

# The Hon. R J Ellicott QC: 50 years at the Bar

*A speech delivered by The Hon. Justice R V Gyles AO at a dinner to celebrate Ellicott QC's 50 years at the Bar, Westin Sydney, 17 November 2000*

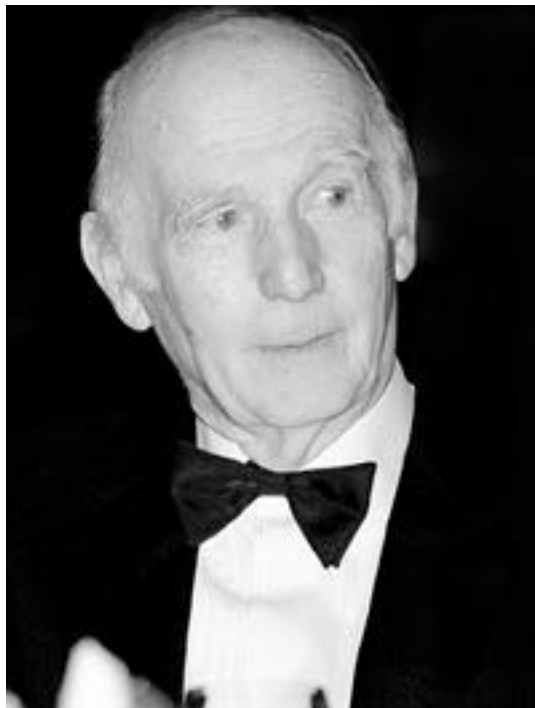
**Y**ou can take the boy out of the bush, but not the bush out of the boy.

Bob Ellicott was born and raised in Moree, the son of a shearer turned wool classer. Rural interests have been one abiding theme of his life. Since his days as a junior barrister, he has owned rural properties (not always with Colleen's full approval). When in comparative penury whilst in public service, he persuaded Trevor Morling to subsidise his interest by entering into partnership.

That long-term friendship had begun when each attended Fort Street High School, along with other future barristers. Bob, down from Moree, boarded on a verandah at Summer Hill during school term. I am reliably informed that he still regularly takes his family for views of that location. Morling was one year behind Ellicott. In an arrangement which tells us something of the shrewd, if not frugal, approach of each of them, Morling paid Ellicott £1 per annum for the bailment of his discarded textbooks each year.

His rural background has contributed to his independence of mind and determination to succeed against the odds.

Another abiding theme of Ellicott's life has been a social conscience reflected in his public and community service. This has included his activities with the Baulkham Hills Methodist Church whilst residing in the Hills District, and his association with the Reverend Ted Noffs and the Wayside Chapel



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when he moved to Elizabeth Bay. He is presently Chairman of Life Education Australia, which does much good work with drug education programmes for Australian school students.

He spent 14 years in public life as solicitor-general, a Member of the House of Representatives, in various ministerial portfolios, and as a Federal Court judge.

He had, and has, a genuine fascination for public affairs. He resigned from the Bench in part because he retained this interest and did not wish to shut himself out of participation in public issues and public debate in the way he did not think proper for a serving judge. Whether

his services have subsequently been adequately availed of is, perhaps, questionable.

It will be recalled that he had earlier resigned his office as attorney-general, for which he was ideally fitted and which he much enjoyed, on an issue of principle as to the exercise of the discretions of that office.

I know that, in addition to service as attorney-general, he obtained much satisfaction from the other portfolios that he held. He was involved in developing constitutional arrangements for some of the External Territories, in the establishment of the Institute for Sport, and in devising the scheme for encouragement of Australian films amongst many other activities. His service to sport has continued, with his involvement in arbitration in connection with the Olympic movement.

