Supreme Court of Queensland Library
Bridge to the Past • Gateway to the Future

SENTENCING IN REGIONAL QUEENSLAND
THE INTERFACE BETWEEN THE SENTENCING COURTS AND THE MEDIA

A paper presented to the
Sentencing – Principles, Perspectives, Possibilities conference
held in Canberra on 10-12 February 2006
by Judge J.M. Robertson, District Court of Queensland

Queensland is a highly decentralised State reflected in the disposition of Judges permanently in regional centres throughout the State. At present, there are resident Supreme Court Judges in Cairns, Townsville, and Rockhampton and resident District Court Judges in Cairns (2), Townsville (2), Rockhampton (1), Maroochydore (2), Ipswich and Beenleigh (1 each) and Southport (3). Judges of the District Court in Brisbane conduct circuits throughout the State, usually on average for 12 weeks per annum.

Except for a period of almost three years when I was President of the Children's Court Queensland, I was the resident Judge outside of Brisbane. From 1994 – 1998 I was the permanent Judge at Ipswich, and I commenced duties at the start of the Hanson era. Ipswich had (and still has) one local daily newspaper, a Murdoch tabloid with the grand title "The Queensland Times". Since 2000, I have been one of two judges permanently resident at Maroochydore on the Sunshine Coast. Like Ipswich, and many regional centres throughout the county, the Sunshine coast is serviced by one local daily paper, also a Murdoch tabloid, the "Sunshine Coast Daily", "Australia's fastest growing newspaper" according to its own propaganda! As part of this stream on responding to community sentiment and the media in sentencing practices, I will attempt to convey the very special relationship between the regional Court and its local tabloid and other media, particularly in the way in which the sentencing process is reported in the media. I will concentrate on my own experience, but I am very grateful to a number of my regional colleagues in Queensland who have shared with me treasured moments from their scrapbooks of personal media moments.

In sentencing, the regional judge operates under intense media scrutiny; in a fishbowl, (or at the beach with a cocktail as this clever cartoon suggests).

Power Point No. 1

The only thing missing in this depiction of the judge is the gavel, an instrument from antiquity, not used in courts in my memory, and, despite the fact that most regional juges do not wear wigs, and if they do they wear the short court wig, the judge of the cartoon always wears a bell bottomed wig.

In this regard, regional courts are not unlike their city cousins. The media (and therefore the public) have fixed views about judges and, despite the evidence of their own eyes, journalists everywhere when depicting judges either in print or electronic format, will include the gavel and the long wig.

In the past, it is rumoured that the odd cocktail was smuggled into Court but those days are long gone!

Probably the most challenging aspect of judging in the regions is that every word and gesture can be a media opportunity. Hence, the local Judge must be scrupulously careful about:

(a) what he or she says in court;
(b) and how he or she acts in Court.

Let me demonstrate this point from a recent painful experience of my own.

In June last year, I tried a man who was charged with causing GBH to another man on the Esplanade of Mooloolaba in the early hours of the morning. For those of you who know the Sunshine Coast, you will know of Mooloolaba, a particularly beautiful beach community south of Maroochydore. In the last ten years, the Esplanade has been extensively developed with tourism in mind, and the many bars and night clubs are very attractive to young and old alike. With the development, has come the social problems associated with use of drugs / excessive alcohol, and violence that sometimes follows.

The victim in this case was a middle aged man who had had a night out with friends. He had called his wife to collect him, and was waiting near a cab rank minding his own business. Witnesses described him as heavily intoxicated, so much so that he was seen standing and gently swaying to and fro. For reasons unknown, the accused simply walked up to this man who he did not know, and king hit him from behind in the head. The blow was so powerful that it repelled the victim on to the road where his head struck the paved brick surface and he suffered significant brain damage.

As I was going away the following week, I altered my usual practice of never sending a jury out late on a Friday and did just that, thus the verdict was delivered quite late at night. The trial had been arduous and I was mentally very tired. I have a personal practice of trying never to personally denigrate an accused; even those convicted of vile crimes, rather I will denigrate the conduct the subject of the conviction.

As I was to be away for some time, I proceeded at the accused barrister's request to sentence. A victim impact statement was tendered from the victim's wife. It was a very moving document, describing the effect of her husband's change of personality on herself and their children. I enquired of counsel, if his client had read it and when he said he couldn't bring himself to read it, I momentarily lost control and said angrily:

"I'm not surprised. It demonstrates that he is a rank coward."

