

# Judge Ostrowski bids adieu

Thank you also to the three of you at the Bar table. It is amazing how much people in your positions can find out about one's life, and pretty well all of it accurate, too.

On these occasions it is usual to thank all the people who have made one's life on the court easier. Certainly I have been privileged to work with and be enormously assisted by several people in my 24 years. There were, of course, my associates, starting with Captain Bergin of the Royal Australian Navy. Then for a short time Lou Vatussios, also from the Navy. Then for a lengthy period the inimitable Bernie Convery, who is here today, and for another lengthy period the indomitable Vic Bell, who is also here today, a man whose body has got more spare parts than McEwan's used to be able to sell.

Of tipstaves I had few. There was Reg Wood and Malcolm Carroll. When Reg Wood retired, at his farewell I described him as the 'Prince of Tipstaves'. I have had no reason to change my view of his services to me. Malcolm Carroll, who is here with me today, stepped into a very large pair of boots, and he has worn them with patience and efficiency. For his sake, I wish something I had never thought I would wish before. For his sake I wish that Geelong wins the Grand Final.

There are two secretaries who stand out: The first one was Joan Wells. She was outstanding. Then there was my present one, Anna Summers. All I will say of Anna is that it took never any more for me to say, 'Anna, would it be possible...?' and zip, she had done it. I really don't know how I am going to get on without her.

However, I do not wish this occasion to be a litany of thank yous. Those who have assisted me through the years know what they have done, and hopefully they know of my gratitude to them.

On the occasion of my welcome on 23 September 1983, I referred in passing to my 'somewhat unusual origins'. I did not say much about them at that time. We have heard about some of them from Dr

Emerton today, but perhaps the real story has not quite come out.

Also, recently I noticed that my Instrument of Commission reads rather differently from the very curt statement which one sees in judicial commission instruments at present. My Commission told me that His Excellency Governor Murray appointed me in reliance on my 'loyalty, integrity, learning and ability'.

I do trust that the absence of these words in recent appointments does not mean that those qualities are no longer considered necessary.

Now that I am leaving, it may be an appropriate time to disclose my origins and to examine whether His Excellency's judgement in appointing me was correct. To find the answer to that, one does need to take a look at my origins and the journey through life which I had taken until I took on the law.

Jim Kennan QC, then Attorney-General,

## I was surprised to be told by others that my reputation in 1983 was that of an arch conservative and reactionary.

as we have heard, was no doubt instrumental in putting my name forward to the Executive Council. He took a risk in doing so. He knew no more of me than that I had come here as a stateless refugee, and of my time after that. But that time began only with my arrival in November 1950 when I was 15. My time in the law began in 1954. Let me say at once, I loved my time in the law. It consisted of one year as a law clerk, four years as an articled clerk, eight years as solicitor, 17 at the Bar, and a little less than two of those years, unfortunately, as silk.

I was surprised to be told by others that my reputation in 1983 was that of an arch conservative and reactionary. Jim Kennan, of course, was a member of the Australian Labor Party Government. On

the day of my appointment, I received a telephone call from a journalist at *The Age*. He wanted an answer to just one question: 'Why would a Government like this one appoint someone like you?' I do not actually recall my answer, but it was probably along my usual arrogant lines, something like, 'Because it is a very wise Government.' It does seem that, according to this journalist at least, the Attorney-General was taking a real risk.

I have chosen to speak to you about my time prior to the law, not in order to inflict boredom on you – after all, you are a captive audience – but to try to get off my back some who have pressured me to write a book: namely my wife and children. That's a lot of pressure. We had six children. If you look in the jury box, however, you will see that only one of those children is present, and with our tenth grandchild. That's pretty typical of what my life has been like lately. The children, invariably

with their mother's assistance, pressurise me to do this, that, or the other, like write a book, and then they flit off across seven seas and in the four winds going about their own business, and hardly ever in the country. In any event, if you wish to hear my story, then stay. If not, well, it is an open court, and you can all go at any time. Mind you, it would be very lonely up here if you all walk out.

These then are my origins.

