

## JOHN WALKER QC

**Edited interview with Juliette Brodsky for Foley's List oral history and filmed by Stewart Carter in the Neil Forsyth Room, Owen Dixon Chambers East, 9 December 2009**

### Part One (Early Years)

- Q Well, John Walker QC, thank you very much for your time and for agreeing to be interviewed for the oral history. I'd like to start with your earliest years. You come from English/Danish stock, I believe?
- A I do, yes.
- Q And born in Melbourne?
- A I was, yes.
- Q And educated at Scotch College?
- A Correct.
- Q Tell us a little bit about those early years. You actually don't come from a family of lawyers, I understand, there are quite a few medical people?
- A That's correct. Unfortunately, I think in many ways it wasn't understood that I ought to be a lawyer until late in the piece, so at school I studied mainly sciences and mathematics and eventually realised that that sort of study wasn't for me and decided to turn to the law, which was a first in our family.
- Q Were you good at debating at your school? Is that what prompted your interest (in the law) eventually?
- A That's a good question. One of my friends at school and subsequently at university was Andrew Peacock who went on to be a politician and he formed a group of debaters called the Eastern Speakers and persuaded me to join that group. So I debated with Andrew for some years and yes, I think that assisted me in reaching the conclusion that I ought to be a barrister.
- Q What was Andrew Peacock like as a debater?
- A Oh, very good – persuasive, yes - and serious. You know, he applied himself much more seriously to debating than I did.
- Q So yours is more a jocular style of debating?
- A Well no, I'd love to think that. I don't think I'm that funny, other than to be laughed at rather than with, but no he was clearly on a career path early in his life. Whilst at school, even when he was 16, 17, we all knew he wanted to be prime minister.
- Q An ambition he never exactly fulfilled.

- A No, that's a pity, but he was a fine debater, yes.
- Q You also had at Scotch College, John Winneke who was later to become the President of the Court of Appeal, and I believe you actually sat together?
- A Oh yes, well, they sat us alphabetically at school and John and I were either one behind each other or across the aisle from each other for many years, and then we were friends through university and at the Bar and we're still friends to this day and he was an outstanding lawyer, as you know.
- Q John, of course, was the son of a very distinguished judge. Did he know even then he was going to be a lawyer?
- A I think both John and his brother Michael took the view early on that law was for them. Their mother was the daughter of a lawyer, a daughter of one of the partners in a major legal firm. Sir Henry of course had been, I think he was Crown Solicitor, and then became Solicitor General and (subsequently) became Chief Justice, and I think there was an inevitability about the career for both (sons) John and Michael who both studied law and were both highly successful lawyers.

## **Part Two (University Days)**

- Q So, following school, you then went to the University of Melbourne and that's where you did law and arts degrees?
- A Yes.
- Q Was it a combined degree, or did you do one and then the other?
- A I'm not sure of the answer to that. It was a combined degree in the sense that you get credits from one faculty to the other, but I graduated at different times.
- Q Did you have favourite subjects that you studied while at university?
- A Yes, I did. My favourite of all was psychology, and I was tempted to go on with psychology and forget about the law at one stage, but it wasn't to be, and it wouldn't have been a good idea, I think.
- Q You were nevertheless, I imagine, much later on when practising as a criminal barrister able to deploy some of your knowledge of human psychology?
- A I think it was helpful, Juliette, yes I do.
- Q You in those days were at a university where there were quite a lot of students but that was partly because it was the only university where you could do law....
- A That is so, yes. When you say quite a lot of students, it was a very small number compared with today.

Q I still imagine, though, (that) it would have been rather crowded - considering that was the only place you could do law, or was the barrier to entry a lot higher perhaps in those days?

A No, the barrier to entry was very low, really. I'm not sure whether you'd be excluded from any faculty with whatever results you got as long as you had a pass. The difficulty I think was finance. In those days, a lot of parents could not afford to support their children through university and even if one gained a Commonwealth scholarship, which most students did, there was still the support needed. So, the bottom line to your question is no; one didn't have the sense that it was crowded - there were open spaces that aren't there now and one did tend to befriend people from other faculties which I suspect doesn't go on much now.

Q Can you recall any interesting lecturers from your time at the university?

A Oh yes, well we had some wonderful lecturers. We had Sir Zelman Cowen as he now is, David Derham, I think he became Sir David, I'm not sure. They were both spectacular lecturers. We had a wonderful lecturer in the arts faculty, Mr Frank Knopfelmacher who had come, I think, from Czechoslovakia after the war and who was quite passionate about a number of political issues. He was a very interesting character. Look, I could go on, on and on. In fact, I'll mention one thing, the medical faculty had a wonderful lecturer called Professor Wright. He was known (as) - his nickname was "Pansy". I was never quite sure why, he was a very aggressive and masculine fellow, his lectures were so interesting that some of us from the law faculty would attend them occasionally just for the entertainment value.

Q What did he talk about?

A Oh, he was lecturing medical students, it wasn't that we understood much of what he was telling them about, it was his little asides that used to get us, cause us a lot of amusement.

Q Can you give any examples?

A No, I can't, I can't remember that far back, but I remember thinking years later what an odd thing for students to attend a lecture in a different faculty for that reason.

### **Part Three (Articles with Frank Galbally)**

Q After you graduated from the University of Melbourne, you did articles and here was when you began your acquaintanceship with a man who was to be very important in your life and that was Frank Galbally who was known as "Mr Frank".

A That's true, yes he was. He was quite a remarkable advocate. At that time, he'd already gained an enormous reputation in the community, with much publicity attracted to the cases that he did, spectacular murder trials, and I was very fortunate really to do articles with him because it showed me a side of the law that one doesn't learn at

university. I think it's then I really felt I wanted to be an advocate. So after articles, six or seven months later I came to the Bar. But yes, an amazing man.

Q While you were doing articles, did you have much opportunity to observe him in action?

A Yes, regularly. As an articled clerk, I would attend court with him, sitting where the solicitors sit on the other side of the Bar table and meeting his demands.

Q Demands?

A Well, you know, if an important legal point arose, he would turn to me and say "Answer this for me", which really meant (for me to) get the appropriate authorities and have everything at your fingertips so that he could deal with the issue with the judge.

Q Frank was interesting because of course he actually never went to the Bar; he was a solicitor advocate. They were more common, I believe, in those days than they are today?

A Yes there were, I can only think of three or four at the moment, there were probably half a dozen solicitor advocates. Frank Galbally was the most well-known of those, but there were two or three others: Maurice Goldberg who was a marvellous fellow, he had a practice in Richmond and he was a solicitor advocate but his cases didn't attract the sort of publicity that Frank Galbally's did; and Ray Dunn was also a solicitor advocate but he didn't go into the superior courts. I don't think we ever saw Ray Dunn with a wig and gown on, he went to the Magistrates' Court – (the) Court of Petty Sessions (as) it was known in those days - and he was a formidable advocate too. But Frank was outstanding. To see Frank Galbally in a major trial in the Supreme Court was one of those wonderful experiences, yes.