Of course, in his public life he has been no stranger to controversy. He was involved in 'the

Dismissal'. One of the myths which have grown up about that event was that there was a conspiracy between Ellicott, his cousin, Sir Garfield Barwick, and The Hon. Sir John Kerr. It seems to me that, in addition to the integrity of those concerned, there are at least two good reasons for doubting this theory. The first is that Ellicott was telling everybody who would listen, whether in public or private, his opinion as to what the governor general would be bound to do in certain eventualities. Indeed, one of his opinions was, as I recollect, made public. There were letters to the newspapers arguing his views one way or the other. Nobody was in doubt as to Ellicott's view. The second reason is that whilst Sir Garfield Barwick was a cousin of Ellicott's, and they were no doubt on cordial terms, they were not close. I am reliably informed (not by Bob) that when the young Ellicott first came to the Bar and sought to see the great man, he was told that he was too busy. I can recall being briefed with Ellicott, when he was solicitor-general for the Commonwealth, to intervene in the High Court in a case involving complicated issues concerning the constitutional treatment of Commonwealth places. We worked the case up from all angles for several days. We lasted approximately 30 seconds in the High Court until dispatched at the hands of Sir Garfield Barwick. It was at about that time that a very valuable piece of High Court transcript became available. A verbatim transcript was taken from the tapes and normally revised before publication. On this occasion the following appeared in the transcript, which somehow was released. What follows is not a lapse from taste, it is the contents of the transcript. The transcript recorded Barwick CJ (who sat next to Sir Douglas Menzies) as follows: 'Doug, watch me piss this bloke off'. The transcript was recalled, but some copies were not returned.

It is not for me to comment upon speculation which has occurred at various time as to whether Ellicott was not offered the chief justiceship of the High Court in breach of an understanding with the prime minister, or whether he rejected an offer for an ordinary seat in the High Court. I do say that he would have served in either office with distinction.

Another abiding theme of Bob's life has been his

family. Colleen, his wife of 50 years, is here tonight. He is, of course, proud of all of his children, and one of them, Michael, has his own well-established practice at the Bar. I am informed that some of the habits of his shearer/wool classer grandfather have skipped a generation, including an interest in horse racing. The farm and a place at Mission Beach have been family escapes from the pressures of practise over the years.

I now turn to Bob's career in the law. It can be described as stellar and can only be sketched in outline tonight.

He attained First Class Honours in Law at Sydney University (together with an Arts degree), served articles of clerkship with Henry Davis York, and was a researcher with Minter Simpson. He was an associate to Sugerman J, then of the Land & Valuation Court, later president of the New South Wales Court of Appeal.

I first met him in 1964, when I took a chair in the corner of the chambers of MJ Clarke on 10 Selborne. In about 1962 that floor had come from Denman Chambers, where Bob had, for some time in his early days, shared chambers with Alroy Cohen. Alroy could properly be described as old, eccentric and rich. He treated chambers as a comfortable place in which to open dividend cheques and to have naps (with blankets), from which he was awakened by alarm clocks and cups of tea made by the redoubtable Dorothy Slater. I do not know that Alroy Cohen did what Trevor Ziems is reputed to have done, and offered his hand in marriage to Dorothy.

The leader of 10 Selborne Chambers then was Nigel Bowen QC, one of the doyens of the equity and commercial Bar, and a mentor of Bob's. He did much work with him, he followed him

into politics and as attorney-general, and had the pleasure of appointing him as the first chief judge of the newly established Federal Court.

My meeting with Bob in 1964 was most propitious for me. He was, by then, a leading junior in his field, including intellectual property, tax and general equity and commercial work, including some work in the Land & Valuation Court. He agreed to accept me as a reader, and that commenced a relationship which has lasted to today, to my great



The Hon. Justice R V Gyles AO

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advantage professionally and personally. I appeared with him on many occasions, I appeared before him when he was a judge, I was against him in a number of memorable cases. In a remarkable irony, he has appeared before me sitting both as a single judge and as a member of the Full Court. I might say there have been mixed results in all capacities. We have been together in places as disparate as the Gove Peninsula in the Northern Territory and the fleshpots of Mayfair in the United Kingdom. He has been a good companion and a wise and loyal friend to me.