I come on my father's side from the Polish landed gentry, with estates near Minsk in Byelorussia. You see, my nickname at the Bar was not altogether undeserved. My mother's family was a well-to-do industrialist family living in a town called Wolomin near Warsaw. She was one of three children. She had two brothers. My father

was one of five children. He had three sisters and one brother.

My father was born – hold your breath – on 10 August 1882. Can you visualise those times? No aeroplanes, no radio, no telephone. Energy was supplied by steam, horses and human labour. Poland officially did not exist at all. It had been partitioned between Austria, Prussia and Russia. My mother was 14 years younger than my father. Both the families were ruled by the Russian Tsar, as was the whole of Eastern Poland. My father was chosen by his father to be the one to run the family estates.

That did not appeal to my father. He disagreed with his father, something which in those days was not easily done. So my father packed his bags and went a long, long way away to the foothills of the Ural mountains, to a city called Orenburg. You might recognize the location of Orenburg when I tell you that it was not at all far from Ekaterinburg, the place in which Tsar Nicholas II's family was slaughtered. As it happened, there was within the railways a male choir. My father had a good voice and he joined the choir. All seemed well.

But then there came 1914. The Great War. None of Russia, Prussia and Austria trusted the Poles. The Tsar tried to forestall any problem from them by ordering that all Polish men should join his army. That applied to my mother's two brothers. To save themselves from this edict, they escaped deep into Russia: as fate would have it, to a place called Orenburg. My mother, then 18, and her mother, followed the men. One of these brothers had a good voice and he joined the railway choir. My father and he, both being Polish, befriended each other. One day they were both sitting on a park bench, and from a distance

they saw a young woman approaching. My father said to his friend, 'This girl coming our way, I have been noticing her for months in the church on Sundays. I would so much like to be introduced to her, but how on earth can that happen?' 'Oh, very easily,' said his friend. 'I will introduce you. She is my sister.'

And so it came that my parents were married on 19 May 1917. That was not six months before the Communist Revolution. My mother was 20. My father 34. Despite my father having abandoned a life on the land, he was regarded by the Reds as a capitalist landlord. He was imprisoned. At that time, Alexander Kerenski was the head of the provisional Government. Somehow, and she never told me how, my mother knew Kerenski sufficiently well to be able to see him and have my father released. That caused them to begin almost three years of life as fugitives. In 1991, their first child, my sister Sabina, was born. Poland was reconstituted as a result of the Great War. Then, in 1920, the Russo-Polish War intervened. At its end my parents managed to cross into Poland.

My father obtained work with the Polish Railways. My two brothers were born. With the help of my mother's older brother, my father acquired a small home on a large allotment of land in Wolomin. In 1935, as somewhat of a surprise, I was born. I had an idyllic childhood. My earliest memories are of sunny days and of my father telling me to be proud of my origins, to be honest in all things, to value all men according to their work and never to despise any labour, however menial it might be. My mother taught me how to be courteous, how to address ladies, how to bow properly, and when to kiss a lady's hand and when to

refrain from doing so. Courtesy and respect for all, she tried to instil deeply into my psyche. In June 1939 I recall the gala affair of my sister's wedding. My life really, even in retrospect, was paradise.

It lasted all of four years. Then there came September 1939, my fourth birthday.

I recall being held in my father's arms, cuddling up close to my mother. It was night time. They were looking at a beautifully red glow in the the sky, listening to distant explosions, and saying 'Warsaw is burning'. Later, there were men tramping through our house taking all that was of value. They spoke a language I did not know. I recall being massively surprised that my father did not throw them out. Surprised that my father looked helpless. In fact what they were doing was requisitioning everything. By everything, I mean the lot, including our house and land. Our house and land was to be part of the ghetto in Wolomin. In lieu of that, we were assigned an almost derelict shopfront in the main street. It had a shop, a kitchen and one room – no bathroom.

There was very little food. My two brothers had disappeared. Once or twice they visited, but they acted strangely and were very furtive. Rather quickly though, I learnt that the end of my paradise, this enormous change that had occurred, was due to the Germans. That word 'the Germans' became an expression of wide and unspecific ambit. It encompassed all that was evil. If something was evil, then it was German, and vice versa. I was learning the dreadful power of hate. That is a power that takes over all emotions and supplants all reason. It would be many years before my mother's earlier teaching of gentility and gentleness could reassert itself.



