, this is a significant debt that the community gratefully acknowledges. Your Honour's HIH report and the Bell judgment have proved to be watersheds in corporate governance in Australia. The insights offered by those judgments and those recommendations are significant and they will be key recommendations that will be regarded by the profession properly for years. The reading of those findings in the matters reveals, amongst the depth of detail, your astute conclusion that merely having rules and regulations to control the corporate world is inadequate without a coherent underlying ethical structure that underpins those rules and regulations.

Your Honour was convinced that a process of ethical thought and reasoning was absolutely essential to the proper functioning of any corporate governance system and that tertiary institutions in particular have a significant role to play in developing that understanding.

I have mentioned specifically only two matters. The final tally of sitting days in the myriad of applications before this Court, both in complex criminal matters and complex civil matters, in judgments and appeals, in which your Honour has presided over in 19 years as a Judge in the General Division of this Court and in the Court of Appeal tallies literally in the thousands. Your work, with great respect, has been prodigious and the record is exemplary.

All parties who come before this Honourable Court, or indeed any Court, are entitled to a fair and just hearing before a competent, independent tribunal. In a very real way that is exactly what every party who ever appeared before your Honour got. Your Honour always came to court with a sincere and open mind. All parties were truly and equally treated with genuine courtesy and with an engaging humility that, if I may fairly observe, is something that is apparent not only on the Bench but off the Bench.

Your Honour has always understood that the real authority of this Court comes not only from its creating statute and from the Constitution, but from a wide community acceptance of the authority of the Court's decisions and acceptance of the Court as a fair and impartial dispenser of justice.

The profession is deeply indebted for your long and ongoing involvement in a wide range of lecturing, tutoring and advisory roles with many educational organisations including the University of Western Australia, the University of Notre Dame and Murdoch University.

On behalf of the State Government I would like to thank you for the important and diverse roles that you have played serving the people of Western Australia. Please accept our very best wishes on your retirement. I understand that will involve some more legal work, inevitably, punctuated we hope by forays into, I am instructed, Indian cooking and fishing and cricket and yet more reading, but I hope this time purely for pleasure. May it please the Court.

MURRAY J: Thank you. Mr Quail.

QUAIL, MR: May it please the Court. It is a privilege for me on behalf of the Law Society to farewell your Honour from the Bench today. You have had a distinguished career in the law over more than 40 years. For one year shy of

two decades the community has been the beneficiary of your Honour's skill and dedication as one of the most respected Judges in the State.

Your Honour was appointed in 1991 and, as we have heard, at the age of 43 you were the youngest member of a Court of 14 Judges and one of the youngest ever appointed to the Supreme Court at that time. Your Honour came directly from the amalgam, having been a partner of Robinson Cox, now Clayton Utz, and before that in Bryant and Owen and also E.M. Heenan and Co. You practised as a barrister and solicitor, in the true sense of the phrase, for 20 years.

At your Honour's welcome, then President of the Society, now Justice Chaney, said that your Honour's appointment was an important recognition of the fused profession in this State and of the fact that excellence in the practice of the law in whatever branch of the profession can be recognised by appointment to the Supreme Court.

Unfortunately, despite your Honour's exemplary record, you have not been in this sense a trendsetter. After today there will be no Judges of this Court who were appointed directly from the amalgam. Hopefully this is something the Government of Western Australia will remedy before long, for there could be no better example than your Honour of the merit of fused profession appointments to the State's highest Court.

Justice Parker, then Solicitor-General, said at your welcome that some of the qualities you brought to the Court were a respect for frankness, fairness and honesty. These traits remained a hallmark of your Honour's judicial character. Your Honour is also much admired for your commitment to hard work which has seen you assume the burden of many complex and lengthy trials. Your Honour's strong commercial, insolvency and equity background has proved to be an enormous asset to the Court.

