



MAGISTRATES' SOCIETY DINNER

Address by

The Honourable Wayne Martin AC
Chief Justice of Western Australia

Acqua Viva Restaurant, Nedlands
16 November 2012

It is a great pleasure and an honour to have been invited to address the annual dinner of the Magistrates' Society of Western Australia.

I would like to commence by acknowledging the traditional owners of the land or in fact the water over which we meet, (which is, of course, Derrbyl Yerrigan) who are the Wadjuk people of the Swan coastal plain, and who are part of the great Nyungar clan of south-western Australia, and pay my respects to their Elders past and present.

The Importance of the Magistracy

It is, I think, difficult, if not impossible, to overstate the importance of the magistracy to the administration of justice in Western Australia. Magistrates make up about half of the judiciary of this State. Many more Western Australians come into contact with the Magistrates Court than the other courts of the State, and to them, the magistrate personifies the judiciary. Magistrates are, in a very real sense, the public face of the judiciary, and have greater direct connection with the community which our courts serve than the various other courts in the system.

I am fortunate to receive regular correspondence from interested citizens of this State in relation to the operations of our courts. Sometimes their observations are a little less than complimentary. What I have noticed over the years is that given the extraordinary number of cases dealt with by magistrates around the State, the number of criticisms and complaints that I receive in relation to the magistracy is extraordinarily low. The segment telecast on "Today Tonight" some years ago, in which people who had been sentenced by the Chief Magistrate or the Deputy Chief Magistrate were interviewed following sentence, showed that on the

whole, even people who had been punished in the Magistrates Court were content with the way it operated. This is no small achievement.

The same observation holds true in relation to appeals. Appeals in criminal cases go straight from the Magistrates Courts to the Supreme Court. We deal with about 100 of these appeals each year. That number is infinitesimally small, given that around 100,000 penalties are imposed in the Magistrates Court each year.

The role of the magistracy has an important constitutional dimension which has been recognised by the High Court on a number of occasions, when it has been held that the protections of Chapter III of the Commonwealth Constitution, which require legislatures to respect a number of fundamental inalienable characteristics of the judiciary, such as independence, apply with equal force to the magistracy.

Historical Origins of the Office

The term "Magistrate" derives from the middle English word "magistrat" which in turn derives from the old French "magistrat" which in turn derives from the Latin "magistratus", which derives from the Latin root "magister" which means master, which in turn derives from the root of "magnus" which means great. In ancient Rome, the magistratus was one of the highest government officers and possessed both judicial and executive powers. The Consul was the highest Roman magistrate. Roman magistrates were not lawyers, but were advised by jurists who were experts in the law.

In other jurisdictions, the term "magistrate" or "chief magistrate" has been used to refer to high officials generally and not limited to those who

perform judicial functions, so that, for example, the first President of the United States, George Washington, was sometimes referred to as a magistrate. In Switzerland the word is used to describe those holding the most senior executive and judicial offices, and in Taiwan, magistrates are the head of government counties.

The Australian office of magistrate has closer links to the English office, which is essentially judicial. In England there are two types of magistrate - justices of the peace and stipendiary magistrates now known as district judges. The former have been unkindly described as "middle class, middle aged and middle minded". Perhaps more unkindly, in one of the Jeeves and Wooster series, P G Wodehouse put the following words in the mouth of one of his characters:

"Well, you know what magistrates are - the lowest form of pond life. When a fellow hasn't the brains and initiative to sell jellied eels, they make him a magistrate."

Other uncomplimentary remarks have been made across the channel in France. In his "Declaration of the Rights of Man", Robespierre wrote:

"Toute institution qui ne suppose pas le peuple bon, et le magistrat corruptible, est vicieuse",

which as I am sure many of you would understand means "any institution which does not suppose the people good, and the magistrate corruptible, is evil".

Of course, Robespierre knew a bit about evil, serving as public prosecutor of Paris during the period following the French Revolution. He was one of the architects of "The Terror" which he described as "justice prompt, severe and inflexible". He was to learn all about that in July 1794, a bit

over a year after he wrote the "Declaration of the Rights of Man", when he was guillotined without trial, along with his brother and some other members of their faction. I suspect his enthusiasm for "justice prompt, severe and inflexible" may have waned as he was led to the guillotine.

