



Australian Association of Crown Prosecutors' Conference  
Thursday, 9 July 2009, 9am  
Opening Address

---

**The Hon Paul de Jersey AC  
Chief Justice**

I am very pleased to have the opportunity to offer my encouragement at the commencement of this important conference, the eleventh in an unbroken annual series, with the first at Terrigal in 1999, the year of the Association's birth. In convening the conference, the Association works commendably to advance the performance of prosecutors, and thereby the public interest. It is absolutely critical to the maintenance of the rule of law, and civilised society, that the investigation and prosecution of alleged crime be carried out with high efficiency and propriety. Acknowledging the national dimension of the conference, in this federation the objectives and methods should be fairly similar from one jurisdiction to another, so there should be considerable utility in the discussion of common problems and proposals for improvement.

The "roll up your sleeves" theme courts real utility, basic utility.

I return to this, but first, if I may, some more general observations. Discharging juries upon the delivery of verdicts, trial judges not infrequently observe that they have performed the most significant task one citizen may be called upon to perform in relation to another. Though it may have become a rather trite remark, it nevertheless remains accurate. That alone illustrates the significance of the burden undertaken by both Crown and defence counsel at a trial.

The position of Crown Prosecutor is particularly demanding. When does the strength of the prosecution case reach the point where the prosecution really



Australian Association of Crown Prosecutors' Conference  
Thursday, 9 July 2009, 9am  
Opening Address

---

should be pushing for a conviction? In that sort of case, what range of tactics may be regarded as reasonable?

The burden on the prosecution expands commensurately with the expanding temptation to commit crime. I was interested to note in this jurisdiction this year the need for prosecutors to command complex accounting concepts in a Wickenby prosecution, as well as technical aptitude: it was a largely “paperless” trial, where all participants enjoyed access to a computer screen. The use of the computers resulted in a massive saving of resources. The five week trial would otherwise have taken at least twice that long. It is, in short, a fundamentally important, always large, and in these days expanding and developing burden.

There are two additional aspects of the modern prosecutor's role I wish to mention at the outset this morning. The first is administrative: the way our prosecution services best operate. The second relates to “value adding”: recognising and enhancing the professionalism of the service, especially through its alliance with the broad profession.

In this State until a few years ago, the Office of the Director of Public Prosecutions operated generally along the lines of a government department, though always with the requisite independence. Then the system was refined, with the adoption of a chambers-type arrangement, and it appears to me that this has led to a more efficient and efficacious delivery of service. It has fostered a collegiality among prosecutors which I am told has resulted in greater sharing of information and advice, and more active mentoring of the less experienced.

I have always considered it a strong goal, not always achieved, that prosecutors be involved early in the piece, from the drafting of the indictment having regard to the



Australian Association of Crown Prosecutors' Conference  
Thursday, 9 July 2009, 9am  
Opening Address

---

available evidence, and then as the trial approaches, culling evidence as appropriate in consultation with the defence. I have no doubt that as well as judges, juries greatly appreciate streamlined presentations. Time wasting, through cooling their heels locked in jury rooms while issues are debated in their absence in courtrooms, and having to listen to substantial bodies of evidence on matters which should have been common ground, can be a real irritant.

I am pleased to note that in this jurisdiction, extensive use is made of the pre-trial hearing. I am also pleased to note, with gratitude, the way prosecutors co-operate with judges in the various expedients we adopt these days to facilitate the jury's comprehension – written resumes of elements of complicated defences for example, flow charts, overhead presentations and the like. Attention to administrative aspects is important to ensure optimal presentation, both for prosecutor and judge.

Although critics of the modern jury system sometimes argue that jurors lack the intellectual capacity to make increasingly complicated determinations of fact, empirical studies suggest that it is not so much the intellectual capacity of jurors which is the problem, but rather, the manner in which the evidence is presented.<sup>1</sup> In other words, any fault rests with the lawyers and the judges. Perhaps it is time to reassess the way we communicate with jurors, to multiply techniques 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. Simple expedients can produce disproportionately beneficial consequences. I was amazed at the dramatic improvement to criminal trial



Australian Association of Crown Prosecutors' Conference  
Thursday, 9 July 2009, 9am  
Opening Address

---

presentations wrought by the simple “document viewer”, in displaying documents in magnified form.

We also need to be alive to differences among the generations and age-groups in the manner in which information is optimally 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. Now juries reflect a mix of ages, and so the means of communicating with them could involve a mix of techniques. The modern approaches just mentioned show that, but we must not stop there. Effective communication rests at the heart of the advocate’s mission of persuasion, and the trial judge’s instructions.

