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Swearing in Ceremony of the Honourable George Alfred Palmer QC as a Judge of the Supreme Court of New South Wales

THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

SPIGELMAN CJ
AND THE JUDGES OF
THE SUPREME COURT
Monday 23 April 2001

SWEARING IN CEREMONY OF
THE HONOURABLE GEORGE ALFRED PALMER QC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

1. PALMER J: Chief Justice, I have the honour to announce that I have been appointed a Judge of this Court. I present to you my Commission.

2. SPIGELMAN CJ: Thank you, Justice Palmer. Please be seated whilst the Commission is read. Principal Registrar, would you please read the Commission.
(Commission read)

3. Justice Palmer, I ask you now to rise and take the oaths. First the oath of allegiance and then the judicial oath.
(Oaths of Office taken).

4. Principal Registrar, I hand to you the oaths to be placed amongst the Court's archives. Sheriff, I hand to you the Bible so that you may have the customary inscription placed in it in order that it may then be presented to Justice Palmer as a memento of this occasion.

5. Justice Palmer, on behalf of all of the Judges of the Court, and on my own behalf, I welcome you as a Judge of this Court. Your Honour has, for many years, been a Senior Counsel and participated in a full range of activities over which you will now preside as the Judge and I am looking forward to many years of service with you on this Bench.

6. Ms RUTH McCOLL PRESIDENT NEW SOUTH WALES BAR ASSOCIATION: May it please the Court. It is my privilege to speak today on behalf of the New South Wales Bar to welcome and congratulate your Honour on your appointment to the Supreme Court of New South Wales.

7. Your Honour was admitted to the Bar on 8 November 1974. You read with Dick Conti, now of course Justice Conti of the Federal Court. You were appointed Queen's Counsel on 12 November 1986.

8. Your background equipped you well for your transition to the Bar. Whilst studying law at the University of Sydney, you did your articles at Freehill Hollingdale & Page working extensively in commercial law. From 1970 until 1974 you were employed as a solicitor at Messrs Strasser Geraghty & Partners where you specialised in mining and oil exploration and development work and public company securities. An early indication of your precocity is that you were a partner in that firm by the time you were in your mid 20s.

9. After you were admitted to the Bar, you specialised in company and commercial law and trade practices law. You rose rapidly to become the leader of the junior Bar in company law.

10. Apart from your manifest legal skills, one of the reasons you undoubtedly acquired a large practice lay in your approach to your clients and your cases. While passion is not always a description encouraged in relation to a barrister's work, particularly not in the company list, in your Honour's case it is fair to say you have always been passionate about your cases. You have always pursued your client's interests with great zeal, at the same time managing to remain objective. You have, of course, always been exceptionally well organised and prepared for each case. You are a lateral thinker, but at the same time a person said to understand human frailties. You are said to have great patience.

11. You have obviously taken early lessons in "Total Quality Management" for your client care skills are described as exemplary. There was always a sense of calm in your chambers, even during times of extreme stress, such as when a major corporate client wanted an advice within an hour!

12. You have been exceptionally well prepared for each case, bringing into that preparation those qualities essential for judicial life, being decisiveness, tenacity, extreme logic and the great ability of being able to sort out the wood from the chaff.

13. In Court you have been described as "an arresting speaker" who commands attention. Just how you achieved this is a matter of some debate. Your courtroom style has been described as occasionally "a touch theatrical" but just to demonstrate how subjective such observations can be, others describe you as being "intense, but not flamboyant".

14. You have served the community well through your work in public inquiries. You were Junior Counsel to Roger Gyles, now Justice Gyles of the Federal Court assisting the Woodward Royal Commission into drug trafficking.

15. In April 1986, the National Companies and Securities Commission appointed you to carry out a special investigation under Part VII of the Companies (New South Wales) Code into the collapse of the Balanced Property Trusts. That company had collapsed in 1984 leaving investors about $45 million out of pocket. By the end of 1986, you had produced a four-volume report in which you concluded that the group was "an imposing financial edifice... constructed on foundations of deceit and incompetence".

16. A brief recitation of some of the other cases in which you have been involved indicates your involvement in some of the major corporate controversies and collapses of the last two decades. You appeared in the Tryart litigation, parts of Spedley, the Estate Mortgage case, Talbot v NRMA Holdings, to mention a few.

17. In the Estate Mortgage case, you brought to the fore your ability to organise huge quantities of material logically by reducing six and a half million pages of documents into just eleven essential volumes.

18. Your Honour is about to move into a realm where you will have total control of the proceedings. This is not a unique experience for you, for you are a conductor in another world. You have been composing music in your spare time for some twenty-seven or so years. You describe yourself as being principally interested in being a composer who would also like to conduct your own work. You made your conducting debut at the Sydney Opera House in 1998 conducting the Sydney Opera House Orchestra in the curtain-raising programme for the Ray Charles tour. You were conducting your own arrangements of the work of singer/songwriter Scott Kilminster which is the stage name of Walker's brother.

19. You have had two tryouts to be a Supreme Court Judge. The first occurred by mistake when, soon after taking Silk, you somehow found yourself fully robed and marching in procession into St Mary's Cathedral for the Red Mass with all the Supreme Court Judges solemnly led by the then Chief Justice Sir Laurence Street.

20. The second was when you were an acting Judge of this Court in late 1991. It was apparent to all who appeared before you that you were obviously very good at that role. That being said, it is also the case that around that time you declared to anyone who would listen that you did not want to become a Judge. Which of your two tryouts dissuaded you, we may never know. Equally we may never know what has changed your mind. Whatever it was, we are confident that the people of this State and the administration of Justice will be well served by your appointment.

21. On behalf of the New South Wales Bar, I wish you a happy and successful tenure as a Judge of this Court.

22. May it please the Court.

23. MR NICHOLAS MEAGHER PRESIDENT LAW SOCIETY OF NEW SOUTH WALES: May it please the Court. On behalf of the solicitors of New South Wales, it is my great pleasure to welcome your Honour as a Judge of this Court.

24. Your Honour was born in Sydney and following your primary schooling at Hunters Hill, you were educated at St Ignatius College Riverview. I am told, your Honour, that in 1961, which was your Honour's last year at that school, I started as, according to your Honour's words, a freckled-faced young person starting out in my first year at that particular establishment.

25. Your Honour, as has been said, is an accomplished musician. You are remembered as the school organist, as a distinguished classics scholar, leaving behind your poetry compositions in both English and Latin. But at your special request today, your classics teacher Father Charles Fraser I am told is here, together with many of your former Greek students who studied with you at that particular time.

26. Your Honour attended Sydney University, where you were awarded Honours in Latin before completing your Law Degree. You will be joining other eminent classics scholars on the Bench of this Court, including the President of the Court of Appeal. I am told that at the instigation of Mr Page, you commenced your legal career as an articled clerk at Freehill Hollingdale & Page. It was there that you commenced your specialised interest in corporate law.

27. Your Honour was admitted as a solicitor in 1970 and joined the firm of Tribe & Strasser where you became a partner and were no doubt there able to share your love of chamber music with Mr Ken Tribe.

28. As we have heard this morning, your Honour was called to the Bar in 1974 and took Silk in 1986.

29. In 1991, your Honour, as has been said, had your initial exposure to life on the Bench when you were appointed an Acting Judge of the Commercial Division of this Court.

30. Your Honour is a highly-esteemed corporate lawyer with your specialised and, I am told, favourite area of legal studies being in the area of Law of Trusts.

31. Over the period from 1990 until 1997, as Senior Counsel in probably the largest and longest running commercial cases in Australian legal history, you led a team of four barristers and ten solicitors in what is known as the rather infamous Estate Mortgage piece of litigation.

32. Your contribution has been acknowledged as ending in one of the most highly successful results from the numerous collapses of that decade with the recovery of over $200 million.

