

# **SUPREME COURT OF NEW SOUTH WALES**

## **SWEARING IN CEREMONY**

**6 August 2012**

### **SPEECH NOTES OF JUSTICE G. C. (GEOFF) LINDSAY<sup>1</sup>**

1. **Thank you Chief Justice.**
2. **My thanks also go to you Mr Attorney (Greg Smith S.C) and to you Mr (Justin) Dowd for your kind words, as generous alike in all things said and those things left unsaid. //**
3. **Distinguished guests, ladies and gentlemen, friends one and all.**
4. **Standing at the threshold of a judicial career, with everything to prove and nothing to be taken for granted, I am reminded of the need for circumspection, if not modesty, on my part.**
5. **I do not know whether I will be a good, bad or indifferent judge. None of us can know. We can only hope. What I can say is that I enter upon my new duties with no mental reservations, and with a determination to get the job done.**
6. **Today, there are acknowledgements to be made, and thanks to be recorded.**
7. **And, I suppose, a new judge owes it to the profession, and the public at large, to expose just enough of “self” to allow advocates, and critics, to take their bearings. //**

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<sup>1</sup> The speech, as intended to be delivered, is here printed in bold type. The balance of the document is to be archived.

8. **The list of people to whom I am indebted for help, and encouragement, over three decades at the Bar is unknowingly long. I cannot, today, do more than acknowledge a few of the debts of honour I owe. For those who may be interested, an expanded version of this speech will be published on the Court's website, with a transcript of today's proceedings, in the next few days.**
9. **My experience is that, as often as not, you cannot know everybody who has helped you along the road, or even when or why. //**
10. **I do know that I owe a profound debt to my parents. Dad died in 1984. Mum, in March this year.**
11. On reflection, I am confident that I was led into the law by my father, in particular. At the time, as a brash teenager, I thought I had worked it all out by myself.
12. Had life turned out differently for Dad, I suspect he would have liked to have studied law. As it happened, he was successful in business, and his success paved the way for me. //
13. **Like most people, and with a pride not always pardonable, I bear the marks of my origins. Bankstown looms large in that department. And a plebeian pre-disposition is never far from the surface.**
14. **I was privileged to be born into a Christian family, more affluent than most in the working class community of which we were all part and to which we were all devoted. "Bankstown" in general, and Bankstown Baptist Church in particular, were at the centre of our universe. //**
15. **I decided to study law at the age of 15. I stayed at school, and I impatiently attended university, entirely focussed on doing whatever was necessary to practise law. It says little for my capacity for self-awareness that, only in recent years, have I come to realise that, for me, the law has been a vocation.**

16. **I obtained entry to the Law Faculty at the Australian National University on the recommendation of my school principal before sitting for the Higher School Certificate. As it happened, my examination results would have been sufficient to get me there in any event. However, the kindness and confidence of the school opened a door through which I was invited to travel, and I did so. I am deeply indebted to the staff of Bankstown Boys' High School.**
17. **I was a conscientious student at university, but not entirely comfortable or content with academic studies. I went to university to get beyond it, into the world of legal practice, as soon as I could. As a release from studies, I helped organise a scheme – the “Students in Practice Scheme” – designed to allow law students to obtain work experience in ACT law firms. I may have flirted with other ideas, but the Bar always held me in its grip.**
18. **For me, the Bar has played the role historically served by the Inns of Court in England. It has, for me, fulfilled the role of a university. For me, the Bar lives at the intersection between practice and theory. It is not wholly one thing or the other. At its best, it straddles both. //**
19. **Since my university days I have had three areas of interest that have informed most of my extra-curricular activities as a barrister. The first is, the administration of the law and the legal profession. The second is, why we think the way we do. The third is, the influence of the written word on the way we think.**
20. **Traces of these interests can be found in my early and consistent interest in law reporting, editorial work and legal publishing. My first experience in law reporting and editorial work was as the Case Note Editor on the Board of the Federal Law Review at ANU.**
21. **I have been privileged to be able to indulge these types of interest through the Bar Association, the Forbes Society and the Council of Law Reporting.**

