

Cricket competition. His Honour described one experience from that period of which practitioners were urged to take note:

Normally proceedings arise following a complaint made by an umpire about a player's behaviour during the course of a match. On this particular occasion, the umpire at the bowler's end complained that the batsman, whom he had just given out LBW, had displayed dissent as a consequence of that decision. The umpire said that although he had clearly seen the batsman's lips moving, he had been unable to discern what had been said. Accordingly, the dissent consisted of relatively innocuous facial expressions and other gestures. The batsman/defendant was presented with an exquisite dilemma – should he attack or defend?

The batsman assured the Tribunal that it was an essential part of his case to demonstrate that he had been the victim of an appalling decision. In order to recreate the scene for the Tribunal with as much authenticity as he could muster, the batsman not only repeated verbatim what he had said to the umpire upon being given out, but did so at precisely the same decibel level. He spoke forcefully and in full quadraphonic sound. As a result there was little room for misunderstanding his views about the umpire's competence. By this time the batsman was in full stride and his voice reached a crescendo. He was now in full advocate's mode as he prepared to deliver the coup de grace. Stripped of the searing language and the early epithets, the substance of his submission was that if the umpire had been unable, as he had said, to hear those incredibly offensive words which had been shouted at him then that would explain why he had been apparently unable to hear the very obvious inside edge from the bat before the ball hit his pad. As Sir Humphrey of Yes Minister fame may have been moved to say, that was indeed a courageous submission.



The Hon Justice Ian Gzell

The Hon Justice Ian Gzell was sworn in as a judge of the Supreme Court of New South Wales on Monday, 4 February 2002. In his welcoming remarks, the President of the New South Wales Bar commenced by noting that His Honour had come to us from Queensland, something which is not forgotten, either by the Queenslanders or by those around them. His Honour's practice when he resided in Queensland was not limited to that State; His Honour practised, amongst other places, in Papua New Guinea, Fiji, Singapore, New Zealand and the Solomon Islands. His Honour was a reporter for the Commonwealth Law Reports from as early as 1973. Subsequently His Honour moved to the Sydney Bar and established a varied practice from in 5 Selborne Chambers, with special emphasis on revenue law.

Once in Sydney, His Honour became director of both Barristers Superannuation and Counsels Chambers, of which he was chairman since 1999. In Queensland he had been secretary of Barristers Chambers in the 60s and 70s. He has also been a director of the International Dispute Centre and has made contributions through the Business Law Section of the Law Council, the Commercial Law Association and the Taxation Institute of Australia. Outside the law, His Honour provided financial and moral support of music through the Queensland Philharmonic Orchestra, the Queensland Symphony Orchestra, the National Council of Opera Australia and regional arts organisations.

The President of the New South Wales Bar Association, Bret Walker SC, in welcoming His Honour to the Bench, had the following to say of His Honour's extraordinary career and achievements:

Your Honour comes to this court after a career as a barrister and as a member of

the legal community and, indeed, as a member of the wider community which is exemplary in its service and which is daunting in the combination of high individual achievement and devotion to the common good.

Those are indeed broad words of praise and occasions like these have been known from time to time to attract some hyperbole, but in Your Honour's case, the barest objective description of the post you have achieved, the jobs you have discharged, and the achievements as a legal scholar, advocate and advisor, makes for once the hyperbole quite absent.

Your Honour, you come to this bench with all the best wishes, admiration and congratulations from the Bar. We are sure you will discharge of this bench your duties with the same flair, with the same diligence, and the same excellence as you have displayed elsewhere.

His Honour Judge John Nicholson SC

John Nicholson SC was sworn in as a judge of the New South Wales District Court on 23 July 2001.

His Honour was called to the Bar in June 1977. He first went to Wardell Chambers, where he remained until 1984, practising primarily in Industrial Law, Common Law and criminal law.

He was appointed as a public defender on 1 August 1984 and took silk on 4 November 1994. Two years later His Honour was appointed as deputy senior public defender and in 1999 he became the senior public defender.

In that role, and for many years prior to that, his Honour was known for his deep concern for Indigenous people and their experiences under the criminal justice system - at one stage commenting publicly that 'increased incarceration of Aborigines is also a de facto policy of the courts'.

