SUPREME COURT
OF QUEENSLAND

University of Southern Queensland Public Lecture
"Preserving the independence of the judiciary
USQ, Toowoomba
Thursday, 26 May 2016, 5:30 pm

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Chief Justice

Thank you for inviting me to speak tonight. I know that Justice Keane spoke here a couple of years ago on the topic of the separation of powers, and I am hoping that what I say will be tangential to, rather than duplicating, his speech. I suspect my talk may be pitched at a more prosaic level. Let me explain the impetus for my choosing the subject of the independence of the judiciary and the need to preserve it.

Lawyers tend to take as a given the importance of judicial independence as essential to democratic government and the rule of law. But that understanding is not as deeply ingrained in the wider community. A recent case in which I was involved attracted a good deal of public attention. That there should be some controversy and some criticism was not in the least unexpected or perturbing, but what did trouble me were some comments I read in that context about what should be the role of judges in general. One sentiment expressed was that the judges sitting on the case had forgotten that they were public servants; clearly, from the context, not in some larger sense of being at the service of society but as being employees of a government department. And there were suggestions that it would be better if judges were elected, rather than appointed, because then they would respond promptly to public opinion.

There were a number of comments along those lines and they did bother me because they suggested a lack of awareness of the existence of a principle of judicial independence, let alone an appreciation of its significance and value. And it made me think about how widespread that might be. I hope that I am preaching to the converted with this audience when I say that judicial independence is not a state of affairs which exists for the benefit of judges. It is a safeguard of democracy, because, critically, it means independence in

judgments. But to not have it more widely understood and valued puts it at risk, because the conditions necessary to it can be diminished or removed.

I want to talk about the foundations of, and vulnerabilities of, judicial independence in the Australian context; and the misconceptions I've referred to about it, with some cautionary tales drawn from the American experience.

Let's start with a definition. By judicial independence, I mean the ability of a judge to make decisions in accordance with the law, free from direction by the executive and free from concern about ramifications which may flow to him or her or the judiciary generally if the decision given is not pleasing to government or other powerful interest groups. And I like this statement by former US Supreme Court justice Sandra Day O'Connor:

> "The reason why judicial independence is so important is because there has to be a place where being right is more important than being popular, and where fairness trumps strength".[1]

That place, she says, is the courtroom.

So to return to why the first of those particular comments caught my eye. The idea of judges as public servants, or servants of the executive is the antithesis of an independent judiciary. It has echoes of the circumstances in which the need to afford statutory protection to the judges was first recognised. You will probably know that courts began to emerge in England in the 12th century, but it was at the very beginning of the 18th century that the foundations of modern judicial independence were laid, with the Act of Settlement in 1701. The Stuart kings had felt at liberty to dismiss judges who displeased them, including Sir Edward Coke, and generally to treat judges as within the control of the Crown; not dissimilar to the idea which distressed me, of regarding them as public servants, at the direction of the executive. Parliament, as a check on the powers of the throne, passed the Act of Settlement, which gave judges tenure and established salaries to be paid out of public revenue; both widely recognised to this day as essential conditions for the maintenance of independence.

[1] 33 Seattle U.L. Rev. 559 2009-2010 at 565.

Later in the 18th century, Montesquieu and Blackstone wrote on the importance of separating the judicial function from the exercise of legislative and executive power, to safeguard an independence which would ensure the liberty of the citizenry. That thinking inspired the American founding fathers to vest separate judicial power in the Supreme Court and other Courts to be established by congress and entrenched the rights of judges to hold their office during good behaviour and to receive compensation which should not be diminished. Having started well, the Americans diverged to election of judges for most state courts, which has in my view resulted in placing judicial independence at considerable risk, in ways I'll talk about later.

