

## OCCASIONAL ADDRESS<sup>1</sup>

Professor Bronitt, Members of the Faculty of Law, Students, Ladies and Gentlemen,

May I begin by expressing my support for the Uluru Statement from the Heart and my solidarity with all those people, Indigenous and non-Indigenous, who continue to work for its implementation.

Thank you for the kind introduction. I was honoured and surprised in equal measure by Prof Bronitt's invitation to speak to you this evening. Honoured, because it is a small and inadequate way of paying back the debt I owe to this law school for the legal education I received here, with my first year at this university being exactly forty years ago. Surprised, because you will come to know the law can be very hierarchical. A judge's commission specifies after whom the new judge takes rank and precedence and everything - from judicial processions to the supply of stationery - happens in the Court by seniority. I can only assume that Prof Bronitt had the misfortune of discovering that each of the 35 judges of the Supreme Court who rank ahead of me had prior engagements this evening. So needs must and I will do the best I can for you.

I very much doubt that any of you keeps a commonplace book. They are no longer very common. They were popular for hundreds of years in the literate West as a book into which people would copy quotes that struck them as important or uplifting. I don't think there is any great overarching theme in what I will say tonight. Instead, I will offer some diversions, reminiscences and commonplace observations that I hope you will find of interest, at least for the 15 minutes I have been allocated.

But before I get on with that, my most important task this evening is to congratulate each and every one of you who has been awarded a prize. To win a prize at this distinguished law school - one can even say "elite": and why not when the opposite of "elite" is "mediocre"? - is a signal achievement which implies that natural talent has been combined with good teaching and a lot of hard work to bring about an outstanding result. Well done to each of you. However, your success that we honour this evening invites at least three further observations.

First, success is rarely achieved alone. I imagine that for most of you there are family, partners and friends who have helped and encouraged you. On your

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<sup>1</sup> By the Hon Justice François Kunc, a Judge in the Equity Division of the Supreme Court of NSW, at the University of Sydney Law School prizegiving ceremony, 20 May 2021.

behalf, I would like to acknowledge them and hope that you will take the chance to thank them.

Second, each of you will have your own story and it is an unusual and fortunate person who achieves without overcoming challenges. Each of you has met the challenges of learning in the year of Covid. I have two children at university so I have seen firsthand what it takes to accommodate isolation and online learning.

However, I particularly want to recognise those of you who have overcome other obstacles. Perhaps you are the first member of your family to come to university. Maybe you have had to work two or three jobs to support yourself and others. There are likely to be among you parents and carers, with responsibilities to children, siblings or parents. I expect that there will be those of you who have come to university by different paths. For example, three people I have interviewed to be my tipstaff, including the successful applicant for next year, never finished high school, but left law school with first class honours degrees. Whatever your particular circumstances, only you will know who you are, but a special well done to you.

Third, I mentioned good teaching a moment ago. Again on your behalf, I would like to thank and acknowledge your teachers, many of whom are present this evening. Lawyers make the law, but lawyers are formed by their teachers. They, too, have had to “pivot” - to use the word of the moment - to meet the challenges of what might be called pandemic pedagogy. You are the beneficiaries of an outstanding intellectual community that, in the tradition of the great universities, requires dedication to both scholarship and teaching. This brings me to a diversion into the subject of law teachers.

Law teaching has undergone many changes over the years, not least in this University. Indeed, for its first thirty years or so, the role of the University of Sydney Law School was to run examinations for admission to the profession rather than actually to teach the law. But there was some teaching from the earliest times. In 1858, the Senate of this University appointed the English barrister John Fletcher Hargrave (father of Lawrence Hargrave of early Australian aviation fame) as Reader in General Jurisprudence. Hargrave gave what was probably the first law lecture in Sydney in that year.

