



LEADERSHIP WESTERN AUSTRALIA

Graduation Dinner

*Improving Access to Justice -  
Opportunities for Leadership*

The Hon Wayne Martin  
Chief Justice of Western Australia

Government House Ballroom

Friday, 8 December 2006

Mr Terry Budge, Chairman of the Board of Leadership Western Australia, other members of the Board, Dr Ian Reid, Chief Executive Officer of Leadership Western Australia, distinguished guests too numerous to mention and, perhaps most importantly of all, graduates of the 2006 course conducted by Leadership WA.

I would like to commence by acknowledging the traditional owners of these lands, the Nyoongar people, and pay my respects to their Elders.

Unlike tonight's successful graduates, until now I have had very little opportunity to give particular consideration to the qualities, skills and attributes required of a successful leader. It is no bad thing that tonight's glittering event has required me to sit down and think quite deliberately about those skills and attributes, because although I have held leadership roles in various organisations in the past, since 1 May this year, the demands placed on my leadership skills, such as they are, have moved into a completely different dimension. Of course, that is when I was appointed to the position of Chief Justice of Western Australia, and thereby assumed responsibility for the delivery of justice to the people of this State.

And that is quite some responsibility. It is, I think, impossible to overstate the importance of justice to our society. Without justice, there is no point or purpose in laws, and without laws there is anarchy. And in order to be meaningful, justice must be accessible. So, access to justice is critical to the survival of our liberal democracy.

As the senior judicial officer in this State, I have made it clear from the day of my appointment, that I regard the provision of meaningful access to justice to the people of this State as my primary responsibility. In discharging my leadership responsibilities in this area, I hope I do not succumb to the failing first identified by the French politician, Alexandre August Ledru-Rollin, who famously wrote, in 1857:

"Eh! Je suis leur chef, il fallait bien les suivre."

Which, of course, means:

"Ah well! I am their leader, I really had to follow them!"

Some of you may recall that line more recently plagiarised by Jim Hacker MP, the brilliant British Prime Minister of "Yes, Prime Minister".

Now it might be thought that Richard Milhouse Nixon is an unlikely source of inspiration on the topic of leadership. However, in the following passage from his work, "In the Arena", published in 1990, he provided a succinct statement of the counterpoint to Jim Hacker's philosophy, when he observed:

"I strongly believe that candidates should resist the advice to slavishly follow the polls. Taking uninformed voters where they want to go is easy. Taking them where they should go is the role of the leader. To make what is unpopular popular is the supreme test of leadership."

I digress to observe that given the current popularity of the legal profession and the judiciary, on this view there are many opportunities for leadership presented to me!

Perhaps a little inconsistently with these sentiments, Nixon has also suggested that a certain degree of unpopularity may be consistent with good leadership when he observed:

"An effective leader needs enemies because then you know you're doing something right."

And he pursued this theme when his wife Pat said to him, in the midst of his Watergate troubles:

"Dick, I don't know how you keep going."

And he replied:

"I just get up in the morning to confound my enemies."

Although, of course, I wouldn't describe them as enemies, one of the traditional critics of the Chief Justice of Western Australia is the media. To show that this is no recent phenomenon, I would like to read you what the Melbourne Argus had to say, in the middle of the 19th century, about Sir Archibald Burt, who was the first Chief Justice of Western Australia. My predecessor had had the temerity to impose a fine of 100 pounds on a publisher for contempt of court. Perhaps in order to prove that the media would not be discouraged by such penalties, the Argus wrote:

"We have read and heard of many singular freaks of men dressed in a little brief authority, but we have not yet met with such a case as that of which we yesterday stated the leading facts. In any of the free colonies, or indeed in any place where the feelings of free born Englishmen are not stifled by the pestilent exaltations of convictism, such an occurrence would have been simply impossible."

You will notice the enthusiasm of the Victorian press for emphasising the fact that convicts were never sent to Melbourne.

And the Argus was not the only Melbourne paper to criticise the first Chief Justice of this State.

The Melbourne Age wrote of him in these terms:

"The new theatre of operations, in the effort to silence the press and crush public journalists, is the heretofore penal colony of Western Australia, and the angry potentate who hurls his thunderbolts against those who dare impugn the doings of official authority, is not the sovereign ruler of the State as represented by the local head of the executive in the person of the Governor of the colony, but the Chief Justice in the Supreme Court of this despotically governed little peddlington. The Chief Justice, in a tone and style of speech the most intensely redolent of the pecksniff spirit that our experience has ever been cognisant of, at once commenced his bitter vengeance by extolling his own conscientiousness."

