

BALANCE

LAW SOCIETY NORTHERN TERRITORY

DAME ROMA MITCHELL 1913 - 2000

In her life time Dame Roma Mitchell was a fine lawyer and judge, a passionate advocate for human rights and a ground breaker for women in the law. Her list of achievements is extensive and reveals an energetic woman committed to justice and public service. News of her death in Adelaide on 5 March 2000 was met with sadness and a flow of praise for the woman cited as one of Australia's truly great achievers.

Dame Roma was not the first member of her family to practice law. Her grandfather was both a judge and administrator in the Northern Territory.

For as long as she could remember, Dame Roma had intended to pursue a life in law. She did this with characteristic vigour and in the words of Governor General Sir William Deane "blazed a trail for Australian women - in law, in public service and in academic life."

Her list of firsts for women in law include her 1962 appointment as Queens Counsel and her 1965 appointment as Supreme Court judge. In 1991 she became the first female Governor appointed in Australia when she was appointed the Governor of South Australia. She was appointed as first Chairman of the Australian Human Rights Commission in 1981 and acting Chief Justice and Chancellor of the University of Adelaide in 1983.



Former Chief Justice of South Australia and state Attorney General Len King AC QC, wrote in an obituary in the Adelaide Advertiser that "her firsts are well documented and memorable, yet they should not be allowed to obscure the real quality of her achievements."

These achievements include her incredible capacity for compassion, dignity and her keen sense of humanity.

"A feature which was central to her character was her sympathy for — and understanding of — the less fortunate in our society. Her kindness and interest in others — combined with her outstanding career — made her a very influential person not only in the public life of the nation and the state, but in the lives of many individuals," wrote Mr King QC.

Dame Roma's warmth radiated, and people who met her tell of her ability to love the people she served.

Darwin's Judge Sally Thomas told *Balance* about her meeting with Dame Roma, and of their shared interest in the Winston Churchill Fellowship.

"I first met Dame Roma when she visited the Territory as head of the Australian Human Rights Commission. I also had contact with her through the Winston Churchill Fellowship of which she was the South Australian chair, and later, the National Patron. Dame Roma was very

passionate about the arts, and later sponsored a fellowship in arts.

Continued page 4

- The quality of mercy..... 6
- Sporting challenge: no holds barred, no beg your pardons!..... 7
- Interviewing of Aboriginal people.....19

2

CHINESE WHISPERS Continued from page 3

On 14 April 1997 Sir Gerard Brennan, then Chief Justice of Australia issued a "Declaration of principles on judicial independence". That declaration set out that;

It should not be within the power of the Executive Government to appoint a holder of judicial office to any position of seniority or administrative responsibility or of increased status or emoluments within the judiciary for a limited renewable term or on the basis that the appointment is revocable by Executive Government, subject only to the need, if provided for by statute, to appoint acting judicial heads of Courts during the absence of a judicial head or during the inability of a judicial head for the time being to perform the duties of office.

The declaration made the point that there is a crucial link between judicial impartiality and the principles of judicial independence, understood as a set of protective safeguards. Sir Gerard Brennan stressed that one of the fundamentals of a free society is government by the rules of law, administered without fear or favour by an independent judiciary. Chief Justice John Doyle of the South Australian Supreme Court observed during his presentation at the Eighth Robert Harris Oration in October 1998 that public confidence in a system of justice that depends on maintaining the approval of the government of the day or of powerful interests would quickly evaporate. The key to retaining public confidence in the judiciary is its manifest impartiality. In short that means no "special remuneration packages" that are contained in documents which are not made available for public scrutiny and which may be the subject of renegotiation.

The Attorney General of the Northern Territory frankly and openly concedes he does not have legal training. However he considered the question of the Chief Magistrates "special package" to warrant the taking of legal advice once he became aware of it and to move to put an end to it when that step became available to him. He said that he did not believe there was anything untoward about the Chief Magistrate's remuneration over the two year period. That may be so, but until the documentation that sets out the precise terms of the agreement is released to the

public it remains a secret deal. Secret deals have a habit of giving rise to ongoing comment that is damaging to the status of the Court and can be the subject of ill informed and embarrassing speculation. Remember playing Chinese whispers as a child? Most members of the legal profession have never got over the experience. So, questions linger. How much was the package worth? Was the package capable of being renegotiated after two years? What precise entitlements did it provide that were not the subject of the previous Chief Magistrate Gray's remuneration as fixed by the Remuneration Tribunal? And why was the package only for a period of two years when the appointment of the Chief Magistrate was to age 65?

Two matters need to be attended to immediately. The first is that the documentation that sets out the "special package" should be made public. The second is that Section 6 the Magistrates Act should be amended to ensure that the remuneration of all magistrates is tied directly to determinations of the Remunerations Tribunal.

Judicial independence is an important protection of individual liberty. Almost all criminal cases are fought as contests between the government and a citizen. Governments are frequently involved in civil litigation, either directly or through corporations in which they have a stake. The idea of judicial independence is so very fundamental to the functioning of our justice system that it can not, and should never be, the subject of barter or trade to any degree whether that be at a personal level or more broadly within the halls of power.

If you like westerns, which I do a lot, you should hire the film *The Jack Bull* featuring actors John Cusack and John Goodman from your local video store. The film is set at the turn of the century in the territory of Wyoming. It explores the issues of the independence of the judiciary, the importance of the impartiality of the rule of law and, oddly enough, statehood. Central to the tale is the fate of a decent man who is determined to find redress done to him and another only within the legal system. It may be a Hollywood parable but it makes some nice points.

Dame Roma

Continued from front page

"She was a woman of enormous intellect with such an interest in people," said Judge Thomas. "She was able to relate to people in all walks of life."

"She was also very supportive of women in the law."

Dame Roma's encouragement of women in the law has been appreciated by a generation of women lawyers who look to Dame Roma's life as a model of achievement. She took particular effort to assist young women, believing all offices and positions should be open to women.

Reflecting on her nomination as Australia's first female Supreme Court Judge, Dame Roma later commented "I said at the time that I hoped I would live long enough to see the appointment of women to the benches of superior courts being accepted as not worthy of particular comment."

After taking up the position of Governor in 1991, aged 77, she commented that "...any new position for a woman is a good thing in that it is one more recognition of the fact that nothing should be barred to a woman."

Over her long career she never lost her enthusiasm for a life in law:

"Whatever the path which the LLB graduate may finally follow, my belief is that a career in the law is one which, whether the financial rewards be great or moderate, ensures that one's working life will be interesting and stimulating."

Dame Roma's life was certainly both those things.

She died peacefully in hospital in the company of her parish priest Father Maurice Shinnick who later told his congregation that "it was a wonderful end to a rich life".

A state funeral was held in her honour at St Francis Xavier Cathedral with a packed congregation of 1400 mourners. Lawyers, politicians, Aboriginal and church leaders, family and friends gathered to pay their respects.