

John Harber Phillips

Interview with Juliette Brodsky, 13 May 2009

Q Well, John Harber Phillips, thank you very much for making time to be interviewed for the Victorian Bar, and for Foley's List. I would like to start, if I may, with - I think it was - a very nice description of you in your prior career at the Bar as an "elegant street fighter".

A I'm tempted to say "No comment," but I don't think I was really elegant. When you started, and probably when that (Bar News article) was written, the three-piece suit was absolutely *de rigueur*, usually of a dark colour. So we all, I suppose you'd say, (in) those days we dressed up, and of course you wore a hat then, too, for a while. I suppose the "street fighter" relates to cross-examination, and I'm indebted there to really my colleague Jack Lazarus, I'm sure you've heard his name mentioned in your work. Basically, all I learnt as an advocate I learnt from Jack. He was very generous of his time, and for a long while we had chambers next door to one another.

Q Jack Lazarus was Joan Rosanove's youngest brother, wasn't he?

A Yes, he was, yes. And probably one of the two or three finest advocates the Bar's ever had. He was an all-rounder, he was a very eloquent person speaking to juries, and an absolutely deadly cross-examiner, but always quiet and reserved, never raised his voice, didn't have to. A most remarkable man.

Q Not having seen you myself in cross-examination, would you say your style was very similar to his, given your admiration for him?

A Well, I tried. Whether I ever attained his excellence is for others to say.

Q Your career at the Bar of course is a long and very distinguished one, and I would like to just start briefly also with your acquaintance with the late Vic Belson. You read with Vic Belson. Can you tell us a little bit about meeting him and what he was like?

A He was a brilliant gentleman. He loved life, liked to drink, and he liked to socialise. I read with him in rather gloomy chambers, in the old Selborne Chambers, with a fireplace and a fire; everyone had a fire in those days. I think the rent was three pounds a month. And he was kind enough to let me stay with him until the new Owen Dixon Chambers was ready to be occupied. So I always had quite pleasant accommodation. Very likeable man, his practice was in the civil side, and I very early got involved in criminal work, so I didn't really have much to do with him in the practice field.

Q What prompted your decision to specialise more in criminal matters as opposed to say (in) civil?

A Well, in those days, and probably to an extent it's still the case, the road to success on the civil side was quite a long one, and I had a young family, and the road to success, I thought, on the criminal side was much more rapid. And indeed, I suppose within a couple of years at the Bar, I was already doing murder cases - it was a bit like being pushed off the end of the pier, learning to swim. But that's essentially how I got involved.

Q What year are we talking about when you first commenced?

A 1958 or so. I think there were then about - the whole Bar would not have exceeded 90, and I was literally taken around and introduced to most people. The centre was Selborne Chambers, and I've described that. There was another building, an awful building called Saxon House, probably built in the 1930s, very poor accommodation. And indeed accommodation was a real problem then because I remember some people actually had desks in corridors where (laughing) they would see clients. They didn't even have rooms.

Q And rats, I heard, were there as well.

A Well, I don't think I saw any rats. (Laughs)

Q Maybe only the two-legged variety.

A Maybe, yes.

Q Yes, I wondered too - your decision to specialise more in criminal matters, did that have anything to do with the fact that at about the time you joined the Bar, there was another John Phillips. He was eventually known, I believe, as "Equity Jack" - John D. Phillips we're talking about - and you became known as "Criminal Jack".

A That's right, yes, we were. We were tagged in that way. And he became very successful on the civil side, which of course seemed to get that nickname. The Bar was full of nicknames, and they were particularly hard on people with hyphenated names.

Q Why was that?

A Mischief, I think. A Mr Hugh-Jones was known as Mr Huge-Ones. And I'll try and think of another couple. Mr (Colin) Hollis-Bee was called, I think, Bumblebee. And there were probably a couple of others as well.

Q Starting out as you say with Vic Belson, and rapidly discovering an important role model in Jack Lazarus in those early years of your practice, who else comes to mind as people you admired, or whose style you sought to emulate in some way? Perhaps if not to emulate, (those whose example) certainly formed an important informative role in your own development?

A Well, Jack Cullity, I think, is obvious. I can still see his chambers; he had chambers in Equity Chambers in Bourke Street. And behind his desk was a large oil painting of the boxer, Les Darcy. You remember, (Les was) supposed to be poisoned by American friends, like Phar Lap. And you'd go in there - I used to get junior briefs with Jack - and there'd be one client in the corner rehearsing his unsworn statement, and there'd be another at the desk talking to Jack, and there'd be another one over in another corner working away at some aspect of his case, with Les Darcy looking aggressively over the whole group.

