Professor Dixon, distinguished guests, students, ladies and gentlemen. It is a pleasure to join you tonight and to be a part of an event that is so worthwhile. We are here 10 years after Tram Nguyen’s death to remember her, and to bring to a new generation of students in South Western Sydney an understanding of what Tram achieved in her short life, and to encourage you to do what Tram wanted to do: to go to university to study law and to become a lawyer. Tram saw that being a lawyer can empower and equip you to serve the community in very practical way.

The practice of law can be satisfying and it’s very rarely dull. At least that has been my experience. Before saying more about that, I wanted to talk about our legal system and tell you something more about the work of the High Court. I’m not going to make a meal of it, but I know that for many people their contact with the law is likely to be limited and often not very positive: none of us like getting fined; proceeding before the Family Court can be stressful for both parties; and the like. What people do not see is the fabric of the law that holds our society together and gives us all the rights that we enjoy.
Americans are very proud of their Constitution, and the ten Articles which collectively are known as the Bill of Rights. A group of American high school students would all probably be able to recite those ten Articles with their hands on their hearts. I’m guessing, but I suspect that not every student from Liverpool or Fairvale or Cabramatta High can recite our Constitution by heart. The Australian Constitution is not written in the soaring language of Thomas Jefferson – it’s written in the technical language of lawyers. But it’s none the worse for that.

When the New South Wales Bar Association commissioned a portrait of one of my predecessors, Justice Mary Gaudron, much to the artist’s surprise, Mary Gaudron insisted on having the words of section 75(v) of the Constitution stencilled over the top of it. For those of you who have forgotten, that section states that the High Court shall have original jurisdiction in all matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth. Translated, this is a power to compel a Commonwealth officer to do something that it is the person’s duty to do or, equally importantly, to stop doing something that the person is not lawfully authorised to do. As Mary Gaudron is fond of pointing out, section 75(v) is a more powerful protection than some of the more flowery guarantees that one finds in the constitutions of other liberal democracies.
As many in this audience would know, the High Court is the final court of appeal from the courts of all the States and Territories. I thought I would talk tonight about one case decided by the High Court before I was born. It concerned an Aboriginal man named Tuckiar. The events occurred in 1933. Tuckiar was a Yolngu man, who used to camp at Woodah Island in Arnhem Land. It is enough to tell you that an incident occurred on Woodah Island, in which Tuckiar speared to death a white police constable named McColl. Tuckiar was arrested and tried for the murder of Constable McColl before the Supreme Court of the Northern Territory in Darwin.

I won’t trouble you with the account of the trial. It is sufficient to explain that there was some evidence, which raised the question of whether Tuckiar was acting in self-defence, or under provocation, at the time he threw the spear. On either of those views of the evidence, Tuckiar was not guilty of murder. Unfortunately, the trial was conducted in a most unsatisfactory way. Much of the reason for that stemmed from the apparent desire of the trial judge and Tuckiar's barrister, who had been engaged by the Protector of Aborigines for the Northern Territory, to protect the reputation of the dead policeman from any suggestion of impropriety, rather than to see Tuckiar receive a fair trial.

Tuckiar was convicted and sentenced to death. To make matters worse, Tuckiar's barrister made public statements, after the jury returned their verdict, to the effect that Tuckiar had admitted to
him, through an interpreter, that the true version of events was the one that proved the killing was murder.

Tuckiar appealed against his conviction to the High Court\(^1\). The High Court found that his trial had been seriously flawed and that his conviction must be set aside\(^2\). The difficulty concerned the further order to be made. In the ordinary course, the Court would have directed a new trial. In this case, the public statements made by Tuckiar’s barrister had received wide publicity in the Northern Territory and there was no prospect that a new trial could be fairly had. Since it was not possible to justly try Tuckiar a second time, the Court quashed his conviction and entered a verdict of acquittal\(^3\).

