CLARKE: Profession and Welfare Officers, all of whom I trust will participate in question time and in the debates so that the breadth of all their experience may assist in answering some of the problems we face working in this area.

The theme of the Conference is **"Is There a Need For Change?"** Specific guidelines have been drawn and I"ll read them out to you to remind you of them.

Firstly the effectiveness of the Criminal Justice System in dealing with cases of physical and/or sexual abuse of children.

Secondly the ability of the Criminal Justice System to understand and appreciate the many facets of child abuse with reference to treatment and prevention, and lastly the legal aspects of dealing with the child victim, offenders, retribution and improvements to the Criminal Justice System in the reduction of child abuse.

A busy programme has been arranged over the next few days however there is plenty of time for debate and for the sharing of ideas. We must look at where we are today, where we stand and answer the question posed by the Seminar — **"Is There A Need For Change?".**

Before I introduce you to Mr Justice Vasta, I have been asked to get an indication from everyone here today as to whether or not they are going to the Seminar Dinner and I would ask you to show your hand if you intend going to dinner tomorrow night. Thanks very much.

Mr Justice Vasta, who is our first Speaker graduated from Melbourne University in 1964 and practised at the Melbourne Bar. In 1967 Mr Justice Vasta came to Queensland where he practised at the private Bar for a short period of time before joining the Crown Law Office in May 1968. Mr Justice Vasta was given a commission to prosecute in May 1969 and prosecuted criminal cases in the Supreme and District Courts. He was appointed Assistant Senior Crown Prosecutor in 1965 and took silk in 1979. Mr Justice Vasta became Chief Crown Prosecutor in 1980 and was elevated to the Bench on the 13th February 1984.

The Judge has been involved in prosecuting many cases involving child abuse, murder and manslaughter of children and incest. He comes to us with a wealth of experience. Mr Justice Vasta is married with six children of his own and I don't intend — I think that he probably knows a lot about children apart from just being involved in cases in Court. You might have read in the paper yesterday where he was speaking at another Seminar recently and was featured in "Exit Line". Without any further ado, may I introduce to you Mr Justice Vasta.

ADDRESS — "CHILD ABUSE AND THE CRIMINAL JUSTICE SYSTEM" — BY MR JUSTICE A. VASTA — SUPREME COURT, BRISBANE — MONDAY, 9TH JULY 1984

Thank you very much, Ms Clarke. Mr Mark Hoare, Miss Chairperson, Ladies and Gentlemen, I wish to thank the Australian Crime Prevention Council under whose auspices this Conference has been convened for giving me the opportunity of speaking here today.

Some of you may not know that it was originally planned to have Mr Justice Kirby speak on this subject. Unfortunately he is presently overseas. I make mention of this not so much as an apology to those of you who might come to expect the sort of controversy that lectures given by Michael Kirby tend to enjoy but rather to explain that as a Supreme Court Judge administering Law in this State, matters of reform are left to those who are charged with the task of reporting to the Legislators. I do not occupy any position on this State's Law Reform Commission. I must say however that Seminars of this type are so invaluable, in attempting to come to grips with what is now acknowledged to be of very grave concern in the community and which has existed for such a long time. There is today unlike yesterday an openness of discussion which is more likely to be conducive to the resolutions of some of the difficulties in the area of Child Abuse and the old method of sweeping the problem under the carpet. I note with interest some very important topics to be discussed over the next four days. What I propose to do is to mention some matters which may become food for thoughtful discussion rather than advocate the implementation of particular reform proposals.

Whilst I was Chief Crown Prosecutor it had been my sad experience to deal with horrific cases of Child Abuse which resulted in charges of murder. I found a singular reluctance on the part of juries to bring in veridcts of murder — they were invariably the convictions for the offence of manslaughter. I do not however wish to speak on that type of case here today. I intend to focus my attention on the subject of Sexually Abused Children and in particular victims of incest.