Q Yes, it would have been a fascinating insight into many things in those early years for you. And did your keen interest in history, was that springing up at about the same time, or had you always had that keen interest?

- A The love of history relates to my school days, where a particular teacher, Brother Paul - he was a De La Salle brother - gave me a great love for Ancient Greece, and to a lesser extent Ancient Rome, and that probably built on that.
- Q You wrote subsequently a play, did you not, about that period of history?
- A I wrote a play about Socrates' trial. I actually wrote a series of play, and due to my chronic inexperience as a playwright, I didn't venture beyond the courtroom. So I wrote one about Socrates' trial, another about Ned Kelly's trial, and one about an imaginary trial of Pol Pot. I think all of those were put on the ABC, but I wasn't swamped with commercial offers.
- Q Nevertheless, I'm sure you would agree the courtroom is perhaps one of the best places to observe theatre first-hand as it were, and in a sense you had a ringside seat, or rather, the performing seat when it came to observing these pieces of theatre, and thereby turning them into plays.
- A Yes, that's so. There's a lot of drama involved, and you can't help feeling for the people who are caught up in it, because every case involves a lot of innocent people who are going through a very painful experience, through no fault of their own.
- Q Interviewing another barrister for this oral history project, the late Philip Opas, he talked about on the one hand the dangers of identifying with your client, but in a sense, as he admitted himself, he became identified with the late Ronald Ryan, who was the last man to be hanged in Victoria. From your point of view as a criminal practitioner, did that ever happen to you? Did you ever feel any sense of unfortunate identification with any of your clients, or were you able to maintain the necessary emotional distance?
- A Oh, I think I was, and as far as I'm concerned, I was always Mr Phillips, and the client was Mr Jones, or Mr Smith, or whatever. I think a reasonably formal attitude was the way to go.
- Q In your early years, you appeared as the *Bar News* here describes you in major and notorious cases, and you did over 150 murder trials in those early years, and you're well known, it says here, "for your successful defence of many police officers, particularly those who appeared before the Beach Inquiry in 1975, and who were charged thereafter". Can you give us a couple of accounts of a couple of outstanding cases? And we'll come to the Azaria Chamberlain case separately in a moment, but (in terms of) some of those early cases, do any stand out in your memory that you were involved in?
- A There was the case of the two police officers who were charged with the manslaughter of the painter and docker whose name was Collingburn - that was quite a sensational case. And a lot of it turned on some quite complex and detailed investigation of his injuries, and what might have caused them. That's one that comes to mind. And of course all the cases that arose out of the Beach Inquiry, and which lasted on top of the inquiry probably another 18 months. So, about three or four years of my life was entirely taken up in that inquiry and the cases which flowed from it. And they were all sensationally reported by the media at the time.

Q That caused you disturbance?

A I did get some treatment, which I don't really want to go into, but it included an attack on my house, and another incident of a similar kind.

Q Did you as a result form strong views on what you feel perhaps was irresponsible reporting of crime and criminal matters, or do you think this is an ongoing endemic problem?

A I'd say that the run of media reporting during the Beach Inquiry and (its) aftermath was probably against the police. One of the reasons why I started a system of awards of law reporting when I was Chief Justice is, I suppose, a reflection of my feelings from those days. I think now, and certainly in my time as a judge, the standard of legal reporting has been very, very good and fair.

Q I spoke not long ago with a member of the New South Wales Bar Association, and he was lamenting - I don't know whether you have similar views - the demise of afternoon papers that reported judgements in more detail. And (this person) felt in some ways that (the demise of afternoon papers) did no service to the quality of legal reporting. Do you have similar views about the fact that we too (in Victoria) saw the demise of afternoon papers? Do you think that would have made any difference? This is prior of course to your instigating these awards.

A I think it was a pity, it was the (Melbourne) *Herald* that was the principal afternoon paper, and I can faintly remember a paper called *The Star*, which I think might have folded before I started practice. Look, it's a perennial problem with judgements, because the papers can only fit in a certain amount of what the judge said, and the radio and television even less. So, there's a tension there between conveying the essence of what happened, and the actual space available. There used to be a journalist called Darrell Symonds, S-Y-M-O-N-D-S I think, and he wrote a column called *Tales from the Court*, I think for the *Herald Sun*. And he worked off the Melbourne Magistrates' Court, and he was very good. Some (tales) were sad, some were uplifting. He was not afraid to criticise the magistrates if he thought it was necessary, but there's nothing like that now, I don't think.

