

THE SUPREME COURT OF
WESTERN AUSTRALIA

WELCOME TO THE HONOURABLE JUSTICE ROBERT ANTHONY MAZZA

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 8 MARCH 2010, AT 9.40 AM

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MARTIN CJ: The Court sits today to welcome to the Bench his Honour Justice Robert Mazza, who took the oath of office as a Judge of this Court at Government House last Thursday. I would like to particularly welcome this morning members of his Honour's family, including his wife Julie and their children Catherine, James and Sophie, his Honour's brothers, John and Anthony Mazza, and their respective families, his uncle Bob Mazza, and brother-in-law John Klobas.

I would also like to welcome Justices Tony Siopis, Neil McKerracher and Michael Barker of the Federal Court of Australia; Justice Stephen Thackray, Chief Judge of the Family Court of Western Australia; her Honour Judge Antoinette Kennedy, Chief Judge of the District Court of Western Australia; Chief Magistrate Mr Steven Heath; the Honourable Professor David Malcolm QC, former Chief Justice; Mr Robert Meadows QC, Solicitor-General; Ms Cheryl Gwilliam, Director-General of the Department of the Attorney-General; and many 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 the Honourable Michael Mischin MLC, representing the Honourable Christian Porter MLA, Attorney-General of Western Australia, who is unable to join us this morning; Mr Hylton Quail, President of the Law Society; and Mr Theo Lampropoulos SC, representing the Western Australian Bar Association.

Justice Mazza joins the court from the District Court, to which he was appointed on 10 February 2004. In the six years your Honour has served on that Court, your Honour has demonstrated the capacity to apply to judicial work personal characteristics that were evident in your legal practice prior to your appointment. Those characteristics include an intuitive sense of fairness, enthusiasm for hard work, a sound knowledge of the law, good humour, a capacity to relate to people from all walks of life and to put them at their ease in the most stressful of circumstances. These are capacities which will be of invaluable assistance in your work on this Court.

Your Honour had a distinguished legal career prior to appointment to the Bench of the District Court and practised in a number of fields, latterly mostly in the field of criminal law. In that field your Honour was highly regarded and was regularly retained to appear in the most serious cases. Your Honour will now be charged with the responsibility of presiding over some of the most serious cases that are tried in this State.

This is, of course, not to suggest that your Honour is a stranger to civil dispute resolution. Your Honour practised in that area prior to your appointment to the Bench and served also as Deputy President of the Equal Opportunity Tribunal for a number of years, and of course as a member of the District Court you sat regularly in civil matters and have shown a proficiency in that area which we hope to exploit.

Your Honour has also been actively involved in legal professional activities. Your Honour served on many committees of the Law Society prior to your appointment to the Bench and I will leave it to Mr Quail to expand upon those activities during the course of his address this morning.

You have had a particular interest in people with intellectual disabilities and the criminal law and have presented papers in that field. More recently you served diligently over a number of years on a committee which was created to oversee the preparation and publication of an equal treatment bench book for use by the Judges and Magistrates of Western Australia. That bench book was launched late last year and your Honour's contribution to that project was considerable.

Your Honour has also shown a capacity to find time in a busy professional and family environment in order to do community and volunteer work. Your Honour has served as a member of the Council of John XXIII College and on the Board of Management of the WA Ballet Company.

Your Honour has also been keenly interested in sport as a participant, spectator, referee and administrator. I regret to advise that your Honour's appointment expands the numbers of Dockers supporters on this Bench, although it must be observed that support for that team is generally regarded as character building.

Your Honour has been a keen and skilful player of both hockey and cricket. Your illustrious cricketing career has seen you play in a number of teams, including the infamous Stragglers, a team of miscreants who gather every couple of years to try to demonstrate Australia's cricketing prowess in other less fortunate countries in our region. Because of the well-known expression, "What goes on tour stays on tour," I'm not at liberty to divulge any of your Honour's activities during those tours, which is probably a very good thing.

You are, of course, not the only Straggler on our Bench. Another notorious Straggler, Justice Owen, has advised me that with your Honour's appointment we should be able to field a pretty decent cricket side. He has in

mind that he would keep wicket while your Honour and Justice Beech open, Justice Pullin would come down-wind with the new ball, with Justice Chaney running fleet-footed around the boundary from point to mid-off.

