



Supreme Court
New South Wales
Common Law Division

Title: Ceremonial Bows of Jeffrey McLennan SC

Date: 29 October 2014

Before: Hamill J, Supreme Court Grafton

Occasion: Appointed Senior Counsel in the state of New South Wales, taking rank and precedence after Matthew John Darke SC.

Catchwords: Rainbow Region – colours – where Crown Prosecutor insists on colour-coding exhibits - fuchsia – lime green - Tuscan orange – fashionable Italian lycra – contradiction in terms – bad puns – ride on lawnmower – deft touch

Cases Cited: *Federal Commissioner of Taxation v Hoffnung Ltd* (1928) 42 CLR 39 at 62

Texts Cited: Sun Tzu, *The Art of War* (1913)

REMARKS

- 1 Mr McLennan, thank you for paying me the courtesy and great honour of taking your bows here in Grafton when your commitment to the current trial prevented you from travelling to Sydney for the official bows before the full Court yesterday. I have passed on your regrets and respect to the Chief Justice.
- 2 There is a practice at the Bar that when appearing before an unknown Judge, a barrister makes extensive inquiries to try to understand the idiosyncrasies, quirks, likes and dislikes of the Judge. This is a practice of

antiquity and stems, perhaps, from Chinese wisdom of Sun Tzu who said in his *Art of War*:

“If you know the enemy and know yourself, you need not fear the result of a hundred battles.”

- 3 You will probably not be surprised to hear that this detective work goes both ways. I understand that outside Newcastle District Court we once passed like ships in the Knight(s). In deference to your regrettable tendency in favour of bad puns, Knights should be spelt with a “K”. However, before the trial that we are currently conducting, I did not know you, I did not know your puns and I did not know your work.
- 4 I might interpolate here that the situation of your opponent is very much to the contrary. I have known Mr Dennis for so many years that it would be impolite, and unfair to both of us, to nominate a number.
- 5 So it was that I applied the wisdom of Sun Tzu and spoke to a number of my colleagues to get some idea of your form. The response was universal. I was told that I was very fortunate to have you before me as Crown Prosecutor. I will not embarrass you by sharing the adjectives and superlatives that a number of District and Supreme Court Judges employed.
- 6 That inside information, even the hearsay, has proven to be completely reliable. Over the last few weeks I have had the opportunity to observe - and to be greatly assisted by - your advocacy.
- 7 You have shown excellent judgment, a deep and broad knowledge of the relevant legal principles, a quietly persuasive advocacy style, a deft touch with witnesses and a polite doggedness in the face of repeated judicial interruptions of your arguments. You may have felt that the fourth day of the pre-trial *voir dire* was a little like the tax case in the High Court that

Justice Starke said was “argued over nine days by the Court with the occasional assistance of counsel”: *Federal Commissioner of Taxation v Hoffnung Ltd* (1928) 42 CLR 39 at 62.

- 8 As somebody with a particular interest in the subject, I have also noted approvingly, the fairness with which you conduct yourself as a prosecutor. As a defence counsel, the one thing I feared more than anything else was a fair and well prepared Crown Prosecutor. You exhibit both of those qualities.
- 9 My spies tell me that you grew up in Bankstown and that you were raised by your mother and grandmother. Nancy and Florence would justifiably be very, very proud of you today.
- 10 You moved to Queensland to complete your secondary education and then attended the University of Queensland.
- 11 You worked for a number years at the Queensland Public Defender’s office. Kerry Copley QC, Shane Herbert QC and John Jerrard QC (now a retired judge of the Queensland Court of Appeal) received the benefit of your thoroughness and attention to detail.
- 12 You then practiced with the highly regarded firm of Robertson O’Gorman. I understand that on your first day you were forced to hitch hike back to the office from outside of a prison. This was, I believe, a difficult undertaking sporting, as you were, a long and unfortunate beard and an equally unfortunate new suit.
- 13 You then moved to the other end of the bar table, working for the Commonwealth Director of Public Prosecutions and then becoming a Crown Prosecutor with the Queensland DPP. You also worked for an organization that was so secret that nobody can tell me who or what it was, let alone what on earth you were doing there.

- 14 Your move back to New South Wales fulfilled a long-term dream to live amongst the natural beauty of the northern rivers and the rainforest hinterland around Lismore. I have been unable to confirm or to deny a very strong rumour that Lismore had particular appeal to you owing to the fact that being “well dressed” in that town involved an outfit wherein footwear of any kind was worn.
- 15 You have worked as a Crown Prosecutor at Lismore for a number of years and quickly earned a solid reputation amongst your opponents, instructing solicitors and the judiciary. I am told that your instructing solicitors dread it when you say “ride on lawn mower” and, while I accept that, I confess that I have not the slightest idea what it means. I also note that your capacity to organize a brief and to colour code it confounds even the most anal retentive of those who instruct you.
- 16 I have had some experience of this in the current trial featuring as it does a number of plastic folders of photographs and diagrams. Exhibit A was a colour best described, I think, as Fuchsia. Exhibit F was a kind of lime green. Exhibit HH was burnt - or perhaps Tuscan - orange. You relented a little with Exhibit NN - it was red - and exhibit RR, which was blue.
- 17 When we came to exhibit XX I asked if you had run out of colours. I was delighted when you patiently explained “no your Honour, this is the rainbow region”.
- 18 Like all of the best advocates, you have a wide range of interests outside of the law. In spite of the intense work-load and stresses of practicing as a criminal lawyer, you completed an Arts degree part-time, achieving a double major in history with high distinctions all of the way through. You almost left the law to become a historian. As Bill Murray once said of Philosophy, “there’s a good buck in that racket!”

- 19 I have also learned that we share at least three common interests.
- 20 First, planting trees. I am prepared to speculate that, like me, you take particular joy when you see a new bird species land in one of your plantings.
- 21 Secondly, cycling; although I came to this endeavor rather later in life whereas you have been cycling since you were a much younger man. I gather that one change in your cycling habits has revolved around your capacity, now, to afford the most fashionable Italian lycra.
- 22 Thirdly, we have both made appearances on rural radio stations although I confess that my forays were rather less esoteric than were your monologues on the rare joys, and frequent disappointments, of otter spotting in the Scottish Outer Hebrides.
- 23 The office of Senior Counsel is an important one. In New South Wales, it has become an increasingly more arduous task to receive recognition. The selection process is difficult and many more applicants are disappointed than are successful. Long gone are the days when a couple of “chaps” sat around at “the Club” working out who was worthy. There is now a substantial protocol and a consultation group of many hundreds of lawyers and judges. Putting one’s head on the chopping block is, in itself, a courageous thing to do.
- 24 It is particularly gratifying to see a practitioner from the country achieve this high recognition and elevation. It is important for those whose universe revolves around a five kilometre radius (mostly to the North and East) of Martin Place in Sydney to realise that there are talented lawyers leading rich and rewarding lives in places as far flung as Lismore, Wagga Wagga and Dubbo.

- 25 In view of the importance of this accolade for you personally and for the legal practitioners of this rainbow region, my Associate Ms Hogan insisted upon, and arranged for, the attendance here of my ceremonial robes. If I can be permitted to channel for a moment a former Judge of this Court, the Honourable Brian Sully: I can assure you, my dear McLennan SC, that I do not dress like this for just anybody.
- 26 You have earned, and thoroughly deserve, this distinction. On behalf of all of the Judges of the New South Wales Supreme Court, I congratulate you on it.
- 27 Well done.
- 28 I will now adjourn.
