

TRANSCRIPT OF PROCEEDINGS

O/N 18095

FEDERAL COURT OF AUSTRALIA

**CEREMONIAL SITTING OF THE FULL COURT FOR THE SWEARING
IN AND WELCOME OF THE HONOURABLE JUSTICE MIDDLETON**

PRESIDING JUDGES

**THE HONOURABLE MICHAEL BLACK AC, CHIEF JUSTICE
THE HONOURABLE JUSTICE GRAY
THE HONOURABLE JUSTICE RYAN
THE HONOURABLE JUSTICE SUNDBERG
THE HONOURABLE JUSTICE NORTH
THE HONOURABLE JUSTICE GOLDBERG AO
THE HONOURABLE JUSTICE WEINBERG
THE HONOURABLE JUSTICE KENNY
THE HONOURABLE JUSTICE YOUNG
THE HONOURABLE JUSTICE RARES
THE HONOURABLE JUSTICE JESSUP
THE HONOURABLE JUSTICE TRACEY RFD
THE HONOURABLE JUSTICE MIDDLETON**

MELBOURNE

9.32 AM, MONDAY, 7 AUGUST 2006

MIDDLETON J: Chief Justice, I have the honour to announce that I have received a commission from his Excellency the Governor General appointing me a judge of the Federal of Australia. I now present my commission.

BLACK CJ: Madam District Registrar, would you please read his Excellency's commission.

THE DISTRICT REGISTRAR:

Commission of appointment of a judge of the Federal Court of Australia. I Philip Michael Jeffrey, Governor General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 72 of the constitution and subsection (6)(i) of the Federal Court of Australia Act 1976, appoint John Eric Middleton, one of Her Majesty's Counsel, learned in the law, to be a judge of the Federal Court of Australia beginning on 31 July 2006 until he attains the age of 70 years.

Signed and sealed with the Great Seal of Australia on 22 June 2006. P.M. Jeffrey, Governor General, by his Excellency's command, Philip Ruddock, Attorney General.

BLACK CJ: Thank you. Justice Middleton, I now invite you to take the oath of office.

MIDDLETON J: I, John Eric Middleton, do swear that I will bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors according to law; that I will well and truly serve in the office of a judge of the Federal Court of Australia and I will do right to all manner of people according to law without fear or favour, affection or ill-will, so help me God.

BLACK CJ: I now invite you to subscribe the oath that you have taken. Madam District Registrar, would you please take the oath of office and his Honour's commission and place them in the records of the Court. My warmest congratulations on my own behalf and on behalf of all the judges of the Federal Court of Australia.

MIDDLETON J: Thank you.

BLACK CJ: Mr Solicitor for the Commonwealth do you move?

MR D. BENNETT AO QC: May it please the Court. The Attorney General the Honourable Philip Ruddock MP, sincerely regrets that he is unable to attend today's sitting because of other ministerial duties, but he has asked me to pass on to your Honour his personal congratulations. During a distinguished professional career covering about 30 years your Honour has become one of Australia's leading practitioners, particularly in the areas of commercial law, constitutional law and administrative law.

Your Honour's outstanding academic ability and leadership qualities became apparent very early in your life. You attended Camberwell Grammar School where you were an accomplished and popular student who became editor of the school magazine and your Honour graduated in 1970 as dux of the school in humanities with an award of house colours for general excellence.

Your Honour's service to education is reflected in 14 years on the Council of Camberwell Grammar School. As Chairman you have guided the school's development in its tradition of academic excellence. Under your chairmanship the school has built a new performing arts centre with a full fly tower and orchestra pit and the new Roy McDonald Centre and state of the art classrooms and studios. You took on the primary responsibility for finding a new headmaster and ultimately after an international search Dr Paul Hicks was appointed. Your Honour's wife, Judith, has also played an active role in the life of the school, particularly through the Friends of Music. Your three sons have all attended the school and your younger son, Antony, is currently in year 11 there.

