

OPENING ADDRESS
TO THE ANNUAL SUPREME COURT JUDGES CONFERENCE
BY THE HONOURABLE T F BATHURST
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Good afternoon colleagues. It is a pleasure to welcome you to the Annual Supreme Court Conference. I would like to extend a particular welcome to our guests, Lord Justice Burnton of the United Kingdom Court of Appeal and Dr Sathavy Kim of the Supreme Court of Cambodia, who have honoured us by their attendance at this Conference. Could I also extend my thanks to our other guest speakers, Mr Stephen Gageler SC Solicitor-General of Australia, Professors Peter Butt, Don Langevoort, Angela van Daal and Ian Frazer, Judge Helen Murrell and Dr Robyn Williams AM who will be giving the dinner address at the Conference dinner tomorrow night. I know their participation will make this Conference a memorable event. I would also like to thank the Judicial Commission for its support and assistance in making this Conference possible.

As I am sure many of you know, judges in the United Kingdom were traditionally prevented from speaking publicly by Lord Chancellor

Kilmuir; a prohibition which became known as the “Kilmuir Rules”. The rationale for the rules was not particularly generous to the judges the rules sought to protect: it was thought that judges would shatter the illusion that they were wise if they spoke with any great frequency outside of their judgments. I will keep remarks today fairly brief so as to avoid shattering any illusions that conceivably may remain regarding my wisdom.

A US Circuit Judge, the Honourable Frank M Johnson once stated: ‘the business of judging is a tough job. We do, after all, spend the better part of our days endeavouring to do that which everyone else tries his best to avoid – making decisions on hard questions.’¹ He is not the first to complain about the work of a judge. The Lord Chancellor of England in the mid-nineteenth century lamented that “my spirit almost dies away when I think I am to pass the remainder of my days in hearing witnesses swear that the house was all secure when they went to bed, and the next morning they discovered that the window had been broken and their bacon was gone”. At times, judging can be a tedious task, and one that is largely thankless: whoever wins the case will thank the barrister and whoever loses will blame the judge.

¹ The Hon Frank M Johnson Jr, ‘Civilization, Integrity and Justice: Some observations on the Function of the Judiciary’ *Southwestern Law Journal* 43 (1989) 646 at 646.

I hope it is not just that the role is still somewhat novel to me, but I think that there are many aspects of being a judge in which we can take pleasure. I have certainly taken a lot of pleasure in having the chance to work with all of you over the past few months. At this stage of my limited experience on the bench, I prefer the description that Learned Hand gives to the process of judging.

“...there is something ... that makes [being a judge] – anyway to those curious creatures who persist in it – a delectable calling. For when the case is all in, and the turmoil stops, and after he [or she] is left alone, things begin to take form ... That is a pleasure which nobody who has felt it will be likely to underrate.”

I hope that any feelings of pleasure that you take from being a judge will grow over the course of this Conference. The Supreme Court Judges' Conference serves a number of functions. First, it allows us to take stock of what has happened this year and to prepare ourselves for the remainder of the year. The challenges that the Supreme Court faces in the coming year are not new challenges, but we should strive to meet those challenges with new and innovative approaches. We must aim to act effectively and efficiently so as to uphold the interests not only of the

parties in the dispute but also the interests of the public at large. I hope that this weekend will go some way towards helping us further that goal.

Secondly, this Conference allows us to expand our knowledge: of court functions and processes, of developments in the law, and of developments in legal systems outside of our own. The seminars in which we will partake over the course of this weekend will allow us to expand our knowledge so that it is both broader and deeper. Finally, and equally importantly, the Supreme Court Judges' Conference allows us to build upon the collegiate atmosphere of the Court so that we can work more effectively as a team.

We have some very interesting sessions ahead of us over the next two days. The planned seminars cover the full spectrum of judicial life, including legal principles, procedure and programs. We will be addressed by leaders in the field on Occam's Razor and the law, judicial review post-Kirk, developments in criminal and equity law, public access to courts and information, fiduciary duties and the Judicial Commission's program to raise awareness among the judiciary about contemporary Aboriginal society. We are also fortunate to be hearing from guest speakers who work in areas outside of our daily lives, including Professor Ian Frazer, who invented the vaccine against cervical cancer,

and Justice Sathavy Kim, who survived the Khmer Rouge's regime to become a judge in Cambodia. We are extremely fortunate to have these esteemed guests speaking to us over the course of the weekend. We are likewise fortunate to have such breadth and depth of knowledge amongst the judges of the Court itself and I am very grateful for the efforts all judicial speakers have put into preparing their presentations for the weekend. No doubt the presentations from our wide range of guest speakers will be informative and inspiring.

Without any further ado, it is my pleasure to introduce the first of our guests.

The first of our guest speakers is the Right Honourable Lord Justice Stanley Burnton. Lord Justice Burnton read jurisprudence at St Edmunds Hall, Oxford, before being called to the Bar by Middle Temple in 1965. In 1982, Lord Justice Burnton was appointed as a Queen's Counsel. He specialised in commercial law including conflicts of law. He became a Bencher in 1991. In 2000, Lord Justice Burnton became a member of the Queen's Bench Division of the High Court of Justice and in 2008 became a Lord Justice of Appeal. He is currently also the Treasurer of Middle Temple, a Privy Councillor, an Honorary Fellow of St

Edmund Hall and I am told that from January 2012 he will be Master of Music of Middle Temple.

Lord Justice Burnton will speak on the topic of 'Occam's Razor and the Law'. This principle, sometimes known as the law of succinctness, is one which should influence us in dealing with the legal problems which confront us in our day-to-day activity. Lord Burnton will speak on the topic by a reference to what might be described as a concept of legitimate expectations which had only a brief flowering as a separate doctrine in our administrative law jurisprudence. We are very grateful that you have been able to join us today.

It is my pleasure to officially open the Supreme Court Conference and welcome Lord Justice Burnton to give his address.