Oral History Program interview transcript

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Interviewee	The Honourable John Byrne AO RFD
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Notes	This interview concerns the Hon John Byrne's legal career.

Start of interview

Cathy Van Extel: [00:00:00] This is tape one of an interview with the Honourable John Byrne AO RFD, retired Queensland Supreme Court Justice and Senior Judge Administrator. The date is the 17th of April 2019 and we are recording this interview in John Byrne's George Street office in Brisbane. John Byrne is talking to me, Cathy Van Extel, for the Queensland Supreme Court Library oral history project. John, let's start with the early years of your legal career. You studied law at The University of Queensland and [00:00:30] in the early 70s began as an articled clerk for Morris Fletcher and Cross which, was the largest law firm in the state. Can you tell me about that time?

The Hon John Byrne AO RFD: Yes. The tradition in those days was that people in their last two years of law school would often enter into articles of clerkship. It was a two-year period when you studied part-time and worked in a solicitor's office learning how solicitors ran their practices and the kind of work [00:01:00] they did for their clients and how they did it. So it was a training period for lots of us who were in many cases working in our first jobs.

CV: Once you'd qualified as a solicitor, you were actually admitted as a barrister. Is that right?

JB: Yes. I was qualified to be admitted as a solicitor. But, in fact, I was admitted as a barrister.

CV: And that caused a few ructions.

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JB: There was one minor complication. The Bar Association was concerned at the time [00:01:30] at the thought of barristers working in solicitors' offices. They were troubled that work might be taken from the Bar to centres of advocacy in solicitors' offices. And so, although I was entitled as a barrister to appear in court, the firm agreed that I would not exercise that right while I remained employed as a law clerk in the firm.

CV: And did that settle the matter?

JB: Yes, it did. I [00:02:00] wasn't the first person who was a party to such an arrangement. It had happened with one other solicitor before me, who in the first place had been admitted as a barrister.

CV: So it put you in a rather unique position though amongst your fellow solicitors.

JB: In the sense that they could appear in court and I couldn't, yes.

CV: You left Brisbane to pursue postgraduate study in the United States. You gained your Masters of Law at the University of Michigan. At the [00:02:30] time it was unusual to go the US. What took you there?

JB: I wanted to engage in postgraduate studies, and I didn't want to go to England. I took the view that the English universities - the law schools at any rate - were too conservative. I was interested in business law and I thought the United States was the place to go. I was anxious to attend an elite law school in the United States.

CV: And how do you think that assisted your [00:03:00] career in commercial law?

JB: It exposed me to new ways of approaching the solution of legal problems. The academics who taught there frequently had a practical background, which was unusual for academics in Australian law schools. And I think it was of considerable assistance to me in the early days; and it was a confidence boosting experience as well because I was able to achieve academically at that level.

CV: You returned to Brisbane [00:03:30] and started working as a barrister, joining chambers with a small group of barristers on level 18 of the MLC Building. Tell me about that period.

JB: Well, at first I started in the Ansett Centre in 1974 and moved to the MLC Centre about three and a half years later, in May of 1977. In the period that I was at the Bar, the Bar was much smaller. There were probably about a hundred and ten people in [00:04:00] active practice in Brisbane, and some in regional centres, but not many. So people by and large knew each other. The work was quite different from what it's subsequently become at the Bar. There was a greater variety of work for new barristers than there is at the moment. And I was fortunate to be in chambers with some talented young barristers; and it was at a pretty [00:04:30] interesting and active time.

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CV: You talk about talented young barristers. Two of those of course were John Dowsett who became Supreme Court Justice and Paul de Jersey who later became Chief Justice of Queensland, but those ties went back to your student years and continued right through your professional career, didn't they?

JB: They did. The three of us first met in 1965 when we were in debating teams at our schools. We were contemporaries at the law school [00:05:00] and we served in the Army Reserve together. So, yes, we knew each other very well for a long time.

CV: Do you feel like you've shadowed each other through your careers?

JB: We've had some similar experiences.

CV: You mentioned that the three of you were long involved in Army Reserve. How did that shape you and your friendship and how did it sort of shape, I guess, your approach to law?

JB: The Army Reserve was, I think, useful to many of us, for a number of reasons. [00:05:31] One, it had its demands physically and mentally. It was good to be tested in that way. But I think among the more important advantages that Army Reserve service provided were in respect of officer training and leadership: in particular, the armed forces had a very useful problem-solving device, called a military appreciation, which is easily transferable to an adversarial system of justice where you have people who are opposed to each other. [00:06:01] And for obvious reasons, the armed forces need to be able to solve problems in combat effectively, and this mechanism is a very valuable problem-solving device, which many barristers, before and after me, used successfully in the practice of an advocate at the Bar.

CV: In chambers, you quickly became a star of commercial litigation and in your [00:06:31] valedictory speech you revealed that this area, that this area of conflict, in fact remains your main intellectual interest in the law, and why is that?

JB: My father was a businessman and I think it's related to the fact that we used to occasionally talk about matters of business. I used to work in his factory as a child and, at a pretty early stage, I became interested in commercial transactions [00:07:01] and their importance to our economy and ultimately to all of us.

CV: You took silk in 1982 after an extraordinarily short nine years in practice. It wasn't without controversy. Can you take me back to those days?

JB: In 1982, there was a new chief justice, Sir Walter Campbell, and there were a number of applicants for appointment as Queen's Counsel. The youngest [00:07:31] and the most junior were me and John Dowsett. The year before, Paul de Jersey had taken silk. He'd been at the Bar for two years longer than I had and a year longer than John Dowsett. Eight people were appointed by Sir Walter Campbell as Queen's Counsel in that year, and they included three from my chambers: me, Dowsett and Ted Lennon, who was the most senior of the barristers with

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us.[00:08:01] And it was a little controversial because there were people who were more senior to us who had not been appointed; and there were people who are more senior to us - to Dowsett and me at any rate - at the Bar who did not apply and I think regarded the application by me and John Dowsett as almost impertinent because we were so junior at the Bar. I think some of them were surprised and disappointed when the Chief Justice took a different view of our applications.

CV: [00:08:31] What inspired you to apply?

JB: I was overwhelmed with work and I was looking at a way to be relieved from the burden of it.

CV: The decision by Sir Walter Campbell was in fact criticised. How did he respond to that?

JB: I didn't ever discuss it with him. So I don't know. He'd have been aware of the criticism. But he was a very clever man and would have anticipated it at the time he made the decision to recommend that we be appointed.

CV: [00:09:01] There were flow-on effects in terms of the Bar Association. Can you take us through that?

