

**REMARKS BY THE HONOURABLE PETER UNDERWOOD
AC, GOVERNOR OF TASMANIA TO OPEN THE 2012
INTERNATIONAL SYMPOSIUM OF THE AUSTRALIAN & NEW
ZEALAND FORENSIC SCIENCE SOCIETY, HOBART MONDAY
24TH SEPTEMBER 2012.**

As Governor of Tasmania it is both a privilege and an honour to welcome so many distinguished guests to our island State. I think that it was in 1992 that Tasmania last hosted an Australian & New Zealand Forensic Science Society International Symposium. There were in the order of 170 delegates at that symposium and my word, haven't you grown since then? I understand that this year there are more than 700 delegates coming from over 20 countries as well as all parts of Australia. As my grandchildren would say, "That is huge!" And what a busy programme you have today and over the next four days. I congratulate the organisers on putting together such an impressive programme. I haven't counted up all the sessions but there appear to be in the order of 50 keynote presentations and over 250 oral presentations and more than 200 poster presentations run in several parallel sessions.

Just three days ago I opened the 2012 Scientific Meeting of the Australian General Surgeons and as I said to them and I say to each of you that you are all experts and the titles of the presentations at this conference reinforces what is really common knowledge namely, that as each day goes by the fields of expertise get narrower and narrower and more and more specialised. As a barrister and then a judge for many years I am very aware that expert knowledge is

something that expands exponentially and consequently fields of expertise become narrower and narrower and more and more specialised. I frequently had to lead evidence from experts, and cross examine them and later, when on the Bench, listen to their evidence. Although often very detailed, the evidence was always tightly focused on the narrow issues raised by the case at hand; each case was quite different, and the trouble the lawyer has is that once the case is over he or she forgets all that he/she has just learnt and gets on with the next case which of course, involves another, quite different, but equally narrow field of expertise.

Thus, it has been said of experts that they are people who know a great deal about very little, and who go along learning more and more about less and less until they know practically everything about nothing.

Lawyers, on the other hand, are people who know very little about many things, and who keep learning less and less about more and more until they know practically nothing about everything.

But judges are people who start out knowing everything about everything, but end up knowing nothing about anything, due to their constant association with experts and lawyers.

However, that exponential growth in expert knowledge, particularly in the forensic sciences, has led to the Courts becoming

more and more reliant upon expert opinion evidence. As you all know, today forensic science involves many different disciplines, from pathology and chemistry to engineering and entomology. I once presided over a murder trial where the determinative evidence was given by an entomologist. The deceased was a male in his fifties who lived alone in the country. He was found lying dead in his garden with a flail chest and much of the rib cage separated from the chest wall. The forensic pathology was that he had been stomped to death - someone had jumped up and down on his chest until his lungs could no longer function. The chief suspect was the deceased's grown up son who had, according to him, been in telepathic communication with a gorilla in the Melbourne zoo. When found the body was crawling with maggots and an entomologist who was called in by the police forensic team was able to identify the species of blow fly that had laid the eggs. Like the story I told you a little while ago I have now forgotten the details, but I recall that after taking into account the recent weather conditions and after considering the stage of development that the maggots had reached the entomologist was able to tell the jury to within half a day when the deceased was stomped to death. She gave her evidence clearly and precisely in unemotional tones and the jury obviously accepted it. A variety of other witnesses described seeing the deceased's son walking to his father's house at times that would have him arriving there at about the time the entomologist's opinion said his father was killed. The end of the story is that he was found guilty of the killing,

but not guilty of murder by reason of insanity - his explanation was that the gorilla had told him to do it!!

Forensic scientific evidence is not confined to the criminal courts although it is most frequently heard in criminal trials, but wherever it is given it is critical that it be given shorn of professional jargon and in terms that can be understood. One would think that is so obvious that it goes without saying, but I have often heard expert evidence that I have constantly had to interrupt to ask the witness to explain some word or expression he or she has used and it is likely that most of jury would not have understood. All expert witnesses and indeed, the lawyers who are examining or cross-examining them should bear in mind that “A word from the wise is useless unless it can be understood.”

