

## Farewell from the chief

The following speech was delivered by the Hon JJ Spigelman AC upon the occasion of his retirement as chief justice of New South Wales at ceremony in the Banco Court, 31 May 2011.



Photo: Courtesy of the Supreme Court of New South Wales.

The welcome to country with which this ceremony began has particular significance for me. As I think most people here will be aware, association with the cause of Indigenous Australians has been an important part of my personal journey. The welcome has an additional symbolic significance.

Just as the elders of the Gadigal clan of the Eora people have been the custodians of the land on which we meet, the 16 chief justices of New South Wales, including myself, have been the custodians of the institutional traditions of the rule of law, since this court was established almost exactly 187 years ago.

Most people in this audience will have heard me speak, probably more than once, of the significance for our society of the longevity of our fundamental institutions of governance. It was a theme of my first address upon my swearing-in as chief justice. It has featured as a basic theme in the address I have given at each of the 400 ceremonies I have conducted for the admission of legal practitioners, during the course of which just over 23,000 lawyers were admitted. The point might by now seem belaboured, but it is a point worth belabouring.

Many of you would have been present on the occasion of the ceremony to mark the court's 175<sup>th</sup> Anniversary, in May 1999. I addressed on this theme, as did the then premier, Bob Carr. At my request, the two presidents of the professional associations stood aside and permitted the former prime minister, E G Whitlam QC to speak on behalf of the bar and the then serving prime minister,

John Howard to speak on behalf of the solicitors. A feature of that occasion was the welcome to country.

I believe that was the first time at any official ceremony in this nation that a welcome to country had been delivered. The then presiding officers of the two houses in the New South Wales Parliament informed me that it was that occasion which gave them the mantle of respectability to introduce a welcome to country in parliamentary ceremonies.

Only the speakers on that day and the president of the Court of Appeal were aware of my intention in this respect. You could have heard, to use a still serviceable cliché, a pin drop during the course of the welcome. Most of the people in the room had never heard one and had no idea what was happening. The position is different now. A welcome to country has become a familiar mode of commencing many public events. Contrary to the practice of some, I have not adopted it as universally applicable but best reserved for occasions, such as this, where it has, for the reasons I have mentioned, particular relevance.

I wish to make it clear that I have not come here to get anything off my chest. Having once before in my career made the transition from rooster to feather duster, I do not intend to emphasise my imminent powerlessness by exploiting the presence of an audience of this size.

In my address on the occasion of my swearing-in as chief justice I indicated that I looked forward to the intellectually creative process of writing judgments

because I regarded the judgments, of this court as part of a broader public discourse by which our society and polity affirms its core values, applies them and adapts them to changing circumstances. My expectations in that regard were fulfilled. The process was intellectually satisfying in the way I anticipated.

What I did not then anticipate was that I would also develop a substantial body of written work in the form of speeches. During the term of my office I delivered 180 speeches that were of sufficient substance to justify recording on the court's website. In this respect, also, I sought to make a contribution to the public discourse on a wide range of matters not limited to the law but extending, particularly, to history which, for a serving judge, is a comparatively safe haven.

Expressing my views in the form of public addresses had two distinct advantages. First, I choose the topic, rather than have the subject matter determined by the issues about which litigants choose to appeal. Secondly, the High Court cannot do much damage to a speech.

In my speeches I developed a number of themes. One theme was the significance for the legal profession and the nation of global engagement by the Australian profession, particularly engagement with our region, culminating in my address to the Law Society's annual Opening of Law Term Dinner this year. The skills of our lawyers and judges, together with their reputation for professionalism, competence and impartiality, is a significant national asset. It is what the economists call a sphere of comparative advantage.

The initiatives I undertook in this respect included reinforcing our traditional ties with the judiciary of England, with the result that English senior judges have attended each annual Supreme Court Judges Conference. In the Asian region I negotiated, with the support of Chief Justice Gleeson, with three successive chief justices of India leading to the first, now regular, exchange between the judiciaries of our two nations; I organised the first judicial exchange with the Supreme Court of Japan; I initiated the Asian/Pacific Judicial Seminar on Commercial Litigation, the third such seminar having been held in Sydney two months ago, jointly organised by the Supreme Court of New South Wales, the High Court of Hong Kong and the Supreme Court of Singapore, attended by high level delegations from virtually all the major nations of the region.

Perhaps the relationship I have worked hardest to establish is the exchange with the judiciary of the People's Republic of China. I have led several delegations to China and judges of the court have participated in the judicial training of the National Judges College of China, virtually every year for the last seven years.

There was always a prospect that this relationship was personal rather than institutional. I am very pleased, therefore, that, after my most recent visit to Beijing, I was able to negotiate a number of Memoranda of



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Understanding on Judicial Exchange which will ensure that this relationship continues. It is necessary in a nation as large as China to select particular regions and, with the support of the Supreme People's Court, I approached three provinces and the National Judges' College. In the last week I have signed memoranda of understanding with the presidents of the High Courts of Hubei Province, Guangdong Province and Shanghai and anticipate that a memorandum with the National Judges' College will be finalised soon.

From the point of view of our nation this is one of our most important relationships. The significance of developing our understanding of China, including its culture and institutions, cannot be underestimated.

An occasion such as this gives me a public opportunity to thank all those many people with whom I have engaged in the course of serving on this court. My first, and most significant, recognition is to all of the judges, including those who have retired.

Without exception these are men and women of considerable capacity and dedication with many of whom I have had the closest of interchanges of a jurisprudential character, whilst sitting on the Court of Appeal and the Court of Criminal Appeal. All of those

judges made substantial contributions to my own understanding of the law during the course of that interaction.

