

**Speech to be delivered by
Justice Terence Higgins**

**To the Law Society of the Act and
the Act Bar Association**

**On the occasion of the retirement of
Chief Justice Jeffrey Miles**

Thursday 26th September 2002

**Our guest of honour and Mrs Miles, Judges, Presidents,
practitioners and their respective carers, ladies and gentlemen.**

His Honour became the second Chief Justice and third head of jurisdiction of the Supreme Court of the Australian Capital Territory on 17 June 1985. He retires from that office having been appointed an Officer in the Order of Australia in 1994 and for his services to Australia and this Territory, in particular. He holds the degrees of Master of Laws and Bachelor of Arts. Even then, his Honour went one better.

He did take the opportunity to work as a solicitor with a legal firm in London. It was, he says, a very traditional firm. The senior partner would be driven to the front entrance in his Roller at the civilized hour of 10am, cast a proprietorial eye over the toiling slaves and depart for lunch at his club at about noon.

However, there was one brush with fame, even then, that resulted from his time in London. He became known to the Beatles' solicitor.

His Honour was admitted to practice as a solicitor in New South Wales in 1958 but instead of running in the legal rat-race to the top, served as a lecturer in the volunteer graduate scheme at the Indonesian Civil Aviation College. He returned to practice with Stephen Jacques & Stephen.

It was at this stage that he received his first appointment of note – he was to be the solicitor for the Fabulous Four in Australia – regrettably, during their Beatlemania Tour of Australia in 1966, they did not become engaged in litigation. However, his Honour did meet with them.

No offer of an audition was, however, forthcoming.

To assuage his disappointment, his Honour took the next best alternative to a Show Business Career – The Bar.

From 1965 to 1978, his Honour pursued a barrister's usual interests, arguing with Magistrates, suffering the eccentricity of various District Court Judges and battling the obvious intention of various Supreme Court Judges to put his clients away.

I do not know, given the well-known patience and courtesy District Court Judges now display, what a young practitioner would conclude from the fact that the presiding judge, before whom he or she is to appear, goes by the encouraging nick-name of "Cranky Jack".

Plainly, his Honour was a glutton for punishment, becoming Public Defender for New South Wales, a post he held from 1978 to 1980 relinquishing it in favour of appointment to the National Court of Papua New Guinea (in April 1981).

It did not start well. Having gathered his family and possessions, including furniture, to aid the cause of justice in a fledging nation, his Honour's arrival coincided with the aftermath of a change of government. There was a new Prime Minister. A new Attorney-General. The head of department was unsure if they really wanted a new expatriate judge despite offer and acceptance. However, after some delay, the new Attorney apparently decided his Honour was acceptable thus avoiding possible litigation. It was certainly that Territory's gain. As Mr R E Williams QC (as he was then not yet) said at his Honour's swearing in on 17 June:

“Your Honour was a compassionate and understanding judge in a new country.”

Judicial practice in PNG is based on the Australian model. It is an independent judiciary, open to public criticism. The major difference, though perhaps a little less so now, is that trial by judge alone was the rule. However, particularly in remote locations, accessible only by aircraft, public criticism is not confined to outraged letters to the editor or sneering articles in The Canberra Times. No. The critics, which of them to assume such a role being determined by the outcome of the trial, generally manifested their criticism by bringing out their bows and arrows and waving war-axes.

His Honour found it prudent to have the departing aircraft already warming up on the air strip and leave the terms of the verdict for the local authorities to translate to the interested parties after his departure.

In 1982, on the same day as our own Kep Enderby, and following the end of his term on the National Court, his Honour was appointed as a judge of the Supreme Court of New South Wales.

Whether his Honour thought that judicial service would be any easier in that State than it had been in PNG, I do not know. Despite a well-deserved reputation for upholding civil liberties, his Honour is also a diligent and conscientious upholder of the law and the legal process. He, amongst a number of other judges found a Mr Collins (I believe it was) guilty of contempt for importuning prospective jurors in a trial to “stop police verbals”.

As a result, a wanted poster was produced including photographs of all those judges who had so offended Mr Collins, including his Honour.

So whether it was to evade arrest, or to accept an even more seriously challenging role, his Honour on 17 June 1985, became Chief Justice of the Supreme Court of the ACT at the invitation of the then Attorney-General and Deputy Prime Minister, Mr Lionel Bowen.

In welcoming his Honour, Mr Bowen speculated whether his Honour might find the task “daunting”. My former partner, Faulks J, (as he has since become) engaged in introspection concerning the advent of technology with which he then had, and still has, a disturbing familiarity. He predicted “a time of challenge”. Mr Williams QC, (as he had yet to become) reminisced upon the troublesome and difficult time attending his Honour’s service on the PNG National Court. Was he sounding a warning?

Even his Honour, who should have regarded himself as arriving in a legal land of milk and honey compared with Macquarie Street, could not resist the “challenge” theme.

