

MELBOURNE STATE COLLEGE, 4 MAY 1979, 7 P.M.

OCCASIONAL ADDRESS BY THE HONOURABLE MR. JUSTICE KIRBY,

CHAIRMAN OF THE AUSTRALIAN LAW REFORM COMMISSION

AT A CEREMONY OF CONFERRING OF AWARDS

TEACHERS IN A TIME OF CHANGE

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INTRODUCTION AND CONGRATULATIONS TO GRADUATES AND DIPLOMATES

On an occasion such as this a speaker in my position is obliged by tradition to do certain things. Because they have to be done, makes them no less pleasurable.

The first is to express a proper sense of the honour which it undoubtedly is to be invited by this distinguished institution to take part in this happy occasion. There are few obligations of public life that are more pleasurable. For a mere New South Welshman, and an officer of the Commonwealth to boot, it is a special honour to be here with you in Wilson Hall in the heartland of Victoria.

The second thing to be done is to remind ourselves of the significance of this occasion. We gather here tonight in a ceremony, at least as old as the Christian era, to place before the international community of scholars, new recruits who have earned their laurels by a period of dedicated application to the study of knowledge. Many have previously completed a degree within a university or college of advanced education or are diplomates who have pursued a course of tertiary education and have, as it were, come back for more. Inescapably, in the acquisition of knowledge, each and every

one who has come forward tonight, to receive their award, has acquired, in the process, discipline and a measure of wisdom. Each is sent forth by the college to the community of this State, with the commendation of their diploma or certificate. Each joins the international community of tested scholars : taking their place behind the distinguished and famous men and women who have previously gone on to serve the community and the country in their chosen professions. Many of you will know that the precise form of this ceremony traces its origins to the medieval church and the laying on of hands, by which authority was transmitted from one generation to the next. On an occasion such as this, it is important and proper for us all to pause and reflect momentarily upon the seamless fabric of man's scholarship.

Thirdly, it falls to me to congratulate the new diplomates and those to whom the certificate has been given. I will not disguise the sense of community which I have with all of them. It does not seem very long ago that I was sitting in a like position to them, listening to an occasional address and wondering precisely what the future held in store for me. There is no escaping it. An occasion such as this is a watershed in the life of these scholars. It is a time when at least one period of concentrated study is over. It is therefore a time when the scholar is permitted a modicum of self congratulation.

I am not so far removed from your position to have forgotten the rigours that are imposed upon those who pursue tertiary education today. When nostalgia sets in, it may seem an idyllic time. But in many ways tertiary education today has become more difficult than it was. There are quotas to be met. There are restrictions to be overcome. There are rules against failure to be circumvented. Always there is competition to be faced. There are limitations and contractions in the resources made available to our tertiary institutions. Most unhappily of all, there is no guarantee of employment for all at the end of the hard road of disciplined education.

All of these problems and hurdles have doubtless taken their toll, in one way or another, upon the men and women who sit in this hall tonight.

In most cases the burden has not been borne singly. The family, parents, friends, husbands and wives, children and colleagues have all played their part. They have helped to share the burden. The reward is here tonight. This is an occasion for proper, shared pride. That is why in occasions such as this at universities and colleges of advanced education, we involve the families and friends of the students in the community of scholars. It is a recognition of the contributions which they have made to the achievement that is signalled by this occasion.

On behalf of the community, and on my own behalf, I extend congratulations to all of those who have ascended this platform. I also extend thanks to those who helped them on their way. For many, this is a natural end to the long processes of orderly, structured and tested education that began somewhere in a local primary school. Learning and education in its fullest sense will go on without abatement. But for most, I imagine, this is a time to pause and expect, as I now give, the hearty congratulations of the community.

A NEW AGE OF REFORM

Having discharged my primary tasks, it is now my function to say something of general significance. The only requirement is that I must be brief in the process. For five years, I sat as a Member of the Senate of Sydney University. I attended in that time at least thirty ceremonies such as this. Thirty times, an occasional speaker rose in his place to address those assembled in a university hall which some regard as equal in splendour to this one. Thirty times, an address of significance was given. It is a sobering thought to me as I stand here before you tonight, that I cannot call to mind a single utterance of those thirty worthies: not one item of distilled wisdom; no aphorisms; not a single jest of any of those thirty occasional speakers. Cicero told the Romans that he preferred tongue-tied knowledge to ignorant

loquacity. People in my position do well to observe his maxim.

As you have heard, I am Chairman of the national Law Reform Commission. Our task, in matters that are referred to us by the Federal Attorney-General, is to suggest to the Commonwealth Parliament, laws that are in need of review, modernisation and simplification.

Reform does not necessarily mean change. Indeed it implies some degree of conservation. To "reform" presupposes the preservation of that which is being reformed : saving and adapting it to new circumstances.

Every informed citizen, but especially those who are or will be engaged in the business of education and the dissemination of knowledge and information, will know that the law and our society are in the throes of a major period of reform. Every so often a free society goes through periods of rapid change. It is an uncomfortable time of instability and disruption. But out of it comes, generally, improvement and advance.

SCIENCE AND TECHNOLOGY

One of the most potent forces which necessitates change in the law is the advance of science and technology. Nowhere is this advance more noticeable today than in the information sciences. One of the tasks that has been given to my Commission is the design of new laws that will protect the privacy of the individual. As a consequence of this task, the Commission has had to examine the exponential developments in computerisation of information systems and the integration of such systems by radical changes in telecommunications.

These changes are important for privacy because the fear has been recognised in many countries with systems of government similar to our own, that the importance of the individual may be lost in information systems which integrate and retrieve data about all of us : cradle to the grave. The

right to call some aspects of our life "private" and to supply information to a limited number of chosen and known recipients, and on a limited basis only, is part and parcel of what we would presently regard as keeping control over the perceptions which others have of us.

