

THE HONOURABLE T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
WELCOME, COMMUNITY AWARENESS OF THE JUDICIARY
PROGRAM

10 OCTOBER 2012 JUDICIAL COMMISSION OF NSW

It is a pleasure to be here this afternoon and to welcome you to the inaugural Community Awareness of the Judiciary Program. Over the next seven weeks, this program will bring together members of the judiciary, legal experts and participating community leaders in a number of sessions designed to enhance participants' understanding of the legal system and offer an insight into what it is like to be a judicial officer. I must admit that my first thought was that you must be either very brave or very foolish to sign up to experience life as a judge, although I understand that you will be spared some of the more, shall I say "unique" aspects of being on the bench - such as attending ceremonies in the height of summer wearing rabbit fur robes and a shoulder length horse hair wig. For this, you should be truly grateful.

The Community Awareness of the Judiciary Program has been initiated and conceived by the Judicial Commission. It builds on the Commission's Ngara Yura Aboriginal Cultural Awareness Program, which has operated since the early 1990s and involves judicial officers visiting Aboriginal communities, both to learn more about the social and cultural issues in those communities and to give Indigenous people an opportunity to improve their understanding of the judicial process. The present Program has also drawn on a similar and successful initiative run by the NSW Police Force, in which community leaders learn about and participate directly in a range of policing activities to gain an insight into the work of police in NSW. While similar projects have been conducted overseas, to my knowledge this is the first program of its kind to be run in Australia.

The participants in this Program are drawn from across the community and include representatives from the police, media, and victims support agencies, as well as religious and community leaders. I will leave the introductions to Ruth Windeler, who will say a few words in a moment. Let me therefore simply welcome you, and thank each of you for the vital role you play in informing and

supporting members of the community, both to access the legal system and more generally.

Over the next seven weeks, you will attend and observe matters in the Supreme, District, Local and Land and Environment Courts and discuss the proceedings with the sitting judicial officer. You will hear a number of presentations, including on the functioning of the court system, the importance of judicial independence and approaches to dealing with self represented litigants. You will also participate in a range of discussions and interactive hypothetical scenarios, addressing issues such as bail, sentencing and an examination of ethical scenarios facing judges and magistrates.

This innovative program is intended to provide you, as leaders within your communities, with a deeper understanding of how the judicial system functions and of the role and tasks of judicial officers. It is also intended to de-mystify some of the more controversial tasks performed by judges, particularly in relation to bail and sentencing. Bail and sentencing matters are conducted in an understandably emotional atmosphere and a great deal of misperception exists as to the work of judicial officers in these areas, partially fuelled by sensationalist media reporting. It is

hoped that this Program will reveal a more accurate and measured picture. Lastly, this Program is intended to facilitate effective dialogue between the judiciary and community, by allowing you to ask questions of judicial officers directly and by exposing those judicial officers taking part in the program to your views and concerns. In turn, it is hoped that participation in this Program will allow you to support the communities in which you work more effectively and to act as ambassadors for the legal system, sharing the information and understanding you have gained with your families, friends and networks.

I am also mindful that the participants in this program bring a wealth and diversity of experience of the many facets of the legal system. This further highlights the value of initiatives such as this one, which facilitate community participation in the legal system. The law touches people's lives in myriad ways, and practicing lawyers are by no means the only mediators between the legal system and the individuals who encounter it. Many of you play such a role, by providing policing or support services, or by engaging in advocacy, representation and reporting. I hope and trust therefore that this Program will give you the chance to deepen your understanding of the legal system, not only through the

sessions in which you will participate, but by sharing your experiences and knowledge with one another.

The goals of the Community Awareness of the Judiciary Program are also integral to the effective administration of justice. It is often said that justice needs not only to be done but seen to be done. Indeed it is said so often that it has become a cliché. Like most clichés, however, it is founded on an enduring truth.

At heart, the legal system exists to serve the public. This does not mean by that the judicial system should respond to the demands of every talk back radio host. The legal system exists to serve the public in the sense that its role is to supply a governance system within which both social institutions and individual freedoms can flourish, to affirm fundamental shared values, and to provide a framework by which disputes can be resolved peacefully and equitably. It also serves the public at a more personal level. Often, the judicial system is called on to provide resolution in situations of deep crisis – to give some sense of emotional satisfaction and comfort to victims of crimes or accidents, to find an acceptable pathway through mine fields of acrimony when familial or business relationships break down, and to provide outcomes that allows

communities to recover and rebuild in the face of acts that tear at social cohesion, such as violent crime.

