# THE CHALLENGE FOR THE JUDICIAL SYSTEM

THE Chief Justice of South Australia, the Honourable Justice L. J. King, addressed this challenge on the second morning of the conference. The media, both locally and nationally, had its interest in the conference heightened when the Chief Justice disagreed, in some respects, with the views of the Attorney-General for South Australia. The Attorney-General's address to the conference was reproduced in our last issue. The Chief Justice's address we bring to you now.

The Chief Justice's career was reviewed in the August, 1987 issue of the Journal. We will not repeat that review. Suffice it to say that, since his admission to practice in 1950, His Honour has led a life devoted to the law and the community of South Australia. His contribution to this country has been more than significant and, it is pleasing to say, has been publicly recognised by his admission to the rank of Commander in the Order of Australia.

THE theme of this conference is *"Criminal Justice — Towards the 21st Century"*. There are obvious reasons why it is appropriate that in that context consideration should be given to the role of the judiciary and the courts in the future development of the criminal justice system as we approach the 21st century. The role of the courts is central to the system. The whole process of detection and investigation of crime is a preparation for the role which the courts must play in determining guilt or innocence and, where guilt is established, in assigning punishment. Moreover, the role of the Correctional Services flows from the determination by the court and is concerned with the implementation of that determination. The focal point of the system is the role of the judiciary and the courts. It is essential therefore that all questions relating to the development of the criminal justice system receive consideration from the point of view of the role of the judiciary and the courts.

The criminal justice system exists for the purpose of the protection of the public by means of the suppression of crime. Crime is anti-social conduct which is prohibited by law under pain of punishment. It is therefore by definition conduct which the community sees as being a threat to its well being. In all the advanced countries, the incidence of crime has reached such proportions that it is perceived in the community to be one of the principal threats to social well being. It is therefore becoming one of the major preoccupations of government. Australia shares the problem with the other advanced countries and South Australia shares the problem with the rest of Australia.

Crime attacks the well being of a community, both directly and indirectly. Direct effects consist of the suffering and loss sustained by the victims. Indirect effects consist in the additional burden placed upon the health, social security and other services in the community as a result of personal disability and financial loss which crime causes. Over and above those effects is the enormous cost of crime control, detection and prevention. There are, moreover, indirect and insidious effects consisting in the fear and insecurity which the prevalence of crime produces, which pervade a community and diminish people's capacity to live full and happy lives. A high incidence of crime in a community gradually erodes the confidence of the citizens. It reduces their freedom to move about when and where they will. It infects them with a constant feeling of insecurity, both as to their personal safety and the safety of their property. It affects their relations with one another, particularly with strangers, and thereby poisons neighbourly relations and mutual assistance. A sad situation has been reached when people quite reasonably fear to stop to render assistance in remote places, especially at night, for fear of being attacked. Where an accident occurs, many motorists, especially women motorists at night, fear the consequences of complying with their lawful obligation to stop for the purpose of furnishing the statutory information. Worse still, many people, especially women, no longer feel secure from violence, especially sexual violence, even in their own homes. Similarly a sad situation has been reached when people return to their homes with a feeling of uncertainty as to whether their home is intact and their property secure. Fear of armed hold-up pervades those whose work involves the management of money or drugs.

The prevalence of crime tends to affect a community's attitude towards and respect for the law. Tax evasion, fraudulent commercial practices, shoplifting and other common and, often undetected, crimes gradually become the behavioural norm of the community. When others are escaping their fair share of tax by fraudulent practices, even the honest citizen is tempted to emulate those practices. When shoplifting is carried out with impunity, other people, particularly young people, are tempted. With the diminution of respect for law, the community becomes less safe, less secure and less happy. Crime should be understood and tackled as a major social evil which erodes the foundations of a good life for the citizens of any community.

