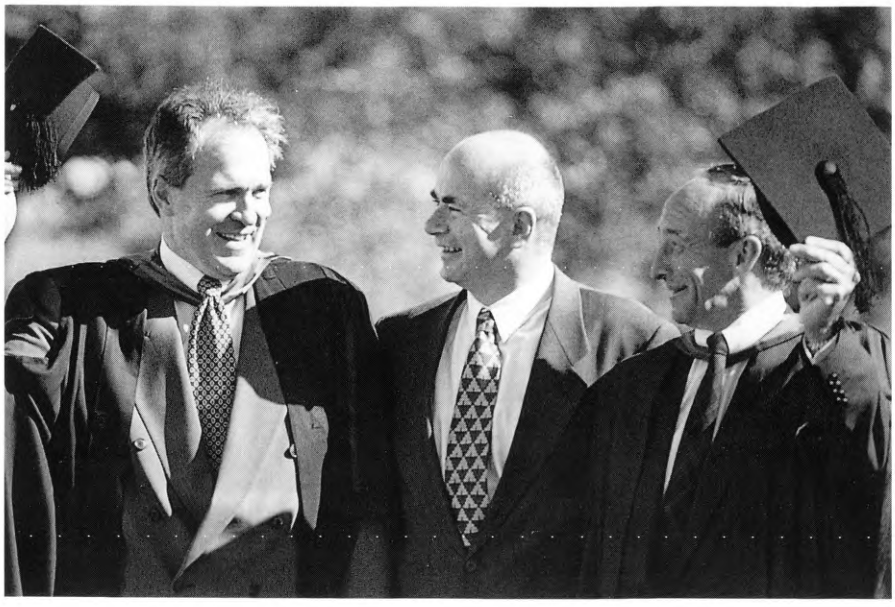
Inaugural graduation ceremony heralds a new era in police education



Minister for Justice Duncan Kerr congratulates Superintendent Malcolm Brammer of the NSW Police (l) and Commander John Vincent (r) of the AFP at the inaugural graduation of the Australian Graduate School of Police Management.

Commander John Vincent was among 39 students who graduated from the Australian Graduate School of Police Management on Friday, 19 May 1995.

The inaugural graduation ceremony saw students awarded the Graduate Certificate in Police Management and the Graduate Diploma of Public Administration.

The graduation was held at the Manly (Sydney) campus of Charles Sturt University which accommodates the Graduate School and is co-located with the Australian Institute of Police Management (formerly the Australian Police Staff College). The Graduate School was established in April 1992 following an affiliation between the Commonwealth of Australia and Charles Sturt University.

The keynote address at the first graduation ceremony was delivered by the Honourable Duncan Kerr, MP, Minister for Justice. The Minister said, "All Australians should take confidence that the studies completed by these graduands have been done to a national standard, and have set international benchmarks for police post-graduate programs in police management and public administration."

Students had their awards conferred by University Chancellor Mr David Asimus AO. Faculty Dean, Professor Timothy Rohl, expressed his delight that the first students have now graduated, "This is an important occasion for the police profession as a whole since it realises the aspirations of all police commissioners, who through their 1991 'Statement of Strategic Direction' set out to advance the professional status of policing."

The Chancellor noted that the Graduate School has grown substantially since 1992 when it only had a handful of students. Today there are in excess of 500 students enrolled from all states and territories of Australia, New Zealand and Papua New Guinea studying by distance education.

Commander John Vincent AM, a member of the Australian Federal Police was one of the first to graduate with the Graduate Certificate in Police Management. Commander Vincent said, "I have found the course to be very good. It has been especially beneficial in giving me a comprehensive knowledge of modern trends in management." He noted the importance of police services acknowledging higher education if they are to be competitive in the modern work place. A number of students in Commander Vincent's class are continuing their studies and will be the first to articulate into the Master of Public Policy and Administration Program.

The Graduate School has a dedicated group of staff who come from both academic and police backgrounds. Further information about the Graduate School or the courses offered can be obtained from the School Liaison Officer on (02)977-5800.

