

# What is Justice?

Law Week speech by Magistrate Di Fingleton presented in Alice Springs on Wednesday 17 May and in Darwin on Friday 19 May 2006.

Thank you so much for the invitation to speak to you today. I am honoured and flattered to do so, given the standing of some of your previous speakers. I notice that all of the members of the Law Society and Council are women lawyers and am told that women lawyers being admitted to practice in the Northern Territory outnumber males by 4 to 1 – is the rumour true we are taking over?!?

The Northern Territory is a fascinating and beautiful part of Australia. I am always impressed by the colours and fabric of the country, not at all what I thought of Central and Northern Australia, growing up, as I did, in an intensely urban part of Brisbane. Instead of “all dry and brown” as I thought, there is red, green, orange, purple, blue, pink ...

I take this opportunity to acknowledge the traditional owners of the land on which we meet (Alice Springs – Arrernte), (Darwin – Larrakia/Woolna).

I take such kind invitations as a huge compliment that people would want to hear from me about my recent ordeals, the way in which I got through my “*annae horribili*”, the way forward for what has been and continues to be – a good life and a good career! I also derive great support and benefit from my public talks – not in an egotistical way, but from the good “vibes” which come back to me.

When I do get to speak, forgotten are the early mornings and late nights as I write my speech in and around a busy court life, the stress which my husband takes upon himself as I have a deadline to meet – they call women “nags”! – the search for a meaningful title and theme for the paper. Actually – it’s just good to be here once again, among my legal and judicial peers – back as a magistrate, doing the job I love, administering justice.

I was asked recently at one of the functions I addressed, two most interesting questions, the latter leading me towards the title of today’s paper – “What Is Justice?” A member of the audience asked, firstly, “How had I survived the attack on my integrity over the civil and criminal trials I had endured – was not that the worst, or almost the worst thing? Secondly, I was asked - “When exactly did I regain my belief and trust in the judicial process, which had seen my career and life brought so low?” I was reminded that a journalist had described me, after my conviction in 2003, as having lost my career and, indeed that “my life was over”. I know the journalist personally and look forward to seeing him at some conference or other and presenting myself, bright and breezy



to him, showing that “Spring Hill” girls are tough – Spring Hill being the Brisbane version of “Balmain” in Sydney!! However, we do cry!

Anyway, my answer to the first question was that, indeed, the attack on my integrity had been one of the hardest issues for me and those close to me. Families and friends are bound to support you – certainly events such as I endured show up the good friends from the mere acquaintances – and my friends came up smelling like roses. I have the “best husband in the world” as I proclaimed him on the Denton show and the best brothers and extended family, one can have. Those who knew me best, knew me to be a person of great integrity and ethics and that I was no “bully” and that I would not ever do anything to interfere with the course of justice.

My legal career up until the time I had become a magistrate, had been almost entirely dedicated to the promotion of access to justice for the disadvantaged. My friends knew that, as did many colleagues in the legal profession but once the media got involved and things were blown out of all proportion – all of that was forgotten.

One’s integrity, in human relations, in one’s career, in one’s dealings with those around you, is where you draw your breath from. The questioner at the function I later learned had, himself, suffered and prevailed over, an attack upon his integrity. So, he knew what he was talking about... Whether it was a true belief in my integrity, based on a childhood education based on catholic teachings, and/or a well developed political and social justice perspective, I knew right from wrong and had decided to make a career of righting the wrongs wherever they occurred. This does not make me a saint – indeed I am as flawed as the next person – it makes me strong and firm in my ideas and that is what got me through.

I never lost my belief in myself and that was what mattered in the wee hours of the morning, during

Continued page 6...



---

## What is justice? cont...

the long wait for justice, or in that time after lunch, when the afternoon and evening lay long ahead of me, when the friends I had lunched with, would go on back to their jobs and careers. Some might call it my “ego” which got me through – whatever, I agree with the Sky Hooks song – “Ego is not a dirty word”.