He took silk in the middle of my reading period. Callaway, at the time, was unkind enough to say that it was to avoid the responsibility of looking after me. Mind you, Callaway said the same thing when I disappeared to become Master in Equity for six months during the tenure of Francis Douglas as a reader with me.

It is interesting to recall the other silk appointed from the private bar that year. In order of seniority they were: EA Lusher – feared defendant’s counsel (McHugh J still trembles at his name), Royal Commissioner, Supreme Court judge; DG McGregor – president of this Association and Federal Court judge; KJ Holland – one of the great all-rounders of his day (who I must also say was good to me) and a Supreme Court judge; and last, but by no means least, GJ Samuels – another president of this Association, a Supreme Court judge and now Governor of this State. A strong group, particularly when it is recalled that others in Bob’s field such as AF Mason, LW Street and RW Fox took silk at much the same time.

Shortly after taking silk, Bob disappeared into the Rheem case. He then became solicitor-general from 1969. In that capacity, he appeared in many important cases, including the proceedings in the International Court in relation to French nuclear tests. He served as attorney-general of the Commonwealth between 1975 and 1977, and amongst many important activities was instrumental in having the Parliament pass the administrative law reforms and establish the Federal Court. I was reminded of the former only a few days ago, when reading a recent article by Sir Anthony Mason, who stressed that getting those reforms through depended in large measure upon the efforts of Ellicott as attorney-general.

As a judge, Bob participated in establishing the reputation and jurisprudence of what was then a small, but talented, Federal Court.

It is impossible to list the important cases, both at first instance and on appeal, in which he has led since his return to the Bar, together with the significant work in which he has participated as an arbitrator. He surely must be neck and neck with his chamber companion, TEF Hughes QC, in this respect.

I finish these remarks by referring to Ellicott the advocate. I do so advisedly. Although his knowledge of many areas of the law is without peer (I do not include the rules of evidence in that comment), his real skill is advocacy in the broad sense. He has a great instinct for the point of a case, and then sets about shaping it to his vision – in preparation, in court, in interlocutory proceedings and at the final hearing. He then sets about selling his vision. Whether against him or as a judge (and as his junior), you know to fasten your seat belt when Ellicott fixes his blue eyes on the judge and his tone of voice suggests both the Methodist lay preacher and the honest tiller of the soil.

I have noticed no waning in his capacity. The only change is that it is now even harder than it was to induce him to resume his seat if he thinks he is losing – whether a point or a case. As somebody tonight here has said to me, the most difficult thing to extract from Ellicott are the words: ‘I close my case’.

I also notice no diminution in his motivation. My conclusion is that in addition to his normal practice, he is determined to do all the good cases that he missed out on during his 14 years of public service.

*The following is an edited version of the speech delivered by Ellicott QC.*

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## The Hon. RJ Ellicott QC

Chief Justice, your Honours, colleagues, you have done me proud. May I thank all of you for coming tonight, I know that I am amongst friends, and that goes from the Chief Justice, the former chief justice, right through to the most junior person here. I feel at home. I want to thank you for doing this. I was somewhat shy of having it because I thought somebody like Roger might be the person who would speak. I suppose he hasn’t been as difficult as I thought he might have been. He has kept back a few secrets about the fleshpots of Soho and he hasn’t made up any stories about our trip to Darwin.

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### Denman Chambers

When thinking about tonight, I thought of the people who were in Denman Chambers, when I first went to the Bar. One particular person came to mind. Clive Teece KC was a grey headed man, who usually wore a light coloured suit with a red rose in his buttonhole, a monocle, and a pork-pie hat. I used to think what a very old, old man that is, as he walked along the street and went to deliver the course in legal ethics. I asked if Philip Selth could get some information about him, because I thought I might like to talk about him. I decided I won't, because when I looked up the biography, I discovered that when I first observed him he was the same age as I am now! Never mind - he went on to live until he was 88 and he was the first president of the New South Wales Bar Association and, I think, the first president of the Law Council of Australia.

