

AUSTRALIAN NATIONAL UNIVERSITY

ANU COLLEGE OF LAW

ALUMNI DINNER 2008

[These remarks were prepared by Justice Richard Refshauge and Justice Hilary Penfold, and delivered by Justice Penfold in Justice Refshauge's absence interstate]

Friends, colleagues and fellow alumni

Hilary: I speak to you tonight on behalf of Justice Richard Refshauge and myself, and indeed note that Richard in fact prepared a speech worthy of the name, which I propose to read to you with my own interpolations. This will, I hope, to some extent disguise the inadequacy of my own preparation for this function.

Richard: Let me first acknowledge the Ngunnawal people, the traditional owners of the land on which you are meeting (I am presently meeting on the lands of an entirely different tribe, the Wurundjiri people!). While such acknowledgement has become formulaic to some and a matter of irritation to others, it is important to recognise that our history is inevitably bound up with those the English settlers displaced, whose lives have become so challenged and often devastated as a result and who had lived in a harmony with the land and water for a long time before European settlement that should be worthy of respect in a time of approaching ecological crises.

May I secondly apologise profusely for my absence because I am attending another gathering arranged many months before this one and, indeed, changed to this date because of an inconvenience to me. I, therefore, could not justify not attending it, though I would have been delighted and honoured to be with you tonight.

I have promised to attempt to divert any possible action against the ANU College of Law or its Dean by any of you attending tonight that you might consider making under section 52 of the *Trade Practices Act 1974* because of my absence when I was advertised to be present.

Dean Michael Coper mentioned this function to me at the morning tea following the swearing in of French CJ and I immediately heard alarm bells when he told me of the date. A double booking loomed – and Coper would be mightily upset at a non-appearance! Like most men, however, I used that well-known device of ignoring the issue and hoping that, if one does not look at a problem it will cease to exist.

Hilary: Here I point out that, while I didn't do as well as Richard in preparing a speech, I was well ahead in actually putting this function in my diary. On the other hand, I have to confess that the words "piss-up" and "brewery" in the same sentence have come to mind in relation to this function a few times, and I don't exclude myself as the object of such thoughts.

Richard: Of course, that does not happen and, at the last minute, I summoned up courage enough to speak to the Dean and he graciously – perhaps thankfully – agreed that I could avoid entire perdition if I gave him these thoughts which someone else could read – and, I suppose, judiciously edit if necessary.

Returning to the *Trade Practices Act 1974* for a moment, I suggest – provisionally, of course, as I have not heard full argument – that those attending would find it difficult to prove damages. Justice Penfold and I have struck a deal that if we are both asked to speak at a function, she will only take one quarter of the time allotted to us both. It is expected that I will not only fill the balance, but mostly exceed it. You have, therefore, been spared!

Hilary: That's what he thinks.

Richard: Indeed, those who *might* have a damages claim are the alumni who stayed away because of my appearance on the triple bill. They may have attended if only they had known of my double-booking and the choice I had to make!

Enough of that! I apologise but would briefly wish to share a few thoughts with you about ANU and the – now known as ANU College of Law – what most of you will remember as the Faculty.

In thinking about these ideas, I realised that I have now been actively and closely associated with the ANU continuously since I entered as a very raw undergraduate in 1966. As a snapshot, I stayed as a student and student politician until 1975 (ten years) by which time I had been elected to the University Council, a position I held until 1991 (a total of about 20 years), by which time I had commenced giving lectures in Civil Litigation (formerly Practice and Procedure) in the Faculty (more years than I care to remember) and become a member of the Legal Workshop Committee of Management, a position I relinquished a few years ago, by which time I had been appointed as an Adjunct Professor, an honour I am still proud to hold.

Hilary: My own association with ANU is not quite as long, and hasn't been as consistent. I started at ANU half a lifetime ago (37 years, frighteningly), back in the days when the College of Law was the NSW competitor to the Legal Workshop, and when the Law “thing” called itself the Law School, and that was seen as a bit of a radical Americanism – perhaps reflecting the same hankering after the *Paper Chase* environment that certainly influenced some of our then lecturers.

Back in those days, too, the building across the lawns was Asian Studies, our lecturers were still coming to terms with not being able to smoke in lectures, and the Law Library had a nearly new copy of the Bengali Law Reports and hadn't yet felt obliged to install electronic

sensors to stop people removing books unrecorded (in the best tradition of law students, of course, the response from some students was apparently to throw the books they needed out the windows and retrieve them later from the bushes below the windows – presumably the windows no longer open).

Back in those days also, there were still people around who claimed to know why *Flesh's* was called *Flesh's*, although even then I think there was an element of urban myth involved.

There were also people around who claimed that, since there were close to 50% women studying law, the equal representation of women in the upper echelons of the legal profession would happen painlessly as my generation of students moved into the profession in those sorts of proportions.

This is not the time or place to explore that issue in more detail, but I do note that today's *Australian* reports research a generation and a half later, by the NSW Bar Association about attrition rates among women at the NSW Bar, and includes comments to the effect that the relatively low numbers of women applying to be senior counsel still reflects relatively low numbers of women joining the Bar in the early 1990s and that the higher numbers joining the Bar since then "would not YET be reflected in applications for senior counsel". As I sometimes say when granting bail, this suggests the triumph of optimism over experience.

After graduating, and finishing the Legal Workshop in 1977, I did a semester of tutoring a couple of years later, gave a couple of presentations on legislative drafting in the following few years, and regularly in the 1990s and until 2003 as the head of the Office of Parliamentary Counsel was asked and agreed to send representatives to make presentations to law classes about legislative drafting. Recently, though, I have found myself more involved with ANU, as a

graduation speaker, a member of one of the Rhodes Scholarship selection committees, the current chair of the Legal Workshop Advisory Committee, and of course as the mother of two current ANU students and one prospective student.

