CONFERENCE OF STIPENDIARY MAGISTRATES OF QUEENSLAND
9.00AM - 9 NOVEMBER 1998
MERCURE HOTEL

OPENING ADDRESS - CHIEF JUSTICE PAUL de JERSEY

Chief Stipendiary Magistrate
Magistrates
Ladies and Gentlemen

It is a great pleasure to address you at the commencement of your Conference. It is also a privilege. As Chief Justice, I am principally responsible for the administration of the Supreme Court. But I do willingly assume an at least theoretically influential role with respect to other sections of the State s judiciary and magistracy.

As Magistrates, you are directly responsible for the vast majority of judicial work daily accomplished in this State. Not only do you dispose of a comparatively massive amount of work, but you also have a substantial opportunity to create an impression on the public as to the judicial process. You bring immense accumulated wisdom to bear in the discharge of most important responsibilities, and you are greatly admired and respected for what you do. I express my very best wishes, and my congratulations on the design of a potentially productive conference. You will be considering a wide range of important subjects and you will hear from many experienced and talented speakers.

Speaking at this very preliminary stage of the event puts me rather into the category of the judge who was referred by counsel to one of his earlier reported decisions. The reference was to the judge s decision reported in (1992) Qd.R 40, at 15. "How can that be?", asked the judge, "is it another case I decided before it began?" Well, what I say to you now will not be definitive, of course. It can be no more than a hint at matters you may think significant to our judicial approach in this day and age. I hope that what I will briefly say may inspire some further consideration which may be of value to you.

Of course opinion about what is important varies. I recently attended the Third Asia Pacific Courts Conference in Shanghai. We were addressed most imaginatively by Professor Jim Dator of the University of Hawaii. The Professor, a political scientist, referred to a survey he conducted of the Hawaii judiciary, in which the Judges were asked to assign, anonymously, their priorities in relation to judicial concerns. As the Professor put it:

"After many hours of discussion and ranking, we finally came up with

> the number one priority of the Hawaii State Judiciary. It was parking. That was the number one concern of the group. Not justice . Not a speedy trial . Not even efficiency . None of the things that I expected might be their top priority. Instead the main concern of the Hawaii Judiciary at that time was that each employee have a convenient parking space for her car."

There are, as he went on to add, many dimensions to the judiciary. I propose therefore to do no more than advance a few of my own views today, broadly surveying what I see of the path forward.

I want to say a little first about how the courts are perceived. There is tension these days between the traditional approach to the courts, as the third arm of Government, and a perception among some that courts are mere service providers. It is important that we perform efficiently, that our backlogs be monitored and eliminated where possible, that our judgments be delivered expeditiously, that we not make too many mistakes. But important as those factors are, the real picture has a much deeper perspective.

Some modern trends may be confusing the public about what we really do in the courts. One of the risks of even the current penchant for alternative dispute resolution, for example - mechanisms which I should say I warmly embrace - is that it may deflect attention from the courts traditional role.

Courts are not just another dispute resolution mechanism. They operate quite differently, for example, from mediation and conciliation. For a start, the courts operate in public. Courts hear both sides together. Judicial officers give reasons for their decisions. If bare efficiency were the only consideration, disputes could be resolved much more satisfactorily than in the courts. Take the criminal arena. If the only consideration were to punish the guilty and acquit the innocent, as quickly and cheaply as possible, no doubt a bureaucrat could do it, as in some other parts of the world.

Courts ultimately stand between citizen and State: which immediately, of course, raises the anomaly of financial support from a department of State which also supports the Director of Public Prosecutions and the Crown Solicitor. I offer no solution to that - I mention it merely to point up the complexity of our situation - a complexity not readily resolved by fashionable catch-cries based on notions of bare efficiency.

Speaking of bare efficiency raises another issue of current concern: the problem of applying to the courts so-called Treasury "output budgeting" - determining what funds should be provided by reference to the amount of work turned out, increases in "productivity" and the like, rather than by considering the objectives we must fulfil.

Courts must be given the resources adequate to enable them to do only one thing, to deliver justice according to law: only one thing, but something of massive proportions and significance, an indispensable goal of civilized society. And providing the resources necessary for that, one may observe, is not limited to financing the courts directly - it includes proper funding outside the courts, such as securing an adequate level of legal aid, presently lacking.

Cost driven exercises, economic rationalism, often ignore the true cost to citizens. Reducing or maintaining the level of an item of expense in a budget may produce an encouraging financial appearance. In reality, of course, it may often do no more than shift an item from one department s budget to another s. That aside, however, reducing services by not properly funding them may lead to a more intangible, serious cost to society - and for which, interestingly enough, no bureaucrat will likely be held to account.

The problem may sometimes be that unless something can be valued in direct financial terms, the temptation is to jettison or ignore it. The cost associated with human anxiety over court delays is a good example. It is the courts which are called to account for such things. But courts can only act as far as financial resources allow. Governments must come to think more broadly about funding the justice system. Current Treasury models may be simply inappropriate.

In short, courts are not mere service providers. The worth of the courts is not truly gauged by analysis of outputs alone, useful though that may be. Courts operate at a much more fulsome level. They are indeed an "arm of Government", of indispensable worth to civilized society. They are not just a piece of bureaucracy, but an overwhelmingly significant public organ. They inspire and support the people, guarantee the delivery of justice according to law, and act, as it has been put, as "a bulwark against prejudice and unreason".

