

a novel attempt to identify murderers in a large group of balaclava-clad men.

The answer lay in saliva tests on the balaclavas which the bandits wore. It was, as Cicero termed it, a *gre[x] siccariorum* [Cicero MT *Pro Sex. Roscio Amerino*], a flock of murderers or a group of masked bandits - out of



that flock of murderers, who did the deed? Dusty would decide that on the evidence and with a police escort for security. Dusty was the first at so many things throughout his life. He retired from the court on 9 June 2000, after nine years sitting full-time as a judge. Thereafter, Dusty sat as an acting judge of the court in the trial division and in the NSW Court of Appeal, from time to time.

Dusty retired to Mudgee, more precisely to the village of Lue, which he loved. He was back and forth between the city and the country for a time. He always had a longing for country NSW. At times, he could be seen in Queens Square when he sojourned in the city. By chance, having spoken with the Hon PA Bergin SC the Commercial List judge at the time, he attended the Commercial Causes Centenary Dinner in 2003. Dusty loved engaging with people (friends, family and strangers) and he did so with a quaint *bonhomie*, a pleasant turn of phrase and with a certain friendliness reminiscent of a bygone era of Australia.

Dusty was a devotee of the Australian Ballet and loved to attend the Opera House with his wife Jane for its performances. He also enjoyed golf and surfing (after many years holidaying at Narooma on the South Coast). The law was one aspect, albeit a significant one, in his life. Dusty was possessed of a certain authoritative voice, an unequalled stamina and a zest for life. Dusty also had a long and abiding devotion to education having been on the council of his beloved Knox Grammar School and also of Pymble Ladies' College. Education had enabled all the remarkable events and

achievements in Dusty's life.

Dusty's funeral was held at St John the Baptist Church at Mudgee. A memorial service was held in late August for him at the Knox School Chapel in Sydney. Many lawyers gathered to farewell Dusty at the Knox Chapel; *inter alios* the Hon Murray Gleeson QC and former Supreme Court judges: Robert Shallcross Hulme QC, JRT Wood QC, Moreton Rolfe QC, John Bryson QC, Trevor Morling QC, Terry Cole QC, Peter Barr QC, David Kirby QC, the Hon WV Windeyer and with Justice Michael Pembroke, Justice Carolyn Simpson, not to mention the bancs of old solicitors and counsel who filed into the chapel to strains of the bagpipes in the fading afternoon light.

Dusty is survived by Jane his second spouse and his large family which he cherished: Wendy and Bob, Angus and Irene and Jenny. He was stepfather to Samantha, Melissa and Remy and Lucy and Jeremy. There are all of his grandchildren who recall him lovingly: Lydia, Felicity, Kate, David, Lachlan, Sarah, Elise, Simone, Owen, Meiba, Jen, Pepon and Boitne. The affliction of Huntington's Disease claimed Marie



his first wife, and then it took his two sons John and David. They died far too young. As an example to us all, Dusty had the fullest life, it was well lived and he was a delight to all those who knew him. He was learned and kind. He left no stone unturned. His story was extraordinary.

By Kevin Tang

## Clive Evatt (1931 - 2018)

Clive Andreas Evatt, barrister and Renaissance man, died on Friday, 3 August, 2018. Born in 1931, he was the only son of Clive Raleigh Evatt QC, a famous barrister and a minister in a number of state governments, and Marjorie Hannah Andreas, the daughter of a prominent businessman. Evatt jnr's uncle was Dr H V Evatt, a former High Court justice. His sister, Elizabeth, won the University Medal for Law and became the first chief judge of the Family Court of Australia. His sister, Penelope, took a different course, became an architect and married the famous architect, Harry Seidler.

Given the family background in the law, it was almost inevitable that Evatt jnr would become a barrister. But law was never his only interest. During his university days, he developed a passionate interest in opera and ballet, literature and classical music and paintings. After leaving university, he also began betting on horses in a systematic way and was extraordinarily successful, winning a seven figure sum in the period 1960-1976, equivalent to many millions of dollars today. In 1972, he opened the *avant garde* Hogarth Galleries which largely pioneered the sale of Aboriginal paintings in Sydney.

Evatt was admitted to the bar in 1956. 'Young Clive' (as he was known in recognition of his father) remained an institution at the Sydney defamation bar until his death. Experienced practitioners knew that beneath his disarming exterior, behind the injured wildebeest appearance of the shuffling old man with a cane, lay a uniquely dangerous opponent. More than any counsel of his era, Evatt knew how to strip his case back to the barest essentials, paring away everything unnecessary to his client's success before the jury. With unsettling frankness and a mischievous glint in his eye, he was unembarrassed about abandoning any part of his case on which the witnesses were not 'coming up to proof'.

Evatt's preferred approach to the notorious technical complexity of the law of defamation was not to engage with it. In pre-trial applications in the Defamation List, his favourite response to thorny arguments raised for the defendant was, 'Well, there's a lot for your Honour to think about there' — effectively shifting to the court the obligation to answer the point.

Where Evatt excelled was in a jury trial. He had an uncanny ability to connect with and charm jurors 40, 50, even 60 years his junior. Unlike his opponents, he would lead all the evidence he needed from a witness in five or 10 minutes. He was also savvy enough to decline to call a plaintiff to give evidence in his own case in chief whenever he thought cross-examination might damage the plaintiff, something most practitioners would

lack the tactical daring to do.

Many lawyers believe that it is unwise to sue for defamation if the would-be plaintiff has done anything else discreditable. Such baggage will usually emerge at the trial, and trial publicity can do more damage to a reputation than the original publication. But Evatt was undeterred that, in the argot of the trade, a plaintiff might not be a 'cleanskin'. He seemed to be a magnet for such clients, who would sue — and win. By any reckoning, he was the king of the plaintiffs' defamation bar.

