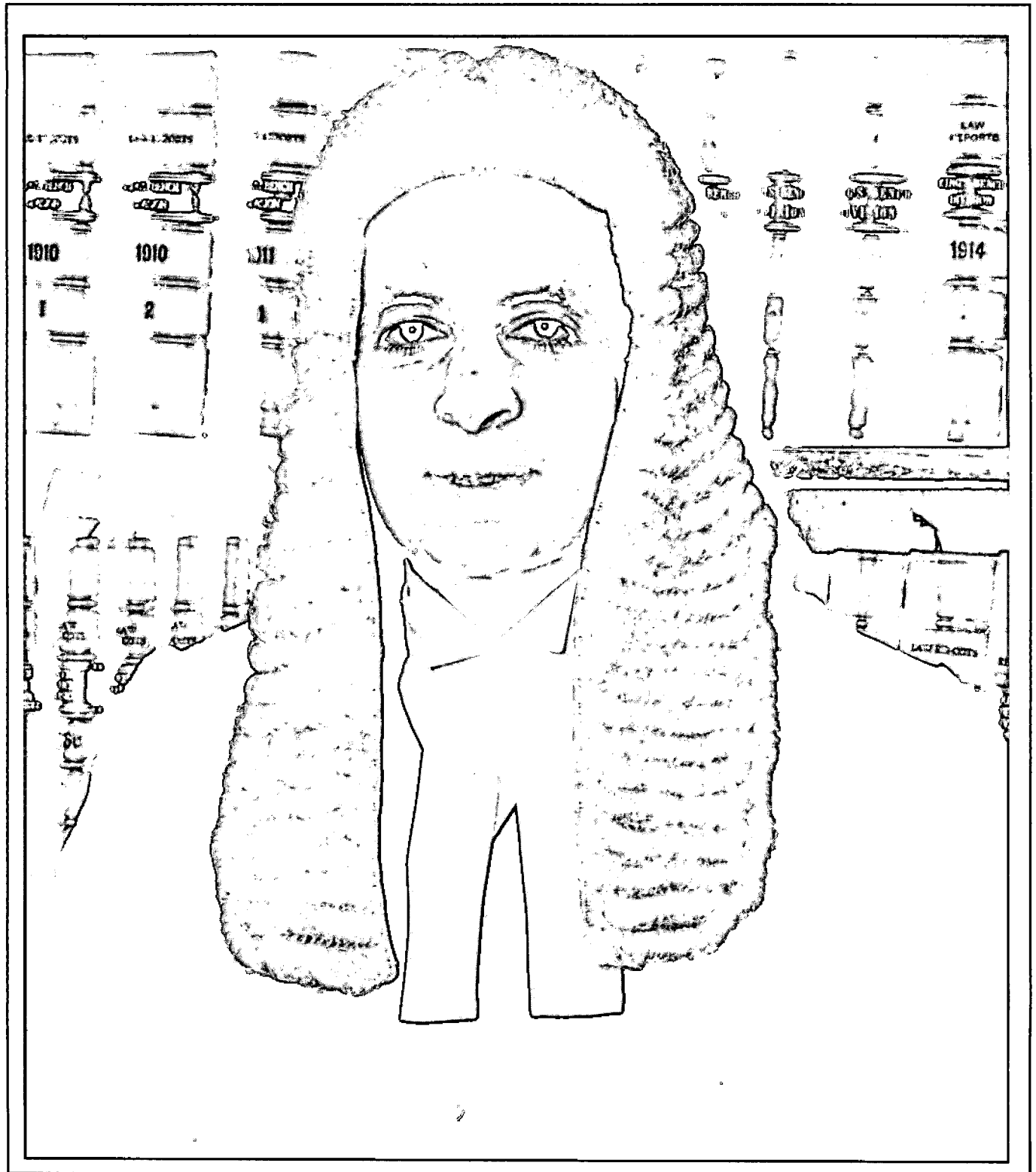


Memorial Service for David Albert Yeldham QC

David Yeldham QC died on 4 November 1996. A service of thanksgiving was held in his memory at the Parish Church of St James at King Street in Sydney on Thursday 21 November 1996. Three eulogies were delivered during the service. Bar News reproduces them in their entirety in honour of his memory.



Justice M J R Clarke

It is a signal honour to be invited to pay a tribute to a great friend of forty years and to salute a lifetime of achievement and service.

David Yeldham was always going to be a leader, and as a boy the most obvious choice as the student most likely to succeed. I was not at school with at Knox but not only was he foremost amongst students as the School Captain and the winner of the Sports and Studies Prize, but he was also popular amongst the students and the teachers.

