# Passages in the Law

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Talk at the office of Carroll and O'Dea

12 February 2013

Good afternoon ladies and gentlemen.

One bonus of being asked to speak today was the opportunity to get better acquainted with the history of the firm through the prism of your centenary publication "The Vision Splendid". It sets out the history and culture of the firm over most of the last one hundred and fifteen years of it's existence. Many of the anecdotes resonate with my fond recollections of the personalities referred to such as Clive Evatt, Frank McAlary, Barry Mahoney, Ray Loveday and Paul Flannery.

Over the past fifty years inevitably I have come across many members of the firm. My most continuous acquaintance has been with Michael O'Dea whom I first met in 1965 and who in 1968 succeeded me as an alderman of North Sydney Council of which he later became Lord Mayor.

I admire the culture and vision of the firm and its engagement with the community especially through its extensive pro-bono program. Not the least of its achievements is keeping its name and identity, as well is its strongly personal culture in the present environment of law firm mergers, which, by change of name and often of culture, tend to become anonymous commercial entities abandoning a valuable part of their identity and esteem.

The name Carroll and O'Dea has a personal ring rather than those global operations with names such as Linklaters, Ashurst or Quality Solicitors.

**The Task**

Today I first want to say something about the Sydney Law School Class that graduated fifty years ago in 1962.

I have called this talk "Passages in the Law" because I want to look at a number of those *then* fresh and eager faces and briefly sketch their career paths and then to look at some changes in legal practice over fifty years from *three* perspectives.

The *first* perspective is to contrast the increased breadth of outlook and the range of career opportunities which lawyers can now follow.

The *second* perspective is to look at the technology drivers which have shaped and which continue to shape the legal profession.

The *third* perspective is to consider some trends resulting from those changes.

**Context 1963**

Fifty years ago the country under Robert Menzies was stable but static. Students were basically conservative. There were no protest rallies. There was only one University Law School in New South Wales — Sydney. The only other way of entering the profession was through courses conducted by the Solicitors and Barristers Admission Boards which took about five years part-time.

About half our class had started university in 1956 doing an arts-law combined course of six years. There were ninety-two students in the graduating class of whom only six were women. There were four first class honours and ten second class honours awarded on graduation.

All seven judges of the High Court were elderly white males from the ranks of barristers of basically Anglo-Saxon ethnicity. There were no women on the NSW Supreme Court. In South Australia Dame Roma Mitchell was a Supreme Court judge. She was, I think, the only female judge at that time on a Superior Court.

Our classes were spread out in rooms all over Phillip Street.

We were blessed with great teachers. Most of the full-time professors had postgraduate degrees from Oxford, Cambridge or Harvard. They included Professors Julius Stone, David Benjafield, Bill Morison, Ross Parsons and Patrick Lane. Many of the lectures were given by barristers and solicitors including some who became eminent judges, namely, William Deane, Roddy Meagher, Denys Needham, Rae Else-

Mitchell who was an outstanding historian constitutional lawyer, Robert Hope, Frank Hutley, David Selby, Bernard Riley and Barry O'Keefe. Legal history was taught by the colourful Dr C. H. Currey who was one of the very few Doctors of Law from Sydney University at that time.

**The Class**

To illustrate the varied destinations a law degree can take you I want to make a brief reference to a number of the graduates of that year. Many of the names are familiar to you by reason of their reputations and no doubt from your personal contacts.

The order of graduation is set out in the 1963 University Calendar at page 1053. This is available on the internet:
http://calendararchive.usyd.edu.au/Calendar/1963/1963.pdf.

The 92 graduates included:

- A Chief Justice of New South Wales who then became Chief Justice of the High Court (Murray Gleeson)
- A President of the Court of Appeal of New South Wales who later became a member of the High Court of Australia (Michael Kirby)
- Four Federal Court judges (Graham Hill, Brian Tamberlin, Jane Mathews and Marcus Einfeld)
- One President and two Deputy Presidents of the Australian Administrative Appeals Tribunal (Jane Mathews, Brian Tamberlin, Geoffrey Walker)
- Two Family Court judges (Joe Goldstein, Lloyd Waddy)
- Two Supreme Court judges (Jane Mathews and David Hodgson who became Chief Judge in Equity and later a Judge of Appeal. David was also a world-renowned legal philosopher. Jane Mathews and Brian Tamberlin also served as Acting Supreme Court Judges after retirement.)
- Three District Court judges (Jane Mathews, again, Barry Mahoney and James Conomos)
- Two renowned wine experts and gourmets (James Halliday and John Beeston)