Q I understand there was some resentment at the Bar of Frank Galbally. There was some perception that he took the so-called easy murder trials, the ones that would garner him the most publicity?

A Yes, one heard that from time to time. It was quite untrue. Frank did enjoy publicity and I don't say that any denigrating manner. He enjoyed publicity, it wasn't just a matter of a commercial exercise and in my opinion without any doubt, he chose the most difficult cases to retain for his own personal attention and gave away the easier ones to the Bar to deal with and he did it for a number of reasons. I think he had a passionate sense of justice and if the case looked hard, then all the more important for him, he would say, to defend this person and make sure this person gets a fair trial and he had an incredible success rate. Really quite extraordinary. A greater success rate, while we're on this topic, when you look at the statistics, than the great Marshall Hall, an advocate in England and the great Clarence Darrow, an advocate in the United States. Frank Galbally's success rate was much greater than that, so this context of easy / hard cases is quite an interesting one.

Q Yes, I actually took the liberty of looking up Marshall Hall's success rate. I believe it was about 50% and Clarence Darrow's strike rate was about 60%, but Galbally's was about 80-90%.

- A Well, isn't it interesting that you should have done that, because they're roughly the figures I would have given you, if you'd asked the next question - yes.
- Q He was a tall lion-like presence and I read an interesting story about Frank apparently timing an address he wanted to deliver to the jury, when a shaft of sunlight burst into the courtroom. That would be typical of Frank Galbally?
- A I'm not sure. That's a story I've heard and I've heard it from one barrister who's just recently been appointed to the Supreme Court as a judge. He says he was there on that particular occasion. It's possible, but I suspect it was probably more like their subconscious awareness. He may well have noted the day before and the day before when the shaft of sunlight would come in through the window and perhaps by chance, perhaps by ingenuity, a dramatic point could be made at that moment. But certainly he was a man of theatre, there's no question.

#### **Part Four (Signing the Bar Roll)**

- Q We'll return to some more discussion of Frank Galbally in a moment, but going back to you, you were admitted to practice in March 1964 and then a few months later you actually signed the Bar Roll, and I believe you read with James Gobbo who was later to be Lieutenant Governor of Victoria as well as a Supreme Court Judge.
- A That's so, that was a privilege. James Gobbo was a very, very fine advocate and (a) highly respected lawyer and yes, it was a great experience reading with him and I learnt a lot from him. Some readers will tell you they didn't learn a great deal from their masters, but I certainly did from Sir James and he's a lifelong friend to this day.
- Q What do you think James taught you in particular?
- A Well at that stage, James Gobbo at that time had a practice that was largely in the area of local government but he was also a lecturer in the laws of evidence and by reading with him, I was exposed to a jurisdiction about which I knew absolutely nothing, because neither the Melbourne University's law degree course nor my articles had exposed me to the sort of work he was doing and because he was a lecturer in evidence, he would ask me and other readers subsequently to assist in marking the evidence exams. So I benefitted hugely from that.
- Q Did you ever do any devilling for James?
- A Oh yes. Devilling in the sense of paperwork, absolutely. First draft statements of claim, interrogatories, answers to interrogatories... Oh yes, yes, the masters made you work and that was the benefit that you gained, being obliged to do something that mattered and that was important.
- Q So you did that for about three months, that was the general course.
- A Three months was the reading period, it was compulsory.

- Q That's right, and almost immediately afterwards you were plunged into doing court work yourself?
- A Yes, oh yes. In fact, my memory is that, we were allowed to go to court and I think I was in court the first day after I was admitted to practice, but it was a minor matter in the Magistrates' Court - Petty Sessions as it was called in those days. But I was plunged into the deep water by Frank Galbally only eight or nine months after I was admitted to practice and he had me in a murder trial on my own in the Supreme Court of Victoria, probably because the fee was so low, only a junior would accept it in that instance, and there I found myself before, I think, Mr Justice Starke, and a murder charge. It was one of those occasions upon which the expression "my knees shook" took on a harsh reality. I can still vividly remember rising to my feet and my knees were literally shaking; it was a big moment.
- Q I suppose it wasn't helped by the fact that Justice Starke was known to be an intimidating figure as well?
- A Well that's true but only partially. He was known to be, he was a powerful personality but he was a very good man and I had done some work with him whilst I was at Frank Galbally's office, we'd briefed him in a quite significant matter, I've forgotten what it was now, it had an international flavour to it. So having worked with him, firstly he knew me which was a help. I mean he knew I was very junior, he knew the way I thought about things, and I felt comfortable with him because I knew him too. So it was really the fact that I was appearing for a person charged with murder, which, let's face it in those days, carried the death penalty if there was a conviction, and that was something I didn't want to have to sit through, the death penalty, fortunately the jury acquitted.
- Q I suppose, and this was something you were mentioning to me, it became a subconscious motivator if you like, that you'd worked hard to make sure that you got your client acquitted, because there was this fear of the death penalty always hanging over the trial.
- A Yes, you did, but in a sense because there was a death penalty, murder trials took on a special significance, not just in the minds of the lawyers, but certainly in the mind of the accused because whilst the death penalty still remained in place, anyone charged with murder really thought "I might be executed". So that added a quite different component to the atmosphere, in which you took instructions and spoke to your client. Not only that, the public were much more interested. They were sort of half hoping for that sort of result. So yes, they were challenging cases, murder trials in those days. Once they took away the death penalty, it just became another trial.
- Q The public galleries in those days were very much more crowded?
- A They were. If Frank Galbally was appearing, you had to get there very early to get into the court, much less a seat, but even in a trial where someone like myself was appearing, the trial itself would attract the public and quite often the gallery was full.
- Q Perhaps they should have charged admission?
- A They would have made a lot of money.

## **Part Five (Characters at the Bar)**

Q I read an account of Joan Rosanove, did you ever actually meet Joan Rosenove?

A Yes, Joan Rosanove was very much an icon of the Bar. I mean she was not only one of I think three female barristers then (I might be wrong, maybe four,) but I can only recall three, and of course she took silk, so she was a marvellous person and her brother, Jack Lazarus, who was a great advocate, and with whom I did a lot of work. Jack and I appeared in many cases together and indeed perhaps I'll put this in now, the late John Phillips, who of course became Chief Justice, John Phillips, Jack Lazarus and myself had a set of chambers here in Owen Dixon East, down on the first floor. So we worked a lot together, the three of us. So I met Joan, really, through Jack. When I came to the Bar, she was an elder statesperson, so I wouldn't have otherwise come across her.

Q I interviewed John Phillips not long before he died, and he told me that when he started at the Bar, one of his jobs was to light Joan's cigarettes.

A Really? Yes, well she was, she was always seen with a little cigarette holder as I recall, and a cigarette in her mouth. Oh no, she was a marvellous person, but of course in those days a female at the Bar was almost inevitably going to be briefed in matrimonial work, so I didn't come across her.

Q In her earlier work, though, I do recall something about how it was a very rare occurrence for her, but a very unpleasant one, where she had the opportunity or rather the situation of defending someone and watching the judge put the black cap on (to pronounce the death penalty) and it was a sickening horrible feeling to see that happen to your client.

