

## Simon Kerr SC (1972–2011)

On the afternoon of 14 October the bells of St James pealed resoundingly. The queue of mourners, come to farewell Simon Andrew Kerr SC, extended up Phillip Street past the law courts. This eulogy was given by Justin Gleeson SC.



The Bench, Bar and the broader legal community gathered in this church almost 18 years ago, on 16 December 1993, to mourn the passing of Paul Dixon Kerr at the cruel age of 49. Murray Tobias QC, as president of the bar, spoke on that day. Paul's wife Carol, and his son and daughter, Simon and Belinda, were present.

We gather again today, in equal or greater numbers, and with great sadness, to join Carol, Belinda and now young James Dixon Kerr, in saying our farewell to Simon.

My name is Justin Gleeson. I am head of Banco Chambers which was Simon's professional home and family for the last 7 years.

Simon's father Paul had come to the law late, with an engineering and architectural background. He had read with Tobias and established himself as a leading junior in fields of building and engineering and in local government. Paul spent most of his 40s fighting a skin cancer that attacked his face. Over time, his face became increasingly disfigured and he had to undergo numerous operations. He carried

on working till near the end without ever making a complaint or seeking any quarter from his opponents, and with a generosity of spirit, always helping out, and giving advice to, others. Paul displayed great courage and dignity in facing this terrible disease and his ultimate death. Tragically, his son has also had to face the ravages of cancer and an untimely death. Like his father, Simon displayed immense courage and dignity over the past four months.

About a year before his death, Paul came to Bret Walker, then shortly to take silk, and asked him to look after his boy Simon who was coming to the bar. Bret did so without hesitation. Bret and Murray proposed Simon for membership of the Association. Simon was admitted to the bar in September 1993 at the exuberant age of 21 years 8 months and 6 days. The records of the Association stretch back 97 years. Simon is the 6<sup>th</sup> youngest person to have ever joined the bar. One has to think back to the likes of Chester Porter in 1948 or Elizabeth Evatt in 1955 to find those who came so young.

Simon had been schooled at Sydney Grammar. There he chose to reveal only some of his talents. Most of us don't think of him as a sportsman, but the school records show he was the captain of the school's 2<sup>nd</sup> VIII rifles team, whatever that activity involves. Also it's not generally known that Simon had a brief flirtation with dangerous left wing ideas: the records show that from 1988-89 he had a stint in Amnesty International.

In 1992, he was one of the early

graduates of Bond University. The law was growing on him, but never in a narrow or merely bookish sense. He reported proudly to the Association, in support of his application in 1993, that at Bond he was manager of the Bond University NSW State of Origin Rugby Team, with his duties involving selecting the team and getting sponsors so the team could wear the best jerseys, and that he was chairman of the Student Residence Catering Committee. A dislike for wasting valuable time on poor dining was there from the start. His great friend Jason describes him from Bond days as old before his time. He wore tweed suits.

From the outset at the bar, Simon was a young man keen to work hard to make a success of his career, without any arrogant assumption that he would necessarily make it, particularly so young, but with an overwhelming desire to make his father proud of his efforts. Walker describes him as perhaps his most effective pupil in making Walker perform his duties as tutor: Simon was always there in Walker's chambers, with his work done well, and done on time, and with questions for how he could improve.

Simon worked not only hard, but also thoughtfully. He was there at a crucial time in the expansion of building and construction work. He rapidly grew into a role where he understood and enjoyed the challenges of working with senior executives and consultants, bringing together the lawyer's jargon and concepts with the real world activities in hand. His tastes continued to improve. Walker says

he introduced Simon to Meursault and Sassicaia at a time when fine French and Italian wines were expensive yet affordable; Simon continued to drink them when they had become simply expensive!

Simon's other official tutor was Guy Reynolds, later SC. His unofficial tutor was Bob Greenhill also later SC. Greenhill became a close friend and surrogate father. Bob should be speaking here today but I suspect Simon feared Bob would cry, swear or tell scandalous stories about the criminal cases in which Bob led Simon in the early days, or all of the above. Bob describes Simon from early on as a brash, bright, clever bugger, and that's the bit I can repeat.