Your presence on the Court of Appeal will also be sorely missed, not only by counsel but I suspect more so by the President and other members of the Court. Your experience is irreplaceable by a fair margin; in fact I would say by about the width of a Harmison first ball in an Ashes series.

For someone who once observed that the first criminal trial you saw was one you presided over, your Honour is nonetheless very popular with the Criminal Bar. Both at first instance and also on the Court of Appeal, your Honour has been renown not only for your legal acumen and incisive analysis, but also your compassion and acute awareness of human frailty.

Your Honour was not a harsh sentencer. You were also fair and open to persuasion on the prospects of rehabilitation of even hardened offenders, especially young ones. The burden of judgment and the weight of your judicial oath did not appear to sit lightly on your shoulders.

No farewell of your Honour could fail to acknowledge the work that you did on the HIH Royal Commission and in Bell. Justice Murray and Mr Tannin have already spoken of both matters and I join in what they said, particularly Mr Tannin's thanks on behalf of the profession and the community.

At his welcome, Justice Corboy said that he thought your Honour had not been given sufficient thanks for the work you did in Bell. Rest assured there is nothing but admiration in the profession for the work that you did and enormous respect for the manner in which you carried it out.

Ultimately, though, it is impossible in a few words to reflect the extent of your Honour's service and contribution to the administration of justice in this State and across the country, not only in Bell and HIH but in the many matters over which you have presided in the last 19 years.

Your Honour will also be remembered for your substantial contribution to legal education, both as a practitioner and as a Judge. Almost every lawyer in Perth has been a beneficiary of your Honour's commitment to teaching through your involvement with the Universities of Western Australia, Murdoch and Notre Dame. Amongst many other achievements, your Honour and former Chief Justice the Honourable David Malcolm AC, QC were responsible for restoring equity to the UWA law curriculum more than 20 years ago.

We at the Law Society are particularly thankful for your Honour's contributions as an active voice of our Law Summer School over many years. It is largely because of the participation of Senior Judges that Summer School is as successful as it is. You have also been a very popular presenter at many of our CPD and Young Lawyer events.

Just as no farewell of your Honour could fail to mention Bell, it would be remiss of me if I did not make some sporting reference or 20. Your Honour is a well-known Dockers tragic, perhaps this year more triumphal than tragic, we hope. I asked some of your Honour's friends and colleagues who you would be if you were in fact a Docker. There was no doubt among them that in your own eyes you were Matthew Pavlich. Others, though, compare you to a player recognised for his skill, his work ethic, for being a quiet achiever and leading by example, for being fair, no suspensions in 273 games - although he came close once - for being an all-round nice guy and, most of all, for doing the hard work for the good of the team that no-one else wanted to do. That player, of course, is Peter Bell. There's even some synergy in the name.

Can I finish though with cricket? Your Honour started on the Bench at number 14. By the end of your first day you had progressed to carrying the drinks as twelfth man and now you retire at first drop, which is as it should be. Your Honour, we wish you well in your retirement and in September. May it please the Court.

MURRAY J: Yes, thank you. Mr Colvin.

COLVIN, MR: May it please the Court. It is with great pleasure that I appear on behalf of the Bar at this special sitting to mark the end of your Honour's judicial career. My responsibility this afternoon is considerable. Your Honour has a long and distinguished record of public service as a member of this Court. You were accorded the greatest respect by the Bar and the profession generally and we have been afforded so few opportunities to convey these sentiments to your Honour that when the occasion arises we wish to do so properly.

So, despite what I expect will be your Honour's discomfort in being the subject of some adoration, I offer these remarks. Out of deference to your Honour's sensibilities, I will speak without embellishment. I take as my text a passage from the lamentations of Jeremiah, "It is good for a man that he bear the yolk in his youth." Your Honour began judicial life as a young Judge, yet the face and smile of a cherub did belie great wisdom and experience.

