



MAGISTRATES COURT OF QUEENSLAND

**QUT Graduation Ceremony
Thursday 20 August 2009**

**Judge Brendan Butler AM SC
Chief Magistrate**

I am privileged to be the guest speaker at this Graduation Ceremony.

It seems that in the modern world ceremonial occasions are increasingly infrequent. In my view it is important that Universities, even relatively young institutions such as QUT continue to preserve the rituals of academic life passed down through history. This is a significant occasion both for the University and for each graduate. I still recall my graduation ceremony from 3 ½ decades ago. I even have a faded photograph to remind me of it. I expect that for most of you who graduated today this ceremony will be one of a small number of occasions that will stay clear in your mind when, in later life, you look back at the course your life has taken.

Graduates, I wish you well in your future endeavours, whether as practising lawyers or in other roles that utilise the valuable skills that you have learnt at this University.

My comments today will be about events two decades ago that had a profound influence on the course of my career as a lawyer.

On the occasion of a public lecture at the nearby State Library just three weeks ago, the Honourable Tony Fitzgerald AC QC in introducing the guest speaker made some brief comments, 10 paragraphs in all that resulted in considerable media soul searching about integrity in public life in Queensland today. Indeed, the occasion was a public lecture held to mark the 20th Anniversary of the delivery of the Fitzgerald Report.

I will speak today about my perceptions as one who participated in the Inquiry by Tony Fitzgerald into police and political corruption in Queensland all those years ago. I believe all of us can take some lessons from what happened then, when we

are performing our part as citizens or as professionals in the service of justice in this State.

When I joined the Fitzgerald Inquiry in 1987 as a Junior Counsel Assisting there were only a handful of us on the team. The number of Inquiry staff was to grow as the magnitude of the task became evident but in those early days I remember how uncertain we were about the extent of the illegality we were seeking to investigate. It was well known that brothels and illegal gambling establishments were operating with impunity in Queensland. That much had been exposed that year in a series of articles in the Courier Mail and in the famous 'Moonlight State' episode of the Four Corners program. However, while the corrupt involvement of police in those activities was suspected, the nature of that involvement was unclear.

I headed an investigative team focusing on the Gold Coast scene. We were able to easily establish that illegal prostitution was flourishing and that the policing of it was ineffective but proof of a link to wider police corruption initially eluded us. An informant described seeing an unidentified well dressed man pass an envelope to a senior Gold Coast police officer outside the Southport Post Office. We suspected that this was significant but it wasn't apparent how it fitted into the bigger picture.

It was only later after investigations in Brisbane focused on Jack Herbert, a retired police officer, that we identified him as the man passing the envelope at Southport. Herbert as he later admitted was the bag man who collected bribe money and distributed it to police involved in a corrupt arrangement known as the 'Joke'.

As the success of the Inquiry started to become apparent, a number of police officers elected to admit their guilt and, in return for indemnity, testify about the corrupt scheme. It emerged that the corruption reached up through the police ranks to include the Commissioner of Police himself. Other investigations by the Fitzgerald Inquiry demonstrated that the breakdown in public morality extended into the political realm where ministers of the Crown had acted dishonestly or corruptly.

What was uncovered by the Fitzgerald Inquiry was widespread and systemic corruption in the police force that had been continuing for many years. The Fitzgerald Report documented how the corrupt behaviour reached back to the 1950's or before. Political protection of the police contributed to its continuing.

Are there lessons we can learn from that experience from the Queensland of two decades ago?

How did all of us, particularly those of us in the legal profession, not see and act on what was happening?

For decades only isolated voices in the legal profession had raised concerns. There were aborted opportunities. The ineffectual National Hotel Inquiry into alleged police activities in 1963 and the acquittal of Jack Herbert on corruption charges in 1976 were opportunities lost. Those taking bribes had opponents in the police force but many of those opponents were compromised because they had engaged in another form of police misconduct, the illegal verballing of suspects to gain evidence.

In retrospect the warning signs were numerous even to a casual observer. In country towns hotels traded illegally on Sundays. Behind closed doors bars were full of drinkers some of whom were local police. Shop keepers often declined to take payment from police for meals or produce. The existence of illegal brothels and SP bookmakers was common knowledge. Yet the legal system and the lawyers failed to respond.

