

Jeff Sher's 70th Birthday Party

Speech by Kate McMillan S.C. on Friday 26 May 2006 at a 70th Birthday Party for Jeffrey Sher QC

TONIGHT it is my great honour and privilege to speak on the occasion of the celebration of the 70th birthday of Jeffrey Sher QC.

Jeff was born on this day, 26 May, in 1936. He was admitted to practice on 1 May 1958. He signed the Bar Roll on 1 February 1961. He took silk in 1975.

Jeff has practised law for just over 48 years — nearly 3 years as a solicitor; over 45 years at the Bar — 30 of those 45 years as a silk. He is a silk in all States and Territories of Australia.

Jeff is one of the silks of renown at the Victorian Bar, indeed, he has a high profile Australia wide. He is a formidable opponent and a brilliant advocate.

Friends variously describe Jeff as tenacious, robust, no pretensions, hard working, bullet proof, warrior like, down to the task, charming, disarming, humourous, and in addition, from the women, as having youthful good looks.

In August 2003, 42 years after signing the Bar Roll, Jeff was annointed, along with others, as a Living Legend of the Bar.

On that night, Justice Alan Goldberg said that the legends were honoured because they exemplified the principles and standards for which a strong and independent Bar stands — integrity, hard work, ability and an absolute commitment to acting in their client's interests.

Alan described Jeff as having a well deserved reputation for utter competence and being relentless in the manner in which he runs his trials and, in particular, the way he cross-examines witnesses. His cross-examination was recently described as follows: "Sher hit a nerve, and without the benefit of anaesthetic, he drilled deeper."

Jeff's career of 45 years at the Bar is marked by its breadth and diversity,



Diana and Jeff Sher QC.



Son-in-law Dr Ian Glaspole and daughters Dr Julia Sher and Kate Richards.

1978 the highest damages award made by the Victorian Supreme Court for personal injury. This was followed shortly after with the highest settlement awarded to a plaintiff under the age of 18 in Victoria. By



Kate McMillan S.C.



Young Jeff Sher — QC in the making.

nowadays something that very few at the Bar could emulate.

From day one at the Bar Jeff did both criminal and civil work. He moved between the criminal and civil jurisdictions with ease. His practice encompassed a wide range of areas and his practice took him to all courts from the Magistrates Court through to the High Court.

On the criminal side, he appeared in rape cases, murders, stabbings with

intent to murder, attempted murders, conspiracy to murder, larceny, drink driving, dangerous driving, culpable driving, armed robbery, bribery, arson, assault and false imprisonment cases.

Some of his high-profile criminal matters were the murder trial of painter and docker Billy Longley and that of Maria Tramonte in Geelong.

He was briefed in the major personal injuries cases for plaintiffs winning in



His Honour Judge Leo Hart QC.

1983 Jeff was described as the only barrister to have got more than a \$1 million jury verdict in a personal injuries case in Victoria.

On the civil side, he appeared in all types of matters — corporate, sporting, estates, for newspapers resisting attempts to silence the press, in Royal Commissions and inquiries. He developed a defamation practice unequalled by anyone at the Bar — the *Wainer* libel case, the Jeff Kennett defamation trial and Popovic against the *Herald Sun* are just some that come to mind. There are many, many others.

In the commercial jurisdiction, he appeared in all the high-profile commercial cases: the NCSC inquiry into the cross shareholdings between Elders and BHP, the Battle between Murdoch and Holmes a Court for the Herald and Weekly Times Ltd, Meagher QC against

Packer, Gutnick against Dow Jones, Cathy Freeman against Bideau, Philip Morris against an anti smoking lobby class action, Optus Communications against News Ltd, Air New Zealand against the Ansett administrators, the Shane Warne doping case, NRMA against Heydon, the Village Roadshow case and the list goes on.

Somewhere in amongst all of these cases, he made time to appear as senior counsel for the Northern Land Council. These cases included the challenge by the NLC in the Kenbi land claim in the Cox Peninsula area, the land claim by the Jawoyn Aboriginal people for the Katherine Gorge and the challenge to the mining agreements for the Ranger uranium deposits.

Not only did he run these cases for the Northern Land Council but in his spare time he broadened the musical repertoire of his colleagues beyond the usual rugby songs by introducing them to his own rendition of "Hava Nagila" to the entire cocktail bar in the Paraway motel at Katherine. He has refused all invitations to make it an annual event!

There are many anecdotes to tell about Jeff but he has expressed a fear that these anecdotes may be defamatory. Let me say this. Whatever I say tonight is true and, Jeff, in any event undertakings have been extracted from everyone here tonight that they will not appear for you. However, never fear, I am told that Geoffrey Robertson QC cut his teeth on defamation cases and he might be available for you.