I have interacted with every member of the court when organising the affairs of the court, whether it be in the context of legislative proposals, drafting rules and practice notices, developing case management, attending conferences, seminars and involvement in the full range of committees through which the court maintains and improves its capacity to serve the people of the state. As a collective and collegial body of men and women I could not have asked for a richer or more satisfactory experience.

It is invidious to single out particular people, however, I should acknowledge the particular role of the heads of the three divisions of the court with whom I have served: Keith Mason and James Allsop as presidents of the Court of Appeal; James Wood and Peter McClellan as chief judges at Common Law; David Hodgson, Peter Young and Paddy Bergin as chief judges of the Equity Division. Their contribution to the jurisprudence of the court is of the highest order. However, I, more than others, am aware of the contribution that they have made to ensure the effective and efficient operation of the court in the day-to-day administration of their respective divisions, particularly the performance of the pastoral functions that inevitably arise with respect to individual judges. They bear the principal burden of much of the task of running an effective and efficient court and the success of the court during my term of office is in large measure due to their dedication and competence.

The court operates through a structure of committees. It is not possible to list on an occasion like this all of the names of those who chaired these committees, let alone served on them. Critical areas of the court's activities – education, rules, information technology, the building – are dealt with either completely, or at first, by these committees.

I also express my appreciation to the staff of the library and to the registrars and staff of the court, led for most of my term of office with great skill by Megan Greenwood, now a magistrate. Their dedication, sometimes under great stress, has been of the highest order.

In consultations about legal policy and appointments to

the court I have had the benefit of a close relationship with four attorneys general who held office during my period. The late Jeff Shaw, whose personal tragedy affected all members of the court, was a fine lawyer and a fine attorney. It was a pleasure to deal with him. With both Bob Debus and John Hatzistergos this close relationship continued and, albeit briefly, has also been manifest in my relationship with Greg Smith.

Of particular significance has been the consultation that has always occurred between each of the four attorneys and myself on the issue of appointments to the bench. There was never an occasion on which I had any doubt that each of these attorneys was determined to ensure that the appointment was of a person of whom the court would be proud.

Perhaps the most significant change during my term of office in this respect is the progress made to remedy the gender imbalance on the court. When I was appointed there were two women judges and one woman master. There are now ten women judges, one an associate judge, and we allowed one woman to go to the High Court.

I have had fruitful dealings with a number of public servants. I cannot name them all. However, Laurie Glanfield has been head of the Attorney General's Department throughout my 13 years of office. He was first appointed head of a government department under the Greiner government and his survival skills are comparable to those of Talleyrand. My dealings with him were always positive and purposeful. He also performed a very useful function for me. I could blame him for everything I did not want to do.

I also wish to acknowledge the contribution of those with whom I have served on the Judicial Commission of New South Wales, an organisation which makes an outstanding and internationally recognised contribution to judicial education, to criminal justice particularly sentencing statistics and by the handling of complaints against judges. It is the forum in which I have met and worked closely with each of the heads of jurisdiction of the other courts in New South Wales, together with the non-judicial representatives on the commission. We have been served exceptionally well by the dedicated staff of the commission, led ably by its chief executive, Ernie Schmitt.

Throughout my term of office I have had a first class

staff. My first associate, Sue Pearson, who began in the chief justice's office during the term of Sir John Kerr, served throughout the Street and Gleeson courts and for about half of my term. Her institutional knowledge was invaluable. Throughout she served with competence, tact and discretion. I very much regret that she left on somewhat unhappy terms.

Her successor, Susie Packham, has performed her duties with the highest level of competence and wisdom and consummate organisational skills. She is a woman with a wide range of interests, with whom it has been a pleasure to work.

Christine Leondis has served in the Chief Justice's Office since 1985. Her accumulated knowledge of legal terminology and the personalities of the law has ensured that she carried out her responsibilities with accuracy and speed. My driver, Sean Doherty, has been as delightful as a Tigers supporter could be. He has saved me enormous amounts of time, which I could devote to my principal functions.

I have had the intellectual joy of having as staff members an array of young legal talent, almost all of whom were with me for two years, during which they served principally as researchers for my judgments and speeches. There are too many to name. They were all intelligent young men and women, each of considerable accomplishment both in their studies and in extracurricular activities. I have thrived on the stimulus of interaction with the younger generation in a daily exchange of views. Collectively their contribution to my judgments and speeches has been of the highest order. I have watched with pride as their careers have developed since they left me and I look forward to their future success.

In conclusion, I want to publicly express my debt to my wife Alice. Our marriage and family life has been, and remains, the most important bond of my life. To some degree my role as chief justice and lieutenant governor has expanded our horizons. In other respects it has narrowed them. We have enjoyed many functions and events together. Some not quite as fascinating as others. You attended all with your grace and charm intact.

I have always admired and received inspiration from



Photo: Courtesy of the Supreme Court of New South Wales.

your dedication and competence as a companion, as a mother, as a psychologist, as a writer and in the wide range of public activities to which you have contributed. Your work at the Benevolent Society and on the boards of the Bundanon Trust, the Australian Institute of Music, the National Institute of Dramatic Art, the UN High Commission for Refugees, the UNSW Faculty of Architecture and Sculpture by the Sea have ensured that I remained engaged in a world beyond the confines of the law.

I have relied on your counsel on numerous occasions, particularly in any context involving a human dimension, where your wisdom and instinct is unsurpassed.

You are my life partner and the prospect of spending more time with you is my sole consolation about leaving this court and the people I have come to know so well and whom I will miss.

For a final time, I can say: 'The court will now adjourn.'