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By The Hon. Michael Kirby AC CMG

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Forensic Sciences at 50: Past, Present and Future?[1]

The Hon. Michael Kirby AC CMG[2]

Abstract- In this article, delivered originally as an address to the Australian Academy of Forensic Sciences on its fiftieth anniversary, the author – a past President – reflects on the past, present and future of the Academy. In the review of the past, he recalls the personality of Dr O.R. Schmalzbach who founded the Academy and initiated the successful mix of topics and members in the first 25 years. He then reviews the changes that came about producing the present Academy with more women members, scientists and less ceremony. Looking to the future he concludes that there will be no going back to the old ways. However, he suggests initiatives to broaden the definition of "forensic sciences" beyond primary attention to bench science. He also encourages the revival to some degree of the participation of the leaders of the medical and legal professions and their engagement with the issues of science and society or forensic sciences, broadly envisaged.

I. Vivat Academia Nostra

If our Founder were here, he would regale the Academy in his beloved Latin:[3]

> Bene scio me a uobis, Academici, plurimis esse oneratum honoribus, quod uos me socium huius praestantissimae Academiae elegeritis, quod uos me etiam, ut uerbis nostri Horati utar, socium honoris causa 'uita dum superest' feceritis, quod uos me praesidem Academiae nominaueritis, quod uos meas scriptiunculas in lucem diei in actis uestris saepe produxeritis, denique quod uos me iam rogaueritis ut orationem anno quinquagesimo ab Academia condita.
>
> 'I am well aware, Academicians, that I have been weighed down by you with numerous honours, in that you have elected me a member of this eminent Academy, that you have even – if I may borrow words from our poet Horace - made me an honorary member 'as long as life lasts', that you have appointed me president of the Academy, that you have often brought forth into the light of day in your journal modest writings of mine, and that finally you have now asked me to deliver an oration in the fiftieth year since the foundation of the Academy.'

In members of my age, memories of the Academy inevitably involve vivid recollections of Dr Oscar Rivers Schmalzbach. He was the founder of the Academy. He left the stamp of his distinctive personality on its objectives, its activities and its perception of itself. As his influence was broad and deep, and overwhelmingly beneficial, it is appropriate to bring him back to our minds in remarks that honour the first half century of the Academy's life.

Oscar Schmalzbach was born on 17 April 1912 in Lvov (previously Lemberg), in Poland. He was a member of the Jewish community that suffered much discrimination in that country. He qualified in medicine in Lvov, Poland and in neurology and psychiatry in Warsaw. However, not long after the Second World War broke out in Poland, in September 1939, he fled via Czechoslovakia to Budapest in Hungary. He then escaped to Palestine and made his way to England. There he secured an appointment to research into brain physiology at Middlesex Hospital in London. He completed post-graduate studies at Maudsley Hospital and at the National Institute of Neurology, Queen's Square. In 1949, he left England for Australia arriving here on Melbourne Cup Day.

Soon after his arrival in Sydney, he was appointed a medical officer at the Callan Park Institution. At the time it was officially called a 'lunatic asylum'. In the 1960s he became senior consultant in psychiatry for the Crown in prosecutions that raised the mental state or capacity of accused persons. His evidence was called in numerous homicide and other cases. The former Associate Justice of the Supreme Court of New South Wales, J.K. McLaughlin, remembers, as a judge's associate, Dr Schmalzbach arriving at court to give evidence before a jury. He was dressed in the formal manner of a Middle Europe expert: wearing a homburg hat, yellow kid gloves and a formal suit. However his down to earth, practical approach to psychiatry well suited the Crown's sceptical scrutiny of insanity and other defences. In 1971, he wrote a book *Profiles in Murder*, based on his trial experiences.