No section of society will be free from the impact of the new information sciences. But educators and librarians have a particular reason to pay close heed to these developments and to consider their consequences for the kind of society we live in. I have no hesitation in predicting a number of important developments :

- * 1. The close integration of the telephone and computer systems of telecommunications and teleprocessing and the rapidly increasing use of satellite transmission, microwave, laser and the like.
- * 2. The rapid substitution of electronic media for paper records. Already we are witnessing beginnings of the cashless society. But it will go much further. Most of us will live to see electronic delivery of mail, the delivery of newspapers and magazines by facsimile on the home television screen, and the expansion of television to allow multiple channels to link home terminals with central stations.
- * 3. The re-organisation of information storage and retrieval systems, based on the computer, will come to have an increasing impact on universities, schools and libraries. The advantages of speed and interactive network communications will have tremendous implications, as I am sure you have all gathered, for libraries and schools of the future.

The expansion of educational systems, through computer-aided instruction and the use of satellite communications will not be limited to rural areas or under-developed countries. The implications of this revolution for what we teach and how we teach it, for what information we store and how we retrieve it, is only now being dimly perceived. I predict that the changes will come upon us more rapidly than we expect. It will be an uncomfortable time to be a lawyer. I fear I must predict that

it will be equally uncomfortable to be a teacher or a librarian in a time when the medium of instruction and communication is changing so rapidly.

ACCESS TO EDUCATIONAL RECORDS

As if these changes in technology were not enough, I feel bound to add to them changes that will affect the educator and which arise from differing social attitudes. Mass education and mass information have raised community expectations. In the United States a Family Educational Rights and Privacy Act was passed in 1974. It provides that no federal funds are to be made available to any educational institution which does not provide parents with the right to inspect and review the educational records of their children. Each agency or institution is obliged to establish procedures to facilitate this right. Students over the age of 18 years are given the right themselves. All of this has been done in the name of privacy protection. Because important decisions are made on the basis of records, it is said that parents and school-age students should have access to those records and means to ensure the quality, accuracy and up-to-dateness of the information. A recent report in Britain has proposed that a special code should be drawn up, ultimately enforceable in the courts, to permit people affected by them to know the contents and use of education records. The day of the secret report card and the unexaminable and prejudicial personal evaluation may be drawing to its close. Through the privacy legislation of North America and Western Europe is a common thread. It is the right of access to personal information by any individual the subject of it.

EXOTIC DEVELOPMENTS

One of the most exotic developments affecting educators in the United States is the incipient growth of so-called "educational malpractice" suits. Consider these cases :

- * 1. In 1959 Columbia University sued a student and his parents to recover \$1,000 for tuition fees owed to the University. The student filed a

counter-claim demanding damages of \$7,000 alleging that the university "had represented that it would teach the defendant wisdom, truth, character enlightenment and understanding, justice, liberty, honesty, courage, beauty and similar virtues". It was alleged that damages were owed because the university was guilty of misrepresentation. It had failed to teach these things.

*2. In 1972 a young man with an above-average I.Q.

graduated from a San Francisco Public

School after having attended the school for

twelve years. It was found that he had a

reading ability of a fifth grade level child.

The student, alleging that his inability to read

and write resulted from the negligence of his

teachers, sued the school and its teachers to

recover damages of over half a million dollars.

Now, in both of these cases, the student failed. Nevertheless, legal commentators have made it clear that traditional legal principles provide an ample basis for fashioning a viable cause of action enforceable in the courts, against teachers and schools for incompetent or out-of-date teaching. [124 University of Pennsylvania Law Review 755 at 804 (1976)]

Now, I am sure that there is little chance of a disaffected student and his enterprising lawyer being able to mount a successful case against any of those who have received their diplomas tonight. But the cases I mentioned illustrate the fact that the boundaries of the law are expanding and the use of courts to enforce high standards of up-to-date tuition cannot be entirely ruled out. The possibility takes on a special significance in a time when the use of last year's teaching notes will become increasingly unsafe. And what I have said in relation to teachers may apply with even greater force to librarians. I am sure that the Index to Legal Periodicals would produce any number of articles on "librarian malpractice". However, whilst my librarian was able to turn up abundant material on claims against teachers, she has shown self-protective delay in finding literature on librarian negligence and malpractice suits.

CONCLUSIONS

Were there time, I could address you on many of the other issues that concern librarians and educators. Amongst the most vexed in an age of rapidly changing social values is the question of the role of the teacher with respect to the discussion of issues that raise the fundamental values of the individual and of our society. The extent to which schools should permit or even encourage discussion of such issues as religion, politics, sex, drugs, the alternative lifestyle are all issues worthy of consideration and having distinct implications for the law and its reform. But an address on these subjects would abuse the occasion and sorely test your patience tonight.

Can I end on a personal and somewhat more reassuring note? Vicariously, for all those who, like me, owe so much to their educators, I think it appropriate to put on record the debt we all owe to that hardy band of teachers, librarians and others who, against all odds, inculcate in succeeding generations of Australians that greatest virtue of education: the inquisitive mind. Every one who mounted this stage tonight is embarked upon a vital, indispensable, honourable vocation: the spread of knowledge and the search for truth. If times are becoming more difficult, they will also, doubtless, become more rewarding.

It has become unfashionable, these past few years, to call Kipling in aid. True it is, he demands revision, in the age of women's liberation and now the sun has set on the empire which, even in my lifetime, spanned a quarter of mankind. But he was surely right when he praised his educators thus:

"Let us now praise famous men -
Men of little showing -
For their work continueth -
Broad and deep continueth,
Great beyond their knowing!"