I had plenty of time in prison to read books and it was fortunate that I was able to read stories of some very inspirational people. For instance, the iconic Nelson Mandela’s “Long Walk to Freedom”, which detailed how he survived twenty seven long hard years in prison in South Africa and could emerge with such forgiveness in his heart for his and his people’s tormentors and go on to lead his country in a conciliatory fashion unknown in the modern world. That made me feel humble.

I also read about Christopher Reeve, the intelligent actor who became “Superman”, until he fell, cruelly to earth from a horse. His overwhelming optimism and sheer determination to live until a cure for quadriplegia could be found, was again inspiring. He recently lost that battle but died, with his dignity very much intact.

I read “Ice-Bound”, the story of a medical doctor, who was diagnosed with breast cancer while she was based in Antarctica, in the middle of Winter, when no planes could fly in or out. She had to treat herself “on line”; she showed great courage and endurance throughout her ordeal – she survives.

Hilary Clinton was another inspiring woman. Her autobiography shows her to be a great person. One who never forgets an old friend or co-worker – she always remembers and names people she has met and worked with at various times in her full and interesting life. Although Ms Clinton may have failed in her attempts to provide health care reforms into the American system and was thwarted in other ways to bring about welfare reforms, she remained strong and focused throughout. Now she has emerged as a hugely successful politician in her own right, a Senator from New York and someone who is talked about as a future presidential hopeful. This, from a woman who was publicly cuckolded by a famous husband who said he did what he did, “because he could”. Her loyalty to her husband and daughter are in themselves admirable.

Also, the number of letters I received from friends and strangers were touching and humbling. I have also been asked what I “learnt” from my experiences and my reply is “humility”. Not that I was brought down a peg or too but that I was humbled by the touching words and messages which came my way. To know that people can be so thoughtful and so

caring, sometimes to someone they had never met, makes one see the world in a much broader perspective. Kindness is the number one quality I look for in people I meet now. And I try to reciprocate.

I had the opportunity to study the issue of “resilience”, when I was performing the community service aspect of my incarceration in the second half of 2003, which I did at the Abused Child Trust in Brisbane. The Trust, as the name suggests, works with abused children and, importantly, their families. My research was directed at how the concept of “resilience” could be incorporated into school programs for emotionally and otherwise abused children, to help them through their tough times.

Resilience is not, on the face of it, a very complicated idea. Not a new idea, either. Seneca, the Greek philosophers said, 2,000 years ago – “We must expect anything” ..... “There is nothing which Fortune does not dare”. In less affluent and comfortable times, life itself was tougher, every day and no-one survived who was not tough. These days it has come to mean an ability to confront adversity and still find hope and meaning in life. Put more simply, in the colloquial – “What doesn’t break you makes you strong”.

I learnt a lot from the book entitled simply “Resilience”, written by Anne Deveson, a well known writer and broadcaster. Deveson herself needed to dig deep in her life on a number of occasions, when she was overcome with adversity. She had a son who had schizophrenia and who eventually killed himself at twenty four years of age. The experiences of living with someone with a mental illness is told in her earlier book – “Tell me I’m here”. While she was writing “Resilience”, she was going through the heartbreak of the illness and, later, death of her partner Robert Theobald, a futurist, from cancer. For all of her adversities, she does not hold herself out as being an expert in the practice of resilience. There are no experts, she says. “People do the best they can”. (p. 12)

Resilience can and needs be found in communities dealing with disasters – wars, floods, famine. We are all familiar with the resilience in nature – the green growth after the bushfire. We are also familiar with those people who stay to rebuild after a bushfire, while others leave. Or those who stay on the land, despite years and years of drought.

Or those who survive for two weeks in the Torres Strait in a boat or two weeks trapped in a goldmine in Tasmania – there are always plenty of examples of “true grit” around the place.