The other matter I raise is what I termed “value adding”, recognising and enhancing the professionalism of the prosecution service, especially through its alliance with the broad profession. My memory of three or four decades ago is of a gulf separating the prosecution service from the private profession, which did nothing to foster the collegiality necessary to ensure co-operation in preparation for trial, and at trial. Co-operation is not a sign of weakness; it promotes efficiency. Nowadays, prosecutors recognise that they are members of the legal profession, and they are recognised as such. That recognition extends to their appointment, where appropriate, as Senior Counsel. I was very pleased to note earlier in the year in this jurisdiction a substantial number of prosecutors attending the Queensland Bar Association’s annual conference at the Gold Coast in March, and substantial criminal law streams in the conferences periodically hosted by the Bar Association, the Law Society, and the District Law Associations.

---

<sup>1</sup> Jacqueline Horan, “Communicating with Jurors in the twenty-first century”, (2007) ABR 75.



Australian Association of Crown Prosecutors' Conference  
Thursday, 9 July 2009, 9am  
Opening Address

---

Back, now, to the conference programme. It must be read with care: “witness a live demonstration of the investigation of online sexual predators. Learn about the latest investigation techniques in this growth area.”

Reference to “live demonstrations” in this area may be somewhat fraught, but we know what is meant. I struggle to comprehend the stress to which those who investigate, and prosecute, this crime are subject, not to mention the victims. It does seem that the extent to which this criminal activity is uncovered is increasing. Stress for those who police and prosecute it points up the need for psychological support – now available in this jurisdiction for jurors, judges and departmental officers.

Then you are to “watch a fire develop from a few metres away. Shipping containers sheeted with plasterboard and fitted out with carpet and furniture replicating a room in a house will be set on fire allowing you to watch the development of the fire; the rate at which it develops and the burn patterns produced.”

A “controlled experiment”, I trust. Ross Martin, one of the Association’s vice-presidents, told me that most prosecutors have not seen fires burn to flashover, or have not seen or understood the detail of how fires develop, or the signs remaining after a fire indicative of particular causes, and that is unsurprising. The Fire Brigade in conjunction with the Police will provide the training that Arson Squad investigators receive.

Potentially most worthwhile, though I hope you valued prosecutors are not thereby lured into the fire or police service.



Australian Association of Crown Prosecutors' Conference  
Thursday, 9 July 2009, 9am  
Opening Address

---

Another practical experience lies ahead in the “visit to Queensland Health and Scientific Services to learn how autopsies are performed and how decisions are taken about what examinations are done and what tests are performed. See the CT scanner in use and its capacity to improve the presentation of this evidence to a jury.”

Not an actual autopsy, I imagine; and I return to my theme about streamlined, contemporary style presentation to jurors, many of whom are now generation Y and younger. The plethora of television shows like CSI, NCIS, and Law and Order probably gives rise to an expectation, with some, that we are able to offer the very latest technologically to streamline the presentation of evidence. We do our best, but there is in the end a finite limit to available resources.

And in addition, you are to visit the “training facility at the Amberley Air Base and participate in the Weapons Training Simulation System (WTSS) where you will learn how to handle and fire a variety of weapons ranging from pistol to light machine gun.”

Ross also told me about a psychiatrist who had never fired a weapon giving evidence in a shooting case on the basis of a misunderstanding of just how difficult it can be to make a very accurate shot. Having a practical understanding of such issues prevents that order of misunderstanding.

I personally know from six years in the Citizens' Military Forces in the 1960's how very, very difficult it is to make an accurate shot. And I am glad you are to carry “light” machine guns. The Bren Guns to which I was exposed were far from light.



Australian Association of Crown Prosecutors' Conference  
Thursday, 9 July 2009, 9am  
Opening Address

---

I add this: take care to be responsible, follow all directions from trained professionals, and beware of colleagues bearing firearms.

I applaud the practical orientation of the conference. You will actually get a lot out of these sessions, massively more, I suggest with great respect, than from even the most carefully presented dissection of the modern law on propensity evidence or joint criminal responsibility.

In short, the conference programme is interesting and innovative, and in its implementation, the result will also involve, dare I mention it, enjoyment.

I wish you well, ladies and gentlemen, as, through this conference, you contemplate your professionalism, and the means by which you can, in discharging your important responsibility, serve and promote the public interest even better.