It's perhaps a sign of Justice Owen's need for further gender awareness training that he makes no provision for President McLure or Justices Johnson or Jenkins in his cricket Dream Team, but even allowing for those players, in order to make up the numbers there would still be a rather long tail. I have offered to take responsibility for drinks as twelfth man on condition that I am never asked to field. Our first match should, I think, be against a side provided by the Bar who will, if they know what's good for them, politely lose.

It must also be conceded that your Honour's appointment to the Bench of the District Court was not without its own controversy. Shortly after your Honour's appointment you commenced sitting with something on your head that looked more like road kill than a judicial wig. I regret to have to report that your Honour's wig became something of a laughing stock within the profession.

The problem apparently arose from your Honour's desire to emulate a wig worn for many years by your distinguished father, the late James Mazza, which was a little darker than usual. Your request to the wig makers to make you a wig slightly darker than usual resulted in a gross overreaction and the production of a wig which looked as if it had been made from the wool of a black sheep rather than from the hair of a palomino horse.

I understand that after a while retired Judge Nigel Clarke took pity on your Honour, not wanting you to be seen as the black sheep of the Court, and lent you his judicial wig. Happily, the abolition of judicial wigs generally has meant that your Honour can be spared any further embarrassment on that front.

As I have mentioned, your Honour is known to be a prodigious worker. That's a good thing as we have plenty of work for your Honour to do. I hope that despite the demands of that work you will continue to remain on good terms with your wife Julie and will continue to see as much of her and your children as is mutually desired. We are very pleased to welcome all of you into the community of the Court.

It only remains for me to once again congratulate your Honour upon your appointment to this Court and to express the wish that your career on this Court is long and rewarding. Mr Mischin?

MISCHIN, MR: Thank you, your Honour. If it please the Court, it is my pleasure on behalf of the Government of Western Australia to welcome his Honour Justice Robert Mazza to the Bench of this Court. Born in Subiaco, his Honour was educated at Wembley and Subiaco and then the University of Western Australia. In fact he graduated a year ahead of me, which only goes to show how much of a success he was compared to my relative career.

Justice Mazza was admitted to practise law in Western Australia in December 1981. He was employed as a Solicitor with the firms of James Mazza and Company and Mazza McCallum and Robinson from 1981 to 1984. Justice Mazza went on to become a partner of Mazza McCallum and Robinson from 1984 through to 1987 and later established the firm Mazza and Mazza with his father in 1997.

Justice Mazza's practice included civil litigation, criminal and family law, and he regularly appeared as counsel before the Supreme and District Courts and the Court of Criminal Appeal and other Boards and Tribunals. His Honour also held the position of Deputy President of the Equal Opportunity Tribunal, was an active member of the Law Society of Western Australia and also taught law students at the University of Western Australia.

In February 2004 his Honour was appointed to the Bench of the District Court, where he has since presided over many trials and cases and during his time he has dealt with his fair share of difficult and complex cases, including the McLeod trial, which recently achieved some notoriety regarding an incident at the Joondalup - I think it was the Old Bailey Tavern, the Walsh-McDonald case involving the tragic death of one Jess Meehan and a civil trial that resulted in an award of damages of \$7.5 million. His Honour has also been active in the administration of the District Court through his work on the Criminal Administration Committee and the Technology Committee and was also one of the judges responsible for case managing complex criminal trials.

His Honour has not confined his work to the busy District Court but has continued to serve in the broader justice system as a member of the Chief Justice's Criminal Practice Committee and the Committee advising on the recently developed Equal Treatment Bench Book. He also chairs the Advisory Board of the Notre Dame Law School.

His Honour has served this State with distinction, both as a lawyer and as a Judge, for almost three decades. He has been a judicial officer of dedication, conscientiousness, learning and ability. As a person he is a man of humour, of decency and although intellectual, unpretentious about it. The State is confident that he will continue to serve this State with distinction as a Judge of this Court. The District Court's loss is the Supreme Court's gain but the overall winners will be the administration of justice in this state and the people of Western Australia.

The Government is confident that his Honour will serve himself, his family and this Court with, no pun intended, honour and there is no doubt that he is a fitting addition to this Court Bench and on behalf of the Government of Western Australia and the Western Australian community I wish you well in your service to this Court for, hopefully, a very long time. If it please the Court.

