

AUSTRALIAN ACADEMY OF FORENSIC SCIENCES



20 TH ANNIVERSARY MEETING

FORENSIC SCIENCE - YESTERDAY, TODAY AND TOMORROW  
UNIVERSITY OF NEW SOUTH WALES , 15 AUGUST 1987

Forensic Science - What have we learnt?

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The Hon. Justice Michael Kirby,\*

A DIARY OF THE YEARS

Few of us, nowadays, keep diaries. Of course, we have an agenda, faithfully maintained by our secretaries. A glance at an old one of these will conjure up a few dull memories of a busy day. But the art of recording the events and feelings of the day has largely been lost. When, occasionally, a Cabinet Minister (like Mr. Crossman in England) keeps a detailed diary and it is then published, the result is no end of trouble for the law, because of the secrets disclosed.<sup>1</sup>

I do not imagine that there are many secrets of our Academy. If there were, they would be safely locked in the breast of our indefatigable President and long time Secretary General, Dr. Oscar Schmalzbach. He was Secretary General from the first. Although we have no continuous diary of the Academy, the Journal, first published in September 1968, contains a comprehensive, consecutive record of our doings, of our members and of our changing concerns. It is fortunate that we have this record. From the start, careful attention was paid by the

editors to the faithful setting down of the great events that brought us together.

Of Vice Regal dinners, there have been many. Scientific sessions followed each other, attending to the problems of the times in the fields of forensic science. The international congresses, especially, brought to Australia experts of the front rank. By corresponding membership and honorary appointments, our Academy was illuminated by the participation of overseas scholars of great distinction. We have always had distinguished patrons, usually Vice Regal. The first Patron was Chief Justice Sir Leslie Herron. The first President was Mr. Justice Russell Le Gay Brereton, a judge of the Supreme Court of New South Wales.

I had a particular friendship with "Dooley" Brereton. Our careers were somewhat similar, as were our interests. Like him, I served, in student days, on the University Union. I sat with him in the Senate of Sydney University. My first recorded contribution to the affairs of this Academy can be seen in a description I offered to the moving tribute paid to his memory, after his death, by Mr. Justice Meares.<sup>2</sup> He was a creative man. The journal of this Academy begins with his insightful essay on "Evidence in Medicine, Science and the Law".<sup>3</sup> It was the product of a pen of an experienced judge who was to die lamentably young and whose encouragement to the establishment of this interdisciplinary Academy was critical for its early success.

The moving force, from the beginning, was Dr. Schmalzbach. As he recounts in the opening "Short History" of the formation of the Academy, the idea sprang (as is so often

the case in this country) from the example of the British Academy of Forensic Sciences. Preparation for the establishment of the Academy took nearly three years. Apart from Mr. Justice Brereton, the early leading figures were Mr. Justice (later Sir Bernard) Sugerman, Mr. W.J. Knight, QC, Senior Crown Prosecutor, Dr. (later Sir Kenneth) Noad and Harold Snelling, the long time Solicitor-General of this State. Dr. B. Cotter Harvey, Sir Douglas Miller and the leading silks Davoren and Meares made up the complement of the first Committee.

The foundation meeting gathered together on 20 April 1967. Mr. Justice Brereton justified the Academy by pointing to the increasing importance of science, not only in the world of medicine but also of the law.<sup>4</sup> The Academy was established. The first Annual General Meeting took place on 3 August 1987. The draft constitution, based on the British model and prepared by Mr. Justice Brereton and the then Mr. Meares was adopted. It was not, one might say, the most democratic charter of its kind. Absent was a Bill of Rights and certain of the features of a participatory democracy that we come to expect in other fields. In a decade which produced the independence constitutions of at least 30 African states, the Academy's constitution disdained such an approach. It reserved great power to the Council and to the Secretary General. Just about the only honorific it did not provide for was that of an Honorary Life President!

The Presidents of the Academy of the years have been a parade of remarkable men. I say "men" because there have, as yet, been no women Presidents. My single-minded lonely efforts to increase the number of women in the Academy have so far not

borne fruit. It remains, with the Roman Curia, the clergy of the Anglican Diocese of Sydney, the CSIRO and the BLF, the last bastion of male dominance in this changing world.