A Yes, exactly and that's the point I was making. That was at the end of the murder trial where you've lost, you haven't been able to put your client's case properly or the evidence is overwhelming or the jury is perverse or whatever, and that would be a most unpleasant experience.

Q It never happened to you though in all the time that you defended people?

A I think it did. I have a memory once of feeling very deflated and I think it must have, but see there's the power of repression. I've put it out of my mind, I couldn't describe the black cap to you to this day, and I think from memory the judge may have even put a black sash around instead of, well maybe they always had a black sash. I've forgotten, but yes I think it did happen once. Of course, the sentence was a commuted but yes a most unpleasant experience.

Q Yours was a very broad practice though to begin with. You did "crash and bash" which is an inelegant way of describing car accidents and things?

A Yes, that's correct. Well you see Frank Galbally's practice as a solicitor specialised in motor accidents and personal injury cases and that sort of work and so there was a body of that coming in, and it came in from other solicitors because if they heard that you'd been at Galbally's they knew that you'd know what to do in that sort of jurisdiction. But it was even broader, I mean we did everything in those days, we went to the

magistrate's court and we did with minor matrimonial matters, maintenance matters, wives seeking maintenance from husbands, we did, I can't even remember, but it was a very wide range. Traffic violations, you know people charged with traffic offences, evictions from rented premises. It was a very broad practice but with someone like Frank Galbally throwing major criminal trials at me, and at others, I mean he provided a lot of criminal work for the Victorian Bar. There came a time when I really became known as a criminal lawyer rather than anything else.

Q What about "running down"? That's a term we don't use very much anymore, but your practice also included running down, can you explain a bit about what that involved?

A That's the same as crash and bash.

Q Oh, it's the same thing?

A It's called the running down jurisdiction.

Q Oh right, I see. Do you have any advocates? You've mentioned already Jack Lazarus and obviously Frank Galbally, were there other advocates at the Bar during those early years that you admired?

A Oh absolutely, there were many, and in different fields, but in the field in which I was practicing, that is general work plus crime with a bit of an emphasis on crime, we had some wonderful, we had John Phillips whom I mentioned earlier who was an absolutely outstanding advocate, George Hampel, Michael Kelly QC who became a County Court Judge, brilliant advocate. I should have been on notice on this question, I don't want to leave someone out, my own generation included people like Philip Cummins and Frank Vincent, I could go on and on, I'm sorry if I've left someone out. Then of course in other jurisdictions like prior to his going to the Bench, John Starke was just brilliant, look there were so many really good advocates in their different ways. They're all pretty good - you know, I didn't get anywhere near them.

Q Well, conversely in your early years were there any bad men judges who are now long gone, that you can mention that you appeared before?

A With the wisdom of age, I've tempered my opinion. There were times when not only I but others would come back steaming from court and saying the most unpleasant things about the judge before whom they'd just appeared and wishing him to all sorts of dreadful futures. But looking back on it, I think most judges, even those who were harsh and seemed unsympathetic to the cause, were generally doing the job as they saw it fit. I don't think there were too many, I can't even now think of a judge who behaved in a manner that I think was, on reflection now, inappropriate in the extreme which is really I guess what we're talking about. There were some magistrates who behaved very badly, but I think in many ways that was because they weren't qualified lawyers. It was a curious situation. The magistrate before whom you appeared in the court was not actually qualified to appear before the court over which he presided. Which, when you think about it, is an extraordinary thing.

Q I know quite a few years later they abolished the system of the justices of the peace.

A It wasn't just justices of the peace.

Q And also unqualified magistrates, and now you do have to have the qualifications.

A You have to be a qualified lawyer, yes.

Q That's right, although I have interviewed a few (retired) magistrates who maintained that they had a better knowledge of human nature than all these qualified types.

A Yes, and in some ways they're entitled to say that because in those days, they joined the public service in the, whatever the department was, the law department or whatever it was called, and they would start off at the age of 16, and they worked their way up the ladder and of course they were exposed to the police on one side and the lawyers on the other, and the defendants, the unrepresented people, they watched witnesses. I think in some ways they're right, they had a much better understanding of human nature in that area of the law, that jurisdiction, but of course when it came to a point of law, they weren't necessarily up to speed and barristers would often become very frustrated.

### **Part Six (Jim Foley)**

Q An important person in those early years for you at the Bar was your clerk, Jim Foley.

A Yes.

Q And I believe this is before you married, that you were telling me that Jim made you feel part of the family and he in fact invited you for a Christmas lunch?

A Yes, it was, I think, a Christmas dinner actually, but whatever, yes. He was a wonderful man, Jim Foley was. He had such a wonderfully paternal approach to us all. He took us under his wing as individuals. Of course the Bar was much smaller. I dare say his list was less than 50 barristers, there were, I think, four or five clerks in those days and maybe a Bar of 220-odd to 230. So your clerk got to know you in a much more personal way. But (Jim) was exceptional, yes, he would help you out in the most extraordinary ways and he had an understanding of the sort of work you wanted, so a lot of the solicitors simply rang a clerk and said "who have you got free for such and such a case?" and he would farm it out equally. But if he understood you had a particular interest, he'd follow that up. I think it was (in) that very first year, he said, "What are you doing?" I was on my own - my father was dead and my mother was with someone else - and I said, "Well I haven't got anything on". He said, "Come out and have dinner at home". He lived out towards Heidelberg somewhere, near the river there, near the golf course, and so I went and met his wife. He was marvellous.

Q You described him as an old English-style clerk, and I'm interested to know a little more about what you mean by that exactly?

A Well, the English clerking system was a little different from ours. Their sets of chambers are smaller, well they were smaller, it's understandable of course that there were differences and you know a group of maybe a dozen barristers would have a clerk who did much the same thing farming the work out, and Jim had brought that tradition to the Victorian Bar. I suspect when he became a clerk, because I can't remember

when it was, but I suspect the Bar was probably only 100 or so, and he probably did represent a small number of say 20 people, so he brought that tradition with him, and he had that rather old fashioned courtesy. I mean everyone was “Mr”, I mean I had much difficulty, I still remember saying, “You know, you don’t call me ‘Mr’”.

### **Part Seven (The Forged Ten Dollar Notes case)**

Q You were involved in an interesting case shortly after the introduction of decimal currency in 1966. You defended one of four men who were accused of counterfeiting the new \$10 notes and I’d be interested to hear a bit more about this, because I believe a lot of the evidence in the case was almost entirely circumstantial?