It was in 1967 that Oscar Schmalzbach founded the Academy of Forensic Sciences. He invited Mr Justice Russell LeGay Brereton to be its first President.[4] Effectively, Schmalzbach gathered around himself a distinguished company of judges, lawyers, medicos and a few scientists. They were known personally to him or by public repute. They included the leaders of their respective professions. His objective was to establish a

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[1] Text for an address to the meeting of the Australian Academy of Forensic Sciences at the, Union Universities and Schools Club, Sydney, 22 November 2017.

[2] Honorary Life Member and Former President of the Academy.

[3] I am indebted to Professor James Adams, an Australian Latin scholar and now Fellow of All Souls College, Oxford University, for checking my schooldays effort. And to Acting Justice Emmett for this contact.

[4] The inaugural Presidential address was given by Mr Justice Brereton. R.LeG. Brereton, "Evidence in Medicine, Science and the Law" (1968) 1 AJFS 1.

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high level interdisciplinary society that would address topics of mutual concern loosely involving the forensic sciences. There had to be a scientific element. But it did not need to be bench science. He was elected to serve as the inaugural Secretary-General of the Academy. He held that post three times and was twice elected President. He was specially vigilant in upholding the high status of the members.

Because, at that time, senior judges were commonly knighted, they had the inner running in the quest for membership. However, a few medical knights were also admitted (including Sir Douglas Miller and Sir Kenneth Noad). Important scientific knights also joined up (including Sir Ernest Titterton and Sir Philip Baxter). He had an eye for future incumbents of Vice-Regal office, inviting Sir John Kerr, Sir Zelman Cowen and Justice Gordon Samuels into membership and office in the Academy. He spotted judges on the rise (including Sir Harry Gibbs and myself). He was the "kingmaker". But he was also the "defrocker" of the Academy. He rusticated members who fell from his grace, silently removing them from the list of Council members; although he sometimes later restored them equally without explanation.[5] Looking back, it is a tribute to his willpower and personality that he got away with such an autocratic rule over so many powerful personalities. In essence, they submitted to his form of tyranny because they valued the Academy and knew that he was its chief moving force and inspiration.

When Mr Justice Brereton died in 1974,[6] he was succeeded by my predecessor as President of the New South Wales Court of Appeal, Sir Bernard Sugerman. It took a couple of years for the written constitution of the Academy to be adopted; and then only because of the insistence of lawyers that the Academy should have a permanent form outside the notions of the Secretary-General. When adopted, the Constitution delivered most of the power of the Academy to the Council. And the Council was substantially an adjunct to the activities and ideas of the Secretary-General. Four times each year, he organised 'scientific sessions'. In later years they convened at the Sebel Town House in Potts Point. The arrangement for quarterly meetings has continued to the present time. However, as I shall show, there has been a shift in the focus of the activities of the Academy. One of the first papers, at the birth of the Academy reflecting the present focus on science was by Mr L.G. Clark, NSW Government Analyst, on "the role of the forensic laboratory in crimes of violence".[7] Clark's paper identified problem areas that were to take decades to address in Australia, and to which the Academy later contributed.

In keeping with the Oscarian view of the Academy, that lawyers – especially judges - should predominate in power and dignity, the distribution of the Presidency since 1967 has seen nine legal presidents (mostly judges); seven medical; and four scientific or other categories. Until Justice Annabelle Bennett of the Federal Court of Australia was elected (2004-5) no woman served as President. By the time of her election Oscar Schmalzbach had departed the Academy. Indeed, he had died in Sydney on 26 December 1996. Very few women were elected, to the Academy when he was presiding. However, wives were welcome, and some were active participants, in the scientific sessions and the dinners that followed. It is a tribute to the changing times and the leadership of Professor James Robertson AM PSM, as President, that the present Secretary-General of the Academy is a woman (Professor Shari Forbes), as is the Treasurer (Ms Alison Sears). The Founder would doubtless be shocked.

As he grew older, Oscar Schmalzbach's summonses to give forensic testimony in court for the Crown dried up. The Academy effectively became the residual centre of his life. He held the office of Secretary-General for more than 20 years in all. He also served as long-time editor of the Academy's Journal. He was President twice (1976-78) and (1985-87). He even floated the idea, during his second term as President, that he should be elected "honorary life president". This proved a bridge too far.