Following matriculation your Honour was admitted to the University of Melbourne where you completed a Bachelor of Laws Degree with First Class Honours in 1975, accumulating numerous academic prizes and scholarships on the way and then your Honour was admitted to practice. You took up the Winter Williams Scholarship at Oxford. You graduated from Oxford with a Bachelor of Civil Laws, again needless to say with First Class Honours and in 1979 your Honour was associate to Sir Ninian Stephen, then a justice of the High Court. No doubt your Honour benefited greatly from this experience. Had his Honour had the power he would no doubt have awarded you first class honours as an associate.

In September 1979 your Honour signed the bar roll and began practising as a barrister and you established a substantial practice covering many areas of the law. You gained a reputation as a talented advocate and a practitioner with remarkable ability, quickly to identify and isolate the decisive issues and run with those most likely to carry persuasion. Your Honour was one of the earliest members of Aitken Chambers in Queen Street and probably its only junior member at the beginning. The more senior members suggested to a number of large Melbourne law firms that it would be appropriate to brief you in matters calling for the skills of a junior.

You thereupon received a brief from Allens Arthur Robinson, marked at \$100, to appear on a plea of guilty to speeding at Wangaratta Magistrates Court for one Charles Windsor. The brief explains the delicacy of the matter because of the family's concern about publicity and reputational damage if he were to lose his licence. Your Honour worked assiduously on this high profile brief and I am pleased to report that His Highness did not lose his licence. The reason, however, was not the persuasiveness of your Honour's advocacy or your Honour's tact, but the fact that the whole brief was fictitious and there never was a speeding charge.

In 1991 your Honour took silk, due recognition of your legal skills and high standing. You were retained by many major corporate clients and involved in

numerous high profile cases, although, I am sorry to say, none involved acting for royalty. Your Honour conducted those cases not only with a high degree of legal skill but also an invaluable knowledge of current popular media culture. One such case was a long-running case involving dealers of Toyota Australia. At the end of that long and tedious case your Honour was asked whether you had any further submissions. Your reply, the case having finished, was "Oh, what a feeling, but I promise I won't jump." I anticipate that when the Chief Justice calls on your Honour to reply today your Honour may raise your eyebrows and say, "Beam me up, Scotty" or perhaps ask the Chief Justice whether you can phone a friend.

Throughout your career your Honour has made a significant contribution to the legal profession by service on various legal professional bodies. You have been heavily involved with the Victorian Bar Council, having served as its treasurer, senior vice-chairman and chairman. You were awarded the centenary medal and the citation reads:

For services as Chairman of the Bar Council, to the community and education.

You are, I am told, the only Chairman of the Bar Council to be so honoured and no doubt my learned friend, Ms McMillan, will talk about your service as Chairman of that body. I have already referred to your Honour's service to education.

Your Honour enjoys a rich personal life outside the law. You are devoted to your wife, Judith, and your three sons: David, Thomas and Antony and you have regular family getaways at your holiday house at a place called Anglesea. You have a deep and abiding interest in humanity and enjoy meeting people from all walks of life and as a consequence you have an enormous range of friends. Incidentally, while Chairman of the Bar Council your Honour was, I am told, a master of the art of delegation. I am told as a result that the Registrars and court officers of this Court are quite nervous at the prospect of what your Honour may have

Your Honour's friends speak of your Honour's well-known passion for good conversation and socialising, with one describing you fondly as a pathological extrovert. Your social activities are rumoured to have some connection with a necessity for your Honour's knee reconstruction. No doubt your Honour will appropriately be offered executive office on this Court's social committee where you will be able to organise functions at such establishments as the Hairy Canary and Double Happiness. Your Honour plays golf, although there is some speculation that this is largely for the post game celebrations and you are known as a stereo typical Melbourne Football Club supporter, namely, someone who is not fully paid up and attends two or three games a year.

I know that your Honour's extensive experience, knowledge and integrity equip you to undertake the important roles and responsibilities of this appointment. Your wisdom, compassion and humour will serve you well in facing the challenges of your new office. On behalf of the Commonwealth of Australia, the Attorney General and

myself I offer congratulations on your appointment. May it please the Court.

