

## Nicholas Gye (1958 – 2006)

By RJ Ellicott QC

There are moments in our lives when we hear what we do not ever want to hear. They are usually moments accompanied by disbelief. It happened to me on 29 December when Maurice Neil gave me the news of Nick's passing.

I speak today on behalf of myself and all of Nick's other colleagues at Sixteenth Floor Wardell Chambers. Indeed, judged by the presence of so many here today I think I can properly say that I speak on behalf of the profession itself.

May I first express our deepest sympathy to his parents, Professor Gye and Mrs Gye, his sons Henry and Oliver, his wife, Georgina, his sister Louise, her husband Colin and all the members of Nick's family and close friends. Nick was very dear to us and we share your grief. But we also share your admiration of his life and his achievements, indeed the sheer joy and rewards of having known him and spent so much time with him.

A floor of barristers like 16 Wardell which has enjoyed relative stability in its membership for over 20 years, develops a life of its own. We share each others joys and hardships, our successes and losses in court (although mostly our successes) we learn of and meet family and friends and of some of the personal events which crowd each others lives. Some spend holiday times together. On occasions we have to try to encourage or mentor each other. The reality is we spend the majority of our waking hours in chambers or in court.

So it was with Nick.

After graduating in law at Sydney University in 1986, and practising for a time as a solicitor with Sly and Weigall, he joined us on Sixteenth Floor Wardell Chambers shortly after his admission to the Bar on 3 August 1990.

From the very beginning it was clear that this was his chosen profession. Throughout his life at the Bar he evinced absolute commitment to its ideals, its independence and its vital role in our free society.

Like most of us, he was a greenhorn when he started. He needed guidance in court procedure, the rules of evidence and cross-examination before he could be set loose. With this in mind, a moot was organised in the late Frank Gormly QC's chambers in which Nick was counsel for the plaintiff in a motor accident claim. Under the guidance of Carr as judge, Drummond as counsel for the defendant, and with a client economical with the truth, and an uncontrollable witness in the person of Haffenden, he was blooded and ready to face the only teacher the Bar can really offer in these matters – experience.

Being the son of Professor Richard Gye, Nick was well aware of the demands professional life could have. In a sense, life at the Bar can be more demanding than other professions. Commitment followed by success can lead to long hours, late nights, early morning conferences, reading and preparing advices, argument and cross-examination. Such a life requires a special understanding by family and friends.

Although Nick started off with the stated intent of doing negligence work, in particular medical negligence, as often happens, it was not to be. His practice took a different turn and his main areas of expertise became equity and many other aspects of commercial law.



Nicholas Gye, second from left. 'Throughout his life with us...he retained his infectious and delightful sense of humour'.

Over time his work in these areas increased and he developed a solid commercial practice which could have led within a few years to his taking silk. He was widely respected by members of the Bar and bench.

Nick did not see his practice simply as a means of earning income.

Apart from his two sons, Henry and Oliver, the Bar remained at the centre of his life. It was obviously a passion, and represented for him the pursuit of excellence. He was endowed with a high intellectual capacity, an inquiring mind, and an amazing memory including for cases and transcript. I did several appeals with him. If I wanted a reference to transcript or an authority, on many occasions he could quote the reference, the page or even the line. He had a rare capacity for incisive legal thought.

In his case, the scope and depth of his texts in his library were a perfect indication of his interest. If one needed to research a subject you would head for his room and invariably be given or discover the text that answered your query. It was indicative of the depth of his interest in legal principles and their development.

Entry into his room was however a different matter. It was in sharp contrast to his mind – a scene of chaos! Particularly in more recent years, trolleys full of files relevant to his cases, were likely to appear in the corridor just outside his small room. Law reports, papers, texts and parts of briefs usually littered his table and his dog-eared carpet was a hazard essential to avoid. Out of it all, however, phoenix like, rose his personal computer, his digital dictating machine and his smiling boyish face and the pursuit of excellence prevailed!

Recently his practice began to grow in significant ways. He was retained by a federal government department and he increasingly appeared in cases in the Federal Court and Supreme Court in Sydney and elsewhere. He began advising on constitutional issues. He was presenting papers on request at lunch time seminars.

