John Doyle Oration

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My earliest recollection of John Doyle is from the mid-1980s. He was then "Doyle QC". Adjusting for the change in monarch, resulting in a QC becoming a KC, and for the change in protocol, allowing a potential KC to be an SC, the title "Doyle QC" appears since to have become hereditary. I acknowledge the presence tonight of one "Doyle SC" and, depending on how you count them, between one and three "Doyle KCs". All are amongst the many members of the Doyle family who have gathered with us for this important occasion.

In the mid-1980s, the original Doyle QC frequently appeared at the lectern in the main court room of the newly opened High Court building just across the forecourt from the National Portrait Gallery where we are now gathered. Ordinarily in those days, the Justices on the bench appeared much as the Justices appear in the centenary painting which now hangs in the High Court foyer: some looking up, some looking down, one or two appearing to concentrate on the words of counsel, others evidently focused on something else.

When Doyle QC appeared at the lectern, a noticeable change occurred in the in the collective mood. The Justices uniformly adopted a forward leaning posture. Seven pens were poised. Fourteen ears were open. All eyes were focused on the speaker. These were the halcyon days, before extensive written submissions, when legal arguments were forged in oral submissions then to be hammered out, sometimes to be strengthened and sometimes to be broken in interchange between the bench and the bar.

What the Justices saw as they adopted their uncommonly uniform forward leaning posture, and what they came over time to anticipate and to value, was a highly reflective and extremely personable form of advocacy. They knew Doyle QC to be a scholarly and experienced counsel. They knew that in each case he had thought deeply about the problem at hand and had come up with his own simple elegant and workable solution. They had a well-founded expectation that he would quietly and methodically explain that solution to them in a calm and pleasant manner with just a hint of self-deprecating humour. Reflecting back on those days, Justice McHugh would later observe that Doyle QC "was a persuasive advocate" precisely because "his submissions did not exhibit any advocate's bias". "Rather", said Justice McHugh, the submissions "were judgment-like". "If you agreed with ... the conclusion in his submissions, you could have adopted them as your judgment. ... The strength of his arguments lay in his candour".[1]

A characteristic phrase of John Doyle QC appearing as counsel before the High Court was "in my respectful submission". The phrase captured the essence of the

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[1] (2012) 112 SASR at xlix.

advocacy. It was HIS submission, meaning that it was HIS personal analysis of the legal problem to be resolved that was being presented. And his submission was being presented RESPECTFULLY. No pretence. No arrogance. No attitude. The style, as Sir Anthony Mason was to describe it, was "conversational", in the mould of the great Sir Maurice Byers QC.[2]

Including the nine years he spent as Solicitor-General of South Australia, John Doyle appeared at the lectern in the main court room of the High Court building on roughly 70 occasions. A memorable occasion on which I recall being present as junior to Sir Maurice Byers was during argument in the Australian Capital Television Case in 1992. Gavan Griffith QC, the Solicitor-General of the Commonwealth was arguing - we all now know unsuccessfully - against the implication of a freedom of political communication into the Australian Constitution. The State Solicitors-General, including the Solicitor-General for South Australia, were there to support him.

Gavan Griffith quoted from a speech made by Dr John Cockburn who had been a South Australian delegate to the Australasian National Convention of 1898, and who had been stridently against the introduction of a due process clause into the Australian Constitution. The quotation was as follows:[3]

> Why should these words be inserted? ... Have any of the colonies of Australia ever attempted to deprive any person of life, liberty, or property without due process of law? [T]he insertion of these words would be a reflection on our civilization. People would say – "Pretty things these states of Australia; they have to be prevented by a provision in the Constitution from doing the grossest injustice."

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2 Mason, 'Reflections on the High Court of Australia' (1995) 20 *Melbourne University Law Review* 273 at 277-278.

3 Transcript, High Court of Australia, *Australian Capital Television Pty Ltd v Commonwealth* (S5/1992), 18 March 1992, at 139.

The reception from the bench was more quizzical than sceptical. Justice Deane asked: "[w]hatever happened to Dr Cockburn, Mr Solicitor? Or, perhaps I should ask the Solicitor for South Australia". Gavan Griffith responded, "I do not think he ever became Chief Justice, Your Honour".

