SUPREME COURT OF QUEENSLAND

Queensland Police Commissioned Officers' Mess dinner

Friday 21 August 2009, 7.30pm
Brisbane Club
"150 years of criminal justice and a vision for the future"

The Hon Paul de Jersey AC
Chief Justice

I am very pleased to have the opportunity to speak on this important occasion. Like the courts of Queensland, the Queensland Police Service is integral to the good government of the people. Also like the courts, the Police Service suffers occasional setbacks. We share a resilience however, history shows, enabling us to re-emerge often in reinvigorated form.

And it is a privilege to address you, ladies and gentlemen, as you lead and inspire, currently 10,256 men and women in this noble, indispensable and regrettably often under appreciated service.

Under appreciated and, as we know, sometimes questionably reported. Yesterday morning's 612 news bulletin on ABC Radio began with the headline: "Last night a Queensland Police officer shot a woman after she stabbed his police dog." It was only later in the bulletin we were told that the woman had allegedly then gone on to attempt to stab the police officer himself which, if true, would put a rather different complexion on the shooting.

I have been invited to speak in this sesquicentenary year on the subject: "150 years of criminal justice and a vision for the future". Now I have been alive for only 60 of those years, and allowing for childhood years and the ordinary frailty of human memory, I hope you will pardon me if I confine my remarks to recent decades at the most. Did I hear a sigh of relief?

I am also afraid, ladies and gentlemen, it is not a subject which readily lends itself to humour. So there's a challenge. Though not as great as that faced some years ago by Justice Jeffrey Spender of the Federal Court delivering an after dinner speech to the Annual National Conference of Coroners.

My reading of history tells me that the establishment of the police "force" in Queensland should probably be regarded as dating from 1843, when the first Police Magistrate, John Clements Wickham and his Chief Constable William Fitzpatrick were joined by four constables, Higgins, Scanlan, Ramsay and McGrath. The Moreton Bay colonists had to wait almost another 20 years for the establishment of their Supreme Court, which was legislatively achieved on 7 August 1861, two years after separation. As at separation in 1859, Mr Justice Lutwyche administered justice according to law in the colony, and he may well have known the police officers individually, certainly an impossibility today. It used to be said that a good headmaster knew each student by name. Even Commissioner Atkinson's acknowledged fine leadership of the Service could not I imagine stretch to recognizing all 14,000 of his officers. But what has not changed over the last 150 years is both the high importance of the respective work of the Police Service and the Courts, and the complementarity of their work.

That finds its apogee, of course, in the criminal justice system. While our roles are obviously different, they cannot be separated. And so, unsurprisingly, the courts of law have sometimes over the years made rulings or suggestions which have led to refinement of police investigative methods. Expressions of judicial concern about the fabrication of records of interview, coupled of course with Tony Fitzgerald's recommendation in 1989, no doubt contributed substantially to the trend towards audio then video taping, which found its way into s 263 of the *Police Powers and Responsibilities Act* in the year 2000, mandating the electronic recording of the questioning of suspects. There is no doubt in my mind that the electronic recording of interviews has been the most dramatically beneficial change in the prosecution of crime over the last three decades. The consequent streamlining of both the processes of investigation and prosecution has been immense.

Courts cannot however claim any credit for what I would see as a development following fairly closely behind electronic recording, and that is DNA testing, both to exclude suspects and inculpate the guilty. I think fingerprinting as a forensic tool dated in this country from the early 20th century. DNA sampling, which began a century later, has wrought extraordinary change, in both confining police investigative effort and resources, and in ensuring the conviction of the guilty. Recall the role of DNA in convicting Bradley Murdoch for the murder of Peter Falconio; and in this jurisdiction, of Andrew Fitzherbert for the murder of the so-called 'cat lady', Kathleen Marshall. Of course there are potential weaknesses in DNA evidence, as the Lindy Chamberlain case reminded us in relation to forensic evidence generally, but for all that, DNA, in many cases, is elevating proof in criminal prosecutions almost to a level of scientific exactitude. And if we tend to recall in this context the Court of Appeal overturning the rape conviction of Frank Allan Button in 2001, DNA evidence had not been available at Button's trial, coming to light only subsequently.

Another development on which, over the years, the police and the courts have collaborated – in the very best sense of that word, concerns the way evidence is prepared and presented in the criminal courts. A graphic example is the use of the interactive crime scene recording system, the computer-based recreation of all 360 degrees of the crime scene – not used in every case of course, but invaluable when it can be. This sort of initiative involves recognition of the need to inform juries optimally.