JB: One or two of the people who applied for silk the year Dowsett and I did were upset that their applications did not succeed, and somehow or other they were persuaded that David Jackson, who was a very senior and very able barrister, and who was Vice-President of the Bar Association [00:09:31] had a hand in it. I think there was nothing more to it than that the President of the Bar, who was Bill Pincus, and David Jackson had been consulted by Sir Walter, which was a perfectly proper thing to do. And one or two who were disaffected assumed that Jackson must have spoken against them. So when he stood for the position of President of the Bar Association, they - a couple of them - actively sought to encourage opposition to his appointment. [00:10:01] It was unfortunate because he was a very talented barrister. He still is actually.

CV: And were there ramifications for his career as a consequence of that?

JB: He went to practise in Sydney and I think that what happened in connection with the Bar Association had a part to play in that.

CV: So it was a loss to Queensland.

JB: Yes in a way because [00:10:31] he was a very talented Barrister. He was in fact my master when I was appointed to the Bar. I think he had only three pupils and I was one of them. So my view about him I think is influenced by the fact that he was not only obviously very talented but kind to me personally.

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CV: Ian Callinan became President at that time, but clearly there was division within the ranks. Was there efforts [00:11:01] made to unify?

JB: I don't think it was regarded as a sufficiently serious rift. There hadn't been a challenge to someone who was a Vice-President seeking to assume the presidency for a long time. But it wasn't unknown of historically and people just accepted that elections were proper things to have; and Ian Callinan succeeded.

CV: This period in [00:11:31] the 70s and 80s was considered a golden time for the Bar in Queensland. Can you reflect on why it's considered that way?

JB: It is because there were about a dozen or so very talented barristers. Sir Gerard Brennan was still at the Bar in the early 70s. So was Peter Connolly, Cedric Hampson and quite a few others. I could go on. And then in the mid-70s, [00:12:01] there were a number who took silk: Fitzgerald, Davies, David Jackson, Jim Thomas and others; and they were they were a particularly talented group of barristers. In those days, barristers got into court much more often than they do now, and, as a result, were probably better skilled in court craft; and their judgment was probably also improved by their greater experience in the conduct of cases. [00:12:31] It was just a lucky time for Queensland. We were a small Bar compared to Sydney and Melbourne, but we had, as I say, about a dozen highly able people; and, as it happened, all of them, with one exception, eventually became judges.

CV: Most would have come through The University of Queensland ranks. Do you think that the teaching at that time had something to do with that?

JB: Well, if they managed [00:13:01] to get through despite what was called the teaching, it demonstrated that they had an aptitude for law and a capacity to work effectively on their own. Standards of teaching at The University of Queensland law school were variable. But there were a number of eccentric members of staff and in many respects the quality of the teaching was poor. So people were often left to their own devices. If they succeeded, then they were likely to be able to manage the stresses of practice [00:13:31]. If I can just give you some statistics. In my first year, there was one Elements of Law subject that was an introductory subject in law. The pass rate was about 30%, and most people were attempting four subjects that year. The consequence was that only about 10% of the first year cohort passed every subject. Statistics like that like that would be completely unacceptable now, especially as people are paying for their degrees.

CV: This period that we're talking about, golden sort of period [00:14:01] for the Bar in Queensland in the 70s and 80s, was at the tail end of a very long tenure by the National Party Government in Queensland, which ended in infamy. How did the Bjelke Petersen regime influence judiciary? Was there a genuine separation of powers in those days?

JB: Well, as you know, the then Premier had some difficulty with the concept. When it came to the way in which [00:14:31] the courts functioned and judges were selected, for the most part it

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didn't matter much because the portfolio—the Attorney-General's portfolio was invariably given to a Liberal Party politician. My impression was that Sir Joh had no interest, for the most part, in who became judges. He didn't think that they mattered. His perception changed a little eventually with the events that surrounded the appointment of Sir Dormer Andrews [00:15:01]. But I think, looking back on it, we were not pressed with many highly political issues - in the 70s, at any rate. In the 80s, well, you may know that, I think it was the mid-80s, the then Premier brought a number of defamation actions in the court against his political opponents, and, at about that time, he became more interested [00:15:31] in the judiciary.

CV: Were you familiar with any sort of undue pressure from the government at that time?

JB: I never saw any imposed on the judiciary or the profession. They sought to influence things through legislation passed by the Parliament. But I personally was not aware of any improper attempts to influence the course of events.

CV: Just seven years after making silk in 1989, you were [00:16:01] appointed as justice to the Supreme Court here in Queensland, joining John Dowsett and Paul de Jersey on the Bench. You mentioned earlier that most of your legal work had been in commercial litigation. Presiding over criminal trials must have been quite a dramatic shift.

JB: It was a challenge and a bit daunting. But I got some good advice from colleagues. One of the more senior judges said: if in doubt, adjourn and ask somebody. [00:16:31] Nobody expects you to know anything much about Crime, so no one will think the less of you for doing it. I also had the great advantage that John Dowsett had been on the court for four years, and he knew more about crime than I did when we were at the Bar, and he was very helpful to me in my early period dealing with criminal cases.

CV: What sort of exposure had you had to criminal cases prior to joining the Bench?

JB: I participated in two jury trials, I think, both in my second year at the Bar at the Bundaberg District [00:17:01] Court in succession, one after the other, and that was it. The practical result was that the first summing up in a criminal trial that I heard from a Supreme Court judge was one that I gave.

CV: In your valedictory speech you refer to that but you also talked about the advice that you received from Chief Justice Macrossan at that time about how you should prepare for a summing up.

JB: He gave me a bit of advice about Crime [00:17:31] in relation to the summing up. He told me, in effect, that he hoped that I wouldn't make the mistake of trying to help the jury and went on to explain that a summing up is essentially an examination by the Court of Criminal Appeal. It's become even more taxing, I think, since then. The directions the trial judges are required to give to juries have become ever more complicated. But he also gave me some other advice: he said when the official photograph is being taken, do not smile because the Courier Mail will

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publish that photograph of [00:18:01] you after you've sentenced someone to life imprisonment for murder.

CV: So did you smile? [laughs]

JB: No, I did not.

CV: When you were appointed to the Bench, it was a significant time for the Queensland judiciary because the Goss Government had been elected, ending seven terms of the National Party. It wanted a Court of Appeal and there was controversy around that. Can you take us through what it was after, and the difficulties that that it that presented?