In the weeks before Christmas he expressed to me and others on our floor his growing confidence in the future. He was happy. He shared in Christmas festivities with friends from the floor. Miles Condon's last minute frenzied efforts to finish up for the year were punctured by Nick's infectious laughter five rooms away! He was a junior barrister in full flight. He was on a roll!

His enthusiasm for his practice continued till the last. On that day he was due to appear in the Supreme Court sitting in vacation.

Nick's interests outside the law were also quite remarkable.

He read widely and in depth on many subjects – art, history, politics, philosophy and theology. He had a deep love of music both classical and modern. I am told he even enjoyed Jimmy Hendrix!

Sometimes I went to his room, around lunchtime, to enquire about a particular case we were in, having been told he was there. Almost invariably when I arrived it was locked and there was no response to my attempt to enter. I could not understand it. His neighbour, John Carr has now explained it all. He tells me:

Nick would often take a break from working on a brief to read a book for a while. He loved history. He also often closed his door after lunch to enjoy a postprandial lapse into the arms of Morpheus for half an hour or so before setting about, reinvigorated, the preparation of an advice or his case for the next day.

His knowledge of and interest in people outside the law was in my experience also extraordinary. He knew of, had met or was friendly with many people in quite different fields of endeavour.

As a student his thirst for knowledge, by report, must have been insatiable. Professor Gye recalls that as an arts student he was privately tutored in Hebrew in order to make his own interpretation of the Old Testament and related documents. But more than that. He established a friendship with Rabbi Apple. On one occasion he read the lesson in Hebrew at the Great Synagogue, at the request of the rabbi, as there was no one available at the particular time to do so.

*... he developed a solid commercial practice which could have led within a few years to his taking silk.*

On occasions he would enter our common room, pick up the thread of an ongoing conversation on subjects within or outside the law, quickly and intelligently contribute to it and – without being a know all – even dominate it.

He was naturally gregarious. He generated a broad range of friendships. And people warmed to him.

At the age of 15 Nick was at school in Oxford. He was infected in an epidemic of encephalitis. He made a slow recovery. Several months later he developed severe and incapacitating epilepsy. However his parents made an important life-changing decision. They returned to Australia and his condition was successfully controlled by medication by Professor James McLeod. Nevertheless he had to live with it for the rest of his life.

In his later years, as I observed it, he became involved in a constant struggle between the effects of his medication, his obvious need to lose weight but also his constant but perhaps unrealistic desire to live what otherwise might have been, for his age, a normal life.

It was evident from his demeanour that this struggle required a great deal of personal courage but it was taking its toll.

On the morning of 29 December last Nick suffered a seizure while taking a shower prior to going to court. He fell heavily in the shower it would seem and the effects of this and of not being found for several hours led to his passing.

Throughout his life with us and despite his health he retained his infectious and delightful sense of humour and regaled us with his stories. He was a clever impersonator of people like Peter Ustinov, Sydney Greenstreet, Peter Lorre and the traditional Indian shopkeeper.

He constantly introduced me to his friends and solicitors as the new reader on the floor. He had a healthy and impish disregard for authority! I sensed that underneath he had a rebellious streak which I admired – he wanted to change the world and in important respects.

Nick contributed freely to the collegiate life of our floor, was of great assistance to our readers (including myself) and freely shared his time with other members to discuss and assist them with their legal problems as they did with his.

He was quick to help others and was generous to people in need.

As I said, Nick read widely in theology. He was, as you may know, a member of the congregation of this famous church of St James. He developed an extensive knowledge of the history of the Christian Church and of other religions. His father describes him as a man of God. I shared a number of conversations with him on these matters. He had what I would describe as a very simple faith. It was no doubt fashioned to some extent by his insistence on the need for intellectual rigour in his thinking.

Early last year he attended a seminar given in Sydney by a leading United States psychologist, Professor Martin Seligman. He came away from it with a very positive view he said about the need to have a belief in something beyond himself. It seemed to reignite his faith – that is his belief, as he explained it to me, in the existence of a God whose defining characteristic was love, and who was, because we all have the capacity to love, within us all. Love, he thought, was as essential to life as the air we breathe. In the centre of it all was the person of Christ.

Nick loved life and the good things that can go with it. He wanted people to love God and love one another. He loved people – his parents, his family and his many friends – above all, as he often told the members of our floor, he loved his boys.

True love like that never disappears. I believe I can hear him saying: 'Do not stand at my grave and cry; I am not there. I did not die'.