# THE ANATOMY OF A JUDGE

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THERE is little to be said about the "anatomy" of a judge using that word literally. The "long arm of the law" is not a characteristic of the judiciary. There are one-legged judges, smiling judges, edentulous judges, deaf judges, short and long-sighted judges and even one-eyed judges. They are anatomically no different from any other members of the human race who are of similar ethnic background and sedentary habits, and basically they suffer from the same weaknesses. Perhaps their digestion is of some interest as there have, from time to time, been protagonists of digestive jurisprudence who ventured that what a judge had eaten for breakfast or the night before could have a profound influence on his decision and general performance.

I will attempt to deal more with the psyche of the judge than his anatomy and, in so doing, I would like to say that I hope to practise the law for another twenty or so years. During this period, for reasons which will emerge, I have no hope of becoming a judge. My remarks should therefore be taken lightly by those members of the judiciary who are present, and also by those present who may be given the opportunity to attain judicial office sooner or later in their legal career.

I should say at the outset, that I have never met a man about to assume judicial office who did not express or exhibit considerable doubt about his ability to fulfil the office adequately. On the other hand, on meeting the same man one year later, I inevitably have found that he has apparently discovered in the interim that he was born for the job. A judge recently retired made the following observation on what it was like to be a judge.

" '*Well, what is it like to be a judge?*"

'First of all, it is very comfortable in the sense that you have staff to look after you, and you are insulated from the outside world a bit, which is not altogether a good thing, but it's nice for the person who is being insulated. And you get a lot of respect paid to you, and you have to resist the temptation to accept all this as your due. I mean, it's not your due really—it's only due if you're doing your job properly

and efficiently and I am afraid that there's a big temptation to say, well now that I am where I am, I don't have to try any longer. I don't think there are many judges, who take that attitude, but there have been odd cases—people who, not deliberately, but subconsciously, relax their effort.'"

Our task then is to examine the system which produces the judges and the men or women who fit into that system with such little apparent effort.

It is a fact of life that, excepting those States which do not have a divided profession, judges in the British Commonwealth are appointed from the ranks of barristers who have signed the roll of counsel. (There have been one or two notable escapes from the ranks of solicitors to the Bench but only by way of the Bar.) For the most part, barristers, who amount to about ten per cent of the total profession, live together in a club-like atmosphere unavailable to members of the public unless introduced by a solicitor, or attorney, as they are called in New South Wales and England. Unlike most members of the community they do their formal work in clothing of a bygone age. The origins of the court dress currently in vogue are as follows:

Robes
- Judiciary—Judges Rules 1635
- Senior Counsel—contemporary fashion circa late sixteenth century
- Junior Counsel—contemporary fashion circa early seventeenth century

Wigs
- Judiciary—both short and full-bottomed wigs follow contemporary fashion circa early eighteenth century
- Senior and Junior Counsel—general male fashion circa 1780.

In the late eighteenth century as the wig began to go out of general fashion, it was retained by the legal and medical professions and by the bishops. By the mid nineteenth century it was retained only by the lawyers but not without protest in high places. F. W. Maitland wrote in 1883:

> "Judges and lawyers took to wigs when other men in a frivolous moment took to them; unfortunately they retained the silliest adornment that the human head has yet invented for itself when even physicians and bishops had recovered their wonted sobriety."

The most common arguments for retention of the present costume may be summarised as follows:

Some form of distinctive costume is needed and change for its own sake can be a delusion;
The wigs and gown emphasizing the anonymity of the wearer are distinctly egalitarian and underline the close association of Judges and Barrister in the administration of the law;
The uniform has a severity which adds dignity to the proceedings;
Barristers and Judges are not as a majority apparently in favour of a change in this mode of dress.

Arguments for change are many and range from the climate in summer to the suggestion that the answer to the question as to why barristers and judges wish to retain their wigs should be sought not from lawyers but from a psychologist.

