VALEDICTORY
THURSDAY, 17 AUGUST 2017

Your Excellency, Chief Justice, Attorney-General, judicial colleagues, including Chief Justice Kiefel and Justices Bell, Gageler, Keane, and Edelman of the High Court of Australia, Justice Dowsett, the senior Federal Court judge resident in Queensland, Chief Judge O'Brien, Chief Magistrate Rinaudo, and Judge Kingham, President of the Land Court; the Shadow Attorney-General, Mr Walker, Mr Hughes, Ms Shearer and other members of the legal profession, retired judges, ladies and gentlemen.

My departure from the Court next week coincides with the end of my second five year term as Senior Judge Administrator. Other factors indicate that my leaving is timely, among them: that 20 judges appointed to the Court after me have – through death, resignation or retirement – already gone; that my Associate is the fourth such who was not even born when I became a judge; and that only two judges appointed to the Court in more than a century have been here longer: the grandson of one – Justice Douglas – sits with me today; the other is his Excellency the Governor.

The Governor's remarkably successful 16 years as Chief Justice finds physical expression in this splendid building, which he persuaded the government of the day to construct.

Your Excellency, you honour us by your presence.

A valedictory can be a time for reflection; it is an opportunity for expressions of gratitude.

47 years ago, my practical experience of the law began – as an articled clerk in what was then the largest law firm in the State.

Ethical standards there were high, and the partners were committed to service: to their clients, to their profession and, through membership of community organisations, to the public.

The partners recognised that their duty to put the interests of clients ahead of their own constrained expectations about levels of remuneration. They sought a comfortable living from practice. They did not appear, however, to aspire to the riches of those pursuing self-interest in commerce. There were income targets. But, in those gentler days, there were not the pressures of the billable hour or a six minute charging unit.

The lawyers at the firm took to heart the message printed on a Queensland Law Society bumper sticker that a former President of the Society, Denis Byrne, kept on his fridge door. It read: "Solicitors solve problems", which is as it still should be.

Although qualified to be a solicitor, I was admitted as a barrister. Then, for about six months, I worked as a law clerk. To accommodate concerns of the Bar Association, the firm accepted that I would not exercise a barrister's rights of audience.

After returning from studies in the United States, I joined a small set of barristers' chambers where two of my friends and contemporaries from law school, Paul de Jersey and John Dowsett, were already hard at work. I learned from them, as well as from quite a few of the 130 or so barristers then practising in Brisbane.

The 70s and 80s have been described, aptly, as a "golden age" for the Queensland Bar.

By 1980, when John Macrossan joined the Court, there were about 10 senior counsel of outstanding ability practising in Brisbane.

All but one of them answered the call to judicial service.

In those days, the two counsel rule operated. Anti-competitive it may have been. But it had the beneficial effect that junior counsel like me learned much quite quickly, working with, and appearing against, talented silks.

My practice was, almost exclusively, civil. But I did appear in two criminal trials: in my second year, at the Bundaberg District Court, before the formidable Judge Pat Shanahan.

In the first trial, my young client was found not guilty of stealing a coat. His obvious pleasure at the verdict was diminished somewhat when, before the jury had left the courtroom, the judge stood him up and told him: "The next time I see you here, you'd better have your toothbrush with you".

The second trial had not progressed far when, with firm judicial encouragement, the prosecutor elected not to proceed.

So, with an unblemished record, I retired from criminal trials.

Commercial litigation absorbed much of my time at the Bar; and that area of conflict remains my main intellectual interest in the law.

Those who toil daily resolving commercial disputes – in court and out of it – usually are too occupied doing so to reflect on the societal value of their labours.

Efficient markets for services and commodities generate wealth; and a nation's prosperity depends substantially on the effective enforcement by courts of contracts and rights in property.

One of the pleasures of my judicial life has been observing advocates ply their craft well.

I have enjoyed seeing skilful, thoughtful barristers and solicitors – bent on achieving a useful result for the client – exercise discrimination in selecting the issues raised and the arguments advanced, taking only those points that have fair prospects of success, in cases that are properly prepared.

My meagre exposure to crime meant that the first summing up I heard from a Supreme Court judge in a criminal trial was one that I gave.

Chief Justice Macrossan prepared me for that. Aware of my lack of relevant experience, he cautioned: "John, I hope you're not going to make the mistake of trying to help the jury"; proceeding to explain that to sum up was to sit for an examination by the Court of Criminal Appeal.

Criminal courts help to maintain social harmony. And in the last decade, the Court's criminal jurisdiction has engaged more of my attention.

Ordinarily, we list the more complex trials before the more senior judges.