BLACK CJ: Thank you, Mr Solicitor. Mr Ray, President-Elect of the Law Council of Australia, do you move?

MR R. RAY: May it please the Court. On behalf of the Law Council of Australia and all Australian lawyers it is both an honour and a pleasure to welcome you to this Court. The President of the Law Council, Tim Bugg, regrets that he is unable to be here today and he sends his personal congratulations and best wishes. Your Honour's extraordinary industry, intellect, capacity, are all reflected in all that you have done in your academic and professional career and in your service to the wider community. In the *Art of Winning Cases* by Henry Hardwick, published in 1903, it was said and I quote:

The first five years of the professional career of a lawyer will usually determine his standing at the bar. If after his admission the young lawyer fritters away his time paying more attention to the pleasures of society, the amusements of the theatre and other fashionable follies, than he does to the study of the law and the business of his clients, he can never hope to be successful in the true sense of the term.

Your Honour demonstrated a capacity to do it all absolutely and successfully. Pursuing the interests of your clients you continue in the lifelong study of the law which you began with such distinction at Melbourne and Oxford. Your Honour also frittered with magnificent style in a way that would have turned the learned author's hair quite white. Your Honour developed a practice that was the envy of all commercial lawyers in Australia. One of the skills that enabled you to achieve this was the ability to distil the key issues of the case from the many folders of material provided to you on silver trolleys by your instructors. The many juniors who have worked with you praise your organisational skills. You have never been afraid to delegate to other capable members of the team.

Your Honour worked on the Tricontinental Royal Commission. Knowing the massive workload you sought the consent of the Commissioner, Sir Edward Woodward, to sit four days a week. Your Honour astutely anticipated resistance to Friday as the rostered day off and sought Mondays instead. This was agreed to by all parties. It is a clear and perhaps unrelated reality that the Flower Drum is far more easily accessed on a Monday. It is said that for approximately two years thereafter lunch and conferences flourished. Your Honour's neat, structured approach to work is well-known. Some 30 days into an inquiry, the Commissioner asked for a copy of a document. It was a vital document. The original could not be found. All counsel were embarrassed because their copies were covered in notes. They were unable to be produced. Your instructing solicitor knew how meticulous you were and so retrieved from your chambers a pristine copy of the document.

Your commitment to the profession and the community at both state and national level is well-known. Your service to the Victorian Bar will be outlined by the

chairman. You were very active in 1995 to 1996 in the establishment of uniform conduct rules for barristers throughout Australia. Your strength and insight then has been followed by others in the movement towards uniform national professional rules and guidelines. Writing in the Bar News about the significant proposals for regulatory changes in the profession leading up to the 1996 Legal Practice Act, your Honour observed, citing examples of, Robin:

What we wear is irrelevant. It is how well we do our job that matters and that is what I hope will not change: our commitment to excellence, our strict observance of our duty to the Court, and our role in the effective administration of justice.

You went to England in 1996 on behalf of the Attorney General for the State of Victoria. Travelling with you was Professor Peter Sellman, Crown counsel. On this occasion, your brief was to look at the regulation of the legal profession in England. Professor Sellman attended with you and, of course, had an expense allowance provided by the State Government. It is suggested that on the first night out in England you led Crown counsel into spending his entire allowance in one splendid evening. Were this to be so, I am confident that your notorious generosity would have assisted from that point onwards.

Your Honour has always enjoyed retreating to Anglesea with your family. You recently rebuilt your beach house funded, some speculate, by Texas dollars. The central item in the renovation was an industrial sized wine fridge which holds 196 bottles at a constant temperature of 14.6 degrees. This was necessary to keep pace with your universal and generous hospitality. The learned Chief Justice with whom you read in 1979 will need to subject any request for capital improvements within this court to very close scrutiny.