Very little can, in my opinion, be said in favour of retention of the wig. As Lord Campbell once said, "Who would have supposed that this grotesque ornament, fit only for an African chief, would be considered indispensably necessary to the administration of justice in the middle of the nineteenth century". "Let alone the twentieth" you may say, although there are now ironically a number of African chiefs who have cheerfully adopted the costume as a trapping of independence from colonial rule. There is really very little to be said for the practice of wearing any form of headgear in the courtroom other than that it maintains tradition and that hatters and/or wig-makers would presumably lose custom with the abolition of the practice. The judicial wig comes in two basic styles. A short wig which leaves the ears free for judging and the long wig which has a convenient if hairy sound dampening device on each side. It is perhaps not by accident that the long wig is worn during criminal trials although when the evidence is salacious some judges may be observed pushing back their wig flaps much in the manner of the early aviators with their leather helmets.

The judges to whom I have spoken seem to be strongly in favour of retention of all their plumage, some vehemently so. I suppose if one has gone to the trouble and expense of purchasing such articles as a full-bottomed wig, knee breeches, and shoes with silver buckles it is difficult to contemplate where else one might wear them. Even when they grow old (the articles not the judges) they are not even suitable for fishing or gardening unless one is particularly skilful in the use of the riposte. There is I suppose a limited use for the red robes at Christmas time when they might be used for beguiling grandchildren or for part-time employment in department stores. One of the arguments put forward by the propounders of the jury system is that judges tend to atrophy in their attitudes to dress, social behaviour and levels of income at the date of, or shortly after their appointment. The

jury, it is said, in exercising fact-finding and damage-fixing functions provides a useful counter-balance which becomes more useful as the judge grows older. Lord Diplock, in an article in 91 L.Q.R. at page 461, said:

> "The practice of the law in England with its reliance upon precedent induces an ingrained resistance to change—not least among those who have practised it long enough to have attained judicial office. He who sets out to alter the habit of mind of judges must be possessed of stamina and patience and, if he hopes to see some positive results, blessed with longevity".

Juries of course are not always the most rational of fact-finding bodies. There is a well known story of a jury which, having deliberated for some ten hours, was sent back by the judge for further deliberations with a promise of a meal, whereupon the foreman remarked "Your Honour, I think we need 11 meals and a bale of hay".

Man has long accepted that there is a correlation between age and wisdom. To the extent that each individual is constantly meeting new situations which add to his bank of experiences this correlation must be accepted. Judges are usually appointed at or about the age of fifty when, if they have utilised their experiences, they should, to use an idiomatic term, be getting strong wise-wise. Because of their early vital role in acting as a buffer between the Crown and the people judges were originally, and indeed until fairly recently, appointed for life so that a capricious Crown could not remove them. There are still a few incumbents who enjoy such an appointment but, for the most part, retirement comes nowadays at about the time company directors are expected to retire. There is a judge of great antiquity who is still in office who makes a noise somewhat like a cuckoo clock about to emit its cuckoo before speaking.

No doubt when man's average life-span expectation was less than fifty years the frailties of old age were seldom exhibited by the members of the judiciary. Unhappily this has not always been the case in modern experience. One of the most common failings of elderly judges is their tendency to sleep during the day and then to spend the night awake worrying about what took place during the day. This tendency to sleep manifests itself most strongly during the afternoon and I well remember an occasion when the judge appeared to be sleeping soundly and the bemedalled court crier who was a similar age was, if anything, in even deeper slumber. Counsel, on becoming aware that his argument was not getting through the wig, as it were, picked up several volumes of the law reports and dropped them on the

bar table. The crier woke a second or two later and on hearing the silence stood to his feet and said "All Stand. This Honourable Court stands adjourned until 10.30 o'clock tomorrow morning." "You fool" rejoined his Honour. "It's only half-past two. You will have to re-open the court." Whereupon the unfortunate crier had to say for the second time that day "All persons having business before this Honourable Court are commanded to give their attendance and they shall be heard. God save the Queen." The proceedings were then able to continue. There was also an occasion in my experience when the book dropping was to no avail and in response to enquiries some months later as to the verdict the parties were informed that the case had eventually proved to be of such complexity that it necessitated a replay. A well known character at the Bar named Grattan Gunson, who subsequently himself became a County Court Judge, was on one occasion opening a case before a judge who was known to be extremely deaf. In the course of opening he said "There was a dreadful 'fracas' in the kitchen". "What was that?" responded the judge. "Fracas, f-r-a-c-a-s, Your Honour" replied Gunson. "Oh, you mean frakeas" said the judge. "Quite so, Your Honour" replied Gunson, "I forgot I was in the County Court."