One must commence upon the premise that father/daughter intercourse is something which society should abhor. Now I start upon that premise because I note with some interest in the recent Seminar that was held in Sydney on the 27th June, there was an argument in favour of the retention of the Laws relating to father/daughter relationships saying that there is no evidence that that sort of relationship does any harm to any child in particular or to society in general. But various arguments as I say could be advanced to support the basis for this taboo which in this State makes the offender liable to imprisonment with hard labour for life. Those arguments i.e. those arguments for the taboo include the genetic argument which refers to the greater incidents of recessive and congenital disorders in offspring resulting from incestuous relationships. Another theory for the basis of Incest Laws is that humans have developed as a specific application of the general principle of animal breeding which is to breed outside the family. The principle states that outbreeding has an overwhelming evolutionary advantage over inbreeding in that it leads to hybrid vigour and the greater flexibility of the species.

These are largely biological arguments but in addition there are two main types of socio-logical theories. The first is that it is necessary to create a society which knits itself together for economic, defence and other social reasons and incest militates against this tendency. The second theory is that the function of the incest taboo is to prevent a confusion of social roles. **B. and E. Justice** in a work entitled **"The Broken Taboo"** state that the most powerful reason for the incest taboo is to protect the child's development. For a child to develop he must receive both nurturing and encouragement. that is to say his needs both to belong and to be separate, must be met in a way appropriate to his age. In an incestuous family the parents characteristically turn to their children for warmth and closeness in order to escape a poor marriage and to cope with the fear of the outside world. This in turn prevents the child from establishing those ties with society which are necessary for the development of independence.

There is also a school of thought that children who are brought up in an incestuous family tend to perpetuate this particular situation. **Michael Babin** in an article **"The Social Cost of Incest"** reported in **Volume 43 — No. 6 1981 — Royal Canadian Mounted Police Gazette,** puts it this way:

"Many victims grow up to become incest carriers because they marry men who are likely to be irresponsible, have poor impulse control and have little respect for other people. Prime candidates to become aggressors. Their children are often set up in family situations which are conducive to physical or sexual abuse. To paraphrase a biblical saying "the sins of the fathers are visited upon their children."

Whatever the basis for our present laws proscribing incest there appears to be no valid argument for the relaxation of the taboo. Nevertheless one finds the curious recommendation made by the 1977 Royal Commission on Human Relationships that after a child turns seventeen it no longer be an offence for a father to have intercourse with the daughter, unless there is proof that the daughter did not consent. One wonders why there is a necessity to charge incest in the absence of any consent on the part of the daughter because in such a situation the appropriate charge would be rape. Consent is irrelevent in a case of incest because it is acknowledged that the discipline that apparent has over a child particularly a father over a daughter, requires a mere request and the child will comply. In my experience there have been quite a number of cases where the incestuous relationship has continued on from when the child was of tender age through to the time when the child was over twenty one years of age and that relationship at times continued on after the child was married.

If there was a cut off point at the age of seventeen there would not have been able to have been charge brought against the father. This would have been the case notwithstanding the very long history of incest with the child and the possibility of similar occurrences with other children of the family. In my view therefore this recommendation is one which is ill-conceived since the very basis for the charge of incest makes consent an irrelevent consideration. Having commenced with the premise then that incest and all forms of sexual abuse are matters which society must discourage, we need to see whether the legal processes are so structured that they reflect the community's abhorrence to this offence. I have already pointed out that in Queensland the maximum penalty for the offence is imprisonment with hard labour for life. Other States have similar penalties. In New South Wales however the maximum penalty is imprisonment with hard labour for seven years.