- An ambassador to France who later became head of the Office of National Assessment and Deputy Director of the Foreign Affairs Department ("Kim" Jones)
- Two Professors of Law who became Deans of law faculties (John Peden and Geoffrey Walker)
- A Lord Mayor of Sydney (Nelson Meers)
- A squash champion, Olympic rower and squash coach who is a leading Queen's Counsel (Lionel Robberds QC)
- An actor who worked for the BBC (Stefan Gryff)
- Several Queen's Counsel
- A lawyer who worked for McKinsey & Co in the United States (Gary Watford)
- Managing partners of major law firms (Brian Thornton and Philip King)
- A solicitor with a large law firm who became the Chief General Counsel of the AMP society (Garry Traill)
- Many other solicitors in private firms and government offices
- A magistrate (Lilian Bodor)
- An Assistant Commissioner with the Trade Practices Commission (Geoffrey Walker)
- A renowned financier (Charles Curran)

From that sketch you can see how even fifty years ago these graduates were able to embark on a number of different pathways. Since then the opportunities for a varied professional career with a law degree have grown exponentially.

**Career Opportunities**

Legal education from 1956 to 1962 focused on a narrow series of practical courses with almost no optional subjects. The substance of the courses was designed to produce professionals following the narrow career paths of barristers, solicitors and law teachers.

Dean Griswold of Harvard told us that "the study of law sharpens the mind by narrowing it." This was a real danger inherent in the limited range of subjects we were channelled into. Basically, we learned black-letter law. We learned how to closely analyse decided cases and legislation, follow or distinguish precedents and how to convey land. There was a heavy emphasis on such enticing technical subjects as practice and procedure, evidence, pleading, probate, drafting of wills, conveyancing, the order of administration of deceased estates, the Rule against Perpetuities, springing and shifting uses in Property Law, the order of administration of deceased Estates assets, Roman law and mortgages. Only the two courses taught by the cosmopolitan Julius Stone expended our horizons. He taught us Public International Law and also Jurisprudence.

Many areas of law of central importance today were not included such as human rights; antidiscrimination law; indigenous law; alternative dispute resolution; competition law and trade practices; migration law; town planning and environmental law; corporate securities law; social security law, commercial arbitration and even the subject of administrative law was only taught in a narrow context. This was, of course, because the legislation and legal framework for many of these areas of practice was not enacted at that time.

As an example of these expansive developments we can look at administrative law. Although administrative law was taught as a subject it was in a context where there was no specific administrative tribunal legislation creating bodies such as the AAT or the ADT or providing statutory judicial review. This does not come until the seventies. The subject as taught was directed at the availability and erudite mystique of prerogative writs such as Mandamus, Prohibition and Certiorari.

Federal courts, apart from the High Court and the Commonwealth Industrial Court did not exist.

If you look at the elective subjects now taught at Sydney University Law School, for example, most of these latter areas are covered and these fields opened up vast areas of specialist practice.

The most striking example of the opening up of the profession is the increase in type and number of opportunities for women in every aspect of the profession.

In addition there are more law schools and institutions graduating many more qualified lawyers from increasingly varied backgrounds.

Fifty years ago, for example, working as in-house counsel for a bank or large commercial institution was relatively rare.

Today, the banks, for example, are major employers of graduates. I understand that the large commercial banks employ many hundreds of lawyers in-house to manage their affairs and liaise with outside solicitors and barristers. Westpac, I understand, for example, has about 150 lawyers in-house and CBA employs several hundred.

These outlets together with the Australian Government Solicitor, the Crown Solicitor and the Department of Public Prosecutions employ large legal staffs. Many large corporations have a very sizeable legal staff handling their day-to-day affairs. In addition, most government departments employ large teams of lawyers. There are also extensive opportunities, for example, in the Department of Foreign Affairs and Trade for lawyers wishing to practice in international areas such as world trade law treaty negotiation and drafting and United Nations law.

Another important and rapidly developing field of practice has emerged from the policy of many law offices to export legal services and to open branches in major market centres such as China, Singapore and parts of Southeast Asia and the Pacific. This, in turn, opens up rich new areas of practice and calls for new skills.

In addition, the increased merging and globalisation of law firms has resulted in movement and fluidity in employment of legal advisers. Keep in mind that until 1965 when Michael Ahrens and John Connor set up “Baker and McKenzie” in Sydney there were no international law firms operating in Australia. The entry of Bakers into Australia enlivened great angst and opposition in the Sydney legal community. Contrast this scenario with the internationalisation of almost all our major law firms in the last few years.