It is a characteristic of human nature that persons who develop an antipathy towards other persons tend to carry it with them to the grave. Because of the somewhat limited environment in which barristers live and the fact that like the gladiators of ancient Rome they are bred and trained for combat, it is inevitable that some members of the group dislike other members more than somewhat. Although most members of the judiciary convince themselves that they have managed to put all prejudice and bias aside there are nevertheless some extravagant exchanges between judges and counsel from time to time. I note but three examples:

> Judge A was having a particularly difficult time with Barrister B and vice versa. Barrister B who was of fiery disposition and had an iron on one leg stood for the umpteenth time to object to some evidence which the trial judge proposed to admit. He rose with such violence that he slipped on his iron and shot under the bar table from whence he eventually emerged with wig awry heavily encrusted with cobwebs. "Good Heavens, Mr. B" said his Honour with some malice "Where have you been?" "Buckingham Palace, your Honour, Buckingham Palace" was the reply.
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> In my second vignette Judge X interrupted Mr. Y on numerous occasions and eventually accused him of dishonesty. At lunchtime they met by accident in the Club lavatory. The judge had by this time regretted his behaviour and whilst continuing his emission

said "I'm sorry about what happened this morning Y". Whereupon Y, similarly occupied, replied "That's typical of you X, you insult a man in public and apologise in the urinal."
Lastly but not leastly there was the occasion in one of the margarine cases when counsel for the manufacturer kept referring to "margarine" pronounced thus to the obvious dissatisfaction of one member of the bench. Eventually it became too much for the judge who remarked "Surely the contemporary pronunciation is 'marjarine' and I think we ought to use it." The trap sprung, counsel replied very calmly "I have a Fowler's Modern English Usage, would your Honour accept it as an authoritative work?" His Honour realising he was for it had to agree. Counsel then read and I quote:

"margarin(e). The pronunciation marj- instead of marg- is clearly wrong, & is not even mentioned in the OED as an alternative. It was nevertheless prevalent before the war, when the educated had little occasion to use the word; but now that we all know the substance, its g is coming to its own. Perhaps the only English words in which g is soft before a or o or u are *gaol* (with its derivatives & *mortgagor.* See -IN & -INE for the termination."

The antipathy of "learned friends" one towards another is not necessarily confined to members of the Bar *inter se,* or judges and counsel. Members of the bench have on occasions shown marked hostility towards one another. Perhaps the most famous exponent of this syndrome was wont to sit at all times hunched up with his back towards one of his brothers when they sat on the bench together.

Pity the acting judge who having severed the umbilical cord with the Bar finds himself in a kind of forensic billabong. Lost to his former companions but like a new boy at school, not readily made welcome by his peer group. This experience can have a profound effect on the character of an individual, never quite sure whether he can give his powers of interruption fullest rein and therefore perhaps interrupting less skilfully or more often than his well adjusted brethren.

The function of the judge and his participation in a trial has been the subject of considerable comment both formal and informal. As Lord Bacon said: "Patience and gravity of hearing is an essential part of justice, and an over speaking judge is no well-tuned cymbal. . . etc."

The whole question of judicial participation has in recent times been commented upon in some detail by the Court of Appeal in *Jones v. National Coal Board,* [1957] 1 W.L.R. at 760. This appeal was notable in that both sides appealed against the excessive intervention of the trial judge. The appeal was allowed and some useful remarks

made by Lord Denning which are perhaps not as widely or as often read as one would wish.

