30th Anniversary of the Law School at Western Sydney University

Parramatta Town Hall 24 July 2025

Chancellor, Vice-Chancellor, members of faculty, distinguished guests, ladies and gentlemen, it is a pleasure to be part of the celebration of the 30th anniversary of Western Sydney Law. The face of legal education and the make-up of the legal profession has changed beyond recognition over the course of my working life and for me this anniversary is a reminder of how those changes have been very much for the better.

When I started my law studies in 1969 at the University of Queensland, I was one of two girls enrolled in the fulltime law course. In our first year we studied the Criminal Code drafted by Sir Samuel Griffin. As part of our course, we were required to watch a criminal trial during the holidays and to write a report on it. The lecturer singled out Shan and me in class and told us that we must make sure we didn't go to the trial of a sexual offence. He explained that the sheriff's officer wouldn't let young women sit in the public gallery in a salacious case. I would like to tell you that we stood up for ourselves and demanded to know "by what power might a sheriff's officer exclude members of the public from the courtroom?", but of course we didn't.

The handful of girls in the higher years held a party to welcome Shan and me. I have two memories of that function; we were all drinking a wine that I don't believe is still on the market, and there could be a good reason for that, it was Blue Sparkling Porphyry Pearl. After a couple of glasses, a

girl in third year set out to reassure Shan and me that we would learn it was possible to study law and not to lose our femininity. Up to then it hadn't occurred to me that I might, but I've been anxious on that score ever since.

It was around this time, that the Justices of the High Court started to engage bright young lawyers to work with them for a year or two as their Associate. In my first or second year, I recall a notice being posted on the Law School's notice board advising that Sir Edward McTiernan was inviting applications for appointment as his Associate. The notice stated, in terms, that female law students should not apply. Sir Edward had served on the Court since 1930; he was a man of another time. The Court regularly travelled interstate on circuit and plainly he didn't think it seemly to be accompanied by a young woman. Again, it would be good to tell you that Shan and I objected to this flagrant second-class treatment but, of course, we copped it on the chin. This was before the enactment of Anti-Discrimination legislation at the State level and the Commonwealth's Sex-Discrimination Act.

It was inconceivable to me at the time that 50 years later I would be the senior puisne Justice of the High Court and in that capacity, it would fall to me to swear-in the first woman Chief Justice of Australia, Chief Justice Kiefel. In that year one of my two Associates was a very bright young woman graduate of Western Sydney Law. Her trajectory to her successful career in legal practice, after the award of the Medal in Law, has been a great deal more predictable than my own.

After two years at the Queensland Law School, I transferred to Sydney University. The Law School was then housed in an office block opposite the Law Courts Building in Phillip Street in the city. This was a time when many law students worked as articled clerks. The great majority of them were young men and they would come and go ostentatiously carrying files and briefs wrapped in pink ribbon and, overwhelmingly, they were very self-important. No one in my family had been a lawyer, I don't believe that my parents knew any lawyers. I really had no understanding of what it was lawyers did.

I worked for a time as a clerk to a large firm that appeared to do nothing but second mortgage work for a large finance company. This was at the height of the real estate boom in 1972. Files were distributed to the solicitors based on the initial of the mortgagor's surname. I found myself thinking "there's got to be more to life than this". I gave up my law studies for a couple of years during which I was involved in various causes. I worked at the Settlement in Chippendale, which provided programs for children living in the Redfern /Chippendale area. Many were indigenous and almost all came from very economically disadvantaged homes. When I told a fellow worker that I had completed three quarters of a law degree he took me to task for wasting the opportunity to become a lawyer and be of real assistance to the people in our catchment area. It says something about my lack of imagination that this thought hadn't occurred to me. But at least I took it on board.

I finished my course and, happily, not long after my admission as a solicitor, the Redfern Legal Centre opened, and I started my life as a

solicitor working there. It was the first community legal centre in New South Wales. The driving force behind its establishment was a group of very talented and progressive legal academics at the University of New South Wales, which then was a very new Law School. Among their number, perhaps the most actively involved academic was John Basten who in more recent years has served with much distinction on the New South Wales Court of Appeal. John had done post graduate studies at the University of Chicago where he had seen the establishment of store front law clinics and that example and the establishment of the Fitzroy Legal Service in Victoria was the inspiration for the Redfern Legal Centre and in a sense for Western Sydney University's Justice Clinic.

The legal aid landscape at the time was nothing like today, which is not to suggest that the provision of legal aid now is adequate, but the position was a lot worse 45 years ago. For those of us involved in the community legal centre movement at its inception they were heady times. I never had occasion to question whether the work I was doing was worthwhile. It was a general poverty law practice, tenancy, credit and debt work, domestic and family violence, minor crime, and mental health.

