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LECTURE - UNIVERSITY OF QUEENSLAND LAW SCHOOL

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Attorney, Chief Justice, Judges, Magistrates, Professor Tarr and Mrs Tarr, distinguished guests, staff and students, friends -

It is an honour and a pleasure to be asked to speak at the University of Queensland by the Head of the Law School, Professor Tarr.

I was an atypical graduate of the Law School. I was a mature age, female student, I had no legal connections whatsoever and I had preconceived ideas when I enrolled in a law degree as to what I wanted out of it. For all that, and given some reservations I had at the time about the law course, I am pleased to have had the experience of studying at U. Of Q. Law School.

I have a long association with this University, having started work as a steno-typist in the Committee Section of the Central Administration in 1964, having completed Senior at All Hallows in 1963.

The decision to begin work rather than undertake further study, suited my then personal ambition to meet as many boys as I could and to earn the money to buy clothes to impress those boys. The University certainly had a multitude of boys around. I made a less than half-hearted attempt at

studying a subject or two towards a B .A. that first year, as the University provided such tuition free of charge to staff. Whilst I persisted in sitting for an examination in Introduction to Literature, without reading many of the subject books and failing in it, I did succeed in dating someone from the course for about a year!!
Whilst I would return to work at the University as a Steno/Secretary on a few occasions, I did not return to study until I returned from an overseas stay of four and a half years, begun when I turned 21. I began a B.A. which evolved with my personal and intellectual development over a number of years

of part-time study. It included majors in English Literature and Government but included History, Economics and Sociology.

It was while I was working on the staff of the then Minister for Social Security, Bill Hayden in *1974-75,* in the Whitlam Labor Government, that I developed an interest in the study of law. I was mixing with a number of lawyers who were ministers or staffers in that government and when exciting concepts such as access to justice for all through the establishment of legal aid offices and community legal centres as well as Aboriginal Legal Services, were evolving.

Encouraged by Mr Hayden, I enrolled for a law degree in 1980, having all but completed my B.A., with a year's full-time study in 1979. I graduated with my B.A. in 1980.

As I have said, I entered the law school with fixed ideas as to why I wanted to study law and what I wanted from it. I wished to become a Solicitor and to work in the fields of legal aid or the community legal sector. Those four years as a full-time student, after, to that point in time, fourteen years in the workforce were great, if impoverished years. The necessity to support myself by part-time work and conscience-driven involvement in the social justice issues of the time, meant that sometimes my law studies suffered. However, I was pretty sure I was on the right track.

On reflection, and without appearing ungracious, I was possibly at the wrong law school. Whether or not ahead of my time, I was looking for a law curriculum which was more analytical about the law as it affected the rights of the individual as opposed to a more traditional, conservative law degree, which appeared to be producing fodder for the commercial bar and firms at the Riverside end of the city.

Life has its ironies, however. While firmly believing that the corporate, commercial law subjects would be of less use to me than the criminal and family law subjects, it would be commercial law which would stand me in good stead for one of my specialities in my later work for the Caxton Legal Centre - consumer credit, culminating in my work in 1994-1995 leading to the introduction of the Uniform Consumer Credit Code in Queensland.

I was fortunate in having some excellent teachers at Law School, in the persons of my now judicial colleagues, Judge Margaret White of the Supreme Court and Judge Patsy Wolfe, Chair of the District Court and my magisterial colleague, James Herlihy. Quentin Bryce also lectured and tutored me. I was

always in awe of the three women legal academics, who were as impeccably intellectually prepared as they were elegantly outfitted, all combining work with family responsibilities. Mr Herlihy was less of a fashion statement but was as intellectually fine.

I always had a bit to say - often more in lectures than in tutorials!! Smarting from the sacking of the Whitlam Government in November 1975, which had also cost me my job on Mr Hayden's staff, I took on Chris Gilbert in a Constitutional Law Lecture one day when he suggested that both houses of parliament were equal. I retorted from the body of the lecture hall - "How could that be so when governments can only be formed in the House of Representatives?" To which Mr Gilbert replied - "Well the Senate can bring down that government" or words to that effect, which didn't help my mood for the day.

On another occasion, during a Torts lecture on the subject of Lord Campbell's actions, I took offence at the lecturer's suggestion (and we got so few hints of a practical nature), that if we had a widowed client claiming damages for the death of her husband, we should have her dress plainly and with no makeup for the hearing to impress the judge as to her low chances in the marriageability stakes and hence seek to increase her chances of damages. Incensed, I hopped to my feet, noticing one of my friends beside me sort of sliding under the desk, to say that I thought such a suggestion outmoded, outrageous and insulting to women. Whilst I was firing away, a
slightly eccentric student from the front of the lecture group, turned around and said "Ah, why don't you shut up!". Further incensed, I said to the lecturer "Are you going to let him get away with that?". To which the lecturer said "yes" and I resumed my seat - appalled.