I think the individual who was under the misapprehension that judges were civil servants might on reflection see the benefit of the judges not being employees of the Government. Courts have frequently to decide civil disputes between the Government and the citizen; judges preside over the trials of those accused by the Crown; on occasion it falls to courts to consider the validity of legislation; and increasingly, particularly over the last 30 years, the courts have been called upon to review administrative action. One could hardly have much confidence in the performance of those functions if they were to be carried out by servants of one party to the litigation, that being the Government; or indeed were amenable to any form of pressure from that party.

In Australia, the independence of the judiciary depends on a mix of sources: legislation, convention and common law. The Commonwealth Constitution from its inception in 1901 entrenched both the separation of powers as between executive, the legislature and the Federal judiciary and the position of Federal Judges. Over the twentieth century Australia subscribed to international standards such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, accepting its obligation to maintain the independence and impartiality of the judiciary.

There is no shortage of statements, international and domestic, of the critical importance of judicial independence to the rule of law. In 1995, the Chief Justices of Asia and the Pacific region, including Australia's, accepted the Beijing statement of principles of the independence of the judiciary. Not surprisingly, those principles proclaim the fundamental

right of all to a fair hearing by an independent and impartial tribunal to which an independent judiciary is essential. They emphasise matters such as the importance of appointment on merit, security of tenure and immunity from suit, not altering remuneration and conditions of service to the disadvantage of judges, the need for the chief judicial officer to have control of assignment of cases and the avoidance of use of executive powers affecting judges in any way which may influence the performance of their functions. They have given rise to a declaration of similar principles issued in 1997 by the Chief Justices of the Australian States and Territories, with some additions to meet particular situations which might be of concern for independence, such as the appointment of acting judges.

Many of those stipulations are met by legislative provision in Queensland. The Constitution of Queensland Act 2001 provides for judges to hold office during good behaviour and precludes their removal other than for proved misbehaviour or incapacity upon a prescribed procedure. Of course, there is provision elsewhere for what we like to call statutory senility, the setting of the compulsory retirement age at 70. The Constitution also provides that a judge's salary may not be decreased in amount and that if a judge's office is abolished directly or by abolition of the courts he or she is entitled to hold another office of equivalent or higher status.

Interestingly, though, the Queensland Constitutional Review Commission, whose recommendations for reform underpinned the 2001 Constitution, recommended that it should expressly recognise the principle of judicial independence. The Government, however, thought it unnecessary; there was a concern that express recognition of the principle might have the effect of formalising the doctrine of the separation of powers, which Queensland, of course, does not strictly observe. Nonetheless, maintenance of a high degree of separation of functions is critical to judicial independence.

Other important conditions for judicial independence are contained in the *Supreme Court of Queensland Act* 1991. The Act extends the common law immunity from civil suit of judges in the exercise of their judicial functions to the exercise of administrative functions. It gives me as Chief Justice responsibility for the administration of the court and its

divisions and the orderly and expeditious exercise of the court's jurisdiction and power,[2] and gives me the power to decide the Court's sittings.[3] The Chief Judge is similarly responsible under the *District Court of Queensland Act* 1967 for the administration of his court.[4] Control over the Court's business is obviously a critical feature of independence. It takes little consideration to see that nothing could be more destructive to independence than the capacity for any external agency to influence what judge should sit on what matter. I have too, the power to do whatever is necessary to manage the Supreme Court precincts round the State, so that, for example, neither State nor Commonwealth office-holders can introduce any other occupant into a courthouse occupied by the Supreme Court without my approval.

All of those provisions recognise and support the institutional independence of the judiciary but none of them is entrenched; that is to say, none requires a referendum or any particular form of parliamentary majority to remove it. They could be removed in whole or in part at any time by a legislature which chose to do so. The fact of some of them being in the Constitution perhaps provides a little more protection, because of the perception of the significance of constitutional change; but it is none the less readily achieved by Parliamentary vote, particularly if there is some popular impetus for it.