There is a warning and a challenge to all of us in what happened in the decades leading up to the Fitzgerald Inquiry. The corruption then, although widespread, by no means extended to all those in the institutions involved. Corruption is insidious. Some who did not wish to participate were too compromised to speak out. Small lapses in standards can compromise those involved and give cover to others intent on more significant illegality. It is true that some in the police force and in politics turned a blind eye, but others simply didn't recognise the warning signs. Many of undoubted honesty worked beside others who were actively corrupt. After all, the corrupt typically take care to conceal their criminal behaviour.

We could dismiss all of this as being relevant only to the past, but recent events remind us of what was said by the philosopher George Santayana:

"Those that cannot remember the past are destined to repeat it".

In recent months a former Queensland government minister was convicted on charges of receiving secret commissions and the Crime and Misconduct Commission issued a Report disclosing misconduct among police investigators. The recent comments by Tony Fitzgerald have placed these and other concerns into sharp focus in the public mind. As Mr Fitzgerald said in those comments:

"Matters are much better than they were but it is a mistake to take that for granted".

Those who have the benefit of a University education in law or justice share an important obligation to ensure that Queensland does not return to the mistakes of the past.

That, as Tony Fitzgerald advocated in his report two decades ago, is best achieved by adhering to the fundamental values of our democratic system.

Major reforms over the past two decades have placed Queensland in a much better position to resist the redevelopment of corruption. The Fitzgerald Report outlined a blueprint for reform which transformed the governance of Queensland in the years that followed. The Crime and Misconduct Commission, a standing commission of inquiry, specifically tasked to prevent and investigate corrupt behaviour, was and remains central to that reform. Over the years the CMC and its predecessor the CJC have had considerable success in investigating misconduct, fraud and corruption involving politicians, state and local government employees and police in Queensland.

However, I believe our greatest protection lies in preventing rather than responding to corruption by maintaining and enhancing the integrity of all the institutions of our democracy. The genius of the Fitzgerald Report was that the reforms it proposed

were designed to strengthen rather than to supplant the fundamental institutions of our democracy.

Importantly that includes a commitment to the rule of law. In a lecture given at Cambridge in 2006 Lord Bingham, perhaps the greatest English judge of his time, said the rule of law at its core requires that all:

“...should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts.”

Lord Bingham went on to add that under the rule of law the content of those laws must afford adequate protection of fundamental human rights.

Sir Gerard Brennan, a former Chief Justice, in a lecture delivered here in Brisbane two years ago, highlighted the challenge for lawyers in Australia when he said:

“There must be an over-riding justification of public interest to warrant denial of any person’s fundamental human rights. That proposition presents today’s lawyers with a significant challenge to keep the law respectful of human rights so far as is compatible with the national interest.”

It follows that protection of our society from the risk of corruption requires that those accused of corruption be accorded all the protections available to other citizens under the rule of law. It must always be remembered that suspicions are no substitute for evidence and that criminal allegations must ultimately be established beyond reasonable doubt.

Public debate, however well intentioned, is not always logical and dispassionate. Knee-jerk reactions to perceived threats can result in flawed responses. Emotional reactions must be tempered by fairness.

In the final passage spoken by Tony Fitzgerald in the public hearings of his Inquiry were words which demonstrated his commitment to the rule of law. He said:

“Any individuals who have been adversely mentioned are entitled to be considered innocent of misconduct which they have not admitted and of which they have not been convicted..... It would be totally wrong if frustration and anger as a result of what has occurred and now been revealed caused us as a community to fail to act fairly to individuals, and our society would be severely diminished by such a lapse. The punishment of past misdeeds is a legitimate object, but only if pursued in accordance with our established system of justice.”

As with the threat of terrorism, we ignore corruption at our peril, but in combating it we must cling to the values we seek to preserve. Those values include a respect for democratic institutions, the rule of law and especially, the protection of fundamental human rights.

Each generation must confront afresh the challenges to our democracy. You who are the graduates of today bear a heavy responsibility as lawyers or informed citizens to protect our cherished values. When pursuing that goal I suggest there is much to be learnt from the experience of my generation two decades ago.