On enquiry later to my friend on her sliding motion, she told me that it was out of embarrassment. However, another law student came up to me later, Morag McDonald and from that time we were firm friends and our friendship saw the establishment of the Women Law Student's Association, which I hope still exists. We pushed totally unsuccessfully for a "Women and the Law" curriculum. (Does it yet exist?). Even our mere existence was an irritation to some, with notices of our meetings and functions torn off the walls. We were faced with the tricky decision to exclude a sincere male wanting to join our ranks - we refused him. It was a refuge for many women, especially mature age women law students, who felt somewhat alienated from the student body, but whom were often excellent students.

In these study groups, we would sometimes sit around and talk about what we would do when we were through our studies or articles or training for the Bar. We got it pretty right - the most studious member of our group became an academic - Mark Davison is a Senior Lecturer at Monash University in Intellectual Property; Chris Humphries is a senior policy officer in the Victorian public service; Marjorie Mantle we had voted to make the most money and, whilst we are out of touch, I hope she has succeeded; Ann Gummow is a Solicitor with the Women's Legal Service and part-time tutor at U. Of Q. and Griffith in Social Work and the Law. Tony Woodyatt, Morag McDonald and myself have worked in the community legal centre movement and Morag and myself for the Legal Aid Office.

Roslyn Atkinson has gone to the Supreme Court bench - I did pick that one!! Ruth Copelin became a partner at Clayton Utz and is President of the Anti-Discrimination Tribunal - what a bright lot we were! It was during one such discussion, that a friend turned to me and said "And you, you will be the judge of all of us!". My response was "No - you're kidding!" but here I am and thanks to Jean Andrews, who inns her own successful firm on the Gold Coast, for her vote of confidence.

My first involvement with the community legal centre movement was by becoming a volunteer at the Student's Legal Service housed at the Student Union. The co-ordinator was Noel Nunan, now also a Magistrate.

After law school, having completed my Articles with Roberts & Kane, being articled to Frank Roberts of that firm, I was admitted as a Solicitor of the Supreme Court of Queensland in early 1984. I did reach home when I was employed as Legal Co-ordinator at Caxton Street Legal Service, then located at Caxton Street, Petrie Terrace in June 1985. The friendships and professional relationships I made there, with other workers, volunteers (lawyers, social workers and others) have been enduring and it was a great job.

During my time with Caxton, due to lots of hard work from everyone involved and a supportive Management Committee, the Centre thrived. We also moved to permanent and secure premises at Heal Street, New Farm, purchased for us on our behalf by the Queensland Law Society through its Grants Committee. We were innovators, in that parts of our service such as mediation in family law matters, financial counselling and the integration of social workers into legal interviews, where appropriate, were first started there and taken up by the Legal Aid Office, among others, at a later stage.

This energetic time also saw the beginnings of Women's Legal Service (where my friend Zoe Rathus has had such success in promoting the cause of women's particular needs in the legal system particularly in relation to violence against them), the Prisoner's Legal Service, where my friend, Tony Woodyatt successfully advocated for prisoner's rights and the Youth Advocacy Centre, which still fights the good fight for young people within the legal system.

My recollections, among many others, is that we were always asking for money - from the two levels of government - State and Federal - from the Legal Aid Office, from lawyers, from the public but it was amazing what we did produce on the proverbial shoestring.

Caxton Legal Centre is now a publisher of several important legal books, including the "Legal Resources Book" and "The Lawyers' Practice Manual". This publishing aspect was begun by Noel Nunan and Chris MeKelvey from this Law School, who were the first editors of the "LRB" and booklets on Tenancy Law in Queensland.

Tony Woodyatt and I , during our respective times at Caxton and Prisoner's Legal Services, submitted the original proposal to the QLS for a seeding grant, which now sees students from Griffith University Law School undertaking Clinical Legal Education through a one-semester subject at Caxton, involving supervised casework and a project based on a social justice topic. Whilst it may be the only time such law students are involved with a community legal centre, it also produces lawyers of the future with some idea of the need to put back into the community and, of course, invaluable practical experience during their law course.

Over the years at Caxton, I saw many new, young lawyers pass through there on our volunteer roster, many of whom soon became too busy to attend regular sessions. But they could always say they had volunteered at Caxton. The ones who really impressed me were the Helen O'Sullivans, Peter Carnes, Brian Herds, Stephen Keims, John Locks of this world who would turn up after a big day at work to do their civic duty interviewing people and giving legal advice. Brian, Stephen and John all served as President of the management committee and gave good leadership and, thankfully, allowed me - my head.