A drive for efficiency is important, but a focus on efficiency cannot be allowed to obscure the broader significance of this third arm of Government we are privileged to constitute. Courts are a vital constituent of the essential fabric of the State. And I believe it is critical that we do our best to remind the public of this, to restore a proper perception of our role.

I turn to another matter of current concern. Public perceptions of courts are being influenced by so-called "client satisfaction" surveys. This may not be generally helpful. One point is that gauging views on our process cannot effectively be separated from the significance of outcomes. What newspaper, having lost a defamation action will express satisfaction with the process? What convicted murderer in prison for life will glowingly recount the fairness of his trial? Half our litigants lose, and more often than not, the other half, though "successful", resent having to be there! What a scenario for satisfaction!

And as to the "friendliness" of the process, what lay person would not inevitably, naturally be daunted by it?

The necessary authority and ultimate detachment critical to the process will always, unavoidably, inspire a degree of intimidation, however courteously the court treats the litigant, and utter courtesy is of course the goal of all of us. Public confidence in the impartial delivery of justice is much more important than our being liked.

There has been some criticism of the method behind the recent report released by the Australian Institute of Judicial Administration entitled "Courts and the Public". That report, you may recall, led to criticism of the courts earlier in the year. It was selectively reported in the media. It has done some good in provoking constructive reconsideration of the way we do things. But to my mind, it likewise appeared to be based on a rather inadequate appreciation of the judicial role. It appears to have assumed our role as essentially service providers - which, as I have stressed, if repetitiously, is only part of it.

The report seems to have been based largely on anecdotal material, drawn from various parts of the country, tending to be advanced as justifying substantial criticism if not condemnation of at least aspects of the judicial system Australia-wide.

Our own courts here should not have to bear the burden of the rudeness of a counter clerk in remote central Australia, or central Sydney for that matter. Also, the notion inspired by the report that judicial officers are regressive and unresponsive is glaringly inaccurate. The Judges of the Supreme Court have led that court through massive changes over the last five to ten years, on both the civil and criminal sides.

I will not delay by cataloguing those changes - it would take too long. I did so in delivering the Mayo lecture at the James Cook University in Townsville on 23 September, and that speech, "regressively" enough, may be found on the Internet! As I have said elsewhere: modern day courts are not resistant to change, they initiate desirable change.

Such reports are ultimately unhelpful because they ignore the inherent difficulty of reliably surveying true attitudes on these things. And a consequence is that the report may unjustifiably erode public confidence in this most significant arm of Government.

I remain convinced that we will help develop that proper public perception of the role of the courts if we become more communicative about what we do. We need to instil a better appreciation of the role, that we are not mere service providers, but truly a significant arm of Government, and inspire confidence by more information

about our processes.

Communicating, demystifying, but acknowledging that there is a point beyond which we cannot go, because the perception of the authority of the court ultimately depends on a certain degree of detachment. This is a major thrust of my chief justiceship.

Another thrust concerns the fundamental importance of properly exploiting the benefits of modern technology. The so-called "Courts Modernisation Project" will have accentuated interest in this area, especially for the magistracy. The benefits of modern initiatives in this realm are potentially immense. I am sure you agree.

One of our challenges is to ensure, so far as we can, that adequate financial resources are properly committed by the Government to ensure that the public does not lose out.

We have moved on since the wheel, the steam engine, the printing press and the biro! A new world awaits us, and the gates are easily opened - but more resources are necessary if the path forward is to be fully available to us.

My most recent exposure to these exciting possibilities concerned the courts of Shanghai and Singapore.

Those courts display a commitment to most innovative facilities, surpassing our own current initiatives which, one should fairly record, include the taking of evidence by telephone and videolink, use of document viewers, real time reporting, CD-rom presentation of documents, and the like. We must be urging facilities to allow for full technological on-line management of cases and the lists and allocation of hearing dates and fully computerised "callovers".

There are other possibilities: full electronic filing of documents, the translation of books and documents into floppy discs and CD ROMS, video monitors in more courtrooms. I would not presume to suggest particular initiatives for your system, but they do apply to the Supreme and District Courts.

You will hear at the conference of one technique which I believe could substantially benefit us all: computer based interactive crime scene recording. The economies which can be secured through technological innovation are substantial: so is the enhancement of understanding of issues.

That I dwell on this is not of course inconsistent with my reference earlier to the need for a proper perception of the courts as not mere service providers. Efficiency is nevertheless of prime importance, and we must continue working together to accelerate it.

Speaking of the major thrusts of my approach, may I add, finally, reference to my firm wish that the State courts, and their judicial officers, work forward together in a complementary and co-operative way. I consult regularly with the Chief Judge and the Chief Stipendiary Magistrate.

I have been delighted by the presence of Mr Deer and other magistrates at Bar Practice Course events, and at many other public occasions. I have been impressed by the capacity of Keith Krosch and Basil Gribbin to inject vitality into meetings of the Rules Committee - which you will readily accept as inherently dull occasions.

We have the same interest in many matters: a unified approach will often secure much more. The heads of the three jurisdictions recently made a joint submission on court finances: we are jointly involved in the push for technology. You will shortly hear from Justice Thomas. I sense we are developing a greater corporate or collegiate spirit, and that can only be publicly beneficial.

I hope my short remarks today have confirmed to you my complete support for your significant endeavours.

And now, may I conclude by reverting to my theme: through more open communication, we should strive to develop a better perception of our true role, as courts of law. That is how we will enhance the confidence the public should be reposing in institutions of such pivotal significance.

I wish you all well in your important deliberations, and take great pleasure now in declaring your conference "open".