

UNIVERSITY OF SYDNEY

OCCASIONAL ADDRESS

FACULTY OF LAW GRADUATION CEREMONY

6 MAY 2016

Professor Masters, Chair of the Academic Board, Professor Riley, Dean of the Faculty, Members of Faculty, graduates, distinguished guests, ladies and gentlemen.

I acknowledge the Gadigal people of the Eora Nation upon whose lands we gather today, and I pay my respects to their Elders, past and present.

I commence by expressing my gratitude to Professor Joellen Riley, the Dean, for the honour which she does me by inviting me to deliver this address.

I was a very average law student. I could never have guessed when I graduated nearly 40 years ago, that anyone could possibly think that my academic career at this University would see me return today to address graduating students.

I look around this magnificent Hall in which I regularly took closed book examinations which were the fashion of my time. It was here that, in a cold panic and sweat, that the insufficiency of my studies was laid bare. Here, I summoned up what little I knew of the law of torts, namely that soft drink manufacturers should not put snails into ginger beer bottles, and that woollen underwear manufacturers should wash their products before giving them to mature-aged men to wear. In contract law, I remembered something about carbolic smoke balls, but today I cannot tell what that was. I remembered clearly for my criminal law exam that even though you are hungry and shipwrecked and far from home, it was still a crime to kill the cabin boy so that you could save yourself from starvation.

There were other things which I learned, the significance of which eluded me then. Quite what a “springing use” was, and why the rule in Turquand’s case was ever created remain unanswered today. What did boiler makers and engineers have to do with the Australian Constitution? After all, weren’t they meant to engage themselves in the task of making boilers and engineering, not making law? These were all mysteries to me. I knew of them, but failed to appreciate their true consequence. I also failed to appreciate how my education here would lead to a life in the law which was characterised by interest, challenge, a variety of learning and a responsibility in society.

So now, as I look out to the new graduates, I wish to firstly extend to you my warmest congratulations upon your remarkable achievement in graduating at this

University and from this Faculty. You are now part of a relatively small group of people who have graduated in the Faculty of Law at the oldest university in Australia. Graduates in law have preceded you for well over 100 years.

You join a remarkable group of people privileged by their tertiary education. One quarter of the Prime Ministers of Australia have graduated in law from this University. The first Prime Minister of Australia, Edmund Barton, and the current Prime Minister are fellow faculty alumni. I challenge each of you to become our Prime Minister in the future. After all, each of you has the intellectual capacity, but who will use their innate leadership skills to lead this country, or the country of your birth.

With the privilege of your tertiary education, and with your membership of this relatively small group law faculty alumni, comes great responsibility and that is the mantle that you accept today with your graduation.

Whether you choose to practice law, or engage in commerce, public service, not to mention academia, or any of the many avenues into which you may go, you will always have an education in the law. You will be part of a group of people in our society who understand the law, and who are expected to respect the Rule of Law and its central role in a just and democratic society. The Rule of Law plays an important part in everything we do, every day. Whether it is a backyard dispute over a dividing fence, which seems trivial to many, but important to the neighbours, through to whether governments ought be entitled to compulsorily detain members of the community who have committed no crime, but because of fear that they might, there are many ways in which the Rule of Law interacts with our everyday lives.

As you go forward just remember that if you see or hear the Rule of Law being discarded by individuals, overridden by a government, exploited by the strong against the weak, and you walk by and close your eyes to it, or you refrain from speaking out, then from that moment you accept the weakening of the Rule of Law and its ultimate demise. Do not walk past any breach of, or inroad into, the Rule of Law and ignore it, because it is essential that it be constantly maintained and strengthened so as to ensure a just society.

I particularly wish to acknowledge the efforts of each and all of the families and friends of the graduates present here today to witness this ceremony. As much as

the graduates themselves have sat for their exams and attended to their assessments, I very much suspect that their parents, families, siblings and close friends have sat through those exams in their own minds. Today is a day when they can at last relax and take pleasure and pride in their achievements of successfully ensuring that the graduates have reached this day.

The law is far from being a dull and limiting career. To the contrary, it is a career which opens up an extraordinary range of endlessly fascinating topics and one which includes constant learning.

I practised as a barrister for 32 years before being appointed to my present role.

I was often asked to describe the nature of my practice. Did I specialise in income tax, was I a criminal lawyer or what was it that I did. Often I was asked these questions by people who were unfamiliar with what barristers did and generally with what lawyers did. I found that a hard question to answer. On one occasion my wife, who is also a graduate in law from this University, said that my practice was best described as catastrophic because I dealt with floods, fires, pestilence, earthquakes, landslides and plague-like events. She has always been very good at keeping me grounded. And she was right.

In the course of my catastrophic practice, I came to deal with public inquiries and cases which arose out of events which were catastrophic for individuals and for the community generally.

