

The Hon Justice Stephen Rothman

Stephen Rothman SC was sworn in as a judge of the Supreme Court on 3 May 2005. He had come to the Bar in 1982 and took silk in 1995. He had a national practice and was an acknowledged leader of the industrial bar.

In his swearing-in speech, Harrison SC, on behalf of the Bar, noted that his Honour had been selected by the ILO to advise the Soviet Union on attempts it was undertaking to establish free trade unions and that 'for that purpose, together with advocates from Europe, you met and worked with former Soviet premier Mikhail Gorbachev and members of his government in 1987 and 1988.' Harrison continued by observing that his Honour:

was involved in some seminal constitutional and human rights cases concerned with issues including the implied guarantees in the Australian Constitution involving the right to strike, the right to work and choose one's employer, anti-victimisation provisions and the status of trade unions. Most recently you have been involved in cases involving the protection of persons applying for refugee status under Australia's current immigration laws, including two significant cases dealing with racial vilification and freedom of speech. *Tobin v Jones* and *Jones v Scully*, both cases taken by you pro bono, clearly record your significant contribution to this area of the law.

Justice Rothman is also well-known for his service to, and as a leading member of the Australian Jewish community. In 1979, he was elected as a member of the Council of the New South Wales Board of Jewish Education and, in 1982, was elected to the executive of that body and served successively as its honorary secretary, vice-president and, from 1993-1995, as its president. In 1998, he became an executive member of the New South Wales Jewish Board of Deputies and a member of the Executive Council of Australian Jewry and was elected and served as president of the New South Wales Jewish Board of Deputies in 2000 for the maximum four-year term.



Swearing in of Justice Rothman.

In his remarks in reply, Justice Rothman referred to two mentors from whom he acknowledged having 'learnt the basic tenets which have guided my life, namely, to accord respect to all human kind; to understand that truly civilised society entitles each of us to our basic needs and an equal opportunity to reach our potential; and that, as part of human society, each of us has a duty to give back to society to the extent to which we are able.' His Honour said that 'It is that last duty which has always guided me to seek to empower the disempowered; to pursue justice; and to implement steps to ensure a fair society.'

His Honour continued:

I have been blessed in that endeavour in coming from a community that has suffered over thousands of years the persecution that comes from being a minority and as a consequence I have been given an understanding of the suffering of others and the support and confidence to rail against it. The exploration of the proper construction and operation of the racial vilification laws was one example; the work in establishing scholarships for Indigenous students of law was another. I have had the opportunity to alter the operation of the law as it affects Australian society and it has been a labour of great love. Every case in which rights are enforced or denied defines the democracy in which we live. Every time a steer jumps a fence and a person is injured and is granted or denied rights, society is defined. Every balancing of defendants' and victims' rights is a defining of democracy.

The autochthonous form of democracy which is Australia has largely been kind to my community; not so our Indigenous inhabitants whose traditional ownership of this land I acknowledge and who still suffer the effects of our actions. Ours is a society which does not seek to merge differences by creating one from many, but to encourage diversity within our values including a fundamental egalitarianism and respect.

It is said that our values are under attack and that laws are necessary for the protection of our society. But the greater the attack, the more vigilant we must be to ensure the continuation of democratic precepts and the inculcation of fairness. Democracy is more than the rule of the majority; it is the equal treatment of all, including the minority. The rule of law is 'a great inheritance which has guaranteed the rights that, as individuals and as a nation, we have cherished'. Essential to the operation of the rule of law is the legitimacy of the institutions which administer it. The Supreme Court of New South Wales epitomises that legitimacy. Essential to that democracy and essential to that legitimacy is the independent unbiased application, equally amongst its citizens, of the law. Once we embark, as a society, upon a course which undermines the legitimacy of the institutions in our democracy or undermines the rule of law, we will begin to erode the very democracy that we seek to protect.