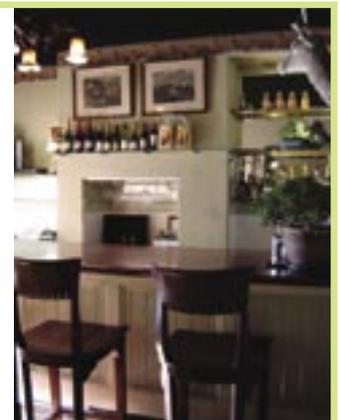
## VISITING GEELONG?

The Haymarket Boutique Hotel provides overnight / weekly accommodation to legal, medical and academic corporate travellers.

Ask about our [Corporate Rate](#)\*

**Reservations: 03 5221 1174**  
**[www.haymarkethotel.com.au](http://www.haymarkethotel.com.au)**  
**244 Moorabool Street Geelong**

\*Corporate Rate includes: Wireless High-speed internet, light continental breakfast, morning newspaper, secure off-street car parking and access to fully equipped Guest Kitchen and Guest Laundry.



I lived in that one room at the back of the shop with my parents and a dog. My mother tried to run a coffee shop, but without much success. Most of the time there was no food to serve. I did not stay there very long. I found myself taken by my sister and her husband to Warsaw, to an apartment in a grey, unattractive, multi-storey building. It was one room and a kitchen, but it did have a bathroom. I guess I was five years old. Much later I found that my father had decided that my sister and her husband were more likely to be able to feed me than he could. He handed me over to them. My mother had disagreed. She wanted her child, but she was overruled by my father.

Of my time in my sister's apartment I have no pleasant recollections. I was locked in all day with a page of letters, a pen and ink. I had to copy the letters and remember the sounds. I was being taught to read and write. Once only, as I recall, my father visited me there, and brought me a small wooden horse on wheels. It was a treasure, but it did not make up for having to sleep on a mattress in the kitchen, a mattress which was full of bed bugs which came out at night and feasted on my blood. We moved two more times. Each apartment was better than the one before.

Then I suddenly found myself back in Wolomin. My father was lying dead in a coffin in that one room. There were four candles. There were people praying. I held my mother's hand as we walked behind the horse-drawn hearse, and as she sobbed at the edge of the grave. My father had died on his sixtieth birthday, 10 August 1942. To this day, I do not know the cause of his death. At the time it was simply put down to 'the Germans'.

After the funeral I was back in Warsaw with my sister. The third and final apartment was in a pleasant semi-detached building. It had a basement and three storeys. It was in the fairly august suburb of Zoliborz. It had three rooms and a kitchen and a bathroom. I could read well by now, and I loved reading all that I could lay my hands on. It was a wonderful escape. I was no longer locked in. I had my own key from the age of seven. But after my father's funeral, I was not to see my mother again for the 25 or 26 years Dr Emerton referred to.

According to Hitler's plan, Poles were to be slave labour. Anyone who had the

### **Ballad of a thin man**

(on the occasion of Bob Dylan's  
2007 Australian tour)

At the age of sixty-six  
The Troubadour's legs resemble sticks.  
The leader of a cowboy band's  
Still making music of his own brand.

His voice, though shot, still leads the way  
For those who come to see him play.  
A nasal snarl, an incantation  
Give vent to his imagination  
That runs right through his lifetime's work  
Now soft, now swift, now gone berserk.

The double bass, the pedal steel  
Create a swirl of notes that heal.  
Some understated guitar licks  
Precede the drummer's upraised sticks.

The marionette, the master blaster  
No make-up now of alabaster.  
No repartee with any fans  
Just words and music from his hands.

