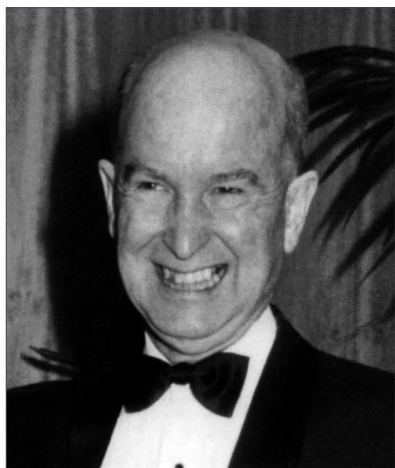


## Paul Francis Flannery QC (1913–2014)



Paul Flannery died on 5 September 2014 when he was in his 84<sup>th</sup> year. He was born on 7 March 1931, the elder of two sons born to Rita O’Driscoll and Jack Flannery. Both of his parents were pharmacists and for many years of his younger life they conducted a pharmacy in Oxford Street, Paddington. Paul had only one sibling, Max, who spent his life as a teacher in the Christian Brothers order. Max is two years Paul’s junior. He and Paul were very close throughout their joint lives.

Paul and his brother grew up in Randwick. They both attended Waverley College. Paul was a good student and very keen on cricket.

He attended the University of Sydney from 1948 to 1953. He completed a BA in 1952 and in 1954 he graduated with an LLB with second class honours. He worked part time in the Mark Foy’s womens’ store at the corner of Elizabeth and Liverpool Streets while he was a student. His area was ladies’ slippers. He was an unusual combination of men, being at once unworldly, modest, gentle, charming, erudite, a joker, and a powerfully committed Christian. Those close to him often speculated about how such an unworldly man managed to deal

with the intimacies of fitting a slipper onto the stockinged foot of a female customer.

At the time he attended university it was customary for students to work part time for a law firm, usually for a nominal wage, completing a form of apprenticeship long since gone in NSW, called articles of clerkship. Paul worked for two firms, one of which was Freehill, Hollingdale and Page. At that time there was a religious division in the law firms of Sydney, with some having a strongly Protestant bent and others a strongly Catholic one. Flannery’s Catholicism helped him to fit into the then strongly Catholic Freehills office, which employed (mostly men) who had attended one of the better Catholic schools and/or lived at St Johns College.

It was then, and is still, unusual for a law graduate to start practice at the bar without first working as a solicitor. Paul never worked as a solicitor. Instead he spent a year after he graduated working as an associate to a Supreme Court judge, Sir Cyril Walsh, who was later elevated to the High Court of Australia.

Paul Flannery was called to the bar on 30 November 1956.

At that time NSW barristers benefited greatly from the wartime tenancy legislation, which helped to keep tenants protected in significant ways. Much litigation was generated from this legislation, with landlords trying to evict bad or inconvenient tenants and tenants trying to resist their efforts. Paul developed expertise in this field and spent much of his early years at the bar appearing for tenants or landlords. One of his frequent opponents at that time was the late Peter Clyne, who was ultimately disbarred.

In his early months at the bar Paul had chambers in an old terrace house in Chifley Square, where the Wentworth Hotel was later built. One of his fellow chambers members was Keppel Enderby QC, who was later to become Commonwealth attorney-general and then a justice of the Supreme Court of NSW. Another fellow floor member was the late John Foord QC who was later appointed to the NSW District Court and who, like the late Justice Lionel Murphy, later stood trial on charges of attempting to pervert the course of justice, and at whose trial, as he was at Murphy’s trial, Flannery was one of the principal prosecution witnesses.

After his time in Chifley Square, Flannery was invited to join the fourth floor of Wentworth Chambers. There, some of his fellow floor members were Murphy, Neville Wran QC (later premier of NSW) and Peter Clyne. (After Clyne was disbarred, Paul bought his room). In his early years there Paul shared a room with the late Joe Ford, later Joe Ford QC, who was, as was Flannery, later appointed to the NSW District Court. Flannery’s practice there flourished. In later years he tended to concentrate on accident cases, usually appearing for insurers, often holding briefs in several courts and suburbs on the same day. Amongst his colleagues he enjoyed a reputation as a charming and highly intelligent and wily fighter, who used his charm and legendary sense of humour to great effect, whether when persuading a witness to make a concession, or a judge to adjourn a case so he could finish another one in the court next door, or perhaps an hour’s train ride away. He had an unusually good memory for names, and knew the names of all the court officers and the judges’ associates, which stood him in good stead when, as was

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often the case, he needed an indulgence. Although most of his work was in the insurance field he did some criminal trials, including murder trials, in which he was usually successful. He was invariably good humoured. He was described recently by a friend as incorrigible. Whilst he was at the bar he had a friend, a solicitor, who briefed him to settle an affidavit. The affidavit was sent back with the solicitor's name slightly altered. Instead of Adrian *Leopold* Belmore, it appeared as Adrian *Loophole* Belmore.