I must confess that every now and then when I get a bit of bad press, I reread that passage in order to comfort myself that things could be worse.

The reality is that dealing with the media is a vital aspect of access to justice, and therefore of my responsibilities. The Courts of this State exist to serve the public, and the confidence of the public is essential if we are to discharge that function effectively. Although the internet is an increasingly important source of information, many members of the public still rely heavily on the media for the information necessary to form their views about important community issues, like justice. And regrettably, the slant often taken by the media in order to attract attention to a story is capable of creating a quite false public perception.

The sentencing of offenders is a topic of great media and public interest, and properly so. However, there is a tendency for some sections of the media to enhance the newsworthiness of stories about individual cases by couching them in terms which imply, or expressly state, that the sentence was wrong - usually because it was too lenient.

Frequent repetition of that approach has, I think, induced a widespread public belief to the effect that sentences imposed in this State are lenient. Nothing could be further from the truth. This State has the highest imprisonment rate of any State in the country, and is second only to the Northern Territory in all the jurisdictions of this country. This State has the sixth highest imprisonment rate in the world. I do not advance these propositions as achievements of which either the judiciary or the State ought take pride, but simply as an example of the quite erroneous public perception that can be created by media on a mission.

One of the challenges of my job, and a challenge which I must confess I have not yet overcome, or even devised a method to attack, is just how I might get the message to the public about sentencing without disappearing in a quagmire of controversy. The media approach on sentencing responds to a widely held view that the best way to discourage crime is to impose severe sentences. There is, of course, nothing wrong, and a lot right with the proposition that the sentence imposed should reflect the severity of the crime. That proposition is reflected in a number of well-established principles of sentencing, including deterrence, both general and specific, retribution and proportionality. Those principles are applied every day in our Courts.

But those principles must also recognise that there are some cases in which the dominant objective of protecting the community, which I can assure you is the objective which drives all our Courts, will best be served by also taking into account the need to reduce the risk of reoffending by a particular offender, by constructing a sentence which enables the causes of the offending conduct to be addressed, not just the system. This approach to sentencing is often associated with a developing field known as "therapeutic jurisprudence", and which I prefer to refer to as a problem solving approach. This approach accepts that some crime will be the symptom of an underlying cause, such as substance abuse, social or socio sexual dysfunction and so on, and recognises that unless and until the causes of the criminality are addressed, criminal behaviour by that offender will continue. Sometimes the causes of criminality will be best addressed in a custodial environment, but sometimes they will not - indeed, sometimes, the institutionalisation of the offender will itself be the cause of subsequent crime. So in those cases, the task of the sentencing Court is to identify the best way of addressing the cause of crime so as to reduce the risk of reoffending - always in the context of a sentence which is proportionate to the crime committed.

A convenient way of putting this message in the one liners of which the media are so fond, and which are necessary if the medium is television, was coined by that great exponent of the one liner, Tony Blair, as long ago as 1992 and was recently recycled by Kim Beazley who promoted the slogan:

"Tough on crime - tough on the causes of crime."

Some of you may have noticed that one of the sub themes of my address this evening is that not all wisdom about leadership comes from leaders who have been completely successful!

A very recent review of the problem solving approach to sentencing which is embodied in the Drug Court of Western Australia demonstrates that local experience has replicated what has always been found in other jurisdictions when this approach is taken - that is, that it can substantially reduce the risk of reoffending and, at the same time, substantially reduce the imprisonment rate. This is obviously a win-win outcome - a win for both the community and the offender. I am therefore very keen to see this approach expanded into other areas, including other areas of criminal jurisdiction. And if that means that less people get locked up, and the Courts became the target of media criticism, it will at least show that we are leading community expectations and not following them. The reason we have an independent judiciary is so that our Courts can do what is right, which may or may not be what is popular. And that is an aspect of leadership.

The two most significant factors associated with criminal conduct in Western Australia are, by far, substance abuse, including illegal drugs, and legal drugs like alcohol and Aboriginality. The Drug Court already addresses illicit substance abuse, but does not yet address alcohol abuse. For my part, I would like to see its role expanded into that important area. Which leaves Aboriginality and perhaps the most challenging, but at the same time one of the most depressing aspects of my job.