And notwithstanding those statutory protections, inevitably, of course, the courts cannot be quarantined from involvement with the executive. An obvious example is in relation to the appointment of judges. Plainly, appointments should be based on merit, by reference to the competence, integrity and experience of the individual chosen. No appointment should be made or refused, for example, because of the political leanings of the individual involved. The older among you will recall that in 1982, Mr Justice Douglas, the senior judge on the bench was recommended by the Attorney-General for the position of Chief Justice, but rejected by the Bjelke-Petersen cabinet. That was because, according to what Sir Edward Lyons said at the Fitzgerald Inquiry, he was believed to have voted Labour. Of course, seniority gave Mr Justice Douglas no claim beyond consideration for the position, but if it is true that he was rejected because it was perceived that his view were not aligned

2 s 15.
3 s 16.
4 *District Court of Queensland Act* 1967 s 28A.

with those of the Government, that was an insidious form of attack on judicial independence.

Then there are the allied questions of tenure and removal of judges. I've already mentioned that the Constitution of Queensland provides for removal of judges. The relevant procedure is firstly that a Tribunal made up of three former judges of superior courts makes a finding of misbehaviour or incapacity, as the case may be. If that is accepted by the legislative assembly, the Governor-in-Council may remove the judge on an address of the assembly. But the question of what to do about a judge whose failings fall short of misbehaviour is always fraught because of the importance of a judge being able to perform his or her role without fear of reprisal. It is essential that the executive not be able to impose sanctions on them; hence the very limited statutory grounds for removal.

The balance is between accountability and independence, and it is a delicate one. Which brings me to the second of the areas of comment that caused me concern. One can see why from time to time the election of judges is advocated, or at least the system adopted in many American States, of appointing judges and then requiring them to face an election at the end of a set term to determine whether they will be retained. In theory, those measures are a fine way to ensure independence: if judicial office is the subject of a vote, the executive is not involved in appointment, and with a retention election, neither the executive nor the legislature plays any role in removal. Appointment and removal by election have the potential to ensure only those who do meet with public approval become judges and those who disappoint are moved on. The idea sounds appealing, and that is why I want to talk about some of the American case law. America is the only country of which I am aware which has judicial elections.

As we know, the office of Federal judge in the United States was from the beginning, and has remained, by appointment, and originally that was also the model for the individual States. But election become increasingly common for State courts through the 19th century; currently 39 States have some form of judicial elections for their appellate or trial Courts or both, some partisan, that is with the endorsement of a political party, but most not. Because of concern about the political nature of judicial elections many States moved

to the system of retention election. Thirty-one States, however, still use popular election to select judges who then have to run for re-election thereafter. Almost 90 percent of State appellate Court judges have to be regularly re-elected.

Minnesota has chosen its judges through contested popular elections since the State was admitted to the Union in the mid-19th century. In *Republican Party of Minnesota v White*[5] the United States Supreme Court had to consider a clause in the Supreme Court of Minnesota's canon of judicial conduct which prohibited candidates for election from announcing their views on disputed legal or political issues. A candidate for election to the Court had distributed campaign literature criticising decisions of the Court on issues such as crime, welfare and abortion. That was not a problem, although it does not seem a very good recipe for collegiality. But the candidate wanted to go further and indicate which way he would rule on things if elected, with a view to procuring votes. He was joined in his litigation, as the title of the case shows, by the Republican Party.

Essentially, the dispute between the minority and the majority in the US Supreme Court turned on whether there was on strict scrutiny a compelling State interest to be served by the clause. The argument was as to what was necessary to the State's interest so far as preserving the impartiality and independence of the Court and the appearance of it was concerned. The majority, led by Justice Scalia, considered that the essential form of impartiality was equal application of the law as between parties. This clause though did not restrict speech as between parties but as between particular issues. Judges' minds were not a complete blank; it was unrealistic to avoid judicial preconceptions on legal issues; and to try to preserve the appearance of that type of impartiality was not a compelling State interest. The clause which prevented the candidate from saying how he would decide things violated the First Amendment freedom of speech.

