Chief Justice Alstergren;
Fellow judges of the Court, present and past;
The Honourable Justice Steward of the High Court of Australia;
The Honourable Justice Moshinsky of the Federal Court of Australia;
The Honourable Justice Wheelahan of the Federal Court of Australia;
Former Chief Justice, the Honourable Diana Bryant AO QC;
The Honourable Rod Kemp;
Ms Cooper, of the Australian Government Solicitor, on behalf of the Attorney-General;
Mr Liveris, President of the Law Council of Australia;
Ms Annesley QC, President of the Victorian Bar;
Mr Dickson QC, Chair of the Family Law Bar Association;
Ms Wolf, President of the Law Institute of Victoria;
Colleagues, friends and lastly, but certainly not least, family.

I too acknowledge the traditional owners and custodians of the land on which we meet, the Wurundjeri people of the Kulen nation, and pay my respects to their elders, past and present.

I am indeed grateful to have reached this day and, equally so, this stage in my life.

In March 1992, I commenced employment at the Family Court of Australia as legal associate to the late Honourable Justice Steven Strauss. I could not have believed then that, thirty years later, I would be appointed as a judge of the Court. His Honour was kind enough to employ me, notwithstanding that I had not studied, nor worked in family law, and thus began my life in this jurisdiction. Born 100 years ago, in Germany, his childhood was disrupted by the rise of Nazism there. He fled to England

in 1939, on a *kindertransport*, as a refugee – a Jewish one. However, in 1940, he was deported from there as an enemy alien – a German one. What a cruel irony. He travelled to Australia by ship, on the infamous Duneera, in appalling conditions. It was a 57-day journey, during which the ship was hit by a torpedo. The ship was overcrowded, with some 2,000 people on board - mostly German Jewish refugees but also some Nazis. Upon arrival in Australia, he was interned for two years in camps at Hay and Tatura, again as an enemy alien. After the War, he learned that his mother and sister, who had been trapped in Germany, had been murdered. Nevertheless, he did not give in to rancour. He set out to rebuild his life and that, he certainly did. He studied law, becoming the first person born outside of the British Commonwealth both to be admitted to the Victorian Bar in 1950 and, subsequently, to be appointed Queen's Counsel in 1965. He was gentleman and a gentle man, with a twinkle in his eye, a ready smile and a cheeky sense of humour. Appointed to the Court in the first year of its existence, he became one of its leading intellects and great jurists, being later appointed to the Appeal Division. He taught me many valuable lessons, which I will strive to follow. One is that the most important person in a case is not the judge; it is not for the judge to show the lawyers or the parties how clever he or she is. Nor is it the winner, if there be such a thing in this jurisdiction. Rather, it is the party who loses. As a judge, he strove to ensure, as much as possible, the dignity of the unsuccessful party.

Since his retirement in 1993 and, all the more so, since his death in 2010, I have learned another sobering lesson which I will bear in mind over my time on the Bench – *sic transit gloria mundi*. No matter how important judges or others may think they are, they are often soon forgotten. From 1993, when I went to the Bar, until 2019, shortly before the outbreak of

Covid, in December each year, there was a lunch for the former and then current legal associates. We would go around the table in the judges' common room, introducing ourselves. With the passage of years and then decades, I noticed an increasingly blank look on the faces of the younger, more recent associates, when I mentioned that I had been the legal associate to the Honourable Justice Strauss. Sad though it was, and is, it taught me a valuable lesson; even judges are but a fleeting moment in time.