I have not sought to namedrop, but merely to point out the riches of an involvement in the legal profession. Now that I am a Magistrate and now Chief Magistrate, I would like to talk a little about the

Magistracy. Whilst not great law may be made in the Magistrates Court - although I have on two occasions made law there! - I suggest that great law is practiced there. Magistrates deal with approximately 90% of those persons who go through the courts.

We are based throughout Queensland in regional centres and magistrates travel out further into the community to sit on circuit. There are 73 of us in Queensland, including three specialists - a Coroner, a Children's Court Magistrate and the Referee of the Small Claims Tribunal (also known as the most patient person in Queensland). Of these 73 magistrates, 53 are former clerks of the courts, legally qualified, who acted as Magistrates before their appointment. 9 are former Solicitors and 9, former Barristers. There are two current vacancies. 7 of the 73 are women, our recently having lost one of our number upon elevation to the District Court - Sarah Bradley.

Despite the formidable output of courtwork by Magistrates throughout Queensland, it is still not unusual to hear members of the legal profession, having been "down" to the magistrate's courts, being very scathing about the performance of individual magistrates. This is indicative, I believe of a number of factors (in no particular order) - legal snobbery; little or no out-of-court time for magistrates to prepare reserved decisions; no sabbatical leave for magistrates to further their legal education; perceived haste in decision-making to meet the demands of long daily lists; lack of preparation of submissions by legal practitioners adding to the perception of the need for haste; the need for improved training and continuing legal education for the magistracy in view of the width and depth of our jurisdiction.

Our jurisdiction includes - an extensive jurisdiction in criminal (State and Commonwealth offences); traffic offences (including applications for provisional licences and appeals against cancellation of licence); domestic violence applications and offences for breaches; quasi-criminal hearings - e.g., breaches of Fair Trading legislation and other state government legislation; family law (including appeals against child support assessments); civil actions both in torts and contract (up to a $50,000 limit); small debts and small claims (including tenancy matters and dividing fences disputes). Specialist magistrates deal with Industrial Law, Children's Court and Coroner's Court in the metropolitan area.

On circuit or at regional or suburban courts, magistrates may have to deal with any or all of these matters within one day, with little chance of a pre-sentence report or a sentence hearing of 20 minutes

or more - more like three minutes! Given cuts to the legal aid system, we face an increasing number of unrepresented defendants in summary matters.

We are the arbiters of fact as well as the interpreters of the law. The law as dispensed in the magistrates courts is supposed to be delivered efficiently, courteously, with due respect to natural justice and not at the sacrifice of fairness in decision-making. (It has been described as "the V.W. system of justice" as opposed to the "Rolls Royce" system in the higher courts!!) This, all without sacrificing quality. It can be little wonder that we may sometimes be perceived to flounder.

While our monetary jurisdiction is limited to $50,000, the complexity of the issues involved are the same as those in the higher courts, in relation to personal injury claims, breaches of contract or interlocutory proceedings in chambers matters.

Whilst our sentencing powers are limited to a maximum of three years' imprisonment, making the matters before us at the lower end of the scale, we face some real challenges. For example, in dealing with persons who are first offenders. Often the first appearance for a person in the court could have an enormous effect on a person's future. If handled properly, the magistrate has an opportunity to deal with the offender in a manner which may make a difference to that offender reoffending. Once an offender has reached the superior courts, they usually have a solid history of offences.

Or they may be repeat offenders, whose real problem is an addiction and who will continue to reoffend while so addicted; child and spouse abusers whose anti-social behaviour transgresses into criminality; children who are pushing the limits of parental control or who lack any guidance in their personal lives; persons passionate about a badly repaired washing machine in small claims.

Can you imagine a more difficult decision than one which orders the removal of a child from its parent/s and gives custody of that child to the state until the child turns 18 years of age, under the Care and Protection legislation?

We deal, in other words, with persons at the lower end of the offending scale or complexity of subject matter - in other words, the majority of people. Ours may be the only court in which they ever appear. The importance to a person of a licence to continue to earn their living cannot be under-estimated and such applications cannot be treated lightly. A domestic abuser, against whom a d.v.o. is not made, can

become a domestic murderer. A defendant allowed free on bail can seriously re-offend while on bail or be detained at length in custody to later be found innocent.

The media takes a close interest in much of our work, especially in smaller centres, where defendants may be known to everyone in the town and the local magistrate is the creator of daily, if not weekly news. We are, perhaps, the most transparent of courts.