One anomaly in his career is the poor pass that he gained in the Leaving Certificate. His closest friend, Justice Morris Ireland, has told me that is explained quite simply. The Headmaster had such faith in David that he delegated duties to him far beyond those normally entrusted to a schoolboy. As a result of these extensive civic duties he was unable to devote time to study. The trust that the Headmaster reposed in him resulted, according to another master of the time, from his extraordinary capacity to listen, digest the facts, analyse the problem and then speak with authority. A capacity which he carried through his life.

I first met him when he was in his last year of an Arts/Law Degree course and I was in my final year at school. He was already something of a cult hero to the students at the school and I suspect that was because he was held up to us as an example by our teachers. I was at that time contemplating studying Law but was somewhat uncertain about my capacity to succeed in that area. David would have none of it and that was the first occasion on which he encouraged me, as in his lifetime he encouraged so many others, to "give it a go". He, of course, went on to graduate soon after with First Class Honours in Law and the John George Dalley Prize.

His mother died when he was a young boy and he went to Knox Grammar School at a very early age. In order to put himself through university he worked as an articled clerk for his uncle, John Yeldham, who was himself a very highly respected solicitor at North Sydney. Even at that time his remarkable energy was evident. Apart from his work and his legal studies he took on the job as Secretary of the Knox Old Boys Association, then a rather languid organisation, and was responsible, almost single-handedly, for setting it on track to becoming a very active and worthwhile association of ex-students of the school. As a result of this involvement he also became a member of the School Council during the early fifties, which was a very difficult time for the school.

After his graduation he worked for his uncle as a solicitor for two years and was admitted to the Bar in 1955. Upon admission to the Bar he took up chambers in the basement of Denman Chambers, now sadly demolished. According to Mr Alan Loxton, President of the Law Society, speaking at David's swearing-in as a judge, the basement was known as 'The Dungeon' and his chambers were described as "The Broom Cupboard". It was there that he practised for the next seven or eight years having, in 1957, unsurprisingly, been

elected to the Bar Council, a body on which he served for many years thereafter.

I saw David from time to time in these years, usually at a new club known as the Associated Schools Club in which David and John Kearney, later to become a judge, were prominent. At that time my University career was coming to an end and I was contemplating going to the Bar. A number of young barristers from whom I sought advice had spoken in discouraging terms. I sought advice from David. Again he was full of encouragement but not only that, knowing that I had very limited contacts and no chambers, he agreed to help me and to permit me to sit in his already overcrowded chambers. I frankly doubt whether I would have been bold enough to take the step without his encouragement and assistance. I did not read with him because at that time he was helping another new barrister, the distinguished Naval Officer, Rear Admiral Harold Farncombe. Nonetheless, I sat at a very small desk in his chambers for nearly a year and the lessons I there learned were fundamental to my advancement at the Bar.

David had been at the Bar for about four years when I joined him in his chambers. He then had one of the top Landlord and Tenant practices in Sydney. To observe him working was an eye-opener. He was in court virtually every day of the week and spent the evenings preparing for the next case and writing myriad advices. He also devoted much time to those bodies I have already mentioned. I suppose the greatest lesson that I learned in his chambers was the critical importance of preparation. David's was thorough and inventive. I was trying to recall some examples of the extent of his preparation when I read the recent article by his brother, Peter. He wrote of a small case which David handled as a young solicitor. His client was alleged to have committed an offence and this had been reported by a witness who claimed to have seen the offence by the local street lights. It seemed a simple open and shut case, but David went down to this particular street and he found it was a new street and that no lights had been installed. He took photographs showing the absence of lights and at the hearing destroyed the witness. He had a compelling need to know all the facts concerning the cases which he was to present and that instance stands as one small example of the extent of his preparation.

The other thing I remember clearly about David during the time I sat in his chambers was his decision to cease practising in the Landlord and Tenant jurisdiction. Having made the decision, he determined on a particular day never to take another brief in that area and, with the exception of one brief accepted as a favour to a friend, I do not think he ever did accept another brief in that jurisdiction. I remember thinking at the time it was a brave but silly act. How wrong I was. Within a very short time he was again in court every day of the week. This time in the Supreme Court in the Common Law, the Commercial and the Admiralty jurisdictions. It was then that he started developing his formidable practice.