That listing policy does, however, assume that Samuel Taylor Coleridge – himself, the uncle of a judge, and the great-uncle of a Lord Chief Justice – did not have judges in mind when he said that generally:

> "…experience, like the stern lights of a ship at sea, illumines only the path which we have passed over".[1]

Watching juries has been fascinating. Much is expected of jurors: to set aside other pursuits, sometimes for weeks; to cooperate with strangers, working towards a common conclusion in occasionally emotionally charged cases; to sit and remain silent, for hours on end, while information is communicated, mostly orally; and then to apply instructions from the judge that are not always easy to grasp.

For all that, the response of jurors to their burden is impressive.

I have had the good fortune to lead two bodies that serve Australia's judiciary: the Australasian Institute of Judicial Administration - which aims to achieve excellence in courts and tribunals - and the National Judicial College of Australia, which enhances the professional development of judges and magistrates throughout the country.

The governing councils of both organisations include people who are not judicial officers.

Two of the six members of the Council of the Judicial College are appointed by the Attorneys-General of the Commonwealth and the States and Territories. In the four years I chaired the College Council, those appointed by the Executive made valuable contributions.

The Institute and the College could not function without financial assistance from government. The work of these organisations exemplifies the advantages that can be secured by appropriate Executive involvement with the judicial branch.

Attorney, Ms Shearer and Mr Hughes, I thank you for the generosity of your remarks.

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[1] *The Works of Samuel Taylor Coleridge, Prose and Verse*, (1840) Thomas Cowper Thwait, p.427.

Ms D'Ath, I appreciate the courtesies you have extended to me in our dealings, as well the careful way in which you have approached the selection of judges of the Court.

Mr Hughes and Ms Shearer, the dependence of the judges on the competence, character and industry of practitioners who conduct cases in the Court is plain to see.

What is not always sufficiently acknowledged is the contribution made by leaders of the legal profession to public understanding of the courts; in particular, in explaining why a diligent, competent, incorruptible, independent, Supreme Court is essential to the rule of law in Queensland – a proposition that could not be doubted by anyone who has reflected on recent events affecting the judiciary in Poland, Turkey and Venezuela.

It is to ask a lot of prominent practitioners to put aside the cares of a busy practice to speak with the rest of the profession - and to engage with the wider public - about the importance to the welfare of our society of an independent, capable Supreme Court.

Fortunately, when, in recent times, the need arose, retired judges of this Court and practising lawyers of integrity spoke out.

Judges are not self-sufficient. And there are others who deserve thanks.

My 28 Associates – many of them here – have lightened my load. And they have often brightened my day: not just because the annual turnover of Associates has meant that I can tell the same old stories, year after year, to a receptive audience.

Their exuberance has for me been – in a word – rejuvenating.

An abiding interest of mine has been following their later achievements: among them, a Rhodes Scholarship, and triplets.

I am grateful to my Executive Assistant of eight years, Lyn Klein. Not without justification, she worries about how I'll get by without her.

My administrative duties have brought me into contact with many Registry and other staff of the Department of Justice and Attorney-General.

As long ago as 1889, it was established, by a decision of the Full Court[2], that all Court officers are subject to the authority and control of the Court – something that Departmental officers assigned to the Court accept.

My relations with senior public servants – most recently, Director-General Mr David Mackie, and the Principal Registrar, Ms Julie Steel – have been comfortable and productive.

I have memories of many other conscientious, able staff, who strive to facilitate the administration of justice, including bailiffs, list managers, team leaders; those who process

[2] *Byrnes v James* (1889) 3QLJ 165, 168, 171. See also B H McPherson, *The Supreme Court of Queensland*, (1989), p.73.

the thousands of new files and probate applications every year; and those who help the thousands of citizens who serve as our jurors.

I thank them all.

My fellow judges – past and present – have given me much assistance. Their cooperation has been vital to the Court's capacity to function during my 10 years heading the Trial Division.

My colleagues who sit to dispose of the business of the Court of Appeal and the Trial Division already know, from private conversation, the extent of my respect for them as well as the depth of my appreciation for their dedication to the discharge of their responsibilities.

I leave the Court in very capable hands.

My partner, Jennifer, has, in many ways, supported me throughout my years on the Court.

This public event is not – for me at any rate – a time to relate private concerns. But I can tell you this: Jennifer's, invariably sound, advice has included guidance on how better to compose a summing up to enhance jury comprehension. And she has tried to keep me level-headed with timely encouragement to address my several failings.

It is RNA show time in Brisbane – an exhibition with many attractions, including those whirling devices in Sideshow Alley that throw screaming children around.

As I look back over the 28 years during which I have been privileged to share in the exercise of judicial power, I think of the adolescent who, having been tossed about and turned over on one of those machines, steps off and, with a mixture of exhilaration and exhaustion, exclaims: "What a ride!"

Thank you all so much for being here.