JB: [00:18:31] Well, the Goss Government came to power in, I think, December of 1989, and there were whispers that it was interested in a Court of Appeal. In fact, it wasn't introduced for about another two years. The way in which it was done caused unnecessary stress within the Court. Most of the judges were opposed to the idea of a separate Court of Appeal. One or two supported it, I think because they couldn't imagine that there would be a Court of [00:19:01] Appeal that didn't include them. That wasn't to be. The major problem, I think, in terms of the way the Court was affected by it was not so much what was done, but how it was done. In particular, Macrossan was about to go on a three-month period of leave and on the very eve of his departure, he was given a letter from the Department of Justice indicating, as I understand it, what the Government's intentions were with respect to the Court of Appeal. He [00:19:31] then went on leave without telling any of us, except Bruce McPherson who was to act as Chief Justice in his absence, And McPherson undertook that he would not tell the rest of us the contents of the letter. When, finally, we did discover it—what was intended—we also learnt that the position of Chief Justice was to be significantly affected by the same legislation [00:20:01] and Macrossan, as I understand it, subsequently lobbied the Government to change the provisions of the Act that they were proposing to introduce, to the extent it affected his position.

CV: So how is it going to affect the Chief Justice position?

JB: Very significantly. There was a new Office of Chief Justice that was created in respect of it. The Chief Justice could not sit in the Court of Appeal without the permission of the President of the Court of Appeal, which was an extraordinary [00:20:31] state of affairs. And the Court of Appeal had its own budget, its own premises, its own means of governance over which the Chief Justice and the rest of the court had no influence whatsoever. So, all in all, unnecessary stress was generated by the way in which things were done. It wasn't particularly tactful.

CV: [00:21:02] Were these as a consequence of recommendations from the Fitzgerald Inquiry?

JB: No. The Bar Association had for many years proposed the idea of a separate Court of Appeal. The idea was you would end up with the persons better suited for an appellate role sitting on that Court. The Bar's concerns were that you could end up with better appellate judges than were on offer through the system that did exist of rotating everybody through. The

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judges didn't like [00:21:32] the idea, and from time to time in the 80s it was proposed and not proceeded with. And then, as you say, the Goss Government decided to go ahead with it. But for a while it worked out well enough, I think.

CV: You say for a while it worked out well enough, so where did it land after those representations from Justice Macrossan?

JB: He had no success with the Premier in [00:22:03] changing things, so that for the next few years he became concerned, if he could, to have the former powers of the Chief Justice restored. He eventually did, but it required the Borbidge Government to do it. And after he'd succeeded in persuading them to do that, and to make a couple of other alterations to the legislation, he then resigned at a time when, of course, a non-Labor government was in power [00:22:33] and could appoint his successor. But there are other things about the way in which the Court of Appeal was brought to us. For example, the conditions of the judges were a secret. And that was a very unsatisfactory state of affairs. I mean, people who hold significant public office should not have secrets about the way in which they're remunerated, especially as to a large extent the money comes from government. Things should be, [00:23:03] we all thought, plain; but they were not, and eventually after quite some time the conditions became known, and they were significantly better than those of the other judges.

CV: What effect did that create?

JB: Some resentment. In 1997 or 1998, the Borbidge Government changed that so that, in respect to future appointments to the Court of Appeal, they were on the same conditions as those of the rest of the court.

CV: So clearly this was a period [00:23:33] where there were a great deal of tension between the judiciary and the Government. In terms of the Chief Justice's relationship with the Government, how would you characterize it?

JB: Poor. He took the view that they shouldn't be telling him what to do. They took the view that there were changes that should be made to the way in which the Court functioned. He, for example, was offered a trip to Canada to see how things were done there and declined it; And I think that was a [00:24:03] source of some tension. And I didn't think they were really on effective speaking terms.

CV: What was proposed? Was it modelled on a particular system in Australia, or elsewhere?

JB: It drew on the New South Wales experience in having the Court of Appeal as a separate division of the Court. It was unusual in the sense that it was hybrid because it involved the members of the Trial Division sitting [00:24:33] periodically in the Court of Appeal: and I think that wasn't a bad idea because we weren't a very large court and there was a serious question about whether, given the numbers, we could justify a separate Court of Appeal.

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CV: And in terms of where we've landed now?

JB: It's organised in much the same way now as it was in 1992, with the Trial Division judges circulating through. [00:25:03] Members of the Bar have different views about whether it's proved to be a successful experiment over time, but it largely depends upon your view of the quality of the judges who were appointed to it, of course.

CV: What do you believe?

JB: I think that the success of it depends upon making the right appointments to it, and also not expecting too much. One of the advantages of the [00:25:33] way the Court was operated was that people had a lot of variety in their work. You might be sitting in the Full Court one fortnight, and then you might go into Crime and then into Civil; and the variety of work reduced the risk of burnout very considerably. For those judges who do nothing but appellate work, it can become, I think, pretty burdensome. There are advantages for the community, [00:26:03] I think, in judges who are productive and with good morale; and separate Court of Appeals have their challenges. It's satisfactory for as long as the best appointments are being made and they're not overworked.

CV: Going back to that period where there was this [00:26:33] breakdown between the Chief Justice and the government of the day, what sort of flow on effect did that have to the broader judiciary and to yourself?

JB: The Chief Justice was supposed to be the spokesperson for the Court and to engage the Government and get from the Government the things the Court needed to function well, to influence the appointments so that the right people are being appointed, and to persuade the Government to release the other resources that were necessary to enable the Court to function at [00:27:03] a good level. His personal relations with the Premier and the head of the Justice Department were so poor that he could not be effective at doing that. And he was - although he was an excellent trial judge - he also was reluctant to take the judges into his confidence. And so many of us felt that he was not able to communicate our point of view and had little interest in doing [00:27:33] so. So it was, all in all, a challenging period for the Court.

CV: We'll talk about a future Chief Justice and the difficulties there in another interview, but there's implied criticism there of Justice Macrossan.

JB: I liked him a great deal as a person. He was a man with many gifts and talents and, as I say, he was an excellent trial judge. But with a new government [00:28:04] suspicious of a court that was populated by people that had been appointed by its political opponents since it had been out of office for so long, he, I think, lacked the political skills to navigate that state of affairs effectively.

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CV: You pointed out that Justice Macrossan after achieving the changes that he sought with the return of the conservative government [00:28:34], the Borbidge Government, then resigned was that a political move by him?