This changed legal scenario is complemented by mergers of accounting, banking and legal services to cater for the strong desire of clients to secure a one stop shop whereby they can obtain all these services from the one enterprise. Again this loosens up the profession from the somewhat narrow professional opportunities available in 1962. No longer is it the case that a graduate goes to a law firm then starts practising at the bar and is thereafter effectively locked into one relatively narrow career path. Now more than ever there is the possibility to switch careers using the basic legal skills gained by study and experience.

I noticed in *The Australian* last Wednesday, that the US law firm Jones Day is now recruiting Australian lawyers as partners in its "global disputes practice".

With this increased opportunity for movement comes uncertainty, insecurity and greater stress in adjusting to changes in culture, workload and patterns of work. But the reality is that we now live in an age of fundamental rapid and continual change where resilience, initiative and flexibility are essential. Otherwise we become extinct.

This intense pressure for adaptation and resilience is largely driven by technological change. Of course, there are other cogent drivers such as globalisation changes in societal values and perceptions in relation to issues such as non-discrimination, transparency, accountability, and social attitudes, but the amazing technological changes strikingly illustrate the extent of change.

**Technology**

In 1956 we had manual typewriters but IBM electric typewriters were emerging, we had shorthand and secretaries, unwieldy dictating machines and carbon paper with lots of white ink to correct mistakes. We had ink pens, heavy plastic telephones, weird telex machines and express letter delivery. Professional life was far more leisurely.

When we started University in 1956 the most advanced computer was appropriately known as "SILLIAC". It was housed in a room at Sydney University School of

Physics. It ran its first program in July 1956. It was a joy to behold. It had glass panels and light switches to indicate what was going on inside and it often overheated with the strain. The main cabinet was 2 m high, 1 m deep and 5 m long. It worked with paper tape. It operated with vacuum tubes and had 2,911 valves. It was a kind of "son et lumiere" show. It had an average of eleven hours between failures and a memory of 1024 words of forty bits each.

In April 1963 IBM unveiled its state-of-the-art masterpiece system 360 computer which was a large mainframe computer with a memory of about 8 MB. It was unveiled with great fanfare at the Waldorf Astoria.

Today with new personal computers we have memories of hundreds of gigabytes at speeds which were only dreamt of in those days.

These changes have led to almost universal access to instant and universal information through iPads, other tablets, laptops and the software which goes with them. Communication and information accessibility have been revolutionised over the past four or five years with iPads, Google, the smartphone, social media such as Twitter and Facebook, and direct visual communications such as Skype with the attendant sophisticated software applications which go with them.

In the profession, the emphasis is now on 24-hour 7-day access to communication and information. With clients using Google, Skype, SMS, email and Twitter professional advisers will need to ensure they are switched on to these channels because clients have come to expect instant responses.

This rapid, intense and immediate communication creates pressures on the legal profession because as Marshall McLuhan the great media commentator who characterised media as "hot" or "cold" in 1967 remarked that "the medium is the message". These new communication technologies are very much "hot button" media which require urgent involvement, decision and action.

This pressure for instant and comprehensive responses can lead to hasty and ill-considered decisions and responses unless the dangers are recognised and proper

measures are put into effect to control the constant input and overload of information and instructions. There is an increasing possibility of miscommunication and failure to receive or promptly respond to communications which in turn could expose the legal adviser to negligence actions.

In competing for work by the tender process considerable weight no doubt will be placed by clients on the ability of competing legal advisers to provide high levels of information technology. Larger clients especially will expect that lawyers are familiar with the latest technology and they themselves will be using information technology which in many respects may be more sophisticated than that of the professionals.

In many disputes it is necessary for legal advisers to understand the way records are created and stored, reviewed, altered or erased and be aware of the ways in which raised such records can be recovered.

In the Discovery process it is now essential, for example, to understand the extent to which information can be obtained in the form of metadata which records the time and size of messages which are sent or retransmitted. This electronic information can assist in determining whether records have been altered, destroyed, received or ignored. Often the most critical information will be secreted in emails and SMS messages which have been deleted.

With the increased dependence on electronic record-keeping problems with unauthorised persons entering into the system and removing, distorting or stealing data creates a serious problem and calls for increased security. Cyber-security is now a major concern for lawyers, courts and clients.