22. **I am grateful to the Forbes Society, the Council of Law Reporting, and the Attorney General, Greg Smith, for their tolerance of my outpourings on the vital importance of law reporting to the development of Australian law. //**
23. **For all but the first two years or so of my time at the Bar, I had some involvement in the administration, or delivery, of education programmes of the Bar Association.**
24. **After I took silk in 1994, I was given a cascade of assignments that reinforced the tendency of the Bar to serve as a university experience for me.**
25. **That experience was enriched for me because I was able to observe the likes of Philip Selth and Alastair McConnachie in dealing with the business of public administration.** Philip became the Executive Director of the Bar Association in 1997. He brought with him experience in dealing with the administration of universities, a high regard for education and skills as an historian.
26. In sequence, after I took silk, I became the Editor of the Australian Bar Review (in 1996); Chairman of the Bar Association's History Committee (in 1998); a Co-Founder, and Secretary, of the Forbes Society (in 2002); a member of the Uniform Rules Committee (2005); a member of the Council of Law Reporting (in 2006); and Chairman of the Council (in December last year).
27. **Each of the assignments given to me, as a barrister, forced me, more generally, to reflect deeply on the conceptual, functional and historical foundations of law in Australian society. //**
28. Returning to my ANU experience, I might not have endured the lot of a student for the five years that an undergraduate Economics/Law course took without an act of kindness from the practising profession. In the years before the concept of a "Christmas clerk" became common, and studying law at the tail end of a system of articulated clerkship, I spent my first year at university writing to an inordinate number of firms of solicitors – large and small – imploring them to give me a job over the Christmas vacations.

29. The only positive response I obtained came from Freehill Hollingdale and Page. We had had no prior association. They would have been within their rights, and I daresay probably justified, had they simply ignored me, or quickly tired of my entreaties. I badgered them (in particular, Bob Nicholls and, through him, Kim Santow) with correspondence for about 18 months, after which they undertook to provide me with a Christmas job at the end of my second year at university. They had no need to do that. It was an act of kindness. //
30. Every Christmas thereafter I worked at Freehills. At the end of my university studies, I became the last articled clerk of Thomas Owen Jones, a senior, independently-minded partner of Freehills. After my admission as a solicitor, I worked for Freehills for a further 18 months before admission to the Bar.
31. **All but one day of my time in the employment of Freehills was spent working under the tutelage of Mr Jones. I revere his memory. A number of his protégés went to the Bar, took silk and became judges. I am only the most junior of that fraternity. Its most senior member, Tony Whealy, has recently retired from the Court of Appeal. //**
32. **One of the friends I made at University was Andrew Tink. We endured together the sheer terror experienced by exposure to the real world as articled clerks. He served his articles at Stephen Jacques & Stephen.**
33. **In recent years we have been able to renew our friendship through a shared love of Australian history.**
34. **I celebrate the success of Andrew's two books, *William Charles Wentworth* and, most importantly, *Lord Sydney*. //**
35. I went to the Bar at the age of 25 because I had read, in a biography of Dr H.V. Evatt, that his counsel was that it was important not to delay admission to the Bar beyond that time, recognising the desirability of learning the barrister's trade, and making the mistakes that new barristers generally make, before maturity in years renders mistakes less excusable in the eyes of a critical audience. I was very green. I had very many mistakes to make. //