After seven years, I had become the senior solicitor at the Centre and, counter-intuitively, that meant I was doing a great deal more administrative work than casework. The Centre had a thriving publishing arm producing the Law Handbook, the Lawyers' Practice Manual and Streetwize Comics and rather than handling cases I found myself running a medium sized organisation with all the staffing and budgeting issues that entails. I enjoyed advocacy and I had run hearings in the local court

and in the district court, but it wasn't possible to develop further as an advocate without going to the Bar. And so, I did.

I enjoyed my life as a barrister. It might be one of the few occupations in which there is close to zero administration. I wasn't among the pioneering women at the Bar but when I commenced practice we were still viewed as slightly exotic. It was the same when I was appointed the Supreme Court there were three other women judges and over 50 male judges. In a speech that I gave to the Women Lawyers' Association not long after my appointment I made much of the fact that when I opened my court-issued computer the first security question it asked was, "what is your wife's maiden name". Just over twenty years later, following the enactment of the 'marriage equality' legislation, I was able to point out in yet another speech to the Women Lawyers' Association that that question was now an entirely politically correct one to ask judges regardless of gender. I won't go on beating this drum much longer, I'll just note my delight in learning at a function in the Bar Common Room earlier this year, that the current cohort of newly admitted barristers doing the Reading Course for the first time in the history of the Bar features more women than men.

I believe that it is a good thing for the judiciary to be broadly representative of the community it serves. And since as we used to say in the 70s "women hold-up half the sky", I think it good that we now have many women judges. But this is not to subscribe to the view that women may be expected to decide cases differently to the way male judges decide them. Judges may differ in the application of common law principle or the canons of statutory construction in ways that reflect differing judicial

philosophies, but it is true to say that the judges I worked with over my 22 years as judge faithfully sought to apply legal principle to the case in hand. Differences in the application of rules or principles tend to be within confined bounds. In practice, judges of widely differing backgrounds and philosophies hearing the same matter will commonly arrive at the same result. It would be troubling if it were otherwise. We can be rightly critical of the barriers to entry to the judiciary which existed for much of the last century but that shouldn't lead us to be blind to the impressive legacy we have inherited from the judges of that era.

I can't think of a better way to illustrate that than by reference to the decision of the High Court in 1934 in *Tuckiar v The King*[1]. Tuckiar, a Yolgnu man living in East Arnhem land was convicted before the Supreme Court in Darwin of the murder of a white policeman, Constable McColl and he was sentenced to death. Constable McColl had undoubtably been speared to death. At the trial two Aboriginal witnesses gave evidence of what Tuckiar had told them about the circumstances of the killing. On one account Tuckiar had seen Constable McColl having sexual intercourse with one of Tuckiar's women and that when McColl saw him, he fired his pistol leading Tuckiar to throw the fatal spear. An account that clearly raised issues of provocation and self-defence. The other witness, Parriner, said Tuckiar had confessed to speaking Constable McColl in circumstances that did not involve provocation or self-defence.

[1] *Tuckiar v The King* [1934] HCA 49; 52 CLR 335.

The protector of Aborigines arranged for counsel to represent Tuckiar at his trial. Unfortunately, both the trial judge and Tuckiar's counsel appear to have been more concerned to protect the reputation of Constable McColl than to ensure that Tuckiar had a fair trial. The judge summed up for a conviction in strikingly robust terms. Following the verdict of guilty, Tuckiar's counsel made a statement in open court designed to reassure the jury that their verdict was the right one. He said he had asked Tuckiar which of the two versions was true and Tuckiar said it was Parriner's account.

At the time, an appeal lay directly to the High Court from the Supreme Court of the Northern Territory. Tuckiar appealed against his conviction. The Justices were scathing about the conduct of the trial judge and defence counsel. They were unanimous not only in allowing the appeal but on the consequential order. Ordinarily, the Court would have directed that there be a new trial. But how could Tuckiar have a fair trial when his own counsel had publicly stated that Tuckiar had confessed his guilt? In the extraordinary circumstances, the Court held that it would not be possible to secure a fair trial, and it directed that a verdict and judgment of acquittal be entered.

The language of the judgments is the language of another era, which to our ears is suffused with prejudice and condescension. The Yolgnu are described as "uncivilised Aboriginals", Yolgnu women are referred to as 'lubras' and their children as 'picanninies'. All five Justices who decided the case were male, white and privileged and there's no reason to think that they didn't share all the misconceptions and prejudices of privileged

white men of 1930s Australia. My point is that their legal training and adherence to common law principle trumped those prejudices. At a time when in the US the lynching of African Americans on the slightest suspicion of wrongdoing was commonplace, the High Court of Australia, entered a verdict of acquittal in favour of an Aboriginal man who had undoubtably speared to death a white police officer because that man had not received a fair trial according to law and his counsel's wrongful disclosure of his client's guilt meant that no fair trial could be held.