It would be remiss of me in speaking about Jeff to overlook his known failing. All would agree that Jeff's temperament is entirely unsuited to mediations. For some reason, when Jeff attends mediations a switch is thrown in Jeff's mind. He performs in a most peculiar manner. It usually has a sorry ending – he puts on his coat, shoves his chair back under the table and walks out muttering, "I'm not very good at this." I think it's called "throwing a wobbly".

In his early days, Jeff's communication skills were not quite as well developed as they became later on in his career. Whilst a junior on circuit, a nervous witness once asked Jeff what he should do when he was in the witness box. Jeff's advice: "Just watch what everyone else does." The nervous witness went into the box. The tipstaff called "silence" in the court. Jeff's witness looked up at Jeff and yelled "silence".

By the time Jeff was being briefed by well-known businesspeople, his commu-

nication skills had improved dramatically. In one particular matter, having advised that there was no cause of action, Jeff was challenged as to why his signature would not be endorsed on a statement of claim. He leant back in his desk chair and said slowly and clearly: "Briefing a barrister is not like ordering a pizza. You can't just get what you want."

Many of Jeff's cases have been written up in the newspapers. One particular case deserves a mention. The trial of *Gutnick v Dow Jones* was heard, at first instance, before Justice Hedigan. Jeff appeared for Gutnick, and Geoffrey Robertson QC, of Hypothetical fame, appeared for Dow Jones.

The consistent theme of all the invitees that I have consulted is that you have been much more than just a fellow barrister — you have been a good friend, a mentor and an outstanding leader of the Bar.

The media were all over it and here is why — "Hypothetically, it had everything ... everything and more. Because what they came for, packing out Supreme Court six with a standing-room only crowd of silks, solicitors and stockbrokers, was this: a clash between two of Australia's greatest barristers. On the one side, out of London, Geoffrey Robertson QC, the silver-maned and beautifully modulated expatriate champion of human rights. On the other side, out of Melbourne, Jeff Sher QC, with a reputation as a clinical merciless courtroom interrogator and infighter. It was the equivalent of a heavyweight championship, the thriller in a manila folder ..."

Melbourne silk David Bennett QC, writing about the case for the Bar News, said he was reminded of Sher in his early days sitting at a tiny desk beside the fireplace in the chambers of Voumard QC at Selborne Chambers. Then, Sher looked like a young blackbird ready to snatch a worm. On this day, Bennett said that Sher looked as though he had eaten the worm, had developed a taste and was ready for more ... Jeff was hungry for worms.

Now Jeff was very fair to Robertson. He warned him clearly about the strength of the Dow Jones case. He told Robertson on

many occasions that his case was "dead in the water"; "dead in the water in Victoria"; "effectively dead in the water in Victoria" and "to repeat a phrase I used in argument yesterday on this issue they are dead in the water".

The urbane Robertson resisted and fought back all the way: "In particular, I need to ... show Your Honour that the whole argument ... is not only wrong but to use the phrase that seems to be much in use at the Victorian Bar, 'dead in the water'."

History records that Robertson's "hyperbole out of London" was truly dead in the water, with a very sweet victory in the High Court going to the blackbird.

Jeff, as you know, Diana has arranged for most of your family and good friends from the legal profession to be present this evening to celebrate your birthday with you.

This occasion gives us an opportunity to let you know just how much you mean to all of us.

The consistent theme of all the invitees that I have consulted is that you have been much more than just a fellow barrister — you have been a good friend, a mentor and an outstanding leader of the Bar. You exhibit both the tenacity and toughness that we admire, the skills we all hope one day to display, and, perhaps, most importantly, an innate sense of justice that drives you.

On the night of the Living Legends dinner, (and after you had finished your lengthy mobile telephone conversation with the Attorney-General) you said that it had been a pleasure and a privilege for you to spend your working life amongst the quality and independence of the barristers who constitute the Victorian Bar.

For our part, it has been a pleasure and a privilege for us to spend the greater part of our working lives with you as a good friend, mentor and leader of the Bar. Be in no doubt — you are very much a loved son of the Victorian Bar.

And, Jeff, just in case you harbour any thoughts that your birthday is an excuse to think about retiring, let me disabuse you of such a notion immediately. You are a barrister's barrister and, as far as we are concerned, you are not yet done at the "coal face".

Tonight we not only celebrate your 70th birthday, we also celebrate your 45 years at the Bar and your 30 years as a silk.

I ask you to raise your glasses for a toast to Jeffrey Sher QC.

To Jeffrey Sher QC