As I have said, the first President was Mr. Justice Brereton. He was succeeded in 1969 by Mr. Justice (later Sir Bernard) Sugerman, the second President of the Court of Appeal. In 1970, the third President of the Academy took office. He was Sir Douglas Miller, a distinguished surgeon. He was succeeded in 1972 by Professor R.J. Walsh, long time Dean of the Faculty of Medicine in the University of New South Wales. In 1974, my colleague Justice Gordon Samuels took office as President. During the 10th anniversary of the Academy in 1976, Dr. Schmalzbach's moving force in the Academy was recognised by his election to that office. He was succeeded in 1979 by Professor Malcolm Chaikin, now Pro Vice-Chancellor of the University of New South Wales. In 1981, the office was graced by Sir Harry Gibbs, then Chief Justice of Australia. It will be hard ever to reach again the pinnacle of having, as President of the Academy, one of the three great Officers of State. Sir Harry was succeeded in 1983 by Dr. Kevin Bleasel - a man of special grace - who I note from the list of foundation members which opens the first volume of the Journal, was one of the members, at the establishment of the Academy.<sup>5</sup>

Reluctantly, and dragged protesting back to the chair, Dr. Schmalzbach was again made President in 1985. It is probable that only the obdurate, foolish opposition of a few Jacksonian democrats dampened the accumulated pressure to recognise his vital force in the Academy by changing the constitution to make him Life President, like Simon Bolivar in Latin America. But it was not to be so. Nonetheless, he remains

to this day the motive force and spirit behind the Academy. Tribute must be paid to him.

A glance at the names of the Presidents and of the members of the Council shows the cream of the intellectual leaders of law, medicine and science that appear. True it is, for practical reasons, they tend mainly to live in Sydney. True also, the law has tended to have a disproportionate say. But the Council of the Academy, from the outset, has included leading judges, silks, medical practitioners, university academics, scientists and government officials. There has also always been a sprinkling of accountants to keep the financial records in order.

The dinners which follow the scientific sessions are a delight. The ceremonial occasions when a distinguished colleague, or overseas visitor, is admitted to an honorific place tend to be unforgettable events. The Latin encomia of Dr. Schmalzbach, mixed deftly with his idiosyncratic speaking style, are engraved upon the collective minds of two decades of the leadership of three disciplines. Once experienced, these dinners are never forgotten. If at the time they sometimes seem a trifle long lasting, this feeling passes. But the record of the scientific sessions is happily permanent. It is found in the Journal of the Academy which is now sought in all parts of the world and read with appreciation by many.

We are fortunate to have the Journal. It is our institutional diary. A glance through its pages over the past twenty years is a rewarding experience. We are, after all, the only body that brings together in Australia, on a permanent and regular basis, medicine, science and the law. I realise that

there are other bodies which perform this function in part, including the Australian and New Zealand Association for the Advancement of Science and the various medico-legal societies. But no other body has such a national mission. No other body provides such a permanent record of scientific meetings over 20 years devoted to pressing problems of the day which are of interest to the members and of importance to the society they serve. The reasons that moved Russell Brereton and Oscar Schmalzbach in 1967 to establish this Academy are even more relevant today than they were then. The watchwords of our time are science and technology. They permeate medicine and invade the law. They increasingly dominate our society. This assures the Academy, under forward-looking leadership, of a continuing vital role in our society of the next twenty years.

#### CHANGING CONTEMPORARY ISSUES

A glance through the pages of the journal will show the recurring themes which have appeared over the past 20 years in the scientific sessions of the Academy. To some extent, as is proper, those meetings have reflected the changing concerns of the members of the Academy. Thus, in the first volume there is a paper by Jules Masserman on "The Vagaries of American Youth". There, hidden on page 14, is a word which I had almost forgotten, "beatnik".<sup>6</sup> There too is reference to the writings of Masters and Johnson which I never, until recently, expected to see cited in a legal judgment. But Mr. Justice Mahoney, a past Vice-President of the Academy, had typically radical resort to these authors in a recent judgment on the compensation payable to a patient who suffered damage to his penis in a circumcision operation.<sup>7</sup>

In the early 1970s, with uncontrolled atmospheric nuclear testing in our region, a remarkable initiative was taken by another councillor of the Academy, then Senator (later Justice) Lionel Murphy. He led a team to the International Court of Justice to contest the legality of the French nuclear testing in the Pacific. This case was written up at length in the Journal. It obviously attracted a great deal of attention in the meetings of the Academy at that time.<sup>8</sup>

