



**GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003**

Justice Margaret Wilson

1. It is a pleasure and an honour to be asked to address you today.
2. Thinking back to my own school days, I never dreamed I would be asked to address a conference of school principals. I am not sure that I do so now, more than 30 years later, with any less a sense of awe than I would have then. It has always seemed to me that the potential influence of school teachers on our society at large is enormous, and that it is seldom fully appreciated.
3. It is not for me to suggest how you should go about meeting the challenges of your role. Instead, I am going to reflect on my role as a judge and on the ideals to which judges aspire - which, I suggest, are little different from those you seek to foster in the young. I hope you will interrupt me whenever you want to tease out ideas, and that we can all share experiences and insights as we go along.
4. Judging is a distinctly human craft. It involves the application of the technical skills that are the hallmark of a lawyer to what is, at the end of



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

the day, human conflict. Wisdom and integrity born of long experience and understanding of human nature need to be combined with specialist knowledge and skill.

5. I am inclined to think this is not so very different from what I perceive to be the ultimate goal of education - learning to live together while developing individual strengths, so as to achieve social harmony and personal fulfilment.
6. If you will bear with me while I tell you a little of what I do, I may persuade you that the values which underpin the administration of justice are reflections of the core values which underpin Judao Christian society - the same values which you as educationalists seek to instil in your students.
7. I am a member of the Trial Division of the Supreme Court of Queensland. I hear criminal and civil cases (but not family law matters). Sometimes I sit on appeals.
8. The criminal work involves determining applications for bail, conducting trials, sentencing, determining applications for confiscation of the profits of crime, and determining applications for compensation for victims of crime. In the Supreme Court most of the criminal work



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

relates to murder, manslaughter and drug offences. Criminal trials take place before a judge and jury, but the other criminal work is done by a judge sitting alone.

9. The civil work can be very varied - accident compensation claims, professional negligence, disputes about wills and succession to the property of persons who have died, contractual disputes, corporations law, defamation, review of decisions of the executive branch of government alleged to involve errors of law. Occasionally a civil case will come before a judge and jury, but most of the civil work is done by a judge sitting alone.

10. I also sit on the Mental Health Court. This is a specialist court which decides whether someone charged with a serious offence was of unsound mind at the time of the alleged offence and whether he is fit for trial. These decisions are made by a judge assisted by two psychiatrists. According to our law a person who is of unsound mind at the time of an offence is not criminally responsible for his actions. Further, everyone is entitled to a fair trial, and if his mental state is such that he does not meet the tests of fitness for trial, it is impossible for his trial to be fair. In such a case the trial has to be postponed until his condition improves.



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

11. People sometimes ask about the respective roles of the judge and the jury in a criminal trial. The judge's role is to ensure that the trial is conducted according to law, to rule on questions of law and to direct the jury on the law. The jury's role is to determine the facts. So guided by the judge's directions on what are the issues to be considered and what is the applicable law, the jury decides whether an accused person has been proved guilty. If the verdict is guilty, it is then for the judge to decide on the appropriate penalty.

12. In the five years I have been a judge I have developed a great respect for jurors.
 - They are men and women selected at random from the electoral rolls. They come from all walks of life. They bring their different experiences and insights to bear on the very serious questions they have to decide.

 - They have a great leavening influence on a courtroom. They make the judge and lawyers think about the law from first principles, and talk about it and explain it in simple, straightforward terms. It can sometimes be quite a challenge for



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

members of the legal profession not to talk in language only the initiated have any chance of following.

- Their task is an onerous one. Their decision will probably have a lasting effect on the accused's reputation and on his relationships with many people. Although they do not have any part to play in fixing the sentence imposed on someone found guilty, they know that that is the next step in the proceedings. I have found that juries approach their task very responsibly and conscientiously. I have great respect for their integrity and worldly wisdom.

13. I do not imagine that jury service is not stressful for the jurors. Twelve people previously unknown to each other are thrown together and isolated from the rest of the world while they decide whether another human being has been proved guilty of a criminal offence. It is almost inevitable that there will be a mix of different abilities, attention spans and capacities for reasoned deliberation. I have recently returned from a wonderful seminar on *Judges and the Humanities* at Princeton University. One of the speakers was D Graham Burnett, a history lecturer at Princeton, who had been the foreman of the jury in a murder trial in New York, and who had written a highly acclaimed book about his experience.¹ He described the medley of men and women on the



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

jury, their sometimes unexpected strengths and weaknesses, how seriously some of them thought about the principles which underpin the justice system, and how ultimately unanimity was reached. It was a fascinating account, and I would recommend it to any of you interested in the jury system.