> Then Mr. Edmund Davies called the surveyor, Philip Edgar Roberts, who made the plan. Nothing untoward occurred in his short evidence. Finally, Mr. Edmund Davies called Cecil Henry Bates, an expert consultant mining engineer. We are afraid that the judge took the examination-in-chief largely out of the hands of Mr. Edmund Davies. He took the points of criticism made against the defendants, went through them with the witness, and appeared to accept his explanations. Mr. Mars-Jones cross-examined the witness, but after a while the judge disclosed much impatience with him and he brought it to a close.
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> No one can doubt that the judge, in intervening as he did, was actuated by the best motives. He was anxious to understand the details of this complicated case, and asked questions to get them clear in his mind. He was anxious that the witnesses should not be harassed unduly in cross-examination, and intervened to protect them when he thought necessary. He was anxious to investigate all the various criticisms that had been made against the board, and to see whether they were well founded or not. Hence, he took them up himself with the witnesses from time to time. He was anxious that the case should not be dragged on too long, and intimated clearly when he thought that a point had been sufficiently explored. All those are worthy motives on which judges daily intervene in the conduct of cases, and have done for centuries.
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> Nevertheless, we are quite clear that the interventions, taken together, were far more than they should have been. In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a judge is not a mere umpire to answer the question "How's that?" His object, above all, is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role. Was it not Lord Eldon L.C. who said in a notable passage that "truth is best discovered by powerful statements on both sides of the question"?: see *Ex parte Lloyd.* And Lord Greene M.R. who explained that justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, "he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict": see *Yuill v. Yuill,* [1945] P. 15.
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> Yes, he must keep his vision unclouded. It is all very well to paint justice blind, but she does better without a bandage round

her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth: and the less dust there is about the better. Let the advocates one after the other put the weights into the scales—the "nicely calculated less or more"—but the judge at the end decides which way the balance tilts, be it ever so slightly. So firmly is all this established in our law that the judge is not allowed in a civil dispute to call a witness whom he thinks might throw some light on the facts. He must rest content with the witnesses called by the parties: see *In re Enoch & Zaretsky, Bock & Co.* So also it is for the advocates, each in his turn, to examine the witnesses, and not for the judge to take it on himself lest by so doing he appears to favour one side or the other: see *Rex* v. *Cain, Rex* v. *Bateman,* and *Harris* v. *Harris,* by Birkett L.J. especially. And it is for the advocate to state his case as fairly and strongly as he can, without undue interruption, lest the sequence of his argument be lost: see *Reg.* v. *Clewer.* The judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumed the robe of an advocate; and the change does not become him well. Lord Bacon spoke right when he said that: "Patience and gravity of hearing is an essential part of justice; and an overspeaking judge is no well-tuned cymbal."

Such are our standards. They are set so high that we cannot hope to attain them all the time. In the very pursuit of justice, our keenness may outrun our sureness, and we may trip and fall. That is what has happened here. A judge of acute perception, acknowledged learning, and actuated by the best of motives, has nevertheless himself intervened so much in the conduct of the case that one of the parties—nay, each of them—has come away complaining that he was not able properly to put his case; and these complaints are, we think, justified. . . .

Now, it cannot, of course, be doubted that a judge is not only entitled but is, indeed, bound to intervene at any stage of a witness's evidence if he feels that, by reason of the technical nature of the evidence or otherwise, it is only by putting questions of his own that he can properly follow and appreciate what the witness is saying. Nevertheless, it is obvious for more than one reason that such interventions should be as infrequent as possible when the witness is under cross-examination. It is only by cross-examination that a witness's evidence can be properly tested, and it loses much of its effectiveness in counsel's hands if the witness is

