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SOUTHERN CROSS UNIVERSITY

GRADUATION CEREMONY

SATURDAY 27 APRIL 2002

MEDIA AND COURTS - THE DILEMMA

The Hon Justice Michael Kirby AC CMG

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CONGRATULATIONS TO GRADUATES

I thank the Chancellor and the members of the University for inviting me to participate in this graduation ceremony.

This is my first visit to the University, although the fame of its School of Law and Justice is well established. I am proud to be associated, on the editorial board of the *Criminal Law Journal*, with Professor Stanley Yeo, a world respected expert in criminal law. I have enjoyed frequent association with Professor Brian Fitzgerald, also with a global reputation on the interface of law and information science. Professor Fitzgerald and Richard Harris have kept me informed of the law programme of this University. They and other

* Justice of the High Court of Australia.

members of the Faculty are welcome guests at the High Court in Canberra.

I support regional and new universities and their law schools. Every year I recruit my Associates according to principles of equal opportunity. But other things being equal, I will favour appointees from outside the Sydney/Melbourne axis. At the moment, my male Associate, Mr Bruce Leishman, is a graduate from Murdoch University in Western Australia. My female Associate, Ms Elisa Arcioni, is a graduate from the University of Wollongong. Both of them are the first graduates from their universities to be appointed as High Court Associates. This is a sign of the coming tide of talent. In today's world, it is ability that matters. Our inter-connections are on the Internet, not in the Old Boy network. I have had some excellent applications for appointment as Associates from Southern Cross University. Before I hang up my robe for the last time, or appeal to the High Court in the sky, I hope to recruit a graduate of this University. You can be proud of the achievements of your University. They come together on an occasion such as this. You are all permitted a moment of pride and self-satisfaction.

An occasional speaker is obliged to say a few things. But the speech must be short. And that presents terrible difficulties for a lawyer, and especially a judge.

I must not only congratulate the graduates but also their families and friends who supported them on their journey to this moment. For most people, a university degree or diploma is a family effort. For many who are graduating, this will be a first such ceremony for your family. Of the present Justices of the High Court none was the child of a university graduate. This is a strength of Australia. Education, including higher education, belongs as of right to all who have the ability.

Think, at this moment of success, on those who are less fortunate. Consider your first class in kindergarten or primary school. How many of those who sat in that classroom have made it to a graduation ceremony like this? You know that you are no better than the others. Indeed, the prize of education imposes upon you the obligation to remember those who have no degrees. A degree is not just a ticket to a high income. With privileges in life come duties. Always remember the disadvantaged. Practise equal opportunity. Rid your minds of unfounded prejudice. Be the vanguard of a better, juster and more compassionate society.

Never forget that, in this University the legal faculty is called the School of Law and Justice. Those added words "and Justice" carry with them a challenge. Law is not enough. Justice is the banner under which all Australians should walk. Justice for women. Justice for children. Justice for the old. Justice for indigenous Australians. Justice for other people of colour. Justice for gays and

lesbians. Justice for refugees. Justice for all good people. Not just for the rich, the popular or the majority. Justice for all.

COURTS & MEDIA

This ceremony involves graduates from two Schools within the Division of Arts. Not only the School of Law and Justice but also the School of Multimedia and Information Technology. It is a natural combination. Information technology has produced amazing advances during my lifetime. It has the potential to reinforce law and to strengthen justice.

For example, it is now more difficult to hide the wicked acts of oppressors, the cruelty of war, the deceitfulness of leaders and the abuses of human rights that once were hidden because we simply did not know. In a real sense, the fall of the Berlin Wall was a result of the new technology. It became impossible to closet millions of people behind a physical wall that was so easily penetrated by informatics. So it is with the remaining autocratic societies or unjust laws at home. As more young people gain access to the Internet, it will become impossible to control their minds by the means of the past. The explosion of modern media also represents a healthy antidote to the controlling power of the press barons of the past. We must ensure that it remains that way. Diversity of opinion defends freedom.

It may well change in the future that will be shaped and created by the graduates who leave this ceremony today. But it remains true today that most Australians receive their knowledge of the world, of their country and local community, from the national daily newspapers and the television and radio outlets that dominate the provision of news. These are the major sources of information and opinion for most of us. They are therefore the outlets that provide the data upon which the representative democracy, established by the Australian Constitution, operates in practice.

Yet in the High Court in Canberra, I watch the lack of attention to the decisions of the Court. My reaction is not one of hurt feelings. As a judge of nearly thirty years, I am beyond that. But if your job is that of upholding the Constitution, inevitably you spend a great deal of your time with that document. Reading it. Reading between the lines. Thinking about its meaning and operation. Considering how its brief language can operate with law and justice for all Australians in the age of cyberspace.

