

The Hon Justice R P Meagher

On 15 March 2004 it was standing room only in the Banco Court at a ceremony marking the retirement of the Hon Justice R P Meagher. The Hon Justice J J Spigelman AC began proceedings with the following speech.

We gather here today to mark the departure from full-time involvement in the administration of justice of one of the intellectual giants of our legal history. The Honourable Roderick Pitt Meagher, known universally as Roddy, is the most widely loved judge of his time. There are some exceptions to that proposition but they need not detain us.

The source of the esteem in which your Honour is held is your combination of immense personal charm with an extraordinary intellect, reinforced by the wickedness of your tongue, the sparkle of your wit and the relentlessness of your intellectual honesty, not least with yourself. Throughout your career in the law, as lecturer, author, barrister and judge, you have followed the law where it led, whatever the consequences may be. On no occasion did anyone suspect that you fudged either the law or the facts to achieve a convenient, let alone a popular decision.

Often the confidence you exude, together with your extraordinary command both of the law and of the language to explain it, leaves the rest of us surprised, even anxious. That, however, is not your problem but ours.

As everyone in this courtroom knows your major contribution is found in that magnificent text *Equity: Doctrines and remedies*, a joint work which is the product of a massive scholarly endeavour.

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Justice Heydon said of this publication: 'It has extremely strong claims to be placed on, indeed at the top of, a short list of the greatest legal works written in the English language in the 20th century.'¹

It is a different kind of text to any that had come before. It spoke without the diffidence characteristic of legal texts; it exuded, and sometimes luxuriated in, its own confidence and mastery of the subject; its style was irreverent, witty and disrespectful, including strongly expressed opinions about the inadequacies of judgments by judges of high repute. It heralded a new and distinctive voice in Australian legal discourse, a voice which would enrich the intellectual endeavour of a generation of lawyers in numerous further publications, speeches, judgments and, for those of us privileged to have experienced them, in conversations with you. I am confident you will, one day, find your Boswell.



Photo: Murray Harris Photograph.

In the Court of Appeal and in the Court of Criminal Appeal, your Honour dealt with matters across the full range of this court's jurisdiction, travelling well beyond equity jurisprudence. Chief Justice Gleeson, who is overseas and has asked me to apologise for his absence today, informs me that he was careful to ensure that you sat with him on your first appearance as a judge in the Court of Criminal Appeal. Immediately after the Bench sat you turned to the Chief Justice and said: 'You only have to look at him to know that he is guilty.'

Chief Justice Gleeson felt obliged to point out: 'The appellant hasn't been brought up from the cells yet. You're looking at the court officer.'

Throughout your years on the bench of this court you have conducted yourself with unfailing courtesy to counsel and litigants. In hearings you have manifested an ability to direct attention to the real issues upon which the outcome of the case would depend, distilling the facts into their simplest form, before applying the precise principles of law required to determine the case. Your judgments are written concisely, accurately and with humour, encapsulating within a few pages what others take dozens to express. This is not the style fashionable amongst your judicial contemporaries, including myself. There are many of us who yearned for more. We are, however, most grateful for what we received.

All of us cherish the memory of your many witticisms, your mischievous inventions, your flaunting of unfashionable

opinions - some of which you probably hold - and your eloquent turns of phrase. Even those who have been the object of your most pointed barbs, many of which must have been hurtful, seem to accept that they were devoid of malice. I am sure they were. For no-one was exempt from a rapier like thrust at the heart of their reputation.

Sir Frederick Jordan was one for whom you have the highest intellectual respect. Nevertheless, with respect to a particular footnote in his *Chapters in Equity in New South Wales* you once observed, in a judgment:

Great as is the homage we all owe to Sir Frederick Jordan, one must state that the footnote is nonsense. It has, of course, been approved by the High Court on about four occasions ... but that does not convert it into sense.²

This was 1998, when your Honour had served on the court for about a decade. In 1983, when your Honour wrote the foreword to the republication of Sir Frederick Jordan's papers³, the High Court judgments, to which you would later refer with such scorn, were mentioned in that foreword. Far from being critical of those judgments, your Honour referred to them as an indication of the 'current utility' of Sir Frederick's great work. Perhaps you were teasing. Your Honour was of course then counsel. This may have been an uncharacteristic display of tact, or at least discretion. You would rise above tact on the bench.