Legal *results* alone may not satisfy these intangible but necessary demands. Indeed, to paraphrase Abraham Lincoln – or Bob Dylan, depending on your personal preference - it is impossible that legal outcomes will “please all of the people all of the time”. What is required therefore is that the individuals who interact with the judicial system feel a sense of allegiance and respect for the law, such that even if an outcome is unfavourable, there is a sense in which it is recognised that justice has been done. As the Vice-Chancellor of the UK High Court, Sir Robert Megarry, said in 1978:

“One of the important duties of the courts is to send away defeated litigants who feel no justifiable sense of injustice in the judicial process”ⁱ

If the community does not trust in the judicial system, it becomes impossible for the law to perform this essential function, and thus to fully serve the public. In turn the legitimacy of the legal system is undermined and rule of law weakened.

It is in this context that programs such as this become so important. Evidence shows that the more the community understands the legal system and the work of judges, the more confidence in the law they have.ⁱⁱ In relation to the particularly emotionally charged area of sentencing, for example, research suggests that 66 per cent of people in NSW believe that criminal sentences are too lenient,ⁱⁱⁱ and that judges are often viewed as out of touch with community expectations. Yet, when members of the public are provided with the same detailed information about the offence and offender as a judge receives, they do not sentence more punitively.^{iv}

We therefore improve confidence in the law by improving community understanding of the judicial system. There is no one way to do this, but I strongly believe that dialogue with the judiciary and direct participation by members of the community in the judicial process are central to the process.

As to dialogue, judges can and should speak out more: to correct misinformation, raise awareness of the role of the courts and explain processes such as sentencing to the public. This would also contribute to dismantling the common misconception that the

judiciary is somehow isolated from and out of touch with the real world. As to direct participation, I have said before that juries are essential in this regard. Studies show that the experience of sitting on a jury significantly improves individuals' confidence in the justice system.^v In turn those jurors become ambassadors for the courts in their community.

This program is particularly valuable in that it brings together both the attributes of direct participation and open dialogue. I hope and trust that through your participation, you too will become ambassadors for the judicial system, able to share the insights you gain by immersing yourselves in the tasks faced by judicial officers, with your friends, family, and networks, to the benefit of the legal system and the public at large. In addition, the opportunity to enter into open and frank discussions with judges and magistrates will not only assist your learning, but importantly will give participating judicial officers a chance to learn from your experiences and concerns. I have no doubt that this dialogue will be extremely instructive and beneficial to all participants and that it will facilitate communication between the communities you represent and the judicial system following the conclusion of the program.

It remains only for me to once again thank the members of the Judicial Commission who developed this initiative, and each of you for your participation. I am sure that this program will be eye opening and interesting for each of you. Enjoy the next seven weeks, and welcome.

ⁱ Quoted in R.E Megarry, *A New Miscellany-At-Law: yet another diversion for lawyers and others* (2005) Hart Publishing: Oxford & Portland, 111.

ⁱⁱ Jones and Weatherburn and McFarlane, 'Public Confidence in the NSW criminal justice system' (Crime and Justice Bulletin No 118, NSW Bureau of Crime Statistics and Research, August 2008) 9, 14.

ⁱⁱⁱ Jones, Weatherburn and McFarlane, 'Public confidence in the NSW criminal justice system' (Crime and Justice Bulletin No 118, NSW Bureau of Crime Statistics and Research, August 2008), 12.

^{iv} Warner et al, 'Public Judgement on Sentencing: Final Results from the Tasmanian Jury Sentencing Study' (Trends and Issues in Crime and Criminal Justice No 407, Australian Institute of Criminology, February 2011) 5; The Hon. JJ Spigelman AC Chief Justice of New South Wales, 'A Guide to Sentencing: Launch of Publication of the Judicial Conference of Australia' (Sydney, 5 October 2007)

^v O'Brien et al, 'Factors Affecting Juror Satisfaction and Confidence in NSW, Victoria and South Australia' (Trends and Issues in Crime and Criminal Justice No 354, Australian Institute of Criminology, April 2008) 1, 4-5.