With great deference to Oscar Schmalzbach and his devotion to the Academy, I resisted this notion, believing that it was inimical to a body that, despite its failings, was nonetheless a valuable intellectual society. Only partly in jest, I pointed out the only life president of distinction in history was probably Simon Bolivar, liberator of the Hispanic Americas from Spanish colonial rule. Distinctive as Oscar's service had been for the Academy, it did not rise to that level. His idea was eventually dropped. Oscar knew when he did not have the numbers. Instead, I was myself elevated to the Presidency. He accepted this substitution with good grace.

By the late 1980s, Oscar Schmalzbach was clearly failing. Honour was saved when he was designated the "Founder", a factual not a constitutional office. To this day he is memorialised on the letterhead of the Academy. There his name can still be seen. Generations will come who never knew Oscar Schmalzbach, the man. However, within the Academy, whilst memories of him remain fresh amongst the older members, his astonishing personality should be

[5] Commentary: 'Reflections on the Formation of the Australian Academy of Forensic Sciences on the Fortieth Anniversary of the Journal' by Maurice J. Sainsbury (2008) 40 *Australian Journal of Forensic Sciences* 97 at 98. Dr Schmalzbach himself wrote a history on the creation of the Academy; O.R. Schmalzbach, "A Short History of the Formation of the Australian Academy of Forensic Sciences" (1968) 1 AJFS 20-22.

[6] Obituary (1972) 6 AJFS 288. An obituary of Mr Justice R.LeG. Brereton appears (1974) 48 ALJ 280.

[7] (1975) 9 AJFS, 196.

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recorded and his central contribution should be honoured. As it happens, I believe that the Founder has an important continuing message for the Academy of today. I shall return to that theme by way of remembering the focus of the Academy during the years that Dr Schmalzbach exerted primary influence on its membership, meetings and intellectual endeavours.

II. First Quarter Century: Broad Focus

What was the magic formula that Dr. Schmalzbach dispensed in the first quarter century of the life of this Academy? How did so many extremely busy, senior and even powerful members find time to turn out regularly in such large numbers for the Academy's scientific sessions? It was surely not the food at the Sebel Town House, passable though it was. Nor was it the occasionally tedious and even misogynistic approach of the Secretary-General to some issues presented for debate.[8] The presence of so many accomplished and senior professional members was obviously secured by the intellectual fare that was regularly presented for consideration and debate. There was also the common feeling that the Academy was useful, stimulating and valuable as a source of cross-disciplinary information that moved beyond the strict professional boundaries of most of its members. In a sense, the very seniority of many of the participants attracted junior professional members, from the same profession. It was a privilege to rub shoulders with one's own professional leaders. It was also stimulating to meet and gain the perspectives of the leaders of other disciplines, gathered in the Academy. Professional leaders demonstrated their knowledge and skills. They were willing to be beckoned out of their specialised disciplines to listen to the younger members and external and overseas experts, addressing topics of the day. Overwhelmingly, they stayed and valued the Academy's sessions.

Oscar Schmalzbach had an eye for the important issues and controversies of his time. They had to be issues of cross-disciplinary interest or the members would have drifted away and withdrawn.

When I reviewed the scientific sessions of the Academy, up to the commencement of my Presidency in 1987, I did so by a review of the papers published in this Journal, derived from the earliest quarterly "scientific sessions".[9] In seeking to rediscover the "magic formula" of that time, it is useful to return briefly to that analysis.

1. *Sentencing*: The sentencing of convicted offenders was a matter upon which most participants in the Academy between the 1970s-1980s had an interest. Sometimes they had perspectives that were useful to share. On this basis, sentencing law and practice was a principal subject of the scientific sessions in the first half of the life of the Academy.