Drugs, as will appear, have been a recurring theme. So too has concern with the media and their impact on anti-social conduct. Likewise a number of scientific sessions have dealt with advances in scientific analysis of forensic evidence. Reflective perhaps of the revolution which has occurred (outside the Academy) in the status of women during the past twenty years, can be seen hints of the violent reaction, in some quarters, to Dr. Schmalzbach's paper on "Evil in Women - The Deliah Syndrome".<sup>9</sup> The prodigiously energetic Dr. Jocelyne Scutt contributed, as early as 1975, an essay on "Psychiatry and the Creation of Female Criminality".<sup>10</sup>

As the decade of the 70s unfolded, the papers of the Academy turned inevitably to the remarkable developments of biological sciences, particularly in transplant surgery<sup>11</sup>, human experimentation<sup>12</sup> and in vitro fertilisation.<sup>13</sup> By the 1980s new concerns were becoming evident. One of the most important initiatives taken by the Academy in 1985 was the organisation of a national symposium on acquired immuno-deficiency syndrome (AIDS). The first part of volume 18 of the Journal is devoted to a series of papers on that melancholy topic. The papers there appearing have worn well.



They are still highly pertinent to this challenge which is increasing, rather than decreasing, in importance in this country and abroad.

The informality of the central organisation of the Academy, and the dominance therein of the fertile-minded Dr. Schmalzbach, has meant that, from the first, the Academy has been able to react promptly to issues of contemporary concern. In addition to these issues, a number of matters of abiding importance have surfaced from time to time in the scientific sessions. Through those sessions can be seen ten threads at least. They illustrate the areas which we have attended to over the past twenty years. It is unlikely that they will be of any less importance in the foreseeable future.

#### TEN RECURRING THEMES

What are the ten themes that have run through the deliberations of the Academy in the past twenty years?

The first, as might be expected, is the sentencing and treatment of offenders and their victims following criminal conviction. From the very beginning this was a topic of controversy. In 1969, the Hon. (later Sir Kenneth) McCaw, Attorney General for New South Wales wrote on the need for a new approach to the victims of crime.<sup>14</sup> Sir Leslie Herron, then Chief Justice of the State, contributed a paper on what he boldly called "The Science of Sentencing".<sup>15</sup> Sir Leslie may have called it a "science". But for many judges it is the "least rewarding" of judicial tasks.<sup>16</sup> A report of the Australian Law Reform Commission aimed at introducing a little more "science" into the process of sentencing has not yet been

adopted in law.<sup>17</sup>

Mr. W.R. McGeechan, then in charge of Corrective Services in New South Wales wrote on the "Work Release Plan".<sup>18</sup> Sir Leslie Herron returned to the issue with his paper on "Rehabilitation of Prisoners: Reforms and Innovations in the Penal System".<sup>19</sup> One of the foundation members, Mr. D.F. Kelly, a senior Crown Prosecutor, peered into the future with an essay "Wither Criminal Corrections?". The same title was taken by the new State Attorney General, Mr. John Maddison.<sup>20</sup> Three years later, Mr. Maddison was contributing on a related theme concerning civil liberties and the police.<sup>21</sup>

Mr. David Biles who has been a most faithful member of the Academy, contributed for us a paper on penal reform.<sup>22</sup> Professor Gordon Hawkins, a recurring voice of good sense in our community, wrote on "Prisoners Rights".<sup>23</sup>

One of the rare women speakers invited in those earlier years was Justice (later Dame) Roma Mitchell. In 1975 she spoke in her typically pithy way on a paper titled simply "Sentencing".<sup>24</sup> Professor (later Sir) Zelman Cowen offered some general reflections on crime and society in 1977.<sup>25</sup> He was later, as Governor-General, to be a frequent host to the Academy and was admitted to its honorary life membership.

The old debate on capital punishment was revived by a paper in 1979 by M. Lopez Ray.<sup>26</sup> Professor Tony Vinson in the following year wrote on "The Social Drama of Corrections".<sup>27</sup> In the same volume I offered my first contribution on "New Trends in Crime and Punishment in Australia".<sup>28</sup>

There were many other essays on the same theme. But punishment of the convicted criminal and the treatment of

offenders and compensation of victims is at the end of the forensic process. Its importance lies in the way it reflects the attitudes and values of a "civilised society". It is right that no other topic should have so preoccupied the Academy. It has engaged, in the papers cited and many others, the collective wisdom of the Academy's members. Yet at the end of the day, the "science" for which Sir Leslie Herron called has not been found. Sentencing remains an "art". It is non normative. There is insufficient precision in it. The years ahead will require further precise attention to this topic.