JB: I think he'd achieved what he wanted. He had had the powers of the Chief Justice restored by the Parliament and the time, I think, he thought was ripe. My feeling is that within the Goss Government it was expected that he would resign after the 1991 Act was passed; and there are a number [00:29:04] of indications that that was being expected But they underestimated Macrossan's tenacity. One of the clear indications was that the 1991 Act provided that the President of the Court of Appeal, who was Tony Fitzgerald, could also hold the Office of Chief Justice. And so I think Macrossan was determined to defeat their expectation that he would go and remained there long enough to have the legislation amended to, as I say, to restore [00:29:34] the powers of the Chief Justice. Then he thought he'd achieved what he wanted to achieve. He was in his late 60s and had other interests - lots of them - that he was willing to pursue.

CV: Was the Court of Appeal the primary source of tension there between the judiciary and the government at that time?

JB: I suppose so. From the Government's point of view, there wasn't any particular need to be concerned about the views of the judges. [00:30:04] The Parliament had legislated and we were all obliged to accept it.

CV: There's a celebration of the collegiate atmosphere of the Bar and wondering—and the judiciary—and I'm wondering at that time, what it was like to be part of the judiciary.

JB: Well, the Court of Appeal, when it was established under the presidency of Tony Fitzgerald saw itself very much as distinctly different. [00:30:35] They didn't dress in the same way - their robes were different. They went without wigs. They occupied a different part of the premises, and, as I say, they even had their own budget, which was a remarkable state of affairs: that, too, was lost over time. And so it, it had its little tensions. Over time, things changed [00:31:05] and relations became a little more comfortable. But a number of the members of the Court of Appeal were very pleased that they were.

CV: Just going back to the decision then, by Justice Macrossan to resign. Paul de Jersey is appointed as Chief Justice. Tony Fitzgerald also resigns around that time and Margaret McMurdo appointed. So we're talking about a real changing of the guard at this particular point, aren't we?

JB: Yes. [00:31:35] Fitzgerald, I think, was there for quite a few months perhaps a year after de Jersey's appointment. I think Paul was appointed in 1997 and Margaret McMurdo succeeded Tony Fitzgerald in 1998, if I remember correctly.

CV: And was this changing of the guard welcome more broadly?

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JB: Well, de Jersey proved to be a very able Chief Justice. [00:32:05] And he understood how to garner the support of others - other judges - and he was also effective in dealing with a variety of Attorneys-General and Premiers. Margaret McMurdo's appointment was quite controversial, as she'd been a District Court judge and then elevated to the presidency of the Court of Appeal, which was a very large leap.

CV: [00:32:37] And we'll go into that with Margaret McMurdo as well, but going back to Justice de Jersey during his time. How did it change, how did he change the running of the Supreme Court?

JB: In a number of ways. First of all, he made the decision to sit substantially in court. Macrossan had begun his Chief Justiceship by sitting at first instance and doing the work of a trial judge, but he gave it up after about six months and thereafter sat [00:33:07] only in the Full Court and the Court of Criminal Appeal. This was not a popular choice. One of the judges called him to his face, at a judge's meeting, a "non-playing captain". de Jersey understood that and was determined to sit substantially as a judge, and always did so. He also decided to move to the regions, and to go there regularly. He understood that in a State [00:33:37] with Queensland's demographics, it was important that the Court at all levels, including the Chief Justice, be seen to be delivering justice throughout the State. He was more careful about cultivating the judges and their support. For example, I don't recall John Macrossan having walked the floor before a judges' meeting to test the waters and look for support to a proposal, whereas [00:34:07] de Jersey knew how the judges' meeting actually functioned - which wasn't particularly effective for the most part – and understood the importance of engaging with the judges in and out of formal judges' meetings. So he was good in that respect. And he obviously worked assiduously to establish comfortable and productive working relations with the variety of Directors-General and Attorneys-General [00:34:37] that he had to work with.

CV: How did that, sort of, impact on the way that you saw your role within the judiciary and felt within the judiciary?

JB: Me personally? It's hard. Looking back on it now, I suppose that people felt that their voices were being listened to. Paul [00:35:07] was good at doing that and, in particular, creating the impression that he was doing that; and that was helpful because, in a court of that size, things work better if it's a collegial environment where the major decisions are made in a collegial fashion.

CV: I'm wondering how you approached having such a lifelong friend as Chief Justice. What that sort of effect that had on your friendship and your professional, sort of, I guess, standing together.

JB: I don't think things changed [00:35:37] much when he became Chief Justice - not as I see it. It'd be interesting if you asked him what he thought about that. But I don't think things changed much; and eventually, as you know, I ended up as the head of the Trial Division while he was Chief Justice; and we got on pretty well.

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CV: So you just mentioned there that you worked with Justice de Jersey as Senior Judge Administrator. You were appointed in that role in 2007, I think, the second person to actually take [00:36:07] up that position. Can you describe what that role is and how you approached it?

JB: The Senior Judge Administrator is the head of the Trial Division, and therefore responsible for the way in which the Trial Division, in all its aspects, functions. A principal way in which that's done is by being responsible for a calendar, which assigns every judge, throughout the year, typically six months in advance, to the various jurisdictions in which [00:36:37] the judge will sit. Major - by that I mean, typically, long - cases would usually only be set down with the consent of the Senior Judge Administrator, who would look to see that the burdens were shared fairly among the judges. And then there are a lot of day-to-day issues to be dealt with having regard to the problems that particular judges may have: for example, some may have a need for additional judgment writing time because they've just dealt with a very long civil case, [00:37:07] and there are other issues that would arise on a daily basis affecting the way the Trial Division functioned which were the responsibility of the Senior Judge Administrator.

CV: How did you approach this role? What was it that you wanted to sort of put a stamp on?

JB: I wanted the Court to be a happier place than it was.

CV: Why was it an unhappy place?

JB: It wasn't that it was unhappy. It was that it wasn't as happy as I thought it might be. I thought it was particularly important that I should spend more time engaging [00:37:37] with my colleagues than my predecessor had. He was more inclined to be remote. I thought that it would help to make the place more productive, more congenial, if people felt that they had a more significant say in the way things happened than [00:38:07] my predecessor had thought was appropriate. I also decided to sit in court more often than he had done– de Jersey thought I sat too often. But I thought it was important to be seen to bear the judicial load because everybody knows, or at least believes, that deciding cases is more challenging or difficult than being an administrator; [00:38:37] and that is true. The difficulty of some of the cases in the Supreme Court compared to some of the administrative matters that arise is chalk and cheese.

CV: In fact, it's been observed that you approached that role as head of the Trial Division very fairly. In fact, giving yourself some of the really tough cases in Queensland.

JB: Well, I took the view that you can't ask others to do the hard cases if you're not willing to demonstrate [00:39:07] that you can do them yourself. So yes, I did that.

CV: You mentioned that under Justice de Jersey there was a greater focus on the regions in Queensland, that Justice—that the Chief Justice was spending time in the regions. Did you spend much time in the regions yourself?