Sir Leslie Herron (first Patron of the Academy and also Chief Justice of New South Wales) provided an early paper on "The Science of Sentencing".[10] Over 25 years, a range of topics dealing with crime and punishment was examined. They included a paper by a frequent participant, David Biles, on "Penal Reform" and another by Gordon Hawkins (one time prison governor in England and an inaugural commissioner of the Australian Law Reform Commission) who addressed "Prisoners' Rights". This was a topic in an age when many experts did not conceive that prisoners had many rights at all. Dame Roma Mitchell was one of the few women in the early years, invited to address the Academy. She also chose the topic of sentencing. Sir Zelman Cowen examined "Crime and Society". Professor Tony Vinson (who moved from academic life to Corrective Services) addressed "The Social Drama of Corrections". In volume 13 of this Journal, I, myself offered a paper focussed on a topic based on the then current work of the Australian Law Reform Commission (ALRC) on "New Trends in Crime and Punishment".[11]

2. *Evidence*: The next most popular topic of the Academy's scientific sessions, and a recurring theme of the Academy in the 1970s and 1980s, was the Law of Evidence and how it affected the proof of crime and forensic facts. A repeated topic under this heading was identification evidence. By the 1980s the risks of identification evidence had become well known to the judiciary. Those risks were frequently mentioned in the rulings and decisions of Australian courts.[12] In the Academy, important papers were delivered on this theme in the early days by Sir Bernard Sugerman and also by a fine federal judge, Sir Richard Eggleston.

Mr Justice Brereton, who had presided in the trial of the notorious Mrs Grills, convicted of murdering her victims by the use of rat poison, presented a paper on that topic. G.D. Borrows spoke of hypnosis in evidence. Sir Ronald Wilson, a Justice of the High Court of Australia, read a paper on "Lying and Confabulation". Dr C.B. Degotardi examined the then state of evidence on the potential use of "truth drugs" in the search for safe and convincing evidence.

[8] He wrote a paper on "Evil in Women: the Delilah Syndrome". It proved very controversial. It was hotly contested and criticised; but not supressed by the Academy. See O.R. Schmalzbach, "Evil in Women – "Delilah Syndrome" A New Psychiatric Syndrome" (1983) 15 AJFS 53. See also O.R. Schmalzbach, "Pathological Lying – Psydologia Phantastica" (1973) 5 AJFS 45.

[9] M.D. Kirby, "Forensic Sciences – What Have We Learnt?" (1987) 20 AJFS 183. See also M.D. Kirby "Hail and Farewell" (1989) 22 AJFS 23.

[10] Sir Leslie Herron, "The Science of Sentencing" (1969) 2 AJFS 80.

[11] M. D. Kirby, "New Trends in Crime and Punishment" (1980) 13 AJFS 96.

[12] See e.g. *Domican v The Queen* (1992) 173 CLR 555.

