

The San Jose State University Tax Policy Institute International Scholar for 2005-6 was awarded to Kim Brooks of University of British Columbia (Canada) and Binh Tran-Nam of Atax. University of New South Wales. Congratulations to Kim and Binh.

Congratulations to Ken Devos, on his promotion as senior lecturer, Monash University.

Justice Graham Hill, a judge of the Federal Court of Australia, passed away on the 24 August 2005. Tributes and stories appeared in:

Buffini, Fiona 'Tax titan was no heir but had all the graces' *Australian Financial Review* 26 August 2005, p 29

KPMG *Daily Tax News*, 29 August 2005, Justice Graham Hill, item 7

'Tribute to Justice Graham Hill', Attorney-General, Philip Ruddock, MP, Media Release 156/2005, 25 August 2005

[http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media\\_Releases\\_2005\\_T hird\\_Quarter\\_25\\_August\\_2005\\_-\\_Tribute\\_to\\_Justice\\_Graham\\_Hill\\_-\\_1562005](http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases_2005_T hird_Quarter_25_August_2005_-_Tribute_to_Justice_Graham_Hill_-_1562005)

Hayes, Terry 'Death of the Hon Graham Hill' (2005) Issue 36 *Weekly Tax Bulletin* [1474]

'Justice Hill passes away' (2005) Issue 33 *CCH Tax Week* [716]

Carson, Vanda 'Decisions come from dead judge' *The Australian* 16 September 2005, p 24.

I understand there will be a number of tributes, to be published in various Australian tax journals. See the following tributes.

#### 4 Vale Justice Graham Hill 1938-2005

The following address was delivered by The Honourable Michael Black AC Chief Justice of the Federal Court of Australia, at a Memorial Service for The Honourable Justice Graham Hill, at St James' Church, King Street, Sydney on 1 September 2005.

With the untimely passing of Justice Graham Hill last week, on Wednesday 24 August, the Australian judiciary lost one of its outstanding legal minds. We in the Federal Court lost a superb judge and fine colleague whose contribution to the work of the Court judicially and extra-judicially was quite exceptional.

In paying tribute to Graham, it is a daunting task to convey, in brief remarks, an adequate idea of the richness and diversity of his work and his service to the community: as a lawyer, a scholar, a teacher, a leader, a mentor and a member of our Court. I can do no more than give an outline of the *public* side of a remarkable life – a life to be celebrated.

Donald Graham Hill was born in Sydney on the 1<sup>st</sup> November 1938. He received his secondary education at Fort Street Boys' High School where, in brilliant company, he was an outstanding student. He then studied Arts and Law at Sydney University, beginning an association that continued for the rest of his life. Again he showed himself to be an outstanding student. He also became closely involved in the life of the University.

In April 1962 he graduated in Law with first class Honours. In a remarkably strong final year, he topped the Honours list and was awarded the University Medal in Law.

Later that year he went to the United States, to Harvard University where he studied for the degree of Master of Laws, supported by a Fulbright Scholarship, a Ford International Fellowship and a graduate scholarship from the University of Sydney. At Harvard he studied tax law under Dean Erwin Griswold, regarded by many as the foremost tax professor in the United States at that time and subsequently Solicitor General. One of his fellow students at Harvard, later to become a judicial colleague on the Federal Court recounts how, on his way

there. Graham "jumped ship" (as he put it) in Panama and gradually worked his way up through Central America to arrive in Boston in time for the September 1962 term. His love of travel began at that time.

From Boston he travelled to London and the London School of Economics where he was a postgraduate scholar.

On his return to Sydney he joined the firm of Parish Patience & McIntyre, becoming a partner in 1965. In 1970 he became a partner of Dawson Waldron where he built an enviable reputation as a tax lawyer. He left the firm in 1976 to practise at the NSW Bar where he had the good fortune to read with Richard Conti. At the Bar, he quickly gained a formidable reputation – and soon a national reputation - in the fields of tax, public law and commercial law. He was appointed Queen's Counsel in 1984, after only eight years at the Bar. He wrote many learned papers and wrote the standard text on Stamp Duties.

This hardly does justice to a very distinguished career as a solicitor and then as a barrister, but I need to pass on to his time as a judge of the Federal Court of Australia, to which he was appointed in February 1989.

As a judge of the Federal Court, Graham Hill showed once again his exceptional talents as a legal scholar. He quickly showed his new talent as an outstanding judge. He wrote many fine judgments in the field of taxation and in related areas, but his judicial work covered, with equal distinction, the whole range of the Court's trial and appellate work. His work in all fields was, and is, widely respected and frequently quoted. He has left us with an impressive body of jurisprudence.