Evatt was educated at primary schools on the North Shore including Artarmon Opportunity School before going to North Sydney Boys High School where he finished first in the state in geography in the Leaving Certificate. Although he graduated in arts (majoring in economics) and law from Sydney University, he did not do as well at university as he could have done. This was largely because he seemed more interested in attending race meetings as well as playing cards with friends than studying legal texts. He also led a very active social life.

During winter months in particular, he would host friends to weekends of fun, good food and games to test the mind at the magnificent mansion built by his maternal grandfather at *Leuralla* in the Blue Mountains. Up to twelve people might be staying in the house, around a roaring fire, discussing law, politics, art and racing.

Until 1967, Evatt's practice at the bar was dominated by personal injury cases in which he had an enormous practice. He also did the occasional defamation case with his father for politicians such as Tom Uren, Les Haylen, Bill Rigby and Clarrie Earl and celebrities such as the singer, Shirley Bassey.

In 1967, Evatt became a casualty in the move by the Law Society to end the practices of five solicitors who were charging very high fees for conducting cases for impecunious plaintiffs. Evatt had been briefed by two of these solicitors and, as counsel, had got 18 plaintiffs to sign authorities deducting the solicitors' fees from the verdicts they obtained. The Court of Appeal held that Evatt was guilty of professional misconduct in that he knowingly facilitated a course of conduct whereby the two solicitors charged extortionate fees and he himself charged fees 'which were excessive' and which 'he knew would be paid in part from the amounts so charged'. The Court of Appeal suspended him from practice for two years. The Bar Association appealed to the High Court which held that the Court of Appeal was 'in error to suspend [Evatt] from practice rather than to disbar him'.

Thirteen years elapsed before a unanimous

Court of Appeal held that he was a fit and proper person to resume practice as a barrister after hearing evidence of his probity and honesty from many witnesses who had had commercial dealings with him over the intervening years.

During this period away from the law, Evatt's principal source of income was betting on horses. In 1961, Don Scott, a high school friend, and Evatt, using a sophisticated method of assessing the ability of racehorses,



won a large amount of money by backing the Doncaster Handicap winner, Fine and Dandy, at 66/1 and 50/1. This win and similar large wins attracted the attention of the journalist, Frank Browne, who subsequently christened them 'The Legal Eagles'. They continued to bet successfully until November 1974 when Scott gave up betting to become a playwright. Evatt continued betting for another two years but in 1977 he mysteriously stopped betting and never again set foot on a racecourse.

Much of Evatt's betting winnings were used to acquire valuable paintings including those by Brett Whiteley, Arthur Boyd and Roy Lichtenstein and later those by Tim Storrier and Jeffrey Smart. Insuring these paintings attracted the interest of the commissioner of taxation who issued amended tax assessments based on the significant increase in Evatt's wealth over the preceding years. Fortunately for Evatt, his betting was on credit and recorded in his name in bookmakers betting sheets. In a lengthy case before a Taxation Board of Review, Evatt established that the increase in his wealth was the result of betting winnings by tendering the betting sheets, which had been subpoenaed from the State Treasury. By majority, the board held that the winnings were not taxable and set aside the amended assessments.

After the High Court decision, Evatt did a Fine Arts degree at Sydney University and topped the course. Subsequently, he lectured in Fine Arts at the University. His expertise led him to found the Hogarth Galleries in 1972.

Irreverent and irrepressible, Evatt was a larger than life and formative figure in the

Australian art world. He loved publicity and revelled in shaking up staid 1970s Sydney with some of his early exhibitions. Ivan Durrant's *Severed Hand Happening* which was alleged to be a human hand displayed in a box made headlines in local newspapers, and the erotic paintings, drawings and sculpture of the Playboy exhibitions turned the Hogarth Galleries into a lively venue. And nowhere else in Sydney could one buy posters by Jackson Pollock for \$35 or Salvador Dali for \$30.

Evatt became a pioneer of the Australian art market introducing artists such as Garry Shead, Brett Whiteley, Martin Sharp, Cressida Campbell and Peter Kingston. He was an early champion of feminist and women's art and supported Miriam Stannage, Kerrie Lester and Mandy Martin early in their careers. He was also a generous supporter of other early-career artists, a fact he would have quickly dismissed.

Evatt's ability to foresee trends in the art market resulted in early investments in Aboriginal art, Hornby trains and toys. In 1976, he purchased a collection of Aboriginal art and displayed it in the gallery. It became a drawcard for international visitors. The Hogarth Galleries subsequently became Australia's foremost Aboriginal art gallery credited with exhibiting Aboriginal art in the fine art tradition.

A discerning buyer, he amassed an extensive and eclectic personal collection. Some of the more valuable works were on permanent loan and exhibited in local and overseas institutions. Many of his art works were displayed in the Supreme Court of New South Wales.

Evatt loved the arts in all its forms. He had an unparalleled knowledge of art history. He also had an extensive knowledge of music and opera, loved Wagner and was a frequent visitor to the Bayreuth Festival. He had a particular interest in pop art and introduced Andy Warhol, Jasper Johns, and Allen Jones to the Australian market. Jones's *Girl Table* of 1969 was displayed at the gallery and caused a riotous reaction. A newspaper reported that there was now a 'Women's Lib blitzkrieg' which exhorted women to 'smash sexist art oppressors!'

Characteristically, Evatt said he was pleased that 'these people were angry'. He said that the last person who got angry about art was Dr Goebbels, 'and we've had to wait for 30 years for someone else to get angry.'

Evatt is survived by his sisters, Elizabeth and Penelope, his first wife, Dr Susan Hepburn and the five children from that marriage - Mary, Elizabeth, George, Ruth and Victor, his second wife, Elizabeth and their two children, Alice and William.