

John Spence Winneke
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When Jack Winneke retired from the Presidency of the Court of Appeal, he refused to have a farewell. He did not like people saying nice things about him, or making a fuss of him. I have to apologise now because Jack will not be too happy about much of what I'm going to say.

There had never been any question as to who would become the first President of the new Court of Appeal. His appointment was, of course, enthusiastically welcomed by all the legal profession, save possibly by the solicitors who had briefed him so often, and by the journalist Scotty Palmer who said very perceptively, "Why would Jack want to take that job when he's an AFL commissioner?"

He was a no-nonsense, easy-going, very humane, unpretentious man with a great sense of humour. He very rarely used profanity and I never saw him furious except when discussion turned to the Northern Territory Government's treatment of Lindy Chamberlain.

He was an extraordinary athlete and sportsman; so he was something of a rarity in that, in June 1995 he was to lead a group of first class lawyers making up the Court of Appeal, whose combined list of sporting achievements would struggle to fill a postage stamp. Those inaugural members, Brooking, Tadgell, Ormiston, J D Phillips, Hayne and Callaway, were all very highly regarded. The appointments that followed during Jack's presidency were all of the same high calibre: Batt, Kenny, Buchanan, Chernov, Vincent, Eames and Nettle. At the outset, the court was very fortunate in having in an acting capacity two of the most experienced judges in crime, Justices Crockett and Southwell, both then nearing retirement.

But any collection of first class minds may produce serious differences of opinion, leading in turn to fractured and festering egos. When the NSW Court of Appeal was set up in 1966, the ill feeling and animosities produced took 10 years to settle.

That this did not happen in Victoria was largely due to Winneke's sensitivity in the assumption of control, and the enormous respect which the whole legal community had for him. The trial division gave full and generous cooperation to the establishment of the new court.

When it came to choosing the President, there was no other candidate to consider. He had practised in, and mastered, every jurisdiction the law could offer, whether in court or royal commission, and his experience and skill as a barrister were almost unrivalled, matched only by Murray Gleeson and Michael McHugh in New South Wales and Neil McPhee in Victoria. The respect of his colleagues, both in the appellate and trial divisions of the Supreme Court, was such that the transition to the new court ran smoothly from the outset.

Before 1995, the hearing of appeals in Victoria had been a slow and cumbersome process. It was virtually impossible to have urgent appeals heard quickly and few, if any, at the Bar had been able to develop specialist appellate practices. All of this changed immediately the new Court was established.

Jack's first task was to develop the administration and procedure of an entirely new court. He was very fortunate in having as his associate his brother Michael, also an excellent lawyer and legal administrator, his devoted secretary Joan Simmons, his tipstaves John Tedder and Trevor Todd, and his

driver Steve Sterlus. Neil McPhee also offered to act as his tipstaff so he could wear his army medals in court.

They worked very well as a team but there were occasional stumbles such as, after introducing a new electronic card to gain access to the appeal courts, the card was mislaid, and Jack and Mike were locked in a court for some time. Even Mike's idea of using his David Jones credit card failed to work. Only their gales of laughter alerted others to the fact that the President and his associate were incarcerated in a courtroom. There was also a Duress Button under the Bench to summon armed police in emergencies. On several occasions the composure of measured legal argument in court was shattered by the SWAT squad bursting in with machine guns at the ready, summoned by the accidental pressing on the button (usually by me).

Winneke was the perfect judge to control and lead the court. He knew and understood all his judges, regularly made his rounds to see how they were travelling and developed an excellent relationship with all. He was a remarkable leader, an extremely hard worker, in chambers by 7.30 am, working until 6.30, at which time there would often be a tap on my door, "Time for a drink?" At the end of the day he enjoyed a whisky, but never to excess. He was always highly disciplined, taking home at night, and to Flinders at weekends, at least 2 loaded bags of work.

During argument in the Court Room, Jack was always fully prepared, in total command of the facts and issues. His humour was masked in court, because litigation is a very serious matter for the parties. But all were treated with respect and humanity in his Court: counsel were allowed to make their arguments - at least once, but not more than twice - and no lawyer or party left the court feeling their arguments had been unfairly dismissed. By contrast, a Sydney Court of Appeal judge once interrupted a silk's boring

submissions with, "I'm going to sleep now, and I don't want you to be here when I wake up." We never tried that in Melbourne!

Jack was particularly good with unrepresented litigants, able to explain the strengths and weaknesses of their case and what the court could or could not do. On one occasion in a criminal appeal when he was explaining to an appellant the difficulty with his case, the latter leapt to his feet and shouted, "You're a bloody liar." "Bloody" was not the adjective actually used. Other judges might have reached for boiling oil and penalties for contempt of court, but Jack merely said, "Mr Rich, you will go down to the cells, and we will go back to my chambers and have a cup of tea. When you have regained control of yourself, we will continue." There were no further interruptions.

Jack's many qualities, his fairness, humanity, compassion but above all his leadership, brought out the best in his colleagues and those appearing as counsel. He himself wrote judgements of the highest quality in every area of the law, and with expedition. His example ensured that all the other judges were determined to do their utmost for the court and the community, something that continues to this day.

The court's judgments were highly regarded. Justice Michael Kirby's view was that a relevant statistic in assessing the standing of an appellate court is the outcome of appeals to the High Court. The Court of Appeal in the first decade had only 10 reversals in the High Court (3 in crime and 7 civil), an average of one per year. This was at the time a consistently lower pattern of reversals of the Victorian court than of any other state's appellate court. A number of judges from other states have told me of the high standing that our Court of Appeal achieved in the first decade, which I'm sure continues.

Jack, from the beginning, introduced the practice of taking the court on circuit. Previously the Full Court (3 judges) had never sat outside Melbourne. With the enthusiastic support of the Premier, the Court of Appeal made 4 circuits every year, visiting all the provincial centres in which a Supreme Court judge had sat, commencing with Geelong, Ballarat and Bendigo.

Considerable difficulties were involved in the organisation of moving three judges, their staff, and other necessary facilities to each location, and the task would have been impossible without the administrative skill and energy of Mike Winneke. The circuits were welcomed by the legal profession and municipal authorities in all the regional centres, and Jack's skill as a raconteur was much in demand at municipal functions. One of his stories was that when Hawthorn played South Melbourne, Ken Boyd, the opposing ruckman told him before the bounce that he had a big nose which would be broken before half-time, and it was. Jack told this story on several occasions. Years later, Boyd, who had become an insurance executive, contacted Jack and said, "You've had your fun. As a matter of fairness will you come and address a group of insurance executives?" Which Jack of course happily did.

Despite his enormous workload, Jack served for a year as President of the Melbourne Club. He was an extremely entertaining speaker and members would no doubt have wished to listen to him more often. On one occasion when dealing with the Burke and Wills expedition, Jack reminded members that O'Hara Burke must have been the only club member to have died of thirst.

It was always Jack's view that he should limit the duration of his term of office to 10 years. He accordingly retired in June 2005 to the regret of his colleagues and the profession. We all thought he was exhausted. Thereafter

he and Sue lived principally in the house at Flinders, playing golf and watching football with their pugs, first Winston and then Rocco.

His remaining time was sadly marred by his failing health, but Sue tended him heroically and was with him to the end.

His achievements during his lifetime were extraordinary and will never be forgotten. He was an inspiring leader and an exemplary judge.

He was a great Australian.