There is a superficial attraction in the proposition that the escalation of the rate of crime represents a failure of the criminal justice system. In truth, however, the effectiveness or otherwise of the criminal justice system plays but a subsidiary part in determining the level of crime in a community. The causes of crime are to be found elsewhere and the level of crime in any given era or any given society depends upon the strength of those causes. Much has been written and spoken about the reasons for the escalation in the crime rate in the last 20 years. I content myself with drawing attention to factors which seem to me to be important.

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OF fundamental importance is the decline in respect for moral values in considerable sections of the community. When the internal restraints imposed upon behaviour by conscience break down, the external restraints imposed by the criminal law are placed under great strain. This is perhaps the fundamental cause of the increase in the crime rate. There has been a continuing increase in urbanisation. City life renders people and their property more vulnerable to crime. The nature of city living facilitates the commission of crime. Moreover it loosens family ties and discipline and removes those internal constraints which have their origin in the way of life of small communities. The full effect of the post-war baby boom has been felt in the past two decades. Crime is largely an occupation of the young, particularly of young men. Research confirms what commonsense suggests, namely that the age distribution of the population has a considerable effect upon the crime rate.

There are factors relating to particular crimes. Changes in the habits of life of women in the community have played a major part in the increase in sexual offences. It is necessary only to mention the increased inclination of young women to accept rides in motor cars with young men who are strangers to them and the disposition of young women to live alone in flats and to go about at night alone. Changes in the way of life of the community have also contributed to the incidence of breaking and entering. The presence of valuable possessions, such as electronic equipment, in the home presents the temptation, and the tendency of both spouses to work, leaving the home unoccupied during the day, presents the opportunity. The impact of television and other forms of entertainment on the young, as well as the prevalence and free availability of pornography, have been, I think, contributing factors. Unemployment and increased drug abuse have undoubtedly played their part.

I see no prospect of the diminution of the influence of any of these factors, with the possible exception of the age composition of the population, during the next quarter of a century. I approach the subject therefore in the belief that the rate of crime will not diminish and may well increase during the period under consideration. This consideration serves to emphasise the need for energetic measures to endeavour to bring under control the escalation of the crime rate and to reverse the trend if possible.

Having said that, I move on to emphasise immediately that the crime menace, like all social evils, must be seen in its proper perspective and that there must be observed a proper sense of proportion in applying remedial measures. We should neither over-estimate nor under-estimate the problem, nor should we set ourselves unattainable goals. Crime has been part and parcel of every community throughout history. There is a side of human nature which will always be tempted by the fruits of crime. In every community, too, there will be disordered and psychopathic personalities and the possessors of those personalities are likely to become criminals. In every community there will be persons who are driven to crime by material or psychological deprivation or by some form of emotional disturbance. In every community there will be people who succumb to the temptations of lust, jealousy or greed. We must therefore accept that there will be always some degree of crime in the community.

We should not set ourselves the unattainable goal of endeavouring to eradicate crime, but confine ourselves to the attainable goals of containment and reduction. I emphasise the need for retaining a proper sense of perspective and proportion because anti-crime zeal can easily degenerate into hysteria and bring in its train greater evils than those which it aims to cure. Crime to a great extent is a by-product of liberty. Wherever men and women are free, a proportion of them will misuse their freedom. Probably the crime rate could be considerably reduced by curtailment of the citizen's freedom of expression and action. The price would surely be too high. Rules of law which protect the citizen against arbitrary arrest and detention, against unfair treatment while in police custody, and which protect his home against arbitrary invasion by persons in authority, must be maintained. Any reduction in the crime rate purchased at the cost of the loss or curtailment of important civil liberties would be purchased at too high a price. What is needed is an intelligently planned and vigorously pursued programme of crime control which is consistent with the maintenance of the legal rights upon which our liberties depend.