NIGEL LEICHARDT

capacity of leadership was in danger of execution. Teachers fell into that category. In any event, schools were prohibited. However, child-minding centres were allowed, and these became secret schools. I was sent to one of them, but it took me not very long to work out that if I did not turn up, nothing much would happen. So at the age of seven or eight I began life on the streets. I learned street craft, especially how to travel by tram without paying fares, how to steal, and how to make myself invisible. This latest talent was most important when there was *tapanka*, a frequent affair. Truckloads of soldiers would seal off a street and herd everyone in the street into trucks to be taken to labour camps. Of course, I did see worse. I saw young men lined up against the walls of city buildings and shot. Long lists of those executed appeared frequently pasted onto city walls. Death was common.

By eight years of age, I knew about the Polish Underground and the fact that my sister and brother-in-law were in it. I also knew that my brothers belonged

to it. I envied them all. I was not at risk of disclosing anything concerning my knowledge, because I knew then that it was preferable to die rather than disclose any such knowledge. And, looking back, I am sure that had the occasion arisen – thank God that it didn't – that's how I would have acted. That's the power of hate.

The Underground army, acting on commands from the Polish Government in exile in London, was active throughout Poland. It was the AK. I was very put out that the AK considered me to be too young to be a member. That was particularly so when one of my street friends, who was 12 years old, told me that he had been taken on as a message runner.

My memory of being in my parent's arms seeing Warsaw burning was revived one night when I saw a similar glow in the sky and heard my sister say, 'That is the ghetto burning.' I knew that there was a part of Warsaw which the Germans had surrounded by a high brick wall. I knew it was the ghetto. When it burned, I knew that there were people burning in it.

Then came 1 August 1944. Long thereafter, I learnt that on that very day my mother was coming to Warsaw to reclaim her child, myself. Her journey was thwarted. A cordon had been thrown up around Warsaw, and all travel into it and out was prevented. I recall the day well. It was a beautiful sunny summer's day. I was in the apartment reading. About mid-afternoon there was a shot, then another, and another, then the rattle of a machinegun. I knew this was no normal day. Something of significance was taking place.

What was in fact taking place was that on that day the Warsaw Insurrection had started. Somehow, in the evening and late at night, firstly my sister and then my brother-in-law succeeded in reaching home. So began weeks of life in the cellar with what was left of the other tenants. Life in the cellar was not too bad, all things considered, apart from sanitation. A house not far away from ours had a pump in the garden. We all put in digging a trench from the exit from our cellar to that pump, and that gave us ample drinking water. Of course, food was very short. And then there was the artillery. I was used to air raids, but I had never been in a building that was actually hit.

During the insurrection, our building took quite a number of artillery shells. I

recalled the first one. An apparently impenetrable wall of dust rolled down the stairs to the cellar. I thought it was smoke with fire behind it and I went berserk. Totally hysterical. I jumped up and pulled at the iron bars on the cellar window, screaming. I must have been a real spectacle. Eventually, with the help of a bottle of valerian, the others pacified me. It is interesting how familiarity does breed contempt. By the time of the last hit, I hardly took any notice, even though that last one found me on the stairs on the second floor and blew me down a flight of stairs and splat against the wall.

On 9 September 1944 was my ninth birthday. On that day we used up the last of our food – a mixture of flour and water. After that there was only water. There were apples and pears hanging on the trees in the rear garden, looking more enticing every day. Eventually I ran and climbed

## It didn't bother me. I knew I was invulnerable.

into the pear tree to get some pears. I am not sure if I only heard or if I actually felt the bullets going past my ears. It didn't bother me. I knew I was invulnerable. I did get some pears.

My view of my invulnerability was shattered when one day we heard cries for help from the street pavement. We tied a couple of brooms together and passed them out into the road. The person calling hung onto the end and we dragged him in. It turned out to be my 12-year-old mate, with one of his legs shattered, and his shinbone sticking out at a right angle to the rest of his leg. To this day I count it a mystery, that from the time of seeing him dragged in, onward, I have absolutely no memory of what happened to him.

Then there was the day when all of a sudden there was shouting and sounds of the main doors to the building being broken down. Then the soldiers were inside yelling the well-known, '*Hande hoch*' and '*Alles raus*'.