I have often asked magistrates with more years' experience than myself if they have ever gotten bored with court; if they have "heard it all". Some say "yes". Others say - "Well, I thought so, but just today, I had an interesting case", or - "It all depends if you find people interesting". And if one does find people fascinating, especially criminal offenders - and I do - that is why the "people's court" - the Magistrates Court - is a vital and dynamic jurisdiction. It is those people's "stories" that we must stay alert to - why that person offended in the first place, why they continue to do so - whether the person is a recalcitrant or is someone who may be capable of rehabilitation. This means, we must be, of course, excellent and instantaneous, judges of character.

I want to talk later about the future of the magistracy in Queensland, but first I would like to reflect on our long and impressive history.

The past up to the present

The history of the Queensland Magistracy is a rich one. The system of magistrates was derived from the British Justice system, as you would know. The office of justice of the peace dates back to at least 1361. Because the function of justices was to keep the King's peace within the country, they were appointed by royal commission and were removable at will. They gradually acquired an extensive and disparate jurisdiction exercised summarily as a bench in petty sessions over a host of offences regarded as too minor to justify trial by jury. Sitting four times annually, the justices for the whole county had jurisdiction to try more serious offences in what were called quarter sessions or general sessions.

Their powers were confined to what were essentially criminal, quasi-criminal, "industrial" and revenue matters. The office of justice of the peace was entirely honorary and largely confined to members of the country landowning class. A part-time judiciary consisting of laymen like that could not be

expected to have more than a smattering of legal knowledge, although in the course of the eighteenth century, the practice of appointing full-time paid magistrates began to develop in London. (3)

In 1792, the first Police Offices were established in London with paid magistrates and staff hence the former name, Police Magistrates, was created. The first paid Stipendiary Magistrates were appointed in London in the 18th century. The early magistracy in Australia was largely composed of voluntary lay 'justices of the Peace" following the system in England.

Australian beginnings

From the inception of Queensland as a colony, magistrates and clerks of petty sessions were used as representatives of central government in outlying parts of Queensland, performing a wide range of duties as place, time or occasion demanded, acting in the character of election officers, customs, immigration and quarantine officials, registrars of births, agents for the Lands Office, etc. For that reason, it was not until after the turn of the century that they passed out of the control and supervision of the Department of the Chief Secretary or Premier and came under that of the Attorney-General or Minister for Justice. (2)

The term "Police Magistrate" stayed with magistrates in Queensland until 1941, when the title was changed to Stipendiary Magistrate. This was done to be rid of any notion of perceived bias that a magistrate was a mere servant of the Police. It is reputed that a magistrate of the time said "It's better not to listen to the defendant's evidence, it only confuses you".

Originally it was the practice to select members of the magistracy from amongst those of the Justices who had lengthy experience and exhibited aptitude in the administration of justice. Persons holding appointments in Petty Session office were naturally more qualified to fill these ranks. In 1897, with responsibilities increasing, magistrates had to qualify for the position by sitting for an examination.

As time has passed, magistrates have been appointed from outside the public service. In Queensland, clerks of the court, suitably qualified and admitted as Solicitors and Barristers and with experience as Acting Magistrates, can be appointed magistrates.

There has only ever been one woman appointed as a magistrate from within that system. This may be because of the necessity for clerks of the court to move around Queensland in the pursuit of promotions and advancement, taking their family with them, which is a practice perhaps too onerous for the average woman, who may not, as an employee of the Department of Justice in the court system, be the primary breadwinner. Whatever the reason, I consider that, given such a path of promotion to magistrate is still open to public servants, some study should be made as to why women are not progressing through those ranks.

Jurisdiction

Speaking generally, it required at least two lay justices sitting together to constitute a court of petty sessions. The contemporary rule that a single stipendiary or police magistrate may exercise the powers of justices sitting in petty sessions seems to have originated in a New South Wales statute of 1853. (4) Much needed simplification of the powers and duties of justices was initiated by The Justices Act of 1886. Under it the general jurisdiction of justices in petty sessions was defined to cover any statutory offence, act, or omission attracting a liability to penalty, punishment, or payment of a sum of money and not constituting a treason, felony or misdemeanour; or, more concisely, any simple offence or breach of duty.

A vast range of other matters, including claims for maintenance by deserted wives and children left without support by husbands or fathers *(5)* and under the Summary Ejectment Act of 1867, claims to recover leased premises from defaulting tenants, consumed much of the time of the early justices. In addition, the justices, either singly or in pairs, issued warrants for search and arrest and acted as coroners under the Inquests on Fires Act of 1863 and the Inquests of Death Act of 1866.