Your Honour's commitment to physical fitness is well-known. It commenced after you grew in stature as chairman of the Victorian Bar over a two year period. You and Curtin QC joined an aerobics dance class which was held at 1.00 pm. This avoidance therapy worked well until your Honour found a class at 12.15 which released you for conferences for the balance of the day. Your Honour joined the Royal Melbourne Golf Club approximately seven years ago. It is suggested that the only time your Honour has played there was on one occasion at the request of some American clients. It has been suggested that occasional directions from groundsmen facilitated progress around the course.

The Law Council of Australia and the National Profession welcomes your Honours appointment to this Court. This ensures that the national community and profession will receive the benefit of your outstanding abilities. We wish you well for a long and distinguished career as a judge of this honourable Court. May it please the Court.

BLACK CJ: Thank you, Mr Ray. Ms McMillan, chairman of the Victorian Bar. Do you move?

MS K. McMILLAN: May it please the Court. I appear on behalf of the Victorian Bar to welcome your Honour on the occasion of your appointment as a judge of the Federal Court of Australia. I also appear on behalf of the Australian Bar Association representing all Australian independent bars. The president of the Australian Bar Association, Glenn Martin SC, cannot be here today. He has asked me to pass on to you his best wishes and congratulations on your appointment to this Court.

Having read with Michael Black CJ in 1979, your Honour commenced your career at a time when there had been an explosion in the number of people coming to the bar. Between 1974 and 1980 the number of practising barristers increased by almost two thirds. Such an explosion did not deter your Honour and you soon established a strong practice. Your Honour's reputation for excellence and ability soon spread amongst the senior bar. Very soon you became the junior of choice for the then leaders of the bar, particularly one Alan Goldberg QC.

With the honing of your legal skills at the feet of such eminent leaders of the bar, together with your charm and ability, your Honour developed an enviable reputation at the bar and you quickly became a fashionable junior. Within a very short time, it seemed, you were able to upgrade your not-quite so fashionable Honda Civic stationwagon to a more up-market Mercedes Benz and, indeed, to upgrade to your more up-market Zegna suits.

It was no surprise when Alan Goldberg then led Ron Castan, Ron Merkel and Cliff Pannam to new chambers, affectionately known as Golan Heights, that your Honour and another fashionable junior, Ray Finkelstein, were included as the token juniors and both of you soon became known as the incorporated nominal juniors. Your Honour has now travelled full circle with your appointment to this bench, sitting with your former master and two of your good friends from chambers, Justice Goldberg and Justice Finkelstein.

You were well known in your practice as a barrister for your efficiency and your excellent organisation, attributes on which you pride yourself. Today is probably not the day to mention the one and only time, unlike some of your colleagues from Golan Heights, that your Honour found yourself double-booked and embarrassed before Justice Northrop. This incident gave the late Ron Castan much amusement as he, at your request, settled your grovelling - yes, very grovelling - apology to the judge.

Although your practice was demanding, your Honour has willingly and generously found time to serve the profession with your 10 years on the Bar Council, including 18 months as chairman, eight years on the Applications Review Committee, including two and a half years as chairman, service on the boards of Barristers' Chambers Limited, the Melbourne Bar Proprietary Limited, the Essoign Club and the Barristers' Malevolent Association.

Your Honour has also been chairman and member of the Supreme Court Board of

Examiners and has been the barrister member since 2001 of the Legal Practice Board and its successor, the Legal Services Board. You have been very generous in your professional support of fellow counsel, your juniors and other colleagues, particularly in giving credit to your juniors for their contributions in your cases. You also have a reputation for generosity in terms of hospitality.

The most notable example being the time you were required to travel to Paris with your juniors, including Michael Colbran QC for an arbitration which just happened to extend into two weeks, leaving time for one or two visits to the bar at the Ritz and a memorable visit to Versailles Palace. The finale to the arbitration was your hosting of a dinner for your juniors and instructing solicitors and others at the renowned Tour D'Argent restaurant in Paris, an evening that none of them will forget. An upper room overlooking the Seine with the finest food and wine that France has to offer. Colbran took days to recover while you trotted off for an early morning jog along the banks of the Seine.