He was a controversial figure. You have all probably been told that you will have several careers over your lifetime. That is nothing new. At various times, but I hasten to add not simultaneously, Hargrave was a foundation judge of the District Court, a Justice of the Supreme Court, a member of both the Legislative Assembly and the Legislative Council, Attorney-General and Solicitor-General. His friends acknowledged him as eccentric, others have referred to him as

unhinged of mind and a woman hater. This last quality was said to stem from the fact that before they came to Australia, his wife had him committed to a mental asylum, an incarceration he successfully challenged. The Hon Keith Mason AC, QC has, with some justification, described Hargrave's appointment as the Supreme Court's first Matrimonial Causes and Divorce Judge as most curious if not inadvisable, inappropriate and even misogynistic.<sup>2</sup>

Let me change eras and continents. Professor Charles Kingsfield was the imposing, if not terrifying, law professor created by John Jay Osborn Jr in his 1970 novel *The Paper Chase*, a *bildungsroman* based on the author's experiences as a student at Harvard Law School. It became a successful TV series and movie.

Professor Kingsfield is almost certainly based on a legendary Harvard law professor in the first half of the twentieth century - Edward H Warren. Warren could not be further in style and character from Hargrave. His approach is best summed up in the title of his book of memoirs and teaching advice. That title is "Spartan Education"<sup>3</sup>. It includes chapters such as "Effective Teaching Methods" and "Effective Juristic Style".

Warren's advice includes this: "The main thing is the training of students so that they may be enabled to become *accurate, clear, and terse* in their statement of facts and issues, and *sensible* in their exercise of judgment. It is wise not to try to do more for first-year students than to be accurate, clear, terse and sensible"<sup>4</sup>. I am not sure that ambition should be confined just to first year students. Judgments that ticked each of those boxes would be no bad thing.

In his chapter on effective juristic style he deplores "the literary style, or lack of literary style, of many judges, professors of law, and editors of, and contributors to, law reviews" and puts "sloppy thinking" as first in the sources of this trouble<sup>5</sup>. As a judge and the editor of a law journal I strive to avoid that cardinal sin and to the extent I succeed, I acknowledge my debt to my teachers at this law school.

When I was a law student, I do not recall any teachers either quite as eccentric as Hargrave or as scarily method driven as Warren. I have to say "quite as eccentric" because my late teacher and friend, the Hon Roderick Pitt Meagher AO, QC was certainly somewhere on that scale. Because the former practice was

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<sup>2</sup> Speech at the Supreme and Federal Court Judges' Conference, January 2001

<sup>3</sup> Edward H Warren, *Spartan Education*, Houghton Mifflin Company, Boston, 1942

<sup>4</sup> *Ibid*, 20. Emphases in original.

<sup>5</sup> *Ibid*, 29.

for law students to work in articles as they studied (something that was just ending as I started law school), the law school of my day was in Phillip Street across from the Supreme Court. Essays could still be submitted in handwriting by those who could not, or would not, use a typewriter (please google it if you don't know what a typewriter was). The regular lecture theatres were in the sub-basements and entirely devoid of natural light. I doubt they would satisfy any of today's expectation to provide an environment which encourages good mental health.

Again because of history and location, many of my teachers were practising barristers and solicitors, in addition to the professional academics. I was, for example, one of those lucky enough to be taught equity and trusts by R P Meagher and W M C Gummow (both then barristers) and J R F Lehane (then a partner in my future employer, Allen Allen & Hemsley). However, all of them, practitioners and academics, taught me not only law, but gave me to understand that to practice law is to be a lifelong student and equipped me to do so. They all fulfilled Edward Warren's first rule of effective teaching: "The giving of a substantial amount of reliable information and the training of minds of students are *both* important. But the instructor should lay about twice as much emphasis upon training as upon information".<sup>6</sup>

In my own commonplace book, I have recorded several quotes about the training of minds by the great American jurist and Supreme Court Justice Oliver Wendell Holmes. In an 1886 lecture marking the 250<sup>th</sup> anniversary of Harvard University and entitled "The Use of Law Schools" he observed that "nearly all the education which men can get from others is moral, not intellectual...the business of a law school is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers...The aim of a law school should be...not to make men smart, but to make them wise in their calling".<sup>7</sup>