However the procedure which the process requires to be followed does not recognise particular difficulties associated with the child victim. Where there is a complaint by a child no real differentiation is made between that complaint and one where an adult reports some wrong doing. One can say not unfairly, that while some reforms have been implemented in the procedure involved in prosecuting rape cases, those who lobbied for the reforms were silent with regard to the rights of children. Yet what is done to the child may be more traumatic and more likely to leave an indelible mark on that child than anything that may have been done to an adult who is able to cope better psychologically with the trauma than the child of tender years. In this State the setting up of the suspected child Abuse and Neglect Team (SCAN) for short, the core members of which consist of Medical Practitioner, a Child Officer from the Department of Children's Services, and a Police Officer has done much to encourage the making of complaints of Child Abuse. This has meant that there is a corresponding increase in the number of matters which are required to be dealt with according to the legal processes. In my opinion it is important for the proper resolution of the Child Abuse problem in our community to have the legal processes working in harmony with the other support systems. People who offend against the Law ought to be dealt with according to Law. Therefore I am firmly convinced that whenever an offence is disclosed and the evidence is sufficient to launch a prosecution a charge should be laid. I say this because society's abhorrence for this type of offence is best reflected by easing the Laws set up for its benefit. To fail to enforce those Laws when an offence is disclosed can only tend to cause those Laws to be considered no longer relevant. Moreover if an offender is dealt with according to Law there is likely to be a means of ensuring the management of his behaviour.

It must however be emphasised that I am not advocating that there is no room for the exercise of a discretion not to prosecute in some cases. In my view however that discretion is too often exercised in cases of Child Abuse. Now too many people may identify the prosecuting of an offender with his incarceration. This fallacy may have been one of the explanations as to why so many cases are not prosecuted. The advantage of following the processes of Law is the particular offender's management, be it psychiatric and counselling treatment. This is achieved by particular sanctions. If he does not comply he can be forced to do so. If the discretion not to prosecute is exercised and some counselling is given on a voluntary basis and the offence is repeated one would like to be able to say that he has committed this offence before. Without the formality of the procedure through the system, this can not be argued unequivocably. If he states that he has not offended previously, nothing could be done to assert positively to the contrary. Those who have advocated the liberal use of the discretion not to prosecute have done so in order to spare the child the trauma of the various procedures necessary in the prosecuting process. Yet if one were to accept the first premise that the offence is a serious breach of one of society's fundamental laws, the two approaches are incompatible. I am sure if one were to advocate the frequent exercise of discretion not to prosecute in cases of attempted murder, there would be an outcry, yet the Law makes no differentiation in the maximum penalty and in so many cases offences against children cause them permanent, psychological harm. I am not saying that those who urge the prosecuting authorities look closely at the case before bringing a charge are not well intentioned. What I am saying is that they are accepting **(A) that the procedure in the prosecuting process necessarily involves additional trauma to the child and (B) that in the adversary system that obtains very little can be done to alleviate the additional stress to the child.**

I turn to (A) that is the procedure in the prosecuting process necessarily involves additional trauma to the child. This assertion has been widely held. One finds in quite a number of papers written on this subject a fairly consistent theme, e.g. in the Royal Commission on Human Relationships to which I have already referred, the report states :

"it is axiomatic that children are entitled to protection under the Law from criminal sexual attack, but having already become victims of sexual attack, real questions arise as to the extent to which they should have been involved in the system of Criminal Justice, attend at Court and give evidence against the aggressor. The legal procedure may do more harm to the child than the original offence, and in some cases, it may be the only cause of serious upset."

The Commission then quoted from a 1925 United Kingdom Departmental Committee Report on sexual offences against young persons:

"A large number of witnesses desire to spare the child a prolonged strain involved in waiting for the trial. The committal for trial necessitates the child having to relate

the facts over and over again to different people and on at least four different occasions. It involves more formality in the proceedings of the Court of Trial, and the likelihood of a more trying cross examination than was undergone at the Lower Court."

And lastly:

"the details have to be kept in mind during the waiting period which may be as long as five months — the child being thus obliged to remember what in his own interests it should be allowed to forget."

Again quoting from the report by the Royal Commission on Human Relationships at Page 217, the observation is made:

"That in Australia the Police usually decide whether or not to arrest and prosecute the offender and that it is, there is little intervention by the Child Welfare or Child Protection agencies. The Police however are not equipped to balance the two competing interests involved, that of the child in allowing the matter to be forgotten and that of the public having approved an offender dealt with. In their principle role in the enforcement of Law, the Police incline towards the public interest in prosecuting the offender. In our view however, the interests of the child is also a legitimate public concern."

The Commission concludes:

"That the means of ensuring that the distress to the child is minimised, if by greater exercise of the discretion not to prosecute."

