

[Print Page](#)[Close Window](#)

The University Of Sydney Graduation Ceremony

THE UNIVERSITY OF SYDNEY

GRADUATION CEREMONY

19 MAY 2006

**The Honourable Justice Peter McClellan
Chief Judge at Common Law
Supreme Court of New South Wales**

Chancellor, members of the University, graduates and guests.

I thank the Chancellor and the Dean of the Law School for inviting me to participate in this graduation ceremony. I express my warmest congratulations to all of you upon whom the University has today conferred degrees, or to whom it has granted prizes, honours and distinctions. You are entitled to be proud of your achievements. In many cases your success will not have come without sacrifice including contributions made by your families. They may also take great pride in your achievement.

I am myself a graduate of this university. It was more than 30 years ago at a time when many aspects of our society were markedly different from today. When I graduated an appeal from an Australian court still lay to the Privy Council. With leave an appeal could be taken to that body from the decision of a trial judge. I was fortunate to participate in one such appeal where their Lordships were required to investigate and provide an opinion in relation to the planning regime for the municipality of Woollahra. Presumably at least some of the Law Lords had been to Sydney but whether they had any appreciation of the many attributes of Darling Point I seriously doubt.

I graduated at a time when Australia had recently recognised the Peoples Republic of China. The Vietnam War was coming to an end. Communism and most communist countries, particularly the USSR, were nevertheless seen as a threat to the civilised world and by many as a threat to the continuing existence of the world itself. Any suggestion that China, India or any other of the great emerging nations would challenge the economic or military domination of the United States was simply inconceivable to most people.

I graduated at a time of significant change in many of the mores and accepted social values in the community. For the first time in our history since European settlement a real sense of a unique cultural heritage and national identity was emerging. The economic prosperity of post war Australia, although hindered by two recessions which were but temporary impediments, gave the promise of job security and economic prosperity to anyone who was able to work.

I graduated in a time when cricket was played without crash hats and where the occasional win by the Wallabies was celebrated with exultation accompanied by relief. Aunty Jack rode resplendent on her motorcycle. Radio did not talk back. News broadcasts were a genuine endeavour to provide information irrespective of its entertainment value.

At that time The Sydney Morning Herald was a paper of record and the ABC was the most immediate source of reliable international news. The fax machine did not exist, secretaries took shorthand and the electric typewriter was gradually replacing the inefficient mechanical device. The personal computer was in its infancy.

Litigation was entirely controlled by the parties who were free to utilise the courts facilities to argue the case irrespective of the time taken and the cost to the public purse of their private dispute.

When I graduated with the principles of the common law and equity freshly in my mind, I could never have imagined the experiences which the law was to give me over the coming years.

With a law degree followed by admission as a barrister I was to be given the opportunity to meet people, explore historical events and participate in an understanding and development of ideas across

many areas of society. That opportunity can also be yours provided you remain alert to the possibilities.

When I had been some years at the Bar, but before I was appointed as a Queens Counsel, I was offered a brief by the Commonwealth Government as Counsel Assisting the Royal Commission into British Nuclear Tests in Australia. The fee offered was modest and the inquiry was planned to go for at least twelve months, a long time for a junior barrister to be removed from conventional practice.. I sought counsel from one of my senior colleagues, he later became a High Court judge, who advised against taking the brief. I did not take his advice.

The inquiry took eighteen months of intense and detailed activity. However, by the end of it we had met and engaged in discussions with leading nuclear scientists, meteorologists, epidemiologists, anthropologists as well as the military and political leaders both in Australia and the United Kingdom. We visited many remote parts of Australia. One of my lasting images is of Justice Jim McClelland, known universally as Diamond Jim, sitting in the desert sand near Maralinga discussing the plight of the aboriginal communities who had been dispossessed of their land by the testing program with devastating consequences for the health of their communities.

The Maralinga inquiry was to become the first of many investigations and inquiries with which I was fortunate to be involved. Others have been concerned with issues as diverse as casino gambling, public sector corruption, mining, water and effective state and local governments. I have been blessed with the opportunity to participate in the debate with respect to some of the most difficult environmental problems the world faces, in particular the most effective use of the water available for the irrigation of the vast semi-arid areas of the world and its safe use in urban water supplies.