Criminal Jurisdiction

Of critical importance to the administration of justice, since Queensland never adopted the grand jury system, was the function of investigating charges of indictable offences preparatory to committal for trial by judge and jury in either the District Court or Supreme Court if a prima facie case was made out to the satisfaction of the justices. This procedure, imported from England in 1848(6), had the merit of

relieving the Attorney-General of at least one aspect of his otherwise invidious triple responsibility of deciding whether to indict an apparent offender; conducting the prosecution, and finally, if successful, advising the Governor in Council whether or not to exercise the prerogative of mercy.

At the present day, criminal matters ranging from certain charges under the Criminal Code to traffic infringements are dealt with by Magistrates. Certain indictable offences can be dealt with summarily at the election of the prosecution or the defence.

Civil Jurisdiction

Differing in this respect from their counterparts in England, justices in New South Wales had been given civil jurisdiction as courts of requests first in 1823 and later under the Small Debts Recovery Act 1846. (7) These "small debts courts" as they were known, were an immediate and lasting success and by the time of Separation at least three courts of this kind were operating in Queensland.

Now, these small debts courts have jurisdiction over matters in dispute up to $7,500.00 as from 1 July 1999. Persons with legal training are not allowed to appear in court representing clients on small debts (now known as minor debts).

Recently, the Uniform Civil Procedure Rules were introduced, which while in their early stages and subject to the solution of considerable teething problems, should streamline the procedure of civil matters through the three levels of courts. In 1997/1998, 110,100 civil cases were brought before the Magistrates Court.

Small Claims Tribunal

The tribunal was established under the provision of the Small Claims Tribunal Act 1972 and commenced on the 1 July that year. The tribunal handles disputes between consumers and traders by an independent referee (magistrate) quickly, cheaply and in an informal environment.

The Tribunal also encompasses residential tenancies matters and dividing fences disputes. Next year,

with the introduction of the “Civil Justice Reform Act’, monetary jurisdiction will be increased from $5,000 to $7,500.00.

If you think a dividing fence dispute is not a serious matter, you have to experience the depth of feeling which such a dispute can elicit.

Appeals

As inferior courts, the proceedings and determinations of justices or police magistrates, whether sitting in petty sessions or as small debts courts, were susceptible to the supervision exercised by the prerogative writs issued out of the Supreme Court. The Justices act of 1886 introduced a generalised form of appeal, known as quashing order, the forerunner of the modern order to review, to enable the Supreme Court to review decisions given in petty sessions. It was not available in respect of decisions given by small debts courts, as to which a right of appeal to a District Court was conferred. (8).

Now, all appeals against decisions of magistrates are now hear by the District Court alone, with an appeal from that decision to the Court of Appeal. In the period 1997/1998, 313,480 criminal matters were heard before magistrates in Queensland.

Developments

The period between the two world wars was in some ways the golden age of the magistrates courts. They had succeeded to the L200 civil jurisdiction of the District Courts abolished by statute passed in 1921. Their decisions were sometimes reported in the “Queensland Justice of the Peace”. Official statistics show that in the 12 month period 1934-1936, magistrates courts accounted for more than 20,000 civil actions. The vast majority would have been undefended; but even so, the number is very large. The war and inflation may have had an effect, because, by 1845-1946, the total was down to 2211. It increased to 6738 in 1952-1953. During the same period Supreme Court writs increased from 890 to 2261. In 1954, the civil jurisdiction of magistrates courts was raised to L600. It now stands at $50,000.

<u>The lighter side</u>

I was pleased to note in my research for this paper, the suggestion that the best magistrates are those who also possess a sense of humour and are able to use it with effect during proceedings before them. Despite constant warnings from my experienced lawyer husband that even if you think, as a judicial officer you are being amusing in court, you never really know, because all parties want to get along with you and will laugh uproariously at anything you say, short of the sentence!!

Some of the best stories I have come across include those about a legendary South African Magistrate, 'Sam Ellman' who was possessed of a genial personality. He was described as an ideal magistrate, for he was a shrewd judge of human nature and was endowed with a distinct flair for the law. He was always a pleasure to appear before, apparently, not the least for his practice of relieving the dullness of court proceedings with spices of humour. (1)

A good example was his reply to an attorney who had been particularly length in cross-examination and who persisted in plying witnesses with questions which had already been dealt with.

Ellman, becoming impatient, requested the attorney not to take up the time of the court by irrelevant questions and repetition. "Surely", protested the attorney, "your worship will allow some latitude?" "I don't mind giving you latitude", said Ellman, "it is your longitude that I object to""...

One more about Mr Ellman and I have some sympathy with these sentiments, having done country service in the Magistracy and now being responsible for sending Magistrates to do country service. Ellman was once transferred to a small country town where he was quite out of his element. He was unable to accustom himself to his new surroundings and in the course of a few months became a recluse, and was generally voted as being unpopular with the residents of the town. Matters became so bad that eventually a petition was set on foot asking the authorities at Pretoria to transfer him. A local bureaucrat, hearing what was happening offered to do anything he could to assist him. "You can do me one great favour", said Ellman to the gentleman who had so kindly intervened. "Please let me be the first signatory to the petition.".