In 1980 he returned to study at the University of Sydney, graduating with an LLM, his thesis being a study of the doctrine of attainder, whereby a prisoner serving a sentence for a capital felony could not sue at common law, a doctrine brought to modern attention by a defamation case brought by the late Darcy Dugan against the publishers of the *Daily Mirror*.

Paul always maintained a great faith in his religion. He was a man of small stature. He always wore a hat or a cap. He enjoyed many nicknames at the bar, but the one which stuck was 'the Pope's Jockey'.

Paul married Rosemary Woodbury on 26 December 1957. They met at university through the Newman Society. They later had four children, Anne, Leonie (who later became a barrister, senior counsel and a District Court judge, this being the first time in Australia father and daughter had been appointed to a court), Christopher and Philippa. Paul always referred to Rosemary as 'my first wife'. He was a devoted father and husband.

Paul did not drive. Nor was he a handyman. He probably never picked up a screw driver or a hammer in his life except as exhibits in court cases he was appearing in. Nor was he a gardener. His interests were his career, his family and his God.

*Paul and Rosemary Flannery went to dinner at the Murphys' Darling Point unit on the Saturday night before the trial began. They were the only guests. The trial was not mentioned, but a legal issue highly relevant to the Ryan case was raised by Murphy. Paul said to Rosemary on the way home: 'He's trying to nobble me.'*

He left the fourth floor of Wentworth Chambers in 1973 and joined the eighth floor. He took silk in 1980. His first case as a silk was in the Privy Council. He had won the case in the District Court, then lost it in the NSW Court of Appeal. The Privy Council overturned the decision of the Court of Appeal, five to nil. The case is reported as *Burnes v Trade Credits Ltd* [1981] 1 NSWLR 93. One of those sitting on the Privy Council for the case was Lord Diplock, whose stature was similar to that of the five foot four Flannery. Paul sometimes remarked how comforted he had been to see that Diplock was short, and thought it probably gave his client a head start.

In late 1982 Paul was appointed to the District Court of NSW. He served on the court for 18 years. For a large part of his time he sat in courts in the Downing Centre, the same building which had housed Mark Foys all those years ago where he had assisted women with their slipper purchases. When he was sworn in as a judge the then president of the Law Society of NSW, the Honourable Marla Pearlman AM, spoke of his honesty and moral integrity, his sparkling sense of humour, hard work, sense of justice and fair play. In the course of her speech, speaking of his departure from the bar, she said: '[A]nd yet for us it is a sad time for we are about to lose our tricky spirit. It is no exaggeration, it is no poetic licence, to assert as I do that the mere mention of your name in conversation

among lawyers was enough to unfurrow the most lowering brow and to introduce an atmosphere of sweet reasonableness into the deliberations. It has been simply impossible to harbour ill natured feelings towards you'.

It can fairly be said that Paul maintained throughout his long career on the bench that atmosphere of sweet reasonableness. Female barristers especially, found him a delight to appear before, and so different from many of his colleagues. It is rare for it to occur when a judge, let alone a judge of the District Court, retires, but when he retired in 2000 the bar held what has become known as a 'swearing out' for him. On that occasion a number of eminent senior counsel gave glowing testament for the high regard in which he was held as a judge. The court room was packed out, with standing room only.

If his first case as queens counsel was significant for him, one of his first criminal trials as a judge was seminal. In 1981 a Sydney solicitor, Morgan Ryan, was charged by Commonwealth authorities with the crime of conspiracy to break certain immigration laws. The facts alleged were that he had conspired with others to use false evidence of trade qualifications so that some people of Korean origin might obtain Australian residency. Ryan was convicted, and later granted a new trial, although the Crown never put him up again. What occurred leading up to that trial and in the course

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of it was to influence Paul Flannery's life and that of his family for as long as he lived.

Although Flannery and Lionel Murphy both practised from Fourth Floor Wentworth Chambers, and they enjoyed a floor friendship, they never socialised outside legal functions. Murphy, a High Court judge since 1975, was a long standing friend of Ryan. In July 1983 Flannery was listed as the trial judge in Ryan's trial. A few days before the trial began, and totally out of the blue, Flannery received a phone call from Murphy inviting him to dinner. Paul and Rosemary Flannery went to dinner at the Murphys' Darling Point unit on the Saturday night before the trial began. They were the only guests. The trial was not mentioned, but a legal issue highly relevant to the Ryan case was raised by Murphy. Paul said to Rosemary on the way home: 'He's trying to nobble me.'

As the Ryan trial proceeded one of Flannery's fellow judges, John Foord, also a close and long standing friend of Ryan, spoke to Flannery in such a way as to suggest to him he also was trying to influence the trial's outcome. But at that stage Flannery did not go to the authorities. He was a very junior judge and he was in a difficult position, especially since Foord was a District Court colleague and a long standing friend.

In the late 1970s a group of NSW police tapped the telephones of citizens without any legal authority. One of the citizens was Ryan. In the early eighties journalists began writing articles about the contents of the tapes. In November 1983 the *National Times* had a story dealing with what it described as 'secret surveillance reports that give fascinating insights into relations between a lawyer, an organised

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crime figure, police and a judge'. The *Age* published articles about what was said to be in the tapes and on 6 February 1984 an *Age* editorial referred to the stories which, it claimed, 'disclose a pattern of behaviour that is improper and unworthy of someone holding high judicial office'. The *Age* articles had serious errors in them about what was said by the participants and the *Age* apologised. But Murphy was then exposed as the judge whose calls had been intercepted.