"Rank" is a word with many meanings but of course the one I meant was "highly offensive, disgusting". It was a word I'd never used before to my memory; and on reflection I realised it was one of my mother's words – she was a conservative North Queensland WASP woman, and "rank" was one of the words in her arsenal. It had lodged in my childish subconscious to appear many decades later in this case.

The Sunshine Coast Daily loved it. There was no reporter there at 10:30pm on Friday night of course, but, to my horror they picked up the story later in the following week and this was the headline:

Power Point No. 2

I was struck by the headline of a recent editorial in the Courier Mail attacking my namesake, the Minister for Health in Queensland and it could easily have been said of me in this case:

Power Point No. 3

It demonstrates when sentencing the judge must take great care in the choice of language.

The humiliation for me was compounded by the Daily's editorial which praised the sentence and concluded with the words:

> *"… and the world would be a much better place if there were far fewer (name of unfortunate prisoner) and far more John Robertsons."*

At a meeting of interstate judges soon after this, we were discussing the increase in personal attacks on judges in the media in that State and the concern they had about that trend. When I related my story they all agreed that from a professional view point, it may be better to be criticised by the media rather than praised.

The editorial also demonstrates another trend in the reporting of sentencing, particularly in the regions, and that is the personalisation of the judges as individuals, rather than as judges. The media portray the judge in such a way that the anonymity of the office is stripped away. The reference is rarely to Judge Robertson; it is either Judge John Robertson, or simply John Robertson.

A number of my colleagues have been plagued by this in certain regional areas of Queensland. Judge Wall QC is one of the two regional judges in Townsville – a North Queensland regional centre serviced by one local daily the redoubtable "Townsville Bulletin".

A remark during the sentencing hearing of three armed robbers, resulted in this headline:

Power Point No. 4

But, of course, even a severe penalty will not satisfy everyone.

Power Point No. 5

These dramatic resports are often accompanying by "vision" – a photo of the judge is dredged up from some public source and the picture is published – over and over again, like this of Judge Wall:

Power Point No. 6

We judges, perhaps cynically, sometimes think that the media at times choose "vision" which carries with it a lack of respect for the Court. For example, this photo of a colleague, Judge Pack also from Townsville, with a big toothy smile in the context of a report about a case in which the accused was alleged to have bitten the hand of the complainant so hard that when he pulled his hand back, he ripped out the accused's dentures. Judge Pack reports to me that he has all his teeth!

Power Point No. 7

This sort of publicity has its drawbacks. Judges in the city are much more likely to be able to remain anonymous in the life beyond the courthouse, but this does not apply to the regional judges. All of us, from time to time, get unsolicited advice from members of the public whom we encounter in our private lives.

In my case, I am a member of a large Chorale Society, and very frequently at practice on a Monday night, someone will comment on some sentence that has been reported that evening on local T.V. or in the previous week in the Sunshine Coast Daily.

A colleague of mine now retired took it much further when he became frustrated at the constant misreporting of the Gold Coast Bulletin of sentence proceedings in his Court. He was not a man to take a backward step so he decided to play the media at

their own game. He took what Sir Humphrey Applebey would described as "a courageous step".

He had presided over the sentence of a man who pleaded guilty to dangerous driving causing death. These are cases that tend to attract the most extreme response from the media. He imposed a non-custodial sentence based on the particular circumstances of the case, and there was no appeal suggesting that the Attorney-General did not regard it as manifestly inadequate. However the Gold Coast Bulletin did, and the publicity lead to the involvement of media from all around Australia, including the electronic media. The sentence was condemned as being too weak. The redoubtable Mike Munro urged viewers to write to the judge expressing their opinions about the case, and they did, in their thousands. The judge, perhaps unwisely, agreed to appear on A Current Affair, and he was positioned under a 1000 watt spot light which made him sweat profusely, and unconsciously look up all the time during the interview. He certainly tried to educate the public about the complexity of the sentencing process; but as he has observed since, the letters he received universally revealed that at least the viewers of A Current Affair did not have any understanding of the true nature of sentencing, which requires a balancing of all the relevant issues in the case; including those in favour of the defendant.

This leads me on to a point of view that is not only mine but is one that is shared by many commentators (outside the media) on the sentencing process. It seems to be accepted that the media do tend to concentrate on a very small number of cases in which the sentence is impugned as being too weak; "weakly merciful" as one appellate judge eloquently put it.