Q I'm digressing slightly, but do you think it's been an improvement to have as a prerequisite now that magistrates must be trained as lawyers before they become magistrates, or do you veer the other way, back to the time when magistrates weren't necessarily legally qualified, but had developed a huge amount of knowledge through working their way up through the court system?

A Well, there certainly were some very good magistrates in the old days, but I think the necessity for a degree has been a good thing. It probably dates to the early seventies now, I think. Yes, I was in favour when it was introduced, and it's been successful.

Q Moving to what was probably one of your best-known cases as a criminal lawyer, was in 1982 when you were briefed to appear for Michael and Lindy Chamberlain, and which was known at that time, and possibly still is known as the "Trial of the Century". And it describes here, with the-then (Bar Council) Chairman, Andrew Kirkham QC, you led (the Bar News says) "an outstanding and comprehensive defence". What are

your chief recollections of that period? It was, as they say, a sensational trial, (with) reverberations that lasted long after the actual trial was over.

A My chief recollections are a sense of grave disappointment and frustration. Andrew and I went round such forensic science establishments as there were then, and without exception, they said, "Oh, we've already been consulted by the prosecution, we can't help you." Or some said, "Oh, we don't want to get involved in a sensational case like that." The institutes and forensic science organisations then all considered they were involved with the prosecution services and the police, and that they were the people that they were set up to serve. And the result was at the Chamberlains' trial, Andrew and I did call some technical witness, but none were from the professional forensic science sector. And I can still remember the Crown Prosecutor saying to the jury "Don't pay any attention to these defence witnesses, they are airy-fairy, ivy tower, university types. They're not coal-face forensic scientists". And that was a telling point, and I think it hurt the defence. Much good, despite the Chamberlains' sufferings, came out of that case, because in 1986 the Royal Commissioner entered the convictions, Justice Trevor Morling recommended that a National Institute of Forensic Science be established to raise the standards properly, and in 1990 the Commonwealth Government established that with the consent of all the states and territories, and I was appointed the Chairman, and I've remained so. Even earlier, about 1985, the Victorian Government through the then Attorney General, Jim Kennan, a far-sighted gentleman, established the Victorian Institute of Forensic Medicine, and its ethos from the beginning was that it was available to assist everybody, the prosecution, the defence, and even private citizens. And then at the time of the Royal Commission, that wonderful advocate, Chester Porter QC, who was the lead counsel assisting, he engaged Dr Tony Raymond, as the chief scientist to help the Commission, from the Victorian Forensic Science Centre. And Dr Raymond really collected the evidence, which showed that the evidence given at the Chamberlains' trial was deeply flawed. And that institute adopted the same ethos that they are prepared to assist anybody. And gradually all the other institutes have more or less come into line. The outstanding achievement of the National Institute of Forensic Science is the establishment of an independent system of evaluating and checking the forensic science institutes in Australia. And that's regularly done. And so the forensic science scene now just doesn't bear any comparison with the state of affairs at the time of the Chamberlains' trial.

Q With the advances recently made in DNA profiling, did you find yourself wishing that that had been around at the time of the trial too?

A I'm not sure that would have materially assisted in that case, but that's been probably the principal development in forensic science, and of course the technology is now onto about the fourth or fifth generation, it's moved with remarkable speed. The other vivid recollection I've got of the Chamberlains' case is the rumours that were floating around in Darwin. I thought the most damaging one was that Mrs Chamberlain was the sister of a woman called Mrs Waldridge. You probably don't remember the case, but in the Waldridge trial, a little girl disappeared from her home in Beaumaris. I think she was never seen again. And the two women did have a superficial resemblance in that they (both) had pageboy haircuts. Now Mrs Chamberlain didn't have a sister, but the rumour was that she was Mrs Waldridge's sister, so murder went in the family, as it were. And the other rumour was that when the police searched the Chamberlains' house, they found a child's coffin. Well, they did find a little coffin, but it was about

20 or 30 centimetres long, and if you pressed a button, a little man smoking a cigarette popped up. And Reverend Michael Chamberlain used it in his sermons, because the church he belonged to was against smoking. And that grew from that little instrument of education into a child's coffin. Awful.

Q You must have found that inordinately frustrating to deal with.

A Yes, it was very difficult. And you know, going around Darwin, even the most informed people, they'd say to me "Oh we are so sorry for you. What are you doing here? You haven't got any hope of securing an acquittal". And I remember (that) we were given some rooms at the Aboriginal Legal Service, and I fondly remember an Aboriginal lady who manned the switchboard. She had a doubt about whether Mrs Chamberlain was guilty, but she was about the only person I met up there who did.