Richard: To me, ANU is a fine institution and has made an enormous contribution at all levels – internationally, nationally and locally. I note it has maintained its position as the 16th top University in the world and the only one of the top 16 outside the USA or Britain!

Hilary: When Richard and I were at ANU, of course, we knew that it was pretty tops even without the help of league tables.

Richard: It is amazing that, wherever you are, there is a high likelihood that you will find someone who at least knows of ANU, if not one of its current or past members of staff or students. For the smallest of the Great 8 universities, it certainly punches above its size, as I found out as a student politician in the 1970's when ANU was certainly a leader in the national student politics of the day.

I suppose the word that for me best sums up ANU is “opportunity”. ANU and the Faculty has given me great opportunities (though in some ways more *after* graduation than before in the case of the Faculty).

It gave me the opportunity to participate in some of the great issues of the day: the Vietnam Moratorium, Anti-Apartheid Activity, the Aquarius Festivals, including one at ANU, the world-wide movement for student participation in university governance (which the wily Chancellor Nugget Coombes and equally wily Vice-Chancellor Sir John Crawford nearly neutered by introducing an extensive version of it almost as soon as asked) and quite significant reforms to university education.

It also gave me an opportunity to meet some fascinating people. On the University Council there were many leaders of Australia. It is inappropriate to reminisce too much and I won't just name drop but a couple of vignettes may be appropriate. I remember well being somewhat surprised to be told in no uncertain terms by Sir Norman Cowper, then senior partner of Allen, Allen and Hemsley, a scion of the Sydney legal establishment and a member of Council, about how wrong it was for Australia to be involved in the Vietnam War!

Many of those I met were academics and we were – and are – blessed with some extraordinarily impressive and talented academics at ANU and in the Faculty.

Hilary: I would wholeheartedly endorse this comment—the list of people who have taught law at ANU over the years is quite astonishing.

Richard: I have a fond memory of Geoffrey Sawyer at one Faculty meeting opposing the introduction of the teaching of taxation law on the ground – pace Justice Penfold – that it was merely statutory construction!

Hilary: My experience was slightly different – I remember sitting next to Professor Sawyer at a dinner shortly after I started my career in legislative drafting and being told by him what a noble and honourable profession it was, which left me very chuffed – probably as much as anything because I'd actually met someone who even knew what legislative drafting was.

Richard: I wear with that pride that comes with a sort of reverse snobbery the fact that I was once thrown out of Les Zines' Constitutional Law lectures for not having read the set cases! Of course, one did not suffer that indignity twice. I confess, though, that I never actually saw him smoking in the lecture theatre in front of the "No Smoking" signs!

Hilary: I record that Professor Zines, who is at our gathering tonight, has just confirmed that the stories were not apocryphal. Unlike Richard, I wasn't ever thrown out for not reading cases, although I did have a couple of nasty moments – but not as bad as one of my classmates who had bought a set of lecture notes from an older student and found he could answer anything Professor Zines could throw at him – until the notes ran out at the end of Term 1, leaving him with some blank pages and a reputation as the member of class who could always be relied on to have the answers ... I think he read all his cases for the rest of the year.

Richard: The degrees bestowed on me by ANU have given me the opportunity to participate in a great profession and one that has given me personal and professional satisfaction and experiences that I treasure. I have a kind of reverse relationship with the subjects I studied and then practised. Having been thrown out of Constitutional Law, I nevertheless participated in probably as many constitutional cases in the High Court as any solicitor outside government. Having failed Practice and Procedure (but with some difficulty then passing a supplementary exam) I now edit the ACT loose-leaf service on ACT Civil Procedure.

The one counter-example to that is Family Law. I never studied Domestic Relations under David Hambly and my first and nearly last foray into the Family Court ended with me being threatened with contempt for allegedly calling the Judge a silly old bugger – pretty much a career stopper – and it did put paid to any career I might have had in that jurisdiction.

Hilary: Like Richard, I had a largely inverse relationship between subjects and later career choices, until very recently. My work in legislative drafting involved a lot of tax and company law, two subjects that I'd never studied, and areas such as social security law and migration law that no-one even taught back in the 1970s. Although like Richard, I did do

a fair bit of work in the constitutional law area, and one of my greatest (although sadly incomplete) satisfactions as a legislative drafter was drafting the legislation for the 1999 republic referendum. I live in hope that one day it will be dragged out and dusted off, although the fact that it didn't provide for a popularly elected President may reduce that prospect.

Richard: The continuing opportunity to meet with, occasionally teach, encourage and employ ANU students ...

Hilary: and cook dinner for -

Richard: ... is stimulating, energising and enthusing. The opportunity also to meet and marvel at the excellence and academic achievement of the members of staff is a delight.

Hilary: My experience as a parent has revealed to me that, however much we enjoyed our student days, and we both did, Richard and I simply didn't know we were alive compared with the students of today. My daughter, for instance, an Economics/Law student, is heading off to Milan for 2009 on exchange where she will, as well as studying subjects that will be credited to her ANU degree, pursue her interest in fashion. Not only are these fabulous opportunities available to the students, but they seem to be substantially funded by Centrelink and a very generous ANU (although it was made fairly clear to my daughter that ANU wouldn't be funding her excess baggage charge when she comes home).

Richard: There are bad things about ANU – I did not get the Honours degree in law that I clearly deserved – but tonight is not the time to think those thoughts.

Tonight is the time to remember the good times, to renew friendships and make new ones among the alumni bound together by our

experience of a great institution and to celebrate the opportunities that our alma mater has given us. I wish I could be with you to do that together tonight. I thank the Dean and all of you for this occasion and hope it is a stunning occasion.