The minority said that issues of law or fact in litigation should not be determined by public vote and it was the business of judges to be indifferent to unpopularity. Even if impartiality were limited to a lack of bias for or against either party, a stance on a particular issue was likely to indicate a view as between particular classes of litigants. So, for example, for a

[5] 122 S. Ct. 2528 (2002).

candidate for re-election to rely on a history of affirming rape convictions, implied a bias in favour of the prosecutor against defendants in those cases.

What is most interesting in the case for my purposes is the judgment of Justice Sandra Day O'Connor. She joined the majority to conclude that the clause was unconstitutional but wrote a judgment expressing her concern about judicial elections. She pointed out that a judge subject to regular elections was likely to feel that he or she had some personal stake in the outcome of every publicised case, being aware that if the public wasn't satisfied with the outcome it could hurt their re-election prospects. Statistics demonstrated that judges facing election were much more likely to override jury sentences of life without parole and substitute the death penalty than those who did not run for election. Even if judges refrained from acting on their awareness of the electoral consequences of their decisions public confidence in the judiciary was liable to be undermined by the possibility. Campaigning for a judicial post could require substantial fundraising and reliance on campaign donations was likely to leave judges feeling indebted to parties and interest groups; again that possibility was likely to undermine public confidence in the judiciary. Minnesota's problem with judicial impartiality was one which was inherent in the use of the election system and was not to be solved by restricting freedom of speech.

Justice O'Connor's concern about fundraising came home to roost in *Caperton v AT Massey Coal Co Inc*[6]. A jury awarded $50 million against the Massey coal company. The coal company, knowing that its appeal would be heard by the Supreme Court of Appeals of West Virginia, decided to campaign against an existing member of the Court who sought re-election and instead to support an attorney called Benjamin. The coal company donated $3million to Benjamin's campaign and he won narrowly. He then refused repeated applications for his recusal from the appeal. And he ended up in the 3/2 majority which reversed the jury verdict against the coal company.

By a 5/4 majority, the US Supreme Court concluded that the campaign contributions relative to the total amount spent in the election had a significant and disproportionate influence on the election; it was entirely foreseeable when the contributions were received

[6] 129 S. Ct. 2252 (2009).

that the newly elected justice would be hearing the contributor's case; the result was a serious objective risk of actual bias requiring recusal. It was an extraordinary situation warranting the conclusion that there was a breach of the due process requirement of the 14th amendment. The minority including the Chief Justice acknowledged the concern to maintain a fair, independent and impartial judiciary. But, they said, allowing the appeal would do more to erode public confidence in judicial impartiality than an isolated failure to recuse in a particular case. That approach is unsettling for an Australian lawyer, what is also unsettling is that it is clear from the majority judgment that most cases involving parties who had donated to a judge's campaign would not be seen as involving a significant interference with due process.

In an address in 2010,[7] Sandra Day O'Connor described the flood of money coming into Courtrooms by way of expensive and volatile judicial election campaigns as the single greatest threat to judicial independence in the United States. There was, she said, an arm's race in funding. That situation has not improved any. The Brennan Centre for Justice at New York University School of Law maintains a watching brief on judicial campaigning and fundraising. Its website is daunting and illuminating. Average spending in retention elections between 2009 and 2014 reflected a tenfold increase from the average of the previous eight years. You might say in response to the *Minnesota v White* case that the solution is not to allow candidates to campaign and to the *Caperton* case that the answer is clearly not to allow candidates for election to fundraise. But the American experience is that if the candidates don't do those things, someone else will.

The Brennan Centre's report for the 2013/14 year notes that special interests were increasingly doing their own advertising in judicial races and spending freely to support candidates rather than actually donating to them. The top ten spenders accounted for nearly 40 per cent of total spending nationwide. Ominously, some of the campaigns focused on criminal justice issues, for example with an ad suggesting that a sitting Supreme Court justice was not tough on child molesters. But they were funded by groups with no demonstrable interest in criminal justice issues, suggesting that that was simply used as a convenient device, a stalking horse, to influence judicial races and by that

[7] 33 Seattle U.L. Rev. 559 2009-2010.

means, influence judicial decision making on other matters, involving for example competing interests of resource use and environmental protection. There was also significant spending from the political right, including the Republican State Leadership Committee, the mission of which is to elect State-level Republican office holders, including judges.