Difficulties in complex criminal prosecutions

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devotes such attention to the life and times of Lenny McPherson is beyond me.

Like it or not, these perceptions of the public are reflected in the attitudes of juries, a topic to which I wish to pay brief mention before moving on to some of the barriers in the criminal prosecution process.

The Jury

Since all present [tonight] are primarily concerned with indictable offences arising under Commonwealth legislation, the fact of trial by jury, and the need for a unanimous verdict have to be accepted. One development of recent interest is the extent to which the jury process has been under study.The recent report of the AIJA, *Jury Management in NSW*, merits some attention by those who wish to present a prosecution brief to a jury and by judges who are expected to preside over the trial. This study exposes something of the dynamics of the jury process, the problems they have, and the assistance they need.

One of the most interesting if not disturbing responses came from a juror who had served on a nine-month trial, and became so incensed with the experience as to keep a diary in which she described the conflicts between the jurors. She reported that by the end of the first day, a majority of the jury were agreed that the accused must be guilty – one because he was wearing an earring; one because he looked too glitzy; one because he was ugly probably he was bad; and one because his lawyer looked positively evil.

From that point, the juror said, this group only listened to evidence or argument which reinforced their conclusion of guilt. She was personally ostracised and marginalised from the start, being described as a "pinko leso". Another juror suffered the same fate because, despite being intelligent, he was very badly groomed with poor personal hygiene.

Our reporter was informed by one juror that she would be put on a hit list if she went against a verdict of guilty, and another tried to persuade her to stay at home. One juror, a bank manager, who was confident and handsome, emerged as the leader, and had a number of followers who agreed with everything he said. On the final day, when it became clear that our reporter and her ally were not going to go along with a guilty verdict, the bank manager changed his mind and was followed by the rest, she said because it was clear he had expected an early verdict and had made plans for golf which he did not want to break.

This may be a horror story, but it has the support of other jurors who reported on their experiences in similar terms. You can imagine the frustration of those who investigated and presented those cases, and that of the judge who carefully marshalled the evidence and law, and directed the jury, if they were to learn that was the way their work was received.

Some things of value do emerge from this study and from recent media coverage attracted by the WA Bill:

- while jurors can cope with directions of law, and a reasonable amount of evidence, they have problems with special terms and placing the evidence into the context of issues, unless real care is taken in the directions.
- there are real difficulties experienced in maintaining concentration and recalling a large volume of evidence over any length of time so that copies of exhibits, extracts from the transcript, written aids, charts and visual displays are very much appreciated, and careful organisation of the material is rewarded.
- reduction of the case to manageable and clearly explained components will also aid understanding. Evidence which is too complex tends to be neglected.
- all jurors need to feel that they are being involved, since there is a real risk of the foreman or the loudest dominating them in the jury room.
- a verdict in a long and complex trial is as likely to be given out of frustration or boredom as out of a considered appreciation of the merits of the case, so that anything which can be done to overcome this should be seized.

What arises out of this is an underlining of the need for care in the preparation of the prosecution brief. The emphasis must be on having ready a body of material which it might confidently be expected would be understood and managed by 12 persons of, at best, average ignorance. This means exploring the use of charts, displays, visual aids, imaged documents and the like, and paying attention to the ways the material could best be presented to lay persons. This process is best begun at the investigation stage, and before any decision to charge. To leave it to the trial is a recipe for disaster.

Another study which has begun with the AIJA is an examination of the anatomy of some long trials to see whether any common threads of difficulty arose, or techniques adopted worked. This kind of post mortem has not, often been attempted at least in an independent way, and is likely to be quite instructive. Until then, let me try to tease out some of the possible barriers and ways of easing around them.

