Judges and Police: Meeting New Challenges

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The Hon Justice Michael Kirby AC CMG*

FORGETTABLE WORDS

It is a privilege to address this graduation ceremony. I congratulate all of those who have won the Diploma of Policing, now a requirement for promotion to senior constable in the New South Wales Police Service.

My task as graduation speaker is to say a few well chosen words; but to be quick about it. This may come easily to a police officer. But it is terribly hard for a lawyer and harder still for a judge. Over the years, in various universities, I have heard hundreds of graduation addresses. It is a sobering thought that I cannot call to mind a single word of any of them. I fear that these remarks will suffer the same fate. But judges and police are accustomed to doing their duty. So I will press on and do mine.

CHANGING TIMES

I want to speak about judges and police. Our constitutional functions are necessarily different. Police are part of the committed Executive arm of government. Judges are part of the neutral and uncommitted Judiciary. Yet police, like judges, must perform their functions with integrity and independence: without fear or favour, affection or ill-will. They must resist being caught up in the passing passions of society. They must each steer clear of party politics and the enmities which it generates. They must uphold the law and protect all citizens - even those whom they would not choose to invite to dinner. Judges and police wield great power. Their decisions, more than those of most others, affect the lives of their fellow citizens. They must be aware of the law which they administer, for it is constantly changing. They must be familiar with the society they serve. It too is changing, more rapidly than ever. Its composition, values and its problems - all changing.

I have been in judicial office long enough to remember an easier time. There were fewer courts; fewer judges; fewer magistrates; fewer police. Judges were on pedestals. If spoken of at all, it was normally with reverence. There was no familiarity. Police were much the same. They ran law and order and walked the beat. They took no nonsense. Effectively, they were largely unaccountable. Judges tended to believe every word police said in court. If particular decisions of the courts were criticised, the critics had to watch out for the law of contempt. Never were criticisms voiced of the judges personally.

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Consider the changes that our two professions have faced in recent years:

- The numbers have gone up as the duties and expectations cast upon us have increased;

- The educational requirements have been formalised. It is now virtually unheard of for a judge not to have a university degree. This ceremony illustrates the great change that has come over police education. It is no longer in club. It is performed externally, to university standards;

- The demands of society have become more strident. Suggestions have been made that there are too many watch-dogs for police. Judges too are surrounded by scrutiny. In addition to appellate courts there is now a Judicial Commission to receive and process complaints against judges. Judges and magistrates can be brought before the Bar of Parliament, as we recently saw. Courts have their own internal monitors for the competence, efficiency and courtesy of judges. Unfortunately, the work that police and judges do is generally of a kind that will leave at least one of the affected parties very discontented. In the old days, they held their tongues and licked their wounds. No more;

- Community criticism of institutions has become a staple diet of today's entertainment media. From the Crown down, through the ranks which we used to call Crown officials - police and judges included - anyone in public office is now fair game. This is said to be healthy. Doubtless, generally, it is. But it is sometimes destructive. Often it is given particular zest by Australia's tall poppy syndrome. Issues are invariably personalised. The hard basic institutional problems are ignored. The good work of faithful long hours grabs no headlines. Achievements such as we see in this ceremony are no news at all;

- Both judges and police are under increasing pressure to be more efficient. All courts, which not so long ago left judicial performance to the conscience of the judge, now scrutinise output and efficiency. Similarly with police. Courts procedures are to be changed to relieve police of routine court duties and to reduce the time that police officers spend waiting around courts;

- Little wonder in this environment that the stress levels of police and judicial officers have increased markedly in recent years. Stress in policing, and not only because of physical danger, is well documented. Stress in the judiciary was, until recently, comonly denied. Both professions faced the problem, common to a male dominated culture which hates to allow the macho image to slip. Each profession has cultivated an environment of mutual support imbued with a common mistrust for outsiders and for their crude and ignorant questioning of received wisdom;

- Whereas in the past the leaders of both professions, the judiciary and police, retained a reticent silence in public about their problems, times are changing here too. Leading judges now endeavour to respond to criticism, to explain their functions and to conduct a dialogue with the community, necessarily to some extent through the media. The same is true of police. It is wrong, in my humble opinion, for politicians to attempt to stop senior police officers from engaging in proper dialogue with the community about issues relevant to modern policing. How, for example, could Commissioner Ryan discharge his duties today without speaking candidly and directly about the problems presented to police by the enforcement of some of our drug laws? If the Police Commissioner cannot share those problems with the community whom police serve, how can an informed democracy work to achieve effective reforms?