We were chased outside and shepherded into a small cluster of people, surrounded by rifles levelled at us but a step or two away. Looking at the muzzles of those guns I knew on the spot that I was about to die. But

we were not shot. We were marched down the street, joined as we walked by other bedraggled people like us. The Warsaw we walked through was so damaged that the streets were barely recognisable, and still heaps of rubble were burning.

This was the beginning of a long journey packed into railway goods trucks so tightly that only some could sit while others had to stand and swap positions. In two weeks of travel we had only two occasions when we were let out next to the wagons and given something to drink. Whatever it was it was black and tasted foul, but it was something to drink. Of course we got no food. Firstly, we were taken to a camp near Berlin, then to other camps in Austria. There was fumigation of clothing. There were long lines of naked people being put through cold shower halls.

Eventually a small group of us was taken to a place called Landeck in the Austrian

Tyrol. It was a small camp, only one hut, one *lagerleiter*, barbed wire, no guards. Of course, the war in Europe was drawing to a close. The camp inmates were taken out every day to work. No one seemed to quite know what to do with me. There were no restrictions put on me, on my movements, and so I walked and ambled around the town. On one occasion I recall one of the locals allowed me to use his toboggan for a bit of fun in the snow. It's amazing how things like this leave lasting impressions. Ever since then, until I was cured of my hate, I regarded the Austrians as people much nicer than the Germans.

In the spring of 1945, there came a day when my sister and brother-in-law told me that we would leave that night. My brother-in-law had been born and raised in Berlin. He spoke like a Berliner. He told me that under no circumstances was I to speak. If anyone spoke to me, he would deal with it himself. I was simply to look tired. So in the early evening we walked out of the camp and caught a train to the Swiss border. We did have to walk the last few kilometres. The Swiss Guards would not let us in that night, but they did the next morning. My brother-in-law had a brother

in France, and we wanted to get to France, but the Swss would not allow that. We were interned. Again there were camps, barbed wire and armed guards. However, it did not last all that long. I was malnourished and was sent to a children's recovery home in a pretty place called Finhaut. With my sister and brother-in-law we were then shifted from place to place all over Switzerland.

The war in Europe ended in May 1945, shortly after our arrival in Switzerland. Its end, I recall well, was signified to us by all church bells ringing. I had five years in Switzerland. How it all happened I don't know, but I was separated from my sister and brother-in-law for most of that time. So much so that I practically forgot my Polish, but spoke like a native the Berner Oberländer dialect of German.

One day I was told to go with someone so I did. I spent some time looking after a couple of cows on the alps. Then again one day I was told to go with a priest, and so I did. He turned out to be the Catholic Parish Priest of Interlaken. I lived in his presbytery for a couple of years from the age of about 11. It was a good time. There was the Parish Priest, Pfarrer Wyss, his Curate, Albin Flury, and the housekeeper, Regina. I had my own room. I had a lot of free time. I attended a normal school for the first time. Pfarrer Wyss took me mountaineering, taught me to ski, and for the first time since I was a baby I got a ride in his car. I ate with the priests in a dining room, served by Regina. Life was normal and regulated. In the evenings Pfarrer Wyss would allow me into his study where we listened to music on his radiogram and he taught me to play chess. The Warsaw street kid thought that all his Christmases had come at once. I got to love Pfarrer Wyss. I wanted him to adopt me. I don't know about what legal obstacles to that there might have been, but I do know that my sister was aghast. She made it perfectly obvious to Pfarrer Wyss that she would not agree to any such proposition.

So, it was a great time in Interlaken, but I also learnt there about being part of a minority. I was a foreigner and I was a Catholic. Interlaken was mainly Protestant. In the whole of my school there were only half a dozen Catholics. So I learnt what it feels like to be spat on, and shunned by one's peers. for a while that was made easier to bear by reason of a ten-year-old Spanish girl coming to live at the presbytery. She

was being prepared for her first Holy Communion. Her father worked at the Spanish Embassy in Bern. She did not spit on me nor shun my company. That time was extra good. That bit of normal company of a child approximately my own age meant so much to me that to this day I remember the girl's name. It was Carmen Santaella. Apart from that time when Carmen was there, I enjoyed burying myself in the presbytery library. I read Greek mythology and adventure books, especially those written by Karl May. He was a German author, and he wrote of Germans who were quite different from the ones I knew. In that library, my armour of hatred began to crack.