More recently with judicial appointment has come the opportunity to contribute to both the resolution of individual disputes and the development of effective dispute resolution procedures within the court structure.

The world is greatly changed since I graduated. Appeals to the Privy Council have been abolished. Although respected, decisions of the Law Lords are no longer binding on Australian courts. In many areas there have been departures.

Communism is now remembered as a broken promise in many countries and, individual liberty, reflected in a vigorous capitalist economic philosophy, has greater acceptance as the ideal model for a civilised society.

News and information now come from a multitude of sources. It is possible for an 8 year old to use the internet to make enquiries about an infinite range of products that might be available for sale in almost any part of the world. The same 8 year old can with the press of a button access live news broadcasts from any country serviced by Fox, CNN or the BBC. The impact of the visual images of September 11 was as immediate in Sydney, London, Shanghai or New Delhi as it was in Los Angeles. The immediacy and universal availability of the electronic media means that countries which may formerly have been isolated from developments in other parts of the world now have access to ideas of universal application. These are readily translated into aspirations for economic development, cultural change and participatory democracy.

Last year I was fortunate to be part of an Australian delegation which participated in an international conference of Chief Justices and senior judges in Manila. Forty five countries were represented, the primary focus being the Asia-pacific region. However, Chief Justices from countries outside that region also attended as observers including the Chief Justices of Russia, Turkey and Albania and many others. It was undoubtedly one of the most significant gatherings of senior judges to have taken place outside of the developed world.

The conference was initiated by the then Chief Justice of the Philippines who was soon to retire and has since, I understand, been appointed as the Philippines ambassador to the United Nations. The theme of the conference was the essential requirements for effective judiciaries to meet the needs of the 21st century – in short judicial reform. Notwithstanding the diversity of cultures, inherited values and accepted legal doctrines, those present were able to embrace fundamental principles of universal application relevant to the judiciaries of every country in the 21st century. Central to those principles is an independent judiciary dedicated to upholding the rule of law.

It has become fashionable in some contemporary thinking to assume that providing individual freedom

to a community will spontaneously and in a short space of time ensure that the society in which they live will adopt democratic principles and accept the rule of law. Those of you who are familiar with the legal history of common law countries will readily appreciate the naivety of such a view. The history of conflict over centuries between the monarch and his or her judges in England, to say nothing of conflicts with the parliament, bears testament to the difficulties faced by a society seeking to embrace the rule of law where a judiciary independent of the legislature and the executive is universally accepted. However difficult it may be to create such a society there can be little doubt from the sentiments expressed by those at the Manila conference that these values are now embraced by many countries.

Another fundamental concern of the delegates at the conference was the practical mechanisms by which developing countries may be able to provide access to justice to all members of their community. In many places this involves defining practices and procedures for people burdened by significant poverty. In the Philippines a lack of courts and judges has meant that many people have been incarcerated on remand for terms beyond the maximum term provided for their alleged offence. That problem is now being addressed by a fleet of buses, modified as courtrooms, which take the court to the gaols. Known as "justice in a bus" it is but one of the innovative processes discussed at the conference.

The same questions, but often with different manifestations, are faced by developed countries. There may be differences of scale, but, the rule of law is little more than hollow rhetoric if an individual is unable, because of the cost, to access the courts to request that legal principles are applied to the resolution of a particular dispute. Malpractice, dishonest dealing, corruption and crime are all encouraged when individuals and corporations do not have ready access to an independent and effective judicial system.

My purpose in telling you a little of my own experience as a lawyer is not to give you a personal biography, rather it is to give you a glimpse of the possibilities which lie ahead for each of you. No doubt many of you will take up practice as lawyers. Some of you may find that the increasingly commercial emphasis of city law firms fulfils your professional aspirations. Others of you will pursue careers in government, community legal centres, smaller firms, or in academic pursuits. Others will take your legal skills and apply them in related areas, but not become practising lawyers.

Whatever career path you choose the community is entitled to expect of you that you will use your skills to further the maintenance of the rule of law in this country and its development in others. Opportunities will be available for many of you to make a direct contribution to the understanding and development of these principles in Australia. But with the continuing growth of the global community significant opportunities will be available to you to contribute to the development of those principles in other countries. I trust that when the opportunity is presented to you, you will, consistent with your particular capacity, take up that challenge.

I wish you every success in your endeavours.