Reflections on Life at the Bar

A revised version of an after dinner speech given by Mr Justice Bryson to a Master & Reader's dinner.

I should like to take the opportunity to deliver a budget of advice and wisdom ground small in the mills of my two decades of practice at this Bar. I do not believe in hijacking rostrums and addressing astonished audiences of pig-breeders or brain surgeons about the burning issues of the day, so I will leave them to glow at one side.

The profession of the law is not like others.

There is nothing to be certain about: nothing building up for your old age, no Annual Holidays Act or sick leave, except what you pay for yourself. You get no necessary advancement or respect for seniority; mere survival is not enough. You only get what people are prepared to give you. If it ever were true that young barristers received steady or even glittering briefs on the strength of family or old school ties it was never true in my time, and merits have always been to my observation indispensable. The Bar exposes itself to all the laws of supply and demand in as unmitigated a form as exists in Australia. Protection and subsidy are as Australian as tomato sauce, but they do not work for us. A year or two's experience will show you that any measures which really changed this would soon sink the Bar out of sight. Only the hard driving, self-motivated, learned and energetic could make any success of it. A secure barrister lacks the quality summed up by the prince of clerks, Ken Hall, who told me early: "A good barrister is a hungry barrister." Barristers must all to some degree be adventurers to have made their way to the Bar: willing to give up the years which others give to climbing ladders in large organisations, or even willing to jump off the ladders after climbing a good way up, to invest all savings and almost all leisure time in trying what can be done. Everybody's favourite economist, Adam Smith, saw it all two centuries ago and gave his explanation of barristers' fees in these terms in "The Wealth of Nations":

> "Put your son apprentice to a shoemaker, there is little doubt of his learning to make a pair of shoes; but send him to study the law, it is at least twenty to one if ever he makes such proficiency as will enable him to live by the business. In a perfectly fair lottery, those who draw the prizes ought to gain all that is lost by those who draw the blanks. In a profession where twenty fail for one that succeeds, that one ought to gain all that should have been gained by the unsuccessful twenty. The counsellor at law who, perhaps, at near forty years of age, begins to make something by his profession, ought to receive the retribution, not only of his own so tedious and expensive education, but that of more than twenty others who are never likely to make anything by it. How extravagant soever the fees of counsellors at law may sometimes appear, their real retribution is never equal to this . . .
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> . . . with regard to all the counsellors and students of law, in all the different inns of court, . . . you will find that their annual gains bear but a very small proportion to their annual expense, . . . The lottery of the law, therefore, is very far from being a perfectly fair lottery; and that, as well as many other liberal and honourable professions, are, in point of pecuniary gain, evidently under-recompensed.
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> Those professions keep their level, however, with other occupations, and, not withstanding these discouragements, all the most generous and liberal spirits are eager to crowd into them."

Whether barristers enjoy this recompense to the full or not, they will realise in the course of 3 or 4 years whether the Bar is to be the career for them. Less time than that is not enough: more time than that is not certain. It is no stigma to have tried the Bar and left it; this is a valuable experience for many other walks of life. The failure would be to try but not for long enough.

The Bar has great potential for rewards. Not all the rewards are financial. A great reward, for me, of a career at the Bar is admittance into the company and society of other lawyers. Every newspaper tells all who have 40 cents that lawyers are dull and narrow: I have never found this true. All sorts of people are lawyers, all sorts of characters, backgrounds, prior careers, hobbies and interests; variety everywhere: as various as humanity is various. They are all clever, some up to a point, some beyond it, and they all have something to say. Stimulating company is one of life's joys: not having it is a great fear, and the Bar provides it. Of course, human society, human relationships, art, culture and intellectual interests tend to become minor themes of life's music behind the crescendo of tomorrow's brief. To have friends is to give hostages: if you value the regard of other people, this assists you to govern your behaviour well. Everything a barrister does in court is public; the failures and humiliations are public, the criticisms attracted are public, the triumphs are public and the blunders and misjudgments are all over Phillip Street in two hours. Gossip is discipline: to have a good regard for other people is to wish for their good regard, and this is a valuable discipline and confers great benefits on the community

Enjoying the 1972 Bench & Bar Dinner: (L to R) D.F. Oakes, Judge Torrington, J.P. Bryson & M.E. Pile, Q.C.

as well as on individuals. It would not be wise to attempt to practise outside this Association. If you find that you do not come to the Bar Association for lunch, not ever, and cannot bear to do so, ask yourself whether this is avoidance of scrutiny. It is easier to treat other barristers honourably if you know them and know they know you, if you look down future decades in which you must deal with them and need the courage to look each of them in the face.