I often tell people about Tuckiar’s case because to my mind there is no better illustration of the value that our system of criminal justice places on fairness and equality. You need to remember that this was Australia in the early 1930s, before the waves of migration from Continental Europe, from Lebanon and from Asia that have made us the culturally rich and diverse society that we are today. In 1934, when the High Court heard Tuckiar’s case, Australia still

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1. *Tuckiar v The King* (1934) 52 CLR 335; [1934] HCA 39.
2. *Tuckiar v The King* (1934) 52 CLR 335 at 344, 347 per Gavan Duffy CJ, Dixon, Evatt and McTiernan JJ, at 354-355 per Starke J.
3. *Tuckiar v The King* (1934) 52 CLR 335 at 347 per Gavan Duffy CJ, Dixon, Evatt and McTiernan JJ, at 354-355 per Starke J.
embraced the "White Australia" Policy. Indigenous Australians were considered to be uncivilised and they were treated in a way that we have come to see was patronising and, at times, cruel. Tuckiar’s case stands in the chequered history of relations with Indigenous Australians as an instance in which we can all take pride.

Whatever happened that day in August 1933 on Woodah Island, Tuckiar, an Aboriginal man leading a tribal life, who spoke no English, and who found himself in custody far from his land and his people, needed the protection of the law. And notwithstanding that Tuckiar had undoubtedly killed a white policeman, he was given that protection.

The Justices who decided Tuckiar’s case were very eminent men – and in those days they were all men – they were all white, they all came from privileged backgrounds, and when you read the judgments you can see that despite their education, they shared the prejudices of their day about Aboriginal Australians. No doubt on a personal level, they were as appalled as other members of the community by the killing of Constable McColl. But their legal training and respect for the principles that inform our law would not let them countenance the conviction of anyone who had not received his or her due – a fair trial according to law.
The wealthy and the privileged commonly enough have no need for the protection of the law; those who do, all too often, are the people on the margins of our society.

Lots of decent, ordinary Australians who have no particular reason to reflect on the principles that inform our legal system might say, "Why do we bother so much about giving criminals a fair trial?". People are apt to think that way until it’s their son or their daughter who is charged with an offence. Treating people fairly is a fundamental attribute of any system that lays claim to administer justice. It can be very satisfying to work within that system. And there are lots of ways in which lawyers can make a useful contribution to society.

At the High Court, each of the Justices has two Associates. These are very able young lawyers who work with us for a year. I was very pleased when several years ago one of my Associates, Pauline, decided to pursue an academic career after leaving the Court. She now lectures at the Australian National University, where she has been responsible for the development of the Law Faculty’s course on employment law. It may not occur to people to think of how important employment law is in shaping the sort of society in which we live: the minimum wage; entitlements to annual holidays and sick leave; and to a workplace free from harassment and discrimination, are valued features of our way of life. Apart from the fact that I am very proud of the contribution that Pauline is
making in this important area of legal scholarship, I have another reason for telling you about her tonight: Pauline's parents came to Australia in the late 1970s as refugees from Vietnam. In one generation, their daughter distinguished herself at school, and went on to complete an undergraduate degree in law, winning the University Medal and a swag of prizes. Pauline does not come from a family that has any connections to the legal profession.

Contrary to one popular misconception, success as a lawyer does not depend upon having family connections. When the then Chief Justice of the High Court launched a book about the Court's history a little over 10 years ago, he pointed out that none of the Justices who then constituted the Court had come from a family with a background in the law. In fact, none of the Justices had come from a family in which a parent had attended university. As Chief Justice Gleeson observed, this statistic said less about the High Court than it said about Australian society and social mobility. And what it said on that subject was pretty good.

I hope that the lawyers who are here tonight will support the Ngoc Tram Nguyen Scholarship in a tangible way and I hope that among the school students we will find a future scholarship recipient, or two, or three. More generally, I hope that some of you

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4 The Hon A M Gleeson AC, Speech delivered at the launch of *The Oxford Companion to the High Court of Australia*, Canberra, 13 February 2002.
will give thought to a career in the law whether you are lucky enough to get a scholarship or not.

I am conscious that I've been talking for a long time, and as I got up to speak it occurred to me that I couldn't remember ever going out to a dinner when I was young when I thought, "Wouldn't this evening be just perfect if after the main course, a judge got up and made a long speech before the sweet?".

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