A Yes, that’s a fair comment with one exception, which I’ll deal with in a moment, but it was largely a circumstantial case and it was a most interesting trial. It’s known as the forged \$10 note trial. It involved these four people, they purchased a Gestetner printing machine, during 1965 and were ready for the changeover from pounds, shillings and pence to decimal currency in February 1966 and they acquired paper, which matched the Reserve Bank’s printing press paper and did a lot of homework. They produced really quite remarkable notes, which they then, I think, had distributed to groups of petty criminals, ready to get going in February. Not many of the notes went into circulation - they were apprehended before too much damage was done - because they produced millions of dollars’ worth as I recall. Thousands and thousands of these, hundreds of thousands of these forged notes. Now that trial became one of the longest criminal trials in Victorian history. Eight weeks. Doesn’t sound much today, but at the Bar table I still recall Bill Crockett (he was then a QC and later became a Supreme Court judge) - he was prosecuting and there was myself appearing for the so-called ringleader. John Phillips appeared for one of the accused and I think Guy Newton-Brown appeared for one of them, and I don’t recall what happened with the fourth, but it was circumstantial evidence, there was much analysis of ash where paper had been burnt, a lot of scientific evidence which is where I was rather glad I’d studied science at school because I did at least understand some of the basics and I was able to cross-examine along those lines, not that it did much good in the end, and yes circumstantial except for this. Guy Newton-Brown’s accused had made a confession whilst the jury were told that that confession was admissible only against him. As you appreciate, it must have been difficult for the jury to put it out of their minds when considering the guilt or non-guilt of the other accused, the confession of the co-accused.

Q I was interested to learn that these counterfeit dollars were manufactured in the garage of Dr Bertram Wainer who later became famous for his pro-abortion stance.

A Yes, that’s so. That arose simply because the ringleader had married Dr Wainer’s sister and Dr Wainer gave evidence in that trial saying that as far as he was aware, no such activity had taken place in his garage. Whether that was believed by the jury or not was unknown, because whilst they did convict the accused, it doesn’t follow that the notes were printed there, but the evidence was pretty overwhelming that whatever it was the Crown produced in court had certainly come from that particular location. I think one can conclude the jury thought that that was evidence of the printing of the forged \$10 note. It was a most interesting trial and you did mention this to me and I actually

brought in one of the forged \$10 notes for you. So, whenever you want it, I'll produce it.

Q That'll be marvellous. Brian Bourke who was also interviewed for the Bar oral history a few years ago mentioned the forged \$10 note case, but in that instance he was acting for, I think, probably one of the criminals you were alluding to earlier, Bert Kidd, who was a well known petty criminal of the day.

A Yes, he was - Bert Kidd was quite a character. Some of those criminals were bad men but they didn't seem to be as bad as some of the criminals of today, there were no drugs around in those days, there was no drug dealing. I remember acting for Bert Kidd once when he was charged with kidnapping and false imprisonment, and he and some other rascal had abducted a fellow, a fellow criminal, they drove him out into the country, put a shovel in his hand and said "dig your grave". Now whether they intended to carry out a threat or whether they were just frightening him, one never knows because he chucked the shovel at them and ran off into the bush and escaped. They were subsequently charged and I appeared for Bert Kidd at the committal proceedings. There was never a subsequent trial because I think the witness had a lapse of memory some time after the committal and the crown didn't have a case to proceed with, but yes, he was one of those to whom these notes were distributed.

## **Part Eight (Representing clients)**

Q You alluded earlier to your interest in human psychology. During the course of your career acting for criminals and accused, did you ever come across someone whom you felt was truly evil?

A Well no, I can't say I did, even on reflection. Of course, my views about clients (would) change, but I learnt early in my career that you really were obliged, not just as a matter of academic principle or philosophical principle, to accept your client's instructions. I learnt that in a case where it was a pro-bono, legal aid of some sort, didn't have legal aid, public solicitor or whatever, but it was one of those cases one felt obliged to do, there was a chap of about 50 (who) was charged with rape, and I won't go into all the details. He came into my chambers and sat down and I started to talk to him. I said "tell me what happened". He said, "Well, you won't believe me - no one does, police didn't believe me, the magistrates committed me for trial..." He was clearly dejected, and I said, "Well, you tell me". He told me and it was a pretty incredible story. I won't go into the details, but I said, "We'll work on this". Anyway we went to trial and I put his case to the witness, the alleged victim of the rape, and in no time it began to emerge he was telling me the truth. It was one of those very rare cases where at the end of the trial the judge said, "Retire to consider your verdict". (The jury) refused to retire and they said, "We find him innocent", and the judge said "You can't find 'innocent' in our courts - you have to say 'guilty' or 'not guilty', and they said 'not guilty'. Now at the end of that, I thought to myself (that) if I'd been asked to judge him, I would not have believed his story. So when I look back and you ask that question about truly evil people, yes, I've appeared for some very bad people. I mean there's no doubt about that. I've acted for Les Kane who was clearly a bad criminal, (and) Christopher Flannery (who) was a very bad criminal, but in the context

of the cases where I've appeared for those men, the evidence simply wasn't sufficient to satisfy juries beyond reasonable doubt. Looking back, I don't think they were pretty desirable characters.

### **Part Nine (Guilty versus Not Guilty)**

Q Did you ever find that juries could be wrong? I was interviewing Jeff Sher QC not long ago and he talked a little bit about (how) if the jury liked the accused, there was often a chance, a reasonable chance of getting someone off if you like, but it did come down in some ways to what the jury sort of felt collectively about the guilt or innocence of the person. It seemed to have something to do with what they felt, almost a visceral reaction to that person.

A Yes, well, can a jury be wrong? Well, of course the first question you have to ask in the context of that question is: what is the state of evidence? Is a jury wrong if they correctly convict a person, but do so on inadequate evidence? Or are they wrong when they acquit even when the evidence seems to the rest of us to be overwhelming? Can they be wrong? Yes. I once appeared on appeal for a man who in my opinion was completely innocent of the crime of which he was charged, but in those days we appeared before three judges on appeal. I persuaded one that the man should have a retrial and sadly I didn't persuade the other two and to this day as far as I'm concerned, an innocent man was convicted. So the jury was wrong, but against that, the prosecution produced evidence which, and I don't suggest they did it with any malice, but it was inadequate and I'm satisfied from the fresh evidence that we had that the man was innocent. I'll tell you one classic case where the jury was wrong. (This) was the Lindy Chamberlain trial - clearly wrong, no doubt about that one.

Q That, do you think, with hindsight was again based on a rather (as I think that film some years ago intimated) visceral reaction to the fact that she wouldn't cry? (Lindy) wouldn't show emotion, that type of thing?

A I'm going to take that theme up with you and I think that's very much part of it, but one must remember (that) in the Chamberlain case, the jury was presented with evidence that we now know was wrong, completely wrong. What was said to be blood in the car was in fact over spray Duco type, so the wrong reagent was used, or a reagent which was an elimination agent was used to demonstrate a positive presence, and that was just completely wrong. But yes, the media certainly presented Lindy Chamberlain as a person who was quite different from everyone and rather hard or harsh, and I dare say in the court, the jury's reaction was a bit that way and I've seen that in other trials, yes. I don't think there's any question that the feeling in a court can influence a jury, and perhaps that was part of Frank Galbally's great success.

Q Did you ever get, during the course of your career, exasperated with the way media covered particular stories?

