

The Hon John Stanley Lockhart AO QC (1935-2006)

On 10 February 2006, a memorial service was held at St James' Church, King Street, to celebrate the life of the late Honourable John Stanley Lockhart AO QC, one of the NSW Bar's most outstanding members.

Numerous tributes were paid including by the Hon John Howard, Prime Minister and by the Hon. Philip Ruddock, Commonwealth Attorney General, who had regularly briefed Mr Lockhart, as he then was, more than 30 years earlier. The attorney observed that, on the Federal Court, Justice Lockhart 'served with distinction and confirmed his reputation as one of Australia's outstanding jurists', adding a 'lustre to the Federal Court, the Copyright Tribunal, and the Trade Practices Tribunal and the Australian Competition Tribunal of which he was president.' The attorney continued:

His skills and capabilities meant that in retirement he was frequently asked to serve by governments in a range of capacities. He served the World Trade Organization, the Asian Development Bank and as chair of the independent review of *The Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2000*. Personally I was delighted that he was willing to accept the position of deputy chairman of the International Legal Services Advisory Council in 2004. He contributed strongly to the work of the council in a number of areas, helping to advance the liberalisation of legal services, internationally. Indeed, were it not for his passing, I was planning to ask him to make his expertise available in other areas within my portfolio.

Dr John Vallance, headmaster of John Lockhart's *alma mater*, Sydney Grammar School – of which he also served as a trustee for many years – described the late judge as 'an elegant, civilized and courteous man possessed of ... a certain aristocracy of mind' and as a man filled with what Aristotle called 'practical wisdom'.

Mr David Spencer, Deputy Secretary of the Department of Foreign Affairs & Trade, and former ambassador of Australia to the World Trade Organisation and chair of the WTO Dispute Settlement Body, referred to Justice Lockhart's work as a member of the appellate body of the WTO, the highest institution responsible for settling international trade disputes between members of the WTO. He described Justice Lockhart as having made a 'lasting contribution' to that institution and as someone who commanded the respect and admiration of both his fellow members and those who argued cases before the Appellate Body. He noted that such was the faith in Justice Lockhart's ability that, when given the choice, he was selected more often than any other Appellate Body member to serve as an arbitrator in WTO disputes.

A moving address was also delivered by James Lockhart who focussed on the personal side of his father's life in an address which captured the judge's essential humanity.

A wonderful tribute was also paid to the late judge by the Hon TEF Hughes AO QC who had been his Honour's pupil master in 1960. Hughes QC's eulogy is reproduced in full.



PRIME MINISTER
CANBERRA

THE HON JOHN LOCKHART AO, QC

John Lockhart was one of the most skilled and respected jurists of his generation.

There are many who can attest more eloquently than I can to his great legal attributes.

My belief, and I am sure inadequate comments, relate to what I might call the international and public policy phase of his accomplished and meritorious life.

Some years ago I lunched with John and he indicated his desire to serve his country beyond a massive contribution as a member of the Federal Court.

Thus began a very special and productive phase of his life.

Prior to his retirement from the bench in June 1999, Justice Lockhart took leave of the Court to join the World Bank as its Judicial Consultant, based in the United States. The experience from this sabbatical, particularly during visits to a number of developing countries, would inevitably shape the course of John Lockhart's post-judicial career.

He accepted an appointment as Executive Director for Australia at The Asian Development Bank later in 1999. He took particular interest in improving the legal and institutional frameworks in developing member nations following the crisis in Asian financial markets two years earlier. This work would be essential to the restructuring of those nations' corporate and banking sectors. In an article for the NSW Bar Association in 2000, John Lockhart remarked that while he missed the exacting and definitive work of the Bench, his work for the Bank was particularly interesting and enjoyable.

A member of the Appellate Body of the World Trade Organisation since 2001, he made a significant contribution, participating in 30 appeals as well as a number of arbitration proceedings. He was appointed Deputy Chairman of the International Legal Services Advisory Council in 2004.

I am particularly grateful for John's recent work as the Chairman of the independent review of the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*. His report was presented to the government for its consideration only a few weeks before his death.

The diversity of his post-judicial work evidenced of his great abilities.

John Lockhart brought passion as well as exactitude to the responsibilities he discharged internationally and for the government.

He was an immensely charming and gracious person, always courteous and possessed of a deep affection for the welfare of our country and its people.