33. During your frequent visits which you made to Melbourne for the duration of that case, you are remembered also for your absolute commitment in attending every possible Thursday night at Baker & McKenzie and staying for more than just your suggested one orange juice, before the late flight back to Sydney.

34. Your musical achievements have been of an exceptional order and your celebrated appearance in 1998, as has been said, as the conductor of the Sydney Symphony Orchestra for the Ray Charles concert was rewarded by the packed audience with what is claimed to have been greater applause than that given for Mr Ray Charles.

35. Your passion for music and talent as an organist and pianist has been extended to the more adventurous field of electronic compositions. I understand that the challenge of mastering the cello remains for the future.

36. Your adventures in music are matched by your physical pursuits as a keen cyclist and I am told your Honour acquired the gift of a magnificent state-of-the-art mountain bike for your last birthday. This equipment, however, will be left behind when you embark next year on your 750 kilometre trek across the Pyranees from Le Puy to Santiago Del Compostela.

37. Your Honour is a dedicated family man, not only committed to your own family, but also the affairs of the Holy Family Parish at Lindfield. Your wife, Penny, two daughters and son, your parents and sister, Maureen, are here today.

38. On behalf of the solicitors of New South Wales, I take great pleasure in congratulating you on your appointment and to many satisfying years on the Bench.

39. If it please the Court.

40. PALMER J: Thank you, Chief Justice, Ms McColl and Mr Meagher. Truly is it said that the welcome address to a new Judge is the only occasion on which counsel is licensed to mislead the Court. Several times this morning, quite frankly, I wondered whether I had turned up to the right swearing-in.

41. Ms McColl and Mr Meagher, thank you for the warmth and the kindness of your welcome.

42. A major turning point in one's life, such as this is, provokes one to reflect both on the past and on the future. As to the future, I can only say that I am looking forward to the challenge with enthusiasm and that I am determined to do my best. As to the past, I am conscious that I have had many advantages in my life and that I am the product of the guiding influence of many people. It is impossible on this occasion to thank all those to whom I owe a debt of gratitude, but it is important for me to acknowledge publicly, at least, some of them.

43. As you have heard, my classics master at St Ignatius College was Fr Charles Fraser. Unfortunately, illness prevents him from being here today. A man of immense learning and accomplishment, he wears his scholarship lightly and generations of his pupils have been influenced by his generosity, humanity, forthrightness and a certain sardonic, if not deflating, wit. To give you some idea of the duration of that influence, not only did he teach me and my contemporaries at the Bar, he also taught Tom Hughes QC. I thank Fr Fraser for all that he has done for me.

44. In 1967 I commenced articles of clerkship with Freehill Hollingdale & Page. Mr Thomas Owen Jones, then and still an eminent partner of that firm, was entrusted with the task of turning a woolly-headed, gawky and diffident youth into a clear-thinking, polished and confident solicitor. Tom Jones was unfailingly patient and helpful but, lamentably, he failed. As you can see, I did not grow up to be a clear-thinking, polished and confident solicitor. Nevertheless, I thank him very much for his efforts.

45. I came to the Bar in 1974. I was fortunate to be led by some of the great advocates of the day. Accordingly, I immediately set myself to imitate slavishly their courtroom styles: Michael McHugh QC for swagger, panache and an encyclopaedic knowledge of any case ever decided anywhere in the common law world; Kenneth Handley QC for dazzling intellectual tours de force which had Courts of Appeal eating out of his hand; Peter Hely QC for the ability to enunciate the critical issue with such deadly economy that the Court hung greedily upon every syllable. Needless to say, my attempts at imitation failed to produce the same effects as the originals.

46. I did not attempt to imitate Murray Gleeson QC because I knew that I could never approach his almost frivolous jocularity in court; and I did not attempt to imitate Tom Hughes QC for the obvious reason that no-one would dare.

47. To each of them, and to all of my friends at the Bar, I express my thanks for their forbearance, their instruction and their camaraderie.

48. Two weeks after I was admitted to the Bar I was briefed to appear in a fully contested trial in the Supreme Court. The trial Judge was the late Mr Justice Needham. Trembling with nervous apprehension, I went to introduce myself to him in his chambers just before the trial commenced, as was the custom in those days. I said, “I hope you will make some allowances for me. This is my first trial." Mr Justice Needham replied with a smile, “I hope you will make some allowances for me too. This is my first trial."

49. That was typical of the charm and the courtesy of one of the greatest Judges to grace this or any other Bench in Australia. Denys Needham was a consummate Equity lawyer whose judgments command universal respect to this day. But just as importantly, he inspired in all who came into his Court, both lawyers and litigants, a secure confidence that justice had been done: every argument had been listened to with a fair and open mind, an erudite intelligence had been brought to bear on all the issues and all who had participated had been treated with courtesy and respect.

50. There have been other Judges on the Equity Bench who, for the same reasons, have likewise been held in the highest esteem and affection of the profession. I mention without further elaboration the late Sir Nigel Bowen, the Hon John Kearney, the Hon Malcolm McLelland, the Hon Brian Cohen. Those of us who have known Judges such as these know how much we are all indebted to them. They are the exemplars who we strive to follow.

51. I come now to my family. I am very happy that my mother and my father and my sister, Maureen, are here today. I have the best parents in the world and the best sister in the world. It is impossible for me to express in words on this occasion the extent of my gratitude to them and how much I admire, respect and love them.

52. Friendship has been a vital sustaining force in my life. I am proud and happy that my closest friends Scott Walker and Chris Hartcher can be here. Scott has been my best mate for almost half of my life and we have shared many adventures. Together Chris and I have been through school, university and all that followed. To Scott and Chris, my inadequate thanks for your love and friendship.

53. What can I say about my children, Matthew, Nerida and Claire, which will not justly condemn me as a boastful father? I am so proud of each of them, not only for what each has achieved but much more because each has grown into a wonderful, loving and generous human being. No parent could hope for better than that.

54. My wife, Penny, has strictly forbidden any disclosure of connubial confidences. She has sought and obtained a quia timet injunction restraining any attempt of judicial humour on the topic of our marriage. The injunction was granted by Justice Einstein over a bottle of wine last week, after a strenuously contested hearing. Therefore, all I will say of my wife of 30 years is this: without her, there would be nothing.

55. Over the last few days many of my colleagues at the Bar have been kind enough to offer suggestions as to how I should conduct myself on the Bench. Some of those suggestions have been - shall we say - interesting, but somewhat impractical. But the common theme of all the advice seems to have been this: “When you get into court, for goodness sake, just stop talking and let the rest of us get on with it."

56. That excellent advice I now propose to take. Thank you all very much for coming.

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A Fair Go Under the Law

**ADDRESS AT A SERVICE FOR THE COMMENCEMENT
OF THE LAW TERM AT ST MICHAEL'S CATHEDRAL, WOLLONGONG
29 January 2002**

A FAIR GO UNDER THE LAW

When I was asked to give an address at a service to mark the commencement of the Law Term I asked myself the question: what is the purpose of such services? Why has the legal profession developed a tradition of commencing its working year with religious services rather than with some sort of secular pomp and ceremony? Why do we all come to this Cathedral today?

Each of us has one or more good reasons, but can I suggest that, for many of us, one of those reasons is the felt need to affirm – to ourselves, as lawyers, and to the community in general – that the law, in its content and in its everyday application, is firmly founded on the ethical values which lie at the heart of all of the great religious traditions of civilized societies.

In today's reading from the Gospel, we heard a story that has been familiar to most of us from childhood: the parable of the Good Samaritan. The moral of the story is, likewise, familiar: do unto others as you would have them do unto you. But, on closer examination, there is a great deal in this parable which is of especial significance to problems facing our society today and how we expect the law to deal with them.