Your Honour's commitment to physical fitness has been maintained not only by your constant regime of aerobics and running but also by a commitment to dancing, particularly at night clubs. No doubt you tell Judith that the real reason for your commitment to dancing is your hyper-vigilant desire to monitor your older children's nocturnal social activities. With your appointment, your sons probably live in hope that they will no longer have to endure the embarrassment of bumping into their father on the dance floor.

Your sons are probably too polite to tell you the truth but I think you need to know, particularly now that you are entering this new phase of your career, that it is very important for you to stick to what you are good at. No-one doubts that you will be a very good judge - in fact, an excellent judge - but on the topic of dancing, we urge you to take heed of the advice of the first officer on your recent boat trip who, on watching your antics on the dance floor, said: "Let's hope he makes a better judge than a dancer."

Your record as an advocate has been outstanding. Somehow, and we are not quite sure how you have done it, your Honour has managed to endure the hard commercial cases and make it look like you were having a lot of fun along the way. So much fun that there is even talk that the high profile Patrick litigation is to be made into a mini-series. Your Honour appeared in that case opposed to Julian Burnside QC. It is not certain whether Jack Thompson or Colin Friels will be playing Burnside's role but there is a strong rumour that your look alike Brad Pitt has been approached to play your role.

Behind your endearing facade of good humour, warm personality, quick wit and generosity there is a finely honed advocate with a keen intellect, a steely determination and an ability to do the hard work required, seemingly with ease. Your Honour is well-known for your skill in martially a large body of facts and distilling a complicated case to a series of compelling and persuasive propositions. Your opponents have come to their cases forewarned of your qualities and all have

known that one should never take your Honour for granted.

Your Honour brings all of these outstanding attributes to this Court after having had an outstanding career for over 27 years at the bar both as an advocate and as a leader of the profession. And we know that these same attributes will remain with your Honour in this next stage of your career. On behalf of the Victorian Bar and of all of the independent bars of Australia I extend our warmest congratulations to you on your appointment to this honourable Court and I wish your Honour a long and satisfying career as a judge of this honourable Court. May it please the Court.

BLACK CJ: Thank you, Ms McMillan. Mr Provis, Vice President of the Law Institute of Victoria. Do you move?

MR G. PROVIS: May it please the Court. I appear on behalf of Victorian solicitors to congratulate your Honour on your appointment as a judge of the Federal Court of Australia. The President of the Law Institute of Victoria, Cathy Gale, regrets that she is unable to be here today and has asked me to pass on her best regards. She is stoically attending to the business of the Law Institute, attending the American Bar Association Conference in the harsh and unwelcoming climes of Hawaii.

As we have heard, your Honour's career at the bar spans more than 25 years working in commercial matters at the highest level. You earned a reputation as a formidable advocate with a keen legal mind and a great capacity to relate to clients and to support junior barristers. As we have heard, your Honour has served on the legal practice board as Chairman of the Victorian Bar Council, on the executive of the Australian Bar Council, as Chairman of the Supreme Court Board of Examiners and as Chairman of the Camberwell Grammar School Council.

Your Honour's reputation as an advocate of international renown has spread as far as Paris, as we have heard. Your Honour was senior counsel in an international arbitration of a contractual dispute in the late 1990s. The contract was governed by the French law but the arbitration was in English. Your Honour quickly became proficient in French contract law after acquiring a copy of the French Code Civile and with some assistance from the learned French counsel, a flamboyant convertible-driving American with a penchant for fine wines - perhaps some unconscious association there, your Honour. The arbitration also enabled your Honour to display your multilingual talents.

Some observers suggested that your Honour struggled with pronouncing some of the French legal phrases, while other phrases took on an entirely new meaning when spoken with your Honour's distinct Australian inflexion. Surely any difficulty of comprehension experienced by the listeners was due to their own failing, lack of hearing or lack of concentration, rather than any failing on your Honour's part. This was proved when, as often was the case, you were asked to repeat yourself. Upon such request, your Honour, in the time honoured tradition of L'Anglais, simply raised your voice and with a few more attempts and further still increase in volume you were heard, as they say, loud and clear.