An important aspect of the role of the courts in the years ahead will be to maintain a rational and dispassionate attitude to the administration of justice in the face of the emotions aroused by public concern at the incidence of crime. The past decade has witnessed mounting pressure by special interest groups on governments and parliaments to dismantle many of the safeguards which the law has erected against injustice. There have been significant legislative changes to criminal law and procedure in response to such pressures in recent years, whose purpose is to reduce the prospects of acquittal. Perhaps the changes that have been made are justified. But the process has to be carefully watched. It would be a grave reproach to our system of criminal justice if it degenerated to a point at which our desire to ensure that the guilty are convicted and punished allowed us to tolerate substantial risks of the conviction and punishment of the innocent. Fear produces hardening of attitudes and fear of crime may produce insensitivity to injustice. It is the responsibility of the judiciary to defend the integrity of the process of justice against encroachments

born of fear and prejudice which might have the effect of imperilling the innocent.

THE challenge which will confront the judicial system in relation to criminal justice in the years to come has many aspects. Constraints of time require that I confine myself to certain only of those aspects. In so confining myself I put aside certain issues of great importance for the criminal justice system. Amongst those are the place of punishment in any programme of crime containment, that is to say the question of sentencing policy, and the relationship of the criminal justice system to the victims and alleged victims of crime. I confine my attention to certain issues only arising from two sources.

The first source is the escalation of the rate of crime combined with the restriction of resources available to the judicial system. The result of those two factors in combination is an overwhelming pressure of business upon the judicial system. The challenge is to manage the volume of work by means of effective methods of disposition which will enable the courts to cope with the caseload without undue cost and delay and without impinging upon their capacity to do justice in each individual case. The second source of challenge with which I shall be concerned is the progressive increase in the complexity of the criminal law reflecting the increasing complexity of the society itself, and the constantly increasing fund of scientific and other knowledge which is available for use in pursuit of the ends of criminal justice. If these challenges are to be met, there will have to be constant re-examination of the procedures of the criminal courts and of the methods of administering them. In this address I will deal with some of the issues which arise from those challenges.

The outstanding features of the judicial process under our law, in relation to criminal matters, are, first, the adversary system and, second, the trial as the focal point of the process. I suppose that, in any review of the role of the courts in the development of the criminal justice system, those central features must come under review. They are absent from the legal systems which exist in all parts of the world except the common law countries. They have come under criticism from time to time. No doubt all legal systems have their strong points and their weaker points. I have read and seen nothing, however, to convince me that our system, regarded as a whole, is inferior to legal systems of non-common law countries. The adversary system seems to be at least as effective as any other in eliciting the truth. I think that the emphasis on the trial in our system has many advantages over a system in which the trial is merely the final stage in long drawn-out inquisitorial proceedings designed to determine guilt or innocence, not the least of which advantage is earlier finality of the proceedings. The common law system does suffer, however, from one marked disadvantage by comparison with inquisitorial systems. The accused is not subjected to interrogation in a judicial setting until, and unless, he submits himself for cross-examination at trial. This is in marked contrast to the inquisitorial systems in which the accused is interrogated judicially at a very early stage. I think that the introduction into our system of a process of interrogation in a judicial setting of an accused person at a relatively early stage of the criminal proceedings would be an important contribution to a more effective criminal justice system. The acceptability of such a development in our system is bound up with the issue of the right to silence and the immunity against self-incrimination.

There are, no doubt, sound practical reasons for the right to silence during the course of police interrogation. A suspect may reasonably desire some assurance that his answers will be faithfully recorded. He may wish to have legal advice as to his rights and, in particular, as to the law relating to the offences of which he is suspected. It seems to me, however, that our procedures are defective. If a suspect declines to answer police questions, there should, as it seems to me, be a procedure which would enable the questions to be put under the supervision of a magistrate and in the presence of the suspect's legal representative. Even where the suspect answers police questions, there may be sound reasons in many cases for a systematic interrogation in a judicial setting. Under such circumstances, I can see no justification for a right to silence or an immunity against self-incrimination. Such an inquisitional examination before a magistrate should, no doubt, be confined to persons who have already been charged with an offence. Perhaps it should be necessary to satisfy the magistrate that there are reasonable grounds for so charging the person who is to be examined. The answers would be properly recorded and would be admissible on the trial of the accused person. I have no doubt at all that the thorough examination of an accused person in a regular judicial proceeding at an early stage of the proceedings would be a most important aid to the investigation and proof of crime. In many complex commercial cases it would not only be an important aid to the proof of crime but could have the effect of greatly shortening proceedings by securing admissions of relevant facts which would otherwise have to be proved by a long and tortuous process. I cannot see that such an examination would impinge on any defensible civil liberty. To the extent which I have mentioned, I consider that the right to silence and to be protected against self-incrimination should be modified.