You would have noticed that Jesus gave us this parable in response to a question from a lawyer. The lawyer had asked what was necessary to achieve eternal life. Jesus' answer was: observe the law. The law is: love God and love your neighbour as you love yourself. Seemingly, very simple. The lawyer was abashed: he had asked a question to test Jesus, perhaps hoping to show him up as a fool or a heretic, but Jesus had said: you already know the answer.

But the lawyer, like all lawyers, did not like to appear a fool. He did not want to leave Jesus with the last word. He engaged in what we, as lawyers, often do. He quibbled over definitions. *"Ah,"* he said, *"but what do you really mean by neighbour?"*

And so Jesus gave the parable of the Good Samaritan as a legal definition of the word "neighbour" – a little bit longer than most definitions you'll find in the Income Tax Assessment Act 1936, but a million times clearer.

There are five characters in the parable: the traveller who is attacked by robbers, the priest, the Levite, the Samaritan and the innkeeper. We are told a little bit about four of the characters and Jesus' audience would have known a lot more about them as familiar stereotypes. The priest is a person of high position in society, educated in the law, a pillar of the Establishment. One would expect him to behave in accordance with recognised ethical and legal standards of conduct. The Levite is a subordinate official of the Temple in Jerusalem, also a person of position in the community. One would expect him to behave in a manner which is a cut above the standards of the ordinary uneducated person. The innkeeper would have been the type of man most innkeepers are today. Then there is the Samaritan.

The Jews despised the Samaritans as heretics and the Samaritans returned the favour with interest. Even worse, this particular Samaritan was obviously a trader: he had a donkey; he was well provided for the journey, having wine and oil; he had money for the innkeeper and promised to pay any additional expenses for the care of the wounded man on his return. Right-thinking Jews at that time regarded traders as cheating scoundrels and Samaritans were especially known as successful traders. As soon as Jesus mentioned a Samaritan, and a trader at that, his audience, in a knee-jerk reaction of prejudice, would have conjured up a stereotype picture of a shifty-looking man, with glittering, rapacious eyes, and of swarthy appearance. A stereotype picture often evoked by prejudice

in our own community today when the media refers to *"a person of Middle Eastern appearance"*.

But what are we told about the man who is attacked by robbers? Absolutely nothing at all: Jesus says only: *"a man was going down from Jerusalem to Jericho"*. The word the gospel writer uses for 'man' is the Greek word 'andros', which equally means 'human being' or 'person'. The text can be read: 'a person was going down to Jericho'. Whether that person was a Jew, a Samaritan, a Roman, a rich man, a poor woman, a good person or a bad person does not matter. The law, Jesus was saying, was to be applied indiscriminately to every human being.

And what was that law? "Love your neighbour", that is, every person, "as yourself". Clearly, "love" is not intended to mean a romantic attraction. Most of us would not say that we feel that way about ourselves. What we do feel about ourselves is that we are, each one of us, worthy of respect, that we have a basic human dignity and that we are entitled, at the very least, to "a fair go". And in particular, we feel that, whether rich or poor, whether influential or without influence, the law should be applied to us without discrimination. That equality of respect and treatment is the law to which Jesus is telling us every human being is entitled.

The character of a society is expressed in the laws which it makes and in the way in which that society applies and enforces those laws. The sense of 'fair go' which is characteristic of Australian society is expressed in laws which discourage discrimination on the ground of race, religion and sexual identity and in laws which encourage equal opportunity for all.

But a society behaves just like the individuals who constitute it. We are all capable of acting inconsistently. We can rush to save our neighbour's house from the bushfire, selflessly risking our own safety without a second thought, and yet a week later, when the neighbour's New Year's Eve party goes past midnight, we can call the police to stop what we regard as an intolerable interference with our peace and quiet.

And so it is with the laws which we, as a society, have developed to express our sense of justice and 'a fair go'. They can be there on the statute books, all right, but sometimes fear, intolerance or lack of understanding of the facts lead us, as a society, to deny those laws effective operation.

The issue which has most tested the character of Australian society in the last year is that of the refugees, the so-called boat people. As we all know, for many years Australia has had laws which determine the status of those seeking asylum and whether or not they are entitled to remain in this country. The Commonwealth Migration Act, the 1951 Convention Relating to the Status of Refugees, and a multitude of ancillary and facultative legislation and regulation provide the legal machinery whereby these decisions can be made. The vast majority of these laws were in existence long before the so-called "Tampa crisis" became an election issue last year. The laws were there on Australia's statute books because this country agreed with many other countries that these laws were a fair and humane response to the plight of refugees as well as being fair in the interest of the country concerned. In other words, Australia perceived these laws as giving both refugees and the people of Australia 'a fair go'.

But when ships and small vessels, often unseaworthy and dangerously overloaded with people seeking asylum, are forced out of Australian waters so that those on board will not be able to invoke the laws of Australia to determine whether or not their claims for refugee status are genuine and whether or not Australia must perform the legal obligations which it has undertaken under the international Convention on Refugees, then we must seriously ask ourselves what is happening to the character of our society. We have laws on the statute books to give both refugees and Australians a 'fair go' but we make sure that the refugees cannot receive the benefit of those laws. We are condoning the principle that the law can apply to those we like or approve but that it is all right to deny the law to those whom we dislike.

Well, some might say, why shouldn't a society deny the law to those it dislikes? Obviously, there are quite a few people who are crooks, cheats, bludgers, queue-jumpers, trouble-makers or otherwise far more trouble to the rest of us than they're worth. Why should we allow them access to the legal system when they'll only abuse it, using clever lawyers to get their own way?

There are quite a few answers to that question. A Christian would be able to say, quite simply, that Christ teaches us that every person should have the benefit of the law because each of us is equally important in God's sight.

A lawyer would appeal to self-interest. If the law is only for the benefit and protection of those in our society who are liked and approved, who and what will protect us if we have the misfortune to become disliked and the mob turns against us?

The lawyer might also answer: is our system of justice really so inadequate that it cannot tell the good from the bad and the genuine from the false? In other words, whether it be an asylum seeker's claim for refugee status or anybody else's claim to a legal right, do we not trust our own system to make a correct and fair decision? Why cannot we allow the law to resolve the problem, as it is designed to do?

If the truth is our society fears that if the law is allowed to apply to these asylum seekers, many will be permitted to stay and we just don't want them here, then let us be frank about it. Let us say openly to the rest of the world: we are going to change the law; Australia is no longer going to be bound by international conventions or treaties on refugees. But let us not, for the sake of our own self-respect, pay lip service to the principle that our laws apply to all indiscriminately while we remove from the jurisdiction of our courts those who appeal to our laws for protection and while we detain others like criminals for months and sometimes years without applying the law to decide their status as refugees. That lip service to principle is the sort of hypocrisy for which Jesus condemned the priest and the Levite who, rather than confront the issue whether to apply the law 'love your neighbour' to the wounded traveller in the ditch, crossed over to the other side of the road.

So I return to the question with which I started: what are we doing here today?

May I suggest that, in coming to this service to celebrate the commencement of the Law year and in listening once again to the parable of the Good Samaritan, we reaffirm our commitment as Christians, as lawyers and as Australians, to that fundamental principle of human dignity which the law embodies and which Christ teaches: that every person is entitled to a fair go under the law.

Justice George Palmer
Supreme Court of New South Wales

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NSW Conference of the Maritime Law Association of Australia and New Zealand

Address by the Hon. Justice Palmer
New South Wales Supreme Court

NSW Conference of the Maritime Law Association of Australia and New Zealand

8 March 2003

Mr President, colleagues,

Thank you very much for inviting me to say a few words by way of introduction, both of myself and of new developments in the Admiralty Jurisdiction of the New South Wales Supreme Court.

As you know, I have been appointed by the Chief Justice as the Admiralty List Judge. This may seem a little like over-kill to some of you: the Admiralty List is not exactly what you would call a heavy list at the moment. In fact, there is only one matter in it. Still, at the time of my appointment there were two current matters, one of which has since settled, so that I can already claim with some justification to have disposed of half of the backlog since my appointment. I hope that this is an augury for the future.