In this matter your Honour's commitment to the cause was demonstrated whilst cross-examining your opponent's chief witness, who was an ex-fighter pilot of the French Air Force. The cross-examination became so animated and the witness so insulted, as the perfidious French military are wont to do, that one observer notes that the only way to resolve the issue seemed to be pistols at the twittery, at dawn. As we have heard, your Honour enjoys partaking in physical exercise and none more so than a jog through the streets of Paris. This was a task which you were wont to inflict upon your unsuspecting instructing solicitors in the wee hours of the morning after only two or three hours sleep.

Of course all that physical exercise can be exhausting and particularly dehydrating. Fortunately, your Honour's French language skills were up to the challenge and your Honour was able to adequately organise a rehydration each evening. Effective rehydration takes time we are told. For that reason and that reason only, your Honour sensibly did not retire until all available rehydration supplies were exhausted every evening. As we have heard today, your Honour's intellect and expertise will no doubt equip you well for the many challenges of your appointment to the bench, as will your obvious joie de vive.

On behalf of Victorian solicitors, may I again congratulate your Honour on your appointment and wish you a long and rewarding service of this Court. May it please the Court.

BLACK CJ: Mr Provis. Justice Middleton?

MIDDLETON J: Chief Justice, your Honours, ladies and gentlemen, I thank you for your presence here this morning. Mr David Bennett, Mr Ross Ray, Ms Kate McMillan, Mr Geoff Provis, I am most grateful for your remarks and for the expressions of good will from those who you represent. I know that each of you in preparing your remarks had much ammunition to amuse and entertain, such remarks I am sure primarily given to you by colleagues in the profession, and I thank you for the culling that obviously took place. There was some suggestion that each of you would supplement your oral presentation to this Court with written submission because time would not permit the full story to be told in its cut and uncut versions.

The Court is today honoured and I am deeply grateful and delighted that so many people have given up their time to be here to witness my taking the oath of office including Professor David de Kretser, Governor of Victoria, and his wife Mrs Jan de Kretser; Sir Ninian and Lady Stephen; Justice Christopher Maxwell, President of the Victorian Court of Appeal; existing and retired members of the Federal judiciary; existing and retired justices of the Supreme Court of Victoria; Ms Pamela Tate, Solicitor-General for the State of Victoria; the Honourable Justice Patrick Keane of the Queensland Court of Appeal and his wife Dr Shelley Keane; Professor Michael Crommelin of the University of Melbourne Law School; Mr Colin Neave, Chairman of the Victorian Legal Services Board; Ms Victoria Marles, Victorian Legal Service Commissioner; the Honourable Mr Andrew McIntosh, member of the Victorian State

Parliament; Dr Paul Hicks, Headmaster of Camberwell Grammar School, and his wife, Mrs Susan Hicks.

I am also particularly glad that my father is present today and I would like to express my gratitude to him and my late mother for all their dedication and sacrifice they put into my upbringing. My father led by example of providing public service to the State of Victoria as its Solicitor-General and later as Secretary of Lands, being awarded on his retirement in 1981 the Imperial Service Order in recognition of his outstanding public service. I owe an unspeakable debt to my wife Judith for her support over many years, something which cannot be adequately expressed on this public occasion. But I am pleased that Judith and my three sons are able to be here today. Boys, I am sure in time you will forgive for the lifestyle change that I have imposed upon you. In addition to my immediate family, I also thank other family members and friends for their attendance.

Also I must express my gratitude to my first clerk, the late Kevin Foley, for assisting me as a junior barrister and I thank Glenda McNaught, who was my secretary with the late Ron Castan QC for many years and then became my clerk. At all times she has been my friend. I have been very fortunate over my life to have many people support and encourage me. As a consequence, my personal and professional life have been charmed. I very much enjoyed my school life and university life, including my time as a resident tutor at Trinity College at the University of Melbourne.