I originally found a resting place in Denman Chambers, at a small table in Nigel Bowen's room. On the floor at that time was Ken Pawley, who shared chambers with Gough Whitlam and became a senior judge of the Family Court. Alongside him was Trevor Ziems who, as you probably know, was the barrister found guilty of manslaughter before Adrian Curlewis and went to gaol for 12 months. Trevor, whom I visited in gaol, felt that he had been badly done by, and I think he was. You will read a judgement by one of the great judges of the High Court, Sir Wilfred Fullagar and another by Sir Frank Kitto, which exonerated him. There was no doubt that Trevor came to the rescue of a woman in a hotel in Newcastle, was bashed by a seaman, and left with blood streaming from his face. He staggered out of the hotel - he had been drinking, got into a car, drove along the street and ran down somebody and killed him. However, when he came back from gaol he won the lottery and he survived. The most fortunate thing that happened was that Dorothy Slater didn't accept his proposal of marriage, because I can assure you Dotty, who is still alive (she is about 86 and lives at Potts Point), would have put him in his place! She was a match for any male clerk in Phillip Street, both in terms of language and in terms of her capacity to get you a brief.

Then there was Bill Perignon, who became a Judge of the Industrial Court, Nigel Bowen and, dare I mention his name, Freddie Myers. Freddie Myers did terrorise us somewhat at the junior Bar. All of us learned a lot. I think he made us better counsel in a way, but he did make us tremor. One day I was stupid enough to accept on the run a brief in front of Myers. It was about interpreting an order he had made. In the way that Gyles described, I said, 'Maybe Your Honour



meant this, or perhaps Your Honour meant that?' I tried to get some response from the Judge, but he suddenly said: 'I'm not here to be cross-examined by you.' Whereupon the great friendship was destroyed, because I said, 'We wouldn't be here at all, Your Honour, if Your Honour had made Your Honour's order clear in the first place'. That started a beautiful relationship, I can assure you, and it didn't end there.

The best person in handling Freddie Myers was Michael Helsham. 'Yes Your Honour; Of course Your Honour; 'Oh don't you worry about that Your Honour; Yes, I'll fix it up today Your Honour.' That was the Victorian style. Nigel and I first noticed it in a famous patent case, HPM Industries, which we couldn't possibly win. We were against Douglas Menzies and Keith Aitken. It was all about a hole in a plate that covers a switch and we were trying to show that it was patentable. Needless to say, we lost the case. But all the time it was 'Yes Your Honour; No, Your Honour; Of course, Your Honour'. That was where we learned the Victorian style!

Bob Smith, who wrote the book on the Stamp Duties Act, was in Denman Chambers and, of course, there was Alroy Cohen. Alroy was a wonderful man. Apart from my parents, I have only been left something in a will by one person, and that was Alroy Cohen, who left me £20. I tell those on my floor who borrow my full bottomed wig, that it was Elroy's wig, which he left me in his will.

One of the truly great people I have been associated with is Nigel Bowen. The person who is your master can be important in your life. I am grateful to Roger that he thinks I've been important in his life. My life would have been entirely different, if it had not been for Nigel Bowen. He was one of the great all-rounders, but he was also one of the great lawyers of the last [twentieth] century. He would have graced the High Court. He was a magnificent first chief justice of the Federal Court. Most of you have experienced him and you know that what I am saying is true. As a friend, as a man, he was a person of immense honesty. He was immensely trustworthy. He was a person who seemed unmoved, yet he was capable of great emotion. Nevertheless, he seemed always to be unruffled. He was a person who, if you were his friend, would stick by you. He was loyal. There is something about Nigel Bowen that was unique and, looking back, I think people will see him in a light of greater magnificence than perhaps we see him, even now.

