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ROTARY CLUB OF CANBERRA BELCONNEN DISTRICT 971

ROTARY YOUTH LEADERSHIP AWARD SEMINAR, 1983

DINNER, CANBERRA, 9 MAY 1983

FEDERAL COMMUNITY LAW REFORM : WE ARE ALL RESPONSIBLE

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The Hon Mr Justice M D Kirby CMG  
Chairman of the Australian Law Reform Commission

CONGRATULATIONS TO PARTICIPANTS

I am delighted to be invited to address your dinner. I offer my congratulations to all of you. You are, in a sense, symbolic of the hope of our country : young people chosen for qualities of leadership at a time when our country needs leadership and good example, as never before.

I do not propose to speak to you tonight about youth unemployment or unemployment generally. I do not propose to speak about our dismal educational retention rates. Nor will I address the issue of our place in the world of science and technology. Leaders must be optimistic. Law reformers must be congenitally optimistic : for there is always plenty to depress and discourage reformers in the institutional resistance that seems to confront the ready change in improvement of the legal system. It is about ready change in improvement in Federal laws that I wish to speak tonight.

In the recent Federal Election, the incoming Attorney-General, Senator Gareth Evans, promised that a Labor Government would establish a Federal community law reform program within the Australian Law Reform Commission. The details were not sketched out. They have been discussed between Senator Evans and myself. The program is still being developed. But the Commission is anxious to take up the challenge offered by the new Government. I hope the Commission will be provided with adequate resources to do so.

On 22 April 1983, in the unlikely place of the Melbourne City Square and on the occasion of my opening Law Day 1983 in Victoria, I took the opportunity to announce the initiation of the Federal community law reform program. In the result, the Australian Law Reform Commission has received large numbers of letters from all parts of Australia drawing attention to defects in Federal laws and practices, as perceived by citizens. We are now building a data base for a Federal community law reform project. There appears to be no shortage of complaints about Federal laws. Nor is there a shortage of suggestions for ways to improve the Federal statute book.

The idea of a community law reform program is an excellent one. Now at last we have the chance to build a society that does not simply shrug its shoulders at injustice but does something, in a regular and routine way, to have claims about legal injustice investigated and promptly dealt with. The idea is to supplement the large projects of the Australian Law Reform Commission with a program of small projects which can lead to regular legislation, collecting miscellaneous provisions for the improvement of the law.

#### VARIETY OF COMPLAINTS : FROM ADOPTION TO SOLAR ENERGY

Since the announcement of the community law reform project, the Law Reform Commission has received many letters pointing the finger at perceived injustices. People warned us that we would receive a lot of letters from cranks. Frankly, I do not regard a single letter I have received as a crank letter. They are all sincere and sometimes angry letters from good citizens who have enough public spirit to put their thoughts on paper and to provide a data base from which we can proceed to construct a community law reform program. Of course, some letters fall outside our power, because they are concerned with State law reform. In such cases we can note the complaint for any relevance it may have to the Federal Territories and suggest it be passed on to State colleagues. In some cases the complaint is about a particular case involving the letter writer. We cannot interfere in court actions. We are not a court of appeal over judicial officers. But the Law Reform Commission is a kind of court of appeal over the legal system itself. It may be the only appeal process open to people where the law is clear, precise, long established and wrong.

Let me give you just a short list of some only of the problems that have been raised in letters received by the Law Reform Commission :

- \* Defects in the availability of education in State prisons and youth training centres.
- \* Defects in family property law and procedures under the Family Law Act which, it is suggested, may unfairly deprive young children of a family home on the dissolution of the marriage of their parents.
- \* Absence of effective Federal laws to over-ride State criminal and other laws discriminating against people on the grounds of homosexuality.
- \* Lack of facilities by which, under appropriate conditions, people who adopted out children can trace them or by which children who were adopted can trace their natural parents.
- \* Refusal of doctors and other expert witnesses to co-operate in court litigation because of the time and inconvenience involved in going to court.
- \* Suggested defects in compensation procedures for Federal Government employees, including the lack of a time limit on the Commissioner for Compensation, within which he must make a decision to grant or refuse compensation.
- \* The suggested need for improved procedures and principles for receiving and determining complaints against judicial officers, without unduly diminishing judicial independence.
- \* The need for consideration of improved firearms control laws throughout Australia.
- \* The need for better procedures to prevent imprisonment for non-payment of a fine where the inability to pay the fine is related solely to unemployment.
- \* The suggested need for greater consistency in the punishment of drug offenders convicted in different parts of Australia.
- \* The suggested prohibitive cost of establishing public companies to take advantage of incentives for Australian films.
- \* The suggested need for laws to provide better redress to citizens defamed under the cloak of absolute parliamentary privilege.
- \* The inadequacy of ACT laws on the keeping of domestic animals in residential areas, by a neighbour who complained about a nearby 'corral' of horses, sheep and dogs.
- \* The need for laws to protect the right of access to sunlight, for solar energy and other purposes.
- \* The need for rehabilitation of offender legislation so that people who have been convicted of criminal offences can 'live it down' after a suitable period of time.

