

**Bar Association's Pupillage/New Bar Committee Dinner
Bar Association Common Room
Tuesday 23 April 2002, 6:30pm**

Chief Justice Paul de Jersey AC

It is a "special" privilege, if etymologically there can be such a thing, to address younger practitioners. It is in one way less daunting: I assume your older colleagues are much more well-versed than you in my substantial shortcomings. But overall it is particularly challenging, your being young.

I was a practising barrister for only 13 years many years ago, so that from any directly relevant "coalface" I can't offer tips borne of contemporary experience.

On the other hand, I have, since appointment to the bench in 1985, been, ex officio, an undoubted expert and definitive commentator – as are all Judges – on the quality, or lack of quality, of those appearing as counsel, so that comments from that 16 year perspective may help you!

But on reflection I mustn't presume to offer advice! The vast experience of mankind suggests that not much advice is ever really very helpful.

Take my own humble experience. When I foreshadowed motions of going to the bar, my endearingly careful father at once advised me not to do so. When, young, I applied for silk, my confidants cautioned me in terms I won't recall.

When in 1985 I was appointed to the bench, I was offered the first piece of advice borne out by reality: the salary would prove totally inadequate!

And then when I was, 13 years later, appointed Chief Justice, no-one offered advice!

You are your own people! Your having reached your own professional pinnacle presupposes considerable intellect, application and, inevitably, potential. You have the capacity to observe the experience of others, and to reach your own, measured, conclusions. You don't need advice.

There is, I should say, one great moderator usually important if not instrumental. That is the view of one's spouse. The selection of a wife or husband or long-term partner posits mutual trust, and that necessarily signals the importance of that other person's view on career affecting decisions. As I say to newly admitted practitioners in the Banco Court, I hope the influence of family members, and especially spouses and partners when they arrive, will endure. That is tremendously important. It is, for example, the refuge of Judges condemned as inhabiting ivory towers – how can that be, when our children compel us to listen to Lincoln Park and Blink 182 or Jamiroquai?...and of course we've all outgrown Britney!

Well, no advice...except from the spouse or partner...or, should we add parent...and not to mention the family dog: in my experience a great source of inspiration!

I won't give advice. But what I'd like to do, is to impress upon you, this evening, my feeling as to the importance of a collegial interaction, what used, from this evening's perspective, to be termed "the camaraderie of the bar".

At once however, regrettably, a disclaimer. Notwithstanding my affectionate father's pessimism, I apparently succeeded, to the point where, added my other natural inadequacy, circumstances forestalled any lively commitment to the activities of the Bar Association. I have subsequently regretted that. I think the consequence of an actively collegial professional approach can only be beneficial.

And, may I for the moment be confessional, that I believe is part of why the Supreme Court of these early years of the third millennium is a productive institution.

As barristers, you have extraordinary rights denied most other people – especially, to appear as of right for litigants in the people's courts of law. Others have to seek leave. You don't. Because you have those privileges, many members of the community, especially disappointed self-litigants – may stigmatise you as elitist. Of course, for sound reason, I support you, and always will. People who, through merit, have the capacity to achieve highly, and in positions supporting their fellow human beings, should be sustained, not criticized.

But absent advice from the Chief Justice, how do you develop that expert capacity which will commend you to your clients, and thereby the people who you more generally serve?

Part of the enduring worth of the bar – which we rightly term an "institution" – is its capacity to influence by example. Barristers have existed since the thirteenth century. The ensuing centuries have seen numerous fine advocates, and Queensland has had, has, its own share.