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

QUAIL, MR: May it please the Court. Your Honour, this is the second time that I have had the pleasure of welcoming you to the Bench. I hope also that this appointment marks the summit of your judicial ambition, as I fear my speech won't withstand a third recycling.

Before being appointed to the District Court in 2004 your Honour had a distinguished career as one of Perth's leading criminal lawyers. I was fortunate to share chambers with your Honour and I recall above all your Honour's commitment to social justice. Your Honour never knocked back a Legal Aid brief for a better-paying one and maintained a significant pro bono practice right up until you were appointed. On the Bench you have been renowned for your even-handedness and courtesy to all those who come before you.

Your Honour has served the community with distinction in your six years on the District Court and has shown that your skills and sound judgment extend well beyond the criminal law. I knew this would be the case when I asked you at the end of your first day on the Court what you had been doing. You told me you had been thrown in at the deep end in civil. Specifically you were on a very difficult contractual matter. In fact, as I recall, it was a dispute about payment for a shed. Anyway, I expressed appropriate dismay and sympathy to your Honour, who responded, "Don't worry, Hylty, I've got it covered. I already know what I'm going to do." In my experience, your Honour always does have it covered.

You have presided over many high-profile trials. Your directions have been scrutinised more closely than many, but there have been very few appeals. This is because your Honour is one of the hardest workers I know. Your Honour takes your role very seriously and will work late into the night to ensure that your judgments and charges are exactly right. Your Honour is also known for being very well prepared in Court and although you never managed to bat for Australia, your defences are formidable. I once thought I had managed to put a good ball past your Honour, only to be told, "I wasn't born under a bush, Mr Quail. Try again."

Whilst on the Bench your Honour has continued to actively contribute to the Law Society's continuing professional development program and whilst you were in the profession the Society was well served by your Honour for many years on the Criminal Law Committee. You continue to share your knowledge and experience generously with both junior and more experienced members of the profession and we know that this will continue.

As we have heard, your Honour comes from a highly-regarded and well-known legal family in Perth. You grew up in the law, spending many Saturdays as a youngster in your late father Jim's office. There you learnt on the one hand about rough justice from one of your Honour's partners who dangled you out of a window at 524 Hay Street for playing with the stationery; on the other, you were inspired by your father, doyen of Perth criminal lawyers. You were articled to him, a partner with him at Mazza McCallum Robinson from 1984 to 1997 and started your own firm, Mazza and Mazza, together in 1997. He would be extremely proud of you today.

Although we are sad to see you leave the District Court, where criminal lawyers on both sides were always pleased to draw you as a Judge, we are very pleased that the District Court's loss is the Supreme Court's gain. On behalf of the Law Society of Western Australia I wish you every success in your new role and we very much look forward to seeing you this afternoon at 4.30 out the front.

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

LAMPROPOULOS, MR: May it please the court. Your Honour was well respected and popular prior to becoming a Judge and after six years on the District Court Bench I am happy to observe that your Honour continues to be well respected and popular. The Australian Guide to Judicial Conduct identifies one of the three main objectives of judicial conduct as being the enhancement of public respect for the institution of the judiciary and your Honour has obviously achieved that level of trust and it is not difficult to identify the qualities which have already given your Honour a fine judicial reputation. Members of the profession often comment upon your Honour's sense of fairness and the fact that you approach every legal dispute with an open mind and a preparedness to listen to opposing views before coming to a final conclusion.

Your Honour is invariably courteous to all in your Court but you can be firm when necessary. There is rarely any display of impatience and, importantly, your Honour always shows interest in the proceedings before you, no matter how big or small the case may be, and of course it is always good to appear before a Judge who is humble. In all those circumstances it is difficult for anyone to come away from your Court thinking that they have not had a fair hearing, regardless of the outcome.

At a practical level your Honour doesn't allow formality to stand in the way of a commonsense approach. As an illustration, some years ago the airconditioning had broken down and it was particularly hot in the Albany District Court. In those circumstances your Honour invited counsel to remove their wigs. When they politely declined, your Honour replied, "No, I want to take my wig off too." Mind you, that was when your Honour had that rather distinctive wig, and you may have wanted to take it off anyway.

Your Honour's capacity for hard work has already been mentioned and I'm told that you're one of the first to arrive in the morning and one of the last to leave. That capacity for hard work is nowhere more evident than when your Honour is on circuit, when resident Court staff just assume they will be working significant overtime. A few years ago police rushed to the Broome Courthouse in response to a burglar alarm, only to find your Honour busy at work at 9 o'clock at night.