Whilst a judge of the Court he maintained his connection with Sydney University. He taught there continuously in a part-time capacity as the Challis Lecturer in Taxation from 1967 until the day before he died – a period of nearly 30 years. He was the longest serving teacher in the Faculty. He was also a mentor to many academics and younger practitioners in the field of taxation.

In May 2002 the University of Sydney honoured Graham by awarding him the Degree of Doctor of Laws (*Honoris Causa*) for his outstanding all round contribution to the University and the law. It was observed by the Chancellor that he had a research and publication record of which a full-time academic could be proud. His valuable contribution as patron of the Australasian Tax Teachers' Association was also acknowledged.

There was a charming and appropriate reminder of his work with the Australasian Tax Teachers' Association in the obituary published last week in the *Australian Financial Review*. The author quoted Ms Coleman, who invited him to be the patron as saying:

"He came to every conference, he gave a fabulous technical talk, and he always said "put me up in the cheapest accommodation so I can meet the most people – he made himself available to everybody".

*I quote this because it reveals one side of the essential Graham.*

Graham's contributions to the academic world extended beyond Sydney University. He was also a great supporter of the teaching of law at Flinders University, where he had spent time as a judicial fellow. I received this morning a request from the Dean to convey the condolences of all to Justice Hill's family and his judicial colleagues. There was an added note from the staff and students. Graham was also the Chair of the Law Faculty Advisory Committee of the University of Wollongong.

I return now to his work as a judge of our Court, which I need hardly add, was undiminished by his contributions in other fields. He was a remarkably hard worker and exceptionally fast and efficient in his writing.

Two areas require special mention. The first is judicial education.

Judicial education was one of Graham Hill's great interests and it was an area in which he made a massive contribution to the Federal Court and to the judiciary generally, here and overseas.

For many years, Justice Hill was an energetic Convenor of the Federal Court's Education Committee. That Committee has produced outstanding programs for the entire Court twice yearly, in conjunction with our annual judges' meetings and equally outstanding seminars in conjunction with the Law Council of Australia every year immediately following the March meeting. Graham was personally involved in a leadership role in all these activities. The seminars held with the Law Council, and indeed some of our own internal workshops, were attended by some of the most eminent people in their fields, here, in the United States and in the United Kingdom. More recently, the role of Graham's Committee expanded to encompass two other activities. The first was the training of our own registry and chambers staff and the second was the work presently undertaken by the Court in other regional countries in the areas of judicial and administrative training. Justice Hill worked in both of these areas.

His activities were not confined to Australia. He was involved with the Commonwealth Judicial Education Institute and more recently was appointed to the Board of the newly formed International Organisation for Judicial Training. He accepted my nomination as alternate representative, later to become primary representative, of the Federal and Family Courts on the Council of the National Judicial College of Australia.

His international work was recognised this week by the head of the Commonwealth Judicial Education Institute who wrote saying that Justice Hill was an outstanding man and that his passing would be a great loss, not only to his family but to the international community where, she said, "His intellect, accomplishments, learning of compassion for others, were well known and valued".

Similar sentiments were expressed in a message of condolence from judges of the Central Tax Court of Thailand. They expressed their profound sorrow and grief, and recognised his contributions to Thailand. His work in the field of the development of tax law extended to the People's Republic of China where, as part of a program funded by the Australian Government, he outlined the significance of the rights of appealing taxation rulings and assessments to independent courts, and – his great passion – the rule of law.

I have focussed upon his work in the field of education for which the Court has had most contact and I should also recognise his work with the Taxation Institute and the education of tax lawyers.

I keep coming back to tax. That, of course, was his primary field, but as I hope will become apparent, his work extended throughout the whole field of law and legal and judicial education.

Another area in which Graham Hill made a huge contribution to the Court was technology.

Graham Hill was a member of the Federal Court's Information Technology Committee for some 16 years, and for 14 years – until last month – he was its Convenor. This is not the occasion to detail the achievements of that Committee but it should be said that the Court, and

through it the legal community and litigants, have had the benefit of nearly all the advances in information technology as it affects courts as and when they have taken place. Since those years were times of momentous and rapid technological change – as indeed is still the case – and since our progress in this area has avoided the pitfalls, cost blowouts and general disasters too commonly associated with these projects, we have much to be grateful for. More than that, since the Federal Court is entirely self-administered and since its administration rests on collegial foundations, Graham Hill's leadership in this risky area was indispensable. Difficult decisions needed to be made that required his leadership and his knowledge of a very technical field, but they were the right decisions. The Court, and through it the public, was exceptionally well served by Graham's work in this field.