I recommend a visit to the Brennan Centre site to illustrate exactly why the Australian system of appointment and tenure of judges is to be cherished. Apart from fundraising issues, the instances of wildly inappropriate campaigning that can be seen on the website are jaw-dropping. There is plainly a likelihood of diminishing public confidence in the judiciary as a result; indeed it has been pointed out the more the election of judges looks like contest for political office the more people are apt to regard judges in the same light as politicians. It is hard to believe that this state of affairs advances the interests of judicial accountability and it seems inimical to judicial independence.

That's not to say that our appointment system wouldn't bear improvement. Ideally appointments should be made in consultation with the judiciary, and by that I mean not just the form of consultation but the seeking of views which are actually taken into account and on criteria which although perhaps broadly stated are nonetheless available for public information. Currently the Attorney-General, as you may know, has in hand the preparation of a protocol for judicial appointments, which we can expect to provide some guidance.

As to removal, of course there can be a difficulty with a judge who does not meet the criteria for removal but is nonetheless what you might call under-performing. Fortunately the sorts of people who join the bench tend to be rather driven individuals, highly susceptible to peer and professional disapproval. And of course error can be corrected on appeal. But the fact that there is not at the end of the day much to be done if someone is not entirely satisfactory in the judicial role is the price we pay for not having judges who fear the outcome should they make an unpopular decision.

I can't do better here than quote from former Chief Justice Gleeson:

> "What is called the law and order debate sometimes involves opportunistic demands, not merely for the reduction of judicial discretion, but also for sanctions for unpopular decision making. If judges could be penalised, or publicly censured, because their decisions displease the Government, or some powerful person or interest group, or, for that matter, most of the community, then the right of citizens to an independent judiciary would be worthless."[8]

Another obvious issue for judicial independence is the funding of the Court's operations. Most of the State Courts, including Queensland's, depend for their resources on their provision by a State Government department. That means that although judicial remuneration cannot be altered without legislative change, the services necessary for a judge to exercise his or her functions can be. So, registry staff may be stripped away, funding for IT may be denied, courthouses may be allowed to run down. It is to be hoped that no Government ever contemplates that a court should move to an entirely user pays system funding itself from court fees; to do so would be inimical to access to justice. The prioritising of expenditure is a matter for the executive and as with appointment the judiciary can only hope for consultation. It's an aspect of relations between the judiciary and the executive which needs careful handling.

I pause here to mention another American example. In Arizona last week the Republican Governor signed an Act passed by the House of Representatives to increase the Supreme Court from five to seven justices. All good you might say; but the Chief Justice had asked the Governor to veto the legislation. The Court's caseload did not justify the extra judges and an expansion of the Court was not warranted when there were other Court related needs unmet. Why the decision to expand the Court? It was widely seen as an exercise in Court packing by the Republican administration of the State. But in the context of discussing executive powers over budget, this aspect is particularly concerning. The Chief Justice had earlier said that he would go along with the expansion if the legislature provided enough funding to cover the Court's past budget cuts and to pay for current

[8] "The Right to an Independent Judiciary" 14th Commonwealth Law Conference, London September 2005.

needs. Now that is a double example of the way judicial independence can be interfered with, through alteration of court composition and through control of the purse strings.

And of course it is not unknown in Australia for the legislature to impinge on judicial independence. Given the absence of any strict separation of judicial power in the State sphere, the High Court's decision in *Kable*[9] was a large advance in the declaration of constitutional protections for the independence of State Courts. The lawyers among you will know legislation is invalid if it is incompatible with the independence and integrity of a State Court necessary to its constitutional status as a repository of Federal jurisdiction. To put it more simply, the decision sets a limit on the legislature's ability to make legislation which controls judicial power; it must not require of a judge functions which conflict with judicial independence or integrity. *Kable*, though, is a blunt instrument. There are certainly many instances in which procedural requirements which are cause for concern have been imposed on Courts but have been regarded by the High Court as not so compromising decisional independence as to offend the *Kable* principle.