We had lots of cases together. I think the strangest one we had was appearing for the madam of a house up in Brisbane. She had been assessed to £12,000 extra income from her brothel and our task was to appear in

Brisbane in front of the Taxation Board of Review and cross-examine each of the prostitutes. We had to ask them all sorts of personal details: about how many times and the like! If you can imagine Nigel and this Methodist local preacher asking these questions for four or five days before the Taxation Board of Review - well you might smile a rye smile.

I think our greatest treasure as barristers is the independence of the Bar and the sense of independence that it gives us. Apart from its role in the rule of law, it enables us to go away and do something else and come back. I don't know whether all of you appreciate that. But if you are a successful barrister, you can go away and do something else and come back. It's a remarkable gift that all of us have. All you have to do is to have the courage and the will to do it. That is one of the most important things that I have discovered in my life. It also enables you, I have found, to confront the demagogue and damn his treacherous flattery. That is part of the independence that we have. This is a remarkable profession. It must be the only profession that still has that sense of independence. It is not only important to the rule of law, it is important to us as people.

### Barwick

I decided to be a barrister at the age of eight. There is a story in our family of a boy who, with his seemingly interminable conversation, constantly interrupted a couple who were canoodling on a gas box on the verandah of a terrace in Paddo. He only gave up when the male got up and gave him what was then called 'a boy-proof watch'. The boy was named Garfield Barwick and the couple happened to be my parents.

I was born in Moree and the bush has meant a lot to me and I guess the bush is still in the boy. They were fairly pioneering days. The success of my cousin, the young barrister Barwick, was interminably repeated in the home. It was the challenge that suddenly caused me to say to myself 'that's what I'm going to be'.

I first went to the Privy Council in 1958. For all my days at the Bar, I didn't appear very much with Barwick. On this occasion, I thought I would stretch the cousinly relationship a bit. I had eight hundred pounds in order to pay our costs getting to the United Kingdom. Bill Cole, from Moree, was my instructing solicitor. He said, 'The client can only afford eight hundred pounds'. So I said to Garfield, 'Look, you

take three hundred and I'll take five hundred and then I can take Colleen'. He said, 'Oh, all right' and off we went to the Privy Council on five hundred pounds!

Barwick was the greatest advocate I saw. He was simple, straightforward, emotive where necessary and able to charm judges. In fact, some of the judges used to say, 'Don't give an ex-tempore judgement, because you need to get off the bench to see things in the clear light of day'. I think that is how Barwick was - immensely convincing. I saw him in all courts, right up to the Privy Council.

There were other great advocates. Douglas Menzies was one of them. He was better than Keith Aitken, I thought, and much closer to Barwick. Lord Roskill, whom I had a lot to do with in the Bass Strait arbitration, said that in more recent years Murray Gleeson and Tom Hughes were two of the best counsel he had ever seen. That, I thought, was a magnificent tribute to the Australian Bar, apart from being a tribute to those two people. We have a lot to be proud of in our Bar.



McHugh J and Hughes QC

### Passage to politics

During the War, as a teenager, I was constantly listening to the radio and hearing people like Churchill and Curtin. They were strong, emotional orators and delivered well-presented speeches. They moved me a great deal, and for some reason I made up my mind - some day I was going to be a politician.

I started my political career at university. For all those who belonged to the Liberal Party, please close your ears! I agreed to be the treasurer of the University Labor Club! It only lasted about three months, because I was a member of the Student Christian Movement, and when I went to conferences at the Labor Club I felt there was a great divide between their rationalisation of philosophy and my view of the Christian faith. I realised that probably I didn't fit, and probably they did too. So shortly after that I ceased to be the treasurer of the Labor Club. But never mind. That has happened to others. May I say that it stamped me in a way where I would be in politics. I was never on the 'right wing' of anything. I was on the 'left wing' of the Liberal Party, if there is such a thing. I tried to be a true liberal, if I could.