Q Why did she have that doubt? I'm interested.

A I don't know really.

Q She didn't share her views with you?

A It was one of the few cases where the media got out of control, I think. No, I can't answer that. It's something of the psyche of the time, it's buried.

Q I was a teenager at the time the trial happened, and I do remember the newspaper and electronic media hysteria over the trial, and yes, I do remember numerous rumours, possibly more to do about black dresses for the baby, and all kinds of things like that. But from where you're coming, though, that must have proved infinitely more difficult to deal with. And in terms of your clients, they must have felt very anxious and concerned all the time at the rumours swirling around as well.

A Yes, they were very, very good really. Of course, they had their religion to sustain them, and a lot of friends in it and outside it, to help them. The other good thing that came from the case is that I think most Australian courts now have a different approach to expert witnesses. They now must acknowledge before they give their evidence that their principal duty is to the court, and that they are not to appear as advocates for the party calling them. Certainly the Federal Court has gone that way, the Supreme Court of Victoria, and I think VCAT. And I think the County Court is moving in that direction, but they may not have actually formalised the arrangements yet.

Q Why would they not have done it yet?

A I don't know. They may have done it, I just don't know. The last time I asked, they didn't.

Q Moving a little further on, you were to become the first Director of Public Prosecutions in Victoria. What led to that?

A Well, I think my introduction to it was that the Attorney General of the day, Jim Kennan, asked me to read some drafts of the Act to set up the Director's Office, and I did that. And then I had a phone call from the Premier, Mr Cain, John Cain, to come and see him. And I thought I was going to be offered a judge's job, but it turned out to be the DPP's job. And as I've always said when offered a job, "I would like to talk to

my wife about it,” so I did that. And we did talk, and we thought it was a good idea, so that’s how I got involved. And it was a very interesting and pleasurable experience because I was the first DPP in Australia, the media were interested, sympathetic, and encouraging, and I can’t remember a single discordant note during my - I wasn’t there terribly long, I think about eighteen months, but in contradistinction to some of the difficult roads that some of my (laughing) successors have had to follow, it was a very tranquil time.

Q What do you think from that time were your legacies as the first DPP?

A Well, I think the establishment of timeframes for the conduct of prosecutions. I went over to Scotland, and spoke to the prosecution service there, who’ve had time-frames for hundreds of years really, and they were very good. They said, “Go ahead with it, but go slowly. Make them initially time-frames that are plainly ascertainable and can be delivered. And then tighten them down a bit.” And that’s what’s happened. Now I think it’s that, and the other thing I was involved in was legislation which enabled judges to make rulings about points of evidence and procedure before the juries in parliament, which has been a big help, I think, to get trials moving along smoothly, and in an uninterrupted way.

Q Though I did notice recently (in) one of the major papers, possibly the Australian, there’s now been some views that maybe that shouldn’t be the case, and I think they were referring to the matters being dropped in what might have been the impending Pratt criminal trial.

A Well, it was pretty awful in the old days. You know, the jury would be - the trial would start, then and only then would objections be taken, the jury would be sent out of the room for hours, sometimes for days, and the trial was just a series of short spells with interruptions - it was quite unsatisfactory.

Q There’s a move afoot I was reading just the other day, I believe in the forthcoming trial of the alleged Pumpkin father, that all jurors now need to be screened further for their credentials in some way, to measure whether or not there’s a potential of bias. This is a bit of a precedent that’s about to be set. I think it’s already happening in New Zealand, but not here. What do you make of that?

A Well, of course that’s the American system. Here the judge usually tells the jury the names of the witnesses that are going to be called, and gives a general description about the case. This is to the whole jury panel. And then (the judge) says “Well, if anyone would be embarrassed being a juror, or if there’s any reason why you don’t think you should - perhaps you know one of the witnesses, or something like that, please indicate and you can make an application to be excused”. That’s what happens here. I don’t know what the setup in New Zealand is. They used to have a system where Maori people could ask for a Maori jury. But I heard they stopped that because they were convicting everybody. (Laughs)

Q So you don’t think really it would make much in the way of improvement if we were to adopt it?

A No. And it only adds another layer of disputation to the many that are there.

Q It says that you were recognised during your time as DPP as a very skilled administrator, and I'd like to put to you a thought that I remember the late Dick McGarvie had. He spoke to me about how various institutions actually mould you. Did you find that being in a new position, as it then was for you being the DPP at that time, did that in some ways change your perspectives on the execution and practice of law?