A Constantly, because inevitably the media (and it's understandable although I still dislike it) have to present a snapshot of the day, and if the day's court proceeding has gone on for four or five hours, the snapshot is not going to give a fair picture and

what's more, the media feel that if something sensational did happen, then that's the news story and of course one is constantly... The day after a particular publication in The Age for example, (my) complaining to the judge that the jury had to be warned that if they read that paper, that that was not a proper interpretation of what happened the day before and I'm sure that they understand that. But yes, you were constantly worried about the media.

Q What about the opinions of opinion section columnists about sentencing? I remember Brian Bourke spoke very strongly about how inadequate he felt the understanding of various opinion page columnists was, about how sentencing actually works and what a year of jail can do to a person, let alone 25 years.

A Yes, Brian Bourke... I left Brian Bourke out earlier from my list of great advocates so he's right up there with them. I'd like to be asked the question again after I've had a look through the Bar Roll to refresh my memory. Brian Bourke is a person whose opinions one would inevitably respect and I think that's partly true but I do think if the media would simply publish dreary accounts of sentencing for the day to give a balanced picture no one would ever read it. What the media I think in the case of sentencing are trying to do is to highlight those cases that go wrong and I'm not sure if there's anything particularly bad about that as long as the community is made to understand that they are picking out the exceptions, they're not really trying to present a picture of general sentencing that they're saying when, often they're saying if the same judge is constantly making mistakes what can we do about this? I mean I think that's one of the questions.

Q When you mentioned John Phillips a few moments ago, of course he acted for Lindy Chamberlain during that infamous trial. (H)e felt so strongly about the aftermath that he became involved later in the establishing of the National Institute of Forensic Science, and just as an aside you were involved too as an advisor?

A Yes, I was on the advisory board of that institute and yes he did feel very passionately about the injustice of the Lindy Chamberlain trial and I must say in that instance I have no doubt the jury were prejudiced against Lindy Chamberlain but setting that aside, as I've said when the evidence says there's blood in the car and in those days it was impossible to challenge that, it was only with the Royal Commission that that sort of error was able to be revealed. John was very upset by that because in his heart I suspect he sensed that she was innocent, although we don't usually form those judgements because they will cloud our presentation and it was a wonderful thing that he set up that institute because it's been very important in the development of full national understanding of forensic science issues.

Q You played some role there too, though, didn't you?

A On the board, I was on the advisory board and yes I played quite an active part, one of the procedures that I was most involved in was assessing the merits of various scientific papers submitted to the institute for consideration, publication and awards.

Q You also, I imagine though, felt strongly about it, just given the depth of your own experience and what, for all I know, may have been for example flawed police work perhaps in homicides and the like?

A Yes, there were times when I was troubled by the lack of professionalism in the presentation of scientific material and I can still recall in one murder trial there was an analysis of the manner in which forensic evidence had been gathered which led to the acquittal of my client in that instance and I was grateful that I had sufficient understanding of science to be able to put that. But having said that, it's fair to say that in those days not a lot of money was available for the development of forensic science departments, it was growing, it was a bit of an ad hoc affair, so yes there was a lot of need for the sort of institute that John has set up and even to this day as we've just seen in the last few days, there's a real concern about the procedures and the laboratories when gathering DNA and you know it's very troubling and scientific evidence of course carries a special weight with jury's. It's one thing to listen to an eyewitness and see after cross-examination how his initial evidence or her initial evidence has been affected by the cross-examination. It's another thing to have a person whose credibility is under attack but science - specific evidence - they tend to think is absolute and that's a worry.

### **Part Ten (The Krope Case)**

Q I'd like to return briefly to the subject of Frank Galbally because you did get briefed a lot by Frank Galbally.

A I did, yeah.

Q Now one of the most famous of Frank's wins was the murder trial of William Krope, who was a young man who had shot his father 27 times and I believe that Galbally gambled on showing a jury how the whole family, the Krope family had lived in fear of the dead man. Now you worked in this case as well. Perhaps you'd like to tell us a little bit more about that particular trial because it got a lot of publicity.

A It did. That was a major murder trial at the time, there was no death penalty then, this was the late 70's as I recall, about 1977, do you know if that's correct?

Q Approximately, late 70's, yes.

A William Krope was charged initially with the murder of his father, and then they charged Mrs Krope, the mother, on the basis that they said the evidence showed that she had persuaded the son to kill the father, her husband, and they were acting in concert, and I was briefed to appear for Mrs Krope. The reason, well it got a lot of publicity for several reasons, the first was that William Krope's sister, Gloria Krope, had been Miss Australia, so it sort of became known as the Miss Australia case which was pretty unfair for Gloria Krope because I don't think she was even around at the time. I think she might have even left the house by then, but she did give evidence which of course attracted even more publicity and as I said earlier, Frank Galbally attracted publicity in himself so there was huge publicity around that case. It was a most interesting case because you might almost argue it was the first sort of battered wife syndrome case. It didn't run on such a defence, we ran on self-defence, but it was a removed self-defence. The account was that William Krope feared, by reason of a whole history of bad behaviour on the part of the deceased, he feared for his life that

night, that had to be self-defence, and there's no doubt he did fear, and I'll come back to that in a moment. But he thought his father had a weapon, (so) he got a weapon and he shot him, as you say, 27 or 28 times. Now of course one of the problems was the weapon held only 10 bullets so he had to actually reload twice in order to get all those bullets into his father which didn't sound a lot like self-defence, but as Frank Galbally put to the jury the first, no one can say what killed the man, so you have to proceed on the assumption that the first bullets killed him, and the rest was just this enormous sense of pent-up rage, not a conscious act and he ran that extremely well. I can't remember what part I played. I had to address the jury, but I think I came after Frank Galbally, so probably I didn't have much impact but it was a major trial and quite sensational.

Q I believe one of the things that Frank Galbally did was (that) he took the jury to the Krope house and showed them the peep hole in the bathroom wall that Krope Senior used to spy on his daughters in the shower.

A Yes, we asked for a view, I actually found that hole myself. Mrs Krope told me she suspected that there was a peep hole, and I went around the house and sure enough found it and we asked the judge to have a view at the house, they probably would have had a view in any event, in those days most murder trials involved visiting the scene so that when the witnesses were cross-examined about who was where and what was happening, they fully understood just what was the case and they could put it in a proper context. Yes, the jury, they all filed past and peered through the peep hole where he used to look at his daughter in the shower which was pretty nasty stuff.

Q Was it also Frank Galbally's advice - or was it yours - that Mrs Krope should appear on a television current affairs show and speak about the whole situation?

A Well, I certainly didn't advise her because she was charged after that interview, that was the principal (factor in the decision), that was very much the case against her. I mean, it was an important part of the evidence so I didn't act for her then and I doubt whether Frank Galbally advised her to do it, I think she just must have done it off her own bat. He would have been only acting for the son; she went on television. Now I cross-examined -

Q Was it *A Current Affair*?

A - I cross-examined the lady.

Q Or Mike Willesee?

A No, no, it was a lady interviewer, well known at the time. I'm not sure she's still around, I think it was Channel Two actually. But anyway, she gave evidence, she had to give evidence to support the video, as it would have been I suppose, of the interview. So it was after that interview (that) the police then charged her.

Q Yes, did you think it was unfortunate that she'd decided to go to the media?

