

Senate Inquiry into Australia's Judicial System and the Role of Judges

Submission by Evan Whitton, columnist on the legal magazine *Justinian*, and author of *Trial by Voodoo* (1994), *The Cartel* (1998) and *Serial Liars* (2005).

I should say I have researching the origins and procedures of our common law system since observing at first hand how each of the West's two legal systems dealt with the same criminal, Sir Terry Lewis, in the period 1988-91.

The task is difficult because publicly-funded legal academics do not trouble themselves or their customers with much legal history. They teach only a sanitised version of what the current system is. I have to say the further you go the worse it looks.

Some of the submission is in Q&A form.

What is justice?

Justice means fairness; fairness to all concerned, including taxpayers who fund the system, requires a search for the truth; truth means reality.

Does the system search for the truth?

No. It now has at least 21 devices which obscure, pollute, conceal or otherwise defeat truth. Moreover, trial lawyers control the evidence and hence the process. (And hence the money.) Trial judges control the courtroom and decide what evidence will be concealed but are otherwise passive and they are ignorant of the facts. The term "judicial system" is thus a misnomer. It would be more accurate to call it a trial lawyer system.

What is a trial lawyer?

A trial lawyer is a person trained at law school in techniques of lying.

What is a liar?

A liar is a person who tries to persuade others to believe something the liar believes to be false.

Do trial lawyers actually lie?

Yes. A US lawyer, Charles P. Curtis, said: "... one of the functions of a lawyer is to lie for his client ... He is required to make statements as well as arguments which he does not believe in." The first trial lawyers to lie were probably Athenian lawyers taught by the Sophists 2500 years ago.

What is a judge?

A judge is said to be a trial lawyer who knows a politician. Judges are not trained. They are trial lawyers one day and judges the next.

Do trial lawyers stop lying when they go on the Bench?

The US uses the same system as ours. A US criminal lawyer, Alan Dershowitz, said: " ... lying, distortion, and other forms of intellectual dishonesty are endemic among judges ... 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 this oath – they couldn't! "

A few examples:

1. Alan Dershowitz said judges and lawyers know that "almost all", i.e. 99%, of accused are actually guilty.

Janet Fife-Yeomans reported in *The Australian* of 27 August 1994: "Figures from the NSW District Court show that the jury convicted in half the cases while the judge, when hearing a case alone, convicted in only a quarter."

That means the judges try to persuade the community to believe that 75% of accused are not guilty when the judges know they are guilty because of the evidence they concealed (from themselves).

2. *Keighery* (1957). The tax system is a fraud on those, including your good selves, who pay tax as they earn because of a lie by six High Court judges: Owen Dixon, Dudley Williams, Eddie McTiernan, Frank Kitto, and Alan Taylor.

Section 260 of its Income Tax Assessment Act 1936 said any "arrangement" which has the effect, directly or indirectly, of "defeating, evading, or avoiding any duty or liability imposed on any person by this Act [shall] be absolutely void".

In *Keighery*, Dixon *et al* said "absolutely" does not mean absolutely; there could be exceptions. This opened the tax evasion floodgates to tax lawyers and the rich. PAYE taxpayers had to make up the losses.

3. *Curran* (1974). Three High Court judges, Garfield Barwick, Harry Gibbs and Doug Menzies, said a profit is a loss. The results of this grotesque lie were:

a) Many self-employed middle-income earners got into tax evasion.

b) By 1978, the Tax Office had been deprived of \$800 million, about \$3 billion at today's rates.

(Mr Henry is reviewing the tax system. Next time you see him, you might consider asking him how he proposes to stop the system being a fraud on PAYE taxpayers.)

What are other effects of the system's 21 anti-truth devices and control of the process by trained liars?

At least 1% of those in prison are innocent. In serious criminal cases, more than half the guilty escape justice. (In rape cases, 1% of the guilty are convicted.) As clients in civil cases know, their cases can be spun out for months or years.

How does that compare with truth-based systems, e.g. those in France and Germany, in which trained judges control the process?

The French and German systems protect the innocent better than ours. In serious criminal cases they convict 95% of the guilty. Civil cases are disposed of in a total of a few hours.

What are the remedies for our judges and our system?

Judges should be: a) Trained separately from lawyers. b) Appointed on the basis of rigorous examinations and psychological testing. c) Given control of the process. c) Obligated to search for the truth unencumbered by anti-truth devices and trial lawyers who use cross-examination to pollute the truth.

What should be grounds for removing judges?

One ground should certainly be a refusal to understand simple English in legislation, e.g. the meaning of "absolutely" in *Keighery*.

Note. Your time is important. This submission is deliberately brief. If required, I can supply abundant evidence to support the material.

Caution. Honourable Senators will be wise to treat with caution submissions by lawyers, including judges, academics, trial lawyer unions, and law reform commissioners. They may have a financial or psychological interest in preserving the current system. In any event, because of law schools' omissions, they know little or nothing about where the system came from, or how its vices derive from its origins.

Evan Whitton