My appointment as Admiralty List Judge is part of a proposal by the Chief Justice of this Court to reinvigorate the Admiralty Jurisdiction of the Supreme Courts in order to regain Australia's position as a pre-eminent Admiralty Jurisdiction.

For some years, maritime law practitioners throughout Australia have observed that although a new Admiralty Act and Admiralty Rules came into effect at the beginning of 1989, Australia's Admiralty Jurisdiction has not thrived. Indeed, New Zealand now boasts, with justification, that it is a more attractive Admiralty Jurisdiction than Australia. Clearly, this is so because New Zealand's procedures, particularly with regard to ship arrest, are perceived to be less onerous than Australia's.

Another reason may be that Australia has lost some depth of judicial experience in Admiralty in the Supreme Courts. While there are Judges of the Federal Court experienced in Admiralty, there has been no Judge in Admiralty in New South Wales since 1997 and the only Supreme Court which still retains a Judge in Admiralty is Victoria.

Over the last few years, Admiralty practitioners in this country, in co-operation with the Federal Court, have sought to bring about improvements to the Admiralty Rules and procedures, but this initiative seems to have stalled. The reasons are unclear but it does not seem attributable to lack of enthusiasm on the part of practitioners.

The NSW Chief Justice believes that co-operation amongst the Supreme Courts, in accordance with the directive in s.40 of the *Admiralty Act*, can reinvigorate the reform process and that, even before amendments to the Admiralty Rules can be procured, a great many improvements can be made.

We have set up a working committee to review existing procedures and to investigate what improvements can be made by the use of the Supreme Court Rules. The Committee comprises four Judges, namely, Sheller, Ipp JJA, Nicholas J and myself, and three senior Admiralty practitioners, namely, Street SC and Messrs Stuart Hetherington and Drew James. The Committee has the enormous advantage of the detailed work on reform which has been done in recent years by Judges and practitioners alike, most of which is contained in papers delivered at conferences of this Association.

In very brief outline, the Committee is considering improvements under two broad headings:

first, new provisions in the Supreme Court Rules which are not inconsistent with the existing Admiralty Rules but which streamline procedures by way of amplification of those Rules;

second, the introduction of procedures in the Courts' Registries which will make administration of the Admiralty Jurisdiction throughout Australia not only as convenient as is presently the case when a matter is commenced in the Federal Court but, hopefully, more efficient and cost effective.

Under the first heading, the Committee is giving particular attention to problems such as ameliorating the onerous personal undertaking to the Court required to be given by solicitors under Admiralty Rule 41.

The Committee is currently preparing a report on draft amendments to the Rules which should be available shortly. In the meantime, a start can be made on improving the administration of the Admiralty List in the Court.

A Practice Note will be issued explaining the procedures which will be put in place. There will be two Judges assigned to the Admiralty List, Nicholas J and myself. A "Duty Judge" system will apply and practitioners will know which Judge is currently on duty for urgent applications out of Court hours. Practitioners with truly urgent applications will be able to contact the Judge at any time.

The Equity Division Registrar, Mr Grahame Berecry, will be appointed as Admiralty Registrar. Mr Berecry is experienced in Admiralty work and will develop and supervise Court Registry procedures for the Admiralty List. Mr Michael Whitehead, an Assistant Registrar, will be appointed as Marshal. Mr Whitehead will be well known to most of you as the Federal Court Marshal for many years. His enormous experience will be of immeasurable assistance to the Court and he will be responsible for training staff to assist in the execution of the Marshal's duties.

Proceedings commenced in the Admiralty List will be made returnable before the Admiralty List Judge for case management directions on a set day of the week which does not clash with the Corporations List or the other major Lists in the Court. Motions and other application will ordinarily be heard on that day as well. Practitioners can expect that the directions list will be managed robustly with a view to getting matters on for trial as quickly and efficiently as possible. Where directions and consequential orders are to be made by consent and there has been no material default in the previous timetable, practitioners need not attend the directions hearing in person but may forward the consent orders, signed by the parties' legal representatives, to my Associate prior to the day on which the matter is listed. Orders will then be made in Chambers unless the Judge in charge of the matter perceives a problem. Practitioners will be encouraged to work out sensible timetables by agreement and to avoid unnecessary interlocutory skirmishes.

This is not the occasion to do more than outline what the Court intends to do. When the Practice Note is issued, I intend to convene a meeting of practitioners to explain its operation in more detail. An Admiralty List Users Committee will also be established, much like the Corporation List Users Committee, so that practitioners can keep the Court informed on a regular basis as to how the List is working and what improvements can be made.

In conclusion, may I thank those of you who have already provided the Court with the benefit of your advice and experience. With your continued support and good will, I am confident that the Admiralty Jurisdiction of this country will come to play a leading role in the maritime affairs of our region.

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Artists in the Black – a Success Story Speech for Arts Law Centre of Australia

"Artists in the Black – a Success Story"

Speech for Arts Law Centre of Australia
6 July 2005

The Hon Justice George Palmer
Supreme Court of New South Wales

As President of the Arts Law Centre of Australia it gives me great pleasure to be able to tell you something about an important project developed by ALCA and its success over the past twelve months.

I am sure you would all agree that indigenous art now occupies a central place in the cultural identity of this country. Who has not, by now, absorbed into his or her own artistic experience and vocabulary the unique vision of Aboriginal art, the unique and vibrant gesture of Aboriginal dance, the unique and evocative sound of Aboriginal music? This unimaginably rich indigenous culture is now a major and seminal part of Australian culture; its artists in every medium are truly and in every sense Australian artists.

But indigenous artists suffer from a special disadvantage. In western and other cultural traditions, art is regarded as the creation and property of the artist. It is bought and sold in a market like any other commodity. However, in traditional Aboriginal culture, artistic expression is a natural and essential part of the life of the whole community; an artist draws upon the common property of the spiritual life and tradition of the community and, in artistic creation, adds to that common property.

Far too often, because of unfamiliarity with the concept of art as a merchantable commodity and because of lack of knowledge and means to protect themselves, indigenous artists and their communities have suffered financially and their artistic sensibilities and moral rights have been trampled on.

The Arts Law Centre of Australia, as part of its mission to provide legal and business assistance to all Australian artists, has developed a special programme to assist indigenous artists and their communities to manage successfully their encounters with the art marketplace.

At the end of 2003 ALCA received funding from the Australia Council to develop a service for indigenous artists; it has come to be called "Artists in the Black". The programme aims to increase access for indigenous artists to advice and information about their legal rights on all arts-related matters. The project was launched on 28 June 2004. May I tell you something about the successes achieved in the last twelve months.

Arts Law has employed Aboriginal staff for the project, a lawyer, Samantha Joseph, and an information/liaison officer, Blanch Lake. The object of the service is to:

provide direct legal advice to indigenous artists and organisations,

provide limited case work services in matters which meet a public interest test,

provide information and education about Arts Law issues to ensure that indigenous artists and their communities are informed about their legal rights.

A Reference Group has been established, drawn from the indigenous community, to provide support

and guidance throughout the course of the project. The current members of the group are:
Robynne Quiggin New South Wales, Chair
John Harding Victoria
Carol Innes Western Australia
Kevin Dolman Western Australia
Irene Watson South Australia
Karen Mills Northern Territory

Senator Aden Ridgeway (NSW) was a member of the Reference Group until he had to resign on 1 July 2005.

The Reference Group has already provided valuable advice and will continue to do so throughout the remainder of the project.