given time to think out the answer to awkward questions; the very gist of cross-examination lies in the unbroken sequence of question and answer. Further than this, cross-examining counsel is at a grave disadvantage if he is prevented from following a preconceived line of inquiry which is, in his view, most likely to elicit admissions from the witness or qualifications of the evidence which he has given in chief. Excessive judicial interruption inevitably weakens the effectiveness of cross-examination in relation to both the aspects which we have mentioned, for at one and the same time it gives a witness valuable time for thought before answering a difficult question, and diverts cross-examining counsel from the course which he had intended to pursue, and to which it is by no means easy sometimes to return. Mr. Gardiner submitted that the extent of the judge's interruptions was such that Mr. Mars-Jones was unduly hampered in his task of probing and testing the evidence which the defendants' witnesses gave. We are reluctantly constrained to hold that this submission is well founded. It appears to us that the interventions by the judge while Mr. Mars-Jones was cross-examining went far beyond what was required to enable the judge to follow the witness's evidence and on occasion took the form of initiating discussions with counsel on questions of law; further, and all too frequently, the judge interrupted in the middle of a witness's answer to a question, or even before the witness had started to answer at all. In our view it is at least possible that the constant interruptions to which Mr. Mars-Jones was subjected from the bench may well have prevented him from eliciting from the defendants' witnesses, answers which would have been helpful to the plaintiff's case and correspondingly damaging to that of the defendants.

The judge seems to have been under the impression on occasions that Mr. Mars-Jones was asking a misleading question. We do not gain that impression ourselves. It seems to us that the case was conducted by counsel on both sides with complete propriety.

An even more remarkable appeal which was allowed on the ground of judicial intervention was in a divorce action of *Yuill v. Yuill*, [1945] P. 15 where it is recorded that the trial judge "interrupted or asked questions to the extent of over two thousand nine hundred times". As Lord Greene M.R. remarked "he descends into the arena of battle and the issue is clouded by dust of conflict and it deprives him of calm and dispassionate observation".

If counsel can have his difficulties the unfortunate solicitor or attorney finds himself at an even greater disadvantage. The branches of the profession have for the most part a good relationship but some counsel regard solicitors with the same degree of affection as a caged lion affords his keeper at feeding time. Of course once the lion is no

longer caged or dependent on the keeper for food he is inclined to treat his old provider with something less than proper respect. It is a curious fact that, whereas the word of counsel is accepted from the bar table by the court without question, solicitors are usually required to put their explanations on oath either in affidavit form or in sworn evidence. I am sure that judges are not conscious of the maintenance of this caste system but uniforms sometimes do strange things to people. Somebody once asked Dr. Samuel Johnson why he hated the Scots. "I do not hate them sir" insisted Dr. Johnson. "Neither do I hate frogs. But I'm damned if I like to have them hopping about my chambers." Some judges give the impression that they feel the same way about solicitors. Really, the goal our profession should be striving towards is a system of courts which are run not for the convenience of the profession, or any part of it, but for the public, who pay for it all and who wander through the elaborate mime and pageantry not a little bewildered, often frustrated but above all feeling very much out of it all even though they may be plaintiff or defendant. As one silk is alleged to have said to his junior after a long and expensive will case "Just imagine, all that money left to be frittered away by those beneficiaries."

Ladies and gentlemen I do not want you to go away thinking that more than thirty years as student and practitioner have left me without admiration and affection for our legal system and the judges who play such an important part in its administration.

The judge is a law maker. It is not fair to criticise him or her for being largely a non-innovative legislator because a spirit of adventure will often not only prelude a cheerful reversal by a court of appeal, but also cause unnecessary expense to the parties.

A judge in laying down a rule to meet unprecedented circumstances is certainly making law but he makes it within certain well-defined limits employing a kind of natural justice or common sense which he has learned from his experience in the law. As Coke said it is not "every unlearned man's reason" but a technically trained sense of legal right!

How far can the task of the judge in developing the law be described as scientific? Or is it an art? A study of the technique used by judges raises some of the most fundamental problems in jurisprudence and in the English speaking world no other part of the law has provoked such a volume of literature. Yet even Bentham, the relentless enemy of judge-made law, could not withhold a tribute to the contribution of British judges:

> "Traverse the whole Continent of Europe—ransack all the libraries belonging to the jurisprudential system of the various political

states—add the contents all together—You would not be able to compose a collection of cases equal in vanity, in amplitude, in clearness of statement—in a word all points taken together, in instructiveness—to that which may be seen to be afforded by the English reports of adjudged cases."

