

Annual Bar Dinner Wednesday 27 June 2001

Chief Justice Paul de Jersey AC

Mr President
Chief Justice Gleeson
Your Honours
Ladies and gentlemen

Thank you Mr Junior Silk: a brilliant performance, Daubney, which I'm sure, ladies and gentlemen, you would wish to acknowledge further ... Thank you, ladies and gentlemen of the Bar, for the apparent enthusiasm with which you express your support of the judiciary.

I will continue, if I may, to speak seriously for a brief moment. I discern a well established, easy rapport between Bar and Bench which is very much in the public interest. There is ready, mutual accessibility which facilitates the Bar's drawing the attention of the Judges to perceived problems in the running of our lists – fortunately there seem to be few of them; and also our raising with the Bar suggested avenues for improvement – of those, there are probably even fewer.

As one example, a few months ago I raised with the President the adequacy of the Bar's means of protecting the public against ethical breaches in the area of bankruptcy. I was quickly persuaded that the Bar Council was taking a responsible approach. Fortunately any such problem here appears minor compared with that of Sydney.

The particular regret of some of us Judges, if there is one, is that we experience too little of the polished advocacy of the Bar these days in the civil trial arena. The statutory schemes mean that precious few civil cases are running through trials to judgment. One does from time to time hear stories of late night pressure on parties to settle following long emotionally charged mediations. It may be that the current mechanisms are working too well! Civil trials must not become an endangered species.

I am very grateful for the continuing co-operation and support of the Bar for the work of the Judges. As we often say, properly serving the public interest, we must work together, and we are doing that harmoniously and productively.

I am also pleased to note a degree of recognition from the Executive Government of the publicly beneficial role of the professional associations. They discharge their publicly oriented roles very well indeed, and a sometimes skeptical public needs to be reminded of that.

The President of the Law Society introduced me, this afternoon, to Mr Chen Young, the President of the Fiji Law Society. Mr Young labours under a very substantial burden in leading his members to rejuvenate the rule of law in Fiji. He told me graphically of police intimidation and other terror of the highest order. We take the rule of law for granted here, but it is an ultimately fragile stipulation. Would you stand please, Mr Young? I assured Mr Young, who displays considerable courage, of our support. Would you please reinforce that, ladies and gentlemen, by your applause? ...

The year since we last gathered here saw a number of changes in the composition of this State's judiciary. Judges departed, new Judges arrived. I sense by the way an increasingly indulgent attitude on the part of newly appointed Judges in relation to sitting time. Not so long ago newish Judges chose to display their dedication by sitting from hours very early to hours very late. This fashion appears to have shrunk. Its high water mark I understand arose in the District Court at Maryborough where His Honour Judge Botting rather confounded the parties by sitting relentlessly into the late night. One of his counsel was Mr James Webb. Come midnight, Webb announced: "Your Honour, my pumpkin has arrived." The transcript records, I am told, the court adjourning at 12.04am.

Aspects of the past year were reasonably predictable. The *Courier-Mail* continued to display obsessional interest in how the Judges spend the last ten

cents of their travel allowances, although you mustn't think we're in the least degree sensitive about that; and the newspaper incidentally still fails to publish about 95% of the Bar President's excellent press releases; Tony Morris continued to inspire novice advocates at the Bar Practice dinners with poetry renditions; the Judges continued to work extremely hard, being rarely spotted during the week at the cricket and never at the track; and the Bar continued to delight the Judges with unfailingly brilliant cross-examination. I have an example from the criminal court, a murder trial last year before Mr Justice Mackenzie during the questioning of a "doctor" – or in view of recent developments I should better say, "medical practitioner":

Question:

"I want you to comment now by looking – assuming that the man is in the position in Exhibit 20 – assuming that a man seated in the position as he is in Exhibit 20, or something very similar to that position anyway – assuming that a person has – that man is completely unaware of a person basically directly behind him – do you understand what I am saying?—Mmm.