The greatest reward of the Bar is the work itself. There can be few experiences more challenging or more stimulating to the wits and the adrenalin than the contest, criminal trial or commercial cause, in which two, three, five or more defendants, cross defendants or hangers on with their counsel circle around each other seeking the opportunity to precipitate trouble for the others. Nothing could be more stimulating, more demanding, could take more attention, could get more out of one's resources, and put more in, than sharpening competition with other nimble wits. As well as the money and the excitement, the work itself is manifestly important. Ask a client if this is so, ask him if you dare whether his case is important. The presentation of opposite side of a case by adversaries is a vital element in the emergence of the true and just solution. Nothing less could stimulate the necessary efforts. A Bar which was lazy or uncaring would not be useful and soon would not exist. It would be replaced by a miasma of welfare workers and clerks shuffling papers about, scribbling scraps of misunderstandings and disposing of person and fortune by rote and rule of thumb. It really seems unlikely that a building stuffed with clerks shuffling files can improve on the courts as an engine of justice, although the idea has its supporters. The real winners would be the sellers of the filthy blue cardigans so favoured by government clerks, each with baggy pockets containing Champion ready rubbed tobacco: the end of the reformer's goal of deconflictualisation.

Challenge, stimulus and response, application and fire in the needed hour are a barrister's life. There is no easy way, and the sacrifice of hours required is unmeasured. The interest of the work is always absorbing: the challenges to imagination and creativity, learning and craftsmanship in recognizing, constructing and presenting legal arguments are present daily. There can be little more exciting to a trained mind. The conflicts themselves are of great importance. Counsel stands between the individual and the large, the collective and the powerful; the vast company, the government. Governments always and everywhere claim to be desperately short of money, but governments build pyramids and fire moon rockets and when they enter forensic contests they always prove to be well funded. It is largely the Bar which stands against dominance by government and, to speak closer to the problem, the people who make up and nominally serve governments.

The most visible and in detail and in the small incidents of life potentially the most threatening organ of oppression is the police and the prosecuting system. I say this with respectful acknowledgement of the community's debt to police, on whom we all depend, but no-one least of all counsel can be blind to the dangers which their powers create.

It is in this respect that we must be mindful of the high importance of the resolution by juries of conflicts which in reality involve the values which people think their governments should observe. Jury trial in criminal cases is of the first importance. It is even more important than ever since in the last one or two centuries our institutions have found themselves in an age where the community is democratically governed and in truth must look to itself to govern itself.

A very strong popular legend or mythic explanation of life in our time is based on the thought that the government is different to the people, and is hostile. There is probably some trace of reality in this perception, but in a democracy it should comfort no-one. A jury is a committee of a self-governing community and if the things they decide are unsatisfactory to the community it cannot dump the blame on an elite, or on a caste, or on a profession. Participation in jury trials is as important a thing as a barrister can do. I include not only the criminal work but the civil cases which mark out and enforce the limits of the conduct of officers of government, particularly of police and other services who handle people's liberty. The right way in principle as well as the effective way to maintain the limits of official conduct is through the verdicts of juries. The damages sued for fade into insignificance: this is truly a venue for fighting cases on principles and establishing the principles. If there are no professional advocates and indeed Judges who understand jury work, liberty is not well defended.

One advantage which no longer can be held out to young barristers in the way it was to me is the prospect of overseas travel. In March 1986 it became impossible to bring any more Privy Council appeals from Australia. The last appeal from New South Wales was heard in June 1987 and the judgment delivered on 27 July. A long era has ended. Their Lordships in their time heard appeals from judicial decisions of Governor Phillip. In Australian natural history they will soon join the Diprotodons. They are facing a further large loss of business when Hong Kong, now their main source of work, passes out of British hands in 1997. But it was pleasant for me to be briefed twice to travel to London, to sit in court behind a leader and — holding a brief for a respondent for two days — to hear the best legal minds in Britain tear the appellant's case to shreds, and then to hear them say that they did not wish to hear any submissions from us and that the decision under appeal would be affirmed. Their Lordships' method was that the most senior Law Lord and the most Junior had completely mastered the volumes of transcript and argument which had been sent over from Australia several months before: they alternated in hectoring counsel from different parts of the Board while the other three sat like their grandsires cut in alabaster, lending nobility but little else to the scene. That is the true history of my career of advocacy in England: with it came two return tickets, a significant advantage. Their Lordships are lawyers entitled to great respect, but the idea of sending litigants to London to fight a case was a great idea whose time had gone. This was the close of a significant chapter.