His humanitarian concern was matched by a practical commitment to improving the prospects of Indigenous law students. He was instrumental in establishing a scheme to assist Indigenous lawyers to develop a legal practice by being placed at the Public Defenders' Office. He worked closely with Slattery QC and the Bar Association's Equal

Opportunity Committee in the design and implementation of a similar strategy for the Bar Association. His Honour was also responsible for setting up the Pynn Scholarship at UNSW to enable students to study law later in their working life.

His Honour was, for many years, a vocal critic of sensational, inaccurate reporting by the media of criminal trials and sentencing. He wrote a number of articles on the way in which the criminal justice system has become increasingly driven by the anger of victims and their calls for vengeance. He warned of the futility of the scramble for political popularity by imposing tougher sentences and steadily increasing the prison population.

At the swearing-in ceremony, Walker SC, speaking on behalf of the Bar, recalled the time in February 2001, when his Honour spoke to the Legal and Constitutional Affairs Committee of the Legislative Council about a Bill of Rights. Walker SC said:

The comments your Honour made there managed to summarise, capture and debate in your Honour's well known style many of the themes which dominate your reported words and private work over the last many years. In particular your Honour's insistence on a fair trial where a trial is between the state and the accused and where the trial is not an adjustment of some other more diffuse set of social rights and obligations came over clearly.

...

You have graced the profession with your energetic advocacy for what can only be described as a robust civil rights approach to the practice of law and the development of policy concerning it. You will not be forgotten for your gallant but unsuccessful attempts with respect to dock statements. You will not be forgotten for the manner in which you joined in what eventually became the High Court's condemnation of the legislation with respect to Kable.

For all those reasons the public interest in New South Wales is greatly enhanced by the appointment of your Honour to this bench and the Bar in particular wishes you well in the challenge you have set yourself and looks forward to participating with you in meeting that challenge.



His Honour Judge Stephen Walmsley SC

Stephen Walmsley SC was sworn in as a judge of the District Court of New South Wales in August 2001. His Honour was born in Sydney and educated in the public school system in Yass. He later attended Canberra Grammar School and the Australian National University. His Honour practised as a solicitor at Messrs Allen Allen & Hemsley and then as a partner in Macphillamy Cummins & Gibson, solicitors in Canberra. He also tutored and lectured in the Law Faculty and Legal Workshop of the ANU. His Honour was called to the Bar in Canberra in 1981 and practised there until returning to Sydney in 1988.

His Honour played a large part in the life of the Canberra legal profession as a solicitor and barrister, becoming a member of the Bar Council and one of two directors of the chambers in the Territory. As well as being a highly respected and fearless advocate, His Honour gave generously of his time and skills to assist the Bar Association and the junior Bar. He served on the Supreme Court Common Law Users Committee and was the Bar's representative on the working party on medical negligence established by the Minister for Health. He also assisted *ex-officio* in the work of the Common Law Committee as well as serving on the Professional Conduct and Education Committees and assisting the advocacy training programme, including training aspiring advocates at the fledgling bars of Bangladesh and Tonga.

After some gratuitous references to His Honour's taste in jackets and ties, Katzmann SC, speaking on behalf of the Bar, recalled two of his Honour's more interesting cases in the following terms:

Some of Your Honour's cases have been as colourful as Your Honour's jackets. The most obvious example is *Fasold v Roberts*, the so-called *Noah's Ark case*, where Your Honour appeared for the applicants seeking various remedies for allegedly misleading and deceptive conduct and for breach of copyright arising out of some public statements about the supposed site of the remnants of Noah's Ark. My favourite, however, is a recent appeal case in which Your Honour appeared for a man who felt that his work injury, which caused him to fracture his hip, was a punishment from God for his peculiar sexual practices involving as they did a *ménage à trois* with his wife and the family dog.



His Honour Judge Nigel Rein SC

Judge Nigel Rein SC was recently appointed to the District Court after a distinguished career at the Bar.

After emigrating from England with his family at the age of eleven, Judge Rein attended Vaucluse Boys' High School where he became Head Prefect and was an outstanding debater. He obtained Arts and Law degrees from Sydney University and undertook postgraduate articles at the then Minter Simpson & Co. After working as an articulated clerk in Israel, he was employed as a solicitor by Stephen Jaques & Stephen in Sydney. He commenced employment with Dudley Westgarth & Co in 1981 and became a partner of the merged firm of Westgarth Baldick in 1983.

He was admitted to the Bar in 1984 and immediately developed an excellent commercial practice, appearing in many professional liability, building and construction law and maritime cases. His main interest was however in insurance and he became a 'guru' in that field.