This leads to the perception in the mind of the public that Courts are generally too soft on criminals. In the regional setting, particularly when the media have a tendency to personalise the judge and undermine his or her anonymity; this can be quite challenging. In 2005 in a very entertaining speech to the Biennial Conference of District & County Court Judges Professor Ari Freiberg referred to a Melbourne Herald Sun "Survey" of 3000 readers in which they had been asked (in effect):

> *"Do you think the Courts sentence too lightly".*

to which 90%, not surprisingly, responded “yes”. If, as Voltaire observed, perception is reality, then, the reality is that a majority of the populace, based on media reports of sentencing, do think the Courts are too soft on criminals.

One of the practical (and indeed legal) reasons said to justify severe punishment is the need to deter others of a like mind. It is called the principle or theory of general deterrence. So, as the theory goes, if a young, poorly educated, drug using male from a severely compromised and dysfunctional social background reads (or hears) about tough sentences being handed out for say armed robbery, he will be deterred from committing the offence. It is not the time to debate this theory. From the point of view of the judges, we are bound to apply it because it is part of the law. It need only be said that the theory of general deterrence is controversial amongst theoretical and academic thinkers, and there is a strong suggestion in the research that it is the fear of detection not punishment that is much more likely to deter people who came from backgrounds which predispose them towards criminal conduct.

If, contrary to the perception, the Courts are too severe on offenders or some offenders, or that very severe sentences are handed out for particular types of crimes e.g. sexual offending against children, violence in public places leading to serious harm, and, if in fact, potential wrong doers do read the papers and watch the TV and current affairs programmes and listen to 2UE; then could it be said that the constant refrain that the Courts are too soft actually encourages rather than deters potential offenders.

The Chief Justice of NSW, Spiegelman J expressed this argument in a recent speech to the Law Society of NSW in this way:

** **"For deterrence to work potential offenders must have an understanding of the legal consequences of criminal conduct. If, as I believe is the case, media reporting gives excessive emphasis to light sentences, and gives the impression that such sentencing is typical when it is not, then deterrence will not work."**

The Victorian Courts Media Liaison Officer reports that in that State less than one percent of all sentences are reported by the media, which is probably true of Australia generally.

If, as I suggest, there is in that reporting an over emphasis on reporting of allegedly soft sentences, then the problem identified by Chief Justice Spiegleman is a real one.

Another aspect of this point of view is that if indeed the facts are that objectively the Courts are not soft on criminals, but rather the evidence is that sentences are getting harsher and harsher, then are the public being grossly mislead by the media on this issue of sentencing.

The point can be demonstrated by reference to a number of cases in 2005 from my region. This problem is not exclusive to regional areas of Australia, of course, but because of the very close contact between Courts and local media in these areas; the point of view can be readily demonstrated.

The first case, in point of time, involved a pair of teenage armed robbers who were given sentences not involving actual imprisonment for the armed robbery of a local KFC. The Daily reacted dramatically:

Power Point No. 9

In passing, I notice in all of these headlines a sub-editorial practice of placing a celebrity, in this case our own crocodile hunter, in a supervisory position, almost as if Steve himself was crying out for "Justice".

In this case, the Attorney-General did appeal, arguing that the sentence was manifestly inadequate. The Court of Appeal unanimously dismissed the appeal (*R v Dullroy and Yates; ex parte A-G (Qld)* [2005] QCA 219) by a 2:1 majority). As far as I can ascertain, there was simply no attempt to report on the appeal judgment – even to show a contrary view to the editor in the judgment of the majority, or support in the dissenting judgment of the Chief Justice.

The next two cases concerned people charged with offences of a sexual nature involving the use of the internet. The first case was one of mine. A lollipop man was convicted of having almost 9000 pornographic images of children on his home computer, an offence then carrying a two year maximum. He pleaded guilty, and for a variety of reasons set out in my judgment I imposed a 12 month jail term to be served in the community by way of an I.C.O. The Daily responded thus:

Power Point No. 10

The next day, a Judge in Brisbane sentenced a Sunshine Coast man who pleaded guilty to offences of attempting to procure a child for sexual purposes over the internet. He was caught in a "sting" conducted by police, and thought he was communicating with a 13 year old girl on-line when in fact he was talking to a police officer. He was not sentenced to actual jail time, and the Daily responded thus:

Power Point No. 11

The Daily then used its front page to pressure the Attorney to appeal:

Power Point No. 12

and, although the Attorney did not appeal the first case, he did appeal against the second sentence. The appeal was unanimously dismissed and is reported as *R v*

Burdon; ex parte A-G (Qld) [2005] QCA 147. Again, there was no report of the appeal judgment and therefore no attempt to inform the public why the Court of Appeal had reached the conclusion it did.