A Well, I changed overnight from having a staff of, I think, a one-third share in a secretary, to having a staff, I think, it was about 160. And I can remember my dear wife saying, "How are you going to manage that when you can't even manage yourself?" (What would we do without these objective critics?) Look, I got a lot of help. Mr Kennan sent a very able lady down from the-then Public Service Board, who took me through all the intricacies of the public service. And I remember I had a lucky escape, I think through, well I hope, through careful husbanding. I saved about half a million dollars to computerise the office. And I was going to spend that in the following year, and then this lady from the Public Service Board said "Just a minute here, do you realise if you do that they will take that money and reduce your allocation next year by a half a million because you've succeeded in getting through this year making those savings? Spend it now before the end of the financial year". That was under the rather weird system of administration that then prevailed. So in the space of, I think, a month I had to go and buy all the computers before the financial year ended.

Q That must have been rather pleasurable in a way.

A Yes. So look, again as in all aspects of my time as DPP, yes, it was a tranquil, easy time.

Q Before I move to your period as the Chief Justice of the Supreme Court of Victoria, which occurred in 1984 - no, strictly speaking, you went to the Supreme Court in 1984, you didn't become Chief Justice until a few years later - I would just like to quickly touch on Foley's List. You'd always been with Foley's List?

A Yes.

Q And was there a particular reason why you went to Foley's List when you first began practice?

A I think because Vic Belson was a member of it. I think there would have been about 30 members, and I can tell you something of the history. There'd been another list called Muir's List, and Mr Muir ran it, and for some reason it folded up, I'm not sure what it was. And a group of very senior barristers, about a dozen, they engaged Jim Foley as a clerk, and they guaranteed him a certain income a year, I think it was 10,000 pounds, or something like that. And Jim Foley was a very respected member of the profession then, he wasn't a qualified solicitor - he was a managing clerk at one of the big firms. I think it was Middleton McEarchern Shaw & Birch, but I might be wrong about that. And in those days, maybe they still are, you know, a managing clerk was an important person. And Jim also had the advantage that he had been decorated for bravery, I think he got the military medal in the first World War, so he was quite a figure. And he started the list, and he employed Mr Muir's son, Doug, in his office, and later his son, Kevin Foley. And I'm not sure how many are on the list now, there's probably more than 200 are there? Yeah, something like that.

Q Do you have any other fond recollections of Jim Foley and dealing with him directly?

A Yes. His office was a gloomy glass room, and incongruously there was hanging on one of the windows, I vividly remember, a wire coat hanger with somebody's braces. So whether they were Jim Foley's braces, or one of the barrister's braces, I don't know. But they hung there through the entire time that I was on his list in Selborne Chambers. It seems a world away now. No one walked in the streets with their robes and wig on in those days. There was a robing room at the Supreme Court, with some lovely old cedar lockers, and you put your robes and wig on (in) there. And there was also a huge barber shop in Little Collins Street, and a lot of the barristers, including the senior ones on Foley's List, would have a shave there. They would be shaved with cut-throat razors by the barbers. And we all wore shirts with detached collars so you could put on your court collar. And, as I said earlier, (we wore) the inevitable three-piece suits.

Q I suppose five o'clock shadows were not exactly the done thing in those days.

A No. That was so. And the first person to break with tradition was a barrister called Charlie Lucas, a divorce ace. I don't think he was on Foley's List - he might have been. But every morning at 10 o'clock, he would lead across William Street a large body of wronged women, mostly wearing leopard skin print coats or trousers and things, and he used to wear his wig and gown. And people looked down their noses at that, but then it gradually became very common to see the wigs and gowns going around the streets.

Q Those women weren't gangland wives, though, were they? (They do seem to have a fondness for leopard!)

A No, they were looking to be divorced from their errant husbands.

Q (That could also apply now, couldn't it?!) You mentioned the robing rooms - there were no robing rooms for women barristers in that period, were there? So people like Joan Rosanove would have had to share them?

A I doubt it. Mrs Rosanove, I think, was the only woman barrister, and then later Miss Molly Kingston came along. I think they were the first two. I used to do a lot of junior work with Joan Rosanove.

Q What was she like?

A Well, my duties (to Joan) were not onerous, they consisted largely of lighting her cigarettes. She had a huge holder, about a foot long, and she'd go "light this", and I would light the cigarette with her gold lighter, and (laughs) that was really all I did most of the time.

Q Did you find that somewhat irksome?

