

Supreme Court of Victoria

Melbourne, 30 March 2006

Book Launch

"In Off The Red"

Family and friends of Ken Marks. Shortly prior to the end of January 1994, I called on Ken in his chambers at the Supreme Court because I was preparing to farewell him on behalf of the Bar on the occasion of this retirement from the Bench. The reason I called on him is because my usual sources of information - friends, colleagues and past associates were all able to identify Ken's judicial virtues easily enough but I couldn't find a story to raise a smile, let alone a loud laugh! So, I thought I would go to Ken himself for what journalists call "deep background".

The meeting was revelatory for both of us. He discovered I had read English long before I undertook legal studies and was something of an avid reader of biographies. Doubtless this figured in his mind when thinking of a person to launch his autobiography. He and I had both just read, with great pleasure, Colm Toibin's novel, *The Heather Blazing*. That was how I discovered Ken's love of literature which sustained him throughout his life.

We discussed the increasing popularity and emergence of the 'memoir' as a literary genre. I told him there was something about reading the narrative of a whole life which uplifted the reader, not least because in high historical moments there were always people poised by reason of their background, perhaps shaped by the *zeitgeist*, who step forward

and meet the challenges of the hour with bravery, resourcefulness and whatever other personal qualities are required, as Ken did during the Second World War. We spoke of the Wordsworthian perception that 'The child is father of the Man.'

Whilst I do not imagine Ken had turned his mind then to writing *In Off The Red*, he told me that in times of childhood tribulation he took singular comfort from a large coloured picture of Peter Pan which hung at the head of his bed. This was not J.M. Barrie's Edwardian figure of eternal youth, but the magnificent chestnut which twice won the Melbourne Cup. While I mentioned this at the Bar's farewell to Ken, it was only when I read *In Off The Red* that a greater understanding of Ken's lifelong love of horses emerged.

Ken was born on 10 September 1924 in a house owned by his mother on the corner of Dickens and Mitford Streets, St Kilda. He was the fourth of five sons of Harry and Phoebe Marx. His autobiography commences in a manner owing something to the Book of Genesis - it opens with genealogy and a respectful, thoughtful and detailed account of his ancestors back to his great-grandparents. By describing his parents' circumstances as young people, he highlights their virtues and foibles, which loomed large in his childhood.

Whilst born into what most people might call 'well-off circumstances' Ken's childhood was marked by melancholy, assuaged by his passion for horses which he traces back to the singular joy - which would now, no doubt, be regulated - of pony rides on local beaches. He makes no bones about the fact that he regarded his parents as 'inadequate' with little understanding of a childish need for love, encouragement and

physical expression of affection, and his school days at Melbourne Grammar were, in his recollection, chiefly marked by the bitterness of one who feels himself like Camus' 'L'Etranger', an outsider to the mainstream.

Eugene Gorman was a significant figure in Ken's life and in one of life's synchronicities, as it happens he was also an influential person in my own father's life. As persons of warmth and abundant gifts sometimes do, Eugene Gorman obviously influenced Ken positively at an important and formative time in his life.

Like many young men of the day, Ken interrupted his university studies in Arts and Law to serve his country and went into the Air Force on New Year's Day 1945. He became a pilot officer and chronicles his war-time experiences in a most interesting way, which I leave you to discover for yourselves. Ken's powers of recollection are formidable and his accounts of wartime popular fiction, plays and entertainment are an historical treasure trove of their own. Back at the University of Melbourne after the war, Ken fell under the intellectual influence of people such as Ian Turner and became, for a period anyway, a Communist. He travelled through Eastern Europe in the late 1940s and has the grace to express his regrets about this episode in his life. He self-consciously read Robert Conquest's *The Great Terror* in the late 1960s and he appreciated, by the time of writing his own book, that the greater the release of Soviet war-time and post-war archives, the greater the verification of Conquest's basic thesis about Stalin and Marxist Russia.

Ken went to the Bar in 1950 and read with John Starke, who was later knighted. There were at the time some 130 men at the Bar. Like many returned servicemen, Ken did not enjoy an easy time in his first few years. Perhaps it is ever thus. Ken's pen portraits of his colleagues and judges will command the attention of those who are interested in the culture of the Bar, and in the ebbs, the flows, the changes both subtle and obvious, which occur over time, to that shared culture.

Ken spent 17 years as a junior, took silk in 1967 and was active in Bar politics. His Chairmanship of the Bar was cut short by elevation to the Bench on 14 June 1977. His autobiography contains a detailed account of his burning desire to modernise some administrative aspects of the administration of justice, a desire to which the Chief Justice, Sir John Young, generously gave rein. Ken was an early advocate of case management and also alternative dispute resolution. Ken continued an active professional life after retiring from the Bench and *In Off The Red* includes Ken's various proposals or ideas about further modernisation of the administration of justice.

Ken died on the 4th of December last year; unfortunately, he was not well enough to see his book launched on a date originally planned. Ken's life reveals a person who might be described in an anodyne way as 'enterprising or enquiring.' The post-modern epithet 'subversive' used in a positive sense might even be apt. His childhood sense of melancholy and profound loneliness, his feeling that life could and should be improved never left him and this more than anything else animates his mature character and his lifelong 'chafing against the bit.' Ken had a touch of Schopenhauer's pessimism in him. Yet, in a

sense, he harnessed this aspect of his personality as constructively as he was able. As Sheila put it to me once, Ken had an enormous thirst for knowledge and a mind always questioning, never resting. One can only admire this. His prose style reflects his sense of the need for discipline, to explicate, to expose with ruthless honesty. You do not go to *In Off the Red* for easy charm or to capture the evanescent qualities of 'joie de vivre' or any careless happiness; but in it you will find Ken's essence - his determination, his open-mindedness, his continual willingness to test - to test ideas, to test himself, his politics, his judicial role, his riding - all were put under Ken's scrutiny; all, in turn, tested him.

Ken's life was not a 'charmed life' despite his being born into circumstances where it might have been. Ken's life was not a 'quiet life' because Ken never suffered fools or circumstances gladly. Ken's life puts me in mind of a simple couplet of Ellen Sturgis Hooper (1816-1841):

'I slept and dreamed that life was Beauty;
I woke and found that life was Duty.'

Ken loved Beauty - he sought and found it in literature and in horses - and he found great happiness and solace in his adult life with Sheila and his daughters, and their grandchildren - but whenever he found life 'a duty', whether morally, politically or judicially, he never shirked that duty. I commend to all of you his own account of his life, with all its triumphs over temperament, its honest regrets, and all its touching, modestly understated, solaces and successes.