Forge's Case,[10] which concerned the validity of the appointment of an acting judge shed some further light on the *Kable* principle. It was beyond the legislative power of a State to alter the constitutional character of its Supreme Court so that it no longer met the description in Chapter 3 of the Constitution of "the Supreme Court of a State"[11]. In *Kable*, the legislation was incompatible with the institutional integrity of the relevant Supreme Court because, in effect, it required the Court to act as an instrument of the executive. *Forge* recognised that the institutional integrity of the Court might also be distorted by altering it so that it no longer exhibited the defining characteristics which marked a Court. In the event, legislation allowing for the appointment of an acting judge was upheld; but it was not ruled out that such appointments could conceivably have an effect on the institutional integrity of a Court, depending on a number of factors – how many had been appointed, for how long, to do what and why.

9 (1996) 189 CLR 51.
10 [2006] 228 CLR 45.
11 At 76.

But while *Kable* operates to defend institutional integrity, it is unlikely to offer any protection against the Arizona situation I referred to earlier, where a government decides to alter by expansion the make-up of a court in order to form a politically desired bench, provided it is smart enough not to articulate those intentions. That comes back, really, to the importance of appointment on proper criteria after good faith consultation.

Just which courts have the status of independence can change over time. Queensland magistrates were not formally recognised as members of the judiciary until the passing of the *Magistrates Act* 1991, which separated the Magistracy from the Public Service. The Act described itself as relating to "the judicial independence of the Magistracy". The Magistracy has yet, however, to receive any constitutional recognition. As Gleeson CJ pointed out in *North Australian Aboriginal Legal Aid Service v Bradley*[12] there are differences in arrangements concerning the appointment and tenure of judges and magistrates, their conditions of service and procedures for dealing with complaints against them and Court administration, all of which bear on independence. That is, he says, because "there is no single ideal model of judicial independence". But the magistrates have moved increasingly close to the position of judges both in their practices and the expectations of them, and as is often remarked, the majority of people who encounter the justice system will do so in the Magistrates Court. At least in theory it is difficult to see why there should be different levels of independence for different courts. At any rate, the *Bradley* case puts it beyond doubt that the *Kable* principle applies to the Magistrates Court as a Court exercising Federal judicial power.

And the ways in which the *Kable* principle can operate to protect the independence of State courts have by no means been exhausted. Thus in *Attorney-General v Lawrence,*[13] a Court of Appeal of which I was a member decided that amendments to the *Dangerous Prisoners (Sexual Offenders) Act* 2003 were invalid as repugnant to the institutional integrity of the Supreme Court of Queensland. The amendments permitted the Attorney-General to recommend that the Governor-in-Council make a "public interest declaration" that a person should be detained. What it meant in effect was that if the Court at first

12 (2004) 218 CLR 146 at 152.
13 [2013] 306 ALR 281.

instance or on appeal gave a prisoner previously detained under the Act a supervised release, the executive could immediately nullify the order by making a declaration. The Court's orders then would be provisional, in effect dependent on the executive Government's decision about whether to make a declaration or not, and if the result was unsatisfactory to the Attorney-General could immediately set it at nought by effectively making his own detention order. It does not take a great deal of thought to see why the Court held that the amending legislation was repugnant to the Court's institutional integrity. It is noteworthy that the Attorney-General did not invite the High Court to add its view on the matter.