Although Artists in the Black was launched only twelve months ago, over 150 legal advices, face-to-face consultations and case work services have already been provided. Arts Law's indigenous staff, in addition, have full access to the two hundred volunteer lawyers that Arts Law already has in place around Australia. Given the need for ongoing case work services in some matters, we have also been able to put in place pro bono lawyers willing to provide an extended service. We are most grateful to the following firms for their support:
Freehills
Gilbert + Tobin
Allens Arthur Robinson
Baker & McKenzie
Michael Frankel & Co
Ebsworth & Ebsworth

The project has worked with the Federation of Aboriginal and Torres Strait Islander Languages to develop template contracts for use in indigenous language projects. These contracts have innovative clauses which enable indigenous communities to exert great control over their intellectual property and over the way in which people work with their communities. The project will examine the need for development of further template agreements, particularly in relation to indigenous culture and intellectual property.

The indigenous solicitor identifies client matters requiring ongoing case work. These cases have a public interest component that will benefit the indigenous community more broadly, particularly in furthering recognition of intellectual property issues. To date, case work has been carried out in eight matters.

Arts Law has developed eight information sheets for indigenous artists. They concern copyright, moral rights, indigenous culture and intellectual property, licensing, contracts, business structures, governance and certificates of authenticity. Today we are launching comic-book style versions of four of the information sheets. Geoff Mulherin of the Law & Justice Foundation of New South Wales will in a moment tell you more about the comics and will officially launch them. Arts Law is extremely grateful to the Law & Justice Foundation and the Copyright Agency Ltd for their financial support of the Artists in the Black project and for the development of these educational resources.

In 2004 the project delivered an education programme to indigenous artists and their organisations across Australia. The sessions were held in sixteen locations and over eight hundred participants attended. Artists in the Black workshops took place in Melbourne, Townsville, Perth, Geraldton, Kalgoorlie, six towns and communities in the Pilbara, Darwin and Alice Springs and South Australia. Our indigenous staff worked with local organisations to ensure that the sessions were appropriately targeted and promoted. We acknowledge gratefully the funding support of the Copyright Agency Limited which has made this educational programme possible.

Despite being fully engaged on the programme, Artists in the Black staff have also provided advice to indigenous organisations and government on the issues of Commonwealth funding agreements for indigenous organisations, proposed legislation on indigenous communal moral rights, better recognition of indigenous cultural and intellectual property under Australia law, and resale rights.

Before concluding, I must express deep gratitude to those who have made this project possible and who have assisted in making it a success in its first year of operation: to Freehills for generously hosting this celebration of the first anniversary of the project and the launch of the information comics,

to the Copyright Agency Limited for funding support of the education programme, to the Law & Justice Foundation of New South Wales for a grant enabling the creation of the information sheets and the comics, and to the Australia Council for the Arts for funding the Artists in the Black service.

Every time Arts Law staff engaged in this project make a presentation or hold an education seminar in the indigenous communities around Australia they are overwhelmed by the response and by requests from Aboriginal people to visit their community with further assistance as soon as possible. A great deal has been done in the Artists in the Black project over the last twelve months and has been done well. Much more, however, needs to be done. The need is great, the work is important, and the assistance given is very much appreciated by the artists and their communities. The project deserves our continuing and wholehearted support.

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Dad always wanted me to be a lawyer but ……

SPEECH FOR UNIVERSITY OF QUEENSLAND
LAW GRADUATES DINNER
13 October 2006
Dad always wanted me to be a lawyer but ……

When you saw the title to my after-dinner speech on the invitation to this dinner – "Dad always wanted me to be a lawyer but …" you probably thought you were in for a bit of group therapy, in which I exposed the psychological scars inflicted on a sensitive youth who wanted to be a composer by a tyrannical father who wanted him to follow a solid bourgeois career in the legal profession. Well, I have to confess that that title, if not positively misleading and deceptive, is at least likely to be so.

My Dad was actually a very amiable man and he thought I should be a librarian.

What I'm really going to talk about is OTHER PEOPLE who really wanted to be composers but whose fathers made them do law – although in many cases, not for long. You'll probably be surprised at the number of famous composers who, when it comes down to it, are really nothing but failed lawyers.

Take George Frederic Handel, for example. His father was a barber-surgeon who wanted better things for his son than to be a musician. When the boy displayed a talent for music his father forbade any musical instrument in the house. Handel used to practice and study scores in secret. You can imagine the scenes when his Dad found out. Handel was a very strong willed, impetuous character with a violent temper, who thought he knew everything. No wonder his father thought he would make a good lawyer. He would have made an ideal judge! Anyway, by the age of 17 young George forced his father give in and let him study music. If he had become a lawyer he might not have been so contemptuous of the laws of copyright. When he was accused of stealing a tune from his rival, Bononcini, and using it in his own music, Handel said loftily: "Bah! It was too good for him – he wouldn't have known what to do with it!"

Did you know Tchaikovsky not only studied law but actually graduated from the School of Jurisprudence in St Petersburg in 1859. He went to work in the Ministry of Justice as a lawyer for four years until he resigned to devote himself to music. At least, that was his story. He was really dismissed for incompetence. He was supposed to be editing the law reports for the St Petersburgh District Court. A file note recently discovered in Tchaikovsky's file in the Ministry's personnel file says: "He's so dumb he thinks a headnote is a soprano's top C."

The Russian composers all seem to be failed lawyers. Stravinsky, the most famous composer of the 2oth Century, studied law at the St Petersburgh University from the age of 17, under heavy parental pressure. It wasn't that he wanted to be a composer instead of a lawyer. It was more that he just that he didn't feel like doing anything, really. When by the of 23 he hadn't got past first year it was his law professor who suggested he become a musician: an organ-grinder. He did go on to become an organ grinder of sorts. His most famous work, The Rite of Spring, premiered in Paris in 1913 was regarded as so horrifically awful to listen to that the first night audience literally rioted. Fights broke out, society ladies screamed obscenities at each other, the orchestra was drowned out, the police had to break up the affray. In other words, a triumph!

When The Rite of Spring was performed in America everyone hated it there too. The Boston Herald published a poem on the front page which went:

Who wrote this fiendish Rite of Spring,
What right had he to write the thing,
Against our helpless ears to fling
Its crash, clash, cling, clang, bing, bang, bing?
He who could write the Rite of Spring,
If I be right, by right should swing!

With Stravinsky's talent for attracting headlines, he would have made a great American trial attorney.

People sometime say to me “You’re a judge AND a composer? That’s an unusual combination.” But actually it’s not so unusual. In fact, if you do a bit of research you find judges who are composers are pretty commonplace.

For example, there was Benedetto Marcello, who was born in Venice in 1686 into an aristocratic family. He was musically very gifted but his father regarded music as a hobby not a career and he was pressured into the law. He became a lawyer and in fact had an illustrious career as a judge, to the point where in 1730 he was made governor of a large town and ended his career as chancellor of a province. But he also became a very successful composer, writing several oratorios, operas, over 400 cantatas and published collections of orchestral and instrumental music. His most famous work was a setting of 50 Psalms which achieved international acclaim and were performed throughout Europe and in England. His popularity as a composer for voice lasted well into the 19 th century.

Then there was extra-ordinary Ernst Theodor Amadeus Hoffmann. He was born in 1776 in East Prussia, now Russia. He was a composer who wrote symphonies, chamber works and operas, one of which, Undine, was premiered for the birthday of the Prussian King, Friedrich Wilhelm III in Berlin in 1816 and achieved considerable success. He was an opera conductor and a writer of fantasies and stories.

You might think you have never heard of Hoffmann but one of his stories became Tchaikovsky’s Nutcracker ballet, several of his other stories became Offenbach’s Tales of Hoffman, and others inspired Wagner’s operas, Tannhauser and Die Meistersinger.

But as well as being a composer Hoffmann was also a highly respected judge. He began his law studies in 1792 at the University of Konigsberg, graduated in 1795 achieving high marks and went into the judiciary. In 1800 he became a superior court judge, offended some people in high office and, of course, was promoted to keep him quiet. Nevertheless he must have been well regarded as a judge because he was again promoted in 1816 and in 1821 became a member of the superior appeals court.