One does not have to go as far as France to find allegations of corruption within the magistracy. In 1886, Mr J Horgan, a solicitor and candidate for election to the legislative council of Western Australia, gave a speech in the course of his election campaign in which he called for the appointment of a Royal Commission to inquire into the Magistrates Courts:

"with a view to weeding out corrupt, vindictive, mulishly wrong-headed, eccentric buffoons presiding there, who cruelly and inconsistently torture and punish as their whims incline."

George Walpole Leake QC was the magistrate for Perth. He commenced proceedings for defamation, claiming £3000 in damages. I will for a moment digress to say a little bit about the Leake family, because of their enduring impact upon the legal profession and the courts in Western Australia. Many of you will remember the firm known as Northmore Hale, Davy & Leake, the last named being a member of this family. Less well known is the fact that the firm now known as Jackson McDonald was, in a previous iteration, Jackson Leake & Co, and that the firm which became Stone James and Co was, for a time, Leake, James and Derbyshire.

This dynasty of legal Leakes started with another George Leake, who was the first person appointed a Justice of the Peace in Western Australia on 9 December 1829. He was joined in the Swan River colony by his

brother, and his wife and sons, who included George Walpole Leake. G W Leake returned to England where he studied at King's College, London (a very fine university) before returning to Australia to complete his legal training in South Australia, serving with the Chief Justice of that colony. He then returned to the Swan River colony in order to practise law. His is the second name on the roll of practitioners that was created when the Supreme Court commenced operation on 3 July 1861. He was appointed Queen's Counsel in 1875, served as Attorney General during the 1880s, and despite being grievously defamed by Horgan in 1886, served as Acting Chief Justice in 1887 and 1888 when Chief Justice Onslow was recalled to London because of his feud with Governor Broome. While Acting Chief Justice, he decided that he would reduce the backlog of cases awaiting trial by adjourning for only half an hour for lunch, and sitting until 8 or 9 pm in the evening. Counsel protested on the not unreasonable ground that there were no lighting facilities in the court, and it was after all the month of July. Leake relented in the face of this irresistible argument, agreeing that he would sit only until it was too dark to see.

He seems to have been a bit of a hothead. In 1880 he was appearing in a case opposite Septimus Burt, who was, of course, the son of the first Chief Justice, Sir Archibald Burt. Counsel were related in a sense, because Leake's son had married Burt's sister. Notwithstanding this, Leake lost his temper with Burt, throwing an ink stand at him. Burt warded off the blow, inadvertently diverting the contents of the ink stand to the face, beard and shirt of his client.

Leake was renowned for his cutting sarcasm. A local author wrote:

"With all his acquired and natural gifts, had Mr Leake only realised that humour was preferable to caustic wit, and that solidity and dignity were essential to the exercise of the highest judicial functions, it cannot be doubted that the position of Chief Justice of the colony was within his reach, but, unfortunately for himself, he sacrificed the high office he so much coveted ... to the display of keen wit and sarcasm which often descended to ridicule."

Happily, the criteria for appointment to the office of Chief Justice have been relaxed since those days.

Anyway, getting back to the defamation case, curiously, given the ink stand incident, Leake was represented by Septimus Burt. The question in the case was whether the words spoken by Horgan, properly understood, should be taken to refer to Leake. The jury were unable to agree, but on a retrial, Leake succeeded and was awarded £100 in damages. Horgan's appeal against the judgment was dismissed, but he gained his revenge, subsequently beating Septimus Burt in an election for the seat of Perth.

George Walpole Leake's son, also George, was also appointed Queen's Counsel, served as Attorney General, and as Premier in 1901-02. His son, Francis Walpole Leake, was appointed King's Counsel in 1939.

Now, what is the point of all this history, I hear you ask? Well here comes the punchline. At the time of George Walpole Leake's retirement, the press described him as an unconventional magistrate who had nevertheless attained good results and who acted "with honesty, firmness and on the whole with a sound administration of the law".

Those words are, I think, a fitting description of the magistracy as a whole, and are certainly apt to describe today's magistrates. The citizens of Western Australia are fortunate to be served so well by magistrates commonly working very long hours, sometimes in remote locations, deprived of the usual comforts of life in the thankless service of an occasionally ungrateful public. This evening I will make good that deficit and will conclude by thanking you all on behalf of the people of Western Australia for the enormous contribution which you make to the administration of justice across our vast State by your hard work, dedication and by your unwaivering commitment to provide justice to all, without fear or favour, affection or ill will.