Another magisterial wit was St John Bernard Vyvyan Harmsworth, who was a magistrate at

Marlborough Street in London for many years. He was considered a competent, courteous magistrate before whom it was always pleasant to appear. His sense of humour was considered "puckish" as can be derived from this example.

On one occasion (as sometimes happens) when a prisoner in the cells could be heard shouting and screaming at the top of his lungs, to the consternation of all in (on this occasion) Harmsworth's court, he looked across to the police officer who was examining his book before shepherding the next accused into the dock and said, "Gaoler, is that someone assisting the police with their enquiries?"

The Queensland Magistracy had had among its number the usual number of eccentrics, two of the more famous being the habitual tie swallower and the author of indecipherable judgments. Counsel, when called upon to argue as to costs at the end of matters, declined to do so, as neither counsel was sure who had won!!

Those idiosyncrasies aside, I believe the Queensland Magistracy works hard and well and I am proud to be their leader.

The Present and the Future

There is a lot being said about "the millennium" — "the year 2000". It is as good a symbolic mark as any other to have a look into the future of the magistracy and its place in the courts of the future.

There are, as I have said, areas of the law where we observe the same types of offenders returning to the courts repeatedly, e.g., indigenous offenders or drug addicts.

Indigenous Offenders

I am currently working with Queensland Magistrates to ensure that they listen to Community Justice Groups when sentencing Indigenous Offenders in their local community. This means that if a local group can provide to a Magistrate an alternative to sentencing which is not imprisonment, but which is a community based

order, the magistrate should listen to that suggestion. The need not follow it — again the principle of judicial independence prevails — but they should listen. The proposal may be that that group itself supervises a community service order, which may include the removal of an offender and possibly his or her family with him, to an “outstation”, which will be free from alcohol and other drugs and give the person a chance to settle down and rediscover their culture and their inner peace. Or the group may engage in a “shaming” of the defendant and require them to do community service in the community.

Magistrates will be encouraged, in remote or regional areas where such groups exist, to make contact with their groups and to meet regularly to discuss issues of mutual concern. This may challenge some magistrates’ views of judicial independence, but they must accept that the community, through this legislation, consider that current sentencing practices are inadequate to meet the needs of these disadvantaged group, which is over-represented in the prison system.

I intend to ensure that all magistrates have cross-cultural awareness training, where required, to best place them to deal with this issue. It will be a matter discussed in some detail at the Special Conference of Magistrates to be held in Brisbane in late November.

Drug Courts

Sentencing procedures which allow drug addicted offenders to voluntarily enter programs as a condition of bail or as a form of interim probation order, have been the subject of discussion for some time. The American experience with “drug courts” has elicited positive discussion and comment.

I had the opportunity to recently hear first-hand about the Victorian experience with the Drug Diversion Program operating in the Central Melbourne Criminal Courts. One of the Deputy Magistrates in that state has developed the program and is a passionate advocate for its benefits, resulting as it does in a reduction in recidivism among offenders, rehabilitation of some offenders and the reunification of families.

Another model exists in N.S.W., which sees a drug court operating at District Court level, although I understand there is a suggestion that it may change to the lower courts. That two year pilot program is

yet to be assessed as to its success.

We await in Queensland any legislative proposal to deal with this vexed issue which sees persons before the court on repeat property-related matters directly related to the need to feed their addiction. It is another example of modern sentencing practices needing to be directly tailored to meet the pattern of offending in society.

Restorative Justice

This concept was investigated recently at a conference in Brisbane organised by the Caxton Legal Centre, which drew a large attendance. A restorative justice system seeks to deal with offending behaviour in a manner alternative to court-based sentencing. To the extent that community conferencing with juvenile offenders and work with indigenous community justice groups on sentencing reflects early work in this area, there is no reason it should not be further investigated. There are some issues of real concern which arise form the concept, e.g., the risk to parity of sentencing when offenders are dealt with at a community conference or the issues for women complainants in a system which may not take into account imbalances of power.

However, it is a concept, in relation to which developments in the area need to be closely monitored.

ADR and Case Management

At the recent conference organised by the Australian Institute of Judicial Management (AIJA), discussion about the success of APR perhaps eroding the civil jurisdiction of the superior courts, resulted in the suggested that in time the role of judges in civil matters may be seriously diminished. We see no such likelihood at the Magistrates Court level, particularly in the areas of small debts and small claims and are happy to further investigate the role which ADR can play in assisting in the resolution of minor disputes.