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JB: A little. Not as much as Chief Justice de Jersey did. I would go on [00:39:37] circuit at about the same rate as the other members of the Trial Division.

CV: And how would you characterise the workload of the judiciary over your 28 years on the Bench?

JB: It changed quite a deal. When I first went to the Court, the majority of civil cases were personal injuries cases. Now there would not be 80 a year tried in the Supreme Court all over the State. When [00:40:07] I started, the nature of the criminal work was much greater. For example, in my first circuit, I went to Mount Isa and tried a rape case. Since 1990, all those cases have been dealt with in the District Court. So the nature of the work has changed quite a deal. It has been cyclical in the sense that in the last two years, there's been a lot more Crime. The criminal lodgements continue to rise. The civil lodgements [00:40:37] continue to decline. So the changes have mostly been in Civil. A trial has become an unusual event now, with most of the civil cases being resolved by some process of mediation or arbitration or negotiation: much more so than was ever the case in the late 1980s. In Crime, the significant changes involve the length of the trials. When I started, few murder trials [00:41:07] would have exceeded three days. Now the expectation is that they will occupy two to three weeks.

CV: Why is that?

JB: One reason relates to the volume of additional evidence that the police are procuring. They tend to record things now that were not recorded in the past. They make video recordings at crime scenes. They collect a lot more information. There's more expert evidence typically adduced; and [00:41:37] prosecutors tend to call a lot of witnesses, and they do it for a couple of reasons. One is that they have a professional responsibility to put before the jury the facts, whether they favour a conviction or an acquittal. So you sometimes get witnesses testifying who really don't have much to say. The other thing is, I think, some of them at times are a bit apprehensive about not calling a witness in case there's an acquittal and it [00:42:07] were to be suggested that if only you'd called witness X, it would have made a difference. So the cases are certainly taking quite a lot longer.

CV: If you're talking about a murder case going from three days to several weeks. So we talking about better justice being dispensed?

JB: That's a good question. I think the quality of the police evidence that's presented is now better than it used to be. [00:42:38] Its reliability is certainly much higher than in the days when the police used to make notes of things said - or which they thought had been said, and probably the quality of the outcomes has been influenced a little by that.

CV: How have you seen juries change over the years?

JB: Depends a little on whether you're talking about a metropolitan jury [00:43:08] or a regional jury. I don't think the regional juries have changed much. The composition of the metropolitan

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juries has changed a deal. The society has, so the electoral rolls have; and we therefore get people from more diverse backgrounds. I'm not sure the gender balance has changed a lot because by the time I went to the Court and presided on criminal trials, women had been serving on juries for quite some time. The juries are better educated. [00:43:39] But there are still problems that we confront with the juries. One that has been emphasised by Michael Kirby, who, as you know, is a retired judge, concerns the younger members of the community. He has a particular concern, which I think is justified, that many of the young people have short attention spans. They don't go to church and listen to a sermon for 45 minutes. They don't go to a lecture or a class and pay attention for 45 minutes. Five minutes might see it out; and [00:44:09] the processes we have of having them sit there for hours on end without saying anything to anybody must be quite a surprise for them.

CV: What about the role of social media though for juries? Are you seeing influences there? I know you've made comments to some juries prior to your retirement about researching additional material.

JB: That's a problem. People want—what motivates them, I think, usually is a concern to do the right thing. There's also a suspicion that if only [00:44:39] they knew some other fact, they'd be able to decide the case. There's an uncertainty on the evidence they've got; and many of them, I think, imagine that if only they could get that additional bit of information or help then their doubts will be resolved and they'd be able to make a decision. So I'm not criticising the motivation for going outside the information that's presented in court. I think largely it's well-motivated. Some, I think, do it because they hold a suspicion that the lawyers are withholding from them evidence [00:45:09] that really matters; and occasionally the Rules of Evidence do operate in that way. But access to extraneous material can really put a fair trial at risk. The most extreme example, I think, I ever saw of it was not the fault of the jury at all. What happened was there had been a five week trial before another judge. The charge was murder. So it was very serious, and during the course of the jury's deliberations, [00:45:39] they came out and they said to the judge, who was Brian Ambrose: "what are we supposed to do with this piece of paper?" which had found its way into the jury room. It proved to be the criminal history of the accused. And that the jury there was presented with other information was not their fault. The Associate had apparently allowed something that had come off a clip in relation to a bail application to go in with the exhibits. The case had to be retried. As it happened, it was retried before me, and [00:46:09] the opening address of the prosecutor was so persuasive that the accused decided to plead guilty and save a five-week retrial. But extraneous evidence that gets to a jury can cause significant problems and we're all having to deal with it. I'm by and large pretty pleased with the way most juries handle it. In the most prominent case where the problem arose for me, it was other members of the jury who disclosed [00:46:39] what had happened.

CV: The recent George Pell case highlighted the difficulties around current rules pertaining to evidence and reporting and the reality of a connected world. Is there a need to look at wider reforms of the jury system and the reporting of evidence in trials?

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JB: Well, first of all, I found the decision to conduct the Pell trials in secret [00:47:09] remarkable. As a rule, we should enable the public to see, and therefore be in a position to criticise, what we do. There are going to be continuing challenges in this respect. The pre-trial publicity can adversely affect the way in which jurors approach their duty. Adverse publicity during the conduct of the trial can also, I think, [00:47:39] have this effect. One thing that does worry me is a case where there's a lot of hostility towards the accused; and that happened with Pell, and it has happened with others in Queensland.

CV: Can I jump in here because you were presiding over a couple of very high-profile cases where the accused was the subject of great deal of public animosity. We're talking about [00:48:09] Queen v Patel in one case or the Queen v Baden-Clay in another where there was an extraordinary amount of public interest in those cases.

JB: Yes. There wasn't so much hostility directed towards Baden-Clay; but there was towards Patel. As you know, he was called Dr Death in the press. This, I think, presents a particular challenge for jurors in this sense: if they acquit, they then have got to go home to their friends and family and say: [00:48:39] I acquitted Dr Death or I acquitted Baden-Clay. They are in a sense protected by the fact that they're one of twelve who makes this decision, and you would hope that they would think they're able to be supported when they engage with friends and family about that. But there will be so many members of the public who will have a clear view about the guilt of the accused, and it requires moral courage on the part of jurors to stand up and say: "I've heard [00:49:09] the evidence, you haven't, and I was not persuaded beyond reasonable doubt of guilt". So I think that the publicity can put considerable pressure on the accused, pointing in the direction of a conviction, because the press is never interested in encouraging people to think that someone is not guilty. This is going to pose a continuing challenge for us, I think.