A Yes, it was difficult because she said all sorts of things that made it much harder to run her defence.

Q She obviously didn't know that that could be prejudicial to her case.

- A No, she can't have. I think she thought she was helping her son.
- Q There was something about the jury crying when Galbally was delivering his closing address?
- A Well, I don't remember that but it wouldn't surprise me, I can still see Frank standing up to address that jury and now you've got to, I would have appeared in, I suppose I don't know how many, 20-30 murder trials with Frank Galbally, me appearing for one accused, him appearing for another accused so I was pretty much used to the way he addressed jury's. But he was incredibly dramatic in that trial. He rose to his feet, it was a packed court, people were standing, the sitting room, all the sitting seats were taken, and he rose to his feet, he had this dramatic way, it wasn't conscious, he was just a natural advocate, and he rose to his feet and his opening words to the jury dealt with a cross in Jerusalem and a man hanging and two other, he was talking about the crucifixion of Christ, all eyes were on him. Then he moved into all sorts of other areas of the miserable life these people have led, and yes it wouldn't surprise me at all, I don't remember looking at the jury with that sort of intensity, but I have seen Frank Galbally reduce some of the more harsh Supreme Court judges to tears when making a plea for leniency for sentence. He had that capacity. So I'm not surprised to hear that someone observed that.
- Q Did anyone else you knew have that same ability, to reduce judges to tears?
- A No. He was an extraordinarily gifted advocate and I don't recall anyone else managing to do that. I mean we all at times can present a story on behalf of an accused person which would tear at the heart strings, and judges demonstrate all that sympathy but I don't think I've seen, I certainly wasn't able to reduce a judge to tears and I don't recollect seeing anyone else do that.

### **Part Eleven (Advocacy)**

- Q You've been described nevertheless as an excellent criminal barrister, an advocate, what would you say about your own advocacy style? What were your techniques?
- A I think that was a kind remark. I didn't have a technique. I worked hard at trying to do my best with cross-examination and then I just, I talked the case. I don't believe I had any techniques, I'm sure I had mannerisms that others will laugh about, but I really took the view that if I've properly prepared the case and if I've conducted the proper cross-examination I should be able to talk to the case and that's really all I ever did.
- Q What about your cross-examination style, though?
- A Well, I would like to think that it was reasonably good, because I did work hard at it. Frank Galbally, he didn't cross-examine with great enthusiasm. He would often say to me in a trial when I was for one accused, he was for the other, he'd leave it to me. He'd either say, "no questions" to the judge and leave it to me to cross-examine, or he'd sometimes say, "I'll ask a few questions and you do what you like", that sort of thing. He depended very much more upon his advocacy. I didn't have that confidence

in my advocacy and in any event it always seemed useful to get some facts that might help, so I worked hard at cross-examination.

Q When you say you worked hard, were you studying the whole time the person's body language?

A Much earlier than that. You look at their statement, you look for the weak links, you look for where you can get a wedge in, you look for their credibility, I mean you can, and then you study their body language and the first, the opening questions in any cross-examination have two purposes, one is to set the tone for the cross-examination with the witness, let the witness know, if you want, that it's a hostile cross-examination or perhaps lull him into thinking that it isn't, so you're setting whatever tone it is that the witness might give, according to his responses. So those are the first questions and they enable you to read the body language. I mean there are times funnily enough where you want the jury to think that you are hostile to the witness whereas in fact you know the witness is on your side, so you actually have to work at your cross-examination and it's not just a matter of on the day, you do all the homework first.

Q These, I imagine, would have been some of the many pearls you would have imparted to your eleven readers.

A Eleven readers, yes, I had eleven readers. Well, yes, I tried. Some of them have been kind enough to say nice things about it but yes, I did take an interest in all of them.

Q The Bar is known or described by many I've interviewed as having a very collegiate atmosphere. A few people I've interviewed have said sometimes that their masters weren't particularly helpful but on the whole you played quite an active, for example, role mentoring your readers?

A I did, because, well for a number of reasons, firstly they were all nice young people and naturally I could remember how apprehensive one could be before court so I encouraged them to talk about their cases if they had any questions for me and of course to help them know where to find the answers rather than just give them the answers. Which particular statutes, which particular case law might be helpful, get them into the habit of always going back to the statutes or the common law.

Q So a kind of "teaching a man to fish" principle?

A Yes.

Q Rather than giving the fish?

A Yes, well that was my aim. Some of them will tell you in a somewhat jocular manner that they've learnt more about investing in real estate from me than the law but I think they're just having a bit of fun.

## **Part Twelve (The Norfolk Island Public Art Gallery Case)**

Q In the 1970s - you took silk in fact in 1980 - but at some point in the 70s, you started moving into tax work.

A Yes.

Q I believe you were briefed by the late Arnold Bloch to do tax work and I was reading a description of Arnold Bloch by Mark Liebler who became, as we know, a partner in the firm. Arnold Bloch was described as having a brilliant mind, (an) incisive wit, who taught his employees to respect his clients. What were your own impressions of Arnold Bloch?

A Well, I agree entirely with that. I didn't have enough exposure to Arnold Bloch to be able to make a meaningful comment other than the broad general one which is as much about his reputation as anything else. But yes, he was kind enough to send a few briefs to me in the mid to late 70s in both commercial and income tax work. Not so much for my expertise in taxation law but rather to ensure that whatever was being done on behalf of the clients wouldn't transgress the commercial crime barriers or bounds and then subsequently a solicitor called Robert Heathcote joined the firm and by 1978 or thereabouts Robert was briefing me quite regularly in commercial, that type of work and really I guess that's partly why I took silk in the end. Crime was behind me in effect. I might have done one or two criminal trials after 1980 but mainly it was then commercial fraud work that I was doing.

Q The late 70s-early 80s was a period of tax avoidance.

A Correct.

Q I guess that's not quite how you would have viewed it in as much as what you were having to do was more about advising people on tax schemes that people could know about in advance, with a view to minimising their tax?

A Yes, the aim of that firm in briefing me (and then some other firms began to also fortunately) was to ensure that whatever schemes their clients were contemplating wouldn't lead to charges of conspiracy to defraud for example. So what it meant was, that I had to really turn my mind to both tax law and corporations law to understand the limits that those statutes placed upon these activities and really in those days the limits were much wider than they are today. The government legislated and then we had the Costigan Inquiry which exposed what they call bottom of the harbour schemes and they clearly went beyond the limits but it wasn't as clear then. It was a pretty interesting area to be working in.

Q Then with the benefit of hindsight, it turned out to be more than an interesting area.

A Oh yes, it changed my career entirely and I loved the work I must say, but that's really all I ever did after the early 80s.

Q Can you tell us a little about the Norfolk Island Public (Art) Gallery case in the mid to late 80s?