A No. No, because the cases were always full of interest, and it was a lot of fun seeing Joan in operation because she was so feminine, she never tried to act like a man in court. And the judges didn't know how to handle her, and she used to run rings around them. A lot of them, anyway.

Q I believe one judge liked her to try and say the word 'adultery' because she would say 'adultewy'. And she wouldn't take any case that had rape in it because she would say 'wape'. Is that right?

A (Laughs) I don't know that one, but there was another judge who would not let you say "lady". You had to say "woman". Mr Justice (John Vincent) Barry, he had that little peccadillo.

Q Why?

A I don't know why.

Q You were actually the first criminal barrister to take silk.

A Yes.

Q How did that come about? There would have been plenty of excellent practitioners - you mentioned Jack Lazarus, your master Vic Belson - there were plenty of skilled practitioners. Somehow, the honour fell to you?

A Dick McGarvie was very encouraging. I remember talking to him about it, and he said "Oh look, give it a go". So I applied, and I must say I was rather surprised to get it, but that's what happened.

Q Was crime frowned on (at the Bar) in some way? As to some sort of feelings about why practitioners in crime should not be allowed to apply for silk?

A No. Well, a lot of people thought I wouldn't make a living, that I wouldn't be briefed. But that didn't happen. So yes, I think some people expected that I'd have an unpleasant experience, but it didn't turn out that way.

Q If anything, you flourished.

A It was a happy time, yes, professionally. And I think my practice changed from murder cases where they were largely domestic disputes that got out of hand for some reason or other, to cases where I was acting for people with serious criminal records. And those cases were much harder, because the prosecution, well they went in harder, I think in most cases. A lot of them were rather unpleasant.

Q Did you ever come across anyone during your long practice, your long years of practice, who struck you as genuinely evil?

A You mean a practitioner?

Q Oh no, no. A defendant. I ask this, because I have asked others that I've interviewed for this who have worked in this area. It's a rather esoteric question, I know, but it is interesting as one who's had many years of dealing with people, I'm always interested to know.

A I don't think so. I mean some obviously were evil, but I don't know that I dwelt on it. No, I don't think so.

Q When you moved to the Supreme Court in 1984, it says here that during that time you were chairman of a couple of important committees, the Criminal Justice Committee, and the Attorney General Advisory Committee, which examined DNA technology. And I suppose that harks back to what you were saying earlier about the improvements in forensic medicine. So you obviously clearly retained a big interest in that. It says here that in 1990 you left the bench to become the Chairman of the National Crime Authority, and obviously also a Justice of the Federal Court of Australia. You took over the NCA helm at “a very unsettled time for the Authority”. Why unsettled?

A I didn't initially discover that - it was not long, probably a month had elapsed when I was there when I realised that relations between the NCA and the police services were at a very low ebb. It was viewed rightly or wrongly as a competitor instead of a partner. Well, some of the allegations that are presently being made about the Australian Federal Police were made, that the NCA grabbed the credit for things when it really should have been shared, and that sort of thing. So what I did was I engaged a then police commissioner in Tasmania, Mr Bill Horman, a Victorian, as a consultant. And he did a very good job, because he knew all the other police commissioners. And we started a campaign really to make it clear to them that we wanted to act in partnership and not in competition. And a beginning was made in the sharing of intelligence, which was quite an important beginning. And I think that problem went away. Again, I was not there for very long. I think I was only there for 15 months or so.

Q Were you following the examples of other similar successful institutions elsewhere in the world in implementing this approach?

A I think there has been the same sort of tension between the FBI in America and the various state police services. I don't think it's been the case in the United Kingdom where of course there are many police forces there, there's something more than 40, as well as the metropolitan police. And I don't think they've had the same problem there.

Q So then, following that, with your period as a justice of the Federal Court of Australia, this was directly prior to your becoming the Chief Justice of the Supreme Court of Victoria. Do you have any special memories that you'd like to share about that period?

A I tried to do something innovative on a regular basis. In 1991, I set up what I called the Court of the Future, which was set up in some leased space we had down in Queens Road, and I was able to borrow all the technology that was then available and put it in the courtroom. I think the only thing we didn't have then was imaging. And you say a fond recollection - I remember being very anxious because we put on a demonstration for the media, and I was thinking, “What will happen if it goes wrong?” But it didn't. And I also established a system of awards for excellence for people who were working for the NCA, which I think went down very well. They're the sorts of things that come to mind.

Q Your court of the future, did many of your predictions as it were, were they realised?

A I'm not sure what you mean.