I know that your leadership course has had a very strong community focus and has been based on practical experience and first-hand

observations rather than academic dissertation. Participants in the course have been drawn from across all sectors of commerce, government and the professions. These are all aspects of your course which to my mind enhance it, and make it really special. And in that practical context, your course has included a component on topical Aboriginal issues. I would expect that you have learnt that the gross over-representation of Aboriginal people in the criminal justice system of this State is a very significant component of those issues. Tonight, as the Hon Margaret Quirk knows only too well, Aboriginal people will represent approximately 40% of her prison muster, but only 3% of the general population. Tonight, approximately one in 16 adult Aboriginal Western Australian men is in prison. And tragically, the position is even worse if one looks at juveniles, where tonight more than 80% of the inmates of our juvenile detention facility are Aboriginal. This is a very ominous portent for the future.

And the situation gets no better if one looks only at rates per head of Aboriginal population. The imprisonment rate per head of Aboriginal population in this State is almost double that of the Northern Territory. The reason the Northern Territory is the only jurisdiction in Australia to have a higher imprisonment rate than ours is because the proportion of Aboriginal people in the general population in the Territory is much higher.

I do not profess to have a solution to this apparently intractable problem. Nor do I profess any instant expertise in this exceptionally complex area - especially in the presence of the Hon Fred Chaney, who knows more about this subject than I would hope to know. But I do know that whatever we have been doing hasn't worked. The figures to which I refer

have got worse rather than better over the last 10 or 20 years. And because of what I have already said about the importance of addressing the causes of crime, I must also say that I think there is a limited amount that the Courts can do in relation to these problems unless and until the causes of Aboriginal criminality are addressed - preferably by a whole of government approach. Unless and until social and cultural dysfunction and dislocation, drug and alcohol abuse, education, health, housing and employment are all addressed by cohesive programmes, it seems inevitable that this problem will continue. In my view, there are opportunities for many leaders, including Ministers and departmental heads across a range of portfolios, to here demonstrate leadership and act together to put in place programmes which may not manifest results within the normal electoral cycle and which might be unpopular with the non-Aboriginal community, but which are essential if they are to discharge the responsibilities of leadership - that is, of leading community expectations rather than following them.

I don't mean to suggest that there is nothing the Courts can do in this vital area. On the contrary, I am very keen to see the "problem solving" approach expanded around the State in the Courts that deal with significant numbers of Aboriginal people. That is why I was very pleased that Magistrates Kate Auty and Denis Temby opened our State's second Aboriginal Community Court in Kalgoorlie two weeks ago - having started our first in Norseman about a year ago. This is leadership in action - showing how European traditions of justice can be modified to accommodate and recognise the cultural traditions of the first inhabitants of this country in a way which has been shown to reduce re-offending and increase the relevance of the court process to both offenders and, just as importantly, their victims.

Let me finish on a lighter note reflecting the social nature of this occasion. Leaders are found in many areas of life, but one of the areas in which leadership can be critically important is sport. Some of our sporting leaders have come up with some wonderful sayings, some of which were recently collected together by Mark Latham in his evocatively titled work, "A Conga Line of Suckholes". (You will again note that I am sticking to my theme of leaders whose achievements have not always been crowned with glory!)

One American football coach was described as such a perfectionist that if he were married to Raquel Welch, he'd expect her to cook.

Greg Norman, for a time Australia's leading golfer, showed his gratitude when he observed:

"I owe a lot to my parents, especially my mother and father."

Murray Walker, the car racing commentator observed:

"The lead car is absolutely unique, except for the one behind it, which is identical."

And followed it up with:

"There is nothing wrong with the car except that it is on fire."

Norman May, the swimming commentator, famously observed:

"There's only one word to describe this result - dead heat."

Terry Venables, the English soccer coach, sagely observed:

"If history repeats itself, I should think we can expect the same thing again."

Emulating the great American baseballer, Yogi Berra, who famously said:

"It's déjà vu all over again"

and who could ever forget his famous:

"When you come to a fork in the road, take it."

And returning to the subject of English soccer, Mark Draper, who played for Aston Villa, once announced that he would like to play for an Italian Club, "Like Barcelona".

And as we are in the middle of an Ashes Test series, I must conclude with a reference to cricket. I hope that Freddy Flintoff does not get the letter which was received by Mike Denness when he was captain of England.

The letter read:

"If this letter reaches you, the post office thinks more of you than I do."

And finally, an object lesson in not speaking too soon is provided by an anecdote involving the great West Indian batsman, Viv Richards. Uncharacteristically, Viv had played and missed several times. An English bowler approached him and said:

"It's round, it's red and it's got six stitches on it".

Richards smashed the next ball out of the ground for six, and said to the bowler:

"Hey man, you know what it looks like, now go fetch it."