Well, completely unsuspecting that anything is going to happen to him. Now, would you accept that in that sort of position the whole of the throat is completely vulnerable to attack by someone holding a knife such as the knife that you have in front of you, Exhibit 2?—I am out of my area of expertise here.

Is that what you are saying?—I generally operate on people, not attack them."

The questioner, if present, need not identify himself.

There were I should add some disappointments over the past legal year. No major scandals, and even the inspiring presence of Justice Callinan couldn't save the courageous cricketers of the Bar from surrendering the Chief Justice's Cup to the solicitors. And there were many causes for deep satisfaction: by some brilliant strategy we at least managed to get the lights working in the courthouse; and then Hampson reached his 30th anniversary of silk, a cause for congratulations, and we are all pleased that Cedric is pleased with his portrait.

The most diverting, somewhat unusual experience of my own last year occurred on leaving an Executive Council meeting at Parliament House, sitting alone with great humility in the rear of the Rolls, the flag gently fluttering, the sun shining, as the driver determined to press forward through a somewhat frenetic crowd of BLF demonstrators. A view that, as for the moment Her Majesty's representative, I was appropriately detached and protected, was dispelled by a less than cultured challenge from one of the throng: "Dickhead, Dickhead!" he jeered as I made an otherwise stately progression.

Now I believe the last time I was censured in those precise terms was at University, although no doubt the label has since been applied frequently, if behind my back.

My lack of response on that occasion was of course appropriate to the modern era. One could not now follow the approach of the English Judge, the rather eccentric and maverick Sir Aubrey Melford Steed Stevenson. At the ceremonial opening of an assize in the 60's, utilising the Mayor's Rolls Royce, his own stately progression is said to have been interrupted by an irate ratepayer's cry: "Up yours", or something similar. His Lordship responded as one might have expected of those times: he at once had the miscreant arrested, and dealt with him *instanter* for contempt, immediate incarceration being the consequence. There is real power!

As I dressed to come here tonight, Kaye asked me: "Will you have to make a speech?" "Yes", I said. "Well", she cautioned, "don't tell that parrot story" ... why not!

It concerns a lawyer who'd been away from home for a few weeks – let us say in Melbourne. To ease his return to domestic bliss in Brisbane, he decided to buy his wife a present. So he went to one of those elegant Melbourne boutiques and

asked to be directed to something “very special”. “Why sir”, said the assistant, “I believe I have the very thing”, whereupon he took our friend to a room containing ... wait for it, three parrots.

After a moment’s dismay, our lawyer, uncharacteristically for his profession, asked the price of one of them, a rather attractive green bird. “A thousand dollars, sir”. Dismay was somewhat compounded. “Why so much – it is after all but a parrot?” “Well, sir, that’s no ordinary parrot. You see that parrot is a classical scholar: it is fluent in Greek and Latin.” “Perhaps not quite what I had in mind”, said our friend – “what of the other, the blue and gold bird?” “Well, sir, that one’s two thousand dollars – for you see that parrot is steeped in philosophy – that parrot has written books, it is a disciple of Immanuel Kant.” “Quite so”, said our lawyer, and with some frustration turned to the third and last parrot, which was a purely black bird with a very long beak. “Well, sir”, said the assistant, “I’m afraid that one costs as much as five thousand dollars.” “How could that be? What does that bird, that parrot do, to justify such astronomical value?” “Well, so far as I can see, sir, it does precious little indeed. But you see, the other two parrots address him as: Chief Justice!”

The length of this speech will be drawing no prize. The award, by the way, for the plum after- dinner speaking role of the past year should I think go to Justice Spender, for regaling the Annual Conference of Coroners. His Honour did subsequently tell me the joke by which he grandly banished any incipient dolour that night; but ... no, I don’t think I’ll repeat it!

Ladies and gentlemen, on behalf of the Judges, I again thank you warmly for your support, and extend our best wishes for your continuing professional fulfillment.