

Speech delivered by Anna Katzmann SC at the swearing in of

Stewart Austin as a judge of the Family Court of Australia

Monday 13 July 2009

May it please the court.

The Hunter is a breeding ground for top rugby league players – and lawyers.

Stephen Gageler, the Commonwealth Solicitor General, hails from Sandy Hollow, Michael McHugh, the former High Court justice, Kevin Lindgren, the Federal Court justice, your predecessor, Graeme Mullane - all from Newcastle - and now your Honour. I suspect your Honour is the first appointment to the federal judiciary from Kurri Kurri High School. Your Honour would be a dead cert for the winner of the Kurri Kurri Superstar Talent Quest held in conjunction with the Kurri Kurri Nostalgia Festival if only there were a suitable category.

I have known your Honour for most, if not all the time your Honour has been a member of the NSW Bar, so it is a particular pleasure for me to be here, representing the Australian and NSW

Bars, to congratulate your Honour on your appointment to this court.

For over a decade your Honour was Our Man in Newcastle – the Bar Council's contact point for the closely-knit, strongly collegiate local bar. In that role your Honour attended numerous awards ceremonies at the University of Newcastle and helped to organise the highly successful continuing professional development mini-conferences. Your own presentation on tendency evidence – three years ago now – is still being requested. On behalf of the NSW Bar I thank you for your years of service to the profession.

Your Honour is a quiet, unassuming man. For that reason the bar might seem to have been an unlikely career move. However, a career at the bar was assured on one fateful Monday morning when the counsel you had briefed in a criminal trial had failed to turn up. Despite the reasonableness of your adjournment application – it was a request that the trial be stood over for one day – in the realisation of every solicitor's worst nightmare Judge Tom Ducker, no doubt fully confident in your Honour's ability to rise to the occasion, refused the application and your Honour had to step into the breach. Three days later the jury returned a verdict

of not guilty. Some suggested your Honour should retire then, with a perfect score of 1 out of 1. However, the excitement of such a win was too much to forsake, particularly for a thrill-seeker like your Honour.

Your Honour was called to the bar in July 1997. You were fortunate enough to have read with two excellent mentors: Ralph Coolahan, now his Honour Judge Coolahan of the District Court, and Kingsford Dodd SC, who was a leading member of the common law bar. You took chambers on the top floor of a renovated terrace in Church Street, sharing the bills with John Fitzgerald. There you exhibited quiet discretion, sobriety and absolute propriety; Fitzgerald came to refer to you as 'The Spy Upstairs'. If your Honour had not accepted a judicial appointment, you would have been an ideal candidate for the position of cabinet secretary or governor of the Reserve Bank.

Despite, or more likely because of, your reserve, you are immensely popular (as the attendance at today's ceremony demonstrates). Your own discretion has been rewarded with the discretion of your friends. No-one is perfect, but their lips are sealed.

Your Honour's only discernible lapse in judgment appears to be your purchase of a four-wheel drive - in what someone called 'an inappropriate and unnatural shade of purple'. Another solicitor, cognisant that he will inevitably appear before your Honour cautioned: 'I think his Honour likes to call it blue'.

Professionally speaking, from the outset your Honour was a confident and polished advocate. You soon established a successful practice, encompassing criminal, family and some commercial law. You forged a reputation for impeccable preparation and court craft that jurors find so compelling: succinct, effective and never flamboyant. Many compare your Honour's style of cross-examination with that of his Honour Judge Coolahan. He in turn likens you to the late, great Harold Glass QC.

Your Honour settled on a career in the law when you learned that the only member of the congregation at your local church to own a new car was a solicitor. You served 12 years on that roll and 12 years as a barrister. Although practice at the bar is far removed from the hard and dirty work your grandfather performed, the refrain from Lee Dorsey's "Working in a Coalmine" may have

been ringing in your Honour's ears when you heard the clarion call from the Attorney-General:

“Five o'clock in the mornin'
I'm all ready up and gone
Lord I am so tired
How long can this go on?”

Still, your Honour needs no reminding that the work of the Family Court can be harrowing. Criminals are often matter of fact about their crimes and accept the verdict without undue complaint, but in family law reason often gives way to emotion. Moreover, as Justice Mullane pointed out in the compelling speech he delivered at the ceremony last year to mark his retirement (and to which both the Solicitor-General and Mr Sullivan have referred), poverty and unemployment are major stressors for families, and this area suffers from significant social disadvantage, which is only likely to increase at this time in our history. The repercussions for the work of this court are obvious. The community is fortunate that a person with your Honour's empathy, equanimity and objectivity has seen fit to accept an appointment to its ranks.

Your Honour is a family man from central casting, who takes pride in the steadily increasing skills of your teenage sons on the

ice-hockey rink.

As Mr Sullivan mentioned, your Honour is also a qualified linesman in the local junior ice hockey league. I welcome this as a sign of change - of growing diversity in the legal profession.

An American journalist, Doug Larson, famously described ice hockey as a 'form of disorderly conduct in which the score is kept'. The *International Ice Hockey Federation Official Rule Book*, which is almost as long as the NSW Legal Profession Act, provides a detailed description of fouls, including: 'boarding' (causing an opponent to be thrown violently into the side of the arena), 'butt-ending' (which requires no explanation) and 'slashing' (using the stick for just about any purpose other than hitting the puck). 'Fisticuffs' – rather like the familiar all-in brawl in rugby league - is an offence, but only when a player intentionally takes off his gloves in the altercation.

Whilst I'm sure the local league is far removed from the Stanley Cup, your Honour's experience at adjudication on the ice will serve you well in your new role.

As the great Wayne Gretzky once said: 'You miss 100 per cent of

the shots you never take'. Congratulations on taking this shot.

Newcastle has scored another goal.

May it please the court.