The objection often made to such a procedure is that it would infringe what is said to be an important civil right, namely the right not to incriminate oneself. I think that the moral and civic basis for such a supposed right is dubious. An innocent person has nothing to fear from being required to answer questions in a judicial proceeding with proper safeguards. I can see no reason at all why a guilty person who has been charged with a crime should be protected against disclosing his own criminal activity or in disclosing facts which would tend to prove the charge against him. To my mind the justification for the right to silence and the immunity against self-incrimination in respect of a person who has been charged with a specific crime is a practical one. It is removed when the questioning takes place before a judicial officer, such as a magistrate, after the accused person has had legal advice and in the presence of the accused person's legal representative. As I have said above, I think that it is important to be on guard against any tendency to dismantle necessary safeguards against wrongful conviction, but it is equally important to abandon

rules which serve not to safeguard the innocent but to protect the guilty.

NO discussion of the role of the judiciary and the courts in the development of the criminal justice system would be complete without some reference to the jury system. Historically it has been a basic safeguard of liberty. Its existence has meant that the authorities could not procure the conviction and punishment of a person who was troublesome to them unless 12 persons drawn from the community at large were satisfied of the guilt of that person. It continues to serve that purpose. In the eyes of most who have had close experience of the workings of juries, the system has been proved to be an effective method of convicting the guilty without imperilling the innocent. It has the further advantage of involving ordinary members of the community in the criminal justice system. The system is coming, however, under increasing pressure from a number of directions. The increasing complexity of the criminal law, a response to the increasing complexity of the society which it regulates, is causing increasing difficulty to judges in explaining that law to juries in terms which are direct and simple enough for comprehension and application by minds untrained in legal concepts. The intricacy of commercial transactions which frequently form the basis of charges of commercial fraud and the enormous duration of trials of charges of such a nature present what seem to me to be insurmountable difficulties for the effective functioning of a jury. In other classes of cases scientific evidence can become so intricate and involved as to make the task of a jury extremely difficult. Superimposed upon those difficulties is the modern tendency of the media to report the circumstances surrounding alleged crimes, together with interviews with the alleged victims, in a way which must make it extremely difficult for members of the public who are called upon to serve on juries to bring a fair and impartial mind to bear upon their task. Even the privacy and confidentiality of the jury room is no longer respected. The question must be asked in such circumstances whether the jury system has a future.

I think that the jury system is far too precious a protection of the individual citizen to be allowed to fail. If it is to be preserved, however, we must be practical in our appreciation of its limitations. We must be prepared to adapt our laws and procedure to make it effective. If it is to continue to be effective, legislators and judges alike must resist the temptation to continual refinement of the criminal law so that the distinctions become evermore subtle and evermore difficult of comprehension by jury members of varying degrees of education and intellectual capacity. There is a natural human striving after perfection. Those concerned with the criminal law, whether academic law reformers, legislators or judges, have an inveterate tendency to seek to perfect it by means of ever increasing refinement. This process is inconsistent with the continuance of the jury system. Already judges are faced with the necessity of directing juries as to elements of statutory crimes which must be extremely difficult of comprehension to the lay mind. Moreover judges in their quest to attain ideal justice produce legal tests of criminal liability which render the task of the trial judge in explaining the law to the jury and the task of the jury in applying that law virtually impossible. If the jury is to continue as an effective part of our criminal justice system, the criminal law must be framed in terms which enable clear and simple questions to be posed for determination by persons of all levels of education and intellectual capacity. If we cannot do that, then we must face the fact that the jury system will not function effectively and will become an instrument of injustice rather than of justice.