I join his many friends in honouring a remarkable life well and fully lived.

(John Howard)

Tribute by Hughes QC

We are present in very large numbers in this beautiful Parish Church of Bench and Bar, one of our traditional places of communal worship, to celebrate the life and mourn the unexpected and untimely departure from our midst of a distinguished son of Australia. Also to express by our presence our sympathy for Juliet, his beloved wife of eight years, and the members of his united and devoted family.

Because there is so much in his life to celebrate, the primary emphasis of our thoughts should be not so much on sorrow but on what God gave us in the person of John Lockhart and his many attributes.

It is a truism that death comes in an almost infinite variety of guises and at variable speed. It came upon him quite suddenly when he was at the height of his intellectual powers, having just undertaken and completed, at the request of the Australian government, a landmark inquiry and report into the sensitive topic of the uses to be made of human stem cell research. Happily he was spared long suffering and was totally lucid to the end. We celebrate a life of awe-inspiring versatility in the deployment of many talents.

He commenced his training in the law under the tutelage of two distinguished solicitors, first, the late E.J. Culey ('Ted Culey') and then Sir Norman Cowper. They taught him well, building upon the promising foundation of his innate ability, so that when, on admission to the Bar in 1960, at the age of 24, he became my pupil, there was little for me to teach him. He had an instinctive and sure grasp of what was required of him as counsel and of what he had to do in order to comply with those requirements. His progress at the Bar was as certain as it was well deserved. He took silk in 1973 at the early age of 37. In that rank he conducted a busy and successful practice until his appointment to the Federal Court in 1978. There he sat with distinction for twenty judicially productive years, until he retired in 1999 at the age of 64. He spent his sabbatical leave of 12 months prior to retirement as a Judicial Consultant to the World Bank, based in Washington.

His qualities as a judge – additional to those inherent in his capable and well-furnished mind – were patience, courtesy, balance, tolerance and a lively understanding of the pressures of litigation upon parties and their lawyers. Whenever possible, he practised restraint in expression when passing judgment upon the testimony of a witness whom he did not accept. He abstained from denouncement unless he saw it as unavoidably necessary. He was one of the really significant intermediate appellate judges of his generation. He was able to handle with conspicuous ability all first instance and appellate work allotted to him. His judgments will live; they will be read by successive generations of lawyers because of the depth of their wisdom and the elegance of their expression. They have left a permanent imprint on important areas of our jurisprudence, particularly trade practices, intellectual property and administrative law. The broad sweep of

his learning is illustrated by one of his early judgments, in 1979, in *Trade Practices Commission v Sterling*, where he compiled, in a masterly fashion, a comprehensive and definitive list of the kinds of document to which the protection of legal professional privilege may apply.

As president of the Australian Competition Tribunal from 1982 to 1999, he stood in an influential position at the cross-roads of law, commerce and economics. During his term of office he was responsible for the introduction of what came to be known as the 'hot tub' method of dealing with the testimony of economists. They were all thrown into a witness box together. This procedure had been pioneered by the late Bruce Gyngell, when chairman of the Australian Broadcasting Tribunal, in a different context. When the proceedings in which Mr Gyngell's tribunal had adopted that procedure came to the attention of the High Court, Sir Anthony Mason inquired somewhat sceptically, whether the witnesses had been accommodated in a 'family size' witness-box. At all events, the 'hot tub' technique has gained currency with the passage of time and is a tribute to John Lockhart's capacity for useful innovation.

Congruently with his sense of civic responsibility and doubtless to the satisfaction of his distinguished father-in-law, Sir Victor Windeyer, to whose daughter Margaret he was happily married for 35 years, until her untimely death in 1995, John Lockhart took pride in his service, in the CMF, in which, in 1959, he attained the rank of captain.

He resigned from the Bench not to engage in the leisurely pursuits of retirement but to embark upon another challenging career as a member of the Board of Governors and executive director of the Asian Development Bank, in which positions he rendered outstanding public service between 1999 and 2002. Then he took office as a member of the Appellate Body of the World Trade Organisation, Geneva. In that part-time position he exercised a powerful jurisdiction over national governments in matters of trade. His appointment signified the high opinion of him held by the Australian Government, leaving him time, however, to engage his skills as an arbitrator and mediator, in which roles he was much in demand.