It was as a legal associate that I first met the Honourable Joseph Kay, then a judge of the Court. When I first met him at the Court and when I later appeared before him in the Court in my early days, he terrified me, with his fierce intellect and interventionist approach. As I came to know him better, I realised that he was best compared to the national fruit of Israel, the sabra (pricky pear) – prickly on the outside but sweet on the inside. However, with the passage of years, like many of us, he has shed his prickles. He has long been a mentor to me, and his wife, Yvonne, and he have become life-long, family-like friends of my wife Dinah and mine. When I was appointed late last year, Joe and Yvonne were as excited as my family and me. Indeed, maybe Joe was even more excited, it that be possible. In my first year at the Bar, I was offered my first appeal brief – an appeal against a decision of his. I experienced competing emotions; sheer terror at the prospect of appearing in the Full Court, but also the challenge of trying to overturn one of the leading minds on the Court. I won and, much as he still insists (28 years later) that he was right and the Full Court was wrong, I think that, deep down, he was proud of me or, as is said in Yiddish, he "schepped nachas". If, when I retire from the Bench, it can be said of me that I was half as good a judge as Justice Kay, I shall feel that I did a good job. I never imagined that I would sit on the Bench

with Joe and I am very grateful to the Chief Justice for inviting him to return to do so today. I must confess that, in the lead up to today, I am not sure to which I looked forward more: having him on the Bench with me at my welcome, or the terrified looks I anticipated on some of your faces when seeing him come onto the Bench, thinking to yourselves: oh no, he's back! Joe, I hope that you will join me again on the Bench at my farewell ceremony in many years time, with Yvonne sitting in the audience.

Many of you here today, my colleagues past and present, my friends and my family, have contributed to my appointment and I want to acknowledge some in particular.

I am delighted that Leon Zwier and Philip Chester, partners of Arnold Bloch Leibler, solicitors, are here today. I was articled at that firm in 1991 and it gave me a good grounding in commercial law, which I brought to my practice in family law. Since then, the firm has grown to become one of the leading law firms in the country and I am particularly proud to be associated with it for its work over nearly 30 years with Aboriginal and Torres Strait Islander communities, organisations and individuals, often pro bono, on matters and issues that go to the heart of their resolve to achieve Indigenous led self-determination.

It was my friend of over 3.5 decades, Larissa Goldberg, who suggested that I apply for the position with Justice Strauss, she having learned of the vacancy from her mother, Lorraine Shatin, then director of court counselling, whom many of you will remember.

I read with Jeremy Ruskin, now QC. Jeremy is the consummate barrister and jury advocate, who can hold a jury in the palm of his hand. He may

never have practised in my jurisdiction, nor I in his, but I saw in him what it is to be a great barrister. It gave me something to which to aspire, as a junior barrister. Jeremy's contributions to the law are manifold but none are as great as that, some 20 years ago, in *Nurses Board of Victoria v RJT*.[1] The Nurses Board had been conducting an investigation under the *Nurses Act 1993* in relation to a male nurse who was alleged to have engaged in unprofessional conduct of a serious nature, namely, commencing and continuing a sexual relationship with a former psychiatric client, for whose care he had been responsible and whom he knew to be married and still living with her husband at the time of the relationship. In quashing the investigation, Justice Nathan, in the Supreme Court of Victoria, expressed outrage, saying the Board did not have "*the jurisdiction to clomp into the bedrooms of registered nurses or their former patients, simply and only because sexual congress has occurred*". His Honour continued, saying that:

> *It is redolent of morality which penalises adultery. It is not the function of the … [Nurses Board of Victoria] to enforce the seventh Commandment. Every citizen whether a registered nurse or otherwise has a basic freedom to fornicate.*

However, on appeal, Justices Ormiston, Batt and Vincent disagreed.