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3. *Science and Technology*: Another recurring theme was the general impact of science and technology on criminal trials and on the evidence called in those trials. This issue was tackled by Sir John Minogue, a Victorian judge who had become Chief Justice of Papua New Guinea, then an Australian colony and mandated territory. Sargent A. Clarke wrote on "Crime Scene Analysis".
4. *Computer Analysis of Evidence:* There were several papers in the early years on the identification of ballistic evidence and the analysis of voice recordings measured against the best available scientific standards. The growing availability and capacity of computer scrutiny of masses of factual testimony was beginning to be felt. The Academy was there at the outset. There were many papers on this theme.
5. *Youth and Law:* Another common theme for the Academy was the interaction of youth with the law, especially criminal law. The guest appearance of "beatnicks" was noted by Dr Masserman. The impact of youth unemployment was examined by Tim Moore. Issues of battered children and of young people in the law attracted a paper by Sir Ninian Stephen (former High Court Judge and later Governor-General). Sir Harry Gibbs (later High Court Justice and President of the Academy) and Sir Ronald Wilson (High Court Judge) addressed issues of young people, crime and forensic science. In one session, the Secretary-General stretched his stern rules to permit Simon Bleasel, son of President medico Dr. Kevin Bleasel, to speak on this topic on behalf of youth. The participation of young persons was even rarer than the participation of women.
6. *Drugs:* The concern of the Australian community about the impact of narcotic and other illegal drugs was reflected in many papers read to the Academy. These included one by Justice Ray Reynolds (NSW Court of Appeal) on the impact of criminal responsibility. Another paper was presented by G.V. Chesheger on the dangers of cannabis. (It looks somewhat old fashioned viewed with today's eyes). The impact of alcohol and drugs on older offenders was explored. On this topic, Oscar Schmalzbach was himself far from conservative. He presented a paper on what he saw as the web of disproportional laws and powers to deal with drug use in Australia. This remains a challenge and a legitimate topic for an intellectual society like the Academy. If senior cross-disciplinary professionals do not examine the direction of such laws (and also the recent laws on terrorism) who will?
7. *Sex:* The eternal subject of sex was examined in many papers. Professor Duncan Chapell (ALRC commissioner) examined the topic of rape in marriage. Astonishingly, until the High Court abolished it, the common law crime of rape had no application to the conduct of husbands in relation to their wives.[13] Entering into marriage was taken by the common law to exclude complaint about a husband's violence, however objectively excessive and disrespectful.

J.S. Andrews tackled the sensitive subject of incest in a paper titled "Incest: Who Needs It?" Most lawyers and other experts steer clear of this topic because of common visceral reactions. However, the Academy tackled it. Likewise the topic of transsexualism. Justice Samuels, earlier the President at the Academy, read a sympathetic and sensitive paper on "Transsexualism".[14] It introduced the topic to members of the Academy, most of whom had never met a transgender person. There is no record that a transgender participant was invited to attend and speak to the topic.

8. *Psychiatry:* Naturally enough, with such a Secretary-General, many sessions of the Academy addressed problems of psychiatry. Dr Schmalzbach read a paper of his own on "Lying, Including Pathological Lying". He also invited a paper by the respected United States judge, David Bazelon, on "The Perils of Wizardry". This warned against the overreach of the claims of psychiatry.
9. *Hot Topics:* Common to the agenda of the Academy's scientific sessions were topics of the moment. They concerned topics that seemed likely to present diverse subjects with a forensic element. Thus Sir Ernest Titterton and George Seddon gave papers on the environment and its challenges. Several papers addressed pesticides. Industrial relations was a recurring and often highly political topic in Australia. This subject was opened up to discussion by Sir John Moore, President of the Conciliation and Arbitration Commission and by Justice Terry Ludeke, a Deputy President. Phillip Adams, still regularly broadcasting on the ABC on today's 'hot topics', delivered a paper on films and censorship. Except for purely transient issues, the members of the Academy could rely on the Secretary-General to spot a subject of public controversy and to find serious and knowledgeable commentators who could unravel the issues for the examination, questioning and education of the members.
10. *World conflict:* Nor did the scientific meetings of the Academy in those days confine themselves to local or national issues. Possibly because of his own background and experience in war and

[13] Abolished in *The Queen v L* (1991) 174 CLR 379.
[14] G.J. Samuels "Transsexualism" (1984) 16 AJFS 57.

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escape, Oscar Schmalzbach insisted on sessions that addressed some of the most serious topics of the world. Thus the two nuclear knights, Sir Phillip Baxter and Sir Ernest Titterson, examined the subject of nuclear dangers. I recall the occasion when Dr. Schmalzbach insisted on a session that was addressed to psychiatric illness in world leaders and how nations, and the United Nations, could respond effectively where a world leader appeared mentally unbalanced, yet in control of fearsome weapons of mass destruction.[15]

I remember, at the time, thinking that this was an absurd topic. Such concerns belonged solely to the internal arrangements of each nation state. So indeed they still may. However, the advent and election of President Donald Trump of the United States of America and of North Korea's Supreme Leader, Kim Jong-un, renders this topic more relevant and urgent today than I originally conceded. A flood of Presidential tweets at 2am Washington D.C. time, often in extreme language, suggests that the subject is more serious and urgent than I once imagined. The two leaders appear to share features of narcissism; a tendency to violent language; a habit of self-praise and walking around clapping their own performances. The existential dangers to humanity of the weapons under their control make the subject of national and global checks on political leaders a reasonable subject for rational debate. Oscar Schmalzbach saw this and brought the topic to the attention of the Academy's distinguished members years before contemporary justifications.