Simon quickly moved into his father's large old room on Ground Floor Wentworth Chambers where his practice prospered and he enjoyed happy days until 2005. He was known there as the floor's resident real estate agent, always urging colleagues much his senior with perfectly nice rooms that they should back themselves to purchase larger rooms on the floor. He ensured the floor would enter the annual Bench and Bar boat race, with the day to start early with a lavish display of lobster and champagne and an equally good lunch after the race. His sense of humour was readily on display. He had no difficulty running around chambers wearing reindeer ears just because he had been asked to by the 6-year-old daughter of head of chambers.

Simon loved variously but always passionately. He loved the bar, fast cars, dining and women. It's difficult to know in which order.

Any reason to drive a fast, stylish car any distance was taken. Some reasons were undeniable. Simon would drive from Bond University to Sydney to see his father before he died. In the early years at the bar, Simon would get up at 3 am on the weekend to collect and drive Frank Corsaro later SC and Greenhill to be ready to tee off in golf at Stanwell Park at sunrise. At his height, Simon simultaneously owned the black Tom Magnum Ferrari 308 for weekend use, a BMW for daily use and a Bentley for occasional use. Simon also briefly owned the Beast, a limited production, imported Mercedes Benz AMG, which he collected in characteristically understated fashion. He opened a major case in Sydney, called the plaintiff, and at the end of the day flew to Canberra to collect the Beast. He then drove back to Sydney and resumed his case with the plaintiff in the box the next day. The Beast was stolen from Simon's private, alarmed garage in an elaborate, traceless theft which remains unexplained. This suggests that not only Simon considered the Beast special. Simon consoled himself with the purchase of his Bentley.

Kerr was the king of fine dining, particularly at lunch after a full day case had been efficiently disposed of in the morning. Otto, Manta, Rockpool, Beppi's, Glass. The list goes on. His colleagues learnt that the only way to get a last minute booking in Sydney was to do it in Simon's name and to endure the disappointment on the face of the restaurateur who, hoping to see Simon, was confronted with a lesser customer. Dining for Simon was in the original tradition of the bar.

It involved company, friendship, generosity beyond bounds or reason, the sharing of stories, and the passing on of advice about law, life and politics – of which he had a subtle understanding and always a profound interest.

A junior member of our floor recalls an early meeting with Simon when both were working late in chambers. Simon took him to his then favourite haunt, the Golden Palace. Mr Ho greeted Simon and took him straight past a long queue to Simon's favourite table. There Mr Ho summarily ejected the four Chinese gentlemen who were still eating, seated Simon and his colleague at the table and the champagne arrived immediately. Simon asked for his 'usual'. A waiter came up staggering under a large, writhing crayfish. Simon pronounced it unsatisfactory and demanded something bigger. Four waiters then arrived struggling to contain an even larger crayfish. 'Cut it up', said Kerr.

Simon's generosity to junior members of the bar was not, however, merely social. It was vocational and personal. He introduced solicitors to new readers and juniors, and then actively fostered those relationships. He was the first to sweep around Banco to gather up the readers to go to 15 bobbars, swearing in ceremonies and other bar events. Simon was proud that, as a junior, he had appeared in almost every court in country NSW. He helped junior members with practical advice on how to run cases in every jurisdiction; instructing them on how to (politely) stand up to judges, how to make objections,



Simon Kerr with his much-loved son James.

what submissions were necessary to secure potential appeal points and other invaluable practical tips. Perhaps most closely to his heart, he taught junior members to leave witty sledging to the silks.

Simon loved the bar in all its facets, more than anyone I have known. He loved dealing with clients and working up cases with his leaders and later his juniors. He loved working with or against the finest talents at the bar, and appearing before all manner of judges. No judge was left uncertain of the approach Simon was taking, and no client left in doubt as to whether

the case had been put as forcefully as possible. He could be abrasive, but never nasty. He loved jousting with opponents, the more senior the better. He earned their respect. He never missed a chance to show his wicked side. Once in the tussle between the Sultan of Brunei and the late Michael McGurk, Bergin J sent Simon, then a junior, and Noel Hutley SC out of court to agree a timetable point. Simon, acting for the Sultan, took the chance to remind Noel that the next time he flew to Europe it might not be ideal for him if his plane suffered engine trouble and had to land in Brunei;

Noel's name may have found its way to the watch list held by the Sultan's Secret Police! Noel tried to muster outrage, but couldn't help admire the cheek of the man. What Simon didn't let Noel know was that his real aim from the case was to be awarded a Pehin or Bruneian knighthood by the good Sultan!