Governments and courts must also appreciate that if the jury system is to continue to be effective, it requires protection. It will be necessary for the media to exercise great self-restraint in its handling of criminal reporting and for the authorities to be vigilant to take action against media or other publicity which might effect the capacity of jurors to reach a fair and impartial verdict. I am very strongly of the opinion that legislation is necessary to render unlawful any intrusion into the privacy and confidentiality of jury room discussions. The jury system cannot function if jurors cannot be confident that their discussions will be protected from publicity. The law of contempt of court is not an adequate instrument to deal with the problem. It is important that there should be a statutory prohibition of improper intrusions into the confidentiality of jury room discussions and that such prohibition should be enforced.

IT must be conceded, however, in my opinion, that, irrespective of what actions are taken to render juries more effective, there are some types of cases in which the jury system simply cannot be made effective. If we are to preserve the jury system, we should frankly face the fact that it is unsuited to certain types of cases, and provide other methods of trial of such cases. It is really quite out of the question that citizens should be asked to serve on a jury in a case which might occupy several months. Few persons can afford to be taken away from their ordinary daily activities for such a length of time. So many jurors have to be excused from service on a very long trial, that the jury which is empanelled rarely represents a cross-section of the community.

Very long trials, in my opinion, are quite unsuitable for jury trial. There are other cases in which the transactions or the evidence are of such intricacy and complexity that a jury, operating as it necessarily must, cannot be expected to grasp them. It is not just that juries are, as they must be if they are to be a cross-section of the community, drawn from persons of all educational levels and degrees of intellectual capacity. There is also the problem of the manner in which the jury must necessarily operate. If there are masses of documents, jurors are not in a position to do what the judge and counsel certainly do, that is to say study them in detail, cross-reference them, prepare tables with the aid of assistants and pore over such materials in the privacy of their chambers or studies. Where such methods of mastering the materials are necessary, the jury is faced with an impossible task and is likely to reach its conclusion without a proper understanding of the relevant evidence and transactions.

I believe very strongly that we must develop alternative methods of trial for such types of cases. To say that, is not

to diminish in the slightest degree the importance or significance of the jury system. Indeed, I believe strongly that no trial should take place without a jury except by order of a court upon proof that the case is of such a kind that it would be unsuitable for jury trial. I do not approve of the legislation currently in force in this State which enables an accused person to elect for trial by judge alone irrespective of the nature of the case and irrespective of whether it is suitable for jury trial. I think that it is a mistaken principle to regard trial by jury solely as a right attaching to an accused person and to overlook the interests of the community in having ordinary citizens involved in the administration of justice. Jury trials should not be looked upon as a right which can be waived by an accused person unilaterally but as the normal system of trial which is to be dispensed with only where a court is satisfied trial by jury would not be appropriate.

Any proposal for a non-jury trial of charges or offences of a particular kind raises the question of the nature of the tribunal of fact which would replace the jury in such cases. Where an accused person elects to be tried without a jury in this State, he is tried by a judge sitting alone. I do not think that a single judge is by any means an ideal tribunal for the trial of serious criminal charges.

Each individual has his own particular personal and social background, temperament and experience of life. Rigorous professional training and the nature of the judicial process combine, it is true, to assist a judge to overcome any prejudice arising from those factors. Nevertheless, it is impossible to doubt that individual judges do vary in their assessments of witnesses and of factual issues and situations. A tribunal of more than one person is, to my mind, clearly desirable. I think, however, that once a jury selected at random is put aside as an unsuitable tribunal for a particular case, it is undesirable to resort to a tribunal consisting in whole or in part of persons who are not full-time sworn holders of judicial office. There are a number of reasons for this; but the most important is that the factors which assist a professional judge to overcome personal prejudice are absent for the most part in the case of persons who do not hold judicial office. Moreover, such persons lack the security of tenure and other protections which safeguard a judge from the temptations of partiality or from susceptibility to improper influence.