In 1959 he married Anne and they moved into a lovely house at St Ives. He loved Anne, he loved married life, he loved his home and he loved the prospect of having a family. When his children, Bruce, Belinda and James arrived, he was devoted to them and loved them with all his heart. The legacy of the love and affection that David and Anne gave to their children is evident in the three marvellous young persons we see today, of whom both parents were justly very proud. Our families had many wonderful times together around the swimming pool or on the tennis court in the house at Hayden Avenue, Warrawee, to which they had moved or at our place at Killara. They were great days.

David was also extraordinarily generous to his friends. He was generous in a material sense but, more importantly, with his encouragement, his friendship and his affection. I sought his advice and his assistance on many occasions. I know Morris Ireland did also, particularly when David was helping him in his courageous and, I am glad to say, successful venture in studying Law when he was in his late 30s and going to the Bar. I have thought long and hard to recall when he ever asked me for any help. All that I can recall is that he did me the honour of asking me to be Bruce's Godfather, a task I willingly accepted and from which I was later to derive great pleasure.

David himself at this time had in excess of 20 Godchildren. This is an alarming thought, knowing his generosity, but it reflects his wide popularity and the genuine interest in, and affection for, the children of his friends which he retained to the day he died.

In the 1960s we witnessed the sad demolition of Denman Chambers and we all moved from there into various parts of Wentworth and Selborne. By then David was well and truly one of the leading juniors of the Bar, a situation which went on and on and on. People began to wonder whether he would ever take Silk and, indeed, some who were junior to him felt that they should delay applying for Silk themselves until he had become a Queen's Counsel.

During his time as a junior he appeared regularly with the leading Silks of the day, in particular J W Smyth QC, C L D Meares QC, R G Reynolds QC and Gordon Samuels QC. It was then evident that he was one of a very small and decreasing group whom they always sought as their juniors. He was also retained, almost from the time he was admitted, as counsel for the Law Society - a retainer that continued until he took Silk.

In 1969 he was appointed Procurator of the Presbyterian Church of Australia in New South Wales, a position he occupied until his elevation to the Bench. He occupied that office at a crucial time leading to the inauguration of the Uniting Church and he was heavily involved in giving counsel to the Moderator General. It was particularly interesting to me to hear the Headmaster of Knox say that David's great concern at that time was the protection of minority interests.

David took Silk in 1973 but after only one year was appointed to the Supreme Court. Upon his swearing-in he

referred to the President of the Bar's description of him as "a bird of passage at the Inner Bar". He served as a judge in the Common Law Division, including in the Commercial List, and as the Admiralty Judge. He handled a variety of cases - difficult, complex Commercial and Admiralty cases; Criminal cases both at trial level and on appeal; Libel cases; indeed all cases, including the most run-of-the-mill. He had no airs or graces. For him there was a job to be done and he was there to do it. No matter the nature of the case if he was available he would hear it. On occasions he would deal with his case and move the whole of the reserve list as he called up case after case.

An extract from an article in the 1990 *Bar News* about a Readers' Course is illuminating. The grand finale of the course was the opportunity for readers to run a case in court all day in front of a Supreme Court judge. A number of judges offered their services, as did David Yeldham, who by then had retired. The article proceeds:

"The hearing commenced at 10 am. As the morning proceeded, a new threat emerged (which should have been fully foreseen) - the Yeldham factor. There was every danger that the case before his Honour would conclude a good three hours ahead of the rest."

He never shirked work, nor did he take time off to write judgments. The incredible speed with which his mind worked when coupled with his enormous energy enabled him to write a far greater volume of judgments than any other judge. This is in evidence in the Supreme Court Library where there are 53 volumes of his judgments and summings-up.

It has been said he was a conservative judge. That he was sometimes rigid in his outlook. I do not fully understand the notion of a conservative judge, nor do I accept that he was not flexible. On the other hand, I do believe that he was a traditionalist judge who was of the firm conviction that it was the duty of judges to apply established principles and precedents. That did not, however, mean that where new territory had to be explored he held back. He did not. He was as inventive as any other judge on the Court. He would, for instance, have agreed with the following parts on an article written by a senior lecturer in law which appeared in the press only about two weeks ago:

"Judges who are seen as activist, adventurously discovering rights, refusing to be bound by 'out of date' precedents and replacing strict rules with flexible standards based on reasonableness and fairness are coming to epitomise the proper judicial role.

Nothing could be more mistaken. Judicial activism is bad. It inevitably eats the hand of those who nurture it. It involves judges in activities for which they are unsuited, it is profoundly anti-democratic, it acts as a disincentive for good politics and it destroys public respect for what judges are supposed to do ...

