



PHOTOGRAPHY: JASON MCCORMACK

A life in the law

Judge Stephen Scarlett, lover of the arts, vintage Porsches and courtesy in court, recently retired from the Federal Circuit Court after a 28-year judicial career. He was appointed to the Local Court in 1988. He became the Senior Children's Magistrate in 1995. He was appointed to the new Federal Magistrates Court in 2000. His life in the law illustrates the remarkable diversity of professional opportunities a law degree can offer. It also raises questions about how each generation learns and transmits the traditions, technical skills and values of the profession. Is the current crop of young lawyers meeting the expectations of their seasoned colleagues? Judge Scarlett takes time to reflect with **JULIE MCCROSSIN**.

My first impression, when I meet Judge Scarlett in his chambers in the Family Court in Sydney, is how

refreshing it is to meet a judge who speaks eagerly about his time as a country solicitor. He went to Parkes in central western NSW planning to stay for five years. He liked it so much he stayed for 15. Country experience, he says, offers three things a young lawyer really needs: diversity of practice, responsibility for cases and a close relationship with a senior colleague.

As Judge Scarlett pulls up a chair beside me in front of his desk, he smiles with pleasure at the memory of his first day as a solicitor in a country town.

"I went to work for a chap called Tony Matthews, a wonderful man," he recalls. "He was a lot older than me. He'd been a Spitfire pilot in World War II. On the very first day he said, 'Come across the road. The District Court is

sitting here on circuit for a week, so come on over'.

"We walked diagonally across the road to the courthouse. On the way over he said, 'You better get used to this walk, because I'm not doing it any more. You are'. And I thought to myself, 'I'm doing litigation from now on'. And so it was."

Despite this sudden acquisition of responsibility, or possibly because of it, Judge Scarlett extended his time in Forbes far longer than anticipated.

"It was most rewarding," he explains. "I still have a great regard for country solicitors. Country solicitors can play an important part in the whole fabric of the community, like doctors do.

"People look to you to do all sorts of legal work. In many cases, they are people who can't afford to fly a barrister up from Sydney. They expect you, as their lawyer, to do it. You have a great deal of client loyalty. It really makes you concentrate on all aspects of the law and you've got to keep up to date."

Law and medicine share many characteristics as professions. Both require students to complete arduous university courses and exams, followed by systematic group training by senior members of the profession.

Yet both medicine and law also expect graduates to learn a great deal by directly observing senior people at work and then asking questions. This is how newcomers acquire practical skills and develop professional judgment.

It is also common in both professions for a relatively new graduate to have responsibility for a client's fate. It is a crucial survival strategy to develop a network of experienced mentors. This peer learning and support extends throughout your career, but it is essential in the beginning.

When I ask Judge Scarlett to reflect on the lessons he can share from his career, he talks respectfully about the mentors who guided him. He has seen "hundreds and hundreds" of lawyers appear in court. ▶▶▶



Retired Judge Stephen Scarlett with his prized Porsche.

What are the errors young practitioners should avoid? He answers concisely and without hesitation.

“Lack of preparation, for a start, in litigation. A failure to understand the rules of the particular court that you are in. And not treating other people with respect: not treating your clients with respect, not treating the court with respect and not treating your opponents with respect,” he says with particular emphasis on the last point.

“There are some remarkably rude and arrogant young lawyers out there. I think it is a dopey idea. Usually you can get on a lot better with your colleagues if you are polite to them. And they’ll usually be polite back. Some won’t. Most will.”

Judge Scarlett believes there has been a deterioration in standards of litigation in recent years. He says this is a view shared by several senior barristers who have spoken to him.

“They have complained about the lack of professionalism, the lack of courtesy and the lack of basic skills of a lot of solicitors,” he explains.

“I wonder whether some practitioners have been given a proper basic training because the principles of litigation are the same, whether its criminal law, family law or bankruptcy or whatever. I think the College of Law and the various practical training courses are good. But I wonder if some of the people who go there actually keep their eyes and ears open

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or whether they go through in a trance and don’t learn.”

For Judge Scarlett, the solution is clear. “You find that practical experience as a lawyer, whether it is in court or whether it’s in conveyancing and learning from older colleagues is absolutely invaluable,” he says with conviction.

He recalls his own experience, in his early days, when he would simply sit in court and listen.

“As a solicitor getting into family law, I’d have a few cases in Parramatta,” he says. “I’d go down and meet my clients there. I would sit in, right from the beginning. There were two reasons for that. One, I would be there when court opened so I wouldn’t get a rap on the knuckles for being late. But, secondly, I could listen to the other people do their business. If you heard 10, there would be about six that would make you think, that’s not too hard, I can do that. And for a couple, you’d think, these people are really good. I will follow that.”