Q Well I suppose it's always the interesting challenge when one decides to take on something like setting up something that envisages or presages the future in some way.

Looking at that – well, we’re talking the early nineties of course, and now we’re looking this year – 2009 - and it is nearly 20 years later. Did some of your, as it were, predictions come to pass?

A Oh they’ve all been taken on now, in addition to imaging. And you’ve possibly seen the technology that has been used for these Office of Police Integrity cases where what the witness says comes up on the screen immediately, and where they can play a tape so there’s audio sound at the same time you’ve got the written content coming up on the screen. That’s been another innovation, I think. And there has been, I believe, a lot of thought (put) into the design of courtrooms. Many of the old ones are beautiful rooms, but acoustically, they are a bit of a nightmare.

Q So is that why a lot of earlier judges kept saying, “I can’t hear you?”

A Yes.

Q It really was because they couldn’t hear?

A Oh, yes.

Q It wasn’t because they were choosing not to hear with people who might be seen as inappropriately addressed?

A No, I don’t think so. And of course the old witness boxes, which simply had a tiny flat piece in front of the witness, were hopeless if a witness came with a bundle of documents. Many courts now have a sort of desk where there’s room for a witness to use documents and give their evidence in comfortable circumstances.

Q Are the courtrooms as they’re designed now much more to your own, if you like, tastes as to how they should be designed, or is there still room for improvement?

A No, I think the general thrust has been positive. I’m just trying to think of some excellent examples. The new County Court – well, it’s not so new now, but the new County Court building has got some excellent courtrooms, that I think are successful in incorporating all the modern thinking about courtroom design.

Q You have by way of background wide-ranging intellectual interests, and I wonder if this in some ways informed your views about the design of courtrooms with regard to getting the balance right between some necessary level of informality to encourage people to feel comfortable in speaking, but at the same time (with) a certain level of formality also being needed to impress on people, if you like, the importance of the occasion? Winston Churchill did say (that) we shape our buildings and then they shape us.

A I’m still in favour of the judge and counsel wearing wigs and robes in criminal cases. I think you could relax things for civil ones, but I would be inclined to keep them for criminal cases. And that introduces what you’re suggesting I think, a measure of formality. And if you can get the architecture right as well, you’ve got a good courtroom.

Q One thing I’m always interested to know from a person who has had many years of advocacy, (that) to sit and listen is of course an entirely different skill set altogether as a

presiding judge, and in your case eventually as the Chief Justice of the Supreme Court of Victoria. Did you find that was a big adjustment for you, or did you find it came quite naturally, and (that) in some ways you learnt as much from that as you did from your years of advocacy?

A Well, I can remember writing an article about listening as part of advocacy. You've got to go along, and you've got to listen, and you've got to pick up the various currents that are going in the court. And of course, much of what I wrote I think applies to judicial work. Again, often the architecture doesn't help, because if you're looking at counsel, you're not looking at the witness often, they're in a substantially different position. And vice versa. I was told by experienced judges when I started of being a judge, "For goodness sake don't let counsel go until you're satisfied you know what the case is about. Take your time, listen, and don't let them go if you've got anything in your mind that seems to be unresolved". And I try to do that.

Q Do you think today's Readers' Courses impress sufficiently on young upcoming counsel the necessity of learning to listen in the way that you've just described?

A I can't really answer that, I haven't had much to do with the Readers' Course for quite a while now, but I would imagine they touch on that.

Q John Phillips, in conclusion almost, reflecting on your years as the Chief Justice of the Supreme Court of Victoria, I'd like you to do perhaps a little SWOT - a strengths, weaknesses, opportunities, threats - from your rather unique perspective as it would be necessarily as I think the tenth (Victorian) Supreme Court Justice as it was at the time. Would you be able to give a little SWOT, if you like, of the Supreme Court of Victoria, and perhaps what successors may need to bear in mind, in your view? Of course you have a successor now in position, but I'm interested to know, broadly, what your feelings are about this.

A Well, we had, I think, some successes in what was called the Spring Offensive, and later the Autumn Offensive. And the court was very good, they acted in a collegiate way, and we formed ourselves into teams. And I think everybody except one judge who did the practice court got involved in these exercises, and we were able to clean up hundreds of cases that had languished there for years. So, they were some good moves. And I think the commercial list has been welcomed by the profession. It seems to be undergoing something of a revival at the moment, and I'm not too sure what the details are. It's difficult for me to make any comparison with what happened in my time, and what's going on at the moment because I've deliberately kept right away from the law courts. The last thing the Chief Justice wants is someone like me looking over her shoulder, and she's got her work to do.