Case Management - Criminal Matters

This is a slightly more difficult matter, but one which needs to be addressed in terms of the efficient passage of criminal matters through the courts. Currently, the Brisbane Central Court engages in a form of case management at its weekly committal callovers. Whether such a system can be introduced in relation to trial matters, is still to be considered. The Victorian Magistrates Courts engage in such a practice, as do the Tasmanian courts, to my knowledge and I am interested to further discuss these matter, along with the various "stakeholders" in the system -the prosecution and defence authorities.

"Performance Indicators"

Again, this was an issue which arose for discussion at the recent AIJA Conference. That is, is it possible to measure the performance of judicial officers and should we have to? Judicial Independence is a thorny issue and once governments expect heads of jurisdiction to respond to calls for the justification of funding based on outcomes and results, we are on difficult ground. On the whole, as I believe I have argued, magistrates courts are extraordinarily productive, processing so very many criminal and civil matters each year.

However, perhaps there is some way in which judicial officers can be made more accountable for their performances. They are highly respected members of community in whom tremendous power is invested. It is for the society to tell us what they expect of us in the way of productivity and performance.

Women on the Bench

There has been much discussion in recent times about the promotion of women onto the bench in Queensland, at all levels of the judiciary. It has caused me (and I daresay others) to wonder whether women make any difference on the bench.

I am indebted to an article entitled "Feminisation of the Magistrate's Courts: The Influence of

Gender?" (9), being the result of research (funded by a grant from the Criminology Research Council) by Roger Douglas, Senior Lecturer and Kathy Laster, Lecturer, both from the Legal Studies Department at La Trobe University. The research (carried our in 1991), while around the topic of the appointment of numerous women to the magistracy (new appointment had, to that date in time, resulted in almost 20 per cent of the magistrates being women), also touched upon the recently introduced important administrative reforms. These appointments of women to the bench, coincided with magistrates no longer being recruited from the ranks of the clerks of courts and no longer being members of the state's civil service.

The central question was whether or not women decision-makers "differ from their male counterparts in their decision-making". Not surprisingly, the research findings are somewhat inconclusive, but suggests that there are in fact few differences between male and female decision-makers. There are two suggested reasons for this.

Firstly, the criteria used by those who appoint decision-makers, may result in those who lack what are regarded as the relevant attributes, being less likely to be appointed. Given this, gender-based differences within those recruited for particular positions are likely to be far smaller than those within the pool of those who might arguably meet the formal qualifications for the position.

Secondly, the positions may constrain the incumbent. The most important determinant of judicial decisions is the law. Therefore, the gender of the decision-maker is no more important than other personal attributes of the decision-maker, or for that matter, the personal attributes of the defendant. The prevailing ethos tends to be accepted by new recruits, however, new recruits are capable of also gradually affecting that ethos.

However, it might be to the style of decision-making that we should look, which is a more subtle concept. While there was evidence in the study of some gender-based differences in approach, these may have reflected the different background and experience of the women magistrates rather than gender per *Se.* It has to be noted that the particular administrative reforms were considered to be a "feminisation" of the traditional authoritarian approaches to the management and style of the lower courts.

The female magistrates included in the study were all ex-lawyers, whereas many of the male

interviewees were ex-clerks. Possibly the degree of male/female differences noticed as a result of the study were in fact ex-clerk/ex-lawyer differences. Often, too, the female magistrates were younger than the male magistrates, since the ex-clerks were often close to retiring age, while the ex-lawyers had less than ten years on the bench.

As to reactions to the recruitment of women to the bench, the acceptance of women initially, was less whole-hearted than it became to be. According to a male magistrate:

> *Traditionally male and ... those males who had always had wives who fulfilled the home-maker role.. Found it difficult to come to grips with working with women who saw themselves in a career mode ... even just the simple things of just sitting around in the common-room and telling bawdy jokes, they had to take a back seat and they found it uncomfortable and just found it difficult to talk to women generally. They are used to only talking to women about domestic issues at home.*

Some comments from male magistrates interviewed included -

> *" Certainly I always think women sometimes have the ability to sense something perhaps quicker than a male. It's a point of view that perhaps males haven* **'t** *looked at it from and they can provide it".*

On the other hand -

> *"There are some females who do a magnificent job and some who are very, very ordinary ... and I perceive that all of the females are judged by those who haven 't got the capacity* ".

Whilst there was some concern about the possibility of women having been appointed from a sense of "tokenism", if there was a criticism of some of the female members of the bench, this was more due to the fact that they were appointed relatively young with a corresponding lack of legal experience. However, it was considered that, given time, these preconceptions would right themselves.