The committal

I do not advocate the abolition of the committal because it is a useful discipline for the prosecution to put its case in order, and it can operate as

a preliminary filter and allow the defence to make a considered decision whether to contest the proceedings or plead guilty. However I have no doubt that it should be primarily a proceeding on paper and that the magistrate should be able to curtail oral examination save for that directed to the single issue whether there is a case to go to trial. Cross examination that is a dress rehearsal of a defence, or fishing trip, or attack on character should be excluded. Moreover there should be a sensible relaxation of the rules of evidence to allow informal proof of complex business records, and an avoidance of lengthy examination on the voir dire.

Wherever possible, these cases should be listed to finish in the one sitting and should take nowhere near the time presently given over to them.

Moreover, there should be every effort made to involve the legal representatives who are likely to have responsibility for the trial.

Differential case management

This is an area into which courts are progressively moving. In my own court, the plan is to create an early arraignment procedure, under which there would be:

- committal to an arraignment date four weeks later, by which time the crown brief would be served along with the indictment, and by which the accused would be expected to have given at least preliminary instructions on the plea to be offered;
- a status conference, at which a plea could be taken or directions given after selection of an appropriate trial track (depending on complexity) so as to identify issues, and determine what pre-trial hearings are required to settle questions concerning the indictment, severance of accused and so on;

Already, procedures have been adopted, which will continue, and which require:

- the service of a Crown case statement, identifying the essential facts the Crown hopes to prove, the evidence and witnesses or exhibits by which that is to be done, facts which are sought to be admitted (and the evidence which otherwise would be relied on to establish them) or informally proved, and any relevant questions of law which are likely to arise at the trial;
- the service of a list of documentary exhibits, to which is attached copies and a statement of how they could be proved;
- the service of a similar list of non documentary exhibits;
- the preparation of exhibit books which are to be admitted with consent;
- the service by the defence of a response to the Crown statement, which identifies any facts not in dispute or which can be admitted or proved informally and provides similar information in relation to proposed exhibits, along with advice as to those matters to which objection will be taken, any additional questions of law which are foreseen and any additional non-controversial facts which the accused would wish to prove and invite admission or informal proof;
- directions in relation to the service of psychiatric reports (which the court tries, in appropriate cases to extend to other forms of expert evidence).

By this process, it is hoped that realistic consideration can be given to the case to eliminate overcharging or overloading of the indictment. What is required in most cases is the selection of a sufficient number of charges to reflect the overall criminality involved, and to prevent the need for the Crown to waste time and resources in calling witnesses or proving matters which really are not in dispute.

One aspect of this which is controversial is the requirement of a degree of defence disclosure, which in some quarters is viewed as a departure from the right to silence. Whether it is such is debatable. An obvious statutory exception already exists in relation to alibi evidence and it is difficult to see why similar considerations should not apply at least to those defences where the onus of proof falls on the accused. Where the Crown is required to make full disclosure pre-trial, I see nothing unfair in the kind of regime mentioned, and with which there has been a good deal of co-operation.

The more difficult question is the provision of a sanction in the event of the accused changing tack in the trial. One response is to permit comment, accompanied by appropriate directions as to the inference which might be drawn. The alternative is the alibi approach which would prevent that change without leave, and permission for the Crown to reopen or call a case in reply. I would also favour the admissibility of evidence of prior answers given under compulsion where different evidence is given by the accused at trial.

It would be more than helpful to have a statutory basis for this kind of regime and to authorise the binding pre-trial determination of significant questions concerning matters of procedure and admissibility. There is nothing more irksome or destructive of the trial process for juries to have repeated and lengthy interruptions while these questions are argued.

Matters of evidence

It is in this area that the greatest opportunity exists for simplifying the trial process and saving time.

Prima facie admissibility

The regime mentioned earlier should allow for the easy tender of a great deal of non-contentious material along with charts and summaries. The provisions of the Commonwealth Evidence Bill abolishing the best evidence rule, concerning the proof of documents, and providing a code facilitating the proof of voluminous or complex documents and documents produced by devices or processes, will help.

Dispensation with formal proof

I very much favour a provision along the lines of the SA Evidence Act S59J which permits dispensation with the rules of evidence for the proof of any matter not genuinely in dispute, or where compliance might involve unreasonable expense and delay, ie in relation to the significance of the matter to be proved. While there has been resistance to the extension of this to criminal trials, I can see no difficulty with a genuine dispute test, particularly if there is a pre-trial regime to test the documents.