As most of your are aware, Queensland is unique in Australia as being the only State in which the decision to appeal against an allegedly inadequate sentence is vested in the Attorney-General and not the D.P.P. This certainly means that publicity about allegedly soft sentences can have direct political repercussions as the earlier headline directed to the Attorney-General indicates. It is more likely therefore that there will be more appeals against inadequacy in Queensland than in other States, and therefore one empirical way of examining the perception that courts are too soft, is to examine the data relating to appeals by the Attorney and prisoners.

In preparation for a public lecture on media reporting of sentencing last year, I undertook a careful analysis of the statistics of the Court of Appeal for the preceding three years. My conclusions based on this empirical evidence were that:

** **The Attorney appeals in less than 1% of sentences imposed and succeeds in only .25%, while prisoners appeal in 7% of cases and succeed in just over 2%.**

which does not suggest that the courts are, as the media overwhelmingly suggests, soft on criminals. The only instances of media reporting which suggested that the sentences imposed were too high in that time are the cases of the ex-leader of One National and Schapelle Corby. As I have noted in my examples, there was no attempt by the local media to follow up and report on the appeals against sentence of which they had been so critical.

When I gave this lecture publicly, I sent copies to a number of senior respected journalists of my acquaintance. Both regarded the information as being in the public interest. One of them wrote a major feature based on the paper. A mere shadow of his piece appeared in the regional edition of the paper, the Courier Mail, and the piece

was excluded completely from the City edition. This incident does demonstrate I think that it is editorial policy, not decisions of working journalists, that drives the media's obsession with so called soft sentences.

My paper has probably extended beyond the topic, but I think this issue is of such importance that it needs to be addressed and, as I have observed, it is of major concern to regional Judges because of our close connection to the community. When I was in Ipswich, and with the consent of the Chief Judge, I gave a series of interviews with a trusted journalist which lead to a series of four articles in the Queensland Times on consecutive weekends, about the role of judges and the sentencing process. These days, Judges and myself included, are more reluctant to engage with the media in a process of public education about the sentencing process, simply because of a lack of trust.

The reality may be that most modern media interests generally are not interested in fair and detailed analysis, and are only interested in sensational attacks on the courts for being too soft on criminals, as this is what the public who purchase newspapers and products advertised on television, want to hear. In the 'slow news' period in early January this year, the Court Mail lead another attack on the courts with an article under this headline:

Power Point No. 13

The main premise of the article under the hand of the Courier's "State Political Correspondent" was that courts were too soft because crime figures released by the Attorney-General for the 2004-2005 period revealed that no-one had received the maximum for various classes of serious violent offences; and a number had not been sent to jail. There was simply no attempt at analysing the figures or putting them in context. To take but one example, the article says *"In major centres, 62 people were convicted of rape, with 53 receiving some time in jail. One rapist received a wholly suspended prison sentence, and eight others were given intensive correction orders."* The maximum for rape is life, and I have imposed the maximum on only one occasions for the rape of a 6 year old whilst on parole for similar conduct. In the relevant period, for example, I sentenced a serial rapist to 22 years which I suppose

qualifies as “some time in jail”. The writer also fails to note that in Queensland now, as a result of a law change, digital penetration without consent is now included in the definition of rape so the offence covers a multitude of behaviours.

To be fair, the Attorney-General was quoted in a statement in which she pointed out the complexity of sentencing and the need to balance up the various factors as required by law. On the other hand it quoted the predictable and deliberately insulting remarks of the President of the Police Union that the judiciary are “*chardonnay-sipping lawyers who don’t understand the system and have more sympathy for the offenders than they do the victims.”*

On that sombre note I close with a return to my happy first slide.

Power Point No. 14

Although at Maroochydore I have never worn a long wig or had a cocktail or even a chardonnay in court, I am able to go swimming every lunch hour either in a pool or on one of the beautiful beaches close by and be back in time refreshed to start back at 2:15. So, it is not all bad.