The second theme is the evidence used in trials, particularly criminal trials. From the start this has attracted the concern of the Academy. In the first volume, Mr. Justice Sugerman wrote on "Some legal aspects of identification of persons and objects".<sup>29</sup> This was to become a recurring topic. In the 10th volume, Sir Richard Eggleston explored identification evidence.<sup>30</sup> The problems that can arise in this evidence are notorious. They have been recognised by the courts.<sup>31</sup> They have also been worked over by Law Reform agencies.<sup>32</sup> Statutory reforms are yet to be enacted. We have added our weight in calling attention to the dangers of error and wrongful conviction.

Like mistakes in the rational operation of the mind can be seen in the treatment of similar acts and facts as evidence. In the moving obituary of Mr. Justice Brereton, reference is made to his rulings in the trial of Mrs. Grills, the infamous thalidomide murderer.<sup>33</sup> Harold Snelling wrote on this topic in 1963.<sup>34</sup> Lionel Murphy, Sir Maurice Byers and Mr. Justice Cross returned to it in 1983.<sup>35</sup>

Likewise there has been a great deal of quite original attention over the years to the use of hypnosis in securing evidence. In the very first paper of the Academy, Mr. Justice Brereton commented on the importance of evidence as the basis upon which medical and scientific, as well as legal, decisions are made.<sup>36</sup> The use of hypnosis by police in North America is now well established, although court decisions there have warned against the dangers of confabulation. These dangers are brought out in a series of essays read to the Academy. An early one, in 1981 was by G D Burrows on "Forensic Aspects of Hypnosis".<sup>37</sup> Howard Purnell, who has been such a loyal member of the Council of the Academy, contributed a paper on the law and hypnosis.<sup>38</sup> Three years later A.K. Lethlean wrote on the problems of confabulation and lying. Pathological lying had been the subject of a fascinating earlier paper by Dr Schmalzbach.<sup>39</sup> Sir Ronald Wilson, another High Court Justice who has graced the Academy contributed one of his three important pieces in the Journal in 1984 on "Truth and Justice".<sup>40</sup> The use of an adjuvant drug to secure evidence in a murder case was explored by Dr. C.B. Degotardi in the same volume.<sup>41</sup>

So it can be seen that evidence, its reliability and scrutiny, have been a recurring issue in the deliberations of the Academy. Evidence in criminal and other trials is where the scientist and the medical expert meet the lawyer most frequently in a professional setting.

The third theme is the increasing importance of science and technology in the scrutiny of evidence received by the courts. This has been the subject of numerous scientific papers. Issues dealt with include the careful collection of

data and the independent, authentic examination of data before it is presented to the decision makers in the trial. Thus, in the second volume Detective Sergeant A.F. Clarke described the necessities of crime scene examiners.<sup>42</sup> Mr. L.G. Clark in the same year explored institutional methods in forensic chemistry.<sup>43</sup> That distinguished Judge, Sir John Minogue, in 1976 examined the use of science in fact finding.<sup>44</sup> There followed a series of papers on the technological impact on the scrutiny of factual data. This series included a number of papers on finger prints and the way in which automatic analysis has now reduced cost and the risk of error.<sup>45</sup> New scientific means of identifying voices have been described<sup>46</sup> as well as the latest techniques of ballistic identification.<sup>47</sup>

A fifth theme running through the papers of the Academy has been the concerns of youth. I have already referred to the paper in the first volume by Masserman with its references to "beatniks".<sup>48</sup> In 1979 Professor Vinson wrote on juvenile aggression and Mr. Tim Moore on youth and unemployment.<sup>49</sup> A series of papers have studied the subject of the battered child. These began in 1970 with a forward looking paper by Dr. J. Steigrad.<sup>50</sup> In 1979 the subject was returned to. The future of youth was the focus of attention at the 6th International Congress of the Academy. The papers in the Journal record the thoughtful opening speeches by the Governor General (Sir Ninian Stephen)<sup>51</sup> and Sir Harry Gibbs.<sup>52</sup> It was at this conference that Sir Ronald Wilson contributed a further paper on "The Gillick Crusade".<sup>53</sup> - recounting the efforts of a mother in England to assert her right to control access by her daughters to information about contraception. Professor Max