It was at Trinity I first came to know one of the many judges of the Court with whom I have shared my journey to this point. Justice Peter Gray, a tutor of mine, must also take some responsibility for today as he moved my admission to practise as a barrister and solicitor of the Supreme Court of Victoria led by Mr Robert Brooking QC, who later became a Justice of Appeal in the Supreme Court of Appeal. I was very fortunate to serve my articles with Mr Ron de Kretser as my principal. He not only introduced me to many aspects of the law but he impressed upon me the importance of dealing with people in a polite and courteous way no matter what the circumstances.

After my admission to practice and upon finishing at Oxford, I was accepted as an associate to Sir Ninian Stephen, then a Justice of the High Court. Sir Ninian and Lady Stephen were very kind to each of their associates and encouraged a spirit for the enjoyment of the law and the pursuit of excellence. Sir Ninian has now four former associates as judges of this Court: Justice Tony North, Justice Susan Kenny, Justice Neil Young and myself.

After completing my time with Sir Ninian I then came to the bar and read with the now Chief Justice of this Court. Chief Justice Michael Black is a person of many abilities and a person to whom I owe a great deal. He fuelled my desire to be a good advocate and imbued in me a love for the bar, and by that I mean more than just the love for the occasional lunch. He introduced me to many leaders of the profession and always took time to assist me in the presentation of advices and the preparation

for court appearances.

After leaving the chambers of the Chief Justice I moved to the 12th floor of Latham Chambers to share accommodation with four other barristers, which included more judges of this Court: Justice Peter Heerey and Justice Don Ryan. I was generously looked after by them and, as always, was provided with much support and encouragement. I then moved over to what was known as Golan Heights to share chambers with five other members of the bar; the late Ron Castan QC, Dr Cliff Pannam QC, the Honourable Mr Ron Merkel QC, a previous member of this Court, and Justices Alan Goldberg and Ray Finkelstein.

I spent about 20 years on the 27th floor of Aitken Chambers, only this year to move one floor to the 28th floor, where I have enjoyed the company of many of my old friends and colleagues, whilst befriending more recent arrivals to the bar. It was Justice Goldberg, who by the way celebrates his birthday today, who was instrumental in encouraging me to join the 27th floor of Aitken chambers. He told me they, and by that I think he meant Justice Goldberg, wanted a young barrister and someone different. I am not quite sure what that latter criteria meant. The interior designer commissioned to design the new chambers did not think there was anything too different about me. The layout drawings had our six chambers, nicely placed, with our names printed on each designated room: Pannam, Castan, Goldberg, Merkel, Finkelstein and Middlestein.

In some quarters, the name has stuck. There have been so many people that assisted me along the way that it would trespass upon too much time to identify them individually. I trust they know who I speak, and they will accept this expression of gratitude for their encouragement. They include many judges of the federal judiciary, and of the Supreme Court of Victoria, both current and retired, and many senior members of the bar.

There have been a number of aspects of my life that I have thoroughly enjoyed. I enjoyed and received much benefit from the company of my six readers, and many of my juniors, and have continued close friendships arising out of those relationships. My time on the bar counsel, particularly as its Chairman, I found stimulating and rewarding. My role included being the bar's representative on the Australian Bar Association, and the Law Council of Australia. This gave me the opportunity to meet practitioners from other states. I have had a practice which has taken me to other states, and I have been able to meet and befriend members of the legal profession who practice principally outside Victoria. I have always been welcomed and treated with the utmost courtesy when working in the other states, and I am glad that I still will have the opportunity to work nationally.

Over the years, many supportive clients have put their faith in me. I always enjoyed large cases with teams of lawyers supporting me, including in-house counsel, external solicitors, and junior counsel, all of which have been of a high calibre. The clients had the resources, the solicitors and junior counsel did all the hard work, and lead counsel received all the glory. Most of the cases that I was involved in at the

time of my appointment have now been allocated to other counsel. In each case, the litigation was on course on my departing, and all I can say, in the hands of competent counsel, you cannot lose.