When it became known in the community that a High Court judge was the subject of the tapes there was a great deal of community disquiet. The then president of the Law Council of Australia, Ian Temby QC, was commissioned as a special prosecutor to prepare a report on the tapes. Then a Senate committee was appointed to enquire whether the tapes were authentic and if so whether they revealed misbehaviour which could be sufficient ground for Murphy's removal from the High Court. At that stage the then chairman of stipendiary magistrates of NSW, Mr Clarrie Briese, brought to the committee's attention information suggesting that Murphy had tried to influence him to help Ryan when Ryan's case had been at the committal stage. In the middle of 1984 the committee reached inconclusive findings. A new committee was set up. In the meantime Briese was excoriated by public figures such as Neville Wran QC, at that time still the NSW premier, and a close

friend of Murphy, for what he had said to the authorities. Flannery then felt he had to go to the authorities about his suspicions. He gave evidence at the second Senate enquiry about Murphy's dinner invitation. In late 1984 the members of the second Senate committee by majority concluded Murphy could have been guilty of misconduct such as to justify his removal from the High Court. In 1985 Murphy was tried before a jury in the Supreme Court of NSW where he faced two counts of attempting to pervert the course of justice, first by trying to influence Briese, and secondly by trying to influence Flannery. He was acquitted of the count involving Flannery but convicted of that involving Briese. That conviction was later set aside on appeal and he was acquitted on the retrial.

Foord was charged for his approach to Flannery and for an approach he had made to Briese. After a lengthy trial (which followed the first Murphy trial), Foord was acquitted. Foord, who had stood down from the District Court after he was charged, then returned to take up his duties on the District Court alongside Flannery.

Those years from 1982 to 1986 were long ones for Flannery, who went on with his judicial duties, interrupted as they were from time to time by the need to give evidence. He became a well known figure, the cartoonists having a field day with his small stature and

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colourful nickname. Sadly, those close to him observed that he became a different man after those experiences. He was always kind and polite to all but he was no longer the ‘tricksy’ man who had been so warmly welcomed to the bench. Murphy and Foord were popular figures at the bar, and in some Labor circles Murphy was iconic. Some who had been Flannery’s friends before he gave evidence ceased to be so. There was a division on his court between those friendly with Murphy and Foord and those not so. These things saddened him. In 1999 the late Jim McClelland died. He had been a close friend of Murphy and had given the somewhat anodyne evidence at the Murphy trials that Murphy had asked him to speak to the chief judge of the District Court to see if Ryan could have an expedited trial. After McClelland’s death, evidence emerged that Murphy’s request to him had been far more sinister than the approach he had given evidence of, but that he had kept back this evidence through loyalty to Murphy. This revelation received much press publicity at the time and Flannery was greatly chuffed by it, feeling vindication. Following that revelation several people who had been unfriendly to Flannery since the first Murphy trial apologised to him.

Flannery did not entirely lose his sense of humour throughout these travails. In the

midst of the Murphy committal he was cross examined by the late Alex Shand QC for Murphy to the effect that he, like Murphy, was a gregarious man, also just the kind of man who would ring up someone out of the blue and invite him to dinner. There was this exchange:

Shand: You do have a picture of yourself... as gregarious?

Flannery : I don’t know Mr Shand. Sometimes I am and sometimes I’m not. I wouldn’t think I was as gregarious as [Murphy].

Shand: Good natured?

Flannery: I don’t think I should admit to [that]. Like everyone else I’m tainted by original sin Mr Shand...

Shand : This is certainly not meant to be a confessional Judge.

Flannery: You needn’t worry Mr Shand. I might go elsewhere.

Throughout his adult life Flannery invariably addressed married females by their maiden names. He loved to be outrageous. He would sometimes sign his name ‘Elvis Flannery’ or ‘Elton Flannery’, on quite official documents. Because of his somewhat small stature he would sometimes sit on the knees of females of his acquaintance at parties. When his daughter Leonie was a public defender he would follow her trials with great interest.

*Paul retired in 2000. He used his retirement to read novels, help in his church, and spend time with his many friends and his family.*

On one occasion a Sydney newspaper had a headline ‘Defence counsel grills witness’. That weekend Flannery left a message on Leonie’s message machine saying he wanted to speak to the ‘griller’.

He kept his faith throughout all those years, attending mass sometimes seven times a week, often popping in to an early morning service on his walk from Wynyard Station up to the legal precinct.

Late in his life he was made a knight of the Order of St Lazarus of Jerusalem and a life member of the Thomas Moore Society.

Paul retired in 2000. He used his retirement to read novels, help in his church, and spend time with his many friends and his family. He is survived by his devoted wife, Rosemary, his brother, his children, his nine grandchildren and his five great grandchildren.

**By His Honour Judge S L Walmsley SC**