III. The Present 1993-2017: Into the Engine Room

Determined to supress any Bolivarian tendencies on my own part, on demitting office as President in 1989, I withdrew virtually completely, as in other offices I have held, from the activities of the Academy. Very occasionally I would give a talk (as I did recently on my mandate from the UN Human Rights Council as chairman on the UN Commission of Inquiry on North Korea). However, I was determined not to interfere. The current President, Professor Robertson, has held the office of President twice (2010-15) and (2016- to date). This is an honour only previously enjoyed by Dr. Schmalzbach. At least this is the case unless one considers that the Presidencies of Mr David Bennett AC, QC (2000-2001) and of his wife Justice Annabelle Bennett AO, QC (2004-5), fall within the coverture of marriage as being essentially the separated manifestations of the one personhood.

However, for some reason, which is something of a mystery, the number of judges and barristers who have joined the Academy and attended its sessions of late has fallen away in the recent quarter century. Along with the loyal toast to the Queen, and the portraits of H.M. the Queen and H.R.H. the Duke of Edinburgh, which hung behind the main table of Academy dinners in the Sebel Town House, vice-regal occasions have virtually disappeared. The wearing of decorations, so beloved of Dr Schmalzbach,[16] is no more. It is to rekindle memories of those earlier charming customs that I have worn tonight the insignia of the Order of the Rising Sun, recently presented to me by the Emperor of Japan for my work on North Korea.

Glamour, celebrity and professional leaders dressed to the nines in the 1970s and 1980s were a common feature of professional life the 1970s and 1980s. They did seem to attract professional members throughout the first half of the life of the Academy. Perhaps these symbols of power were a feature of public life generally in those years. Perhaps it was part of the 'male' thing that predominated in the Academy at that time. However, it is not only such external elements that have changed significantly in the Academy. The business of the Academy appears almost totally to have changed. It is now very much focused on scientific and forensic activities in the sense of police and prosecution evidence and expert opinions relevant to court cases. These played a part in the early years; but only a part. And a small part at that.

Take Issue No. 3 of the latest volume of the Journal (Vol. 49). It contains papers on the analysis of human hair;[17] skeletal trauma;[18] forgery detection;[19] parallel sequencing;[20] parentage analysis;[21] sexual determination from the study of mandibles;[22] and cloud storage in forensics.[23] The same subjects also predominate in Volume 49 Issue No. 4. Apart from the opening items in that issue, containing obituaries (including one of Sir Peter Lawler OBE (b.1921, d. 2017)), written by the President and myself concerning an habitual participant at Academy sessions in the old days, the scientific papers effectively represent the business and interests predominately of those who gather, analyse and seek to present scientific forensic evidence to establish, or cast doubt on, the criminality of an accused person. Substantially, these articles in the

[15] Cf. Bruce Guthrie, "Trump might be feigning insanity" *New Daily* October 14, 2017: available http://thenewdaily.com.au/news/world/2017/10/14donald-trump-crazy/?utm_source=Responsys&utm_campaign-20171015. The article contains a report of a panel of psychiatrists warning that anyone as "unstable" as Mr. Trump should not be entrusted with the life and death powers of the presidency".

[16] He was appointed an Officer of the Order of the British Empire (OBE) 1979.

[17] (2007) 49 AJFS 239.

[18] (2017) 49 AJFS 261.

[19] (2017) 49 AJFS 281.