Let me tell the very junior Bar one or two secrets about Judges.

They really want to hear from you. The challenging or dismissive observations which ring across the Court are not truly intended to make you crawl away or gape in astonishment or fear, or vomit between your knees. I have seen some of these responses, but they are not what is required. The sharp or firm observations are attempts to evoke your response: give it: crackle with inward fire and produce an accurate and ingenious response. The judges are all really interested in what you have to say, and wish to promote your expressions. Not many, or perhaps any, fit these two examples, taken from Professor Shetreet's "Judges on Trial":

> "In his *Victorian Chancellors,* Atlay reported the scant attention that Lord Brougham would give to counsel's argument: 'He would write letters, correct proofs, read the newspapers, do anything, in short, but follow the arguments and listen to the affidavits.'
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> Sergeant Ballantine in his memoirs gave a very good account of Lord Campbell's impatience:
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> I remember upon on occasion during the speech of a very able counsel, now a judge, that after having shown many signs of irritation, his Lordship could no longer keep his seat but, getting up, marched up and down the bench, casting at intervals the most furious glances at the imperturbable counsel and at last, folding his arms across his face, leaned as if in absolute despair against the wall, presenting a not inconsiderable amount of back surface to the audience."

Young barrister going to Court — 1966

Now I will point out to you how judges may come to grief and what they might get up to if they are not carefully watched. You must all have been wondering about this so I will explain what can be done, but to avoid treading on any toes I will stay a few centuries away from our own time and tell you about Lord Macclesfield. He was the Lord Chancellor and he came to grief in 1725. He was then entitled to appoint Masters in Chancery, in an age when the Auditor-General and the idea that government money should be put in a bank had not been invented. The Masters in Chancery had the keeping of money paid into court for the benefit of widows and orphans, and what better investment but to pay standard interest to the widows and orphans and buy shares for one's self in the South Sea Trading Company. When the bubble burst and the peevish widows began to complain of hunger, it was found that people had been buying the office of Master in Chancery from the Lord Chancellor at very high prices, which they had paid out of the funds in Court. One paid 1575 pounds — 1500 guineas — and was immediately ushered up the stairs and sworn in by his Lordship, who was in bed at the time. Another had to go to 5000 guineas: he sent the money round in a washing basket, with gratifying results. Later on when the bubble burst he asked for it back, but received back only the basket. He had offered 5000 pounds but his Lordship's clerk replied: "Guineas are handsomer". I suppose he learnt to haggle when his Lordship was at the Bar. Lord Macclesfield was tried before the House of Lords, fined 30,000 pounds and removed from public life. The trial took 13 days in May 1725.

Another person worth mentioning is Harry Claiborne. He falsified statements to the revenue officers, while he was a judge, and managed to get himself sent to prison for it. He was impeached and removed from office. His trial took two days. This took place in the U.S. Senate in November 1986, the first such trial in fifty years. Of course, there are many demands on parliamentary time. But I will not trespass into the controversial.

The relationship between Masters and readers is capable of being a poor and tenuous thing. That would be an error. The base exists for a life-long friendship and sharing of ideas, punctuated by the occasional clash when you find your Master briefed against you in later years. The Master's mind is there to use, and he needs yours. Share your knowledge and thoughts and do not disappear into the background at the end of your reading year. The first year at the Bar is the opportunity for some vicarious experience and the observance of pitfalls. The best repayment is to give your own time patiently to explanation, and to assist others as pupils in due time.

Please accept a short closing homily in praise of patience, openness to criticism and a mind ready to hear the other person's problem. The lawyer has many clients and does not belong to any of them: but if lawyers stop listening, the system will die. The client will deceive himself if he is all demands and insistence on service and results. All he will get will be a sycophant: he will not have the benefit of a splash of cold water over his ideas before they cost him too much money. The lawyer cannot be all arrogance, confidence and finality. He will not notice when he is being told something important. □