

SPEECH – THE HON JUSTICE MALCOLM GRAY
THE ANNUAL AUSTRALIAN BAR ASSOCIATION’S SILKS’ DINNER
GREAT HALL OF THE HIGH COURT OF AUSTRALIA
MONDAY, 5 FEBRUARY 2001

When Porter QC asked me to give an address this evening he said to me that I would be addressing “... a gathering of decision makers, both at a National and State level – eminent people in the legal profession – people that really mattered”.

He actually didn’t mention the occasion by name. You can appreciate why I would ask – “How come a Tasmanian knows so much about the Brumbies Sportsman’s Dinner?”. I, after all, have only been in Canberra for a short while, but I did know about the important dinners.

As one would expect from a President of the Australian Bar Association, he quickly responded – “No, I want you to talk at the ABA Silks’ Dinner at the High Court, you know – that other major court in Canberra”. I think that ‘disappointment’ is too harsh a word.

Nevertheless, as you can see, I agreed and Porter QC gave me the following riding instructions:

- Whatever you do keep it relevant;
- Try not to make too many High Court jokes – you are, after all, a Judge now and they know where you sit;
- Don’t bore them;
- Try not to speak for more than an hour; and importantly
- It should not be in anyway, mind improving.

With those instructions firmly in my mind, I begin.

My function here tonight is to propose a toast to the new Silks. Tonight is a night of celebration. The immediate cause for celebration is the appointment of Queen's and Senior Counsel throughout Australia, the pride and joy that brings to your families and the eager expectation of the future that your new and challenging role in the profession will entertain.

The grant of Silk is a recognition of integrity, of high ethical standards and the possession of superior skills as an advocate.

As leaders of the profession, your responsibility is to maintain the Bar's high standing and to ensure that the Bar as a whole maintains them. Your appointment brings a responsibility both for and to the Bars to which you belong.

Sir Gerard Brennan, AC, KBE, at the welcome to new Silks in this court on 10 February 1997 said:

"... in the public eye, the status of Silk depends on the status of the Bar as a whole. Peer group recognition is no commendation unless the peer group is itself held in high esteem. The tradition of the Bar is that the Silks are its leaders – not necessarily by popular vote, though that is often the case, but by merit which others seek to emulate and by example which others freely follow. So you have a

new responsibility which goes with the new status. And, reciprocally, the status ultimately depends on the discharge of the responsibility.”

It is timely, on occasions such as these, to reflect on the office of Silk in a contemporary Australia. There is in Australia, I think it is fair to say, a commendable egalitarianism. But recognition of someone’s notability as an advocate serves both a public and professional need. It is some warrant that the person is held in esteem by his or her peer group.

Of course, the Bar is not the only group where designation of eminence is accorded above that necessary to practise or work. Some professions, such as medicine, do this by way of a series of exams and other training in order to attain a specialist qualification. The Government still bestows recognition on those who serve it in areas such as the Armed Forces and the Public Service. Other groups in which specific recognition is afforded people include: Academics, the Clergy, and the Merchant Marine. The common effect of these rankings is to identify persons, both within the group and to the public, who have achieved and are thought likely to be able to continue a certain higher standard or greater experience in the area in question.

From this it can be seen that the fact of appointing Queen’s, and now Senior Counsel is not, by any means, unique.

To a fair-minded onlooker, the best reason for retention is that the system performs a very useful public function. It marks, both for the public and the profession, the acceptance by qualified observers that an individual has developed and displayed those qualities which are necessary to

establish eminence as an advocate. This recognition stands apart from the recognition which might be generated by self-promotion. It stands as an objective assessment of the worth of a particular advocate.

As a newly appointed Judge, can I add another good reason, which I have noticed even in the relatively short time I have been on the bench. It is the ability of the court to trust the worth of the advocate who has been accorded this recognition.

There are other advantages in the process. One is to provide a standard which junior counsel can strive to achieve. Ambition to improve and advance can be properly nurtured by other than financial gains. The recognition of one's peers and those before one appears is a significant incentive to counsel to achieve and maintain high standards.

There are also disadvantages in abolishing the appointment. It may well be argued that the failure to appoint Silks in the future will lead to substantial imbalances within the profession and to detriment to the profession and the public. One consequence of no more appointments is that it would place in the hands of those who contrive the title an increasing economic advantage, and if abolition is not uniform, another possible consequence is there would be an inevitable reliance on Silks from other jurisdictions.

At the swearing-in of the Honourable Justice Kirby in February 1996, his Honour observed that on occasions such as these, "Very occasionally, wise counsel is given". I should wish this to be

one of those rare occasions. I can do no better than to ask those new silks to remember the prayer of Silk about to appear before the High Court. It goes like this:

“O may they let me feel comfortable in their court and offer me words of encouragement and praise;

May they let me speak first and may they listen without interruption;

May they not complain if I fail to take them to a relevant authority or to answer their probing questions;

May they understand my world of strain and pressure, my need to remain calm and relaxed;

May they keep their court-room a place of peace and order wherein I may renew my spirit in the warmth of their smiles and wherein I may be well refreshed from day to day.

Amen.”

I would commend that prayer to you all.

On behalf of the Judiciary, may I propose a toast to the new Silks.

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