Judge Scarlett remembers learning a great deal from watching a barrister, John Shaw, who is still in practice.

“This was 30 or 35 years ago,” he recalls. “I’d think, he’s good.”

When I ask what made him so good, his answer is swift and to the point. “Relevance. Knowledge of the subject. And he would state what he was there for politely and succinctly, so the judge knew what he was talking about and was able to listen.”

The skill of an effective litigator is to help the judge make a decision. You need to stand in the shoes of the judge and see it from the point of view of the person on the bench.

“You provide the judge with the relevant information to enable the judge to make a decision which, hopefully, is in favour of your client,” he explains.

“You don’t obscure the picture with a whole lot of irrelevant stuff. You look at the law and you say, ‘This is the law I am relying on and these are the facts I am relying on.’ And, of course, you need to give the judge a peg to hang his or her hat on. Some reason why the judge can make a decision in your client’s

favour,” the Judge concludes.

Judge Scarlett clearly values a keenness to learn and the humility to be willing to learn. He believes these characteristics are essential for young lawyers. It is how he learnt himself.

“I learnt a lot from some barristers whom we briefed,” he says. “A lot of barristers we briefed went on to become judges. We flew at least business class when briefing barristers. I used to brief my great friend, the late Ken Taylor. He became a District Court judge. He would make sure that I would prepare the cases for him properly and he would have a number of sayings which I can remember to this day.

“One of them was: ‘Remember in civil litigation, you either win or you settle. No-one goes to court to lose’. It taught me to evaluate the case. If you didn’t think you were going to win, you settle it. You didn’t want to go to a disaster.”

Another mentor he briefed was Ray McLoughlin SC who now sits on the District Court.

“He was a very good mentor, as a barrister, for a solicitor briefing him. He taught me about preparation and about how you behaved in court. He said that your behaviour in court was important because you had to have the confidence of the tribunal. If the judge thinks you know what you are doing, you will have an easier road. If the judge thinks you are an idiot, you are going to be pushing against it the whole time. Again, this was very good advice for a young lawyer.”

When Judge Scarlett was appointed to the Local Court in 1988, he again received invaluable guidance from senior colleagues. The first was Judge Mahoney SC of the District Court.

“I met him first of all when he was a barrister and I had just finished school and I had a day of work experience,” he remembers.

“I just sat in court and watched him all day at the Burwood Court of Petty



Former Judge Scarlett is relishing retirement and extra time with four generations of his family.

Sessions. Years later, I appeared before him. It was in Forbes, I’d come over from Parkes, and, at a social function, I told him I had just been appointed to the Local Court.

“He sat me down and gave me some of his experiences of what the first months on the bench were like. He said, ‘You’ll get very tired because you listen to everybody. You are constantly concentrating’. And he said, ‘The difference between being on the bench and being in practice, is that you miss the highs and lows of being in practice. You are more or less on an even keel. The workload is the same but you don’t have the highs and lows. It is a very different process and not all lawyers adapt to it when they appointed’.”

During his first week as a magistrate in 1988, Judge Scarlett met another mentor, Deputy Chief Magistrate Charles Gilmore.

“I spent a week with him at Central Local Court where you get people in custody. Serious crime. I just looked at the way he handled these matters. He was firm but he was fair. He was reasonable. He left no-one in doubt as to who was running the court. But he listened to each side and then would make a decision. He was a very good magistrate,” he says with deep conviction.

Judge Scarlett’s commitment to lifelong learning continued on the bench. He was active in legal education and

he studied. He completed a diploma in criminology and a Masters of Law. He was active in the Army Reserve, retiring at the rank of Colonel. His service included time in East Timor and in Malaysia as Counsel Assisting a Board of Inquiry. He received an OAM in 2015 for his service to the judiciary, the law and to professional organisations.

Since he retired in July, Judge Scarlett has already completed a course in Melbourne at the Resolution Institute in mediation. He will attend another course in alternative dispute resolution at Bond University later in the year. In addition to his plan to work in mediation, he is eagerly anticipating taking some of his “tribe of eight grandchildren” to the art gallery.

Judge Scarlett is well known for his love of the arts and music. “My grandmother, with her own grandchildren, used to teach us about art, music, poetry, literature and astronomy. It was a gift she could give to her grandchildren and I think that is something I can do for my grandchildren.”

As Judge Scarlett says farewell and I make my way back outside, through the tight security of the Family Court, I feel envious of the judge’s grandchildren. Not only will they be going to art galleries and the Opera House, but there is a good chance they will be driving in their grandfather’s car. He has a Porsche 996. I am not sure what that means. But it sounds good to me. **LSJ**