### The nuclear test case

During the Nuclear Test Case, in which I appeared, a lot of things happened. The preparation of it started late in 1972, when the Labor Government came to



power. There was a book published by Professor Sternglass, which suggested that by the year 1988 thousands of children would be killed by atmospheric nuclear testing, if it went on. There was, on the other hand, a United Nations Committee that put out a report, which said there will be 'four or five who will be killed by 1988'. In preparing the case, I decided to go for the lower number, because I thought the World Court would be more likely to listen. If we relied on the higher numbers suggested by Sternglass, and we tried to scare them, they wouldn't listen.

During the early period of Lionel Murphy's ministry, he brought to Canberra Professor Harry Messel to be on his staff as his nuclear adviser. He also brought in Leslie from our Bar and Colin Howard to advise him on constitutional law. That created somewhat of a divide between the solicitor-general and the attorney-general! I didn't quite see what my role was. Very quickly, Professor Harry became his de facto secretary and, so far as I could observe, had little time to advise on nuclear testing.

In order to take France to the World Court we had to generate a dispute with them about the testing. In April 1973, Lionel Murphy and I went to Paris to do just that. On Good Friday 1973, Murphy was talking to the French foreign minister and having the final discussions that generated the dispute. At that stage, while I was standing outside the room, Harry Messel came up to me and said, 'Lionel says that Stevens has to go'. Stevens was our man on the United Nations committee, which said four people were going to be killed by 1998. We had quite a loud discussion, in the course of which I said: 'If Stevens goes, I go! Harry, today is Good Friday and you are trying to crucify another man'.

After that loud discussion ended, we went back to our embassy and Murphy called me in. He said to me, 'If you want to resign as solicitor-general, you resign in front of me'.

I replied, 'Well Murph I'm not resigning, so don't have any wishful thinking. I was just indicating I would hand over the brief'.

When Murphy and I left Paris, there was clearly a dispute with France. I retained the brief and the case was heard in May 1973, at The Hague. That's when he took off his wig and the rest of us kept ours on. I said to him, 'Murph, I'm not going to take mine off. If you want to take your wig off, you take it off in front of the

High Court, do it there, but don't do it here and embarrass this court, which expects you to wear your traditional dress.' When the case ended the counsel sat down, like you may do now after appearing in the High Court, and asked, 'how have we gone?' You may reply, 'we won five to two' or 'three to four', or 'I think that fellow McHugh, he might go either way, we can't say.' Well, we did that with the World Court and we decided that we ought to succeed by nine to six. I was fairly close to Whitlam in those days and he called me round to the Lodge after I returned and said, 'How did you go?' I said, 'We think we will win by nine to six'.

Shortly after, Gough went down to Melbourne to the Victorian Law Society. Somebody asked 'How's the case going?' He said 'I think we are going to win by nine to six.' Unfortunately, it got out into the press and, of course, at that point all hell broke loose. An inquiry was undertaken in the Court. The French judge said that Barwick, the ad hoc judge, had leaked it. When the decision came out, we did in fact win by eight to seven. It was slightly different, but we had won.

Can I just take you forward to April 2000? It was our 50th wedding anniversary party. An old friend, who is a builder, was there and he had been to Eucumbene with me in 1974, where we had a cottage. I don't know how it happened, but apparently, at that time a telegram I had received, but not opened, had fallen on the ground and he had picked it up but he had never given it to me. He gave it to me in April 2000 and this is what it said:

Mr R.J. Ellicott, Redhill ACT. I express my personal appreciation to you and to all who participated in the preparation and presentation of this great case to the International Court of Justice. I am especially grateful to you for your advice and assistance to me. The result of the case completely justifies the initiative taken by the Australian Government and is a fitting reward to your efforts.

Thank you.

Senator Lionel Murphy, QC, Attorney General of Australia.