14. We live in an imperfect world. There are certain basic safeguards built into the justice system to protect the citizen.
 - There is the presumption of innocence: an accused person is presumed innocent until his guilt is proved.
 - Guilt must be proved beyond reasonable doubt.
 - A jury can return a verdict of guilty only if that is the unanimous decision of the 12 jurors.
15. People who come before the courts are entitled to justice according to law. The rule of law is fundamental to a healthy, free society. There must be rules, equally applicable to all. No-one is above the law.
16. Judges must be truly independent. The concept of judicial independence is central to our justice system. In this country judges of most courts are appointed for life (subject to compulsory retirement at



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

the age of 70). We can be removed only for misbehaviour, and then only by Parliament. Our salaries are charged on the Consolidated Revenue, which means they do not have to be voted every year by Parliament like ordinary departmental budgets. We are immune from being sued for the way we perform our work.

17. What a privileged lot, you may be thinking. But it is a principle which exists to serve the public. A judge's commitment must be to the impartial and fearless application of the law to every litigant - whether that litigant be the government of the day, a powerful corporation or a weak and vulnerable individual. The security of tenure and security of remuneration which judges enjoy provide an essential foundation for the impartiality and intellectual honesty expected of them.
18. There is an interesting historical background to judicial independence. In its modern form it can be traced back more than 300 years to the *Act of Settlement*, passed by the English Parliament in 1701. The preceding era of English history, the Stuart era, was as you know a very turbulent one. In the last 11 years of his reign Charles II sacked 11 of his judges whose decisions he did not like, and his brother James II sacked 12 in 3 years. Although not all the judges of that era were subservient to the reigning monarch, it is understandable that



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

parliament saw them as mere tools of the king and the king saw control of the judiciary as an essential element of royal power. The *Act of Settlement* in which the principle of judicial independence was enshrined finally closed that chapter of English history.

19. A judge has to be colour blind, gender blind, and creed blind.² The impartial application of the law to all bespeaks tolerance and respect for diversity.

20. These days much is said about the narrow socio-economic group from which judges have traditionally be drawn. What is put forward as a criticism is a statement of historical fact reflecting the ethnic composition of former generations of Australians and the limitations of class and gender on the educational and career aspirations of former generations. You must appreciate that judges are appointed from the senior ranks of the legal profession - they are seldom appointed before their mid to late 40's. They need to have certain human qualities, legal skills and experience in order to carry out their work effectively. Particularly over the last 50 or 60 years we have become much more of a multi-ethnic and multi-cultural society, and educational and career opportunities for all Australians have expanded exponentially. By far the majority of presently serving judges on all the courts throughout the



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

country were beneficiaries of the Commonwealth Scholarship scheme, which was introduced and gradually expanded in the post war era to provide opportunities for young Australians to gain tertiary education. Of the 24 judges on the Supreme Court of Queensland, 7 are women. The first was appointed just over 10 years ago, and the rest have all been appointed in the last 5 years. But it was only from the mid to late 1970's that appreciable numbers of women commenced legal practice in this State.

21. Having judges drawn from a wider cross-section of the community must enrich the Court. However, on taking office a Judge swears to apply the law impartially to all. Sir Gerard Brennan, a former Chief Justice of Australia, once said this about the judicial oath –

“It precludes partisanship for a cause, however worthy to the eyes of a protagonist that cause may be, It forbids any Judge to regard himself or herself as a representative of a section of society. It forbids partiality and, most importantly, it commands independence from any influence that might improperly tilt the scales of justice. ...

The oath requires justice to be done according to law.”

The community has a legitimate expectation that, in the words of an American judge (a woman) –



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

“A wise old man and a wise old woman will reach the same conclusion.”³

22. Court proceedings are conducted with a degree of solemnity, formality and courtesy. Certain procedural rules have been laid down to facilitate the resolution of disputes. Advocacy, the barrister’s craft, has been described as “tact in action”.⁴ There is an old saying, “Manners makyth the man”, and I would suggest that these forms and procedures, when properly applied, are no more than the application of good manners to legal proceedings. The British philosopher Roger Scruton wrote recently⁵ -

“Manners, properly understood, are the instruments whereby we negotiate our passage through the world, earn the respect and support of others, and form communities, which are something more than the sum of their members.”