When he rose to his feet an hour or so later, John Doyle QC, the Solicitor-General of South Australia, commenced his address as follows:

> Your Honours, Justice Deane inquired about [Dr] Cockburn. He became Sir John Cockburn and went on to become Agent-General in London, which I think is as high as a South Australian can possibly go. He died in 1929. In view of the submissions I am putting, the Court may think that his spirit is alive and well in South Australia today and that I am his spiritual heir.

Unlike Sir John Cockburn, John Doyle QC did become Chief Justice of South Australia. He became the eighth Chief Justice of that State, a worthy successor to Len King in a succession of eminent Chief Justices which included Sir Samuel Way and Sir John Bray. Chief Justice Doyle discharged that office with the utmost distinction for nearly two decades. His judgments were like his advocacy: lucid, imaginative, elegant, uncluttered, and unpretentious.

We celebrate tonight not John Doyle QC, or John Doyle S-G, or even John Doyle CJ, but John Doyle AC, the champion of national judicial education. The contribution of John Doyle to national judicial education - or as he would call it, "judicial professional development" - is the important topic to which I now turn.

To be said at the outset is that judicial education would not be what it is today had John not campaigned for the creation of the National Judicial College and had he

not been the inaugural chair of the NCJA Council and had he not gone on to create what has become the "engine room" of the NJCA, the Program Advisory Committee.

Without question, John made judicial education part of the institutional architecture of the Australian judiciary. And, without question, the Australian judiciary and the Australian public are better off for it.

That the creation of a national judicial education body in Australia was sorely needed is attested to by John's own experience of becoming a judge. When asked in an interview what was the best piece of advice he received when he commenced as Chief Justice of South Australia in 1995, John replied "I'm not sure anyone gave me any". That was thirty years ago. At least in terms of formal judicial education, the experience of simply being thrown in at the deep end and expected to swim was then true for most judicial officers in most Australian jurisdictions.

At the turn of the millennium Australia did not have a national body dedicated to providing educational programmes for judicial officers across Australia. By contrast, the English Judicial Studies Board had been established in 1978, the Canadians had set up their National Judicial Institute in 1988 and the New Zealand Institute of Judicial Studies had been created in 1998. In Australia both the Australian Institute of Judicial Administration and the Judicial Commission of New South Wales offered some judicial education programs. But judicial education was only part of their remit. The Australian Law Reform Commission noted that, as at the year 2000, "[b]y comparison with other common law jurisdictions, the development of judicial education" in Australia was

"patchy": we were fairly said to be "still in the judicial education starting blocks or perhaps even on the warm up track".[4]

In the late 1990s and early 2000s, there were a few champions of the cause of judicial education and the creation of a national body dedicated to it. One was Sir Anthony Mason. In a speech at the 17th Australian Institute of Judicial Administration Conference in 1999, Sir Anthony pointed out that "[j]udicial education is even more important in Australia than it is in England where the Recorder system provides prior probationary experience before permanent appointment". Noting the "good work" of the AIJA and the Judicial Commission of NSW, he argued that "more could be achieved if a National Judicial College was established".[5]

Another champion was Chief Justice Murray Gleeson. In his State of the Judicature Address in 1999 he said that "it is no longer sufficient to assume that most persons appointed to judicial office are professional advocates whose background has provided them with such information and experience as is necessary for the competent performance of judicial duties". He expressed his hope that the Commonwealth would pursue the establishment of a national judicial education body as recommended by the Australian Law Reform Commission.[6]

Though he was himself a sitting State Chief Justice at the time, John was instrumental in making these national aspirations a national reality.

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4 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, February 2000) at 179.

5 Mason, 'The Future of Adversarial Justice' (1999) (Spring) *Bar News: Journal of the NSW Bar Association* 5 at 13.

6 Gleeson, 'The State of the Judicature' (1999) 73(12) *Law Institute Journal* 67 at 69-70.

In early 2000, the Standing Committee of Attorneys-General formed a Working Group to consider the formation of a national judicial college, co-chaired by John Doyle and Robert Cornall, the then Secretary of the Commonwealth Attorney-General's Department. Two more collaborative, public spirited and productive individuals it would be hard to imagine. In combination, they were a powerhouse.