On the whole, they were welcomed as new appointees and considered to have a beneficial effect on the work environment. Women are "good fun" and tended "to liven things up", because they are ''a bit

more social'' and ''more talkative and more socially adept and initiate discussion and topics of conversation". For the younger magistrates who had gone to university and practised with women this was not remarkable.

As to sentencing, the original fear that women might be "a bit soft" or "timid" as sentencers proved to be unjustified. In fact, one female interviewee said, "It is well-known that some of the women can be real animals". No noticeable gender differences were apparent in the way that concepts such as "beyond reasonable doubt" were operationalised.

Folk wisdom suggests that women may be less adversarial in their management style and this may be highlighted in magistrates' attitudes towards the conduct of arbitration hearings (a Victorian phenomenon) but one, presumably where the bench takes a less formal role. Women seem to favour and feel more comfortable with the more relaxed procedure.

For all this, of all the qualities of the ideal magistrate (besides a sense of humour as suggested above), "commonsense" was considered the highest. Opinions varied about "experience", as to whether experience of the jurisdiction or "life experience" was the most important.

On the whole, and as mentioned, other improvements introduced to the Magistrates Court in Victoria at the time led to a "professionalisation" both in the personnel and administration. "Throughput", "case-flow management" and more generally "efficiency" have been the catch-cries of courts management over the last decade. These developments have overshadowed what would, in the normal course of events, have been the novelty of the appointment of women to the bench. "Magistrates are all collectively occupied with absorbing the changes to the jurisdiction and the increased workload which has profoundly increased. Women are now just part of a necessary and important professional team."

What was remarkable to me in reading the results of the study, was the feeling that if such a study had been made in the Queensland Magistracy, many of the comments would have been the same and many of the findings the same. In time, there may be more women appointed as Magistrates - I do not know. If there are, I believe the eventual outcome will be that they will be accepted as part of a "necessary and important professional team".

What was also of note from the study, was that increased efficiency of the courts (in Victoria) has

meant that there was a growing awareness, of the court as a "service delivery" agency, meeting the needs of "customers". As a consequence, new professionals are committed to a different ideology of justice. The law is now regarded as having an obligation to provide creative solutions for litigants and defendants. This is most clearly evident in sentencing where magistrates are committed to fashioning dispositions which suit individuals rather than applying formulistic "punishments" demanded by inflexible law. In the civil jurisdiction many of the new reforms, try to provide mechanisms for parties to negotiate their own solutions with the court acting in the capacity of a mediator and conciliator rather than mere fact-finder.

Magistrates, it seems, may now be expected to focus on the community, by "keeping in touch with community values", "providing better service to the community", were expressed as part of the new ideology.

This study helped me to understand some of the challenges I may have in an organisational sense, as a woman magistrate and, indeed, as Chief Stipendiary Magistrate, attempting to bind together two potentially disparate groups, i.e., ex-clerks and ex-lawyers and, layered over that, a gender mix, which has never been there, except in relation to one woman magistrate who is now retired.

I rely on the goodwill and commonsense of all Queensland magistrates to make this aspect of my new job (together with my erstwhile Deputy, Brian Hine), as easy as possible, so that we can concentrate on the major aspects of possible increases in jurisdiction and the challenges of new, creative ways of dealing with the problems which present themselves before us.

Finally, I would say, that I have been humbled by being asked to address you tonight. To lecture where I was a student of the law, is a compliment indeed and I congratulate Professor Tarr on his reaching out in such a way to all levels of the judiciary and I am sure the magistracy will continue to have an ongoing interest in the development of this T.C. Beirne School of Law at the University of Queensland.

Thank you.

(1) “Law, Life and Laughter - Legal Anecdotes and Portraits” - Ellison Kahn, Professor Emeritus of Law in the University of Witwatersrand, Johannesburg, Juta & Co. Ltd., Wetton. (Kindly supplied by the Supreme Court Library).

(2) “Early Development of the Queensland Magistracy” - Hon. Mr. Justice C.H. McPherson, C.B.E., Conference presented to Conference of Magistrates held at Brisbane - June 4, 1990.

(3) ibid.

(4) Justices Act Amendment Act 1853; 17 Vic. 5. 39; see 1 Pring’s Statutes, at 826.

(5) Deserted Wives and Children Act 1840.

(6) Jervis’s Act 1848; 1 Pring’s Statues, at 767.

(7) 10 Vie. No. 10; 2 Pring’s Statutes at 1237.

(8) The District Court Act of 1891, s. 156.

(9) P.W. Esteal and S.McKillop (eds.), Women in the Law, Proceedings of a Conference held 24-26 September 1991, Australian Institute of Criminology, Canberra.