His Honour said, perhaps prophetically, but a prophesy yet to be fulfilled –

“This court may come the first in Australia to deal with what I understand is intended legislation in the nature of a Bill of Rights.”

What his Honour did not refer to, though the Attorney-General did, was the vast geographic jurisdiction of this court. An even larger one than he left. Was this the challenge? We preside in Jervis Bay, Heard and MacDonal Islands and Antarctica as well as the Australian Capital Territory.

Gray J and I have sat in Jervis Bay. Not in the other Territories. Though we have no doubt that his Honour would not shirk presiding at Mawson’s Hut if a case presented itself. It would, after all have enabled him to have presided, dispensing justice, from the Equator to the Pole.

This is not the occasion to detail his Honour’s enormous contribution to the jurisprudence of this Territory whether on proceeds of crime, bail, forensic science or legal resources.

The Law Reports contain his Honour’s reasons for various decisions. The abiding thread you will find is compassion for the litigants, albeit not necessarily for ill-prepared lawyers, and a great respect for the rights of litigants, particularly those whose rights and liberties have been threatened.

Indeed, in one of his not infrequent speeches, the Hon Justice Michael Kirby, in reminiscing upon the Civil Liberties Council of New South Wales, founded in 1964, referred to the “youngsters” who were then prominent in civil liberties

before it became fashionable. His Honour, he said, was a valued member of that “formidable team” of youngsters.

But his Honour was not merely respectful of the rights of persons. He also is a champion of the rights of animals.

In *Champion* (the owner not the horse) v *Canberra World Cup Showjumping and Carnell* - he awarded \$85,000 for injury to a horse. It had been ridden backwards (accidentally) by an unwarned Chief Minister, Ms Carnell, posing for an opportunity shot. At least his Honour was not obliged, in order to retain office as she had been, to jump from aeroplanes, be precipitated into the Lake, or ride horses for the benefit of the paparazzi.

But cases can sometimes be challenging. The plaintiff who, in middle age, claimed that, but for her “slip and fall” she would have become a high-priced call girl is but one instance. The report of the case appeared on 1 April 2000.

However, after years of dealing with the bad, the good, the wronged and the eccentric, including his colleagues (not to mention Federal and Territory Governments), his Honour was finally faced with the ultimate issue. The end of civilization, even existence as we know it, fell into question. As the Canberra Times recently reported:

“End of the universe forces rapid ruling”

Confronted by the possibility that the universe might cease to exist as early as next week, ACT Chief Justice Jeffrey Miles made a quick decision

yesterday not to order the Australian Broadcasting Corporation to pull a science program scheduled for last night.

Self-made scientist, Theodore J Rout, who admitted that his scientific qualifications were gained through “The university of hard knocks”, asked the Chief Justice to order the ABC not to broadcast The Catalyst, in which his allegedly plagiarized theories on the slowing down of the speed of light would be presented.

He accused the ABC, The Canberra Times and many others of ignoring him for years and refusing to publish his research. He was annoyed by the fact that the program would go to air without any acknowledgement of the work he had done.

Mr Rout said he wanted to use his research into the speed of light to develop a fusion rocket engine but there was a conspiracy afoot to “get this technology out of the country”.

He had disproved, he said, the Big Bang and Steady State theories about the creation of the universe.

The Chief Justice, who obviously knew a bit about physics and quoted Einstein’s Theory of Relativity, could not believe that Mr Rout could not find an “eager lawyer” somewhere to represent him.

But when Mr Rout said the scientists due to appear on the ABC last night had predicted, without knowing it, the imminent demise of the universe, the judge said, “Well, I’d better not reserve my judgment in the matter.”

He refused to order the ABC to withdraw its program because Mr Rout had failed to show that the ABC was likely to breach copyright in some way.

Mr Rout could be adequate compensated, if he ultimately won the case, through an award of damages.”

Was this a result or a cause of his Honour’s pending retirement? Is he undergoing some life crisis?

My suspicions were aroused when I compared the entries made by his Honour in Who’s Who. Apart from “Personalia” in the ALJ, this is now the top source for breaking news on judicial figures.

In 1994, for example, his Honour’s recreational interests were:

“Bushwalking, gardening, reading”

In 2002, they have become:

“Bushwalking, topiary and tai chi”

As I said to the Bar Association recently, it demonstrates his Honour’s attainment of a new level of enlightenment. Nirvana beckons!

We wish him well in his retirement. I thank him for his friendship and guidance. This community and our legal profession are grateful for his immense contribution to law and justice in this Territory.

Justices Crispin and Gray are particularly grateful that his Honour's long campaign for a fourth judge finally paid off.

We now have a Court of Appeal, a court administrator, but, alas, no independent administration, let alone new court facilities but each is not improbable in the next few years.

Finally, I would like to pay tribute to Trish Miles. Nobody could undertake this office without the support of a spouse, an unflagging supporter. Trish has been all of that to his Honour and more.

Join with me now and say, not farewell, but good wishes and many happy years together to Jeff and Trish Miles.
