

The Hon Jeffrey William Shaw QC (1949–2010)

By the Hon Justice Michael Walton

The Honourable Jeffrey William Shaw QC was a member of the New South Wales Parliament whose renown came not from being a politician, but from his contribution as a lawyer, law reformer, policy maker and statesman. He was an outstanding queens counsel and, in the field of industrial law, a giant, inheriting the mantle of Neville Wran, Jack Sweeney, Michael Kirby, Sir Richard Kirby and Bill Fisher; a scholar and an author, writing on subjects ranging from legal and labour history and theory to Bob Dylan; an academic holding visiting and adjunct professorships; and a devotee of literature (with Bertrand Russell rating highly in that interest), of drama (where Shakespeare was preferred) and music (ranging from Mozart and Beethoven to the Beatles and Bob Dylan).

However, it is his role as a lawyer that shall primarily occupy my tribute today. The preparation for that has been greatly enhanced by Jeff's propensity not to waste any good thought without publication.

Jeff was admitted as a solicitor on 19 September 1975 and commenced practice with WC Taylor & Scott Solicitors. He was admitted as a barrister on 28 May 1976 and commenced practice as a barrister on 4th Floor Wentworth Chambers (where he bought a room from Neville Wran QC), later moving to 14th Floor Wardell Chambers. Jeff initiated the creation of a new chambers, HB Higgins Chambers (which was opened by Justice Michael Kirby on 4 September 1987). He was very proud of the significant role those chambers played in many areas of legal practice, particularly industrial law.

Jeff was the very embodiment of what a barrister and, ultimately, a queens counsel should be. His capacity to



'Jeff personified and discharged the central ethos of the independent bar'. Photo: Newspix

identify the substance of a case and to present the argument with great clarity, conciseness, reason and logic made him a powerfully persuasive advocate. He was a superb appellate advocate and was warmly received in the High Court.

Jeff personified and discharged the central ethos of the independent bar. He was a fearless advocate who was not afraid to advance arguments that were unpopular or against the perceived wisdom.

In some respects, and perhaps slightly enigmatically, he adopted a relatively conservative legal philosophy, often referring in his writings, with approval, to the legal theses of Albert Dicey.

Jeff was no ordinary man, though he behaved like the everyman. He was neither lofty nor pompous. He was courteous, engaging and kind to those connected to litigation, even to opponents, and often, particularly in industrial matters, would try to find a consensus. That quality ultimately resulted in the successful passage of the *Industrial Relations Act 1996* which is, in

itself, an enduring legacy of the man.

He did much to encourage and develop aspirants for legal practice. Recognition of Jeff's achievements in the law led to his appointment as a justice of the Supreme Court in 2003.

However, there can be no greater demonstration of Jeff's love of the law than his eventual return to practice, as a solicitor, originally with Jones Staff & Co. and then by the establishment of The People's Solicitors. (The name was, quintessentially, Jeff.) That step also demonstrated his great courage, resilience and humility.

The public accolades for Jeff's outstanding record in the law and as a law reformer have been much welcomed by his family and friends after the burdens of recent times. However, many of the accounts omit giving proper emphasis to one aspect of his work from which he gained his greatest distinction as an advocate and which represented, for Jeff, an abiding passion. This was the practice of labour law.

Even in his final days at the Royal Prince Alfred Hospital, he insisted, over my desire to have a more personal exchange, on receiving the 'latest update' on industrial affairs, and, to my amazement, displayed an intimate knowledge of recent cases. That devotion started very early in his working life. In fact, Jeff disappeared from his honeymoon to do an urgent matter before Sir Alexander Beattie of the New South Wales Industrial Commission.

In his 2003 article entitled 'Our heritage of practicing industrial relations', Jeff stated that the 'professional practice of ... labour relations ... as a ... lawyer is a socially useful occupation, intellectual and tactically challenging'. On this analysis, he must be considered pre-eminent in the field. In correspondence to Elizabeth Shaw, Margaret Fisher, the widow of Bill Fisher, former president of the NSW Industrial Relations Commission, said that 'Bill always said that Jeff was the most able counsel and the best mind that ever appeared before him'.

His successes in significant industrial litigation in the High Court of Australia are legendary. For those aficionados of the area, I need only mention *Re Ranger Uranium Mines Pty Ltd; Ex parte Federated Miscellaneous Workers' Union of Australia* (1987) 163 CLR 656; *Re Australian Education Union and Ors; Ex parte State of Victoria and Ors* (1995) 184 CLR 188; *Re Boyne Smelters Ltd; Ex Parte Federation of Industrial Manufacturing and Engineering Employees of Australia* (1993) 177 CLR 446 and *Re State Public Services Federation and Anor; Ex parte Attorney-General for the State of Western Australia and Ors* (1993) 178 CLR 249.

