

Commencement speech to law graduates
University of Sydney Law Graduation Ceremony
Friday 22 May 2009
The Honourable Justice Ian G Harrison
Supreme Court of New South Wales

Pro Chancellor, ladies and gentlemen.

I completed my law degree at this university in 1974. My last exam was in tax, which I sat for in McLaurin Hall, which you will know is just across the famous quadrangle outside. I received my degree, just as you have, in this magnificent room and in an ancient ceremony just like today's. I return here from time to time, as I suspect you will, to remind myself of that day and of its significance in my life.

I had always wanted to do law but my family had no background in that line of work and careers advisers had always told me that you couldn't do law or medicine unless you had studied Latin. Unlike Justice Emmett, I had not studied Latin. In fact the only Latin I knew for sure was that *carpe diem* means fish of the day and that *post mortem* means a dead mailman. I am glad that I chose to follow my instinct as it sent me on a path of almost daily adventure. It taught me that there is nothing so frustrating in life as an opportunity that is not used to full advantage. My advice to you is that you should never regret what you do, only what you don't do.

As was the way of things at the time, I had spent the last two years of my law degree working for a firm of solicitors as an articled

clerk. The work was effectively full time and one was expected to study full time as well. I received \$33.50 a week before tax. They were the type of working conditions that Anthony Ashley Cooper, the 7th Earl of Shaftsbury, had fought successfully to eradicate in the mines and mills of England more than 100 years before. I temporarily formed the view that the practice of law as a profession was not for me. I therefore joined the law faculty at the university of New South Wales where I taught for some five years. It was during that time that I discovered that I really did want to be a lawyer in active practice. I came to the bar in 1977 and worked as a barrister for the next 30 years. I am therefore not accustomed to speaking in public – for free!

It is not advisable to tell lawyers jokes on occasions like this. I remember our own Chief Justice speaking about this once. He referred to the practice, when addressing a mixed audience of lawyers and non-lawyers, to tell the usual kind of lawyer joke about lawyers who are nasty, greedy and unethical. He said he had stopped that practice because the lawyers in the audience didn't think the jokes were funny and the non-lawyers didn't realise that they were jokes

It is a wonderful privilege for me to have this opportunity to address you today. I know how hard you have all worked and what pressures you and your families and friends have endured. Today is a day therefore of relief and celebration. It is also a day for reflection and decision. Many of you will leave here and enter the world of the law. Some of you will become solicitors and some of you will become barristers. This may not happen immediately.

Some of you will go into commerce or journalism or the public institutions of government. You will all take with you a precious understanding of the fundamental principles that guide the society that we live in, including the rule of law, due process and the right to a fair trial, the right to silence and the privilege against self-incrimination, the presumption of innocence and proof of guilt beyond reasonable doubt. These are things that we often take for granted. We must not do so. The line between order and tyranny is very thin and very fragile. The people of Fiji and Pakistan and Zimbabwe will confirm this. Any country that dismisses its judges is destined for chaos.

We are very fortunate in this country to have a legal system, which is second to none in the world. It is underpinned by these fundamental and interlocking principles. If these principles are, or if any one of them is, lost or discarded, we will also lose the fundamental protections we enjoy as citizens in a free society.

One of the most significant problems facing our country today is what I choose to call "informed ignorance". It is a species of the aphoristic wisdom that says that a little knowledge is a bad thing. It finds succour in the ill informed opinions that parade as news and current affairs. It takes hold in the minds of politicians as if it were the word of god and it is beginning with steadily increasing frequency to manifest itself in controversial legislation that has the potential to threaten the very things we hold dear. It creates a dangerous chasm between truth and what is purveyed as truth.

Let me give you an example of what I mean. In the run up to every election in this state it is probable to a degree approaching certainty that all of us will be bombarded with campaign material promoting what will euphemistically be referred to as "the law and order debate". This will in fact be no more than a bidding war between opposing political parties to build more prisons and increase the length of gaol sentences. In the course of this debate someone will no doubt assert that stiffer penalties will deter criminals and that longer gaol sentences will keep the community safe. The media will run with this material and large sections of the public will accept it as the truth. It is not true. Local and international research has demonstrated for decades that the single most powerful factor in deterring crime is the prospect of detection. People are less likely to commit crimes if they think they are going to get caught than as the result of any perception about penalties or sentences that might apply to the crime in question.

I have appeared over the years in some cases which have attracted publicity. It is a sad fact that not much of what I read about these cases corresponded to what I knew to be the real facts. If our only source of knowledge about the law were the media we would all believe that no sentence imposed by a court in a criminal case is long enough or harsh enough. We would also presumably believe that all judges and magistrates come from privileged backgrounds, are overweight and out of touch with ordinary people, that victims of crime are the only important group in the criminal justice equation and that those acquitted by juries or released on appeal must have had either an incompetent jury or the benefit of some immoral legal technicality. We would all begin

to accept that anyone who belongs to a motorcycle club is to be so feared as to warrant the enactment of special legislation and we would also be encouraged to believe that if a juror in a serious sexual assault case wants to go to the scene of the crime to conduct his or her own scientific test or experiment while the case is still running, then that is pretty much okay.