36. I found life at the Bar hard, but rewarding. Most days were an education in themselves. The Bar provided me with an abundance of opportunities to engage with very talented, honourable and dedicated people across a broad spectrum. The community of the Bar embraces strong personalities with a common interest in the law that transcends what might otherwise appear to be fundamental differences in social or economic circumstances, and religious or political perspectives. The Bar draws strength from both its unity and its diversity. //
37. **Throughout my career at the Bar I was the beneficiary of many acts of kindness. The 13<sup>th</sup> Floor of Selborne Chambers took me in, and provided a home for me, when I had nowhere else to set up a shingle. Janet Coombes mentored me, as she has many new barristers over very many years. Cecily Backhouse and John McLaughlin were senior members of the Floor at that time. I spent my first six months at the Bar being deliberately confused with Phil Hallen by old Clive Evatt Q.C. whenever Janet took me to his chambers for morning tea. I must have made a big impression.**
38. It was on the 13<sup>th</sup> Floor that I first encountered the strong friendship between Ian Harrison, David Davies and Phil Hallen that has endured all these years. //
39. At the time of my admission to the Bar I had made no arrangements for a master, the mentor we now universally describe as a “tutor”. I was dependent upon the Bar Association for guidance. Acting in the ordinary course and on behalf of the Association, Peter Hely introduced me to Brian Rayment. That introduction served me well. Another act of kindness. I thank Brian for his training, support and friendship over many years. //
40. I acknowledge, also, the support and friendship I received in my first year or so of a barrister’s life from Stephen Austin and Jimmy Conomos, amongst others.
41. The first brief I obtained at the Bar – a Brief to Advise - was an act of kindness arranged for me by Bryan Beaumont. //

42. With the help of family, I bought chambers on the 13<sup>th</sup> Floor very soon after my arrival there. David Kirby acted as the agent for the Vendor, the deceased estate of Sam Simblist QC.
43. **After three years at the Bar, I moved to the 8<sup>th</sup> Floor, Wentworth Chambers, beginning a happy relationship that spanned three decades of practice.**
44. **I went to the 8<sup>th</sup> Floor at the invitation of Peter Young. That was another act of kindness. I had met Peter a year or so earlier, as a result of a cold-call inquiry of Butterworths about how a young barrister could secure opportunities to edit law reports and rules of court.**
45. Out of the blue, as it seemed to me, Peter called me. He was then the editor of *Richie's Supreme Court Procedure*. He introduced me to further opportunities in legal publishing and to legal profession disciplinary work.
46. Through him, I was introduced to editorial work for Australian Law Journal and the Australian Bar Review, as well as work for and against the Law Society. It was also at his invitation that, throughout my career at the Bar, I had a succession of cameo appearances in litigation involving the Anglican Church of Australia.
47. **I learned much working as a junior to Robert Stitt, especially in the many cases in which we were both led by Jean Sayer, the Law Society's Senior Investigator.**
48. **In the fullness of time, I took on Readers, and myself became a Mentor to several barristers.** More often than not those arrangements were informal. Those who read with me, in a formal sense, included Clive Locke, Robert Titterton, Justin and Fabian Gleeson, Bob Nicholls, Gary McIlwaine, Julian Svehla and Morton Herschderfer.
49. With advancing seniority at the Bar came silk. I was encouraged to apply for silk when I was given a red bag by David Jackson. When, not on my first application, I was appointed Senior Counsel I received a red bag from Bob Stitt. I value each gift highly. //

50. **The opportunity that came to me, through the Bar Association, to represent the Bar on the Board of the Legal Aid Commission provided me with insights into legal practice that I might not otherwise have acquired. It also provided me with an opportunity to observe many talented public servants, not the least of whom was Bill Grant. //**
51. **In more recent years, I have benefited from the professionalism of Michael Talbot, the AG’s representative on the Council of Law Reporting. Michael has seen off two chairs of the Council to the Supreme Court. My predecessor, Christine Adamson, was appointed to the Court late last year. I follow in her footsteps today. I fear that the Council might find it hard to attract chairmen if it continues to lose them in this way. //**
52. **It was through the Bar Association that I was able to develop my interest in Australian legal history.**
53. **I am very grateful for the support and encouragement I have received from the legal history community arising out of my connection with the Forbes Society. I thank each and every member of the Council of the Society, past and present<sup>2</sup>; our talented Editor of the “Forbes Flyer”, David Ash; the Bar Association staff who actually get things done; and, just as importantly, the many people, within and beyond the membership of the Society, who have lent it their aid. The Society is at its best when it facilitates the work of others, as is its primary objective. //**
54. While reflecting on the work of the Forbes Society, I gratefully acknowledge the work undertaken over many years by Philip Selth; Chris Winslow; Chris D’Aeth; Carol Webster; Carol’s PA, Fiona Williams; my secretaries, initially Margaret Lewis and now Shari Williams; and the Bar Library, led by Lisa Allen. I also gratefully acknowledge the particular support given to the Society, and to me personally, by Wendy Robinson and John Hamilton over many years, and by John Bryson generally.