It is said of Graham Hill that he had a passion for justice, and so he did. This appears from his writings, especially his extra-judicial writings. In his judicial writings, it is plain that his passion for justice did not lead him to be unfaithful to his judicial oath to do justice according to law. Plainly, though, he felt deeply about the rights of the individual and he felt deeply about the role of the judge as ensuring that the law was obeyed in cases affecting a citizen.

Graham Hill had a nice sense of humour. It was not of the boisterous type and one would hardly imagine that it could be. But it appeared from time to time in a way that many of us found charming. He did have his idiosyncrasies, as I suppose do we all. It is true that if one commented to Graham that it was a fine day, the chances were that this would be qualified by reference to other matters such as humidity or even the possibility of rain. His somewhat distinctive approach to these matters did nothing to diminish our affections for him.

In the occasional address Justice Hill delivered in the Great Hall of the University of Sydney upon the conferral of his Honorary Doctorate he made several observations which are revealing of the fine person that he was.

I would like to quote two of them, using his own words for the first.

He said:

*"Some years ago at a function where Judges mingle with students I remember a student asking me whether I had had, when I was at law school, the ambition to be a Judge. I thought the question was rather amusing, probably because at the time I was a student the possibility would have seemed unattainable. But I am proud that this is where I have ended up. I have always enjoyed my life in the law, whether as a solicitor, a junior barrister, Queen's Counsel, Judge or as a lecturer, even if part time, at the Law School. Indeed, I have been very fortunate. As a postgraduate student in London I visited the Soviet Union and met Russian students in the then Leningrad. They refused to believe that a student from Australia whose parents had not been rich and who had died long before I had graduated could have gone to University and studied not only in my own country, but also in America and England. It conflicted with the Communist propaganda that they had been fed. I am really grateful for the many opportunities I have had."*

He then made some powerful observations about the rule of law, but it is his conclusion that I wish to use to conclude my own tribute to him – a tribute made on behalf of his judicial colleagues in the Federal Court. He referred to a very close friend, then long dead, who was always helping those who were less fortunate. The reward of this friend, he said, was to see that those who were helped would later help others. He said: "My friend was a very happy person, for it was true." He exhorted the students to help the future generations of students and said that that would surely bring them rewards.

As well as being an exceptionally fine judge, scholar and teacher, Graham was indeed a helper and an inspiration to many.

We shall all miss him very much indeed but we are all richer for his work. To his family and friends, the judges of the Federal Court offer their deepest sympathy. For those of us in the Court – and the staff of the Court as well – his many contributions will be enduring.

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This is very sad news - Justice Hill contributed so much to others and to the tax profession. I came in contact with him through early ATTA, ATAX, Taxation Administration conferences and as a 'one semester' student in his stamp duty lectures at Sydney University. I remember him as a keen participant, interesting dinner speaker and stimulating lecturer. I will be only one of the many who will miss him.

Berenice Talintyre, 28 August 2005

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I'm shocked and very much saddened to learn about the passing away of Graeme. He was like family whenever I met him at ATTA Conferences. I re-call the last time I saw him when we were in Wellington at the beginning of this year and we went for that cruise where we played all those games.

I have never met a judge as approachable as him.

He'll be sorely missed. Thanks for letting me know.

Hope Ashiabor, 25 August 2005

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Before being formally introduced to Graham Hill, I recall seeing him shopping at the Sydney Fish Markets. Don't ask me what seafood he was buying, as it was in the fruit and vegetable store. In the early 80's, he once appeared in a law library and the staff enquired about his identity and he replied: "I am Hill of stamp duties."

When I gave a paper at ATTA, I chastised tax academics for not citing the *Federal Court Reports*, the authorised reports of the Federal Court of Australia. Graham suggested when counsel appeared before him, it did not matter if they cited the *Australian Tax Cases* or *Australian Tax Reports* even if the FCR's were available, despite the Federal Court Practice guidelines.

At one ATTA Conference I asked Graham if he would write the foreword to a book I was planning on tax research. He revealed he would think about it after seeing the manuscript. Unfortunately that project has not seen the light of day. If anyone deserved the ATTA Medal for tax teaching, I always thought Graham deserved it, yet I suspect he had reservations about the concept itself.

I was always pleased at Graham's informality, his going out for a smoke, travelling with ATTA members after conferences, his down to earth mentality. My daughter, Rosemary attends Croydon Public School, which is the suburb where Graham spent his time whilst at university.