In the case of indigenous communities in Australia



– violence, alcoholism and unemployment can lead to despair. Noel Pearson, the Aboriginal leader from Hopevale has said that “With resilience comes strength and action; without it comes weakness and victimhood”. (p.9 of Deveson)

It is needed in companies – resilient companies are those who survive, by facing reality with staunchness, making meaning of hardship instead of crying out in despair. They improvise solutions from thin air. Others do not. (Diane Coutu – Harvard Business Review – May 2002).

As I read, I learned to be resilient myself. I drew upon the toughness of my parents’ lives – a father who was the victim of terrible childhood abuse and a mother who had to cope with abuse from the dysfunctional husband who had grown from that little boy. Neither was perfect. They just did “the best they could”. I drew on the family story, including my parent’s tortured relationship, which my brother, Tony and I had chosen to turn into a manuscript and which eventually became the movie “Swimming Upstream”.

I drew from my recent past, too and realized that I was proud of my achievements as Chief Magistrate of Queensland. I realized that because of good reformist planning and process based on forward and creative thinking, strong networks in the profession, the public service and academia, being open to sound mentoring and advice, the tools of trade as Chief Magistrate of Queensland, I could relish the fact that there existed a different structure in the of court environment in the Queensland magistracy. I had left behind (I thought forever), a magistracy incorporating a Drug Court, a Murri Court, a State Coroner, an improved position for child complainants giving evidence in sexual assault matters, a magistracy more accountable to the community and one better educated on domestic violence issues. The magistrates’ salary during those three years had increased considerably beyond any previous level. I had helped develop a more flexible and efficient court, with each magistrate having access to computerized research, had made creative input into the beautiful new Brisbane Magistrates’ Court building, all of these accomplishments, built on my efforts in three years of tremendously hard work as Chief Magistrate.

As I looked to possible new careers, during my long wait for justice, I worked as a consultant to community groups with an experienced consultant and friend from whom I learned much. I taught Law at Griffith University Law School, and realized what a thrill it was to convey legal knowledge to young people. I realized I wasn’t “done with” the law as yet. It also kept me in touch with new develop-

ments in the law of Torts, Contract and Evidence, which together with criminal law, form the basis of a magistrate’s knowledge base.

So, in a nutshell they were the forces and influences that supported me through the hard times and towards the big decision as to whether I should return to the tent or stay outside!!

My answer to the second question, to which I referred earlier and which would become highly relevant to my decision-making after the High Court outcome – about the timing of the return of my belief in the justice system - was simple. My reply at the recent function was, I said, “in the few minutes it took me to absorb the 6-0 decision of the judges of the High Court who said that I should never have been investigated, charged, convicted or sentenced for the events leading to the CMC investigation because of the judicial immunity which I had enjoyed but which had been missed”.

It is ironic that, in the end, all of those people who had written to me and who had stopped me in the street or in stores and said – “You did nothing wrong – I thought the whole thing was ridiculous”, were right. The High Court said exactly the same thing! It is good to know that the person in the street came to the same conclusion as the brightest and highest judges in the land. “The ‘person’ on the Clapham omnibus” rides again!!

After that, it was a swifter road to recovery than I would have thought possible. I drew on my natural resilience and the knowledge I had gained from my studies on the topic, at the Abused Child Trust.

I talked long and hard with my closest confidantes – not all were convinced that I should reenter the arena. I read and thought and dug deep. It was fortunate that, at the time, two major achievements in the history of women’s progress – 100 years since women in Queensland were enfranchised and 100 years since women in Queensland were entitled to practice law. I looked, particularly to two recent publications by the Central University Press – “The Suffragists”, which examines the fight for women’s suffrage and “The Legislators”, which contains biographies of all 71 Queensland women elected to state and federal parliament.

I had the opportunity to read inspiring stories of women who had fought their way to the top of their careers, or just fought their way into a male-dominated area of politics or the law, or, indeed, secured the vote for us women.