Justice Cardozo formerly of the United States Supreme Court in *Paradoxes of Legal Science* said:

"I confess to a mounting sense of wonder that with all our centuries of common law development, with all our multitudinous courts and still more multitudinous decisions, there are so many questions, elementary in the sense of being primary and basic, that remain unsettled even now. If they were propounded to you suddenly, you would say that of course there must be authorities in abundance for anything so fundamental. You might feel some pricks of conscience at your own ignorance in being unable to repeat the proper answer out of hand. You would have your self-respect restored in some degree if you came to survey the field, and found that the answer, if there was any, was at best uncertain and obscure. I have noticed this particularly in connexion with the law of torts. Rights and privileges at the root, it would seem, of life in civilized society, are discovered to be involved in doubt. One wonders how one has attained maturity without getting oneself in trouble when one has been so uncertain all along of the things that one might do in affairs of primary concern. Take such fundamental privileges or claims of privilege as these—the privilege to employ force against another who threatens one with bodily harm; the privilege to employ force to effect a recaption of chattels taken from one's custody; the privilege to employ force to effect an entry upon land. It is astonishing how obscure and confused are the pronouncements upon these fundamental claims of right."

It is into these unchartered areas that the judiciary must travel. They must also tread cautiously along the well travelled paths having regard to the explosive and extensive changes in public morals and behaviour which have occurred in the last fifteen to twenty years.

For the most part they make a considerable financial sacrifice when assuming office. They work extremely hard and their appointments are, at least at State level, largely non-political. When I say non-political I would not imagine for instance that Mr. Ted Hill had any great expectation of ever becoming Chief Justice of this State. Judges are appointed by the government of the day and the exact method of selection used is not known to me. It is generally not thought to be mandatory that an offer of a judicial appointment be accepted although it is rumoured that as the green-grocer said when advising against asking for credit "A refusal often offends". There is also

for some aspirants the trauma of wondering whether to accept appointment to a lower jurisdiction from which escape to a higher and two wigged jurisdiction may prove well nigh impossible. Although there are inevitably some anomalies the system does tend to get the right people into the right jobs.

The Judge's life is in many ways a lonely life—perhaps at times more lonely than it needs to be. The Queen's justice is taken to the provinces and the Judges with their retainers move out to provincial cities on circuit following the ancient English practice where they may be asked to remain for upwards of a month. In earlier times in this State it was customary for the Judge to travel by horse and coach or by train wherein the Judge and his Associate were given a separate compartment to guard against contact with the travelling public. Judge's Associate as the function is now fulfilled is not the most demanding of tasks and it is much beloved of retired officers from the services some of whom are of formidable personality and appearance. One judge who was more impressive intellectually than physically and whose accent displayed an Antipodean influence was constantly embarrassed in provincial cities by the fact that the local dignitaries always pushed him aside and shook hands with his English-born Associate. Outside court hours during the circuit the Judge and his Associate lead an almost monastic existence, usually dining alone, but occasionally lightened by a visit from one of the numerous counsel who follow the circuit much as in mediaeval times. Care must be taken however not to give any outward or visible sign of favouritism regardless of personal preference. There is a story of a notorious Nevada judge who opened proceedings one morning with the following statement: "Gents, this State has always been noted for the exemplary conduct and fairness of the judiciary. I have to tell you that this morning the Plaintiff has given me $15,000. I also have to inform you that the Defendant has given me $10,000. I propose to return $5,000 to the Plaintiff and to allow the case to proceed on its merits".