Critics of the modern jury system sometimes argue that jurors lack the intellectual capacity to make the increasingly complicated determinations of fact which now arise. But empirical studies suggest it is not so much the intellectual capacities of the jurors which is problematic, but rather, the manner in which the evidence is presented. We are increasingly – as police, legal representatives, judges – recognizing the need to reassess the way we communicate with jurors, to multiply the techniques we use to ease the jury's fact finding process.

Charts, flow sheets, written summaries, video re-enactments, computer-based crime scene analysis, increasingly a feature of our approach, are movements in that direction.

We also – as police, and as courts – need to be alive to the differences among the generations and age groups in the manner in which information is best assimilated. Juries increasingly include members of generations X and Y. Whereas "baby boomers" most generally have informed themselves by listening and reading the printed word, younger citizens are generally more interested in electronic forms of communication: the internet, mobile phones, etc. The prospect of best informing your subject will be enhanced if you use his or her preferred means of communication. Juries reflect a mix of ages, and so the means of communicating with them could involve a mix of techniques.

Courts are sometimes criticized, fairly or not, for being tardy in their embrace of change. When I joined the Supreme Court in 1985, it was the not the practice for trial judges to offer the jury any assistance, as to their role, the procedure or the law, until right at the end of the trial, in the summing up. In the early to mid-1990's, we adopted the practice of giving a jury a fairly comprehensive opening statement about those matters. We came to accept other things, such as jurors asking questions about the evidence during the trial: Why has X not been called as a witness? Could witness Y explain this aspect of the facts? Then the late 1990's saw the introduction of the sorts of aids to which I have already referred. In 1998 we produced a video about the process which has since been played throughout the State daily to all potential jurors before they enter the courtroom. We developed explanatory brochures, and the Juror's Handbook which is provided to jurors when summoned.

For both of us, technology raises endless possibilities. We recently in the Supreme Court tried a Wickenby prosecution involving thousands of documents. Counsel, accused, judge and each juror had access to a computer: all the documents were managed and displayed electronically. The trial took five to six weeks. The trial judge is confident that the

traditional approach – produce a document, tender it, pass it around the jury box, would have taken not five to six weeks, but probably some months. And this is axiomatic: a jury frustrated by time delays will probably not be a productive jury. Our present problem in the courts is, frankly, that we lack assured funding for electronic trials. The reality is the generated savings will exceed the cost. I am hoping that funding will be found.

The criminal justice system has been refined in recent times, so that judges may take the verdict of 11 jurors when all 12 cannot agree, to permit judge only trials, and to allow jurors to separate overnight during deliberations.

Judge only trials and majority verdicts provoked substantial expressions of concern from the legal profession, especially from those who practise in the criminal courts on the defence side. I thought it was interesting that the first majority verdict taken in the State, and it was taken on 30 September 2008 by the Northern Judge in Townsville, was, on a charge of attempted murder, an acquittal. Then on the other side of the ledger, Justice Wilson entered a conviction for murder only last Friday.

As to majority verdicts, juries may occasionally include one or two intransigent members. Criminal trials are often conducted many years after the offences have been committed. Retrials necessitated by intransigence not only cause undue pain and inconvenience, they also erode police and court resources. Allowing majority verdicts in limited circumstances, and in a measured way, in no way diminishes the significance of trial by jury: on my assessment it enhances it, by updating it in a sensible way to recognize actualities.

So there have been substantial changes over the last quarter century of that century and a half. But more will be necessary. Our challenge is to recognize the need and respond with measure, and thereby enhance the reliability of the process.

Very recent years have witnessed two particularly disturbing trends in criminal activity: the use of on-line chat rooms for sexually predatory behaviour in relation to children, and the apparent increase in the incidence of unlawful drugs as features of violent crime.

The former has placed particular stress on investigating police officers. There is no doubt the internet – that great international force for good – has regrettably also greatly facilitated sexually predatory behaviour. Abuse of the internet will increasingly consume police resources. This week's "Four Corners" episode convinced me of that, dwelling on identity theft, property theft, cyber crime generally. These perversely sophisticated criminals must be matched and uncovered by police officers of at least comparable expertise, and such experts do not necessarily come cheaply.

The arrogance of some of these modern day offenders is breathtaking. A recent proceeding before the Court of Appeal, a case of highly sophisticated encryption, run by a paedophile ring breached by police of considerable expertise and persistence, illustrated the arrogance and audacity of these people: absolutely chilling, and your officers are the frontline troops in this massive battle which must be won. Upon conviction, the courts seek to provide your backup, and no doubt there will be varying views on whether the courts respond sufficiently sternly. We aim for deterrence, so far as it works, but salutary denunciation is to my mind probably a more realistic objective in this area.