A Yes well, that case arose – initially, I think, it came to light in the Costigan Inquiry from memory and I might be wrong about that, but there was certainly an enquiry that led to an investigation of an accountancy firm marketing scheme, a tax avoidance scheme as they would say, a tax evasion according to the authorities and it was a most interesting case. The scheme in summary involved participation by the Norfolk Island Public Art Gallery in purchasing paintings for an inflated value and using money donated by corporations which, to use the expression of the prosecutor at the time, were pregnant with profits. So major corporations would cash up their assets, pass the profits through this scheme and then restart their business with a slight change in the company name, which meant of course it was a new corporate entity. So that a painting, they would donate say \$10 million dollars to the Norfolk Island Public Art Gallery, which I might say occupied a room about four meters by five meters on Norfolk Island, they'd donate \$10 million to the gallery, the gallery would use the \$10 million dollars to purchase a painting from another entity which the accountants had set up here and it transpired that the paintings had been revalued after they were purchased for \$200, they'd been revalued to \$10 million and the gallery acquired a painting worth allegedly \$10 million dollars and the donating corporation gained a tax reduction and then just went on with business as usual. That was a most interesting concept because the big question is how do you value paintings? I mean let's face it, we've all seen paintings in the gallery which were valued at one stage at \$10 million and then all of a sudden it's decided they weren't by Van Gogh after all and they're suddenly worth \$500,000. So it was interesting because they brought all sorts of art experts in including Patrick McCaughey and other interesting people to tell us solemnly that these paintings really weren't worth \$10 million dollars. The bottom line is, if someone will pay \$10 million dollars, what are they really worth? Well, of course, it was a conspiracy trial so the person at the Norfolk Island Art Gallery end was also involved in the scam as they called it. But they were all acquitted, oh no they weren't, one pleaded guilty rather foolishly and went to jail but they'd acted on legal advice and they were acquitted.

### **Part Thirteen (Neil Forsyth QC)**

- Q Just one final question regarding the Norfolk Island Public Art Gallery case....There was a situation where in that case a barrister was prosecuted for advice on tax minimisation; that happened to be the late Neil Forsyth (we happen to be interviewing you in the room named after Neil Forsyth). Would you care to comment at all about that?
- A Neil Forsyth was a really very, very fine human being. His specialty was tax law, income tax law, nothing to do with crime or commercial crime, or even tax evasion, although he would have been conscious of the limits of the principles between avoidance and evasion, but he was constantly sought by accountants for advice, and he advised these accountants for whom I subsequently appeared who were charged with conspiracy over that scheme, and our defence was right from the beginning, as soon as it looked as though they would be charged, they came to me for advice, that firm of accountants. There were five of them; four came to me, one went elsewhere and I began to institute a series of correspondence with the authorities pointing out that they shouldn't charge conspiracy to defraud here because the limits of the law were a little unclear and they had sought legal advice from a highly reputable source; however they were duly charged and the charges were to be followed by a quite lengthy committal proceeding, some eight or nine months later, and three weeks before the committal proceedings started the authorities charged Neil Forsyth who'd been their advisor, and they charged him as a co-conspirator which was a shock to everyone; it was a shock to the Bar, it was a shock to those of us personally, well my clients because of course this was their defence; relying on legal advice, and sadly after a lengthy committal (I think three months or so), Neil Forsyth was committed for trial - in my opinion quite wrongly, and that was supported by the decision of the Supreme Court Judge, before whom he appeared separately, who said there was no case to answer, there was simply no basis for charging him with tax fraud; and the interesting thing is Neil Forsyth, whilst he gave advice on these tax matters, and he had to give advice in accordance with the law of the day which is really what we call the Barwick era, it was a very literal interpretation of tax law, he'd never been in a scheme himself, ever; so it was very sad and Peter O'Callaghan QC appeared for him, and he's a brilliant advocate, and ultimately got him off - but the evidence would have got him off anyway. Peter won't mind me saying that, but sadly Neil's health deteriorated right through that proceeding. It was quite obvious he was under enormous strain, a man with his reputation suddenly confronted with this would naturally feel utterly dismayed, and eventually he contracted cancer and passed away, but he was a really fine person.
- Q Did he get much support from the Bar during that time?
- A Oh yes, yes he did, but because the Bar is very conscious of what should and shouldn't be done, within the legal system, they weren't vocal, and I think that was probably a correct decision, although my whole instinct was to speak out strongly. But they weren't vocal and I think perhaps wisely, because after all it would have sounded as though the Bar were there to just speak vocally against any proceeding against one of their own, and they didn't want to be seen to do that. But yes, very supportive.

### **Part Fourteen (Underestimating opponents)**

- Q There's an amusing story, during a 2008 swearing in for James Judd, who's become a judge of the Supreme Court. While he was at the Bar, he developed a very close and productive association with you, but you had an interesting first encounter with James, which was when there was a complicated tax fraud committal going on. You had Julian Burnside as your junior, and James was opposed to you, he was junior to Ron Merkel, QC, and you weren't too worried apparently about James, but then you went out to lunch and things sort of went downhill a bit for you after that, apparently.
- A Yes that's correct, I got a shock. Yes, Julian and I were prosecuting a group of accountants and a solicitor for tax fraud. It was one of the very rare occasions on which I've prosecuted, but in any event it was a very complicated matter, it was known as the Black Box case. "Black Box" because whatever mechanism that was designed to achieve a lawful outcome, it was hidden inside some process, and I couldn't think of any answers to it and nobody else seemed to be coming up with any, and the case had reached its conclusion, I think we'd been going for some weeks and the defence were to make their submissions, and two had made submissions and they didn't trouble me much at all during the morning, and at lunch time I noticed Ron Merkel say to James "look I've got something else I have to do, you can make the submission this afternoon". I overheard this, you see, and I said to Julian and our solicitor, "oh well, it's going to be an easy afternoon, chaps, let's go and have lunch" so we went off and we had lunch which included the odd bottle of wine, and came back and James jumped to his feet and started his submission, which really flattened me. He had some answers to this "Black Box". I knew in my heart we had to be able to get over them, but I was totally unprepared. He was brilliant; and at the end of his submission I had to rise to my feet and say to the magistrate that if it was okay with him, I'd suggest we'd adjourn til the next day. I needed some time to come up with answers to that, and subsequently James was my junior in a number of cases, including the (John) Elliott case, and many others; and then he took silk himself of course, and he's now an esteemed justice of the Supreme Court.
- Q I suppose the nice thing about that kind of story, in a way, and it wouldn't just of course apply to you, it would apply to many people who'd spent many years at the Bar, I guess you've always got a surprise around the corner, don't you, and it keeps you nimble and mentally agile.
- A Absolutely, exactly, you can't take anything for granted.

### **Part Fifteen (Work-life balance)**

- Q A question I've been wanting to ask you too - how much did all of this work impact on your family life? Were you constantly busy? Were you finding you were spending many late nights working, and did it impact on your family life?

A Well, it's a good question because I was very conscious of that. I was very conscious early in my career that a number of my colleagues were allowing work to dominate too much, and I'm not going to name them, but I took the view fairly early that I wouldn't let that happen, so to some extent the work I accepted was work that I felt I could fit in, together with a proper family life. Now I'm not going to say I was the great father - I wasn't, but I very rarely worked on weekends during the day; so if there was work to be done in the weekend, I would do it at night, and I would spend time with the children, and they are conscious of that. I took their holidays when they were on school holidays, I would not take work, so very often we holidayed together, and weekends. We had a holiday house and I'd be down there, sailing with them and so forth, so I think the answer to your question is whether I succeeded or not; I certainly tried to be a good father along with being a busy barrister, and I think it did work.