Charts and summaries

There is a recognised basis in law for their use where their contents have been independently proved, but again where there has been pre-trial disclosure of them and of the material from which they are drawn, I would like to see a provision permitting their direct use, and allowing them to stand as evidence in their own right. There would be no objection to a requirement that their tender be accompanied by an appropriate certificate of the maker as to their basis and the means by which they were assembled or compiled. This kind of evidence is really little different from analysts reports and photogrammetry which rarely attract attention. One area for care, however is the possibility of the chart or summary being presented in a non-neutral way.

Expert evidence

I should like to see use made of pre-trial conferences of experts, which could be formal or informal and which might explore conflicts, particularly of the kind which involve questions as to regularity or reliability of testing. This has been used with success in the USA relating to DNA evidence. Properly used it can narrow issues, lead to consensual statements and admissions, assist the defence in determining whether there is any point in contesting an issue which is probably beyond the jury, and in some cases even persuade the Crown to drop that evidence altogether. Chamberlain (no. 2) points up the potential danger of asking a jury to resolve highly technical questions beyond their capacity. Further the witness box is the worst place to test experts who are likely to cling to an opinion no matter what, and any debate is not necessarily conducted by people of similar knowledge.

Hearsay rule

I also favour a reasonable relaxation of the hearsay rule along the lines of the Commonwealth Evidence Bill, the procedures for which could be neatly fitted into the kind of pre-trial procedures used in the Supreme Court of NSW.

Sanctions or incentives

It is often said, and with some truth that there is no reason for an accused to co-operate in reducing the complexity or length of trials. The more complex and demanding the trial the greater the chance of judicial error and of confusion in the evidence. Under a system requiring proof beyond reasonable doubt confusion and difficulty in understanding is likely to generate a reasonable doubt. That may well be true, but is it a real answer and should an accused be permitted to use that to his or her advantage? I do not see why that should be so, when measures are available with suitable safeguards to reduce complexity and prolixity.

It is often said that it is far better for 100 guilty persons to escape conviction than it is for one innocent person to be found guilty. That does not, however mean that an accused should be allowed to muddy and obfuscate the proceedings in the hope of acquittal, when reasonable co-operation and an application of a sensible body of rules, designed to facilitate the task of the jury, are available.

The question of an appropriate sanction or incentive is also problematic. Possible solutions include: a discount on sentence where the accused has demonstrated reasonable co-operation in the conduct of the trial, this being taken as a favourable subjective circumstance; comment to the jury where the opposite has been the case.

Sentence indication

I confess to being an unashamed supporter of this procedure which has had a remarkable impact on District Court lists. The procedure is public, the accused has a fair chance to weigh up the alternatives, and I seriously doubt whether any accused who are innocent elect for an indicated sentence rather than take their chance at trial. Already that temptation is present in any jurisdiction which recognises a discount for an early plea. The interest of the community is also protected by the availability of a crown appeal and the option which the accused has of changing the plea.

Summary

While it would be better if we did not need complex trials, realistically they are inevitable as the last line of defence. The challenge we face as law enforcers or as those who run the Courts, is to prepare and present them in a way which will neither antagonise or confuse juries, of whom less than 20 per cent on the AIFA Study, will have a clear understanding of complex facts, and which will maintain respect for the integrity of law enforcers and the law alike.

As a player and umpire in suspension, I can well appreciate the extent of the challenge, and for the need for co-operation. From the players' side, that requires a good deal of skill and confidence in refining and presenting a well organised and clear package. From the umpires' side, it means a sensible application of evidentiary and procedural rules, a concentrated effort to persuade the parties to look for efficiencies and to abandon deliberate obfuscation, and the provision of modern computer-based facilities in court rooms.

It can be done, but if not, no amount of regulatory agencies or law enforcers or courts are going to contain organised crime or serious corporate crime.