CV: What's the answer then?

JB: Well, [00:49:39] it's not conducting trials in secret. We'll always have to strive for a fair trial according to law. Pre-trial publicity can put that at risk. We just have to do the best we can in a system that doesn't claim to be perfect - to provide what Justice Brennan once called a fair trial but not a perfect trial. The alternative - which is that you don't prosecute people, or at least you don't try them, if the adverse publicity is too [00:50:09] great - is also likely to be unacceptable. There are no easy answers to this. But my own view is that if you conduct the trials in the blaze of publicity, it's better in the result because then the public will feel that they've been fairly informed; and they can attend. I'm not in favour of suppressing reporting while trials are being conducted. There might be cases where it's necessary for national security purposes. But I think of one case I had where a man [00:50:39] was charged with murder and rape of a woman in a park, and it was either on the second, but I think the third, day of the trial that the prosecution said: we have a new witness and we didn't have a statement from him, we didn't know he existed. The witness was a Baptist minister of religion to whom the accused had confessed his guilt in respect of the rape and murder of this woman. And he only discovered about it (the trial) because he read about it in the Courier Mail and thought, I know something about this case,

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and then went to the police and reported it. Now that evidence would simply [00:51:09] not have been available in the absence of publicity; and things like that can easily happen, I think.

CV: The Baden-Clay case was publicly covered and the decision by the jury to convict on murder was applauded widely in the community, that case of course went to the Court of Appeal and was downgraded to manslaughter and there was a huge public outcry around that. The [00:51:39] High Court then reinstated the murder conviction. Do you think that the public outcry played a role in that, or was that justice unfolding as it should?

JB: I don't think that the public outcry had any influence on the decision of the judges. It may have persuaded the Attorney-General to ask the DPP to apply for special leave. As you say, there was a very substantial public interest in it and quite some disappointment at the decision [00:52:09] of the Court of Appeal.

CV: The Patel case was another legally interesting case. It was a very high-profile case, as you say, he was described as Dr Death in the media. The case became controversial legally because the prosecution on the 43rd day of the trial sought to amend the legal basis on which he was charged. Can you take us through I guess how you approached your thinking around that case?

JB: [00:52:39] It was a very frustrating experience because the case deserved to be properly particularised by the prosecution. When all is said and done, it was a medical negligence case conducted in a criminal court because the charge was manslaughter. But, essentially, it was concerned with four different episodes where he was alleged to have been incompetent, either in the way in which he conducted the surgery or in, [00:53:09] for the most part, in deciding to perform the surgery at all. Now, I was astonished that in a case like that the defence did not press the prosecution for particulars of the case, identifying what acts or omissions on the part of Dr Patel were said to have been criminally negligent, and what evidence was relied on to prove that the alleged acts of negligence caused [00:53:39] the death. The barristers who were involved in the case were all criminal practitioners not used to the conduct of civil cases involving for example, allegations of medical negligence. And from start to finish, there were problems about the particulars of the prosecution case: in the permutation and combinations that it might involve; and if you look at the High Court judgment, you can see discussion [00:54:09] there of the difficulties that were presented. Eventually when the request came to me to discharge the jury, I decided not to do it, which was a decision with which ultimately the High Court disagreed. But at that stage the prospect of an acquittal seemed to me to be live, and if the case were not taken to the jury, it would deprive every one of the [00:54:39] opportunity of an early end by an acquittal; and if there were a conviction, well then if it's a proper case for setting aside, that will happen. All in all, it was an unsatisfactory way in which the prosecution chose, I thought, to conduct the case, and without the degree of moderation that you expect of prosecutors, especially in a trial that had so engaged [00:55:09] public attention. It called, I thought, for cooler heads than we saw from the prosecutor.

CV: The High Court, in disagreeing with your decision not to standard aside, was also sympathetic to your predicament, I think, in that trial.

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JB: Well -

CV: Certainly the comments from Justice Dyson Heydon seem to express some sympathy.

JB: Yes. Well the High Court had the advantage of knowing that there wasn't an acquittal; [00:55:39] that there'd been a conviction, which didn't seem to me to be the inevitable outcome of the trial. The jury, I think, deliberated for 7 days. Yes, it was it was a challenging case all round.

CV: As I mentioned you've, of course, sat across many, many significant cases. Is there a particular notable case that stands out for you?

JB: Yes, the by far the most interesting case in which I was involved concerned [00:56:09] a trial that took place in Cairns in 1992; and I wouldn't have thought that you could get a case quite like it until I actually had it. The accused was charged—his name was Shane Russell Soper—he was charged with the rape and murder of a woman who'd been found face down, dead, in a tidal drain near a cane farm, just south of Cairns. [00:56:39] The trial took place in 1992 and the DNA type of technology was in its infancy. But sperm had been taken from her vagina and a DNA test matched it to the accused. He also lived in the area, and if I remember correctly some device that may have been used to [00:57:09] strangle her had come from his parents' house. So it looked like a pretty good case against him. The prosecution called a witness to say that he, that witness, was not the killer because the prosecution witness was the identical twin of the accused so his DNA also matched that which had been taken from the body [00:57:39] of the victim. And the brother who gave evidence as a prosecution witness had a criminal history that included an episode of sexual violence directed towards an adult female. So there were reasons to suppose that it might well have been the identical twin. He, too, had access to the parents' house. It also emerged during the trial, I think, that he was living with a woman who was indigenous [00:58:10]. The victim, I think, was a South Sea Islander. The brother was cross-examined by defence counsel with the suggestion that he indeed was the killer. After a lengthy trial, the jury convicted of murder and rape. There was then an appeal to the Court of Appeal. After the appeal had been argued, but before it had been decided, the accused's legal team ran back to the Court of Appeal and said: [00:58:40] Look, there's fresh evidence here; that we've got the wrong person after all. What had happened is that the brother who gave evidence for the prosecution has just been arrested in Cairns. He's attacked and raped a woman in a toilet block. He said to her: "I've killed before and if you don't do what I want, I'll kill you". So it's the wrong one after all. This then meant that the Court of Appeal had to deal with the fresh evidence and decide what was to be done about it. The [00:59:10] appeal was dismissed by the Court of Appeal and then the matter went to the High Court. Along the way, in the Court of Appeal a question arose about whether or not I had correctly directed the jury in relation to intoxication. The accused had a few to drink. I declined to give a direction in relation to intoxication. In the Court of Appeal, one judge said I should have given it, that it didn't matter and was for dismissing the appeal. A second judge said I should have given it it [00:59:40], it did matter and would allow the appeal. And the third judge said I was right not to have given the direction. So in that state of affairs that went to the High Court. The High Court unanimously dismissed the appeal. They took the view that I was right not to have given the direction. But the question then

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remained: well, what about all the other evidence that tended to suggest that it might have been the brother who testified? And as to that, there was one particularly interesting fact. Identical twins have almost everything [01:00:10] in common, but there's something they don't. Do you know what it is?