Simon ran a most difficult action against the Commonwealth of Australia to great success. His loyal solicitor Andrew Thorpe said if courage and determination were a cure for cancer, Simon would still be alive. From the same case, his opponent, John Sackar then QC, described Simon as one who, while not silk for long, displayed a level of maturity, a complete mastery of the facts and an ability to use humour to overcome forensic difficulties in a manner those much older seldom display. In Sackar's words, if the Kerr family has a tragic gene for cancer, they equally have one for dignity and courage in facing adversity.

Simon was duly rewarded with silk in 2009. No barrister could have taken more seriously that honour or loved wearing the silk gown more. He was rapidly becoming one of the leaders of the bar. He had his hands over virtually every failed dam, road, building, tunnel and power station in the country. I personally have the treasured memory of presenting Simon with a red bag.

Simon was the glue that built and bound Banco chambers. He was instrumental in its founding, in its expansion, and in every stage of its life. Equally he never missed the chance to update his knowledge with Newlinds SC on the latest version of *Who's Who*, or on the

means to earn Imperial honours, Australian honours or indeed any medals or honours at all. He even contemplated turning Catholic if he could get one of those Knights of Malta Crosses. He had a talent for giving McHugh SC a gentle ribbing for any reason, or none at all. He regarded the advice of the Floor Leader as infallible, although he was selective in seeking it. His passing leaves a great hole in the heart of Banco, and a larger hole in the heart of Phillip Street itself.

Of all Simon's loves, his family came first. After his father's death, Simon was the 'go to' man of the family. His proudest moment was the birth of James with Lucy. The loss now suffered by his mother Carol, and his sister Belinda, is unimaginable. Carol and Belinda you have our support today. In recent times, Simon had found love with Jane. All of Simon's family are in our thoughts at this time.

Simon was diagnosed with stage IV melanoma some four months ago. He responded with great courage and bravery. He was a proud man, and did not want to tell too many people, even close friends and colleagues, how ill he really was. He forthrightly told his loyal solicitors in the largest of cases of his true condition. They begged him to continue in their cases as long as he could. And he did. He was still appearing before a senior arbitral panel and in the Supreme Court, until a few weeks ago. As

his father had done, he sought no indulgence and made no excuse. While gravely ill, he attended the 15 Bobber for Tom Bathurst as the new chief justice of NSW. He wanted to do the right thing and be there.

Throughout this period, as over the previous 9 years, his ever-loyal personal assistant Tanya Nakhl has been there. Tanya, the Banco community thanks you. We hope you know how important a part of Banco you continue to be.

Simon was interested in the affairs and cases of others until the end. He was more upset that he had to give others the bad news than for himself. In his last week, he still wanted minute by minute descriptions of the progress of Smallbone's case against the Bar Association. His humour never left him. He said at his final floor dinner that the upside of his condition was that so many barristers were now going to a particular Macquarie Street dermatologist but that, unlike Craig Thompson, he was still waiting to receive a credit card on the dermatologist's account. A couple of days before he died, he was all praise and good will towards two floor colleagues who had been made a silk and a judge. At the same time he roused himself to text his loyal instructor and friend David Cowling at 4am to advise that Cowling should be increasing his on-line bids for the green beret worn by John Wayne in the film of the same name.

In recent months Simon underwent treatment that increased his suffering in the hope of extending his life with James. From the age of 13, Simon had attended his father's chambers whenever he could to help out. In all, he spent 26 of his all too short 39 years in and around the two sets of barristers' chambers that he loved so much. In time, his son James, who was the absolute love and dedication of his life, became a regular feature running around Banco chambers, whether in his Grammar uniform or his karate outfit. Simon would always say to James: 'say hello properly to... Mr Gleeson, or Mr Newlinds, or Mr Dick or Mr McHugh'. Simon wanted things done properly and he wanted his son to have the full life with his father that Simon was denied. We cannot restore to him the latter, although James you will always be welcome to run around Banco, at any age.

Farewell Simon, you were a courageous, debonair, sometimes wicked, always funny, man; a superb colleague and a true and loyal friend.

You will be missed by all.