By that time you had served as a captain in the Army Legal Corp and had served for many years on the panel of Army legal advisers. You had enjoyed a happy and busy life as a partner in the West Perth practice of Bryant and Owen, where your opinions in difficult insolvency matters were highly sought after. In those joyous days before computers, your written work was always carefully crafted in pencil, with much erasure, before it was typed, each sentence refined and polished until it was simple, clear and precise. This approach formed the habit of a lifetime and as a Judge your Honour has always written with enviable clarity. You have never hidden behind generality or vagueness and have always undertaken the difficult task of seeking to give precise and principled expression to the reasons why a claim must succeed or fail.

Returning to your earlier life, you were involved, as you would put it, in Bryant and Owen's reverse takeover of Robinson Cox, later Clayton Utz. You arrived in the new firm with a great mountain of current files. Ahead of your time, you doggedly refused to complete time sheets and always gave great value to your clients. Your practice was diverse. You secured a television licence for one client, drafted complex commercial instruments, appeared as counsel in insolvency and corporations matters in this Court and had a number of personal clients who valued your counsel on matters that went well beyond the strict character of legal advice.

Your Honour then had and has maintained a great involvement in our law schools, as we have heard. As a Judge you have often accepted invitations to speak at academic institutions and you have maintained a keen interest in the study of the law and the teaching and training of your lawyers.

It is a testament to your love of the law that you have produced amongst your offspring three lawyers, and a testament to your good sense that not all your children are lawyers. However, it would be wrong to describe your Honour as having an academic bent. Your Honour has always had a watchful eye to the practicalities of the law in its application to real-life circumstances.

In its expression by your Honour, the law speaks sensibly and with due regard to the circumstances in which it must be applied. Its limitations as an instrument for modifying human behaviour or inculcating ethical standards must be embraced. This is especially evident in the content of your Honour's report as Commissioner in the HIH Royal Commission, but indeed, your Honour has a broad view of what qualifies as an academic pursuit. For example, I am told that you put in many hours of so-called research time at The Jolly Judge in Edinburgh, Scotland.

Your Honour's personal qualities marked you as an obvious candidate for judicial appointment and there is a theory at the Bar, built upon anecdote rather than scientific study, that it is an observed phenomenon that when exercising judicial power one aspect of the Judge's own personality becomes more prominent. Your Honour has been the exception that proves the rule.

As a Judge, your Honour was yourself. You were never self-promoting or self-important. You allowed your work to speak for itself and you were always prepared, polite, considered and even-handed. You always came to a case without prejudice or prejudgment and, importantly, you never lost sight of the human scale of a case. Parties, counsel, witnesses, jurors and your staff were all seen by your Honour and treated by your Honour with the greatest respect and in a fair and principled way.

Your Honour was never one to quarrel with counsel or be difficult or disagreeable. As a Judge, you would never be fool nor be fog. You were known for your clarity of thought in the course of oral argument and especially in your written reasons. This is a great risk for a Judge because clear language makes any error more obvious. Obtuse expression can hide a multitude of sins. Your Honour was rarely in error and was rightly included amongst the members of this Court appointed as inaugural members of the Court of Appeal.

I suspect that your character must have been shaped in part from your formative education in New Norcia. Those who know you well may see many possible connections. New Norcia is an anachorism - there's a word for the day, your Honour - a Spanish Benedictine settlement in the wheat belt settlement of Western Australia.

It combines a history of seeking to understand the language and culture of local Nyoongah people with rare examples of ecclesiastical art and literature. Its rich European buildings stand in an Australian bush setting. Its first monks were from Spain, England, France but were accompanied by an Irish Catharist to keep everyone on the theological straight and narrow. They faced much adversity.

Cricket, indeed, I find was a formative part of life at New Norcia. In the 1870s Henry Lefroy, who later became the Premier of this State, often captained the New Norcians on what was described as tours to Fremantle and Perth. The most Aboriginal team was much admired in the press for its great skill and agility.