Judges must exercise considerable powers over the liberty of the subject in imposing sentence on convicted persons. Often they are called upon to deal justly and mercifully with persons from whom they are divided by an enormous social and educational gulf and in respect of whom the community is crying out for revenge. They must, at times, according to the jury's verdict, sentence persons to lengthy periods of imprisonment which to their knowledge can have no reformative function on the individual and which will more than likely return that person to society as a recidivist or habitual criminal. They are given no formal training in sociology or penology, and in

some cases, find their first contact with the law of criminal or civil wrongs or a jury since they were undergraduates, in the conduct of a criminal trial or damages action. They preside in what to many is the most depressing of jurisdictions, namely divorce. Although it has its lighter moments on occasions, it is characterised by a certain bitterness and cynicism equalled only by the behaviour of some persons arguing over a deceased person's estate.

You will probably all recall the story of the Judge who after hearing an appalling tale of drinking, beating and infidelity said to the husband respondent "Jones you are a disgrace to your sex and for a start I am going to give your wife two hundred dollars a week." "That's very civil of you Your Honour" allowed the respondent. "I shall certainly try to slip her a dollar or two myself whenever I can afford it."

It does say a lot for the system and the men who assume judicial office, that they almost always manage to acquit themselves well. There are occasionally pleasant little reminders that a "new boy" is on the job, such as the occasion recently when a new judge became lost in the curtains surrounding the bench and put his short wig into full reverse. (For the benefit of those of you who may not be familiar with the geography of those areas, there is a kind of pop-hole behind the bench through which the Judge and his Associate materialise and later disappear, like a couple of sepulchral denizens of the Necropolis.)

Sabbatical leave for Judges so envied by those for whom it is unattainable can, I believe, be a problem. There is apparently a limit to the period of accommodation one can endure in such places as the Devonshire or East India & Sports Clubs in London. In addition the Judge must provide on leave for that most estimable of persons, the judge's wife.

When the accolades are being dispensed, as new judges farewell the old life and are welcomed on to the Bench, the little woman inevitably takes pride of place, marginally ahead of the kiddies who are usually martialled showing unaccustomed lustre and demeanour in their school uniforms and assembled as a kind of internecine jury in the jury box. Following them very closely in affection is "my clerk".

Most people are these days offended to be called "a clerk" (recall the scathing references to persons said to be, for instance, "got-up like a pox-doctor's clerk"). The barristers' clerks however, don't mind a bit—they drive Mercedes Benzes and emit a ruddy and sometimes bibulous glow over their charges. They are the Bart Cummingses of the profession ever ready to sell and to promote. To be in the right stable can put a gloss on what might otherwise have been a rather dull

career. Whether it is because of past favours or the relief of being out of their clutches, new judges inevitably speak of their former clerks with considerable warmth. Some judges also remember supporting solicitors who usually smile from the welcoming or farewelling crowd like a small child in the realization that a television camera is pointed in his or her direction.

The format of the judge's welcome is inevitably a stylised affair. Speeches by the Presidents of the Bar Council and the Law Institute representing the solicitors, well-laced with private jokes, and the Judge in reply. It all ends like a very bad play with no applause and the principal actor fleeing behind the curtain to the merciful refuge of his chambers. (It is of interest to recall that the word "chamber" meant originally a bedroom hence the chamber-pot and so forth.) My best loved welcome concluded with the new judge stating that he was not going to turn his welcome into a kind of school prize giving and he gave a mass blessing to the faithful in attendance.

The office seldom fails to induce an outward air of severity in the incumbents. There must inevitably be an inhibiting factor in general social activities. Wigs and gowns, "yes" but paper hats and balloons "no".

Until tonight, at least, to coin a phrase, some of my best friends were judges. I don't envy them their task. I thank them all for the work they are doing. I do ask them to remember what each one of them says on appointment: "If I seem to be getting a bit over the fence don't forget to tell me." No one in practice is of course foolish enough to accept this invitation.

In closing I ask the judiciary to give the lead or at least a helping hand to a profession which I believe needs to move the judicial process into the twentieth century so that it will be more efficient, more relevant and less expensive. This I believe can be done without any loss of dignity, and so that the public may resort to the courts in a fuller understanding of the legal process without being impoverished or frightened half to death by it.