The representative democracy of our Constitution is not confined to a ceremonial visit of electors to the ballot box each triennium. As I read the Constitution, it envisages a system of government with all power deriving ultimately from the people. It therefore contemplates an informed electorate that has the means to keep in touch with important events that concern the government of the country.

In Australia, government is performed, for the most part, in Parliament, in the ministries or in the bureaucracy. But important questions affecting the Constitution, the common law and the principles by which we live together are also handed down every other week in Canberra. With few exceptions, these important decisions of the High Court sink without trace. Last year, the American trial of Timothy McVeigh attracted hugely more attention in the Australian media than any of the decisions of our courts, including the High Court. The global dimension of multimedia and information technology has meant that, in large part, we have become a segment of the media of the United States. We should resist this tendency. The United States is a different society with different values. We have our own stories. Some of them, quite interesting and important, are found in the decisions of the courts.

A few years back several of the major news outlets employed dedicated journalists who covered accurately the decisions of the High Court. Today, virtually no newspaper and no television network has such a special correspondent. The result is that the news coverage of the third branch of government in Australia is largely handed over to political correspondents based in Canberra. When, occasionally, they glance down the hill from Parliament House to the High Court, they do not adjust their spectacles. All too often they think that our work can be reduced to the banalities of personality conflicts. The hard yards of understanding, analysing

and constructively criticising the decisions of the High Court are, it seems, often beyond the interest or talent of the Australian media.

To some extent, the blame for this neglect must be shared by judges themselves. Their reasons are detailed. They make few concessions to easy communication. They are in writing, not oral. There are no summaries. No interviews. No press conferences. No "angles" or "spins". Decisions tend to come down together, often in large numbers. It is all too difficult to digest and communicate them. Perhaps the journalists are afraid of making mistakes. Perhaps it is easier to use emailed press releases from others to meet the deadlines and grab a byline.

Should our courts make it easier, so as to reach out, through modern technology, to the people whom they serve? Should our highest court, like the Supreme Court of Canada, approve a dedicated television channel which covers the arguments and decisions of the top judges? Should the High Court provide summaries of its decisions so as to encourage more and accurate coverage of its important cases? Would that attempt make any difference in a news media increasingly dedicated to conflict, mixing fact and opinion and pandering to the views of puffed up individuals?

The Supreme Court of the United States has resisted television cameras in court. Even when *Bush v Gore* was argued, the cameras stayed outside in the snow. But the Supreme Court judges in

Washington in 1973 appointed a public information officer. In his recent autobiography, the first such officer-holder has revealed his often discouraging experience¹. With some exceptions, journalists were as unaware as most citizens of how the apex court functioned. Most were just not interested to cover the actual work of the court. They wanted information, often trivial, on the habits of the Justices. Is there a risk in engaging such a person - that their presence will encourage more personality coverage rather than more substance? Personality and entertainment rule. All too often Hollywood trumps law and justice. In America, Judge Judy is the nation's highest judge. In Australia perhaps it is the League Judiciary. If you read or watch the Australian media there is probably more coverage of that judicial organ than of the nation's constitutional court.

Does it matter? Is it a happy land that knows nothing, and cares less, about the decisions of the third branch of its government? Now, the High Court is fighting back. Its decisions are on the Internet within ten minutes of delivery. They reach out directly to all citizens who are interested. Yet the moulders of opinion and the manipulators of power could not, it seems, care less. The decisions, big and small, mostly sink like stones - without trace.

¹ B McGurn, *America's Court, the Supreme Court and the People* Fulcrum, 1997, 167-174.

If our concern, as judges and citizens, is with law and justice, we must make sure that information technology is more than a medium of entertainment. But can the tide be turned? Can the courts bring their important doings into the homes of the nation? Can multimedia and information technology come to the rescue of law and justice? Or is the new technology the ultimate nemesis of the judges, condemning us to the irrelevancy of trivia whilst the truly important things grab headlines and sell media space and time?

It is good that at this University these two Schools should graduate together. The future of democracy in Australia and everywhere else depends upon the way in which each serves the community. If law serves only the rich and media and its technology are the new opiate of the poor, civilisation will be in danger. But if law serves justice and if media helps to bring law and justice to all people, civilisation will be advanced.

The choice will depend, in large part, upon the graduates whom we send forth today. May their journeys be fruitful. May their lives be crowded with happiness and a sense of purpose that comes with their degrees. May they bring their skills, old and new, to the benefit of all citizens and enrich our representative democracy with choice, diversity and knowledge.