Several years before the establishment of Western Sydney Law, the Commonwealth Government commissioned a report on legal education conducted by professors from the Law Schools at ANU, Monash and UNSW. The authors concluded that there was no need for the establishment of more law schools since the existing faculties were capable of supplying the needs of the profession. The Australian Law Reform Commission was later to point to a range of factors which falsified that assumption. However, even if these factors hadn't resulted in a greater demand for practising lawyers, I would have supported the initiative to set up Western Sydney's Law School. Not everyone who undertakes a degree in law will go on to practice. Many will choose to work in commerce, government service or the media. Nonetheless, the study of law will prove to have been benefit to them and to society more broadly. It gives the student a sophisticated understanding of our federal system of government and the separation of powers for which our constitution provides.

Australians tend to be a bit phlegmatic about our constitutional arrangements. Following the retirement of Justice Mary Gaudron, the first woman to be appointed to the High Court, the Bar Association commissioned a painting of her. It's a fine and characteristic portrait of Mary with her index finger raised to make a point. In what I suspect may have been a bit disappointing for the artist, Mary insisted on having the words of s 75(v) of the Constitution stencilled across finished painting: *the High Court shall have original jurisdiction in all matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth*. As she pointed out at the unveiling of the portrait, the language of our Constitution is not Jeffersonian – it's the technical language of lawyers. But sec 75(v) embodies a very important constitutional protection: person may invoke the original jurisdiction of the High Court to restrain a commonwealth officer from exceeding his or her powers or to compel a commonwealth officer to perform his or her duty according to law. It is a provision that does not have a counterpart in the better-known constitutions of other liberal democracies.

A few years ago, the Commonwealth Parliament amended the *Australian Citizenship Act* 2007 (Cth) to confer on the Minister for Home Affairs the power to take away the citizenship of a person whose conduct in the Minister's opinion demonstrated that they had repudiated their allegiance to Australia. The power could only be exercised if the person had dual citizenship, a recognition that Australia is a signatory to an international convention that obliges us to grant nationality to a person born in Australia who would otherwise be stateless. Nonetheless to take away an Australian's citizenship is no small matter.

In July 2021, the Minister determined that Delil Alexander, a man who was born in Australia, ceased to be an Australian citizen. Mr Alexander had acquired Turkish citizenship at birth under Turkish law as his parents were both Turkish citizens. In 2013, Mr Alexander had travelled to Turkey and from there he entered Syria. ASIO reported that it was likely that Mr Alexander had joined the Islamic State and in ASIO's estimate it was likely that he had engaged in foreign incursions. Mr Alexander had been arrested and held in the custody of Syrian authorities. He had been placed in a prison in which there were reports of serious human rights violations. Mr Alexander's Syrian lawyers reported that the fact he was no longer an Australian citizen was a reason for his continuing detention.

Mr Alexander was able to commence proceedings in the High Court claiming a declaration that the provision under which the Minister acted was invalid in its application to him and seeking a constitutional writ prohibiting the Minister from giving effect to his purported decision under it. The case was argued in February 2022 and in June 2022 the High Court declared that the provision is invalid and Mr Alexander is an Australian citizen. The decision turned on the separation of powers under our Constitution. The invalidity arose because the provision reposed in the Minister the exclusively judicial function of punishing criminal guilt. The joint reasons stated[2]:

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[2] *Delil Alexander (by his litigation guardian Berivan Alexander) v Minister for Home Affairs & Anor* [2022] HCA 19; 276 CLR 336 at [73] per Kiefel CJ, Keane and Gleeson JJ.

> "[T]he fundamental value accorded to the liberty of the individual provides the rationale for the strict insistence in the authorities that the liberty of the individual may be forfeited for misconduct by that person only in accordance with the safeguards against injustice that accompany the exercise of the judicial power of the Commonwealth."

We are living through a period of disruption in a number of democratic countries brought about by the rise of populist leaders, leaders who claim to channel the will of the people, as though the people have one will, leaders who resent any check on their executive power. Leaders who seek to undermine the legitimacy of the judiciary labelling judges as members of an unelected elite. Populist arguments can be seductive, but they are profoundly wrong. Executive governments in liberal democracies are elected to govern subject to the law. We are fortunate that judicial review of executive action is hard wired in our Constitution.

Lawyers' insistence on procedural fairness and the other indicia of a fair trial can seem overly elaborate in what are perceived to be clear cut cases. The landmark decisions that have defined our liberties have often involved individuals who are deserving of little public sympathy. Individuals and groups occupying the mainstream, by and large, don't need the protection of the law but a civilised society respects the rights of all its members. Alumnae of Western Sydney Law, who represent the breadth of the diversity of Australian society are singularly well placed to be active in informing the public debate about the importance of the protections the common law and our constitutional framework secure for all of us.

All that remains if for me to congratulate the faculty, the alumnae and current students on this milestone for Western Sydney Law.

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