Charlesworth wrote a "moral perspective" of the future of youth.<sup>54</sup> Simon Bleasel, suitably enough the son of a founding member and President of the Academy, spoke on the subject from the perspective of youth itself.<sup>55</sup>

An associated, sixth, theme has been the concern about drugs. In the first volume there is a paper by Mr. Justice Raymond Reynolds on "Drugs and Criminal Responsibility".<sup>56</sup> In the third volume, Dr. Schmalzbach wrote on the sociological and rehabilitative aspects of drugs.<sup>57</sup> An interesting paper in the fourth volume by G.V. Chesher on the dangers of cannabis is still highly relevant.<sup>58</sup> Whilst recording the then evidence on the adverse physiological and psychological effects of the cannabis drug, the author concluded that it could not be considered a drug of addiction, that there was no evidence that it led to the use of narcotic drugs or to other criminality.<sup>59</sup> No one doubts the undesirable effect of drugs in a society, such as Australia, already with major problems with legal drugs such as alcohol and tobacco. A question which has recurred in the debates of the Academy has been the justification of criminal sanctions upon some drugs only and how they may be imposed with minimal adverse consequences.

The complications of narcoticism were explored in a paper in 1972.<sup>60</sup> In the same year the Academy examined the United States Federal and State laws to combat drugs.<sup>61</sup> The special problems of drug users in prison was examined in the following year.<sup>62</sup> The operation of drugs on human behaviour and the cause of aggression have been examined in several papers.<sup>63</sup> So has the special effect of drugs on the elderly.<sup>64</sup>

It has to be said that the Academy's Journal records more

of the problems of drugs than it analyses solutions to a society with such huge cravings for drugs. There is, it is true, a paper by Terry Carney on the Victorian Alcoholics and Drug Dependent Persons Act 1968.<sup>65</sup> But the recent debates in the media about more effective control of cigarette and alcohol advertising may demonstrate that Australian society is at last coming to terms with the truly important drug issues it faces. 23,000 of our fellow citizens die every year from tobacco related causes. That represents about 85% of the national's drug deaths. A further 16% of drug related deaths can be attributed to alcohol related causes. Only 1% can be attributed to narcotic drugs. Yet a great web of laws, police powers and punishments has been created to deal with narcotics and cannabis which may sometimes seem disproportionate to the real priorities of tackling the problem of drug addiction in Australia. So much was suggested by Dr. Schmalzbach and by me at the recent 6th International Congress. I have no doubt that this will be a topic requiring continuing attention by the Academy in the years ahead.

A seventh theme has been sex. So powerful is this human need, and so many its consequences for individuals and society, that its continuing re-emergence as a topic of serious study in the Academy will cause no surprise. Harold Snelling in 1969 wrote on "What is Rape?".<sup>66</sup> Even as we meet, the High Court of Australia has before it an appeal from Western Australia where the prisoner was convicted of unlawful penetration, although the victim changed her mind, allegedly, only 30 seconds before ejaculation. Some wisdom may be found by the Justices in exploring the history of rape set out so well in Mr. Snelling's

paper.

In 1976 a paper on pack rape by N. Wallace explored that new social problem.<sup>67</sup> In 1981, Professor Duncan Chappel examined rape in marriage, also a relatively modern notion so far, at least, as the law has been concerned.<sup>68</sup> The reality behind the statistics in cases of sex assaults has been examined by D.J. West who contributed a later paper on violent and non-violent sexual offenders.<sup>69</sup>

Incest has come under our scrutiny in the provocative paper "Incest Who Needs It?" by J.S. Andrews.<sup>70</sup> Transsexualism has been explored in a number of contributions beginning with G.K. Sturup in 1972<sup>71</sup> and culminating in a series of papers in 1983, including another one by Justice Gordon Samuels.<sup>72</sup> As in papers elsewhere<sup>73</sup>, transsexualism has been sympathetically elaborated in our meetings. Proposals for reform of the law on this subject have been before the Standing Committee of Attorneys-General for nearly a decade now. Much talk; but in Australia, as so often, not much action.

An eighth theme has been the importance of psychiatry as a discipline which bridges the three categories of science, law and medicine. In the third volume, Dr. O.V. Briscoe (a frequent contributor) wrote a paper on the contribution of psychiatry to the law.<sup>74</sup> The famous United States Judge David Bazelon wrote of the psychologist's role in 1973.<sup>75</sup> Later he was to contribute a typically elegant piece on "The Perils of Wizardry".