As to the latter of those two trends, drug related violence, that feature has lent a lot of contemporary crime a dangerous unpredictability. That has been graphically illustrated to me in recent times, with evidence of young men carrying loaded handguns in public as if they were fashion accessories. I can, if I may say, understand police anxiety for access to devices like tasers, not only to immobilize offenders who are out of control, but for the police officers' own protection. Better, I would think, a taser current than a bullet from a revolver. Knowing the danger which daily besets police officers, my wife and I are annually greatly moved by the Police Remembrance Service.

I am now in my 25th year of judicial office. That quarter of a century has seen increasingly lurid crime, much of which I would attribute to the movement from alcohol, as the frequent concomitant of offending, to unlawful drugs, and often their combination.

Nevertheless, the most grisly murder I have tried remains the killing in March 1993 of Bart Vosmaer at Sir David Longlands Correctional centre, with no alcohol or drugs – at least none evident. Perceived as an informant, Vosmaer was set upon by as many as six assailants in the prison gymnasium. They battered him to death with gym equipment. Extraordinarily, they were able to accomplish this without alerting the prison guards. Also, they cleaned up immaculately after the event: there was as I recall little trace of blood to speak of. The convictions went as far as the High Court, which was concerned to interpret the provision in the Criminal Code for criminal liability through joint enterprise.

Incidentally, that was the first trial in Queensland in which we confined the accused – six volatile young men who had jumped the dock at the committal – in a perspex floor to ceiling dock.

That was the most grisly murder I have tried. The most bizarre immediately preceded my appointment as Chief Justice at the beginning of 1998.

William Rushton shot his wife in the back of the head, then dismembered and burnt her body in a 44 gallon drum at a caravan park near Cooktown. Rushton saw his wife as a hindrance to his lifestyle. Her body was never found. The case was remarkable for Rushton's disparate claims, which I suspect the jury may have found a degree entertaining. They included: that he was an ASIO agent and shot his wife under government orders because she was threatening to disclose State secrets; that she had been shot when a front gunner in a battle in the Timor Sea while with him on a secret mission to destroy enemy installations; that she ran off with a Baptist minister after committing 55 acts of adultery; that his alter ego, one Sir Johnathan (sic) Clemments (sic), was knighted by Queen Elizabeth for saving her life by catching a hand grenade hurled in

her direction; and this his youthful looks were explained by injections administered to him, as some sort of human guinea pig, during top secret naval medical experimentation. Barely a grin escaped the conscientious jurors.

I should say that as a trial judge in the criminal court, I have generally been greatly impressed by the thoroughness and care of police investigations, and I have from time to time said so. It momentarily got me into trouble in 1988. I had sentenced one Brian John Daldy-Rowe in the Supreme Court at Cairns for drug offending, and added a commendation of the Cairns Police for the efficiency of their preceding investigation. Daldy-Rowe appeared before the Fitzgerald Inquiry, where he accused me of being in league with corrupt police officers in Cairns because of that commendation. Mr Fitzgerald struck the allegation from the record, but it did not save me from the following morning's Courier-Mail.

The newspaper reported Daldy-Rowe as "slipping the boot into a member of the judiciary in no uncertain terms but (that he) could offer nothing to support his claims". Commissioner Fitzgerald was reported as having said it would be "absolute folly" to place credence on his claims and suppressed them from publication and struck them from the transcript.

I vividly recall Ian Callinan QC, Counsel assisting the Enquiry, rather anxiously and very kindly coming to my Chambers the afternoon before to tell me I'd been named at the Enquiry … but not to worry: very reassuring! Shortly after that I was rather amused to see a cartoon in the newspaper with a spruiker with a megaphone at a city corner calling: "Come forward anyone who hasn't been named at the Enquiry."

Ladies and gentlemen, the police service and the courts of law share much in common. Our respective missions are timeless, and complementary. While our fundamental processes endure, we embrace change when demonstrably desirable. The public depends instrumentally upon the faithful discharge of our missions. We endure troughs –

in your case most recently, the "Dangerous Liaisons" report; for the courts, the cases of Ms Fingleton, Ms Hansen, and the Aurukun nine come to mind – but our fundamental commitment ultimately ensures the restoration of that inherently fragile quality, public confidence.

You and I have been in positions of leadership for only a fraction of the last century and a half of Queensland history. Our challenge nevertheless is to rise to the challenge to contribute: not so that we become any recognizable cipher in Queensland's historical development, but simply this: that we are, in a real and productive sense, agents for the promotion of the public good. For your conscientious dedication to that objective, ladies and gentlemen, I express profound gratitude.

I thank you for your instrumental role in establishing and maintaining a contemporary Queensland Police Service which does indeed serve our citizens with distinction, and which is demonstrably true to its motto, "with honour we serve".