Colin Fong

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Graham Hill was the best of friends to each of us and to all of us - indeed for so many years it is hard to believe that it has ended. He was a great judge in the best of tradition with a willingness to depart from that tradition where he knew value would be added. He was the best of teachers and helped create the 'tax profession'. As a supporter of tax teachers he was without parallel - his willingness to join in and to help was simply unsurpassed. Many, like me, benefited from his personal assistance and reassurance. Decades as a tax teacher inevitably saw him active in the earliest of the Tax Teachers' conferences - and of course Patron of the association for many years now. So many times Graham gave of his time and knowledge - so freely and generously. Not only was he a mainstay (probably the 'underwriter' to their success) at a myriad of conferences (tax teachers, TIA, various universities) he was also deeply involved in the establishment ATAX - giving up entire weekends on this latter activity. He was active at Sydney Uni, Flinders Uni and perhaps less well known is the fact, that as a boy from Croydon, he recently has also been active as Patron of the University of Western Sydney Law Students' Society.

He was and is (just read a judgment or paper and you will see what I mean) the best of friends - just as we would all wish to be if we could. It is an honour to be one of the many that Graham thought of as a friend. Like all his friends, I will miss him dearly.

Associate Professor Patrick Gallagher, UWS

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He had one of the sharpest intellects I had the pleasure of encountering, but with a grace, humility and tolerance one does not always find in the law. This was one of the traits which struck me from the time I first "sat at his feet" in the 1980s with David Bloom, Tony Slater and others in his Sydney Uni LLM course on "Gift, Estate, Death and Stamp Duties" - or something like that.

He had a gentle way of leading people through the steps in his reasoning on an issue in a way that was challenging but not confronting - though not all his LLM students felt that way.

He would always listen patiently to alternative perspectives and interpretations, and was never dismissive or demeaning to those he thought were on the wrong track - though he certainly made it clear when he thought someone was missing the point (and believed, I think, that the current High Court frequently got tax matters wrong!).

I was always impressed by the amount of time Graham willingly and cheerfully gave to tax education. From the 1980s, when his earnings as a solicitor and then barrister meant that he was certainly not doing it for the money, he regularly gave classes on the taxation of trusts and other topics to students in various LLB, postgrad and fee-for-service tax courses that I ran at various universities. He had a wonderful way of simplifying complex concepts in a way that students could easily grasp, and providing an overview of the topic which enabled them to see the linkages and relationships within and beyond the topic.

I asked him once, in the course of yet again thanking him, why he devoted so much of his valuable and highly sought-after time to provide in effect "free" education. He replied that he felt a need to return something to the system which had given him so much.

Would that there were more with that view!

He was a good friend - in the good but also particularly in the bad times, which is the true test of friendship, and his family and friends, the law, and society at large, is much the lesser for his passing. I will miss him.

Robin Woellner, 11 September 2005

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A most fond memory of Justice Graham Hill was at this year's ATTA Conference Dinner sitting with him at dinner, chatting about tax cases, sport, teaching, etc. Graham was so knowledgeable, personable, with a keen sense of humour and wit.

Adrian Sawyer, 12 September 2005

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There are not many of their Honours who will turn up even to a conference of tax teachers unselfconsciously wearing jeans and a leather jacket, and engage in conversation on almost any tax topic. He had a frankness and a candour that made him engaging company though he always observed (more or less) the restrictions imposed by his judicial role. He was also one of those lawyers who reached the upper ranks of the profession entirely on merit, without family or social connections. Ironically he spent much of his career dealing with the problems of the rich, though he occasionally appeared for the odd "little guy"; see *Sharma v FCT* 84 ATC 4260.

Graham's expertise as a tax lawyer was a two edged sword on the Federal Court. Though he had the confidence of his colleagues on that Court, the High Court seemed not so impressed, or at least wanted to impose its own view (eg *Hart v FCT* 2004 ATC 4599). I know this bothered Graham, but he stuck to his guns (*Macquarie Finance Ltd v FCT* 2004 ATC 4866). He was very logical, very practical and very thorough. Occasionally I felt he could have been more succinct, but you were never left wondering what he had decided. In the best Dixonian tradition he did not overtly decide cases on policy grounds but some of his decisions were clearly intended to have a policy effect. In *Davis v FCT* 89 ATC 4373 for instance he virtually destroyed alienations of income as a tax planning device. Behind the conservative façade he was a creative judicial thinker. He will be sorely missed, especially from ATTA conferences. His influence will linger long through all those students he taught at Sydney Law School in the last 35 years.

Philip Burgess, 12 September 2005

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### ***5 Journal of the Australasian Tax Teachers Association (JATTA)***

The *Journal of the Australasian Tax Teachers Association (JATTA)* is now live!

I am pleased to advise members of ATTA that JATTA is now a reality.

You can access the first edition at the following address:

<http://www.atax.unsw.edu.au/atta/jatta/index.htm>

I think you will agree that the journal looks very impressive. Also, at the above web page, you will notice that we have also received our own ISSN number (ISSN: 1832-911X).