Sir Samuel Griffith is of course of heroic stature; an extraordinary achiever – though not it seems universally admired. I was interested to read recently from Beatrice and Sidney Webb's diary of their Australian tour in September 1898. They, rather unusually, described Griffith in this way:

“...probably the most interesting personality we met: a man of mark with a keen subtle intellect who would have distinguished

himself in the old country and was, in fact, too fine an instrument for colonial life and had become soured with having to conform to colonial standards. He was a lonely thinker, believing in his heart that the only politics worth pursuing was a definite course of policy based on ascertained facts. But circumstances had forced him into a low kind of opportunism and obliged him to act in conjunction with queer characters, and to go back on all the legislation he had initiated. He had ended by taking refuge in the Chief Justiceship. He was a thin, spare, grey-bearded man with a hesitating manner and cold uncertain look as if he were wondering whether you respected him or whether he respected himself...altogether he was an unhappy man."

Mean, acerbic people!

You will as young practitioners see good advocacy, and great advocacy. And good advocacy, of course, you must know, survives the odd mistake. Don't be discouraged if you ask witnesses the obvious questions: "how many times have you committed suicide?", "the youngest son, the 20 year old, how old is he?" "are you qualified to give a urine sample?", "you don't know what it was, and you don't know what it looked like, but can you describe it?" But you mustn't ask too many such questions!

Now what will you accomplished novitiates have read? Certainly I would think, for example, Sir Edward Carson's masterful cross-examination of Oscar Wilde.

Who should you have seen? Any young counsel determined to succeed will sit in on the high profile criminal trials likely to attract accomplished counsel, and the Long trial is an obvious example. And you will, if otherwise unengaged, sit, in the boondocks, to observe the High Court Justices' masterly demolition of Australia's most talented counsel, retained to rescue Australia's most desperate claims!

The recently published Oxford Companion to the High Court mentions Sir Anthony Mason's recollection of a Solicitor-General concluding his argument with the words: "that concludes the first branch of my argument", whereupon Sir Douglas Menzies – dubbed the "laughing Cavalier" of the court – responded: "Mr Solicitor would not "twig" be a more appropriate word?" Then Mason himself, to counsel's concession: "your Honour has me on the ropes", responded "on the canvas would be a more accurate expression."

Justice Brennan of the United States Supreme Court liked to tell against himself the story of his first criminal trial. He had been appointed to defend a charge of dangerous driving causing death. An elderly Irish police officer who lived near the accused agreed to be a character witness. Unfortunately the young Brennan

did not know he was allowed to prepare a witness to testify. Mr Brennan's examination of the officer went as follows:

"Sir, are you acquainted with the defendant's reputation for veracity and the vicinage where he resides?

The officer looked puzzled. Still, he wanted to help. "Well, he is a good driver, I'd say", he volunteered tentatively.

Shaken but undeterred, Brennan repeated his question word for word. This time, the witness simply stared at him. As Brennan began the third time, the Judge interrupted.

"Officer, do you know the young man over there?" pointing to the defendant.

"Yes, your Honour."

"Have you ever known him to lie?"

"Why, no, your Honour."

"Well, that is what Mr Brennan has been asking you, but he went to Harvard Law School and has forgotten how to speak English."

Now I have promised not to offer advice, but presumably you want to hear, if for a moment, some of my view of the judicial process in which you and we jointly participate.

I must say that what has, through 31 years' experience particularly – and essentially – impressed me, is our concern for the individual person. We are not in the courts concerned with legislative or executive generalities or abstractions! The individual person, before us, is the focus of all intellectual and emotional force.

One who rose to international heights (J F Kennedy) once said, "the poor man charged with crime has no lobby". But in our courts of law, he or she is undoubtedly our only concern. For the other arms of government, he or she is but the representative of others. Those other arms of government are, we accept, deeply concerned with the betterment of the people. Ours is instrumentally focused on the welfare of the individual. I think it is an enormous privilege that we are all participants in that process.

In comparative terms I am closer to you in years, ladies and gentlemen, than some of my predecessors. I sense, as would be my natural approach, not the need to admonish, but to encourage, and to seek to interest. This is part of rendering our people's courts better understood. Upholding the indispensability and the productivity of the bar is essential to that, and that is a large part of my own professional goal.

You have my very best wishes.