There was Francis Hopkinson. Born in Philadelphia in 1737, he studied law and was admitted to the Bar in1765. He was elected to the Continental Congress to represent New Jersey in 1776 and was one of the original signers of the Declaration of Independence. After the War of Independence he was appointed as a Judge of the Pennsylvania Admiralty Court and later George Washington appointed him a Judge of the United States for the District of Pennsylvania.

But Hopkinson was also a composer. He wrote quite a number of popular songs, psalms anthems and ballads. He even wrote a grand opera called “The Temple of Minerva.” By all accounts he was a remarkable person. A co-signatory of the Declaration of Independence, John Adams, wrote of him: “He is one of your pretty, little, curious, ingenious men. His head is not bigger than an apple .. I have not met with anything in natural history more amusing and entertaining than his personal appearance.” What a cruel put down – even for a judge!

Hopkinson died in Philadelphia at the age of 53 “of a sudden apoplectic fit.” He was probably hearing a case with a litigant in person.

Richard Owen became a lieutenant in the Air Force in the Second World War and after the war graduated from Harvard Law School. He went into his father’s law firm in New York and practised for many years before being appointed by President Nixon in 1974 to the federal bench as a Judge of the US District Court for the Southern District of New York. Justice Owen is – at more than 80 he is still on the bench – a well known composer of operas. Six of them have been performed, the last in February 2003 at the Lincoln Centre in New York.

I have to say, however, that my favourite composer Judge is Alejandro Garcia Caturla. Born in 1906 of a wealthy family in Cuba, he studied composition in Paris and became an avant garde composer who combined Afro-Cuban rhythms and idioms with a starkly modern style. He was highly respected as a composer, particularly in the United States, and in the 1930’s his music was performed by Leopold Stokowski and the Philadelphia Orchestra in New York.

Caturla, however, found it impossible to make a living as a composer. His father told him to get a day job. So, having picked up a law degree, he became a judge – as one does. And he became a surprisingly good judge, still composing all the while. He gained a reputation for defending the rights of the working people and the poor against the abuses of the rich and privileged. He was fearless in the

fight against corruption, sending to jail not only corrupt police but corrupt brother judges. He authored several reform laws on juvenile delinquency and set up work programs for teenagers instead of sending them to jail. He must have sympathised deeply with children – he had 11, 8 of them illegitimate.

Although Caturla never wrote an opera, his life reads like one. He died at the age of 34 when a criminal whose case had been listed before him shot him in the chest at point blank range. A bit like the last scene in Tosca. The Cuban chief of police, hearing of his death, was reported as saying: "Thank God they got rid of him."

I think Caturla is a real inspiration – both for composers and judges. They really ought to have more children.

So the law and music, seemingly remote from each other, can actually be combined very successfully as concurrent careers. Speaking for myself, however, accommodating both can become a little frantic at times.

In 1997, when I was still at the Bar, the great and late Ray Charles did an Australian tour. It was to be a very grand affair. He was to play with the Sydney Symphony in the Opera House, the Melbourne Symphony in the Melbourne Arts Centre and the Queensland Symphony in the Brisbane Entertainment Centre. The promoter wanted an Australian support act but it had to be a class act too. He approached my best mate, singer songwriter Scott Walker, and offered him the chance. But he had to do it with the orchestras, just like Ray Charles.

Scott asked me to do the orchestral arrangements for his songs, which I did. The promoter said: " Ray Charles' conductor won't conduct for a support act. I can't afford another expensive conductor." He turned to me and said : "You did the arrangements so you conduct." No worries.

I planned it so I wouldn't be in court the week of the Ray Charles tour. Naturally, Murphy's Law became applicable. At the very last minute a big commercial case in the Federal Court was postponed by a week, to the week of the Ray Charles tour. It was a very important case for my client, a fraud case between oil exploration companies about a highly profitable oil field. A great deal of highly technical evidence, a highly charged atmosphere, a great deal of money at stake. I couldn't pass the brief at the last moment. And we couldn't find another conductor at the last moment. No worries.

The first Ray Charles concert was at the Sydney Opera House on Sunday night. It was a complete sellout – the place was packed to the rafters, three and a half thousand people. The orchestra tunes up. Scott and I walk out onto the stage, Scott sits at the piano, I take my place on the conductor's podium and raise my baton. It's the very first time I've conducted any orchestra in my life.

It was a smashing success. In the next morning's press the critics went wild with praise. Unfortunately, they didn't mention us.

Next morning, at 10.15 am I open my case in the Federal Court. It's going to be a hard fight. There are trolleys full of documents, armies of juniors and solicitors and paralegals. The bell rings and we come out fighting. Noses are bloodied, eyes are blacked. The usual good fun.

At 4.15 pm the bell rings and the case is adjourned for the day. I tear off my robes, dash from the courtroom into a cab, straight to the airport to catch a flight to Melbourne for the concert that night. I arrive at 6 pm, have a 20 minute rehearsal with Scott and the Melbourne Symphony and at 8 pm walk onto the stage at the Melbourne Arts Centre. Another smashing success – the critics haven't a bad word to say about us – or any word, really.

At 6 am the next morning I'm on a plane back to Sydney. At 10.15 am the bell rings and the fight resumes in the Federal Court. A fraught day but when the bell rings again at 4.15, I dash from the courtroom like Cinderella from the ball, straight to the airport for a flight to Brisbane. Twenty minutes rehearsal with the Queensland Symphony and on stage at 8. Another smashing success – we don't bother reading the reviews next day.

Wednesday morning –6 am flight back to Sydney. 10.15 the bell rings, another fraught day. Bell rings at 4.15. Run down Macquarie Street to the Opera House for tonight's concert. Another smashing success etc etc.

Thursday morning 10.15 – the bell rings. I raise my baton for the intro to the first song - the judge gives me a funny look!

It's times like that I wish I'd taken my Dad's advice and become a librarian.

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Opening of Practical Legal Education Conference

Opening of Practical Legal Education Conference
11 November 2006
College of Law, Sydney

The Hon. Justice George Palmer, Supreme Court of New South Wales

The theme of this conference is 'bridging gaps'. The most obvious gap you'll be talking about during this Conference is the gap between a theoretical knowledge of the law, absorbed from lectures and the study of cases in law reports, and the practical knowledge which only comes from real life experience of working in the law.

Bridging that gap into the real world of practice can sometimes be a rude awakening. Recently a very bright young law graduate got a job with one of the largest and most prestigious firms in town. He couldn't believe his luck when he was told he was going to work directly for the senior commercial partner. He was even more flattered when the senior partner invited him to his home for dinner to get to know him better. The law graduate arrived at the partner's palatial Harbour-side residence and was shown around. Eventually they went into the partner's study. The young man was incredulous to see a Picasso hanging on the wall.

"Gosh, sir," he blurted out. "That's a real Picasso, isn't it? It must have cost an absolute fortune!"

"It certainly did," replied the partner, putting a paternal hand on the young man's shoulder . "And if you buckle down to hard work, my boy, put in fifteen to sixteen hours a day six days a week, forget about having a life and give yourself body and soul to the firm, in five years' time, I'll be able to buy another one."

The gap I want to talk about is the gap between knowledge and wisdom – knowledge of the techniques of the law and the wisdom necessary to be a good lawyer. In referring to wisdom I'm not referring to ethical principles of professional conduct such as are covered in Ethics courses. I'm talking about the sort of wisdom that produces a well-balanced person equipped to use the law responsibly and beneficially, a lawyer who is ultimately a contributor to the stability and good order of our society.

Why, as PLT teachers, should you have to concern yourselves with that sort of wisdom? The answer, in my opinion, is that when young lawyers start their professional lives they may well not get a chance to acquire it for themselves before they become disillusioned and burnt out – before the contributions which they might have made to the law and to society is simply lost.