Jeff's abiding interest in and influence on industrial arbitration and industrial

relations should not be overlooked. It is where he won many significant benefits for working people, and contributed to the establishment of precedents that continue to be applied. One small example of his success in the field, about which he was fond, was that he established, then somewhat improbably, jockeys may be employees as opposed to independent contractors and, hence, eligible to join The Australian Workers' Union. Apart from the enjoyment of meeting many prominent jockeys in the process, he was also delighted that he was able to resist the strong challenges brought by racing clubs to the New South Wales Industrial Registrar's decision by demonstrating there was,

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in fact, no appeal. He subsequently celebrated this success by the taking of a part share in a racehorse named *Solitary Echo* but this venture proved much less successful. Nonetheless, for Jeff it was exciting. On one occasion the horse, to the shock of all concerned, actually ran third. Jeff was so elated that he endeavoured to give the victory speech reserved for the winning syndicate at the presentation of the race trophy.

This recounting of Jeff's love of industrial law would not be complete without referring to his philosophy. His passion for this area of the law came with his understanding that it could be a force for the betterment of ordinary working women and men. What was foremost in

his thinking was the pursuit of fairness and, ultimately, social justice. He was a compassionate person and he had a great empathy for ordinary people.

A correlate to these philosophies was his active support for trade unions, and, particularly at an international level, for the protection of trade unionists.

I received a communication from Professor John Lund, the deputy assistant secretary of labour in the Obama Administration, who, after hearing of Jeff's death, commented on the excellence of his international efforts in the fields of industrial relations and occupational health and safety.

Jeff achieved much for labour rights in Papua New Guinea. He travelled to PNG, at his own expense, and, *pro bono*, gave lavishly of his time to assist PNG trade unions who were then under resourced and often unrepresented in significant court cases affecting their members' interests. He gave advice as to a wide range of legal and industrial issues, and, in particular, designed a legal strategy and ensured the legal resources to resist various challenges brought by substantial industries in PNG (represented by some large and well equipped law firms from Australia) to the legal capacity of industrial tribunals to reinstate an unfairly dismissed employee. His stewardship ultimately resulted in a substantial legal victory for

the PNG trade union movement in their Supreme Court.

If I may combine this account with my earlier discussion of Jeff's diverse interests, I should also mention that on the final occasion he went to PNG he was joined in celebration on the last evening by local unionists to show their thanks for his work. The evening was intended to be a small gathering of the key union officials but turned out to be a gathering of about 100 unionists and workers. The resulting picture was magnificent, as the evening was celebrated by Jeff on piano, accompanied by a local trade unionist

with a rather good voice, singing a medley of Beatles songs. I remember with particular affection their rendition of *Let It Be*.

This tribute would not be complete without noting my admiration for Elizabeth, James and Jonathon for the love and support they gave Jeff, and for their devotion and bravery in the most difficult of circumstances. They have my sincere condolences.

In conclusion, another measure of this man was the wide array, from all walks of life, of his friends who were and remain intensely loyal to him.

I was deeply honoured to have known Jeff Shaw; to have shared in his triumphs at the bar and to have been his confidante. He was a close friend, teacher and mentor. He leaves, too soon, a legacy that few will match in the practice and the development of the law in New South Wales. I have witnessed and been proud of his many achievements, none of which can be taken away from him. To paraphrase the Beatles: 'there, let it be'.

From a *Bar News* interview with the Hon Jeff Shaw QC in 2000

Fernon: When you first entered parliament you then had an established and successful career at the bar. What were some of the things that motivated you at that time to change your direction to take on the political career?

Shaw QC: I had been practising at the bar since 1976 and took silk in 1986. When an opportunity came up in 1990 I thought it was time to seize it and to take the chance. It was not without regrets and not without some sense of apprehension but I took the view that many barristers had played a role in public life and given the chance placed before me, I should do likewise. I don't regret that for a minute and although the five years in opposition were hard, combining the role of a shadow minister with the role of practitioner at the bar, the five years between 1996 and 2000 as attorney general were very satisfying. I was motivated to take a position in the parliament

by seeking to pursue some reformist ideas about the law and the legal system, to strive, however difficult the task is, to make the law more accessible to ordinary people. Hence, it was satisfying to me that I was able to persuade the Treasury in each of the five years in office to not only maintain but actually increase the amount of legal aid available from the New South Wales budget. I also took the view that it was useful to be able to persuade a government to maintain fundamental legal principles in the criminal justice system and to avoid the intervention by politicians into, for example, sentencing processes or other aspects of the legal system.

Fernon: What lessons do you think you've learnt from your time in politics?

Shaw QC: I have become a little more world weary and sceptical, but nonetheless there are ideals that are

worth fighting for and I have come away from public life with the idea that, despite popular prejudice to the contrary, there are many people in the parliament, indeed most of them, who are well intentioned and who are receptive to reasoned views from the community. Indeed, I think the great preponderance of people who go into public life are motivated by the idea of doing good things and that this is probably not sufficiently appreciated. The legal profession needs to understand, I think, that the politicians on both sides of the Parliament are receptive to rational argument and although there are occasionally some primitive anti-lawyer prejudices, mostly the members of parliament have regard to the views propounded by the barristers and solicitors of New South Wales, especially when under pressure and in need of good advice.