

The two characteristics considered in detail for the purposes of this paper are solidarity/loyalty and conformity. Solidarity and loyalty are characteristics which can develop to such a point that not only do police officers trust their colleagues with their lives as they exercise their duty on the road, but they protect the "brotherhood" in all situations, reinforcing a "code of silence" (Kleinig in Coady, James, Miller and O'Keefe 2000). From Fitzgerald's perspective, loyalty was evident in this unwritten "code" in Queensland, which punished police officers who criticised other police.

=====

And Professor Alan Dershowitz, a trial and appellate lawyer and Professor of Law at Harvard University, is quite severe. He says: "The American criminal justice system *is* corrupt to its core: it depends on a pervasive dishonesty by its participants ... The courtroom oath – "to tell the truth, the whole truth and nothing but the truth" is applicable only to witnesses. Defense attorneys, prosecutors, and judges don't take the oath – they couldn't!" I do not imply that judges and lawyers are knowingly dishonest

=====

There must be a better way, e.g. former Justice Russell Fox QC in *Justice in the 21st Century*. Ladies and gentlemen, in a centenary year it is proper to recall that the "mother country" gave us many wonderful things: cricket, Rugby football, battledore and shuttlecock, the rule of law, defined as the rule of serial liars, a corrupt and evil legal system, and a culture of trickle-down corruption in the trade of authority, including judges, going back to William II, who was shot dead exactly 901 years and 14 days ago. So far as Sydney's resolute culture of corruption is concerned, we name the guilty man in footnote (2).

=====

As noted, Fox QC says justice means fairness and fairness means a search for truth. (He says truth means reality). The adversary system is controlled by lawyers. A Harvard ethics professor says lawyers can accurately be described as serial liars because they persistently try to induce others to believe things the lawyers believe to be false. Legal ethics hold that lawyers are not morally responsible for what they do for their clients. A psychiatrist says that sound like psychopathy. A famous barrister says the adversary system is a game and shouldn't be. The system can thus be defined as a corrupt game controlled by lawyers, some of whom act as if they are serial liars and psychopaths. It can be unfair to accused, victims, police, prosecutors, and the community. (8)

=====

So much for British justice. How did that happen? It started badly and has got progressively worse. After a conference in Rome in November 1215, European courts adopted a truth-driven and judge-controlled system but it was rejected by a dozen or so almost certainly corrupt judges and lawyers in London, then a frontier town of about 25,000 people. Barristers got control of civil litigation by 1550 and effectively made it a get-the-money game via interminable pleadings, discovery, negligence, class actions, libel etc. *Oh, the shark has pretty teeth, dear/And he shows them pearly white.* Barristers got control of criminal trials by 1800, and then, in the sacred name of fairness (!), began to invent truth-defeating (and hence unfair) rules which conceal relevant and probative evidence. Along with cross-examination

designed to hide the truth, the rules effectively make it a get-the-guilty-off system. Some of the rules are in footnote (9)

In France, the presiding judge is obliged to find out the truth for himself; he questions witnesses and allows them to give the whole truth in a narrative, rather than the artificial Yes or No. Prosecution and defence lawyers can ask questions through the judge and make submissions, but they are not allowed to cross-examine lest they “pollute” the truth with the usual psychopathic devices: “destroying” witnesses by brutal questioning, lying to them, making them agree that black is white, shifting the goal-posts, putting the victim on trial etc. Unfortunately, Australian inquiries tend to be a costly and rather ineffective mixture of adversarial and investigative techniques. They do not as a rule conceal evidence (12), but the purported investigator uses a barrister to question witnesses, and barristers for suspects may be allowed to obscure the truth by cross-examination. (13) The report tends to be wishy-washy because the investigator may subconsciously be mentally crippled by the rules for concealing the truth. Inquiries do produce facts which can be used in pattern journalism, but otherwise are largely a waste of taxpayers’ money.

Will it happen? On Monday 28 May 2001, the French Prime Minister, M. Lionel Jospin, called for a common legal system throughout the European community based on the Charter of Fundamental Rights. England may thus have a choice: either to dismantle the corrupt adversary system and accept the European system it rejected nearly 800 years ago, or to become a theme park. If British justice at last begins to seek truth, fairness and justice, can the colonies be far behind? For the media, it would mean that trained judges would seek the truth behind alleged libels and *sub-judice* contempt law would not exist. Some barristers may not like it, but they can be safely ignored: they make up 1/25th of one per cent of the population. And surely some barristers will be relieved that they can stop all that dreadful serial lying and acting like psychopaths.

7) **Justice** means “a fair go all round”, according to NSW Conciliation Commissioner Gilbert Manuel. It means fairness, and fairness means a search for truth, and truth means reality, according to former Justice Russell Fox QC.

