

## The Hon John Kearney QC (1921–2009)

*Bar News* does not generally publish obituaries of judges who have long since retired from office. This is, of course, not out of lack of respect but is dictated by constraints of space and the fact that this journal is fundamentally concerned with barristers and the Bar. The following eulogy in memory of the late John Kearney marks a departure from this general editorial policy principally for the reason that, to a generation of New South Wales barristers, he was universally acknowledged as the ‘model judge’, a sobriquet he never sought but richly deserved. As such, Dyson Heydon’s account of that aspect of his life (as well as a personal account of his career at the Bar) represents an important historical record of a greatly admired member of the Bar Association.



The eulogy delivered by Isaiah Berlin at Maurice Bowra’s funeral contained a somewhat bland account of that colourful figure. Seeking to excuse his restraint, he remarked to a friend: ‘In eulogies one must tell the truth, and nothing but the truth – but not the whole truth’. That is a rule which can safely be broken in the case of John Kearney. For, when the whole truth about him is told, everything revealed is creditable. That is as much the case for the professional side of his life as it is for all the others.

John Kearney was at the New South Wales Bar for 31 years. For the last 15 of those years he was a member of the 8th Floor, Selborne Chambers. For the last four of those years he was a silk. He displayed an enviable degree

of acuity and learning across all the main fields of equity practice of those days. He conveyed a well-founded impression of close familiarity with all conceivable aspects of a problem. The familiarity was generated by many years of work on similar problems. The work was carried out with immense fertility of inquiry and doggedness of will. John Kearney was skill and judgment in action. He attained a supreme mastery of his craft; and not for nothing did his floor colleague, Mr Justice Meagher, confer on him the title ‘Mr Equity’. In him one fine tradition of the New South Wales Bar reached

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its apogee – the tradition which requires a barrister to respond with proper consideration to a well-articulated question from a more junior barrister who has exhausted all bona fide and diligent methods of seeking to solve it. That ethical obligation corresponded with his instinctive and life-long sense of kindness.

His standing amongst his peers was confirmed by election four times

to the Bar Council. He attained the high office of senior vice-president in 1978. That meant that after two years he would almost certainly achieve a high mark of professional recognition – election to the presidency of the New South Wales Bar Association. But this path was almost immediately interrupted by an even happier event for the public of New South Wales – his appointment as a judge in the Equity Division of the Supreme Court of New South Wales. He served for nearly 14 years. The appointment was widely and rightly hailed as a fine one, but it was greater than the government knew.

Pausing at that Rubicon in his professional career, it is striking how late he took silk. That reflects only his modesty and self-effacement. For he had no regard for ranks, offices, titles and honours as such. To him they were only trinkets and tinsel, baubles and sham and show. What counted was fulfilment of obligation – whether as counsel or judge.

In court Mr Justice Kearney was shy, earnest, inquiring and patient. Above all he was courteous. He had the manners of a perfect gentleman. That is because he was a perfect gentleman. He treated famous parties the same way as he treated obscure ones, the rich the same as the poor, the powerful the same as the weak. He treated the most celebrated practitioners, including close friends, in the same way as he treated the most junior, of whom he knew nothing. Many barristers – now in the full flood of prominent careers at the bar or on the bench – will recall his kindness to them when they were very young. They will recall how, during chambers applications for *ex parte* injunctions, he would tactfully explain why some orders would not do and others fitted better with principle. Mr Justice Glass, another colleague on the 8th Floor, himself, like John Kearney, a great judge of impeccable behaviour, rightly called him ‘the gentle judge’. He loved fairness with his whole heart and his whole mind and his whole soul.

But he was no mere innocent abroad. He knew enough about the dark side of human nature to understand at once when his tolerance of weaker or sloppier minds was being abused, or when foolery or trifling was taking place. He would deal with the malefactor at once. And any counsel who attempted to win the day on a false technicality quickly found that Mr Justice Kearney could easily trump that one with a better.

He presided over his court with

grace, dignity, authority and gravity, springing from a profound and scrupulous consciousness of responsibility. In his court the fresh winds of sanity and clarity and calmness blew away the cold fog of obscurity and the heat mirages generated by excessive stress.

His despatch of judicial work was business-like, disciplined and expeditious. He saw the issues steadily, and saw them whole. He never wrote a poor judgment. An unusually large proportion of his judgments entered the law reports. They largely remain of great legal significance. They have entered the treatises, and will long stay there. In them you will find the quintessence of powerful legal analysis.

But these outcomes were not goals of his. He had three goals only. One was to understand the evidence and the arguments precisely. A second was to consider them with application and care. A third was to decide the controversy economically and justly according to law. These goals he achieved in full measure. He saw it as his duty to strive for the right, and he was totally dedicated to that duty. Courts of equity are courts of conscience, and no equity judge ever submitted to the demands of conscience more completely than he did.

He did not pursue false ambitions. Flashy displays of scholarship for scholarship’s sake were not for him. He knew the vanity of human desires for that form of immortality. He felt no temptation to deliver messages to the world.

He was indifferent to flattery or applause. He was not obsessed with fabrication of suave glittering phrases. If he had to criticise unsatisfactory witnesses or errant parties, he did so reluctantly, only when necessary, and only to the extent necessary. He did not indulge in gibes or flouts or jeers. He never abused his office. He never gave any party any feeling that justice had been administered in a slapdash or unfair way. On those factors rests his incomparable reputation as a model judge.

He sat at a time when the Equity Division was passing through a golden age. He was surrounded by immensely capable judges. But even in that age the equity bar, young and old, and not just the equity bar, saw him as a great judge. They saw him as a man utterly dedicated to duty. They saw his performance of that duty as flawless. They saw him as a man of total decency, shining honour, complete probity and adamant integrity. In the common opinion of the bar he was the most respected and the most noble and the most beloved of judges on the Supreme Court in that generation – and perhaps of any generation. The common opinion can be wrong. In his case it is completely right.

He humbled himself. He will be exalted.

**By J D Heydon**