#### MAIN AREAS OF COMPLAINT

If I analyse the letters as they have been coming in, the main sources of complaint, so far received, relate to :

- \* suggested defects in the Family Law Act
- \* complaints about compensation laws
- \* complaints about court delays
- \* complaints about the costs and lack of communication of solicitors.

In some cases, the Law Reform Commission has already made recommendations relating to the subject matter of citizen complaints. For example, the Commission has already delivered reports proposing reforms to tackle the problems of inequality of punishment of Federal offenders and abuse of parliamentary privilege. In some case, too, the subject matter of an inquiry is under consideration in another Federal agency. For example, the procedures governing compensation for Federal employees is presently under scrutiny by the Administrative Review Council. However, many of the complaints are not being attended at present and most of them have merit and appear to deserve careful scrutiny, including, of course, the opportunity of those complained about to put the other side.

If the number of citizen complaints about Federal laws is typical it will be necessary for the the Australian Law Reform Commission to assign a full-time Commissioner and research staff exclusively to the job of examining proposals and developing recommendations for the Federal Government and Parliament.

#### USING LEGAL AID : BAD EXPERIENCES INTO REFORM ACTION

The experience with the program of community law reform has also raised in my mind the possibility of involving Australia's legal aid authorities in the movement for community law reform. There are many good citizens who would never write with a complaint about the law or a suggestion for its improvement. In particular, disadvantaged people, who may have difficulty in verbalising problems, may sometimes be specially vulnerable to the law and its procedures. We must find a way of identifying their problems so that they too can be included in the program for community law reform. One way would be through the submissions of representative bodies, such as the Australian Council for Social Service and legal aid centres. Another way would be through the Legal Services Commissions throughout Australia which administer legal aid. I realise that there is controversy about the extent to which legal aid should be used to fund test cases for law

reform purposes. But there should surely be no controversy about the notion that defects in Federal laws, discovered by lawyers funded by legal aid, should be automatically and routinely drawn to the notice of the Law Reform Commission. In this way, even where an unjust result comes about as a result of the present state of the law, we can aggregate the experience of legal aid bodies. We can thereby turn one citizen's disadvantage to good social use. Furthermore, this is a means of stretching the legal aid dollar. It is a means of ensuring that we turn the legal aid cases into a kind of laboratory for law reform. Without breaching client confidentiality, I am sure that proper procedures could be developed to permit problems in the law to be notified by legal aid lawyers, so that they can be examined and considered for law reform suggestions. Private lawyers can do this too. But we need to mobilise the lawyers who represent the less articulate and less advantaged members of the community. I have drawn this proposal to the attention of the Commonwealth Legal Aid Council and I discussed it with the Council at its meeting in Canberra on Thursday last. I hope that an appropriate system can be developed with Australia's legal aid bodies so that bad experiences with the law can be translated into reform action.

#### WE ARE ALL RESPONSIBLE

The point of this address is that we should all feel responsible for the state of the law. In a dictatorship, the citizen can fairly sit back and blame the dictator. But in a democracy, ultimately we can only blame ourselves. I know that it is easy to be cynical about the capacity of the ordinary citizen to influence the development of the law. I also know how easy it is to sit back and feel resigned, to shrug the shoulders and to leave it to others. But that is not the kind of society which young leaders such as you should wish to build. Your Australia of the future will be an optimistic country, determined to achieve justice. That means a country concerned about injustice of ordinary citizens : high and low. And if we are to cure perceived injustices, we must find a way to respond to the perceptions of injustice that are experienced by ordinary citizens. Not just the great and powerful. That is why the community law reform project is so important. It is a means by which all of us can participate in improving the legal system. I hope it will have the support of good Australians, young and old, including youth leaders such as yourselves.