Judicial activism involves judges in the political process but a career spent arguing and reading law cases is hardly appropriate training for making broad political

judgments. Nor is the judiciary well placed institutionally for making political decisions. Judges do not have the facilities to conduct research and they cannot conduct hearings to gather information and views from the public on contentious matters. They are also severely constrained in their ability to participate in and benefit from robust public debate and criticism."

I can hear him now firmly expressing his approval. There is no doubt that he was very quick in court. Nor did he suffer fools gladly. If, however, counsel had prepared their brief and had a genuine point there was no better judge. It should not be thought, however, that there were not moments of humour in David's court. Late in December one year he refused a prisoner's bail application and suffered the retort, "Well, your Honour, you are off my list for Christmas cards this year".

His retirement from the Bench was a sad occasion for all those who served with him and for those at the Bar who knew just what a good judge he was. Indeed, when the Chief Justice wrote to him he said he thought that he might need three new judges to replace him - not, I might add an inaccurate

statement. In his retirement he worked for charities, conducted some arbitrations and, most of all, devoted himself to his family. Grandchildren were now on the scene and it was apparent to all his friends that they gave David the greatest joy. Most of us saw less of him after his retirement although there is a group, all of whom are here today, with whom he lunched virtually every Thursday during the legal term. These lunches started back in the '70s and it is somehow fitting that this service is taking place at lunchtime on Thursday.

David Yeldham was a man of formidable intellect, of enormous energy, of high integrity, of courage, resourcefulness and imagination but he was also a humble and generous man. His death was a tragedy.

Those of us who were privileged to know him well have a lost a friend for whom we had enormous respect and affection and who we knew was the best friend a person could have. I will remember only a marvellous man who led by example and who was an inspiration to me throughout his life.

We will all sadly miss him, but today we join with Anne, Bruce and Sue, Belinda, James and Desley and David's wider family, in remembering one of the finest men that the law and our community has known. □

David Bennett QC

The death of David Yeldham is a great tragedy for his family, the legal profession and the community.

So far as his family are concerned, I can do no better than quote his own words at his swearing-in as a Judge of the Supreme Court of New South Wales on 22 October 1974. He said:-

"The Bar, as most of us know, is a hard taskmaster. The life of the average barrister necessarily involves long and arduous hours of work and, with the possible exception of the medical profession, there is no other profession or calling which gives rise to such worry or concern to those engaged in its practice. The burden of this of necessity falls heavily upon the wife of a busy barrister. In my case I have indeed been fortunate in the sympathy, understanding and encouragement which I have always received from my wife and I would like to publicly acknowledge it and thank her most sincerely for it."

That sympathy, understanding and encouragement continued throughout David's judicial career and I am sure that he would have wished that gratitude to be at the forefront of the tributes being paid to him today.

Secondly, David Yeldham was a great member of the legal profession. After a period as an articled clerk and then a solicitor, he came to the Bar in 1955. While there he became one of the most eminent juniors the Bar has seen. As a senior junior he practised very much as a Silk. Those who appeared as his juniors and those who had the good fortune to share his floor during those years tell me that he was always available to hear and solve their problems and that he was never too busy to assist in the development and education of barristers

junior to him. Frequently, when a case was over, he would detain his junior for some time while he explained the reasons for decisions made in the case, and discussed tactics and other aspects for the benefit of that junior's experience.

He had an enormous practice in Common Law, Defamation, Commercial Law and particularly Shipping and Admiralty, an area of law the mere mention of which has an effect on most landlubbers like myself akin to seasickness. As the de facto leader of the Admiralty Bar, he maintained the pre-eminence of the New South Wales Bar in that area. He held retainers for all the leading protection and indemnity clubs. His opinions, typed by his secretary for many years and later his associate, Betty Carr, were scholarly and well-researched. His chamber work was often returned the same day, and that included some of his opinions. He had one of the best libraries in Phillip Street and was a regular customer of both bookbinders and bookshelf manufacturers.

Notwithstanding the frenetic pace of his practice, he found time to serve on the Bar Council for 14 years, from 1957 when he was a junior of two years standing until 1970. Council meetings have always taken place on Thursdays and this provides another reason why this day of the week is so appropriate.

He took Silk in late 1973, less than a year before his appointment to the Bench and 18 years after his admission to the Bar. He could, of course, have done so much earlier.

In fact, it was only his own modesty which delayed for many years his inevitable successful application for Silk. Had he seen the size of the attendance here today, I am sure that that modesty would have led him to express surprise that

so many people had come to his memorial service rather than accept invitations to have lunch with the President of the United States. The fact is that the esteem in which he was held makes that fact anything but surprising.