Those of you who have seen the biopics about the late Justice Ruth Bader Ginsburg's time at Harvard Law School will understand why Holmes only refers to men, but we need to look past the gendered language to the enduring truth of the points he makes. They find their modern expression in Professor Bronitt's hashtag of #inspiringlegalminds, with its playful gerundive ambiguity of describing both the task and the product. Such minds certainly need to know the

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<sup>6</sup> Ibid, 20

<sup>7</sup> "The Use of Law Schools", Oliver Wendell Holmes, *Collected Legal Papers*, New York, Harcourt, Brace and Company, 1920, 36-37, 39-40.

law, but they also need to be trained to be wise. The prizes that will be presented to you this evening suggest you are well on the way. With that in mind, let me conclude with some commonplaces that might be of use as you continue the journey.

It is reasonable to infer from your achievements so far, that you will all find yourselves in some kind of position of leadership one day, whether of a team of one or two people, or of a large institution, firm or business. While my remarks are directed to you as lawyers, I suggest they will be equally useful to those of you who apply your legal skills outside the law. There are many definitions of leadership. My own effort is this: “the application of moral authority by example, encouragement and empowerment”. Those three “Es” are supported by four “Hs”: humanity, history, humility and humour.

The Roman writer Terence wrote: *Homo sum, humani nihil a me alienum puto* - "I am human, and I think nothing human is alien to me." The more you study humanity, the better lawyer you will be. So, read widely, do lots of things outside the law and have friends who aren't lawyers. To offer just one example, the recently retired UK Supreme Court Justice Lord Jonathan Sumption left a career as a leading historian to become a lawyer, but he has always said he was a better lawyer for his time as a history don.<sup>8</sup>

That seamlessly brings me to my second “H” – history. May I encourage you to read history, especially legal history, but also beyond? If you haven't studied much legal history, then please at least have a look at our own Sir Victor Windeyer's *Lectures on Legal History* and the recently published collection of his papers and speeches.<sup>9</sup> This will lead you on to more contemporary legal historians.

The law is a good place to learn humility because someone is always marking or settling your work: as students, your teachers; as solicitors, the partner; as partners, counsel; as junior counsel, your leader; as a silk, the judge; as a puisne judge, the court of appeal; and as an appellate judge, the High Court. And should any of you find your way to the High Court, rest assured that legal academics will always be there to ensure that you cannot take refuge in US Supreme Court Justice Robert Jackson's famous aphorism: “We are not final because we are

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<sup>8</sup> Jonathan Sumption, “The Historian as Judge”, *Law in a Time of Crisis*, Profile Books, 2021, 3.

<sup>9</sup> W J V Windeyer, *Lectures on Legal History*, Second Edn (Revised), The Law Book Company, 1957; Bruce DeBelle (ed), *Victor Windeyer's Legacy – Legal and Military Papers*, The Federation Press, 2019.

infallible, but we are infallible only because we are final”.<sup>10</sup> I have never met a law professor who believed in judicial infallibility.

May I also respectfully suggest that you not underestimate the legal skill and ability of those you work with and against who may not have attended this Law School? Here is something for your next SULS trivia night: what do Justice Robert Jackson (Nuremberg war crimes prosecutor, Solicitor-General, Attorney-General and United States Supreme Court Justice), Lord Patrick Devlin of the UK Court of Appeal, and Sir Owen Dixon and Michael McHugh of the High Court of Australia all have in common other than they were great judges who were not graduates of this university? The answer is that each of them either did not go to law school or, if they did, they did not attain an honours degree. One of the best things about a career in the law is that it is a great leveller where talent will out, whether you went to the best university or none.

Which finally brings me to humour, no doubt to the great relief of each of you. Enjoy yourselves and don't take yourselves too seriously. A lot of funny things happen in a career in the law. Have a laugh, always best at your expense and never at others'. There is much truth in the proposition that there are in fact only three or four real lawyer jokes and that all the other stories are true.

Most immediately, have fun tonight and take well-deserved pride in what you have done. I hope I will have the chance to follow more of your progress as you join a profession in which I have had the privilege to serve for 35 years, sharing with each of you the good fortune of having attended the University of Sydney Law School.

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<sup>10</sup> *Brown v. Allen*, 344 U.S. 443, 540.