He was honoured by appointment as an officer of the Order of Australia in 1994 for his contributions to the law, arts and education. His contributions to education included occupying the office of a Trustee of his alma mater, Sydney Grammar School; and later from 2004 as deputy chairman of the International Legal Services Advisory Council. I would hope that consideration be given to his posthumous promotion to the rank of Companion of the Order of Australia, for which his recent report on stem cell research, his work in the World Trade Organisation and previously in the Asian Development Bank provide powerful reasons. He undertook all these great and successful endeavours after his appointment as an officer of the order in 1994.

No summary of John Lockhart's life story would be complete without reference to his enduring love of art. He was not just a collector of paintings judged by him to be worthy of collection; he gave tangible support to Australian artists trying to emerge from the ruck of obscurity. While holding office as minister for the arts, Bob Ellicott appointed him to the Art Exhibitions Australia Board, a body designed to promote the display in Australia of significant foreign works of art.

I have picked some highlights of a stellar career dedicated, since 1978, almost exclusively to public service. He was in truth an all-rounder whose character was the amalgam of a profusion of remarkable qualities – all of them good: social grace without pretension, cheerful good humour, a capacity to exert authority without pomposity, to name just a few. Speaking for myself, I say that I never spent time in his company without feeling better for it.

John and I once, and quite recently, discussed religion. He expressed himself paradoxically. He said: 'I think I'm an agnostic Anglican'. He was explaining that he had doubts about faith, thereby declaring himself a member of a club with many members, including St Augustine, who, even after his conversion, prayed to God to help his unbelief. Even saints – and many of them – have been plagued with such doubts about their faith. But, if any person was ready to meet his Maker because of an exemplary life, that person was John Lockhart. We can say 'May he rest in peace' with confidence that he has already attained that state. His favourite musical work was 'St Matthew's Passion'. Of him let us say, in the words attributed to Christ in the gospel of that apostle: 'Well done thou good and faithful servant. Enter thou into the joy of Our Lord.'

BOOK REVIEWS

Passing The Torch

By Peter Gray SC (editor) | Aisling Society, 2005

Passing the Torch, an idiosyncratic selection of 50 years of talks to the Aisling (Irish for a vision or dream) Society of Sydney is not manifestly of general interest to lawyers. However, this 'book of talks', edited by Peter Gray SC, provides further evidence of the attraction of the practice of the law to the 'romantic character of the Celt'.

The 'love of language, the lawyer's tools of trade, and the fascination of concepts and ideals are qualities to be found in the Irish temperament', Sir Gerard Brennan told the Aisling Society in a 1989 talk highlighting common bonds of law between Australia and Ireland – especially involving people: chief justice of the High Court Sir Frank Gavan Duffy, NSW chief justices Sir James Martin and Sir Frederick Darley, and barristers Roger Therry and John Hubert Plunkett, NSW attorney general from 1836 to 1856, who prosecuted to conviction the perpetrators of the Myall Creek massacre of 28 Aboriginal men, women and children.

As a 1992 speaker to the society related, after the jury in a trial before Chief Justice Dowling, had found 11 men not guilty of murder in relation to one Myall Creek death, Plunkett had seven of them rearrested as they left the court and arraigned to appear in relation to the deaths of two children. Before a different judge, they were found guilty and hanged. 'From then on, Plunkett was

hated by the majority of the squatter class and other white settlers', received numerous death threats and 'was subjected to a vicious campaign of slander and vilification'.

In March 2002, Justice Michael Kirby (family derived 'with perfect neutrality' from both communities of Ireland) at the end of 'a not always lovely week',¹ recalled successful European Court of Human Rights challenges by 'two very difficult Irishmen' to laws against homosexuals: *Dudgeon v United Kingdom* (1981) 4 EHRR 149 and *Norris v Ireland* (1989) 13 EHRR 186.

'We can learn from heroes such as Geoffrey Dudgeon and David Norris', Justice Kirby concluded. 'They refused to accept humiliation, injustice, oppression and inequality. Ultimately by courage, integrity and persistence they secured reform of the law not only for themselves but for all of their fellow citizens and for generations yet to come'.

Reviewed by John Mancy

¹ The events of which are described in *E Campbell and M Groves 'Attacks on judges under parliamentary privilege: a sorry Australian episode' [2002] Public Law 626*.