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<sup>2</sup> The Members of the Council, other than me, currently are Bruce Kercher (President), Keith Mason (Senior Vice President), Wendy Robinson (Junior Vice President), Carol Webster (Treasurer), Laurie Glanfield, Stephen Toomey, Michael Pelly and Michael Tidball. Philip Selth is the Society’s Honorary Executive Director. Earlier members of the Council, now retired from it, are Michael Sexton, Mark Richardson and June McPhie.

55. Special thanks are due to Bruce Kercher, the foundation President of the Forbes Society, through whom I have learned much.
56. I thank Ros Croucher for my introduction to Bruce, and Philip Selth for my introduction to Ros.
57. At this point I also acknowledge the work of Dr J.M. Bennett. Bruce Kercher and John Bennett are pivotal figures in helping us collectively to know, and to appreciate, the Australian Story. //
58. **I have been privileged to study law, afresh, through exposure to their work and teaching. My legal history activities have also introduced me to talent of the next generation.** Lisa Ford, Brent Salter and Andrew McLeod are but three who come to mind.
59. **Believing, as I do, that the study of Australian legal history is vitally important to the development of Australia's national story, the Forbes Society has provided me with valuable opportunities to engage with all branches of the legal profession and the public.** //
60. All barristers practice best in the community of chambers, served by a competent clerk. I have been fortunate to have my time on the 8<sup>th</sup> Floor of Wentworth Chambers. The Floor Leaders in my time on the Floor, before I was accorded that honour myself, were Peter Young, Brian Murray, Lloyd Waddy, Paul Menzies and Peter Taylor. I leave the Floor in the capable hands of Des Fagan.
61. I acknowledge with gratitude the assistance, and friendship, I have received from all Floor members over the years; the Clerk (particularly Warwick Stewart and Michael Wilcox); and my secretaries, three in all.

62. I shared my first secretary, Mary Hall, with Jack Mater and others. Mary has long ago departed this world. She was charm personified. **My first full-time secretary, Margaret Lewis, is very much alive, enjoying retirement. She was with me for well over 20 years. She became, and remains, like a sister to me. Following her retirement, I was fortunate to secure the services of Shari Williams. I am pleased to say that Shari has accepted an appointment as my Associate. //**
63. **My heartfelt thanks go to all members of my immediate, and my large extended, family for their friendship. In particular, I thank my wife, Mandy Tibbey, for her ongoing love. //**
64. **I have shared the highs and lows of a barrister's life with Family, not always fairly to them. I am grateful to each of Jane, Kelly and Mandy for their love and support at different stages of my life, and for their friendship generally. Robert, Emma and Sarah have grown to maturity with an independence of mind and compassionate heart that does their father proud.**
65. **I am blessed with a grandson who maintains our Scottish heritage through the Lindsay, Buchanan and Cowan family lines. And I am blessed with two granddaughters who can claim descent from Yarramundi, the Indigenous Leader who met Governor Arthur Phillip in 1791, and from his daughter, Maria, who married the convict Robert Lock in 1824. Their marriage was the first officially sanctioned marriage between an aboriginal and a non-aboriginal person in Australia.**
66. **I look forward to making a contribution – hopefully a constructive contribution – to the work of the Court. I regard myself as privileged to have been assigned to work in the Equity Division. If I have learnt anything of Equity, it has been largely under the tutelage of the judges of that Division, starting with Michael Helsham as Chief Judge and continuing to the present day.**

67. **From a new perspective, I now have much more to learn. I am grateful for the support I have received from all quarters to date. I look forward to developing a close working relationship with the profession in the discharge of my judicial duties.**
68. **Thank you.**