I will just mention here that in 2014 the Council of Chief Justices of Australia and New Zealand issued guidelines for communications and the relationship between the judiciary and the legislative and executive branches to ensure that those branches recognise the institutional and decisional independence of the Courts. Firstly, so far as legislative actions are concerned, there should be consultation with the Courts on laws affecting the jurisdiction and powers of the Courts, appointment and removal of judges, laws affecting the judicial function such as those which mandate procedural requirements or prescribe matters to which judicial officers must have regard in making decisions, laws affecting the administration of the Courts and laws affecting the character of the Courts. The guidelines also point out that some forms of Parliamentary and executive action not involving legislation can nonetheless affect the independence of the judges, two particular categories being criticism of the Courts and funding of the Courts. Communication between the Courts and the executive in relation to those matters is advocated.

I've dealt with the incursions which can be made into judicial independence by the legislature and the executive, and some safeguards. In my view, though, the media also have some responsibility in this area. Criticism of judicial decisions is something which should be encouraged in a democracy, and it's something courts have long been inured to. I can't resist at this point stealing an example from a paper by Chief Justice Bathurst of criticism in the 19th Century: Malins V-C had an egg thrown at him as he presided in court. He said, quick as a flash, "That must have been intended for my brother Bacon". One can only envy his aplomb. But while criticism, preferably informed and not involving projectiles,

is entirely appropriate, sustained attacks on individual decision makers are not. From time to time we see in our press or hear on talkback radio denunciations of particular judicial officers, usually magistrates, which are personal and intrusive on their privacy. Over-dramatic headlines are often accompanied by an unflattering picture of the judicial officer going about his or her ordinary affairs and startled to be accosted by a photographer.

I know most of the magistrates who have been the subject of that kind of attention and I am happy to say that they are individuals of great robustness and integrity and are unlikely to have their decisions affected by what they have been through. But they should not be tested in that way. And I am concerned for less hardy souls who may see this experience and be aware that in making an unpopular decision, say about bail, they may well expose themselves to similar opprobrium. I don't say there are not effects on judges of higher courts too, but the magistrates operate at closer quarters than any other section of the judiciary to the community at large.

And you also risk, though obviously to a lesser extent, some of the double effect Sandra Day O'Connor talked about as resulting from the election process: not only that a judicial officer subject to regular attention of that kind may feel anxious about the outcome of every publicised case because of the prospect of further personal attack, but that even if they refrain from acting on that awareness, public confidence in the judiciary may be diminished by a perception that decisions are made with a wariness about resulting publicity.

It behoves our media to think a little beyond the headlines and consider the bigger picture of judicial independence and its importance to social stability. Politicians similarly should observe some restraint in speaking of the justice system and they should not seek to exert pressure for particular results for example in sentencing. I am happy to say that restraint of that kind has been my recent experience at least so far as the politicians of this State are concerned. There should be no factors in decision making other than case law and legislation, no wild cards of influence from pressure groups or the Press. The defendant in the most sensational of cases should be confident of receiving precisely the same treatment as the defendant whose case goes entirely unremarked by the wider community. The equal treatment of citizens before the law is fundamental to our system of justice. I

think most people assume that will be the case without necessarily considering what creates the conditions for it.

Well, what can one do? Ideally we could see bipartisan restraint on the part of politicians at all levels and the resumption by the Attorneys-General of the role of defending the courts because judges cannot enter the public arena. Education is important. I think there would something to be said for better education at both primary and secondary school level about the roles and functions of these democratic institutions, the executive the legislature and the judiciary. I fear that if you asked most people in the community what the different arms of Government were, you would draw a complete blank. The Queensland courts are about to see the appointment of an information officer for a trial period; that may go some way towards public education about the judicial role. We are also in the higher courts looking towards a pilot programme of filming and broadcasting sentencing remarks and appeal proceedings. Those trials will have to be assessed at their end to determine whether there has been any adverse effect on the delivery of justice, which is entirely possible; or whether they have actually served a purpose of helping to inform the community. A cynic might fear that the media will be more attracted to the sensational than the informative, but I try hard not to be cynical.

It seems to me that ignorance and complacency are threats to the preservation of democratic rights. One of those democratic rights is the expectation of equal treatment before the law, which depends utterly on judicial independence. A good way of preserving it is to try to ensure that everyone in the community understands it and sees its worth.