The OED defines “forensic” as meaning “Pertaining to, connected with, or used in courts of law.” Having regard to what I have said with respect to the exponential growth of areas of science, I respectfully suggest that developing the expertise to communicate your science to those not versed in it such as judges and juries is just as important to a forensic scientist as is knowledge of the science itself. And to achieve that it is necessary to be empathetic with the judge and the jury. By that I mean the expert must try and put him or herself in the shoes of the judge and jury and ask him or herself whether it is likely they will understand these words that he is about to use. When you give your evidence you are in the same position as

a teacher in a classroom or a lecture theatre. You have to know where your students are up to before you can meaningfully convey ideas to them. Of course this is not easy in the forensic setting because the jury is an unknown quantity and their ages, education, life experiences, intellectual capacity and socio-economic backgrounds may be completely diverse.

Now I may be wrong about this but as I read Simon Walsh's abstract of his presentation on DNA evidence to be given at 1:30 pm this afternoon I thought that he was referring to the same thing as I am but from a different perspective. Of course, it is arguable that DNA is the greatest development in criminal forensic science ever. Many convictions are based upon DNA evidence alone - and I might add - so are a number of discharges after conviction by the jury before there was DNA evidence. But it is a very hard scientific concept for the lay mind to grasp and unfortunately some scientists who are frequently in the Courts have worked out a pattern explanation that has been rote learnt and is delivered without pause or query if it is being understood. An allele was sometimes referred to by the expert as if the average juror was as familiar with it as he or she is with a Mars Bar. Further, I am afraid that some barristers who have heard DNA evidence many times in the past contribute to the failure to make an understandable explanation of the science by hurrying the evidence on and by failing to pause from time to time to make sure the witness is being understood. In result the jury is likely to form a judgment on the probative value of the evidence on the

basis of whether the witness seemed a nice person or not instead of on their assessment of what the witness said to them.

I suspect that Simon Walsh might be approaching this issue from the point of view that forensic scientists are frequently being asked the same questions seeking to attack the reliability of the evidence and the conclusions to be drawn from it. In the abstract he says with respect to DNA evidence and presentation, “At present this area remains subject to frequent challenge and litigation on topics that have been previously encountered and resolved in the scientific literature and in court. This demonstrates, therefore, a major communication failure, and, potentially, a failure of the forensic evidence to address the actual questions or challenges at hand.” Mr Walsh’s frustration, or what I suspect is frustration, and my comments on the need for experts to communicate the science to the non-expert in terms that they can understand are in congruence.

The ability to communicate scientific facts and concepts to a non-scientific audience is a skill. It can be an acquired skill. The skill calls for:

- an empathetic speaker. Empathy has been defined to mean to perceive the internal frame of reference of another with accuracy and with the emotional components and meanings which pertain thereto as if one were the person, but without ever losing the

"as if" condition. Thus, it means to sense the hurt or the pleasure of another as he senses it and to perceive the causes thereof as he perceives them, but without ever losing the recognition that it is as if I were hurt or pleased and so forth;¹

- periodic enquiry to ensure that understanding is in progress as the speaker speaks;
- the use of simple and commonly used language; and
- on occasions, the use of visual aids such as drawings, photographs, models, sketches and so on.

It is axiomatic that if you are a forensic scientist an essential ingredient in the proper practice of your profession is to have the ability to be understood in the curial environment. As I have said, it might be thought that the ability to make the science understood by the lay person is as important as the science itself for don't forget; a word from the wise is of no use if it is not understood.

However, that is enough from me, or perhaps it is more than enough! It's time for you to get on with the important business of this conference so I formally declare it open, wish you all a stimulating, informative and rewarding few days and

¹ Rogers, C. R. (1959). A theory of therapy, personality and interpersonal relationships, as developed in the client-centered framework. In S. Koch (Ed.), *Psychology: A study of science*, (Vol. 3, pp. 210-211; 184-256). New York: Mc Graw Hill.

look forward to talking to some of you at Government House
this evening.