Q But perhaps as an institution generally speaking, the way down ahead, or things that perhaps could be improved, or perhaps things that they may need to be mindful of as an institution?

A Well, the thing I'm most proud of was the public sessions I used to hold. Several times a year, the Law Institute cooperated and extended invitations, and over a day, it was usually on a Saturday, we would get four sessions of perhaps a hundred, 120 people coming through. And I didn't speak from up on the bench, I came down in to the court, and I gave the people an oral report on the way the court was operating, and I answered

questions. And I don't believe any other Chief Justice has ever done that. Some of the judges were a bit apprehensive about it I remember, they thought a crank might attack me, or something like that, but nothing like that ever happened. So I was very pleased with those. Sometimes it might be a little child of eight or nine ask a question, or it might be a grandpa, but they were very rewarding occasions.

Q It is not always known about you that you're a very fine singer, with a lovely baritone voice, and I imagine that is something that has certainly kept you happy and occupied over the years as well, in between all the undeniably huge bouts of work that you've had to undertake.

A Well, I was a tenor actually, and I can use you as an instrument to publicly announce that I've retired from singing. I can't sing the top notes anymore, or at least not in a way you'd find acceptable.

Q Not even in the shower?

A No. What I've done is (that) I've bought a little grand piano, and I've abandoned singing and I've returned to playing. So that's the end of my singing career.

Q And a very quick final question, there was at one point an intention to set up the Justice Museum in the old Russell Street Petty Sessions Court, and I know you were very much an instigator, and very involved in that. I believe in about 1992 the broadcaster Jon Faine chanced across a trust of some kind, a trust of deeds that was awarded many years ago to the surviving families of the constables who were killed during the Ned Kelly stakeout, as it were. And I believe that you were involved in jointly purchasing with Jon Faine and the barrister Jack Hammond these deeds of trust and that has been bequeathed, I think, to the National Trust?

A Yes. I think your recollection is correct.

Q It was an astonishing thing to come across. I believe Jon Faine was very surprised that it existed.

A I think that's right. Look, I'm sorry, I don't have an accurate recollection of it. Certainly Jack Hammond was involved, as you say. No, I can't help you there, I'm sorry. It was to be devoted to a memorial for the dead police officers, was it?

Q Yes. And money to be given to their families I believe. 900 pounds, or something. As I say, Jon Faine was given this information, all these years later. So I was just interested to know...

A No, I can't help you there - sorry.

Q All the same, though, you were very interested in setting up a Justice Museum, do you believe that that should still go ahead? I know it began and then I think it was in abeyance?

A I remember I had some talks with a Dr Beanland who was the Vice Chancellor or RMIT University then, and at that stage we were talking along the lines of a Justice Museum. And then I think the university found they needed more space in the old Melbourne Magistrates' Court then they had originally indicated, so now I think the

space available is what used to be called Court Number 3, which was the main court where cases were called on and sent out. And I think they have a multi-media presentation there for school children. That's their principal activity.

Q Would you like to have seen more, though? Perhaps some artefacts from the past as well?

A Well, I wrote a play for the Victoria Law Foundation called *Murder of Blue Hills*, which is modelled on an English case where an angry farmer shot and killed a burglar, and was later - he was actually convicted of murder, I think, but the conviction was later quashed. And I was hopeful that the schools would come and act that, and they did for a while, but that seems to have not continued, I don't know why.

Q In your now-current position as Professor here at the Victoria University, do you have anything to say about your current work, and its interest for you now?

A Yes, well, the Zelman Cowen Centre is the postgraduate of the law school, and we also have an association with Cambridge University, which was set up by the previous Vice Chancellor, Professor Ron [Ain], and look, it's been an abiding interest for me since I retired, I was fortunate to be able to take up this job as soon as I retired. It's part time, but I'm working as you can see in delightful surroundings with some very pleasant people.

Q So, if you had to sum up your life then as a practitioner, advocate, man of many talents, many roles, any particular strong thoughts as to how you would like to be remembered?

A I think - I don't know about "like to be remembered", but I think I will be remembered as a lucky man. You probably know the famous story of Napoleon. He was dealing with some of his marshals and discussing whether a particular officer should be raised to general rank. And various people spoke to Napoleon about this man's skills and tactics, and bravery, etc, and Napoleon interrupted (and) said, "Yes, yes, yes. But is he a *lucky* man?" Well, I think I've been a lucky man in that I seem to have been at the right place at the right time quite a few times.

Q John Harber Phillips, thank you very much.

A Well, thank you.
