

FRASER COAST LAW ASSOCIATION DINNER
ENCORE RESTAURANT, BROLGA THEATRE
MARYBOROUGH
THURSDAY 23 MAY 2002, 6.30 FOR 7.00PM

The Honourable Paul de Jersey, AC
Chief Justice of Queensland

This is my fourth time in Maryborough since 1998 when I was appointed Chief Justice. It may be I'm self-indulgently overdoing it! My public promise upon appointment was to visit each Supreme Court centre biennially! This centre has proved irresistible!

My fondness for the Fraser Coast stems, as you know, from 4 years of my childhood spent here in the fifties, of which I have very clear and happy memories. Each return in more mature years has rekindled that regard, and it is fostered now too, of course, by the natural friendliness of the many residents I have the pleasure to meet. It will be a particular honour, and one filled with nostalgia, when tomorrow afternoon I officially open the Show: a matter to which I look forward with great delight.

The older among us may recall Ed Clarke, who was US Ambassador to Australia, appointed in the mid to late 60's – that's of the last century – by President Lyndon Baynes Johnson. Like the present US Ambassador, Ed Clarke hailed from Texas, Texas in the US, not the place to the east of Aramac. This Texan was renowned for daily wearing a yellow rose in his buttonhole. When asked early on his impression of Australian Prime Minister Harold Holt, Ambassador Clarke said he couldn't yet be sure: to that stage, as he put it, "we've howdied but we ain't shook"! Well, we've both howdied and shook, ladies and gentlemen, and I am very much the better for it. The respect and goodwill from this side are substantial, and I'm grateful for what I perceive as the reciprocity.

I am especially pleased to revisit the centres of my youth, Maryborough and in recent years, Longreach, and I hope the past association gives my judicial work here a beneficial perspective.

Judges must be close to their local communities, gauging reasonable expectations, which we must be careful to respect when exercising discretions, especially in sentencing in the criminal court.

If the relationship is too close, there can naturally be risks, and those risks would be very apparent to our Magistrates who work so closely with local communities.

I have been told of the circuit case where local Crown counsel met the beady gaze of his audaciously self-confident elderly female witness with the question: "Madam, do you know me?", drawing the response, "Of course I do. I've known you all your life. You're a rascal now and always have been." Come cross-examination, defence counsel, also a local, ventured, "Well, Madam, now you're

in more independent territory – we’re strangers – so let’s begin.” “What” she responded, “I’ve known you all your life too – and you’re worse than him!”, at which the Judge, the resident Judge, invited both counsel to the bench: “If either of you asks her whether she knows me, you’re disbarred!” There are risks with the concept of locally resident Judges, although the Queensland experience has been very successful.

We have recently passed through “Law Week”, when by various expedients we sought to remind the doubting Thomas’s that the legal profession, which is accepted as at least a necessary evil, is indeed benignly committed to the best interests of the people.

When “The Australian” asked me recently about His Honour Judge Hall’s comments on elderly, be-hatted Volvo drivers, I pointed out that thousands of judicial officers daily sit without incident around the nation. Of course the one maverick remark will be publicized – frankly, it is odd there aren’t more. But the best efforts of the media aside, I doubt that what His Honour said would in any degree have eroded public confidence in the courts of law, a confidence built over many years of reliable service.

Of greater concern is the feeling that courts respond to community calls for tougher sentences, by retreating into undue leniency. This is a very sensitive area as you know, in which the Judges must acknowledge legislative signals, as by the “serious violent offender” regime, and reliably discernible community expectations. I personally preside at appeals concerning sentences which have provoked major community concern.

The generally unfettered judicial discretion is critically important in this area of human affairs, and we must be grateful that Queensland, of all States and Territories, appears to command the least legislative intrusion into criminal sentencing. I sincerely hope that remains the position. May I say, to those of you who practise in the criminal jurisdiction, that the legitimacy of the judicial approach depends to a substantial extent on your cooperation. Crown counsel, especially, must be astute to submit ranges of penalty which are appropriate, that is, neither too high nor too low.

The “legitimacy” of judicial officers, of the legal profession, is Chief Justice Gleeson’s recently expressed term. The predictable and invariably corrosive taunt levelled at lawyers rests in their alleged rapaciousness, and we see it re-emerging in the current insurance debate. Of course the provision of expert legal services can be expensive, and many will always claim not to understand why that should be. Remember Oscar Wilde’s definition of a cynic, “a man who knows the price of everything and the value of nothing”.

We are all concerned, I am sure, about intended further legislative capping of awards and the like. In the context of HIH and 11th September, I am entirely unconvinced that the current problems of insurers, including medical insurers, are the responsibility of the profession, or the judiciary. I think it will be plainly retrograde if people's rights are further substantially limited: once rights are removed, they are rarely regained. For what my support may be worth, it is there in relation to the maintenance of our present personal injury recovery regime, a regime in which recovery is, frankly, highly regulated already.

I congratulate and thank you, ladies and gentlemen, for your initiative in staging this event. We are joint players in a system of pivotal public importance. It is good that we understand the public we serve, and that we understand each other. If understanding can be fostered through firm friendships, so much the better, and that is, I sense, very evident here this evening. I salute you!