In addition to my work as a barrister, I became involved in the broader legal community as a member of the Legal Practice Board and later, the Legal Services Board. Both Boards included as their members many distinguished people in public life who gave their time and energy to assist in the regulation of the legal profession. I am pleased that many of the Legal Board's members are here today, and that I had the chance to work with such dedicated people over the past years. In the same vein, I have come to know many people outside the law, dedicating themselves to the furtherance of education through their involvement on the Board of Camberwell Grammar School. Again, I am very happy to see so many of those who I have had this involvement with Camberwell Grammar here on this occasion.

I now look to the future. I am looking forward to working in the Federal Court of Australia. I am honoured to take the place of Susan Crennan J, who was recently appointed to the High Court of Australia after a distinguished career at the bar and as a member of this Court. I am not as famous as some of the recent appointees: Justice Neil Young, pop star of Crazy Horse fame, Justice Richard Tracey, Dick Tracy, well-known detective. I have, however, on occasions been confused with the late Dr John Middleton, winemaker, who seemed a lot better known than John Middleton QC.

At times when I booked restaurants, the restaurant proprietors obviously very keen to ingratiate themselves with Dr Middleton so as to obtain more of his excellent wine, which was in short supply and greatly sought after, would let me jump the queue and would usually give me the best seat in the house. I considered the principles of law regarding misrepresentation by silence, and concluded that in all the circumstances, I was not required to correct the obviously incorrect assumption made by the restaurant proprietor as to my status.

The Federal Court itself has had a remarkable success story. Sir Nigel Bowen is to be much thanked for the work he undertook in this Court, and being instrumental in obtaining the reputation it now enjoys. Our current Chief Justice, Michael Black, has continued to build on the work which Sir Nigel commenced. When I first came to the bar, and now upon my commencement in judicial office, I have already received much support from the Chief Justice, and also from many of my colleagues. I could not have had a more welcoming time since the announcement of my appointment was made on 22 June of this year, which now seems some time ago.

I will have the opportunity to sit at first instance on appeal. Academic lawyers treat few decisions at first instance as being worthy of consideration, many of the decisions of the Full Court as wrong, and somewhat begrudgingly, most decisions of the High Court as right, but for the wrong reasons. Thus, as a future member of the Full Court, I may get some airplay, although perhaps not necessarily of a positive nature.

I hope I will always remember that the objective of the Court is to serve the litigants. There is an obvious demand for increasing efficiency and transparency in all of society's institutions, including the Courts. The proper basis for Courts to function in society is that they enjoy the public support. Obviously, neither a Court nor its orders can enjoy public respect if judgments are regarded as being reached inefficiently, or are illogical or unjust. I hope I will be able to contribute to this Court, maintaining its high reputation for efficiency and the attainment of justice.

Sir Ninian Stephen at his welcome to the High Court of Australia in Melbourne on 2 March 1972 said that it has been said that the chief pleasure of judicial office should be to witness enacted before one that most fascinating of intellectual accomplishments, the weaving of the threads of well-ordered evidence into the whole cloth of cogent argument. He continued and said:

I am proud to have belonged to a bar which, at its best, regularly practices this high art, and whose members at all times strive towards that goal.

I, too, am fortunate enough to have belonged to such a bar, which is more national now in character than perhaps at the time of Sir Ninian's welcome. I know that the legal profession as a whole dedicates itself to present cases before the Court in an orderly and proper manner, seeking to derive the truth. Both the advocate and the judge share a common object, the attainment of justice according to law. I am honoured to be still an instrument engaged in this process. I again thank you for attending today. I do ask for your continuing assistance in the discharge of my judicial responsibilities, to be undertaken by me in accordance with the oath of office.

BLACK CJ: Adjourn the Court, please.

**THE FULL COURT OF THE FEDERAL COURT OF AUSTRALIA IS NOW
ADJOURNED**