CV: No idea.

JB: Fingerprints and footprints. The accused man was in the habit of not wearing footwear; and there was an impression found in the mud in the tidal drain of a big toe near the head of the victim. It matched the accused, and it didn't match his brother. So on that basis, the conviction was sustained. [01:00:40] But that's not the end of the story—I hope the tape's long enough for me to tell it. The brother who'd been the prosecution witness then stood his trial on the charge that he had raped this woman. He was convicted, and received a sentence of 11 years, which was then sustained in the Court of Appeal. So thereafter, the parents knew where their boys were on their birthday. But it was interesting that, having seen his twin brother sentenced to life imprisonment, [01:01:10] he then, within a matter of weeks, is attacking and raping. Subsequently, Shane Russell Soper's name came to my attention again because he had made an application for parole. I saw it in the list and looked at the papers. I didn't actually decide the case. Some woman had formed an attraction with him and he wanted to marry her—oh yes, this happens—[01:01:40] and the authorities were taking the view that Soper needed to tell her that he was the killer because he had been telling her "it's my brother, not me". Because she was attracted to him, she believed it. The police wanted her to know, and from his lips, that he was a dangerous killer before he was to be released and take up with her. So Soper was then presented with the dilemma—what am I going to do? I want to get out and be with this woman, but before I can do it, the parole authorities are telling me I have to admit to her that I've committed the murder. [01:02:10] I don't know eventually how it was resolved, except that a few years later, when I was at a function, the woman who was next to me and I'd never met, asked me a question about the most interesting case I'd ever been involved in, and I got a few words into it when she said: "oh, Shane Soper, oh, he's out. I went to school with him and I saw him in Cairns recently". So it ended up going to the highest court of the land; and it all ultimately turned [01:02:40] on a footprint because he wouldn't wear sandshoes.

CV: It's a case that's obviously stayed with you. Is that the case with other trials? Do you have a sort of decompression time?

JB: When you're at the Bar, you learn that, to act effectively for the next client, you have to put the cares and woes of the case you've just concluded behind you. Cedric Hampson, who was a very prominent barrister, had a way of describing this process. While the trial is on, as a barrister, it's like the bathtub: you turn the water on; you fill it up; when the case [01:03:10] is over, you pull the plug out because you've got to move to the next; and all you're left with, he said, is the "dirty ring around the bathtub". You learn that as a barrister, to be effective for the next case, you must put aside whatever residue you have from the earlier ones. And as a judge, you're in much the same situation. There are some trials I was involved in which I have no recollection of at all. But others - Soper, as you can see, is an example - that I remember [01:03:41].

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CV: There is often a politicisation of the judiciary in terms of judges' decisions. There's often a criticism directed at judges that they're out of touch, that they live in ivory towers and that they don't meet the expectations of the community. What do you say to criticism like that?

JB: Most of the people who say it seem to spend their life[01:04:11] in a narrower range of interests than the people they criticise. One of my colleagues once said that most judicial officers, when they go to work, have the open sewer of life paraded in front of them. They're exposed - particularly magistrates - to a large number of people from a variety of backgrounds with a range of problems. So it is true that Supreme Court judges are [01:04:42] better educated than most, live in comfortable circumstances and live their daily lives in circumstances that are quite different from those of a large segment of the community. But they're exposed to a lot of information and people on a daily basis. That, I think, means the suggestion that they’re out of touch because they don't know what's going on is generally overstated.

CV: [01:05:12] We talked about the way that the caseload has changed over the years and certainly you point out that the type of cases has changed significantly. What about the pressure on the judges, the caseload itself on the courts?

JB: It's probably increased slightly. There are few decisions now that are given ex tempore after trials. When I started, some judges [01:05:42] would give decisions on the spot at the end of the addresses of the lawyers. But then, as I mentioned before, those cases were often personal injuries cases, and it was possible to do it. Now there is more pressure associated with the writing of reserved judgments. And as most people who write will know, if you bear the burden of editing what you do, you are likely to write and rewrite in circumstances where, if you had to deliver the decision on the spot, you'd occupy much [01:06:12] less time. So it has become more demanding in that sense. By the time I joined the Court, it had been many years since the judges used to play golf on a Wednesday or go to the Queensland Club for lunch on a Friday. Those days were long gone.

CV: You didn't benefit from those happy heady days.

JB: No, I didn't see that at all.

CV: In fact, the concern is often raised now that the resourcing simply isn't there for the courts and that it is actually a system [01:06:42] groaning under the pressure of cases, and very heavy workload for judges. Is there a concern about the kind of impact that has on justice being dispensed?

JB: Yes, it depends a lot on the jurisdiction. In my court, it's not such a problem. Yes, there are pressures, but the workload is manageable. The delays are longer than the judges would wish. If they had another couple of judges, then they'd be able to decide [01:07:12] the cases more quickly and hold the trials closer to the event. But there are other courts, I think, in Australia where the problems are very much greater: in particular, the Federal Circuit Court where the

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burdens on the judges are unacceptable. There are judges there with caseloads of more than 400.

CV: So let's go to some of your work outside sitting in a courtroom. Outside of your practice and judicial role, you made a significant [01:07:42] contribution to the development of the legal profession. You had a very keen interest in structured mediation from its infancy in Australia. Could you elaborate on that?

JB: I was asked by the President of the Bar in my last few months, as it happened, at the Bar to convene a subcommittee directed towards identifying the potential of mediation for the Bar: its potential threats, if any, and the opportunities that it might present. [01:08:13] At that stage, most negotiations were conducted between barristers without the intervention of a third party, and the Bar was anxious to see how things might be different if there was structured mediation, But I wasn't there dealing with it for very long before I was appointed to the Court.

CV: Beyond civil cases, do you see that there is a role elsewhere in the judicial system?

JB: In minor criminal cases it might be possible. But in ones that involve violence, it's [01:08:43] pretty unlikely to be successful.

CV: You were also the chairman of the advanced committee to establish Griffith University's Law School in 1990-91. What was the vision then?