As is well known, your Honour has continued the cricketing tour tradition as a straggler. I make no comment concerning the tradition of skill and agility. You have been a keen and willing circuit Judge, often spending time in the communities up north. You enjoy being in the bush and happily blend in amongst the patrons in the front bar of any country pub.

Also, you have been a great equity lawyer, that branch of the law that came out of the ecclesiastical courts. With its emphasis upon parties acting in good conscience, it is best understood by those like your Honour who have a keen understanding of their own humanity.

For your Honour there has also been what might be described as adversity. In particular, the yolk of office has been heavy. In your judicial career you have been the Judge in charge of the Civil List, at times the Judge in charge of the Corporations List from its inception and for a considerable time you held responsibility for reform of the Procedural Rules and Practises of the Court.

Your Honour, as we have heard, has borne a prodigious burden as a sitting Judge. I doubt that anyone else could have completed the task. We in the profession are sorry that it has been so. One Judge should not have been asked to do so much. We do not mention the word that has become the name of the greatest burden. We pause only to note that in undertaking that task it is not surprising, given your fondness for clarity of expression, that words appear to have provided great solace to your Honour. Indeed, reading the judgment, we suspect that in recent years your mantra has been, "The word of the day keeps insanity at bay."

Early in your judicial career you dealt with the sentencing of the offender in the heinous circumstances of the Greenough murder case. It was to your Honour's great credit that you withstood the calls of the baying media. A moment's consideration of your Honour's sentencing remarks shows how keenly you bore the burden of determining whether to sentence a person to spend the rest of his life in prison without any hope for the future.

In words directed to the accused you stated, "I cannot undo the devastation that you have wrought on everyone concerned, alive and dead." Those words expressed in the first person reveal the extent of the personal investment in the solemn and difficult task that was then before your Honour. Few judges would contemplate a personal burden that might include seeking to undo such devastation by another.

Perceptively, the High Court on appeal in the course of its reasons said, amongst other things, that your remarks were such that your Honour is to be taken as having meant what you said.

Your Honour was to preside over many jury trials and was held in the highest regard by members of the Criminal Bar. As a Judge, your Honour has always been aware of the human condition and has brought that shared status with those who come before you into your role as a Judge. You have never conjured any hint of superiority and you have always treated parties before you with respect. If there be such a state as being able to be justly proud, your Honour has attained it.

Today, though, is not an eschatological moment. It is a mere milestone in a career that is well marked by substantial achievement. Both in its diversity and accomplishment, it has few peers. Indeed, I am pleased to be able to say today that in recognition of your Honour's long standing as a member of this Court, and of the respect and regard in which you are held, the Bar Association will be moving the Owen Amendment to its Constitution to permit your Honour, who alas was never a member of the independent Bar, to be afforded the status of an honorary member. We hope your Honour will accept.

I am told that some of your grandchildren have noticed that your judicial robes are not unlike a Batman costume. We hope that there will be ample time for yourself and your family, especially your increasing numbers of grandchildren, in the immediate future. Some no doubt will be disappointed that their "banga" will no longer go to work dressed as Batman.

Having borne the yoke in your rather extended youth, may your burdens be lightened in the next stage of your life. May it please the court.

MURRAY J: Your Honour.

OWEN JA: Chief Justice, Justice Murray, Justice McLure, fellow Judges, members of the legal profession and friends. I can make this very brief. I have listened very carefully to what Justice Murray, Mr Tannin, Mr Quail and Mr Colvin have had to say. I agree and have nothing to add.

Of course, the reverse is the truth. I thank each of you for your very kind words and for the sentiments expressed in them, but I warn you that gross embellishments of my perceived good points and a failure to mention my many faults will add significantly to the time that you're going to be required to spend in purgatory.

In that respect I have a word of advice for you. I have already wiped out my time in purgatory because I have been watching the Dockers for 15 years. That of course no longer works, but if you want to work off your sentence you can go and watch the other mob.