It is reassuring for me as I look around this beautiful room to see the faces of so many people whose parents or grandparents were not born in this country. My own mother was born overseas and came here as a young girl searching for a better life. It is one of the most wonderful things about this country that we have a diversity of cultural and ethnic and religious influences that was so lacking until the second half of last century. Indeed, it is something that I marvel at every time I come to one of these graduation ceremonies and listen to the names of the candidates as they are read out. I often wish that my own rather boring name had the romantic and exotic sound of some of the names we have heard this afternoon. I also see these diverse influences every day in my court where litigants and practitioners alike from all over the world appear without anyone thinking twice about it. My own tipstaff who graduates here today is herself from the Ukraine.

In these circumstances it troubles me greatly why it should have become a matter of such apparent significance that a handful of frightened and desperate people should want to come and settle in this country fleeing atrocious conditions in their own lands. Our own government at one time even conspired to prevent them from making landfall here. This became the frighteningly named

"Pacific Solution". Much was made of the notion that the government would choose who came here and on what terms. There was promotion of a fear that so-called "illegals", another disgraceful term, might be gathering to overrun our shores. More recently we have had the unseemly debate about push factors and pull factors. That is, are we now attracting more asylum seekers because our policies are more humane, or is the state of the world producing more homeless and stateless people in need of refuge? Does it even matter! The very fact that our politicians seem to feel that they are required by the media to justify their policies in this climate suggests that we as a nation have very hard hearts indeed.

One of the more obscenely populist expressions that one hears these days is "Australian values". We are apparently expected to assess others by their adherence to these ill defined and ill understood concepts. We are told of the so-called importance of mateship, whatever that may be. As many of you no doubt will know personally, we even officially promote the ridiculous spectacle of demanding that prospective citizens undergo a test in which knowledge of such things as the name of our first Prime Minister or Don Bradman's batting average is said to provide some useful and valid basis for their acceptance or rejection. It would be humorous if it were not so sad. Although there is nothing humorous about the intimidating caricatures that parade bare chested draped in the national flag on Australia Day.

I was recently at a hospital in Sydney where a member of my family had been admitted. I was waiting in the emergency department when an Islamic woman and her husband caught my

attention. They were in distress because their young son had been injured. I offered to mind their other child whilst they consulted with a doctor. They were most grateful and upon their return we shared the happy news that their boy was alright. I did not observe there to be anything about their values on that day that were different to mine. Presumably they wanted to have a happy life and to bring up their children in safety. I did not need to know whether they came here as refugees, or migrated in an orderly fashion or were born here. The issue was irrelevant. I did not feel the need to be alert or alarmed. I was no more threatened by the woman's headscarf than by the one worn by the Catholic sisters who worked at the hospital. We need constantly to remind ourselves to believe what we see with our own eyes and what we know to be true rather than what we are told by those with a desire to promote an unidentified agenda.

As I said before I was a barrister for nearly 30 years. But from all the courts and other places in which I have spoken or appeared I have come to suspect that many people in a gathering such as in this room today will take the peaceful state of our society for granted. Fortunately, most of us have never been arrested without cause, or tortured, or imprisoned without trial or access to representation. It is not until your own son or daughter or husband or wife is in need of legal assistance that the ancient protections of our criminal justice system are fully appreciated and understood. Examples of this are always there to be seen.

Much publicity was given recently to a coronial inquest into the unfortunate death of a woman on a cruise ship. A photograph of a

group of men posing on the dockside before the ship left received much prominence. Some of the men in the photograph were mentioned regularly during the course of evidence taken at the inquest. Many of us will have been tempted to form views about what took place on the ship, and about the level of responsibility of these men, or some of them, for the death of the woman concerned. A prominent television current affairs programme even went as far, under the illegitimate cloak of investigative journalism, to track these men down with microphones and cameras and chase them into the recesses of their private homes and to embarrass them publicly with taunts that they were simply unable or wisely unwilling to answer. We have become a very selfish society in recent years and journalism of this type seems to strike a favourable chord with those of us who have an artificially inflated confidence that the same thing might not happen to us or to members of our family. When you leave here today to exploit your newly acquired skills in the law you will need constantly to bear these things in mind.

Those of you who are graduating here today are as important a group of university graduates as at any time or anywhere in this country. You have unprecedented access to all manner of information. The way that you process it can have a significant and profound influence on the single lives of isolated individuals and upon the collective lives of every one of us. To the extent that the criminal justice system, and those who find themselves caught up in it, becomes part of your stock in trade in the years to come, I would ask you to treat the public opinion that comes your way with informed circumspection. As Professor Henry Mayer used to tell

his students at this university in the 1960s, the news is what gets reported. Nothing qualifies as news before that occurs and nothing becomes news if it doesn't. The so-called refugee crisis may look to some like news but I am not so sure. All I ask is that you leave here with an understanding and appreciation of just how significantly what you do in your chosen careers can and inevitably will affect the lives of the people with whom you deal. It would be a sad irony if potentially new and valuable members of our nation who arrive here from failed states where the rule of law has perished, and after enduring extreme adversity, were to be left without access to the fundamental protections we all presently enjoy and which you as conscientious legal practitioners ought to be able to provide.

Congratulations and good luck.