The adversary system is defined as a system controlled by lawyers. The judge controls the court but lawyers control the process. They decide who will give evidence, what they will say, and how long the process will last, with the meter running. Since lawyers are in charge of a major legal system, the 1600 million people affected by it can expect, and rightly expect, them to run it responsibly, with anxious care for fairness, truth and justice. Geoffrey Roberston QC says the adversary system is a game and shouldn’t be.

Lawyers can accurately be described as serial liars because they persistently try to induce others to believe things the lawyers themselves believe to be false, according to Arthur Applbaum, Professor of Ethics at Harvard University. A lawyer, Charles Curtis (1860-1848), wrote: “I don’t see why we should not come out roundly and say that one of the functions of a lawyer is to lie for his client.” Lawyers have been serially lying in written pleadings for five centuries and in cross-examination for four.

Judges are barristers one day and untrained judges the next. We can be sure they instantly stop serial lying; that they have been desperately racking their giant legal brains to find a way to stop their former colleagues’ serial lies; and that after five

centuries we can expect a solution any day now.

Legal ethics appear to be one of those oxymorons, like military intelligence and criminal justice. Fox QC says the ethics hold that lawyers are not morally responsible for what they do for clients. A Sydney psychiatrist, Dr Elizabeth O'Brien, says that sounds like psychopathy. Psychopaths have no conscience. Professor Monroe Freedman, a US legal ethicist, says if a rapist privately tells his lawyer he is actually guilty, the adversary system still demands that he cross-examine the victim to suggest she is promiscuous. Perhaps we can redefine the adversary system as a corrupt game controlled by lawyers some of whom are trained to act as if they are serial liars and psychopaths. And if the adversary system actually demands that the people who run it must pervert justice, it should be the tiniest of steps for judges and lawyers to say there must be something wrong with the system, and that we need a better one. Some are doing that.

=====

(9) The term-get-the-guilty-off system comes from former lawyer Brett Dawson's *The Evil Deeds of the Ratbag Profession in the Criminal Justice System* Evidence should be weighed, not suppressed; none of the rules for concealing it can survive rational analysis. The rules include one which prevents the judge and prosecution from commenting on the accused's refusal to give an explanation, although an explanation from an innocent person could reasonably be expected. There are rules against hearsay, patterns of criminal behaviour, and evidence said to have been improperly obtained. And there is a discretion to conceal virtually all relevant and probative evidence. Dawson says a criminal defence lawyer requires little intelligence; all he has to do is object to all evidence on the ground that it might prejudice his client.

(10) The sketch can be a jokey *melange* of description, anecdote, comment, and analysis. I first adopted it for the 1983 Wran Royal Commission. Michael Grove QC, counsel assisting, was apparently not aware that one way to bribe a public figure is to tell him the winner of a fixed horse race. Organised criminal George Freeman gave Chief Magistrate Murray Farquhar tips every Wednesday and Farquhar's clerk, Camille Abood, placed his bets of \$400-\$600 at the TAB and collected the winnings, but Grove did not ask Abood how good the tips were. When I noted the omission, Grove said: "I have been asked by an expert in Royal Commissions to put this question ..." Abood replied that Freeman's tips were 98-99 per cent winners. There is no copyright on the sketch; I was surprised that it was not until 1995 that another reporter, Kate McClymont, brilliantly used the sketch to report the Wood inquiry on systemic police corruption.

=====

(13) The investigative system is cheaper and more effective than the adversary system, and the 1988 ICAC Act specifically said ICAC was to be non-adversarial where possible. In 1990 former Justice Michael Helsham told ICAC's parliamentary oversight committee that he had no idea how the inquisitorial system works and advised the committee to find out. In 1991 the committee asked ICAC Commissioner Ian Temby to investigate and report. ICAC sought guidance from an authority on European systems, Bron McKillop, of Sydney University Law School, and he supplied background information in 1991. Commissioner Ian Temby QC and other ICAC staff spent \$77,290 March 1994 without a report; McKillop was asked to write the final report.

=====

As noted earlier, under legal ethics developed by lawyers in the get-the-guilty-off adversary system, Dershowitz and Littlemore are perfectly entitled to adopt that posture. By contrast, the code of conduct for lawyers in the European Union, adopted unanimously in 1998, says: "A lawyer must serve the interests of justice as well as those [of his clients]," and that a lawyer has "legal and **moral** obligations ... towards: the client, the courts [and] the public"; this requires "absolute independence ... A lawyer must ... be careful not to compromise his professional standards in order **to please his client...**" (Emphasis added.) United Kingdom and Irish lawyers presumably don't take

an oath to observe those obligations.

=====