That is a piece of paper of which I can be proud, but it is also a happy ending to a part of a relationship which I can assure you was, from time to time, not very happy.

At one stage we were walking across the lawn outside Parliament House in Canberra. He said, 'Come and see me in my office'. We were coming from a meeting with Whitlam. At that meeting there was a decision made that I should go to London,

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because the State premiers were going there to try and lobby against the Government getting a Bill through the British Parliament to stop appeals to the Privy Council. A decision was made that I should go back. I had been in England for three months and I didn't want to go back, but that was the decision.

Murphy called me in and said: 'Next time you want to offer to go overseas, you speak to me first. Anyhow, they tell me you have been leaking things to the Liberal Party.' Now, I of course denied that, because it wasn't true. That was the lowest point in our relationship, and it was at that moment that I decided it was time that I ceased to be solicitor-general. I stayed for the purposes of doing the memorial for the case and after that I went off into politics.

### The Dismissal

Can I talk a little bit about law and politics? It's a funny game. I won't say much about 1975. I will only say this: I was in the thick of it and I have to bear the burden or the joy, or however you look at it, of my involvement. I don't have any regrets, I may say. I did what I did, Fraser did what he did and Whitlam did what he did. It was essentially a battle between two political forces and Kerr was caught in the middle. You can read about it, you can discuss it. All I ask you to do is put yourself in Kerr's place, and ask yourself what you would have done.

People had to make judgements about others. I had to make a judgement about Gough Whitlam, somebody I had had a close relationship with. In 1964 Whitlam said to me, when we were talking about Labor politics, 'You don't want to go into politics - concentrate on the High Court'. We discussed these things. In 1975 I was observing somebody I had known for a long time. I had to make a judgement about how he was acting, and if I made a bad judgment I made it. If Fraser misjudged whether they were exemplary circumstances, he misjudged it. If Whitlam misjudged the power of the Senate, he misjudged it. If Whitlam became messianic, as I believe he did, then he became messianic. If the events of his dismissal have affected the rest of his life in a way that I think is somewhat tragic, then it has robbed us of a person and a capacity that was immense. I regret that it has had that effect. I regret it, but don't blame John Kerr, that is all I say.

John Kerr is entitled to be judged by his own

achievements. You can read his book, and what he says he did. He was the president of this Bar Council, he was responsible for LawAsia, he was the one who was behind the Administrative Law Reforms. He was the Kerr Committee in effect. I was on it, Tony Mason was on it, Harry Whitmore was on it too. At the end of the day judge him on the whole score, and please try and put yourself where he was because I don't believe that justice has been done to him. He was a barrister, he was a lawyer and he was a judge as well and may be I have to say, he was also a friend.



Walker S.C., Gyles J, Barker QC

### Lawyers in politics

You have to take your moment in politics if you are a lawyer. One day a colleague said, 'Oh we have to do something about Jim Staples, he is being a nuisance, John Moore can't get on with him, he is refusing to do this and he is doing that'. I thought, Jim Staples is a great champion of human rights, and on my agenda I had a proposal for a human rights commission. So I said, 'Malcolm why

don't we send Jim on a trip for a couple of years to study human rights, and we'll set up a Human Rights Commission?' They grabbed it and sent Jim off to study human rights. You will find that there was introduced into Parliament in May 1977 a Human Rights Commission Bill, which is basically equivalent to the one that is now in force. You have to take your moment in politics.

When we were discussing the 1977 referendum, to make sure that you couldn't appoint senators the way that Field had been appointed, Anthony and Fraser said to me, 'I wonder if there is anything else'. It was another moment, because in the Judiciary Act Committee, and at a recent constitutional convention, we had recommended that judges should be appointed to the age of 70. That is how that provision became part of that referendum, and that is why judges are now only appointed in the Commonwealth area to the age of 70. You have to take your moment. If you are a lawyer in politics, that's sometimes how things will happen, because politicians aren't thinking about law reform. That is often the last thing that they think about.