At the same time, the Supreme Court Library was publishing the book entitled “A Woman’s Place – 100 years of Queensland Women Lawyers”, to celebrate

**Continued page 8...**



---

## What is justice? cont...

100 years since the enactment of the Legal Practitioners Act 1905. It celebrates the stories of those women who “forged new paths within the traditional, male legal establishment” in Queensland. To quote from the Editor’s Preface – “Their contribution has benefited the increasing number of women choosing to study and practice law and will be an inspiration for future generations of aspiring women lawyers.” I am touched and honoured to be one of the women whose story is told in “A Women’s Place” and that the editors stuck with my story through thick and thin!

Just as the debate still goes on as to whether it is the role of women elected to federal and state parliaments to speak out for the interests of women and children on a regular basis, so there is the debate about whether appointing women as judicial officers, over equally qualified men, should work to improve the status of women in the legal profession and in society as a whole. While it is a wonderful thing to have more women judges and magistrates throughout Australia, those women must do what they can to raise the consciousness of the need for debate about women’s legal issues. In other jurisdictions such as Canada, there is a large body of feminist jurisprudence, which shows that women judges can actually improve the lives of women from their positions of power, as well as being role models for other women lawyers.

On the topic of diversity in the appointment of judicial officers, a NSW District Judge, Gay Murrell, recently summed it up well when she said – “The argument for diversity is not an argument for political correctness. It is an argument for representation on the bench. It is an argument that a representative bench will reinforce public confidence in the judicial system”.

I was inspired, also, by the support of local Academics such as Rosemary Hunter, then Dean of the Law School at Griffith University who had written a supportive article in “The Courier-Mail”, soon after my conviction, and others who had done so. Retired and sitting judges, who would probably prefer to be nameless, advised me to return to the bench, to assist my “healing” and to finally “right the wrong”. I listened and took advice. In the end, an early retirement just didn’t seem like me!

I could look to a future as a judicial officer operating in courts in Queensland, some of which I had helped establish or had established, as I mentioned above, which have adopted the “therapeutic Jurisprudential” model. This is where courts look behind the offending and look more towards rehabilitation than straight punishment. This makes for a more stimu-

lating environment for judges and magistrates. It doesn’t suit all of them but there are enough whom it does suit, to make such courts viable, such as the Drug Courts in southeast Queensland, the Murri Courts throughout Queensland, the “special circumstances” listing in Brisbane courts. A specialist domestic violence court is now being proposed by the Chief Magistrate of Queensland and has my full support, as does his continued commitment to specialist courts in general. It is the way of “Courts for the future”, I believe.

I don’t know if we will go as far as an experiment in Collingwood in Victoria, based on a similar centre in the suburb of Red Hook, in Brooklyn, New York, of establishing a Neighbourhood Justice Centre. The people of Collingwood will get to choose the magistrate who hands down sentences to their fellow residents. The court will handle many of the petty criminal and civil matters that routinely clog larger courts and will also take on cases that would otherwise have been directed to tribunals such as the Victorian Civil and Administrative Tribunal.

The magistrate – picked by the inner suburban Melbourne community, together with the state’s chief magistrate and government representatives – will be able to monitor the progress of offenders through rehabilitation services linked to the court such as drug and alcohol counseling, gambling and mental health support, housing and employment advice, victims support and mediation services. The Victorian government is backing up its new ideas with \$23.7 million over four years.

Since the inception of the same approach in Red Hook in Brooklyn, New York in 1999, the number of murders in Red Hook has dropped from seven to one in 2003, rapes from 22 to six, robberies from 490 to 61 and assaults from 359 to 46. It would appear that attending to the underlying causes of minor crime prevents major crime from occurring. The Collingwood project is one which bears close watching for the future.

So, the second time I took my “Oath of Office” as magistrate, I took it in a different judicial context and with a deeper understanding of injustice –v- justice. I never expected to be “famous” to the extent I have become, for the reasons I now am. I look forward to a quieter judicial life (though the Caloundra court is busy and active and the population is growing rapidly) and a lower public profile.

The fact that I was able to be here to meet you (on Wednesday and) today is a pleasure and an honour and I thank you for your kind invitation. I trust that Law Week 2006 in the Northern Territory is both enjoyable and memorable.