The importance of the clerking system at the Victorian Bar should not be underestimated, neither for solicitors, nor for barristers. At Justice Strauss' suggestion, I applied, and was accepted, to join his old list, Foley's List. I never looked back. In the 28 years that I was on that list, on only one occasion was a mistake made with a booking; the actual date of the hearing was the day before the date for which I had been booked. I was

[1] [2002] VSCA 1991

making my way into chambers at a leisurely pace and time, thinking that I had a day in chambers, when I received a panicked call from my instructing solicitor. I had not appeared, and Justice Bennett was waiting for me. Luckily for my client, my instructing solicitor and, all the more so, me, her Honour agreed to stand the matter down until I arrived. There would be few other barristers who have been as fortunate as I was on Foley's List. A few months after I went to the Bar – but hopefully not because of that – Kevin Foley died and was replaced by John Kelly. John's and my time with Foley's List coincided almost entirely, for he retired the month after I was appointed – again, hopefully not because of that. I regret he cannot be here today; he is in isolation, as a close contact of a family member with Covid. However, he and the List are very well represented by his successor, Andrew Turner. Having known Andrew for many years, I am confident that the List has been left by John in very good hands and that Andrew will take the list from strength to strength.

Solicitors may need barristers but barristers need solicitors just as much, if not more so. I was fortunate to be briefed by, and to work with, most of the leading family law firms in this State over the past nearly three decades, and I am grateful to them all. From instructing solicitors initially, many became dear friends. Some are here today. To mention only some, would invariably be to leave out others, so I will only mention one; the one who kindly and / or bravely sent me my first brief, Ashley Brygel. Ashley and I have been friends for well over 40 years, having gone to school and university together. It was a brief to appear in the Magistrates Court of Victoria at Frankston, on a summons for attachment of earnings. I had signed the Bar Roll the previous day. My backsheet to prepare and appear was marked at $120 (for the day, not even the hour) and the judgment

debt was $2,096.88. With the orders for interest and costs that I obtained, the judgment debt increased to $2,637.04, to be repaid in weekly instalments of $55, which included $1 for clerical administrative costs. Ashley still claims that, notwithstanding all the other briefs he sent me over the years, the memorandum I sent him after that hearing, recounting my brilliant victory, was the longest he ever received from me. When I took Silk in 2015, Ashley was somehow able to retrieve my backsheet, after 22 years. He had it framed and gave it to me. It hung in my chambers on level 12 of Owen Dixon Chambers West and it now hangs in my chambers in this building.

I would not have been able to develop the practice that I did, and eventually to take Silk, had I not had the opportunity to be junior to many Silks, both within and outside of the family law jurisdiction. Many are gathered at the Bar table today. As with my instructing solicitors, to mention only some, would invariably be to leave out others. So I will only mention two who did not live to see this day and whose absence I keenly miss today. First, the late, great Noel Ackman QC. Noel was the leader and elder statesman of the family law Bar. He was fearless barrister, from whom I learned much, including the importance of standing up firmly, even very firmly, but always politely, to judges when necessary. I hope others will do likewise to me, when necessary. I was often his junior but, when I was, I knew it was because Justice Macmillan was not available. I recall once attending his home on a Sunday afternoon in the mid-1990s, to prepare for a case the following day. We were acting for the fourth polygamous wife of the Nizam of Hyderabad. Noel opened the door in his shirt and boxer shorts; I didn't know where to look, but he was unperturbed. He did not don pants that afternoon. At her farewell sitting

last week, Justice Macmillan mentioned Noel's cardinal rule of always speaking first at the commencement of a case, whether he appeared for the applicant or the respondent. However, her Honour omitted the corollary rule, namely, always also to speak last at the end of a case, whether appearing for the applicant or the respondent. I tried to emulate Noel in this, and other, respects. On one occasion, Justice Johns said to me: "*Mr Strum, you don't always need to have the last word*", to which I responded "*Yes, your Honour*" and then, not realising what I was doing, proceeded to continue with what I had been saying, causing her Honour to roll her eyes and laugh. Whilst I miss Noel's presence today, he is with us in spirit by Justice Macmillan's presence.