There is no longer any need for an extensive law library. Most legal data and analysis can be accessed through tablets or laptop computers. This has implications for entry into the profession and the costs of setting up and maintaining up-to-date legal material.

It is now possible during a hearing for counsel using a smart phone or tablet to quickly check whether a legal authority is relevant, has been cited, commented on, reversed or followed in subsequent cases.

In the court room I find that counsel often use tablets to pull up cases or look up legislation or precedents which may come under discussion in the course of the hearing. Likewise, the judge can readily access necessary legal material as referred to by Counsel during the hearing.

The "message" in relation to these dramatic changes is the profession can no longer treat information technology with "disdain" or as a peripheral tool. I say "disdain" because I have seen over many years that practitioners and judges tend to express a fashionable pride in their ignorance of technology. We have reached the stage now where this is fatal. Adapt or perish! is an apt mandate in this area. If you don't see the trends you can't plan to respond to the challenges they present.

It is of central importance to secure a clear understanding as to how the technology operates and to examine the latest developments so as to enhance both administration of the legal practice and engagement with clients. It also helps you communicate with your grandchildren!!

Practitioners are now continuously bombarded with an overflow of information which will easily lead to oversights and omissions as to instructions, authorities or facts. This, in turn, may result in exposure to liability.

A further feature of undigested information is that there is not sufficient thought or analysis given to the core issues buried in a mass of irrelevant material. No one takes the time to give thought to the litigation. "Less information, more thought," is the obvious touchstone here.

**Trends - "The future isn't what it used to be"**

While we can't predict the future we can discern some broad trends.

There will be more rapid and intense integration and concentration of domestic and overseas legal practices and cross disciplinary practices.

Electronic procedures such as electronic filing and e-courts will be far more extensively used.

Domestic and international ADR, mediation, arbitration, neutral evaluation, will increase dramatically to cope with the need for speedy, efficient resolution of disputes.

There will be more pro-active marketing by law firms and the Bar.

There will be increased pressure for a unitary Australian judicial structure and in the meantime provision for judges to exchange roles on secondment to other jurisdictions. For example, exchanges of judges between Federal and State Supreme Courts to gain a broader perspective.

The trend to establishment of overseas offices and branches particularly in Asia and the Pacific will increase calling for greater cultural understanding. This will lead to more joint operations with overseas law firms.

Also, internationally, there will be increased need for practitioners to be familiar with more than one legal system and more importantly to develop a feel and understanding for the reasoning and approaches of their non-Australian colleagues in matters of drafting, negotiation and litigation.

Dual language competence will be a useful qualification. Generally, you can't understand a language without an increased appreciation and "feel" for cultural values.

There will be more aggressive international marketing to export Australian legal services.

New areas of domestic and international law and regulation will develop and the Australian legal matrix will become far more complex, particularly in areas of commercial law, economic law, migration law and intellectual property.

Transnational litigation will increase and there will be greater demand for litigation teams specialising in co-ordinating and running global disputes.

As a consequence, greatly improved ranges of skills and more flexibility and adaptability are essential.

In most areas a much higher degree of specialisation is now essential to survival. The days of the wise old genteel general practitioner have long gone.

Litigation support practices will flourish. The trend to "niche" areas of specialisation will accelerate, particular in the growing areas of practice. We will come to know more and more about less and less.

Law makers will need to adapt far more quickly to understand the legal implications of changes produced by technology and this will call for more education. Black-letter principles can't be applied without an understanding of the technology or science.

There will be more conflict of laws problems and there will be a growing need for direct liaison with overseas lawyers. Failure to do this can lead to increased sterile clashes as to jurisdictions especially in areas of bankruptcy, cross-border winding up, shipping law, corporate fraud and intellectual property where the battlefields are worldwide, for example, the multinational *Apple v Samsung* litigation and the current Romanian horsemeat scandal in Europe which will no doubt give rise to a multitude of cross-border claims.

Global solutions will be required to deal with cross border problems in respect of crime, fraud and pollution.

Refugee and migration law will become far more complex.

International treaties will have a more intense influence on Australian practices in requiring domestic legislation and regulatory schemes to implement them and this will impose greater regulatory restraints on activities in Australia.

The profession and the courts will need far more extensive and specialised continuing education to handle these changes.

**Bottom Line**

In conclusion I hope this brief burst of nostalgia and reflection throws some light on where we are in the profession, where we came from and, more importantly, very generally where we may be going.

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**12 February 2013**