As you move into the entirely tact free zone of post judicial life, we look forward to continuing enrichment from your wit and your intellect. The fact that it will no longer be available to me on a virtually daily basis is a loss which I will feel deeply. So will many other members of this court. I and we will miss you.

¹ Heydon 'The role of the equity Bar in a judicature era' in G Lindsay (ed) *No mere mouthpiece: Servants of all, yet of none*, Sydney (2002).

² See Chief Commissioner of Stamp Duties *v ISVT Pty Limited* (1998) 45 NSWLR 639 at [64]; 'Sir Frederick Jordan's footnote' (1999) 15 *Journal of Contract Law* 1.

³ Sir Frederick Jordan, *Select legal papers*, Sydney 1983, Foreword, p2.

Ian Harrison SC, speaking on behalf of the Bar, delivered the following speech.

There was a time when the Bench and Bar were populated by more than their fair share of eccentric women and men. The ranks, however, are thinning. Many of the eccentrics are still around. Indeed, some are still here today. I shan't name them. They know who they are.

Which brings me to your Honour. I remember your Honour well from my days at law school. Perhaps you remember me as well. Perhaps not. I had the privilege of being taught by Meagher, Gummow and Lehane even before they became Meagher, Gummow and Lehane. It is a great sadness for all of us that the late Justice John Lehane is not here to see you off. Justice Lehane was one of nature's gentlemen with a delightful

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disposition. The only time he ever confided in me about things that troubled him was when he confessed that writing a book with your Honour had sent his hair prematurely white. That wasn't as much a concern to him, however, as the fact that your Honour's hair stayed youthfully brown. Justice Beazley told me that she thinks the colour of your hair could now best be described as Dorian Grey!

I also remember your Honour at the Bar. You were a mellifluous advocate with an inspiring economy of words. You pioneered the style of advocacy known as the 'lectern draping', sometimes known as 'lectern hugging'. This soon became very popular. Proponents of this technique would loll foppishly across the lectern for hours on end in a sort of Darling Point swoon. The idea was to give their submissions a casual flavour of persuasive indifference. Dyson Heydon used it at the Law School when teaching. One QC I know uses it for speeches at all of his weddings. Although your Honour perfected the technique, none of your disciples has done as well. Towards the end of your career at the Bar you became famous for performing your spectacular 'double lectern drape', but only occasionally and only in the High Court. Those hoping to emulate this feat should understand that it is quite dangerous and should only be attempted under strictly controlled conditions. Jack Kenny QC, who was quite short, could never understand why you would not teach him this technique, despite sharing chambers with you on the eighth floor. It is thought that this is why Kenny developed a strand of advocacy in opposition to the lectern drapers. This strand didn't use lecterns at all. Instead, barristers shouted at the court from underneath the Bar table. Tom Hughes QC joined neither group, preferring to keep all lecterns at arm's length, much as he treated Protestants and monarchists.

And then in what seemed like the flash of an eye, your Honour was appointed to the Court of Appeal. You brought colour to the Court of Appeal but not, if I may say with the greatest of respect, much movement. There was reason for this. This was made clear by your Honour in *Trevalli Pty Limited (Trading as Campbelltown Roller Rink) v Haddad* (1989) Aust Torts Reports 80-286 at 60.036. In that case you said this:

Whilst all reasonable people know that any form of physical activity is both unpleasant and dangerous, and probably unhealthy as well; and whilst sport, which is communal physical activity, suffers the added feature of exposing its participants to the perils of tribal barbarism; nonetheless the law has never regarded the playing of sport as contrary to public policy or even unreasonable

Justice Hodgson has never read *Trevali Pty Limited (Trading as Campbelltown Roller Rink) v Haddad*. Justice McColl would have dissented. Justice Sheller, by contrast, hands out copies of the judgment on street corners.