Am I being a little melodramatic? I don't think so. Just in the last month I have heard of two young lawyers who became completely disillusioned after working for a year or so in a large firm and have left the law for good. Let me give you an illustration of why this could have happened.

Recently, a former tipstaff of mine wrote to me about an experience he had at a job interview. Now this tipstaff was a very bright graduate, had done excellent work during his year as a tipstaff/researcher and should have had an easy passage into a rewarding professional career. Listen to what he wrote about an interview with a partner of a large city law firm:

"The partner asked me what I was looking for in this job. I said that while I think I'm professionally capable, I'm still professionally young so guidance and a good feedback relationship with those senior to me is important so that I can learn the best professional practice. The partner responded brusquely: "I'm a busy man, I don't have time to be nice, so if you're looking for some sort of mentor you've come to the wrong place. I have high standards and I'll hold you to them. If you don't meet them you'll soon know about it. If I suspect you're not giving me 100% of your best you'll soon know about it. Don't expect this to be a nice place; it isn't." Not once did he laugh let alone smile. He didn't even attempt to relate to me as a person. What he did ask, more than once, was whether I regarded myself as an aggressive person. As the interview progressed I realised the correct answer

would have been to bare my teeth and snarl."

Do you think that lawyer likes where he's ended up - angry, impatient, aggressive, no time to be pleasant, no time to help a younger colleague? He would be the sort of lawyer who would, when corresponding with another lawyer, adopt an arrogant, sneering and superior tone, making peremptory demands for things to be done within impossibly short time constraints. He would be the sort of lawyer who tells his clients that no-one ever gets the better of him in a fight. He'd be the sort of lawyer who fights with the partners in his firm, with his clients and with his family, if any of them still speak to him. There are many lawyers, barristers as well as solicitors, just like him.

Where is my young tipstaff going to learn that professional excellence does not necessarily come at the expense of personal happiness? Who would tell the young law graduate that, far more often than not, given a certain standard of intelligence, technical knowledge and application, professional excellence is far more likely to be the product of a well-balanced personal life?

There are many lawyers, like the senior commercial partner I told you about, who will tell their impressionable protégés that a successful practice in the law can give you a high standard of living; it can give you kudos amongst your professional colleagues; it can give you a warm glow of satisfaction when you win a case or tie up a successful transaction. They probably won't add that the warm glow lasts as long as five minutes – if you're lucky. They won't say that your legal practice is not a companion and a solace to you when you come home late every night to an empty apartment and you feel that the only way you can get through the silent hours ahead is with a drink – or two, or three, or six.

Where is the senior commercial partner of the prestigious mega-firm who says to the young graduate: the successful lawyer makes time for friends, family, relationships and interests and activities outside the law. There is no once-and-for-all formula for time apportionment amongst the pressing demands of life: each day brings its own compromises, but the successful lawyer always prefers the compromises to the surrenders. The successful lawyer has a smile and a pleasant word for the office staff. He or she is always willing to help a less experienced colleague with advice and is courteous and reasonable in dealings with opponents. Not only that, he or she looks for opportunities to use the law for more than just his or her own financial gain – in pro bono work for some cause that really excites his or her passions.

Why is that kind of lawyer successful? Because that lawyer does not have a bitterness in life which infects everything he or she does in court or in chambers or in the office. That lawyer is not always looking for an excuse to pounce on someone and bite, hoping to spread the infection of misery. Opponents like that lawyer because he or she doesn't make unreasonable demands and is pleasant to deal with while being firm in protecting the interest of the client. Judges like that lawyer because he or she doesn't waste time in court on silly disputes about things that don't really matter, just for the sake of having an argument. And most importantly, clients like that lawyer and want to keep coming back because the atmosphere in that lawyer's office or chambers always seems reassuring rather than stressful and the transactions or cases which that lawyer is handling seem to have generally successful, co-operative outcomes rather than becoming litigious nightmares in which everything goes wrong at enormous expense.

There is undoubtedly a section of the legal profession which espouses a culture of aggression and self-interest. Some may say that in the legal profession aggression and self-interest have become embedded and institutionalised. You might think that, as teachers, you can do little or nothing when aggression and self-interest are so firmly embedded in the culture.

Let me give you an example of how and why practices become embedded. This parable comes from our present Chief Justice, to whom I'm indebted for the illustration.

Did you know that the booster rockets on the side of the United States space shuttle are strictly limited to a certain size? That is because they must be transported by train from the factory to the launch site and they have to fit through a single track railway tunnel in the Rocky Mountains. The United States railway gauge, which is four feet eight and a half inches was adopted because that was the gauge in the pioneer industrial economy, England. The first railway lines in England had been built by the same engineers who built the pre-railway tramways and that was the gauge that they had used. The reason they adopted that gauge was because they used the same jigs, tools and equipment that had long been used to build wagons and carriages, drawn by horses. The wagons and carriages were built with four feet eight and a half inches between the wheels because that was the space between the ruts in the road for many of the long distance roads in England. By continued use over the

centuries, those ruts had become fixed by the passage of countless wagons and carriages and the most efficient way to traverse the road was to stay in the ruts.

Many of the long distance roads in England had been laid down by the Romans and the ruts had been formed by the wheels of Roman chariots during the period of Roman occupation. All chariots throughout the Roman empire were built, in the interests of standardisation, with a distance between the wheels of four feet eight and a half inches. That distance was originally chosen because it was the approximate width of the backsides of two horses.

Accordingly, the reason why the space shuttle is, and will remain, of limited capacity, is because its booster rockets cannot be much bigger than the width of two horses' behinds.

Not every embedded institutional attitude needs or deserves to be perpetuated.

If you think that some of the wisdom, as distinct from the technique, you have acquired as a lawyer might usefully be passed on to your students, how do you do it?

You could make soapbox speeches but they become tedious and young people are rightly resistant to moralizing. On the other hand you could do it indirectly, so that your own wisdom suffuses your practical teaching: the courtesies you employ in drafting model letters; the way in which you discuss the techniques of mediation or settlement of disputes; insistence in moots and mock trial on students knowing and observing the professional courtesies; the suggestions you may drop as to how legal skills can be volunteered to pro bono organisations; the suggestions you may drop as to some of your own interests quite outside the law and how they make such a refreshing change to the daily grind. The possibilities are endless.

The point is that if you have the imparting of wisdom in mind, you are providing practical legal training of a much higher order, in my opinion, than if you confine your teaching to mere techniques. You would be trying to produce good lawyers – successful in their practice of the profession because successful in their attitude to the profession. You would be bridging the gap between knowledge and experience.

Some may think all this is pie in the sky. I don’t think so. The tipstaff I told you about was offered a job by the aggressive partner. He declined and I’m pleased to say he is now working for another high profile firm with a partner he says is cheerful, helpful and encouraging. After three years in practice he says he really loves being a lawyer.

Wouldn’t you like to hear all your student say that!

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Work/Life Balance

NEW SOUTH WALES YOUNG LAWYERS FORUM 2007
28 April 2007

WORK/LIFE BALANCE

Justice George Palmer
Supreme Court of New South Wales

The title for this forum, "Work/life balance", is a study in itself. Does it mean: 'work AND life – how to accommodate both'? Or does it mean: 'work OR life – how to choose between them"? You see that I have started the discussion with a quibble over definitions – how could a lawyer do otherwise!

But, of course, definitions ARE important in any serious discussion. Otherwise, you end up exchanging mere waffly generalisations. And a discussion about the human condition – in this particular context, what we seek in order to be professionally and personally happy – is a serious discussion. As Richard Whately, a nineteenth century archbishop of Dublin, once said: *"happiness is no laughing matter"*.