Q At least one of your children has followed you into the law?

A Yes, well she's far more brilliant than I could ever be. I don't know if you're aware of it - have you looked at her CV? She's very bright indeed and she'll have a wonderful career ahead of her.

## **Part Sixteen (Bar and Bench)**

Q When you reflect on all your years at the Bar, how much do you think things have changed; for the better, or conversely for the worse?

A Well it's a broad question; I think one of the saddest indictments on a society is the need for too many lawyers, and when I came to the Bar, there were two hundred and twenty six barristers I think; you could probably see it on the Bar Roll, and a handful of solicitors compared with today. I mean, solicitors' practices could not exceed more than twenty partners under the Partnership Act, there was no incorporation facility and the numbers of solicitors - I don't know, but it would have been far fewer than it is today. But today we have got nearly two thousand; eighteen hundred barristers, and all these solicitors everywhere. Obviously there's a demand for that, and I think that's a rather sad indictment on our society that there is a need, or a capacity to use so much legal talent. As for the Bar, I think it's a great credit to the Bar that it has continued its independence, and it can continue to provide the sort of service it does, because it is big, it must be very difficult for those trying to keep control of things nowadays.

Q Yes, you mentioned when we were having coffee earlier, that obviously there was a lot to keep on top of, and a great deal of paperwork you had to do, but I have spoken to people who have complained that there's huge amounts of paperwork that exists now by comparison with what they were used to in the past.

A Absolutely. Of course, as a junior barrister, one was doing less important work, but the brief came in a back sheet, a piece of A4 folded over with a nice pink ribbon around it and maybe a dozen pages in it. By the time I was doing commercial fraud work, taxation fraud and commercial crime, a brief would come with perhaps thirty or forty lever arch folders, plus a couple of CD-ROMs, with massive amounts of information, and in the end you suffer from information overload. It's just not possible to get it all

in, but you have to; if you haven't got it in there, you can't run the case, and if I've got a criticism it is that the courts don't do enough to control the manner in which these cases are run, and they're all too long.

Q Who should do the actual controlling? Should the direction come from the Chief Justice, or whoever the head person happens to be, depending on the actual court?

A No, I think it's up to each judge. A judge should be able to assess a case. If a judge has been a barrister, he understands this problem surely, and a judge should try and cut to the chase. The difficulty too is that we live in a community where the first decision is rarely accepted as final. People appeal all the time, and so judges do have to be careful; if they rule out a lot of evidence as either irrelevant, or so peripheral that it oughtn't to be admitted, and subsequently a party appeals, then a different judge will form a different view, and all of a sudden you've got a retrial. You might as well have had the long trial in the first place, so it's not as clear-cut as I'd like it to be, but I do think judges need to exercise a bit more control over some of these cases and particularly in a criminal case with a jury. The idea that a jury, after say a year, or in one instance, two years (two or three instances I think), the idea that they can remember the evidence, make some evaluation of the evidence, and bring in a verdict based on the evidence after a year or two is just, I think, ridiculous.

Q Did you ever aspire to being on the bench yourself?

A No, I never had an intention or a desire, to this day.

Q Despite that perhaps you could have set an example in the way you were just alluding to a moment ago?

A I don't think I'd have been a particularly good judge.

Q Why?

A Because I think in essence I just wanted to be an advocate, and I watched judges. Some judges were, at heart, advocates, and I thought to myself "you know they're not the best judges because at heart they're still advocates". You have to put your advocacy characteristics aside when you're a judge. Otherwise if you're not careful, then you're not making impartial judgements.

Q Could you see that in some judges (we won't say who), their facial expressions give them away a little bit perhaps?

A Oh, much more that. Honestly, going back when I was younger, which is when I decided; that in so far... Let me put it this way. Until late in life, it wouldn't have occurred to me that I would ever be a judge, so I didn't even think about it, but I was very conscious (when the time came to think about it) of those judges who I remembered, who remained advocates; it wasn't just body language, it was expression in the voice, and sometimes outright utterances which should prejudice for one party or the other. I've always loved being an advocate, so it was not a difficult decision to reach.

## **Part Seventeen (Concluding words)**

Q You're still doing some advisory work aren't you?

A Yes, purely advisory, though. I haven't been in a court for ten years, I suppose; nine to ten years.

Q Given the opportunity, would you like to?

A Yes I miss it, but as I... I'm not sure if I mentioned this, but I withdrew from active court appearance for health reasons. Those reasons continue really to this day, although I'm much better than I have been, but it'd be wrong for me now to take up the wig and gown again, I think.

Q Looking back, was there a trial that you never appeared in that you wish you could've been briefed to do?

A I don't think so, no I don't. It's interesting you know, the newspapers at the time of the Chamberlain case ran a little series on who's going to appear from Lindy Chamberlain, and they had a picture of four of us; John Phillips, Frank Vincent, me, and I think Phillip Cummins, and they did a little history of who they were, what you were and so forth, and who would get the brief. I can still remember reading that and thinking "Oh, do I want it, or don't I?" I didn't know enough about the case at that stage but it was already controversial because the first coronial hearing had cleared her completely – correctly, as it turns out - and blamed the police for sloppy work, and blamed the media, and so the machine got going, and she was duly recharged and that was when this question arose. I'm quite confident at the time (that) I didn't think, "oh, I hope I get it". But if I'd got it, it would've been an interesting case. No, that's the nearest I've ever had to come to wondering about whether I'd be in a particular case.

Q I'm surprised that the papers ran a piece like that. Wouldn't that have been seen by the Bar at that time, as in some way touting? Even if you weren't even responsible for the article - the fact that you were there, that your photo was there?

A No, those days have passed, you see. When was the Lindy Chamberlain trial, it was in the 80s?

Q That was in the 80s, early 80s.

A I can still remember colleagues being castigated for posing for photographs in their chambers, you know, you weren't allowed to do that. I myself was chased by reporters early in my career for a photograph, and I was so conscious of this rule that I hid away, and in the end the photograph which was published made me look like a complete idiot, but no, by then it was accepted that the media would publish what they liked. I don't have that article, but you could probably find it, it would have been in one of the major papers of the day, and I can still picture it.

Q So, to sum up then, John; how do you feel you would like best to be remembered during your years as an advocate here at the Bar?

A I must say I've never really turned my mind to it. I've enjoyed the Bar, I've enjoyed my vocation, I think it's not just been a privilege, it's been such fun. To be able to do something in one's life where it was sufficiently rewarding financially to be able to make it one's vocation, has been just a marvellous thing. I would like to think that I'd be remembered as someone who did his best, that's all I can ask, and that's what really you have to do, and if you're not prepared to do your best, then you really shouldn't be at the Bar.

Q John Walker, thank you very much.

A Thank you.

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