The other Silk I wish to mention is the late Jeremy St John QC. We were neighbours in chambers for nearly 25 years, from when I first took chambers until he relinquished his. Jeremy was a tenacious barrister who gave everything for his clients, often to the detriment of his health in his last few years. He was also a very loyal friend to those who were lucky enough to be his friend. We last spoke a few days after my appointment was announced. He said he looked forward to attending my welcome but he died a few weeks later, a victim of Covid. As with Noel, I miss Jeremy's presence today but he too is with us in spirit by the presence of his wife, Jill Rivers.

I don't know that I would have applied for Silk had Holly Renwick not been kind - or silly - enough to read with me. In those days, the Bar News had a feature article on the new Silks each year, which listed, amongst other things, each Silk's readers. From 2003, when I became eligible to take readers, until 2014, when Holly asked to read with me, no-one else did. I

was mortified at the thought of having no readers to my name and resigned myself not to apply. But then Holly came along. At one of her first appearances whilst reading with me, she was approached by Rohan Hoult, now a Senior Judicial Registrar of the Court. He introduced himself and asked with whom she was reading. She responded that she was reading with me. It is alleged, but on the balance of probabilities very likely correct, that he paused, reflected and then responded: "*Strummy? When came to the Bar, he was an arrogant prick, but he's a really nice guy now*". I don't know about the latter but the former was probably correct.

I take immense pride in Holly's achievements. She has quickly become one of the leading family law juniors, respected by the Bench, much sought-after by solicitors and in demand as a junior to Silks. I am confident that she will take Silk and be appointed in far less time than it took me. But in the meanwhile, I hope she enjoys her new, far more important role in life, as the parent of a newborn child.

Through Holly and my other regular juniors, many of whom are here today, I learned how invaluable good juniors are to Senior Counsel. To the occasional dismay of my instructing solicitors and clients, I never did a trial without a junior. I did this for two reasons. First, I was cognisant of the fact I would not have achieved that which I did, had I not had the opportunity of being a junior to Silks. It was and remains important for juniors to have those same opportunities that my contemporaries and I had. Secondly, but equally, I did so out of self-interest; quite simply, I knew I could rely upon them and they made my life easier and more stress-free. I encourage Silk to do likewise, for both reasons that I did. I have lost my juniors but I now have three wonderful associates: Noa Shaul, my legal

associate; and Carla Loccisano and Rachelle Lombardo, who are job sharing the position as my chambers associate. Having associates is even better than having juniors because they're all mine and, unlike with juniors, I don't need to share them (other than when Justice Hartnett seconds them elsewhere).

I want to thank, and apologise, to the Chief Justice. I want to thank him for his confidence in me, for supporting my appointment and for having me join his team of judges of both divisions of the Court, many of whom were already friends of mine and / or colleagues at the Bar. I will not let him down. I also want to apologise to him because, no sooner had I been appointed than Justice Macmillan announced her retirement and Justice McEvoy was appointed to the Federal Court of Australia. I hope it was not a case of "cause and effect" but, if it was, I am sorry. I shall miss them both.

Since I was appointed, I have reflected on how fortunate I am to have been born, to have spent my childhood, to have studied, to have practised law and to have raised a family in this wonderful country of ours. I am acutely conscious of the fact that, 60 years ago, when my mother and her family migrated from Egypt to Australia, due to the persecution of Jews in Arab countries, as a Jew, I could never have been appointed a judge there. My appointment, for me, is the culmination of 100 years since my maternal grandfather started to study law in Egypt, but was required to abandon his studies after a year, when his father died and the responsibility to financially support his widowed mother and younger siblings fell upon his elder brother and him. I am even more conscious of the fact that, 80 years ago, when the Holocaust raged around my father

and his family in Europe, as a Jew, I could never have been appointed there. We have, in recent weeks, heard of the town of Odessa, in the Ukraine, which is presently bracing itself for a Russian onslaught. But 80 years ago, my elderly great-grandparents were murdered in the streets of Odessa. I am indeed fortunate that my parents and grandparents chose, and were accepted, to migrate to Australia. It was not easy for them. My father and his parents wanted to get as far as possible from Europe, which was soaked with the blood of their family murdered in the Holocaust, but in doing so they left, uncertain of the ultimate fate of their brother and son. It was only after long after the deaths of my grandparents and soon after the death of my father that I discovered that on Saturday, 14 November 1942, their son and brother, my uncle, was dispatched to the gas chambers of Auschwitz, aged 18 years.