I would favour a tribunal of three judges drawn from different levels of the judiciary. I have seen in the Republic of Ireland trials of criminal cases which, because of their political overtones, are considered to be unsuited to jury trial by criminal courts consisting of a High Court judge, a Country Court judge and a magistrate.The equivalents in this State would be a Supreme Court judge, a District Court judge and a magistrate. Courts so composed appeared to operate satisfactorily and undoubtedly commanded the respect and confidence of the authorities and the legal profession. I think that our system should develop in the direction of incorporating tribunals so composed into our court system for the purpose of trying cases which are considered by the court to be unsuitable for jury trial.

A major problem confronting the courts in the decades ahead will be the maintenance of a dispassionate and rational attitude to the punishment of crime in the face of prejudice and pressure from sections of the public, stimulated by inflammatory treatment of the subject in the media. There is a tendency on the part of the media, when there is a sentence which is, on the face of it, lenient, to feature angry comments by the victim or members of the victim's family. In that way public feeling is inflamed against the courts and the judges. The victim of a crime is, however, the worst possible judge of what is fair and just treatment of the offender. A person can rarely be a just judge in his own cause. A judge, in passing sentence, must take all factors into account, not merely the need for punishment and deterrence, but also the need for rehabilitation and for a fair and, if appropriate, merciful treatment of those who have transgressed.

Unfortunately, holders of public office, whose responsibility it is to explain these matters to the public and to defend the actions and reputation of the courts, have developed a tendency to join the critical bandwagon often, in the process, misrepresenting the courts' actions and attitudes. Courts are a convenient scapegoat because of the tradition that judges do not engage in public controversy and therefore do not, as a general rule, hit back at the critics. The danger from all this is that it may, as the years pass, have the affect of eroding, perhaps by imperceptible degrees, the judiciary's detachment and impartiality.

Judges are human. They have to mix socially and in the course of their personal relationships with people who are influenced by unfair and inflammatory criticisms by holders of public office or by sections of the media. They give careful reasons for decisions arrived at in the the light of all the evidence and argument addressed to them and after much deliberation. Those reasons are rarely reported. Unless holders of high public office, the media and the public generally are prepared to defend the integrity, impartiality and detachment of the judicial process, there is a real danger that judges and magistrates will, by degrees, be deflected by personal pressures and public feeling from the dispassionate discharge of their judicial duties.

An important step in protecting the independence and impartiality of the judicial process is the appointment of an official, independent of the Attorney-General, to be responsible for prosecutions of indictable crimes and for appeals, that is to say a Director of Public Prosecutions.

This has been done by the Commonwealth and certain of the States but this State has so far not followed suit. Where there is no Director of Public Prosecutions, prosecutions for serious offences and appeals against sentence are instituted by the Attorney-General. The office of Attorney-General is a political office. It is extremely difficult for an Attorney-General, however well intentioned, to put political considerations aside in making decisions in relation to prosecutions and appeals. Where there has been some public comment or criticism, there must be a temptation to get the controversial matter off the Attorney-General's plate by putting it before the courts. That temptation creates the risk that decisions as to whether to institute prosecutions and as to whether to institute appeals might be determined not entirely by the merits of the case, but at least in part by the political consideration as to the impact of media or public criticism.

The risk of the intrusion into the decision-making process of extraneous considerations is greatly reduced where the responsibility for such decisions is vested in a Director of Public Prosecutions who is independent of the Attorney-General in the making of those decisions. It is thought by some that because serious prosecutions have been traditionally instituted by the Attorney-General on behalf of the Crown, there must be retained some ultimate responsibility and control in the Attorney-General. If the Director of Public Prosecutions must be subject to ultimate direction from the Attorney-General, the integrity and independence of decision-making as to prosecutions and Crown appeals can still be secured, by a requirement that any such direction be tabled in Parliament or otherwise made public, thus ensuring public accountability for any over-riding of the discretion of the Director of Public Prosecutions.

