

Mr Justice Warren - Valedictory

My Lord,

1. This is positively the last time upon which I shall address an old friend in this feudal fashion. It is common knowledge at the Chancery Bar – indeed you told us all when you were appointed – that you do not like being “lorded” in either sense of the word. Very well. I shall endeavour to repress the sycophancy deeply ingrained in my psyche and speech patterns by 45 years of grovelling deference to Her Majesty’s Judges – and speak the truth to power.

2. In 1970 a group of young men, imbued with that overweening confidence that is conferred by a sojourn among the dreaming spires, arrived in London bent on reading for the Bar. None of us had read anything as pedestrian as law. We had read difficult subjects – in your case maths and philosophy; in the case of others including myself, the Oxford Greats syllabus. After a year or two contemplating Fermat’s enigma or metaphysics in Ancient Greek we did not regard Donoghue v Stephenson as the great intellectual breakthrough our lecturers made it out to be. Ah, the callowness of youth. We had not yet learnt that what is difficult about the practice of law is not the concepts but the clients, that facts are governed by Heisenberg’s uncertainty principle – by the time you have got the measure of one, all the others have changed – and that English law is not (pace our friends on the Continent) a coherent intellectual system – it does not even try to be – but a compendium of pragmatic solutions to changing social circumstances; and all the better for it.

3. After navigating the Bar exams we were called by our respective Inns, managed to find benevolent pupil masters and prevailed upon our chambers to take us on. In those days chambers were not the all-singing, all-dancing behemoths they are today with hot and cold running receptionists, practice

managers, chambers directors, marketing executives and twitterateurs. I believe you and I were the twelfth members of our respective little sets. Chambers then were typically staffed by a senior clerk who earned more than any individual barrister, an inarticulate boy and a typist who was always too busy to do the junior tenant's work. The junior tenant was given a garret with a gas fire – and required to share it. In my case I was lucky enough to share with a beautiful lady who later became my wife. You got John Martin.

4. Mention of John reminds me of the elegant and witty welcome that he gave you on behalf of the Senior Bar when you were appointed to the Bench in 2005. I gathered from that that your practice had come largely to consist of giving comfort to errant trustees who had done those things they ought not to have done and left undone those things that they ought to have done and come to you for absolution, which you were, for a suitable fee, happy to give them, muttering over their suppliant heads the magic incantation “Hastings Bass”.

5. Even as the utility of my classical education declined with Sir Anthony May's decree prohibiting the use of Latin in Court, your mathematical education was in the ascendant – you were one of the few members of the Bar who could understand the dark arts of the actuary and could therefore advise the trustees of pension funds.

6. History teaches us, however, that after the sale of indulgences comes the Reformation – in your case appointment to the High Court Bench and not long after as President of the Tax and Chancery Chamber of the Upper Tribunal. I shall not speak of the diligent and exacting work you have done in the latter capacity. That is not a figure of speech. I shall not speak of it because I know almost nothing about it and do not understand it anyway. What is apparent is the stream of your decisions on Lawtel, mainly about VAT, a subject to me, at

least, of quite impenetrable opacity. All I can say, adopting the patois of the age, is “Respect”.

7. Nor shall I speak of your two famous contretemps, which caused so much innocent amusement at the Chancery Bar, the first with Peter Smith J and the second with the Pensions Ombudsman, Professor Farrand. In both cases your good humour and courtesy contrasted with the spleen of those two notably splenetic gentlemen. That, of course, was a figure of speech, since I have now reminded everyone of both incidents.

8. Occasionally you have gone off piste, abandoning the icy, mogul strewn black runs of tax and trusts, into the soft, fresh, fluffy powder of property law which, as an expert skier, you negotiated with poise and confidence. Whilst still a deputy you decided Batchelor v Marlow and experienced, not for the last time I fear, a pang of irritation at being overturned by the Court of Appeal. Never mind. It may be of some comfort to you that, as far as I am aware (and as an editor of *Gale* I should be) the Court of Appeal’s decision (though we cannot say it was wrong – whisper who dares) is never followed, is always distinguished and has been roundly repudiated by the Law Commission.

9. In the Field Common case you ventured once more into the law of easements, delivering a judgment on Wrotham Park damages described in a later case by the Supreme Court as “comprehensive and scholarly”, which may, I venture to think, stand as a description of all your judgments. In a case called Polo Woods you essayed the curious world of profits à prendre – a case which I have always suspected was erroneously listed before you on account of your mathematical background, because the clerk of the lists noticed that it concerned a triangle.

10. A Judge has to have his little eccentricities. It is expected. I gather that one of yours has been riding a bicycle down the Judges' corridors of the Rolls Building. I must say that I understand why. Something that has always irked me when sitting as a deputy was being made to walk from the Judges' entrance round three complete sides of the building to get to Court, a distance of at least 300 yards.

11. Another innovation of yours was your job share with Mrs Justice Proudman, an arrangement known to us sailors as hot bunking, but perhaps I had better not call it that in the present climate for fear of misinterpretation .

12. A spell on the Bench would be incomplete without at some stage engaging the attention of the Press. You managed to generate the somewhat startling headline – “*Judge says it’s OK to say C*** in Court*”. That’s OK, then, but it is forbidden to use Latin. *O Tempora, O Mores*.

13. Between John Martin QC’s elegant and witty “Salve” and this my stumbling and inadequate “Vale” (oh dear, more prohibited Latin) you have entertained the submissions of the Chancery Bar with unfailing courtesy and good humour. All agree that it has been a pleasure to appear in your court.

14. I know that your retirement from the Bench will give you more time for your music, a career in which nearly kept you from the Bar in the first place. I hope too that you may find the time to sit on a gently rolling deck under the misty starlight of a Mediterranean summer’s night and, halfway down the second bottle, reminisce like Falstaff and Master Shallow in the play how, long ago, in a perhaps insufficiently mis-spent youth, before a career of relentless application in the service of the law, you and I may once have heard the chimes at midnight.



15. As Shakespeare (him again I am afraid) put it:

*“As in a theatre the eyes of men,
When that a well graced actor leaves the stage,
Are idly bent on him who enters next,
Thinking his prattle to be tedious.”*

I am the one in danger of becoming tedious. It remains to wish you on behalf of the Bar a very happy and fulfilling retirement.

And please note, I have closed this address without once, after the opening words, calling you “My Lord” or “Your Lordship”.