I commenced by acknowledging the traditional owners and custodians of the land on which we meet and by paying my respects to their elders, past and present. However, I want to acknowledge and pay my respects to one particular elder, William Cooper, or Yelgaborrnya. He was of the Yorta Yorta nation, born around 1860 and was a leader of the Australian Aborigines League. There is no record of him ever having met a Jew in his life. Yet, on 6 December 1938, he led a delegation of the League to the German Consulate in Melbourne, then situated on Collins Street, to present a petition protesting against the persecution of Jews by the Nazi government and calling for this to be brought to an end. The petition stated: "*We are a very small minority, and we are a poor people, but in extending sympathy to the Jewish people we assure them of our support in every way*". The German consul refused to admit the delegation. I am sure that my father and grandparents, when they came to this country in

the early 1950s, were unaware of this. Had they been, I am also sure that it would have confirmed in their minds the correctness of their decision to come here.

For my mother and her family, although they too had to leave their home in Egypt, for life had become untenable for them there, it was not easy coming to Australia. Australia was a very different country then and the term and concept of multiculturalism were unknown in the early 1960s. They left a country where they had led, until a few years earlier, a charmed, relatively affluent, multicultural life. Life here, at first, was not easy for them. The language, the culture (or lack thereof), the food, were all unfamiliar to them. In the early years after their arrival, my mother, whose native tongue is French, was on a tram, with another family member. They were speaking French until someone interrupted them and told them to speak English, as they were in Australia. But they too had made the right decision.

I am truly indebted to my parents and grandparents for their foresight in coming in coming to this wonderful country. My late grandparents, as well as my father who did not live to see this day, would be smiling. My mother is smiling here, in front of me, and it is lovely to behold. My late father-in-law would also have been very proud and I am delighted to have my mother-in-law here with us today too.

One of the requirements for appointment as a Judge of Division 1 of this Court, to be found in section 11(2)(b) of the *Federal Circuit and Family Court of Australia Act 2021*, is that "*by reason of knowledge, skills, experience and aptitude, the person is a suitable person to deal with*

family law matters". Of those qualities, I can only speak of experience. The term is not qualified, limited, for example, to experience only in family law. In my opinion, it should be given a broad, unfettered meaning, such as to include life experience. In that regard, I do have the requisite experience, drawing upon the marriage of my parents, which spanned 50 years, and my marriage to Dinah, my best friend, which has spanned 30 years to date. Hopefully, we will at least double that. Doing what I have done and do in this court, I realise all the more how fortunate I am. Dinah is and has been my partner in all that has been achieved and without her by my side, none of it would have been achieved. As the 2nd century Talmudic sage, Akiva is recorded to have said of his wife: שלי ושלכם שלה (mine and yours is hers). That which I have achieved, culminating in my appointment, and that which I hope to achieve for the Court and for those who will come before me, is so much due to her. A talented painter and potter in her own right, she put her art aside for a couple of decades, enabling me to focus on my career, whilst she focused on bringing up our three independent, strong willed, talented children – Gabriel, Orly and Noa – each very different one from the other, but all possessing the values that we and our parents have cherished. We love and are proud of each of them. I am delighted that Gabriel and Orly are here today. Gabriel is a gifted musician, better known to some as Japanese Wallpaper, who brings satisfaction to his fans far more quickly, cheaply and painlessly than I ever did for my clients. Orly is a determined young woman who is finishing her Arts degree this year and plans to study law next year. For reasons which somewhat escape me, she wants to practice in family law and to go to Bar one day. It is just as well that I have been appointed; I can never be opposed to her, nor can she ever appear before me. That is a good thing, as otherwise I would fear that she might kick my proverbial backside in

court. Noa is watching by video-link. She too is a determined, idealistic young woman who knows what she wants. Last year, at the age of 19 years, she decided to make her life in Israel and migrated there, where she is currently undertaking two years of national service. I miss her today, as I do every day, and look forward to seeing her next week. Returning to Dinah, now that our children have grown up and two have left home, it is wonderful to see her focus on, and flourish in, her art again.