This is going to be very largely a four-letter word free zone but nonetheless, I must start on a sour note. I have to advise that I propose to commence an action against the State Government for failure to provide a safe system of work. When I came to the Court I was 12 kilograms lighter than I now am, I had a thick shock of almost black hair, and I had no aches and pains.

My weight has nothing to do with the fact that I have been known to have a very mild shandy on an extremely hot day. It's because, what do Judges do? Sit and sit and sit. The hair problem is not genetic; it is that damn wig. I have got tennis elbow in both elbows, and that comes from writing long judgments. I have got a sore foot, and that has got nothing to do with disputes with ladders; it is metaphorically kicking litigants and litigators under the Bench.

There is a song by the Australian country singer-songwriter - and just to put my children's minds at rest, I am not going into John Williamson mode and going to give you a rendition of Humpin' My Bluey, but there is a song by an Australian country writer called Adam Harvey and the chorus of the song has these words:

Some believe our destiny lies in our own hands.
But as a matter of fact there's a little more to
it than that.

For me, the "little more to it" is friendship. It's friendship that envelops, protects and sustains you in times when life has its little reverses, and it's friendship that exhilarates and makes the good times even better. I owe an enormous debt to a broad range of people whom I have the privilege to call friends.

I want to start at the point where most people making these speeches finished, and that is with the family. I have to explain something to you first, though. In 1975 the first edition was released of Meagher, Gummow and Lehane's book on the Doctrines and Remedies of Equity. For those who aren't lawyers, I have to explain that Meagher Gummow and Lehane is a long, turgid and in-depth but nonetheless authoritative textbook on equity. I decided I would take it home and I would read it from cover to cover, and I did. I put it on my bedside table and I read the lot. It took me several years, but I eventually completed this task, but Meagher Gummow and Lehane have a lot to answer for.

You only have to look at the jury box to see that it is a very ineffective contraceptive. Worse than that, three of my four children are lawyers, or one of them soon will be, and with six, nearly seven, grandchildren, it is obvious that the reproductive gene has also been passed on.

7/3/ems

Farewell

The significance of the empty chair in the jury box will be obvious to all who know us. I am extremely proud of all of my children, and of their spouses, and am grateful to them for the support and wise counsel and for the sheer joy of seeing their own children grow and prosper. I am also in debt to my brother Brett and sister-in-law Carol and other members of the extended family.

2/7/10

OWEN JA

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That brings me to Juliet. As well as being the premier choreographer of school musicals in Western Australia, probably Australia, she is a mother, a grandmother and a spouse par excellence. It's a matter of amazement to me that she has stuck with me all this time. The warmth that she has, the humour and the sound sense is infectious and she is, without doubt, the most important feature of my life.

When I was welcomed to the Court all those years ago I paid tribute to my schooling at New Norcia and I do so again. In an article I wrote some time ago I described St Ildephonsus College as a school for farmers' sons, reprobates whom the toffy Perth schools couldn't handle and other misfits. I am pleased to acknowledge the New Norcia boys - and girl - who are present today. They can work out for themselves into which of those categories they fit into.

The years at University, both in the Law School and at St Thomas Moore, was similarly blessed.. My association with the Universities, particularly Notre Dame and UWA, has been ongoing and will continue, but it is a somewhat selfish pursuit because I am sure I gain more from it than I give.

My time in the profession at EM Heenan and Co, Bryant and Owen and Robinson Cox was rewarding and satisfying, made all the more so by the friendships I made within those firms. I was fortunate to work with members of the Bar whom I regard as some of the finest lawyers that this State has produced. I am grateful to David Malcolm, Daryl Williams and Robert Anderson in particular for teaching me so much of what I now know. They are lawyers of superb quality and they gave me a fine example to follow.

I am not sure what happens in the current day legal profession but one of the great joys for me was the friendships and the lasting friendships that I made with people for whom I acted. I am honoured by the presence today of Kerry Stokes and Peter Gammell, who fit into that category. If at any time during the remainder of these remarks I make some unflattering comments about the media, you can take it that the local daily newspaper and the first television station to begin operating in Perth are exempt.