Mind you, when a circuit is over your Honour is keen to get back to your family. After a recent circuit in Esperance which finished at 5.50 pm, the flight was due to leave at 6.50 pm, it was 23 kilometres to the airport, and your Honour made an executive decision to go for it. There was then a mad scramble but your Honour and your staff managed to make it onto the plane, only to later find that the usher had left medication in his hotel room, the associate had left his clothes in the wardrobe and your Honour had left various items of apparel on the bed in your room.

There has been some mention of football this morning but I must say, as an Eagles supporter, I see your Honour's move to the Supreme Court as being a bit like being drafted from the Dockers to the Eagles, and of course you bring a wealth of experience to the new team. On behalf of the WA Bar Association, I congratulate your Honour on your elevation to the Supreme Court and wish you all the best in the next phase of your career. May it please the Court.

MARTIN CJ: Thank you, Mr Lampropoulos. Justice Mazza?

MAZZA J: Thank you. Chief Justice Martin, colleagues past and present, my family, friends, ladies and gentlemen. Mr Mischin, thank you for your kind and, if I might say, over-flattering words. I have already arranged for a transcript of your speech to be couriered to Mr John Quigley as insurance against any criticism made in Parliament about me either by you, Mr Porter or your Parliamentary colleagues.

To you, Mr Quail, I have always been and will continue to be an active member of the Law Society. You and I have a long association. You are a fine Lawyer and the profession is fortunate that you have sacrificed your own interests to take on the onerous role of President in 2010. I don't think it's too late in the year to wish you well in that role and, by the way, I won't be at the photo at 4.30 this afternoon.

Mr Lampropoulos, I knew nothing about personal injury cases before coming to the District Court, as you well know. Over the years you seem to have appeared in just about every personal injury case I ever presided over. In that time you taught me a great deal and saved me from error. I very much appreciate your knowledge and skill in this important area of the law. I am grateful for the generous support that I have received from you and your members.

My only regret, and it is my only regret, about my life in practice was that I didn't join the Independent Bar. I will continue, when called upon, to assist your association in whatever way I can. I want you to send my personal regards to your President and my good friend, Mr Donaldson, who I know can't be here this morning but I acknowledge the presence of his wife and his son Domenic.

I want to publicly acknowledge and thank all those who took the time to write, ring, email me, stop me in the street, to congratulate me on my appointment to this Court. A favourite email came from one of my book club friends who filled in the Subject section of the message with the words, "Where did our love go?" I found this a little disturbing and worrying, but nevertheless I opened it and the text read, "Well done on joining The Supremes." There are some jokes you wish you could claim as your own. That's not one of them.

It was just over six years ago that I was appointed to the District Court. I want to pay tribute to the Court itself, my colleagues there, and to Chief Judge Antoinette Kennedy. I left the private profession to take up judicial office with a great deal of trepidation. From the day I arrived to last Friday when I left, I was treated with respect, warmth and unstinting support.

As everyone knows, the District Court is a very important and busy trial Court. The work is often difficult and relentless. The Court could not work as well as it does without the close collegial bond that exists between all its Judges. I will miss coffee at 9.30 am each morning in Judge Stavrianou's Chambers with my fellow District Court Judges. In fact they are probably still there now. That's where the problems of the upcoming day are aired and often solved.

I will also miss the lively wit of John Wisbey as he tours the floors of the District Court in the late afternoon with a small glass of whisky and water, slowly unwinding from another day in Court. I am sad to leave the lolly jar behind on the 11th floor reception.

The District Court has been fortunate to have been led, in all the time I was there, by Chief Judge Kennedy. Her Honour has been a strong, effective and extremely hardworking Judge. She is literally the first to arrive in the morning and the last to leave. A generation on the Bench has given her a vast experience, which she generously shares. All of this is done with a good dose of humour. Let me tell you what I mean. This is a memo that she sent to all Judges after she returned from a European holiday in 2004. I quote:

District Court memo 48 of 2004 -

there are a lot of memos in the District Court:

I'm back. I have several thousand photographs and will of course be holding a slide night. I went to Poland and the Czech Republic, both fascinating places with incredible history. I am sure my essay on the 1944 Warsaw uprising is eagerly awaited. I am now an expert on Romanesque, renaissance, rococo and Art Nouveau architecture, with some knowledge of cubism, all of which I want to incorporate into our new building.