[20] (2017) 49 AJFS 308.

[21] (2017) 49 AJFS 326.

[22] (2017) 49 AJFS 332.

[23] (2017) 49 AJFS 344.

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Academy's Journal address the matters of importance for Crown Prosecutors, police agencies, terrorism experts and (occasionally) defence counsel.

The latest part of the Journal (Vol. 49 Part 4) contains papers on cranio-facial gunshot wounds;[24] experts in land and environment litigation;[25] fatal falls;[26] soil analysis;[27] age estimation by vertebrae;[28] age estimation on juveniles;[29] fatal hyperthermia in rat livers;[30] lethal brush abrasions;[31] and plastic bag asphyxia.[32]

Each of these topics is likewise interesting, occasionally fascinating, and in its own sphere important. Thus, the published paper on "brush abrasions" by Melissa Thompson examines minutely the evidence (photographs were deleted) about a cyclist who was collected by a fast moving truck and dragged great distances along the road causing his death. The evidence, analysed in the paper, helped to convict the truck driver of causing death by dangerous driving. These are therefore not trivial subjects. Inferentially, they reflect the concerns of many, perhaps most, of the present members of the Academy. My point is solely that they are very different subjects, with a much narrower focus, than those that gathered the great and the good to the meetings of the Academy two decades ago.

Occasionally today there is an Academy conference which addresses large issues affecting the judiciary and legal process.[33] However, the dominance of scientific and laboratory bench perspectives of forensic sciences was certainly established at least by 2012.[34] At that time, the Journal became the official publication of the Australian and New Zealand Forensic Science Society (ANZFSS). In 2016 the Journal moved to six issues annually, comprising 720 pages. This was so as to include publishable scientific papers which were felt to have a market not currently served by other learned journals.

The Academy is now an almost entirely different organisation than it was in the first half of its institutional life. It has a mainly police, prosecution and courtroom focus. It does not address large philosophical issues about society, its laws and professions; still less its national governance, the safety of our world and the impact of science, medicine and law upon the nation and the planet. The emphasis of the Academy has shifted away from law and even medicine[35] towards highly specialised, intricate scientific and expert evidence of interest mainly to full time official forensic personnel. There is little or no ceremonial. On the other hand, the repeated calls of the Academy for the creation of a national centre for forensic studies have at last been heeded. President James Robertson, is the director of that body at the University of Canberra. The Academy and its journal obviously serve the needs of an expert community. Moreover, it is probably a community whose interests were not, or not adequately, catered for in the past, certainly by this Academy.

IV. The Academy and the Future: 2018

The foregoing reflection on the past and the present of the Academy of Forensic Sciences inevitably raises a question about the future of the Academy. If the "towering figures" of the professions of law and medicine cease joining the Academy or coming to its scientific sessions, nothing can be done to force them to do so. They will only participate if they see utility and/or pleasure and interest in doing so. It is most unlikely that Chief Justices of the High Court and the most senior judges, silks and medical practitioners would regularly come to events focused on highly precise and particular scientific subjects of the kind recorded in the most recent parts of this journal. This is because they would not feel that they could add much to the discussion of such topics. As the case of brush abrasions illustrates, the subjects may be important and even potentially interesting. But the opportunity for dialogue and meaningful interchange to which diverse professional leaders could contribute, is small. If this is so, most such people (and their spouses) will find a better way to use their time.

In 2018 it is possible that rebuilding any substantial part of the life of the Academy to engage with the subjects of yesteryear would now be impossible. Certainly, it would be exceedingly difficult. Just as it is difficult now to get busy professionals to resume attendance at church, or in Rotary Clubs or participation in old fashioned gentlemen's clubs (even when they have admitted women as members). Social life in every society continually changes. Perhaps there is also more scepticism, less deference and smaller perceived utility in comingling with professional leaders, than was the case up to the 1990s. Certainly, one hopes, there would be no return today to the substantial male only domain. The fact that the Academy now includes many more women and younger and diverse members is unquestionably an advance. It is one that I constantly urged upon Dr Schmalzbach and the Academy in my time as President, but without success.