Sport has always played a big part in my life and front and centre in this respect is the internationally famous Perth Stragglers. Please note the name and refer to it by that name. It is my melancholy duty though to perform a disciplinary function in this public forum. A short time ago Justice Robert Mazza was welcomed to this

Court and on that occasion he made gratuitous and insulting remarks about the Stragglers tie. He did acknowledge that he would probably be fined for the indiscretion but, Judge, you are not going to get away with it that lightly. The Stragglers are controlled by the Faceless Men. By the way, that's me. Your penalty is to attend before, and be counselled by, the Faceless Men, and as Australian history over the past couple weeks has shown, counselling by the Faceless Men can have very serious consequences.

Our tennis group has provided me with enormous enjoyment over the years. If you are wondering about the presence of Chief Justice French here today, it has got nothing to do with the occasion. He just wanted to check on the progress of my rehabilitation because he thinks that if the healing process continues to falter he might just be able to beat me.

I came to the Court at the beginning of 1991 and I was met by a group of judges whose warmth and generosity of spirit made the transition to judicial life a lot easier than I could reasonably have expected. In this respect I must make particular mention of David Malcolm, Barry Rowland, the late and very much missed Terry Franklyn, Henry Wallwork, Terry Walsh, Bob Nicholson, Mann Sau Ng and Justice Murray.

I have had only three Orderlies during my years on the bench, Captain Tony Hailey, the late and enormously missed Major Arch Foxley and Ted Mand. They have been loyal and steadfast allies. I have been blessed by a large number of very capable associates and I thank them for their diligent efforts. I am sure the others will forgive me if I mention four of them.

Eibhlin McCloskey was my first legally-trained associate. Her first day on the job was at the old Port Hedland courthouse and it was her 22nd birthday. Talk about being thrown in at the deep end. Jane Erickson and Jessica Edis deserve special mention because not only did they serve in this Court but they followed me to Sydney to assist with the Royal Commission. The fourth member is John Robertson. I am particularly grateful to John because he stuck with me for three years when I was involved in some minor litigious skirmish of some sort.

The Registrars of this Court deserve great accolades for the work they do. Without the assistance of Registrar Sandra Boyle I doubt that I would have survived that minor litigious skirmish. The fine work of Registrar Pam Eldred has made a significant contribution to the establishment and efficient functioning of the Court of Appeal. The IT people, particularly Hoff Ho and Vagelli Mitakos, the Court secretaries, Christina Curtis and Alan Ash, have always given me great support and have never complained

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when I have made unreasonable and sometimes unintelligible demands.

People have often asked me what it really is like to be a Judge and I am still not sure I know the answer to that question. The essence of being a Judge lies in bringing to bear an objective and dispassionate mind to the resolution of a problem, and I cannot remember many cases with which I have dealt that did not bring in myriad competing, and sometimes quite incompatible, considerations that had to be balanced.

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I sometimes wonder if these aspects of the judicial role are really understood. In our daily lives we are not always subject to those strictures and we can give vent to subjective and sometimes quite passionate feelings in relation to a problem. Nor, in common experience, are we always required to give effect to the balancing exercise that I have just mentioned.

This may go some way to explaining why members of the public sometimes feel let down by the way in which an issue has been resolved in the Courts. I mean no criticism when I say that and it is incumbent on us, as Judges, to explain what we do and how we do it in as simple and clear terms as we can.

Although my experience in practice was entirely in the commercial field, the most important work that the Judges of this Court do is in the criminal field. To say that the liberty of the subject is more important than money might sound trite but it marks out the role of the criminal Judge and practitioners in the field. I would urge all young practitioners to consider some involvement in criminal practice.