On all these counts she failed. Her Honour concluded, and here is the kicker:

The most important part of the trip was the trip to the salt mines in Poland in which I learnt a great deal that I intend to put into practice in the District Court.

Thank you, Chief Judge, and enjoy your soon-to-start and well-earned retirement. You can retire confidently knowing that your successor, Judge Peter Martino, is an outstanding appointment.

Although I have always been happy in my work, I have never been as happy as I have been in the District Court. The only sadness I experienced while there was the death of Paul Healy, who is still very much missed. I thank everyone at the District Court for making my time there so rewarding. I am taking something of the District Court with me in my long-serving and long-suffering orderly, Terry Pryor, and my associate, Rita Ruggiero. I am very grateful that they are making the move to the Supreme Court with me.

I mentioned earlier the many letters and other communications that I have received. Nearly all of them have made some reference to my late father, Jim. Although it is 10 years since he died, many of you here today, like me, have strong and fond memories of him. I wish that he and my mother, Maureen, were physically here, although I believe that they are both here in spirit. Today would be a very proud day for the both of them. My father was in every respect a better Lawyer than I will ever be.

I am pleased that amongst the jurors is my father's only surviving brother, Bob. I also acknowledge his fellow jurors, my brothers John and Anthony, their wives Janet and Kate, my Godson Stephen and my brother-in-law John Klobas, who is representing my sister Jane who is working in Italy at the current time.

Although pride is one of the seven deadly sins, it is with great pride that I take up this appointment. I'm acutely aware of the importance of this Court and of the serious and heavy responsibilities that come with being one of its Judges. I will give everything that I have to be a good Judge and a good colleague. I will do all that I can to further enhance the public standing of the Court.

I am really looking forward to the work of the Court. I am especially looking forward to the criminal work and the challenge of its broad civil jurisdiction. I have been humbled by the warm and enthusiastic welcome I have received from my fellow Judges here. It will be a great thrill to work amongst them and with them.

In an obscure way I have been part of the Supreme Court family for a while. My eldest daughter, who will kill me after I mention this, Catherine, Justice Beech's son, Tom, and Justice Hall's daughter, Freya, are all in year 12 at John XXIII College and, coincidentally, are all in the same politics and law class. Maybe there is a Court of Appeal there in the making.

A source of particular joy for me is that I have been appointed to fill the vacancy left by Justice Geoffrey Miller. I have deliberately chosen not to use the word "replace" when speaking of him and my appointment. While I am honoured to sit in his former Chambers, indeed the former Chambers of Sir Francis Burt and Sir Lawrence Jackson, no-one I think can adequately replace him. I certainly will not claim that honour. I have known Geoffrey Miller nearly all my professional career. He is a great Lawyer and a great man. I am glad that he and Rhonda are here today and I will do my best to live up to Geoff's high standards.

It would be remiss of me, but worse, make me liable to pay a very hefty fine, if I did not acknowledge that this occasion has been decreed by the faceless men, also known as Appeal Justice Owen, as an official function of the internationally famous Perth Stragglers. As a result, there will be amongst you some people wearing distinctive, 100 per cent rayon, neck ties that feature a rampant duck. I wouldn't get too close to those ties with a naked flame if I were you.

For all of those who care about such things, the Perth Stragglers are a sometimes touring cricket team. Amongst its members are Justices Owen, Chaney, Beech, Registrar Chris Boyle and myself. It has an entry in the Guinness Book of Records as the most inept cricket team ever.

Finally - and I know it's time to stop because my youngest child, Sophie, is beginning to fidget - I want to thank my dear wife, Julie, and my children, Catherine, James and Sophie. Although I have always tried not to take my work and its worries home with me, sometimes that has just not been possible. At other times I have been away from home for long periods on circuit. I thank you all for your unfailing love and support. As important as being a Judge is, in the end it is family that really matters.

Thank you all for coming here this morning. I am really touched. Many of you have gone to a lot of trouble to be here. I see John Gordon who has come over from Melbourne - thank you, John - and I acknowledge Roly Main in this regard because he has had to order a very busy life in order to be here today. It is an honour to me, my family and this Court that you have all come here today. Thank you.

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

AT 10.02 AM THE MATTER WAS ADJOURNED ACCORDINGLY