[24] (2017) 49 AJFS 369.
[25] (2017) 49 AJFS 392.
[26] (2017) 49 AJFS 392.
[27] (2017) 49 AJFS 403.
[28] (2017) 49 AJFS 421.
[29] (2017) 49 AJFS 449
[30] (2017) 49 AJFS 459.
[31] (2017) 49 AJFST 468
[32] (2017) 49 AJFS 468.
[33] See (2010) 42 AJFS 1 – 49 (a conference on judicial reasoning in 2010).
[34] (2012) 44 AJFS (4), 319.
[35] (2017) AJFS 49 483. M.D. Kirby, "World AIDS Day – Reflections by Lake Geneva" (1999) 21 *AJFS* 75.

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This notwithstanding, the Academy should accept the challenge of broadening the focus of its definition of "forensic sciences". In doing so, it could look at some of the topics that were examined by the Academy in the first half of its corporate life. It should do this because of the objective importance of those topics and the outstanding contributions that the Academy made in those days to cross disciplinary enlightenment, dialogue, shared wisdom and fostering an appropriate "big picture" focus. This depended on a very broad definition of what forensic sciences were about.

The broader view, originally adopted about the domain of "forensic sciences", opens up cross-disciplinary dialogue about some of the most important issues of our time. It is a dialogue in which expert and non-expert discussion is helpful to the traditional professions, to their members, and to society.

The topics which we examined in the Academy in the 1970s and 1980s, always with the assistance of highly respected experts, broadened the lens of our focus. They included nuclear weapons; environmental challenges and climate change; global poverty; the operations and limitations of the United Nations Organisation;[36] even the extent to which world leaders should be subject to psychological checks and civic scrutiny addressed to their mental health, given the destructive weapons and missiles entrusted to many of them.

Self-evidently, such topics provoke energetic exchanges among non-experts. They make for interesting, stimulating and enjoyable intellectual and social occasions. If they were restored to the agenda of the Academy, even occasionally, they might attract once again the "wise heads" whom, as a young man, I met in the activities of the Academy. We cannot revive Oscar Schmalzbach or anyone like him. Today, that may be just as well. To a very large extent, his opinions and attitudes are out of harmony with the present age. Still his focus was never just the laboratory bench. It was the world, the nation, our society and its professions. In my opinion, the Academy needs to revisit its focus. Certainly more than it has done in recent years. The bench scientists (who should certainly retain a major say in the subjects of discussion) would probably enjoy occasional engagement with the subjects of "forensic sciences", assigning that discipline the broader ambit it formerly assumed.[37]

In 1973, not long after the establishment of the Academy in Sydney, and before I became a judge or involved in the Academy's affairs, Sir Leon Radzinavicz, the noted British expert in forensic sciences, addressed the Academy and looked to its future. Asked where forensic science academies were headed, he predicted:[38]

> "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 pendulums swings backwards and forwards and progress depends on 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."

[36] Such as a paper addressed following the advent of the AIDS epidemic: M.D. Kirby: "AIDS – Insights from the Stockholm Conference" (1988) 20 AJFS 282 (based on the author's closing summation at the International Conference on AIDS in Stockholm on 16 June 1988). Also M.D. Kirby "AIDS and Human Rights" (1991) 22 AJFS 29. See also M.D. Kirby, "Medical Negligence – Going Dutch" (2001) 33 AJFS 59 and M.D. Kirby, "DNA Evidence: Proceed with Care" (2001) 33 AJFS 9.

[37] The President James Robertson reflected several times on the changes that were happening in the Academy. J. Robertson, Editorial, "The Times They Are A-Changing' – Or Are They?" (2014) 46 AJFS 1.

[38] (1974) 6 AJFS 11. See also (1987) 20 AJFS 183 at 193. Kensal Green is a cemetary in London with a crematorium.

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