Ken Hall - Clerk of Many Colours

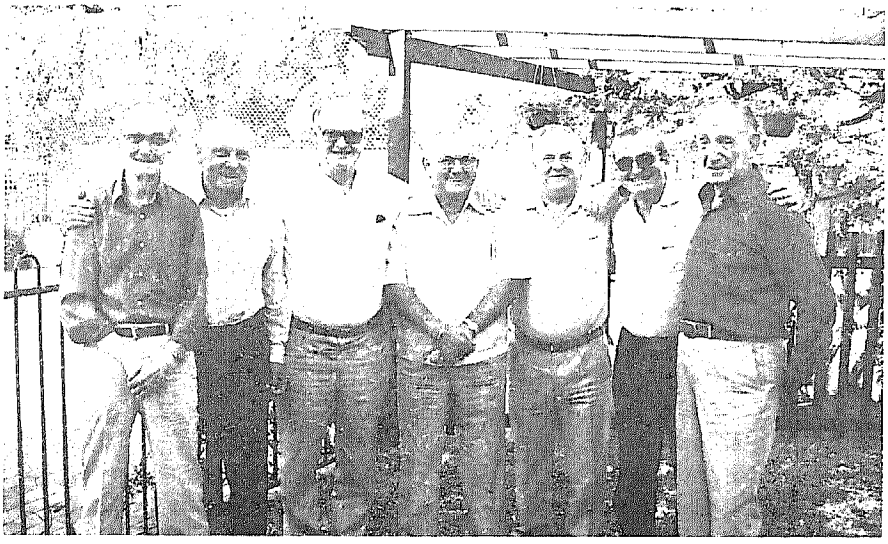
On 15 June 1990, at the annual Clerks Dinner, Bill McMahon (clerk to Eighth Floor, Selborne Chambers) spoke in honour of Ken Hall, (Tenth Floor Wentworth) who has been a Barrister's Clerk for fifty years.

My brief tonight is to make an announcement and speak briefly thereto. The announcement is that 1990 marks the 50th year of distinguished service by our very esteemed President, Ken Hall, to the Independent Bar of New South Wales. The announcement is made publicly in the presence of his friends and peers to honour him as he truly deserves to be honoured.

The epoch of Ken's service is like a travelogue through the legal history of Australian Law itself and the personalities who gave substance and colour to its development and practice.

Since Sir Francis Forbes was appointed Chief Justice of New South Wales in 1823 he has to this day had 14 successors. Ken's service has been during the times of 7 of them. He has served during the times of 5 of the 9 Chief Justices of the High Court. His service preceded the birth of the present Court of Appeal, the Family Court, the Land and Environment Court and the Administrative Appeals Tribunal and the Federal Court.

He has clerked for Sir John Kerr a former Chief Justice of New South Wales who later became Governor General of the Commonwealth, Sir Nigel Bowen who became Attorney General of the Commonwealth and now Chief Justice of the Federal Court, Sir Maurice Byers who became Commonwealth Solicitor-General, Gough Whitlam who was Prime Minister from 1972 to 1975, Athol Richardson who became Colonial Treasurer. He has been Clerk to 5 Bar Presidents, Sir John Kerr, Sir Nigel Bowen, Sir Maurice Byers, Trevor now Mr. Justice Morling and Ken now Mr. Justice Handley and for 19 other barristers who have become judges; and, if you think that an impressive life's work, he said to me only the other day that he feels that he is just getting into his stride.



258 years of clerking!....
(l to r) Ken Hall (50 yrs) Ernie Stanhope (21 yrs) Bill McMahon (27 yrs) Fred de Saxe (55 yrs) Greg Isaacs (33 yrs) Les O'Brien (21 yrs) and Harry Peel (51 yrs)

If he were tonight being judged on the dictum that "by their fruits will you know them" there would be no need to say another word. But tonight's celebration demands that I go on.

Before I do so I feel that this is the correct time for me to get something off my chest. I was pretty chuffed at the honour bestowed upon me when Nick Tiffen asked me to speak tonight. Bob Horne punctured my ego no end when he said we asked you because we had to get an <u>old</u> clerk who had known Ken for a long time. Old indeed - thanks very much. I can easily understand how it was prudent not to ask Greg Isaac and run the risk of the consequences that would run from someone so old that he could be suffering from Alzheimers disease but they could easily have asked Brian Bannon or Les O'Brien if they wanted somebody really old!

My first memory of Ken's sagacity was in my very early days as a clerk when I sought his counsel. I was told by a clerk who has long departed the scene that if I was to succeed in my new profession I must always remember that the relationship between a barrister and his clerk was an upstairs-downstairs one and that I must always keep my place. As this was contrary to my short experience I spoke to Ken about it. I well remember his comments because he delivered them with such emotion and conviction - "Don't ever allow yourself to think, whatever the reality may be, that any barrister at all is an inferior person to you as his clerk - not even a junior barrister. You must concentrate on treating each and every one of them as your equal no matter how difficult at times it may be to do so". I have tried to live by this creed of Ken's. There is no doubt but that he was dead right about the difficult bit.

In the wider society it is now part of history that Germaine Greer somehow heard of Ken's philosophy of equality and founded a religion on it that now claims to have more committed adherents than all the other religions in western civilisation put together. Ken looks beyond this development to when he says the female will, as a logical consequence, come to realise that they have a responsibility to think kindly of we males and to speak and treat us kindly as well. I warned him that he was treading on dangerous ground. He was tampering with the natural order. Consider what happened to the fate of other notable meddlers, Lucifer, Adam and Eve and Hitler. They all came to sticky ends. He seemed unconcerned, his vision impaired. I contented myself in telling him that he and I will never be around to see it.