I hope the experience I have been afforded as a child, a spouse and a parent, made me a better family law barrister and will similarly make me a good family law judge. Before I conclude, I want to say a few more words about my late father. At the age of 11, in May 1940, he fled his hometown of Antwerp, Belgium, with his parents and elder brother, ahead of the approaching Nazis. They sought refuge in a village in the south of France but were soon rounded-up and placed in refugee camps. Life was very hard there; food was scarce, the barracks afforded little protection from the cold in winter, they slept on wet sand and my father and his mother, in the women's camp, were separated from my grandfather and uncle in the men's camp. After some time, they were able to escape; my father and uncle to a boarding school for Jewish children and my grandparents to Lyon, where they hid their identity as best they could. On 26 August 1942, in the early hours of the morning, the boarding school was raided by the collaborationist police in so-called "Free France". The boys over 18 years of age, including my uncle, were rounded up, handed over to the Nazis and deported to Auschwitz. My father was the last member of the family to see his brother alive and, although he did not admit it, I think he carried that burden with him for the rest of his life. Thereafter, he spent the remainder of the War in hiding, under a false name, in a Catholic

boarding school in Lyon. Why do I tell you this? Because so much of the work of this Court is to do with children. My father's childhood was cruelly cut short; his education was disrupted and not completed; he spent years separated from his parents, fearful that he might never see them again; he saw his older brother (whom he idolised) deported, never to return; he lived in hiding, fearful of his true identity being uncovered. All of this happened before he was 18 years of age. And yet, he went on to live a full life. He was a cheerful man, untarnished by rancour, like Justice Strauss, about whom I spoke earlier. They were men who did not forget their past but appreciated their present and looked forward to the future. They got on with life. It puts things into perspective.

So, what kind of judge do I aspire to be? I need look no further than the writings which have guided my people for nearly the past two millenia. The third century work, Pirkei Avot, or Ethics of the Fathers, contains the following pithy advice to judges:

> *Do not act like a lawyer. When the parties in a lawsuit stand before you, look at them as if both sides are guilty. But when they leave you, look at them as if they are both acquitted.*

This has been parsed over the ensuing centuries as follows:

- Do not act like a lawyer: a judge should be neutral and broadminded, open to all sides of a case and the various arguments, rather than allow his judgment to narrow and see the facts from the perspective of a lawyer, who is trained to be the champion of one side.

- When the parties in a lawsuit stand before you, look at them as if both sides are guilty: a judge should be sceptical and critical when listening to the arguments of both parties.
- When they leave you, look at them as if they are both acquitted: when the case is over, a judge should endeavour to let both parties leave with as much dignity as possible, to get on with their lives.

This reminds me both of the affirmation of office that I took, on 29 November last year, to "*do right to all manner of people according to law without fear or favour, affection or ill-will*", as well as the lesson I learned at the commencement of my career in family law, from the late Justice Strauss, to which I referred earlier.

Thank you to all the court staff who have been instrumental in organising this ceremonial sitting and ensuring that it has proceeded as smoothly as it has; in particular, my associates, as well as Cath Bull and Lisa Terceiro.

Thank you all for attending and, to those who spoke, for your kind words. As for the words spoken by my friend, Geoff Dickson QC, I simply remind you all of the caution proffered by Justice Macmillan last week: just because he sounds persuasive, does not mean he's right!