This is what their report said:

"Prosecutions are usually instituted without regard to the welfare of the child."

In one of the two earlier studies by Dr De Francis, the local intervention by a Child Protection agency to deter prosecution as protective measure for the child lead to a substantial reduction in the number of prosecutions. Similar observations concerning the painful experience associated with the making of a complaint and the giving of evidence, are contained in a work entitled **"Proceedings of the Institute of Criminology Seminar — Sexual Offences Against the Female — 1969"** and in that is contained a paper delivered by Mr. H.R. Snelling, Q.C. a former Solicitor-General for the State of New South Wales. Mr. Snelling outlines the normal traditional course of procedure involved in sexual abuse proceedings.

(1) Is the occurence of the incident involving the offence, often a distressing and intimate nature.
(2) The child is required to give some account of it to angry and worried parent or parents, probably under the impression that he or she has been involved in wrongdoing.
(3) He or she is often subjected to an intimate medical examination.
(4) The child gives a formal statement to a Police Officer or a Policewoman.
(5) Attendance at the Children's Court for the purpose of giving evidence — a child's memory being no doubt usually refreshed prior to doing so.
(6) Questioning before a Court by a Police or Court Officer in cross-examination.
(7) Months later further refreshing of memory in giving of evidence in Court in the presence of Judge and Lawyers in wigs and gowns and a Jury.

And Mr Snelling makes the point that having these things in mind it has seemed to me that in this way the original incident has often been greatly magnified and the child very frightened and distressed with substantial risk of lasting psychiological trauma. I have wondered whether the present procedures could not be altered in some ways in an attempt to avoid and minimise these consequences. Often on reviewing the files one concludes that there is no sufficient corroboration of the child's story and a Jury would be directed to acquit or having received the usual warning would be virtually certain to acquit thus the proceedings prove abortive. There are cases where no apparent physical injury has been occasioned to the child, where the accused is a person of previous good character, and where the offence is denied and there is little corroboration and the accused in the unlikely event of conviction would be virtually certain to receive a bond from the Judge. Then again some offences of this nature are committed by persons mentally ill or defective. Perhaps the less serious of such cases the accused could be suitably dealt with under the Mental Health Act without prosecution.

And in New South Wales, Section 78F of the Crimes' Act provides — **that no incest offence will be prosecuted without the approval of the Attorney General.** This Law is reflecting the views expressed by Mr Snelling in the paper he delivered at the Seminar previously referred to. In a work entitled **"Child Psychiatry and the Law"** edited by **Dianne H. Setsky, M.D.** and **Eliza P. Benedict, M.D.,** the writers state Page 99:

"Some legal experts tend to favour vigorous prosecution while others are concerned about the impact on those involved. In Britain for example Onrichs encourages parents to prosecute because he believes that this will remove serious sexual offenders from society preventing similar occurrences with other children since without prosecution there is no guarantee that the abuse will cease and that other children will not be involved. Others disagree finding prosecution more traumatic than the occurence itself."

There is however another theory which is to the effect that the trauma of which is assumed is involved in the child participating in the legal procedure is very much exaggerated. **Volume 23 — No. 1 January/February 1983** of the **Criminology and Penology Abstracts Journals** contains a reference to a work by **C.M. Rogers** entitled **'A Journal of Social Work in Human Sexuality"** and Rogers makes the point "that preliminary results indicate that whilst Criminal Justice involvement may ultimately result in exposure of the child victim to the full impact of an adversary Judicial system, such exposure is in fact rare and not necessarily excessively traumatic in nature." Findings reveal that if you are a victim of sexual abuse whose case has been forwarded for prosecution in the District of Columbia, the odds are two to one that the offender will be arrested, slightly less than one in three that the offender will be convicted, less than one in eight that you will have to face a Grand Jury, less than one in twenty that you will have to testify at trial and less than two in one hundred that you will have to testify in open, i.e. adult criminal trial and obviously this is a reference to the District of Columbia in the United States.