If one were to try to assess the capacity for thought, for work and the ambivalence of the personality of Ken Hall one has only to think that he clerked for John Kerr and Gough Whitlam all at the one time. What is more, there were no public displays of disagreement or petulance when they were under Ken's jurisdiction. Paul Webb said to me that they would not have dared.

I asked Ken if he had much contact with Gough Whitlam during his reign. He said that apart from Floor Dinners he had spoken to him on only two occasions. The first was when Ken

phoned him to seek some help for the distressed aged wife of a very ill retired lawyer as she could not get him into a hospital. Within half an hour the lady phoned Ken back to thank him for his assistance, the ambulance arrived and a hospital bed had been found. And, said I, what was the second occasion. A funny thing about that, said Ken, he phoned me the very next day and you would have to be stupid not to guess what about. I made several guesses, all wrong ones. When Ken told me he phoned to know how Ken was getting on collecting the balance of those long outstanding fees owing to him I said to him, "Verily I am stupid just like you said".

During 1975 anyone who perused the Vice-Regal notices in the Herald as I did would have seen that the daily appointments of the Governor General, Sir John Kerr, included the names of The Rt. Hon. E.G. Whitlam, The Hon. M.F. Fraser, Sir Garfield Barwick and, I kid you not, the other name that appeared more frequently than any other, that of Mr K.M. Hall. I can remember meeting Ken in Phillip Street on his way to Admiralty House to one of those appointments. He was not particularly happy. He said to me that it is not only ex-barristers who become judges who fail to appreciate that, although their changed circumstances have given them more leisure, your circumstances have not changed at all. You still have a busy practice to run. Ex-barristers who become Governors General fail to appreciate your position as well.

Why do you get so many of these calls I asked. Well, said Ken, John Kerr always liked to keep up with the news of the Floor and of Phillip Street and, as he did when was at the Bar, he used me as a sounding board to have what he called a layman's commonsense opinion about things.

Anyone who was around during those days is aware how worried we were about a 6 billion dollar deficit. In 1990 we have an overseas debt on which the yearly interest exceeds 6 billion dollars. We listen to and read what the politicians and the economic gurus say and write about how we are going to resolve this current crisis. They all say we must lower production costs and increase exports and no doubt they are both important elements in the resolution.

One cannot help but be worried about the resolution of the current crisis. This time there is the absence of the input of the most important consultative advice due to the fact that Bob Hawke and Bill Haydon didn't know Ken Hall.

One can only conjecture what the historians of the future will make of all this when sufficient time has elapsed to allow secret documents to be released for public scrutiny. The books that will be written and the titles thereof. There will be "Ken Hall and Sir John Kerr", "Ken Hall and Gough Whitlam", "Ken Hall and the Chief Justices".

In the book "Ken Hall and the Chief Justice of N.S.W. in 1990" how the debate will rage as to how and when and why the Chief Justice acquired amongst his other titles the one of "The Smiler". Whatever the historians agree or disagree about concerning this charming aspect of his personality, it is certain that they will all agree that it became an omnipresent feature of his countenance on and after the evening of 15th June 1990 when, at dinner, he was the honoured guest of, and sat next to, Ken Hall. ❑

Legal Education: Putting Heads Together

In late June, the Law Foundation held a 3 day live-in colloquium (i.e. "talkfest") at the Mona Vale training centre. Forty representatives from the profession, academia and government attended, including the Deans of all the New South Wales Law Schools and Professor Bezdek from Maryland University.

The colloquium started with a frank (i.e. openly hostile) criticism by some employers about what the Law Schools and the College of Law were producing. Then the representatives from the Law Schools and the College of Law replied. Everyone got a lot off their chests. As Professor Bezdek commented at the social function that evening:

"I couldn't believe how rude you all were from the start. It was great. Usually it would take us a day and a half to get to that point."

Such a start to the colloquium seemed to reflect reality. There are obvious tensions between the profession and the institutions which have resulted in the past in relatively little communication and sharing of views.

Thereafter, there was a far better understanding by each side of the other's concerns and interests. It was then possible to constructively discuss the way ahead.

Of course, views about the way ahead differed widely and the respective merits and demerits of integrated and unintegrated "skills" courses and "clinical training" courses were canvassed. For a while we seemed to disappear into a chasm of jargon and ideology with individual specialists pushing individual barrows.

But what became apparent was that the students' perspective was being entirely overlooked and we did not ever seem to come to grips with the difference between the educator's perspective and the student's perspective. They are worlds apart. **The goals which educators set will <u>never</u> be achieved unless the students also share those goals.**

There was an interesting session discussing the role of ethics within legal education. The discussion seemed to demonstrate the lack of consideration that has been given in the past to injecting the notion of ethics throughout a legal education. This is obviously an area that needs greater exploration to ensure a consistent and continuing approach. Presently, we just add on a topic of "legal ethics" or "professional responsibility" which is regarded by students as a "soft subject" and divorced from "real law".

I came away from the conference rather inspired by the fact that everybody had left their initial positions and come together as a group of colleagues with common interests working together to solve a tricky problem. By the third day, perhaps even the second day, the label of "academic", "solicitor from a big firm" or "barrister" seemed to lose significance. I hope that that situation can continue in the future.

The message for the Bar was clear. As a significant body of lawyers, the Bar must play a greater role in the legal education process than at present. The Bar, and the profession generally, has a vested interest in law students and to that extent it should protect that interest.

The way to do that is more complex. Clearly, the Law Schools require greater funding support than they presently receive. Clearly also, they desire and require greater input from the profession in the teaching process. In many ways, this latter aspect is the most challenging for the Law Schools and the profession alike. It deserves greater consideration on both sides. ❑

Philip Greenwood