JB: The Vice Chancellor was very keen to establish a law school, and one that was effective. But the vision was largely that of a member of the committee, Sir Zelman Cowen. He, as you know, had been Governor-General. He'd been Dean of a very prestigious law school and Vice-Chancellor here [01:09:13], and he had graciously accepted that I might chair a committee of which he was a member. His insights were particularly helpful in suggesting how Griffith might concentrate upon integrated courses of law, so that people might be studying at the same time something concerned with environmental studies and law. And so the initial model was "integrated". The risk for the University with [01:09:43] it is that it was likely to prolong legal studies by a year, and to that extent, make the new law school less competitive, which is not really what you'd aim for with a new law school. But they were willing to take the risk because they thought it did offer another advantage in terms of marketing it to students, namely multidisciplinary tertiary education.

CV: Do you see a value in it?

JB: Yes, I think that it's worthwhile, usually, [01:10:13] spending another year at a university engaged in some other form of discipline. Arts degrees used to do this, and then commerce degrees became popular when I was at law school, and more generally now, there are science/law, economics/law degrees; and I think it's a good thing.

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CV: You commented a little earlier about your cohort of peers going through The University of Queensland and achieving great things in [01:10:43] spite of the best endeavours of the of the university at the time. I'm just wondering whether you have an observation about the number of law students that are being pumped out these days and the quality of student that you're seeing graduate.

JB: The students intellectually are pretty well up to the task. I'm concerned about the cost of the process in the sense [01:11:13] that only about half the graduates are going to be working in the law within a year or two of graduation. And then the proportion declines after a while. Law has become to be seen as a general degree in the way an arts degree was 50 years ago. And since it takes longer to qualify in law than it does in arts or commerce or economics, I think that [01:11:43] the community has to realise that it costs more to educate lawyers in this fashion. My personal preference is for the American model where you don't go to a law school out of high school. You spend, typically, four years in college so that the people who are going to law schools go there for three years, but when they arrive they're all 21 or 22, and often 22 because they've had a gap year somewhere along the way. So you're taking the [01:12:13] cream of the intellectual crop. The other advantage is those people who are there in the United States all want to be lawyers. They have another problem as I see it because three years in law school plus four years in college means you don't graduate with a law degree until you've spent seven years in tertiary education. Given the expense of it in the United States, that's seen as a problem. I think President Obama, who himself was a legal academic, proposed a two-year law degree rather than a three to save the cost [01:12:43] of it; but the law schools are opposed to that.

CV: You're also very interested in the institution itself. You've led the Australasian Institute of Judicial Administration and also the National Judicial College of Australia. Why was this work important to you?

JB: Well, the Australian Institute of Judicial Administration is an unusual body in the sense that its governing council consists of judges, practitioners, academics and [01:13:13] court administrators, principally. So you have a large variety of expertise directed towards ways of doing things better in the administration of justice, in all courts and tribunals, and in all jurisdictions. The focus has largely been on civil cases. The institute has done some good work over the years. As to the National Judicial College, when I was asked [01:13:43] in 2002 to join a working group to consider establishing it, it was led by John Doyle, who was the Chief Justice of South Australia. I was the nominee of the Australian Institute of Judicial Administration to it. The permanent head of the Commonwealth Attorney-General's Department joined us, and there was a nominee of the Judicial Conference of Australia; and that was John Dowsett. So I had an early interest in it. Then I stepped away from it.[01:14:13] Eventually, I was asked much later to chair it.

CV: You've spoken about the contribution made by leaders of the legal profession to the public understanding of the courts. In your valedictory speech you talked about the kind of work that's done to provide a broader understanding about the ingredients to the rule of law and the role that the courts play. Do you believe this, that vigilance is necessary?

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JB: Public vigilance [01:14:43] concerning the way in which the courts function: yes, and it should be welcomed. The courts exist to serve the public interest, and it's good that people take an interest in what the courts do and offer criticism of it. I know that there's a great deal of criticism that's ill-informed or unfair, but it's certainly better than working in secret and having no criticism at all.

CV: What about vigilance in terms of protecting the judiciary and its independence?

JB: Well, it would be [01:15:13] useful if it were better understood. The judges have a problem, I think, in communicating to the public why judicial independence is in the interests of the public. It's too easy to portray it as being in the interests of the judges who have security of tenure that almost nobody else now has. Even university academics don't have the same security of tenure that they used to and, as you know, many people are on contracts who used to be employed [01:15:43] and when they are on contracts they're short term and so on. The judges have a remarkable degree of security of tenure; but they do because it's necessary to enable them to do their job effectively. If you just think about the statistics, well over half the cases in the Supreme Court involve government. Every criminal case does on one side; and many of the civil cases involve disputes involving government corporations or government. It is particularly important in those cases - so that the judges can [01:16:13] go about the job of deciding the cases according to law - that they not be exposed to any form of undue pressure, and short-term contracts could certainly involve that. The judges’ only measure of ultimate support depends upon public confidence; and getting the message through to the public about the work that the judges do and why it matters is, I think, very important. That's for example why I'm so pleased to see the school children coming through the courts, even [01:16:43] some of the boys who sit there trying to put their feet on the chairs because they've got no interest in anything that's happening. It's useful for them to go and see that we have courts and what they do.

CV: Is there a role for judges to be more forward facing?

JB: In terms of -

CV: In terms of criticism and protection of that sort of the judicial arm.

JB: It's largely, I think, going to be a role typically confined to heads of jurisdiction. The reality is, you don't - if you're cautious you don't - want to encourage every judge [01:17:13] to go talking on the topics, partly because the kinds of judges who would take advantage of that may not be the judges you actually want speaking on behalf of the court. So having the heads of jurisdiction largely responsible for this is probably the best way to do it, though it does depend a little on who the head of jurisdiction happens to be.

CV: How would you characterise yourself as a judge? What kind of judge were you?

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JB: That's a very difficult question for [01:17:43] me to answer because I know that how I'm seen depends upon a number of considerations: in particular, whether the barrister you ask comes from a criminal background or a civil. I think I tended to be viewed differently by those who appeared in Crime from those who appeared in Civil, but the difference that I encountered is that it was rare for me in the Supreme Court to see barristers who [01:18:13] appeared in Crime taking silly points, whereas in civil cases, it is not unusual to see barristers taking silly points; and I didn't take kindly to silly points.

CV: That concludes part one of this interview with retired Queensland Supreme Court judge the Honourable John Byrne. In part 2 we'll discuss what's been described as Australia's greatest judicial crisis, certainly Queensland's, the controversial appointment of Tim Carmody as Chief Justice [01:18:43] of Queensland, John Byrne. Thank you.

JB: Thank you Cathy.

End of interview

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