CHANGING THE CULTURE

In 25 years as a judge in Australia, I have witnessed enormous changes in the culture of the judiciary. It is, I believe, a better and a stronger institution for its greater openness. A good part of the criticism addressed to its personnel and its ways has been warranted and beneficial. So it will be with policing, including in New South Wales. The Royal Commission will inescapably have taken a great toll on police morale in this State. There is no point denying that fact. Inevitably, its revelations have effected the way the ordinary citizen of the State will look on you, the serving police officer of the next millennium. But policing will eventually emerge from the present age of doubts and questions, strengthened (as the judiciary has been) by the adoption of new standards of continuing education, workplace efficiency and accountability to critics and complainants.

Education at university level is necessary in the more complicated world of policing in the future. The "good old days" of the club are being broken down in Australia, as much for judges as for police. None of us, in our democratic Commonwealth, has a higher basic worth than other citizens. All of us have a privilege to serve our fellow citizens. Drawing our salaries from the public purse, we are ultimately answerable to them. And both of us must engage with our critics. More than occasionally, they will have justice on their side. Sometimes (although probably not often enough) we may persuade them to see things from our point of view.

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Now that education in policing has been reformed and integrity is being reinforced, one last great battle remains for the reformers. It is as true of your profession as it is of mine. It was called to notice recently by Chief Commissioner Neal Comrie of the Victoria Police. Announcing a five year strategy to ensure that his service would surpass its equal opportunity employment obligations and responsibilities, the Chief Commissioner acknowledged that much remains to be done. Amongst his widely reported remarks were these. I believe that they are equally applicable to the New South Wales Police Service:

"Victoria Police has long recognised the enormous contribution to policing made by female members, many of whom for some time have worked in the front line fighting crime. However, for a number of reasons women remain under-represented in the Force generally, and as a result, in senior ranks".

"Much work has already been done to ensure Victoria Police members are sensitive to multicultural and Aboriginal concerns in the community and also to attract more recruits from these groups. We want to eradicate any lingering perceptions of a lack of career opportunities in the Force for people from these backgrounds".

"I also freely concede that Force relations with Victoria's gay and lesbian community have been strained in the past. We will be making a concerted effort to forge a greater understanding and better cooperation with this section of the community. I ... am happy to affirm that Victoria Police clearly recognises that a person's sexual preference has no bearing on their ability to do the job. [Our] strategy will aim to safeguard equitable treatment for gay and lesbian members of Victoria Police as well as promoting more constructive relations with the gay and lesbian community generally".

On reading of the remarks in the public press, I wrote to Mr Comrie to request copy of his speech so that I could share his remarks with you today. Like Commissioner Peter Ryan, Mr Comrie shows true leadership. Things are also changing in the New South Wales Police in the right direction. Far the warmest applause for any entry in the Sydney Gay and Lesbian Mardi Gras is for the police unit, marching proudly in the uniform of a new Police Service, dedicated to the protection of each and every citizen, without irrelevant discrimination.

That is the dedication which we, the judges, also have. We too have to change in our attitude to and in our dealings with, those in our ranks who are women, Aboriginal, from ethnic community, homosexual or from any minority group. The judiciary like the police is, or should always be, above prejudice. Ours is not a job. It is not even just a profession. It is a calling. For both of us.

GREAT EXPECTATIONS

It is a wise old saying but true that people criticise police; yet when they have problems (relevant or not) they hurry to the police station. It is also true that the police and the judges are there to uphold the rule of law. When it is truly important, the judges of Australia

safeguard the liberties of everyone according to law -equally: good and bad, popular and unpopular, criminal and saint.

Our respective callings will throw us together, you and I, in the service of our much blessed country and its people. Both of us should face criticism in the eye. We should be ready to accept that wrongs have occurred in the past and that mistakes are still happening. To be human is to be subject to constant improvement. But we should also proudly tell the community of the faithful service that we do and dedicate ourselves every day to higher service and higher standards. It is because this fine University contributes to these ideals, and because you have accepted them in the studies you have completed, that I was glad to be asked, as a judge and as a citizen, to join you today.

You are the hope of future policing in New South Wales. Of you, our community has, as it rightly has of the judges, great expectations.