Within a matter of months, the Working Group put forward a detailed proposal for a national judicial college and the next year the same Working Group set about establishing it. The result was the National Judicial College of Australia, which commenced in 2002 with John as the inaugural chair of its governing body.

John summarised the case for judicial education in this way:[7]

> "First, it is widely accepted that change is an inevitable incident of modern society, and appropriate professional development can assist judicial officers to participate in the process of change. Professional development programs can help judicial officers adapt to the increasing diversity in our society. They can help them adjust to the changing role of the judicial officer. Good quality professional development can refresh and enthuse judicial officers and can provide programs that will help them deal with the great expansion of available knowledge. Finally, litigation is expensive, and if professional development can make judicial officers more efficient in their conduct of litigation, the community will benefit."

Against that background, the NJCA's programs from the beginning have had a range of complementary objectives. They have sought to orientate new judges into their new roles. Most of us who are current judges have been participants in the now standard coming of age experience that has affectionately become known as "Baby

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7 Doyle, 'The National Judicial College of Australia' (2003) 14 *Public Law Review* 69 at 71.

Judge's School". But the programs have not been left at early judicial learning. They have followed the judicial life-cycle. They have sought to improve the professional lives of judges at every stage in a variety of ways. They have sought to keep judges up to date with the law. They have sought to improve practical skills, such as judgment writing and court craft. They have sought to provide an opportunity for collective reflection about the nature of the judicial role and to provide a much-needed vehicle for candid discussions about judicial stress and mental health. Beyond that, they have sought to ensure what John has called "social awareness" by which he has meant that "as far as possible judicial officers [should] understand the people and situations that come before them".[8]

Learned Hand thought it necessary for a judge to have a "at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject".[9] Though the NJCA's programs have been known to dip into the classics on occasions, on the whole they have been more practical but no less enriching.

There has been a cultural change across the Australian judiciary over the past twenty years. The change has allowed judges to see themselves as life-long learners. It has been very much a change for the better.

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8 Doyle, 'How Do Judges Keep Up to Date?', Speech at LawAsia Downunder, 21-22 March 2005, at 4-5.

9 Hand, ‘Sources of Tolerance’ (1930) 79 *University of Pennsylvania Law Review* 1 at 12.

What has been good for the judges has been good for the public. That remark is not meant to be glib. As John has explained it, "the provision of adequate programs of professional development is important if the judiciary is to remain as a truly independent institution. It is important because the independence of the judiciary is supported by public confidence. That public confidence assumes, and also depends on, a high level of competence from judicial officers".[10] Moreover, as John again put it, "[a]n aspect of judicial independence is that the judiciary itself has a collective responsibility to adjust the workings of the system for administration of justice, subject to Parliament and the availability of resources, to ensure that it remains as efficient and effective as it can be, and to ensure that it responds to the needs of society as they change. In short, judicial independence carries with it certain responsibilities".[11]

Not only did John recognise those responsibilities. Not only did he shoulder them himself. He brought others with him.

Many who worked with John in the pioneering days of the NJCA were canvassed in the lead up to this event. Responses were clear and swift – "pre-eminent leadership, right from the start"; "a dominant force"; "collaborative". Special mention was made by many of his tireless work on the NJCA Heads of Jurisdiction program.

We are indebted to you John. It involves no element of hyperbole to describe your national judicial education leadership as visionary and as transformative. Where national judicial education is today started with your vision and is very much the product of your energy. In the presence of your family, and with gratitude for their

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10 Doyle, 'How Do Judges Keep Up to Date?', Speech at LawAsia Downunder, 21-22 March 2005, at 15.

11 Doyle, 'The Machine of Justice – Who is Driving It?' (2007) 28 *Adelaide Law Review* 7 at 14.

contribution to your contribution, the contemporary Australian judiciary, which you have done so much to create, salutes you!