23. Until I became a judge I did not appreciate that the successful functioning of a court room is the product of a team effort. When I look round a criminal court, for example, I realise that everyone in the room has a role to play - the accused, the security officers, the prosecution lawyers, the defence lawyers, the court reporters (who record proceedings), my associate, the bailiff, members of the press, people



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

in the public gallery, and of course, the jury and the judge. A hitch in one area can affect the whole. As the judge I must appreciate that everyone has a role to play, and try to let each participant know that I am conscious of that fact and that I value his or her contribution to the smooth running of the case.

24. By now you are probably wondering about the relevance of most of what I have been talking about to your role as school principals. For the most part I deal with the adult world - although social interaction and the pursuit of personal ends give rise to legal as well as social problems among people of all ages, all social and economic backgrounds. What the courts must try to do is to apply the same rules to all, not according to some preset formula, but in a way which takes account of the infinite variety of human experience and which endeavours, in a principled way, to fashion remedies most suitable to the particular problems at hand.
25. Unlike me, you and your teachers become integral parts of the lives of children and adolescents. You have the opportunity to contribute to the formation of their identities. To an outsider like me, yours seems such a constructive and potentially rewarding occupation - but I know that the responsibility you assume is truly awesome and that the pressures



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

on you can be enormous. I know, too, that your work is largely undervalued by contemporary society.

26. I have recently read a collection of essays by the Archbishop of Canterbury Rowan Williams entitled *Lost Icons*.⁶ He speaks of childhood as a period of latency, and stresses the importance of giving children time and space to form their identities. He says that a society for which the education of children is essentially about pressing the child into adult or pseudo-adult roles as fast as possible is one that has lost patience with a commitment to guarantee the integrity of such a period of latency.
27. Archbishop Williams makes the point that children need to be free of the pressure to make adult choices if they are ever to learn how to make adult choices. He says that the safest adult to have around is one who is aware of having grown - that is, one who knows in his or her own experience how transitions are made from one sort of choosing to another (which also means one who has not forgotten what it is like to be a child).
28. The pressures on our children and adolescents come from many sources and affect them in different ways. For some, it is an inner drive



GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003

to succeed and perhaps to excel; for some, family or even school pressure to succeed. For others, peer pressure or advertising pressure to conform or to experiment with pseudo adult behaviours, or pressures attributable to parental conflict or separation. Learning to deal with pressure is part of the process of growing from adolescence into adulthood.

29. So, too, is learning when to be competitive, and when not to be. Recognition and encouragement of individual strengths is an essential part of the nurturing process. Fostering and promoting the employment of those individual strengths in collaboration with others is just as important. A school can provide a wonderful community environment in which this can occur. As Archbishop Williams observed - the team that plays well in competition is one that has learned to work non-competitively within itself.
30. As educators, you tread a difficult path in giving young people room to grow but at the same time steering them away from pitfalls you can foresee but they cannot. The pursuit of individual needs and desires - opportunities to develop and use one's strengths - acknowledgement of the need for an underlying set of rules equally applicable to all - humanity - integrity - respect for diversity - appreciation of the talents



**GOLD COAST HEADS OF INDEPENDENT SCHOOLS ASSOCIATION
Kooralbyn - Tuesday 19 August 2003**

and skills of others - civility. These are core goals and values in our society. I suggest that they underpin your work as much as mine.

¹ Burnett DG, "A Trial by jury", Bloomsbury, London, 2002.

² Professor Alice Tay spoke of culture being colour blind and gender blind in "The Quality of Life", in "Women of the Year: A collection of speeches by Australia's most successful women", The Watermark Press, Australia, 1987, at page 28.

³ Her Honour Justice Coyne of the Minnesota Supreme Court.

⁴ The Hon. T.E.F. Hughes QC.

⁵ Scruton R, "Real men have manners" *News Weekly*, July 26, 2003, 12.

⁶ Archbishop Rowan Williams, "Lost Icons", T&T Clark Ltd, Great Britain, 2000.