The most enjoyable thing I did in politics was setting up the Institute of Sport. I discovered what I should do when I went on a ministerial visit to China. I

thought I was pretty good at table tennis and they took me out to an institute where they trained teachers. I found they were in residence, learning skills in sport and also being trained as physical education teachers. I said to the old man in charge, who was then about 73, 'I'll give you a game of table tennis'. Needless to say, he beat me 21:2. This gave me the idea of the Institute of Sport. I was minister to the Australian Capital Territory and I was minister for sport, so I could actually make it happen on a rather modest budget by setting it up in Canberra. I could put empty residences to work at the Canberra College and the Australian National University, by putting the athletes in there. We could build another stadium - an indoor stadium. We were able to put it together because I had the two ministries. I could take the land because I was the one who 'owned' the land. All the land was vested in the minister. That is how the Institute of Sport got going.

When they were building the new Parliament House, I became responsible for getting that through the Government. Before the 1980 election, a union boss in Canberra threatened to go on strike, I said to him: 'For heaven's sake, what are you doing? Get the top off Capital Hill first and then go on strike'. I knew that once that happened, the new and permanent Parliament House would be built, because no politician would leave the top of Capital Hill shaven off. That is exactly what happened.

Politics is malleable. Not in a way that is wrong or dishonest, but it is a very, very interesting area of life and it opens up creativity!

### The Sankey Case

Thank you very much for the night, I will treasure it very much. I thank my wife, for 50 years of being my wife, but also for being a barrister's wife. Not easy, I think. We are working all day and all night and all weekends. It is a reason for having a break now and again - a big break. It is not good for family life and if you can knock up 50 years you are doing pretty good and I am very grateful to my wife for those 50 years. Plus, I am looking forward to a lot more. Thank you very much, thank you Madam President, and thanks to the Bar Association. Thank you for standing by me in 1977, when I resigned in relation to the taking over of the Sankey case. That wasn't easy. Yet, it wasn't quite as you put it.

It happened a different way. It happened because the prime minister was trying to get my officers, Frank

Mahoney, the deputy secretary and the secretary of my department, Clarrie Harders, to give an opinion against me. Maurice Byers had already given an opinion against me. Fraser had gone to him behind my back and found out what his advice was going to be and then said to me: 'Why don't you consult the solicitor-general?' I said: 'I didn't consult the solicitor-general for this reason - he was a witness to the events of 13 December 1974' and I told him that when I became attorney-general I wouldn't embarrass him by involving him. Needless to say it didn't impress me that this had happened. I then went overseas having said to Fraser, 'Well, we'll forget it and just let the case go on'.

When I came back I was greeted by Clarrie Harders at the airport and he said 'Fraser has been trying to get me and Frank Mahoney to give an opinion against you'. At that moment I started to realise that I couldn't stay as attorney-general because the prime minister was trying to undermine me. Those aspects of my resignation are not widely known, but that is why I resigned. I couldn't allow a prime minister to do that sort of thing.

One thing I did not learn until recently was that during September 1977, the attorney-general who succeeded me sought the advice of Professor Edwards, who was a leading authority in the common law world on the role of attorneys-general. Apparently his advice basically supported my stance, namely that I should not step in and terminate Sankey proceedings without having access to all the

evidence. That advice was given about three or four weeks after I had resigned. I was never told that. I found that out when reading Clarrie Harders personal memoirs a few months ago. But that is why I resigned. And that's why I was grateful at the time that the Bar stood behind me. I still believe that the attorney-general's role is the most significant in government. I see it being frittered away. And as it is frittered away, so the independence of the law and the rule of law are frittered away. That is something we can't afford. Thanks for standing by me then. I appreciate tonight very much.

*'I still believe that the attorney-general's role is the most significant in government. I see it being frittered away. And as it is frittered away, so the independence of the law and the rule of law are frittered away. That is something we can't afford.'*