What is challenging in the title "Work/life balance" is that it juxtaposes "work" and "life" as if they were separate things – as if you work to earn money to live and living is something you do when you have finished work for the day. A moment's thought, of course, tells you that your work is part of your life and your life informs your work. That is true whether are a philosopher or a street-sweeper. There are happy street-sweepers and miserable philosophers – the job doesn't necessarily dictate the quality of life.

I would like to approach this discussion with the premise than what you do for a living and how you do it is just part of your life. You don't choose between work and life: you choose how your life will be affected by what work you do and how you do it.

This is hardly a novel proposition. Why, then, are lawyers attending a conference to talk about how their work affects their personal lives and their emotional needs? Lawyers are supposed to be particularly bad at talking about their emotions. We are taught to present an exterior which is "professional", apparently meaning "reserved, impersonal, analytical and sceptical". Since I first gave an address on this general topic about six months ago I have heard so many horror stories from young lawyers about how badly they are treated by senior people in the profession that I am beginning to suspect that some lawyers (not the majority I think) have redefined "professional" to mean "aggressive, unsympathetic, intolerant and cynical".

One lawyer has gone so far as to write a letter, published in a national newspaper, suggesting that lawyers who cannot cope with the aggression within the profession should get out of it: his approach to the issue has come to be known as "professional Darwinism".

I reject the notion that to survive as a lawyer you must be aggressive, career-fixated and insensitive to the feelings of others. Without exception, all the best lawyers I have known have demonstrated none of these characteristics. And when I refer to "the best lawyers", I do not mean only those who have achieved the highest public prominence. I refer especially to those who have, in their careers, contributed substantially not only to the welfare of their clients but also to the welfare and stability of our society. Just reflect for a moment on the career and character of Sir William Deane: leading barrister, High Court Judge and a beloved Governor-General who reached both the hearts and minds of so many Australians.

What you do as lawyers makes demands on your time, your emotions, and your relationships. The standards of the profession are high and you are always being judged: by your peers and by your clients. The desire to achieve and maintain professional respect can be a relentless taskmaster. We

all know what it is to work long hours into the night and on weekends to meet some deadline, imposed by a client, by the Court, by one's superiors or by oneself. We delude ourselves if we think that this is an experience confined to the legal profession.

You may be attending this conference because you do not feel happy about how much your work takes away from your time outside your career. But you need to remember that not everyone feels the same way. For some people, the dividing line between an activity classified as work and an activity classified as pleasure is blurred or even non-existent.

If you were to go to the websites of the High Court and the Law Foundation you would see the astonishing number of speeches which the Hon Justice Michael Kirby has made all over the world, from quite early in his judicial career. The speeches are on a wide variety of topics, most of them to do with Justice Kirby's passionate advocacy of human rights and the rule of law. The speeches alone, you would think, would have occupied a lifetime in the composing and making. Yet they are the extra-curial work of a man who has been a full-time judge since 1975 and has written the most elaborate and learned of judgments at the highest levels of the judicial system.

Michael Kirby clearly feels fulfilled as a judge. The speeches he writes are just as much the product of time and effort as are his judgments. To you and me, both speeches and judgments would probably represent hard work – time away from the enjoyment of life - and we would probably begrudge the time it took to produce them. This is not the case with Michael Kirby – what we would regard as his work, he plainly regards as part of the very fabric and purpose of his life.

You would think a person so dedicated to what most of us would think of as a life which doesn't distinguish work from pleasure, would be rather dull. There are , indeed, plenty of dull lawyers but Michael Kirby is not one of them.

I make this point simply to illustrate that what we want from our work, in terms of personal and emotional satisfaction, differs from person to person. As our careers progress, each of us needs to reflect on what we are doing with our lives and how we can change if we are not satisfied. Difficult though it is for professionals to talk about themselves in this way, particularly amongst colleagues, it is necessary to talk to others who can help, even if only as a safety valve for the release of pent-up frustrations. A recent study has shown that the incidence of depression is disproportionately high in the legal profession as compared to other groups in the community. Perhaps this is because, by training or by nature, lawyers are more inhibited than other people in revealing themselves to others in a way which may expose their vulnerabilities.

As young lawyers, you may be weary of doing endless discovery for mammoth litigation about nothing at all of human interest. You may be sick of clients who are demanding but never satisfied. You may feel oppressed by rude partners who seem to take a malicious pleasure in staying late in the office just to make sure that you cannot leave before they do. You may feel that the particular kind of work that you are doing has no social utility or, indeed, is inimical to your own concepts of justice in society. Does this mean that you have to opt out of the legal profession if you want to be happy in your career and in your emotional life?

My experience tells me that you can, indeed, be happy in your career and in your emotional life … more or less, for a reasonable amount of the time … but not by 'opting out' – i.e. running away from the responsibility of making and implementing rational day to day decisions about your own happiness.

For example, if you are not getting on with your supervising partner – if he or she seems unduly critical and demanding – consider as rationally as you can the causes. It may be that, though both of you are well intentioned, there is such a difference in your personalities that you are not on the same wavelength and misunderstandings arise. It may be that the partner is so pressured and harassed, for whatever reason, that he or she is insensitive to the way he or she is treating you. It may be that the partner is just naturally aggressive and unpleasant. It may be that you have, indeed, made mistakes which have caused problems. It may be combination of some of these factors. It will not help you to make changes if you do not consider carefully all of these possibilities and others but, rather, automatically take the stance that you are the innocent victim of bullying.

If you can identify the causes of your professional dissatisfaction you can do something positive and constructive to make changes. If you are, at least partly, responsible for the problem because you have made mistakes, things will not improve unless and until you frankly acknowledge that fact to

yourself and to those who have had to deal with the consequences of your mistakes.

If, after some honest soul-searching, you conclude that the problem does not lie with you, there are a number of possible ways forward. You could try having an open and honest discussion with the person causing the difficulty: often misunderstandings arise just because people do not communicate effectively what they want or how they are affected by something such as a work load which is far too heavy.

You may conclude, however, that a frank discussion with the person causing you the problem is impossible, probably for reasons of personality. Is there someone else in the firm to whom you can talk and who could help? If you conclude that the firm and you are just not suited to each other, you must think about a move – and well before the time when your frustrations are so great that the only move which you want to make is a move out of the profession itself.

If you find that your work is largely uncongenial but a move to another firm is premature, you may consider doing part-time pro bono work in an area of law which interests you. Most firms now encourage pro bono work by their staff. In doing pro bono work which stimulates you, you may gain sufficient satisfaction from your profession to tide you over until the time is right for you to move to another firm.

You're going to be addressed by speakers who will be more specific than I have been about particular problems you face in the workplace, how they can impact on your personal life and happiness and what you can do about those problems. I don't for a moment suggest that all that information is not very important. But at the same time I want to caution again against the attitude it's so easy for all of us to fall into: "If I'm not happy, it must be someone's fault. So … what are they doing about it?"

When it comes to balancing the demands of life – wherever those demands come from – in order to achieve happiness, I think George Bernard Shaw got it right when he said: *"We have no more right to consume happiness without producing it than to consume wealth without producing it"*.

May I suggest that when reflecting on what we hear during this forum about managing the work/life balance to achieve happiness, we think also about creating happiness around us rather than seeking that it be created for us. Creating it around us means being conscious of the needs of others – the need for a pleasant smile and a courteous word amongst those we work with and amongst those we share the other parts of our lives with; the need for support and encouragement amongst those we work with and amongst those we share the other parts of our lives with.

I may have given the impression of preaching a Sermon on the Mount as if, having achieved celestial wisdom myself, I am entitled to impart it to others. Of course, nothing could be further from the truth. Like all of us, whatever I have learnt in life I have learnt from my mistakes. I am still on a steep learning curve and, consequently, still making grievous mistakes, as my wife and children are careful to point out to me.

However, if there's one thing I have learnt once and for all about how to balance your life, it's this: you never get it perfect, but you're dead if you stop trying.