But I must say that in my experience as a Prosecutor a great majority of cases of incest and child abuse resulted in a plea of guilty by the accused person. In those remaining cases where the accused person pleaded "not guilty" and insisted upon a trial the important consideration was to ensure that the accused was brought to justice and that factor always prevailed over the competing desirability to spare the child obvious embarrassment and distress. In January 1977 the New Zealand Criminal Law Reform Committee reported to the Minister for Justice on the subject concerning the position of young witnesses in cases involving sexual offences. At Page 2 of that report Paragraph 6, the Committee states:

"We have reached the conclusion that it is necessary

that a child witness appear before the Court and be exposed to cross-examination. We are unable to reach any safe conclusion as to the likely harmful effects upon the child. We are not aware of any reliable scientific research done on that issue. Most of the public material appears to present the views of what adults thought children ought to feel — none of the professional persons who discussed the issue with us was able to provide evidence that harm commonly resulted from the Court experience opposed to the sexual experience."

Now the fact that there is perhaps insufficient evidence to indicate that the child would be effected from a Court experience ought not to cause one to conclude that no such adverse effect results. One could say that just as women have been known to suffer at the hands of a Cross-examiner, children would certainly not relish the experience. Some reforms in procedure relating to rape cases have been implemented but it would seem as I have mentioned earlier that the rights of children have been largely forgotten.

The measure suggested as a means to minimise distress vary from minor change of procedure to a radical approach. The measures suggested include the system which obtains in Israel where there has been established the Institution of the Youth Interrogator. The scheme provides that no child under fourteen (14) years of age may be heard as a witness without the permission of the Youth Interrogator. Where permission is withheld the Interroragtor gives evidence in place of the child protecting the child against the assumed danger to his or her mental health by virtue of the exposure to Court proceedings. The Criminal Law Reform Committee in New Zealand previously referred to examined this set-up. That body did not recommend any change to the Law or procedure relating to the evidence of the child witness or relating to the position of the person accused of a sexual offence at whose trial the child may be required to give evidence. That Committee reached the conclusion that it was necessary that a child witness appear before the Court and be exposed to cross-examination. The Committee further observed that the setting-up of a system such as that which obtains in Israel would necessarily erode the rights of an accused person.

Referring to the various steps that have to be taken after a child has made a complaint of a sexual nature and which had been referred to in the paper delivered by Mr Snelling, the former Solicitor-General, the first matter of procedure is the taking of the statement from the child. In my view there is no reason why what may occur during this process could not be recorded on video film. To my mind this would present very much an advantage to an accused rather than be suggestive of any abbrogating of his rights. In return there should be no examination or cross-examination in the Lower Court. The video film may be played in the presence of a Judge and Jury, and the calling of the child victim should then be allowed only with the leave of the Court. Now this may be opposed by people who believe that the civil liberty of the subject may be eroded however if the means whereby the original statement had been taken can be closely scrutinised and the amount of weight to be attached to that statement can be assed by the Jury, it would be my view that there is a decided advantage to an accused person. Invariably when these cases are bitterly contested there is a suggestion that the statement which has originally been made has been obtained as a result of a conspiracy by the estranged wife, The Police Officers with a view to having the accused wrongly convicted. In those proceedings very little is known as to the means whereby the original statement is taken. Quite a deal of cross-examination is directed towards this aspect and any suggestion that there has been a conspiracy is generally denied. However when the video film is played the accuracy of such suggestion can be easily gauged. If there has been any unusual leading or putting of words into the child's mouth, that too will be become manifest on the video film.

This procedure would have an additional advantage in that there would be little need to ask the child on repeated occasions what had occured. Sometimes the Medical Practitioner who has to examine the child has to learn as to what took place and may find it necessary to question the child. This may be able to be largely avoided if the doctor viewed the video film. Another means of attempting to ensure that the child is not put through an emotionally distressing episode during the course of giving evidence, is to ensure that should leave be given for the child to be cross-examined on the statement which he or she has made, and which had been shown on the video film, that the accused person is not in the presence of the child. It is a fundamental right of very accused person that a trial proceed in his presence. He must at all times see that the processes which are set up to try his guilt or otherwise take place in his presence. He may be excluded from the Court but those circumstances are extremely rare and are reserved for cases where his misbehaviour would mean that without his removal proceedings would be forever disrupted. Nevertheless a child who has to give evidence against the father, whom he or she is facing directly will become far more distressed than if that evidence were given in the father's absence. In my view there would be no injustice occasioned if the proceedings could be watched by the accused in another room by means of video monitors and in relation to that aspect of the processes, some other arguments have been advanced, e.g. having the child sit close to the Judge on the Bench, giving of the evidence in Chambers and having the Court sit in a more informal atmosphere, that is without all of the wigs and gowns and other regalia. The New Zealand Law Reform Committee's Report discussed this aspect and concluded:

"That the formality of the proceedings is more likely to be a means whereby the truth is adduced than any informal atmosphere."

and that Committee's Report discussed a number of other alternatives and made various recommendations concerning those.

The first recommendation was made in order to try and relieve the trauma of the child was to limit the right of cross-examination. The Committee concluded:

"that any restrictions on the amount and nature of cross-examination would unjustifiably prejudice the accused."

The second recommendation was a suggestion that here be a change in the conduct of the trial.

(a) The child to be seated near the Trial Judge rather than have the child witness sitting in the chair outside the Witness Box.
(b) Neither the Judge nor Counsel to wear wigs or gowns.
(c) The child's evidence to be taken in shorthand rather than on a typewriter, apparently in New Zealand they still have that antiquated form of taking down evidence.
(d) The child's evidence to be taken in the Judge's room or in some other place less solemn and forbidding to the child, and
(e) The public to be excluded from the Court.

The Committee made no recommendation on the suggestions and they observed that they were impressed by the view of a senior Social Worker that formality is likely to lead to a greater degree of truthfulness on the part of the child than informality. The Committee also stated that the Social Worker's experience confirmed the suspicion of the majority that most children are not intimidated by the formality of the surroundings but once they begin to give

evidence their attention is focused on Counsel asking questions and on the answers they are given.

The third recommendation was the presence of a parent. The Committee held that there was no universal rule that ought to be applied concerning this. They stated that some children seemed to want or need the reassurances on one or other of the parents but others found it an inhibiting factor and they thought the matter ought to be left for the determination of the Court in each instance.

The fourth recommendation was delays. The Committee observed that undue delay between committal and trial be eliminated and that such delays are a probable source of worry to children more than adults. As I mentioned earlier a lot has been done by way of reform in the way of procedures relating to the charging of rape and in Victoria some of you may be aware of the fact that there is a requirement that a case of rape be brought within four (4) months of the commission of the offence. There are occasions when the Crown can apply to have that time extended, but some good and substanial reason must be advanced for that. But the Committee in New Zealand observed that undue delay between committal and trial be eliminated and such delays are a possible source of worry to children more than adults. And the fact that nothing has been done by way of having an emphasis placed on the shortness between the commission of the offence and the bringing of the offender to trial indicates that there has been very little regard paid to the needs of children in the prosecuting process.

The Royal Commission on Human Relations Report recommended the establishment of what they called a Child Protection Tribunal and that Tribunal would have a number of functions and powers including the decision as to whether the child should be removed from the family for a stipulated period pending assessment and investigation of the family. In addition that Tribunal would have the power to determine whether prosecution proceedings should continue. As I have already observed the emphasis should be placed on making changes which would lessen the distress to the child during the prosecution process and ensuring that those changes do not erode any of the fundamental rights which attach to an accused person. To accept that there can be no changes to the procedure and find a solution in the dropping of charges which would otherwise be laid is in my view counter-productive in the attempt at a resolution of this very serious problem in the community. Many prosecutions are not brought against accused persons because it is erroneously thought that insufficient evidence exists to support the charge. Although corroboration of a child's evidence is not necessary as a matter of Law, it is required as a matter of practice in all sexual cases and in all cases whether they are sexual cases or not where the evidence substantially depends upon children. Therefore in cases of complaints of a sexual nature made by children there is a particular emphasis on the need to have corroborative evidence.