Conformably with this passage, your Honour's demeanour has been slow and measured. You walk at a sensible pace. You never hurry. You prefer to take your time and you waste lots of it. You have been known to warn Justice Young on ceremonial occasions such as today that he'll end up knocking over all the justices in front of him like a row of red dominos if he doesn't slow down. There is considerable wisdom in your caution.

But what of your Honour's colour? It has many aspects. Most significantly there is your passionate and abiding interest in art. You introduced art to the Court of Appeal with the same flourish that Justice Powell abolished full stops in the Probate Division and with the same enthusiasm that Justice Wood taught police how to sit in the front seat of patrol cars. You educated your fellow judges in the Court of Appeal about art. Art appreciation on Level Eleven reached fever pitch. Justice Mason tells me that now even Justice Handley can recognise a genuine work of art. This is because it will have a fraction written in pencil in the bottom right-hand corner. Also, with your Honour's help, Justice Ipp has been able to master the technique of looking like a Rembrandt portrait. He can sit in court for hours staring straight ahead but, as with all good paintings, the eyes follow you around the room.

I have had the pleasure of appearing before your Honour many times. I have always appreciated the fact that you made it clear, at the earliest possible opportunity, just how counsel could best assist you. On most occasions I liked this. However, on one occasion I remember your Honour saying to me: 'Mr Harrison,

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Your Honour also had the remarkable ability to be very pointed in the politest of ways. I recall once when you were delivering an extempore judgment you said of counsel, 'Mr Hall has said all that could possibly be said on behalf of the appellants, and more'.

For better or worse your Honour seems never to have been very far from controversy. Indeed, you have been very energetic and productive in this field. Commendably, your Honour has never been one to jump into someone else's controversy, preferring without exception to create your own. You seem with some ease to be able to polarise opinion and create enemies in a way quite out of step with what one would expect of a reasonable man taking proper care for his own safety. Your

incautious comments about women at the Bar have provoked the fiercest attacks. You must have expected these responses. For women at the Bar are confronted with unwanted and unnecessary difficulties that men of equivalent juniority or seniority don't face. A female barrister explained it to me recently with frightening clarity. She told me that when a male barrister makes a mistake, he makes it for himself. When a female barrister does so, she makes it for all women.

But I can't help thinking that your Honour's motives are not as base as some would paint them. Your Honour is, after all, famous for the immaculate line alluded to earlier, 'Oh, surely your Honour is only teasing me'. When I returned to the speech made by your Honour on the occasion of your swearing-in, in this room on 31 January 1989, I was reminded that your Honour said this, recently quoted:

Finally, I must thank my wife and daughter for performing handsomely the task for which they as women were designed, namely, to provide me with domestic comfort; and also for their fortitude in embracing the new challenge which confronts them - to supply me with financial assistance.

Many in this room today know better than I that you were a devoted husband and remain a doting father. It seems to me that some of the comments that you have made, which have caused so much fuss, should well have provoked the response: 'Oh, surely your Honour is only teasing me'.

I haven't troubled to repeat the high points of your Honour's stunning career or contributions to legal scholarship. These are all well documented, and in any event have already been referred to. I should note, in passing, however, that you served as a president of the New South Wales Bar Association with distinction for two years. The Bar is forever in your debt for that service. Nor did you forget those with whom you served on the Bar Council when finally you became a judge of this court. In *State of New South Wales v Coffey* you offered the following description:

[They]... were a motley crew. Many of them had psychiatric disorders. Some of them had been patients at institutions. Some were addicted to drugs or alcohol, or both. Most of them were foreigners, and many of them were female.

That sounds like a description of almost every Bar Council in living memory.

As I look around the room I see that there are many more people here today than were present at your swearing-in. There are possibly three reasons for this. First, you are now more popular than when you were appointed. Secondly, there are just more lawyers than there used to be.

On behalf of the Bar of New South Wales I wish you well in your retirement. Stay close, and please don't get lost in the wilds of Darling Point, wherever that is.