Dr. Schmalzbach has made, as would be expected, a number of important contributions to this topic, including the essay on pathological lying to which reference has been made.<sup>76</sup> Dr.



P. Greenberg, writing on crime and society, offered a psychiatrist's point of view on this topic.<sup>77</sup>

The ninth theme has already been suggested. It is the evidence of concern in the Academy for the current anxieties of the community its members serve. For example, there have been a number of papers about the environment. The very first volume included Dr. Waterhouse's contribution on "pesticides".<sup>78</sup> Sir Ernest Titterton has made a number of important addresses on the environment<sup>79</sup>, recorded in our pages. The importance of environment on human aggression was explored in 1980. In the same year, George Seddon commented on the limited capacity of the courts to cope with disputed issues of environmental policy.<sup>80</sup>

The role of the media in promoting crimes of violence has been examined in a number of essays.<sup>81</sup> A regular contributor, and no stranger to the media, Phillip Adams, first addressed the Academy on films, literature and crimes of violence. This was long before Mr. Adams became Chairman of the Australian Film Corporation.<sup>82</sup>

Industrial relations has also attracted the attention of the Academy under this theme. As early as 1973 Associate Professor Laffer wrote on the role of science in industrial conflict and dispute settlement.<sup>83</sup> Sir John Moore, then President of the Arbitration Commission, addressed the topic of the state of industrial relations in Australia.<sup>84</sup> Mr. Justice Ludeke contributed to the Congress on aggression on the specific of industrial aggression.<sup>85</sup> If any topic was of importance in Australian society, it tended to attract the eye of our Secretary General. Soon it became the nucleus of a theme

for a congress paper.

The tenth theme illustrates the outward looking nature of our Academy. Not concerned only with Australian problems, we have from the start, looked at the broader issue of conflict in the world. In the first volume of our Journal, Dr. Schmaizbach made a telling point about the dangers psychologically ill leaders in a nuclear age.<sup>86</sup> The importance of nuclear fission has recurred in a number of important papers by Sir Philip Baxter<sup>87</sup>, Sir Ernest Titterton<sup>88</sup> and Mr. Justice Russell Fox.<sup>89</sup> Many papers for our scientific sessions and international congresses demonstrate this outward looking concern by the Academy as befits an intellectual society.<sup>90</sup> The contributors here have included the late Julius Stone, Bill Clifford and a frequent visitor to our conferences Professor Eibl-Eibesfeldt. Allied to the issues of world order have been frequent examinations of such topics as terrorism and air piracy.<sup>91</sup>

#### CONCLUSIONS: THE FUTURE?

This then, is what we have examined in the last two decades. The beginnings of our Academy were not modest. The early participants were citizens of established position in a number of professions but, more importantly, of vision and intellectual curiosity. At a time when specialisation and insularity is the rule, they insisted upon inter disciplinary discussion. At a time when science and technology went bounding ahead of the understanding even of intelligent lay people, they insisted upon coming to terms with, and understanding, these powerful dynamics of our time.

From our association in the Academy, we have derived

intellectual stimulation, recurring exploration of issues which we might not think about in our busy lives, and most congenial, precious companionship. It is unlikely that, in the years ahead, there will be any diminution of the topics that will require our attention. There are institutional issues upon which the spotlight will fall in the next decade. They include the renewal of the membership of the Academy, the spread of its membership and influence to a truly national force, the participation of more women and, possibly, more younger members, the establishment of a permanent secretariat, preferably in Canberra and the organisation of the Academy along the lines familiar in the other established learned Academies of this country.

The Academy can also, doubtless, lend its support to other institutional proposals, such as those recently made by Mr. Justice Morling for a national institute for forensic sciences, which would command universal respect and be seen as truly professional and (as far as it is possible) neutral.<sup>92</sup> If nothing else comes out of the recent, celebrated, Chamberlain case<sup>93</sup>, it should be the realisation of the vital importance of forensic evidence and the difficulty which often arises in evaluating it in the court room setting.