THE distancing of Attorneys-General from the prosecution function, assists them to understand more fully and to perform more effectively the important role which devolves upon them under the Australian practice of Minister of Justice. They would see themselves less in the role of litigants before the Courts than in the role of Minister responsible for the effective functioning of the judicial system and for the provision of the resources necessary for that purpose. The roles of Chief Prosecutor and Minister of Justice are inherently incompatible. The impact of the inherent incompatibility is much softened in practice by the delicacy of some Attorneys-General and their advisers in performing the incompatible roles. But, as the public becomes more concerned about crime and, as a consequence, the decisions as to prosecution and appeal made by Attorneys-General become matters of public controversy to an increasing extent, the dangers arising from political involvement in the prosecution process and the need for an independent director of Public Prosecutions become clearer. It involves no disrespect to the holders of the office of Attorney-General anywhere, to say that no Minister can satisfactorily perform the dual and intrinsically conflicting roles of Chief Prosecutor and Minister of Justice.

There can be little doubt that the courts in the decades ahead will continue to be confronted with the challenge of heavy workloads. Whether the communities which the courts serve will be prepared to devote to the administration of justice the resources necessary for the just and effective disposal of that workload, remains to be seen. If the will to make such resources available is lacking, legislators and judges will be faced with hard decisions as to the procedures by which justice is attained. Judicial administration for the purpose of making the maximum use of the resources available to the courts, is a major pre-occupation of presiding judges and administrators and will continue to be so. Every proper step should be taken to maximise the use of available resources. In the end, however, a lack of resources means that procedures which tend towards a just solution of cases must be skimped or there must be delays which themselves impose injustice. The quality of criminal justice in the years to come will depend upon the extent of the resources which are devoted to it.

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I think that it is of the utmost importance that criminal procedures be simplified to the greatest extent which is consistent with the attainment of justice and that the courts and legislatures should firmly resist any tendency towards the proliferation of such procedures. Progress has been made in the area of judicially encouraged and supervised pre-trial agreements to reduce the length of trials and more might be done in that direction. Studies into the means of fostering shorter criminal trials have produced suggestions which can be used to some effect. I think that the purpose and conduct of preliminary hearings must come under close scrutiny. Lengthy preliminary hearings place an enormous burden upon the resources available to the administration of criminal justice and greatly increase the cost. Their scope will have to be limited.

In most instances a magistrate can be satisfied that there is sufficient evidence to put the accused on trial without the necessity of oral evidence at all. So far as the preliminary hearing serves the purpose of acquainting the accused with the evidence against him, this can be achieved in many cases almost as well by the supply of statements or affidavits by the prosecution. Undoubtedly there are cases in which proper preparation of the defence requires that the defence be able to put certain questions to certain witnesses before trial. This could be achieved by authorising the committing magistrate to require the attendance of witnesses for cross-examination limited to certain specific topics and limited to the ascertainment of facts necessary for the proper preparation of the defence. A reform of the system of preliminary hearings along those lines would have a marked effect upon the efficiency of the system and the speed at which justice can be administered. In a typical case in South Australia at the present time, a greater interval of time elapses between the first appearance before the magistrate and the committal for trial than elapses between the committal for trial and the actual trial in the superior court.

Every effort must be made in the years ahead to ensure that those who are charged with crime are brought to trial at the earliest possible moment consistent with the attainment of the ends of justice. All procedures and proceedings which tend to delay a trial must be rigorously examined to see whether their attention is justified. The courts and legislatures must be vigilant, in my view, to resist innovations which tend to complicate the criminal justice system and lead to delay in bringing alleged offenders to trial.

IN reviewing the role of the courts and the judiciary in relation to a developing criminal justice system, I would venture the conclusion that the judicial system in relation to criminal justice is basically sound. To be fully effective it requires in the future adequate resources, the support of governments, media and the public, and constant re-examination by those who administer it of its procedures in order to ensure that they are, and remain, effective to cope with contemporary needs.