Mr Quail has already mentioned my first criminal trial. Another part of that story is that I had the good fortune to have as counsel on both sides fellow Stragglers. At one stage I said something to the jury and they stood up in unison to object.

I remember in my early days on the Bench saying to Magistrate Tony Bloeman that I hoped that by the time I left judicial office the situation of the Aboriginal people in relation to the justice system would be a little better than it then was. I leave with that hope utterly unfulfilled.

When I started, the imprisonment rate of Aboriginal people in Western Australia was 1300 per 100,000 head of population. Today that figure has increased by more than three times to 4400 per 100,000. I don't pretend to have the solution but it is not a statistic of which any Western Australian can feel proud.

The high point of my career was, not surprisingly, the HIH Royal Commission. It's a rare privilege to be given the opportunity to make a direct contribution to shaping the way commercial entities should operate and to deliver a gentle reminder to those involved in business that there is a moral element in the decision-making process.

We were able to have some innovative processes in the investigative process. I was initially appalled at the suggestion that at the end of each day counsel assisting should go to the press room, along with lawyers for witnesses, if they chose, to answer queries about the day's proceedings.

I say I was appalled for two reasons; first, because it was foreign to my experience of the way Courts disseminate information to the public. The second reason was it had also occurred to me that it would mean letting Wayne Martin QC, as he then was, loose in a room full of hungry journalists. But it worked. There was virtually no misreporting over the 232 days of the hearing. I realise that this idea could not be transported into the day-to-day routine of the Courts but we do need continuously to be thinking about different ways of explaining what we do.

I have written a number of papers on the difficulties of running long trials, usually under the title "Surpassing Sisyphus". I don't propose to say anything further about this subject today save for this: there have been three significant - by "significant" I mean in terms of length - significant commercial cases in the Australian Courts in this decade. I cannot speak for either of the Judges who heard those other cases. I simply point to the strange coincidence that none of the three of us is anywhere near compulsory retiring age, yet as of midnight tonight none of us will remain in full-time judicial office.

I cannot count the number of times over the past few months when I have been asked what I am going to do in retirement. There are several things that come to mind. First, I go to bed tonight still a peacock tail; tomorrow morning I wake up as a feather duster. I expect the feather duster to be put to good use because I anticipate that when I emerge each morning I will be presented with a list of chores to be completed before I can go out to play.

Secondly, I propose to establish an a cappella choir with Ian Marshall as lead singer. Thirdly, I am available to act in a mentoring role for Judges or anyone else who would like to take advantage of the service. There is, though, a problem. Mobile phone reception is notoriously bad around in Stark Bay and even worse in Shark Bay. I have given strict instructions to the skipper that no-one is to have the satellite phone number of the Good Ship Thirsty Bay.

Finally, I mentioned that the essence of being a judge is objectivity and dispassion. Now, that I don't have to be objective and dispassionate every waking hour or every weekday I will be able to transfer those qualities to the weekends. It will enable me to assess whether AFL football umpires are as inept and hopeless as I have always thought. That campaign starts tomorrow.

I leave the Court, I think, in very good stead. There has been, as Justice Murray has said, a process of renewal but the Court is extremely well led by Chief Justice Martin and by Justice McLure, and the process of renewal is no bad thing. The Court has had so many welcomes and farewells in the past year that I didn't think anyone would come today. I'm humbled by your presence. It has been a privilege to serve as a Judge of this Court.

It's not my intention that today should bring an end to my period of service to the public and to the commercial community. There is, though, an excitement about not knowing how or when further opportunities may arise. In the meantime, I will end by repeating what I wrote in the last line of the four-letter-word judgment. It comes from the Roman poet Ovid with an embellishment from the Old Latin Mass. In the judgment the quote is in Latin but so that your last impression of me is not as a pretentious prat, I will give you the English translation, "And now my work is ended, thanks be to God." Thank you.

MURRAY J: The court will now adjourn.

AT 5.25 PM THE MATTER WAS ADJOURNED ACCORDINGLY