I had enjoyed life with Pfarrer Wyss for about two years when he told me that it was time for me to go to collegium. I knew that a collegium was a higher type of school than the *primar schule* and *sekundar schule* which I had been attending, but I regretted the day when Pfarrer Wyss handed me a small suitcase packed by Regina and a railway ticket and told me that I needed to find a town called Sarnen, and there find the collegium, and that I would live there. I was not quite 13 years old.

The Benediktiner Collegium Sarnen, as we've heard, was a large boarding school for boys. It was an elite school. It was run by Benediktin monks and nuns. The discipline was strict. All activities were supervised. Those activities consisted of attending classes, performing sports activities, doing homework and attending chapel. Meals were eaten in silence, save for the readings by the lector. Ordinary small talk type speech between the boys was allowed

for only two hours out of every 24. I enjoyed the collegium. I disliked the vacations.

When the vacations came I had to return to my sister and brother-in-law. Swiss authorities permitted them no ownership nor even a tenancy of property. All they could do was to board in one room. For me to sleep nights, my sister arranged with her boss to let me use a bed in his spare room. Every night I walked to his place, slept, and walked back to my sister's one room the next morning and sat and read until it was time to go to lunch, which invariably had to be at a cafe. I learned a great deal about being independent in those days. These days I blush a little when I recall how I used to order beer with my meals, even though I was only 14. But nobody ever questioned me about it.

There was one more surprise: just as I was getting to enjoy being a collegium student and wearing the distinctive student's sodality cap, the Swiss authorities decided that all internees had to leave within months. We were stateless. The Polish Communist puppet government had decreed that all Poles abroad had to repatriate or lose their Polish nationality. My brother-in-law had been in the Polish Diplomatic service. To return to Communist Poland would have meant a very precarious future. The NKVD had already killed my eldest brother. My younger brother had escaped by a miracle. We could not go back. We were stateless, no papers, and chased out of Switzerland. Only two countries at that time took people like us without having to join a waiting list. They were Argentina and Australia. The toss of a coin literally decided our choice. After six

weeks at sea on the tiny 6000-tonne mass transport *Goya*. I arrived in Melbourne on, I think, 5 November 1950.

Well, that is my story. Of the rest of my life, you have heard in other places and other times and also from the other speakers today. The orderly, peaceful and predictable life in beautiful Australia, the company of friends made at schools – representatives of them are in the jury box – the love shown by a girl who agreed to marry me, all combined to allow me slowly to melt away the hatred which had marred my life. It took time, but eventually my parent's very early teaching reasserted itself. By the time of my appointment, I felt that I was not justifiably called a reactionary. By that time I had become convinced that following the path of a tooth for a tooth and an eye for an eye leads to a community becoming both toothless and blind, not a very desirable state of affairs.

So this completes, I hope, the picture you might have had of me. Did Jim Kennan make a mistake? Each of you can answer that question for himself. For my part, with my usual modesty, I say that I believe he should be congratulated for his courage, wisdom and perspicacity.

So the time has come for this judge to leave. I thank you all for coming and doing me the honour of your presence, and I thank the people of this country and especially of this state for allowing me the privilege of living in a community governed by the rule of law and not the whim of the executive.

Guard your liberty. *Guard your liberty.* I bid you adieu, and for the last time I say the words 'Adjourn the Court *sine die*'.



**BLASHKI**

ESTABLISHED 1858

*Makers of Fine Legal Regalia*

- Gowns
- Wigs
- Wig Stands, Boxes and Tins
- Jackets
- Jabots
- Red and Blue Bags
- Ties and Cuff Links



2/36-40 New Street,  
RINGWOOD 3134

Phone: (03) 9870 7100

Toll Free: 1800 803 584

Facsimile: (03) 9870 7199

**SHOP ONLINE at**  
[www.blashki.com.au](http://www.blashki.com.au)

**For Jackets and Wigs:**

Phone for our representative to  
visit your Chambers