The lesson of reading the Journal of our Academy over the past 20 years, is that the towering figures of today retire and, sadly, pass away. Each of us has but a short time in the centre of the stage of our professional endeavours. Some problems change. Many remain the same. So far as the future is concerned, do I hear you ask where we go now? An earlier answer to this question is offered in the paper of Sir Leon Radzinowicz, an honorary life member, which he delivered at a

plenary scientific session of the Academy held in Sydney on 20

July 1973:

"There is never an end to invention. We are now witnessing a hippie fashion amongst our young criminologists ... Each generation needs to discover something fresh. The pendulum swings backwards and forwards and progress depends upon an uneasy balance. Perhaps this is the philosophy of middle age. To invent you have to be young. Perhaps the advice I can give to the elderly and impatient is to say "Wait". ... To quote G.K. Chesterton, another enthusiastic Englishman:

For there is good news yet to hear and fine things  
to be seen,  
Before we go to Paradise, by way of Kensal  
Green."<sup>34</sup>

FOOTNOTES

- \* CMG, Hon D. Litt. President of the Court of Appeal, Supreme Court, Sydney. President of the Academy 1987- . Onetime Chairman of the Australian Law Reform Commission, Deputy President of the Australian Conciliation and Arbitration Commission and Judge of the Federal Court of Australia.
1. Attorney General v Jonathan Cape Pty Limited [1976] QB 752.
  2. See Australian Journal of Forensic Sciences, volume 9, page 50. Hereafter references to the Journal will be shown by the volume and page number. (v,p)
  3. v 1, p 9.                      4. v 1, p 21.                      5. v 1, p 2.
  6. v 1, part 3, 13-14.
  7. Mahoney JA in St. Margaret's Hospital for Women (Sydney) v McKibbin, unreported, CA, 14 May 1987; (1987) NSWJB 90 where his Honour referred to Masters and Johnson "Human Sexual Response", 1966, 191.
  8. See eg v 6, p 32; v 6, p 212.
  9. See v 15, p 53.                      10. v 7, p 64.
  11. See eg Dr. O.V. Briscoe, v 1, 16.
  12. See eg v 8, p 53 and esp Sir MacFarlane Burnet, "Human Values and the Biological Approach, v 8, p 83.
  13. See R. Scott "Who Am I?", v 16, p 147.
  14. V 2, part 2, 54.
  15. V 2, part 80.
  16. Lord Kilbrandon, "Children in Trouble" (1966) 6 Br J Crim 112, 122. See also M.D. Kirby, "Sentencing Reforms & Help in the "Most Painful" and "Unrewarding" of Judicial Tasks. (1980) 54 ALJ 732.

17. Law Reform Commission, Sentencing of Federal Offenders (ALRC 15) 1980.
18. V 2, p 108.      19. v 3, p 40.      20. v 3, p 129; v 3, p 134.
21. V 6, p 254.      22. v 6, p 261.      23. v 6, p 260.
24. V 7, p 102.      25. v 9, p 127.      26. v 12, p 2.
27. V 11, p 85.      28. v 13, p 96.      29. v 1, part 3, p 5.
30. v 10, p 93. See also v 14, p 134 (J.D. Heydon) and p 150 (D.M. Thompson).
31. See eg Alexander v The Queen (1980) 145 CLR 395; Craig v The King (1933) 49 CLR 429, 448; R v Preston [1961] VR 761; R v Boardman [1969] VR 151.
32. Australian Law Reform Commission, Criminal Investigation, (ALRC 2) 1975, 53.
33. See v 7, p 54.      34. H. Snelling, v 6, p 78.
35. v 16, p 131.      36. R Le Gay Brereton, v 1, part 1, 2.
37. v 13, p 20; see also v 19, p 85.
38. v 13, p 126. See also M.D. Kirby "Hypnosis and the Law" (1984) 8 Crim LJ 152.
39. v 5, p 45.      40. v 16, p 2.      41. v 16, p 113.
42. v 2, p 68.      43. v 2, p 130.      44. v 8, p 136.
45. v 10, p 43; v 18, p 143.      46. v 19, p 95.
47. v 18, p 143.      48. v 1, part 3, p 13.
49. v 11, p 139; v 11, p 162.      50. v 3, p 57.
51. v 19, p 3;      52. v 19, p 6.      53. v 19, p 8.
54. v 19, p 55.      55. v 19, p 92.      56. v 1, part 4, p 3.
57. v 3, p 53.      58. v 4, pp 86.      59. *ibid*, 89
60. Cf J.M. Rho, v 5, p 84.
61. Sonnenreich, v 5, p 74. See also v 5, p 125.