It is true that the best form of corroborative evidence comes in the form of a confession by the offender and quite often as I have mentioned in incest cases an accused person will plead "guilty". But in cases which are bitterly contested, corroborative evidence may be found in a number of other areas which may well have been overlooked by Prosecuting authorities, e.g. there may be corroboration constituted by false denials. There may be some circumstantial evidence which may amount to corroboration. The most recent authority in Queensland on what constitutes corroboration is **the Queen against Birrel and Others** reported in **1982 Queensland Reports.** In a more recent trial on the charge of incest which ended on the 11th January, 1984, Mr Justice Connelly directed the Jury that a number of features in the evidence were capable in Law of constituting corroboration of the complainant's story and this particular case does serve to illustrate what can happen if the discretion not to prosecute is frequently exercised. This was a case of incest of a very serious nature and there had been evidence that the father had been having sexual intercourse with the child since she was eight (8) years of age. There had been a complaint made to the Children's Services Department at an earlier period of time and because it was thought that there was no corroboration no charge was laid. The fact that there was no corroboration was an erroneous belief on the part of the Prosecuting authorities but that child was allowed to remain in the family where the sexual abuse continued and it continued where other children were subjected to the abuse and eventually the Prosecution was brought again reluctantly because so much trauma had been occasioned to the child and again reluctantly because it was thought that there was no corroboration in the case and if one reads the direction by the Trial Judge to the Jury as to the evidence which the Jury could consider as being capable of amounting to corroboration, one could see how that belief that there was an absence of corroboration was so erroneously held. And I don't want to go into a discourse here as to what corroborative evidence consists of but it is really evidence which supports or tends to support or confirms or tends to confirm the complainant's account that the offence took place and I don't want to go through the details of the features of the case to which I have referred to in which His Honour the Trial Judge allowed the Jury to consider. I do however have copies of that summing up and several other copies may be made for those interested.

case will serve to illustrate just how important it is that Prosecuting authorities should look elsewhere than confessions for evidence which may constitute corroboration and one can't blame Prosecuting authorities for the fact that they have overlooked important evidence which constitutes corroboration. I think the Judges of the Courts in Queensland have tended to take a restrictive view on what constitutes corroboration. When I say that I don't make mention of this because former Mr Justice Hoare is present, but I say that Mr Justice Hoare was one of those within the exception who put to the Jury matters which other Judges may not have allowed to go to the Jury as constituting corroboration. As I say that probably is one of the single most important areas which are to be considered by Prosecuting authorities in the decision as to whether or not to bring a charge.

Well now may I summarise my thoughts on this topic in this way.

(1) The necessity to retain the Laws proscribing sexual child abuse and particularly incest is well established. There should not be any attempt to relax those Laws.
(2) The Law should be enforced to the extent that whenever and wherever the evidence discloses the commission of an offence, a charge should be laid.
(3) Upon the assumption that distress to a child results from the participation by that child in the prosecuting process, the discretion not to prosecute is not the means to be employed in avoiding this trauma.
(4) The decision to prosecute ought not to be identified as a decision to incarcerate the offender. If there is a valid argument for his treatment and counselling, the Courts should be allowed to consider that.

I am mindful of the fact that Mr John Robertson is to follow me after the discussion and it is a valid argument to say that in Queensland there has been some anomalies in the sentences which are imposed in relation to child molesters. some Judges who believe that there is a chance of rehabilitation have, no matter how horrific the offence may

have been, have imposed a Probation Order. Others almost as an automatic application have imposed sentences of imprisonment. But in relation to this there should be a liaison between Prosecuting authorities, the Judiciary and those who are involved in the Support System to have a fresh approach in relation to this. If there is a valid argument for the treatment and rehabilitation of the offender, if the breaking up of the family is going to be traumatic then that consideration may be one that prevails and that some sort of Order which doesn't involve the incarceration of the offender ought to be made.

(5) The procedure involved in the taking of a statement from a child victim should be recorded on video film and that film can be replayed whenever there is a necessity for the child to repeat the story, and

(6) The presence of an accused person in Court at the time the child is giving evidence should be avoided by removing the accused person to a room where the proceedings can be viewed by him on a TV monitor.

Thank you Ladies and Gentlemen for your attention.