On the Bench he was a judge ahead of his time. We hear today much about efficiency, case management and judicial control of the pace of litigation. David Yeldham did all those things 20 years ago. He would always bring a case straight to the real point and gently but firmly prod counsel who was acting inefficiently or stressing unimportant issues.

One of his regular phrases to cross-examining counsel was, "What more do you need?". Cases before him almost always finished on time, indeed they often finished early.

He had great practical wisdom. In one case which was reported to me there was an insurance claim by a farmer for some hay destroyed in a bushfire. The farmer calculated the quantity by reference to the length of the pieces of string he had used to tie the hay into sheaves before the fire. The insurance company was ill-advised enough to call a young agricultural economist who gave evidence by reference to a text book which he took with him to the witness box. Justice Yeldham asked him whether he could justify his propositions without reference to the book and he uttered an embarrassed "No". The judge gave his usual indication by looking pointedly at the ceiling and subsequently delivered a judgment totally accepting the practical method used by the farmer.

He had a prodigious memory. A week before his death I was privileged to be seated next to him at the Ebsworth & Ebsworth centenary dinner. Being a typical barrister, I started to discuss a case in which I had appeared before him as a junior in 1978. He remembered every detail of the hearing and was fascinated to hear my breaches of confidence about the settlement negotiations of 18 years ago. He filed it away as part of his overall understanding of the dynamics of that otherwise long-forgotten case. Sadly, the information is once more concealed unless revealed by Chief Justice Gleeson or Mr Lyall who were at the same table and who were on the other side in that case.

Thirdly, he was a leading citizen whose activities mark him as a renaissance man of a high order. He was very active in his church. He was the Procurator of the NSW Branch of the Presbyterian Church of Australia from 1969 to 1974, at the time when it was moving towards full union with the Methodist and Congregational Churches and he played a significant role in facilitating that union. He has been a member of the Committee of Independent Schools, Chairman of the Institute of Law and Medicine of the James McGrath Foundation, Chairman of the Proctorial Board, Chairman of the School Appeals Tribunal, Chairman of the National Elicos Accreditation Scheme, a member of the Child Accident Prevention Foundation Australia, a member of the Knox Grammar School Foundation and a Director of the National Association for Prevention of Child Abuse and Neglect. Even the armed forces were not immune from his interest. He was a senior officer in the Naval Legal Service.

The gap left in his family, in the legal profession and in the community by his tragic and untimely death will not be filled. Our sympathy must go out to all of them. □

Norman Lyall

It is a privilege for me to speak today not only as the President of the Law Society of New South Wales representing the solicitors of New South Wales, but also as an old friend of David Yeldham, Anne and their children, Bruce, Belinda and James.

I first met David when my firm commenced to brief him shortly after he was called to the Bar in 1955. We held our conferences in what served as his chambers but was in fact almost a broom cupboard. I can remember that my clients and I used to spill out into the vestibule. I was the first member of our firm to brief David. Our initial involvement was mainly in stevedoring personal injury cases and defending prosecutions of stevedoring companies under the Navigation Legislation. Our connection with David continued to develop. He was briefed in shipping collision cases by John Bowen and later I briefed him in defamation cases I was handling for David Syme and Company Limited, the publishers of the *Melbourne Age*. Together we were involved in many cases, some of which became leading cases in the area of shipping law and defamation law.

It was my experience, and I believe it was the experience of all solicitors who briefed him, that David was always well prepared before a conference and before he went to court. He was also demanding of his instructing solicitor in a quiet way. I was always impressed with the manner he, as a junior, assisted his leader. Feeding them with the cases during argument and materially contributing to the presentation of the case.

He became the leader of the Admiralty Bar and then an outstanding Judge in Admiralty. Significant cases he decided which come to mind are "*The Cobargo*" and "*The Mineral Transporter*", both of which went to the Privy Council which substantially upheld his decisions. As a judge he was always prompt delivering judgments. This was an attribute very much admired by solicitors who always have difficulty explaining court delays to anxious clients.

He had a good sense of humour. We all often laughed about a case involving Mrs Page Wainwright. She had sued P & O in respect of some injuries she had received on one of their vessels and when she was unsuccessful she vented her spleen by reporting us to the Law Society, the Chief Justice, and even the Queen of England. She described David Yeldham in the most unflattering terms. He found the names she gave him most entertaining and so did we all. We have laughed about it many times since.

He was a brilliant barrister and judge and I knew him as a generous, compassionate, warm and caring person. Speaking for the solicitors of New South Wales and myself, I pay tribute to him and say that we will miss him dearly. □