I learned how it is that the Red Cross Blood Bank works. I had to learn about the intricate operations of blood banks because during the AIDS crisis in the 1980s, and the Hepatitis C crisis of the 1990s. For the patients who received one of these viruses in their blood transfusions, it was indeed a catastrophe.

I learned about the need to engineer flood barriers to particular dimensions in order to stave off not just the predicted heights of floods in western NSW, but what the flood levels might be in the distant future. For the citizens of Nyngan whose whole town was inundated, that flood was a catastrophe, but for me it required learning about civil engineering and all of those things I had avoided learning at university.

In a series of large class actions I learned about the causes and effects of bushfires. It meant learning about vegetation, the cycle of the life of our forests and national parks. It meant learning about whether planned burn-offs were ever capable of addressing the ever-present risk of bushfire. It meant learning about indigenous practices and recognising the great care which indigenous people brought to their lands. Those bushfires were catastrophic for people who lost their homes and their families.

I learned about earthquakes because one had a significant impact on the city of Newcastle, the geotechnical causes of the Thredbo Landslide and the type of road construction necessary for an alpine environment.

In the early parts of this century, there were two crashes on the Sydney train network which resulted in significant loss of life and many injuries. I was briefed to appear for the railway operating authority. That brief led me to learn about and understand an endlessly fascinating discipline involving safety management and the psychological theory behind managing the risks of organisational accidents within a highly complex operating organisation, as railways are. Until then, I had never appreciated that a train driver will regularly carry a load of commuters equivalent in number to the passenger load of three Jumbo jets. I developed a healthy respect for the skills of train drivers.

In the latter part of my career as a barrister, after a number of catastrophic clinical cases, I received a commission to inquire into the provision of acute care in NSW public hospitals. For a year, I spoke to hundreds of doctors, nurses, allied health workers, bureaucrats, and service providers for public hospitals. I spent a lot of time talking to patients and their families. I was trying to understand why it was that hospitals, which are enormously complex organisations, were not able to manage as well and as efficiently as the public expected. I learned, for example, that on any given day over 6,000 people came to Emergency Departments in NSW seeking treatment, there are 17,000 people in NSW hospitals each day and that every 30 seconds of every day, somewhere in NSW, an ambulance responds to a 000 call. But I learned of the stresses and strains on the system. I learned that the skilled workforce was not distributed equally throughout NSW. I had to learn about the economics of the public hospital system, and how it has come about that the

provision of the cost of treatment was rising at a rate which the community could not afford. I learned of how culture changes and where there is a need for culture change. And I had to come to grips with the concept of whether transparency of performance data was an enabler of reform or whether it would have a contrary effect. There can be no doubt that that year was, from a professional and intellectual perspective, extraordinarily satisfying. I certainly never dreamed, as a young graduate, that such an opportunity would be available.

Finally, I had the great fortune to conduct a number of criminal cases. These were often cases of trivial offences but which were enormously important to the individual concerned. Their complex lives and personalities were often the explanation for their anti-social conduct.

I continue to wonder why it was that my client who was accused of the first murder in 150 years on the Pacific paradise of Norfolk Island, had given a 2 hour confession on video to police describing his participation in detail in a murder, in circumstances where, when the evidence at the trial was tested against that confession, there was no identity of fact. My client was not confessing to the murder which occurred. I have never understood satisfactorily from an intellectual point of view, what stood behind those mysteries and vagaries.

My last encounter with the criminal law as a counsel was on behalf of two Qantas pilots flying a 737 Boeing plane. It was said that they had flown the plane in a way which was criminally reckless. How is it that one flies a 737? I spent weeks learning about that. Again I came to appreciate that the laws of physics were actually important. I came to appreciate that although I did not enrol in a science degree, that I just needed to know all of these things.

That is the variety of the law. Do not think that it is dry and dull. It is not.

You are fortunate to have had an education at this University which befits you to take a leadership role in our society. Will you add to the list of Prime Ministers who have graduated from this faculty? Will you be seen to be a leader standing up for the weak and disadvantaged? Will you be seen to be a leader in large organisations which embody values of justice and equity? Will you be a leader in standing up against any discrimination against those less fortunate than you in our society? I

urge you to take advantage of the example of your teachers, of the benefits of your education and, as I have said, the privilege which you have of being a graduate from this Faculty at this University.

I want to leave you with one final message, in my career I have never regretted anything which I did. I have only ever regretted things which I did not do, and opportunities which I failed to seize.

Shortly, you will walk from this Great Hall to the music of the grand organ. Treasure the moment. As you do, I encourage you to resolve to yourselves to take every opportunity offered to you, to make the most of your education, to engage in the variety of careers and interests which your degree in law opens for you, and to remember that to each one of you falls the responsibility to maintain, strengthen and defend the Rule of Law.

Congratulations and good luck.