

## HENRY JOLSON OAM QC

Edited interview with Juliette Brodsky for Foley's List oral history and filmed by Elisabeth Crosbie, 6 December 2012

### Part 1 (From World War II to Lygon Street)

Q Juliette Brodsky, speaking with Henry Jolson QC. Henry, thank you very much for making time to be interviewed.

A It's a pleasure. Thanks for coming here.

Q I'd love to start with a picture. A picture that goes back to the time when you were in utero, so to speak. A picture of your mother and father, standing on the bow of a ship, looking out towards the sea, and your mother is pregnant, and you're in her belly, of course, and essentially, it was your parents setting out for a new life in Australia. Would you like to talk a little bit about your parents, because your father in particular had led quite an extraordinary life up until then.

A Yes. My parents arrived in Sydney, Australia in March 1947, and I was born in Melbourne in April 1947. There was a chance I might have been born on the ship, which meant, as I understand it, I would have free passage for life. Unfortunately, the ship, the *Johan De Wittö* was scrapped shortly after. My parents travelled from Paris as displaced persons. They had been through the Holocaust and had gone through the concentration camps. They knew each other from before the war, but caught up with each other in Paris where they married. My mother had an uncle, the only surviving close relative in the world left alive after the War and he lived in Carlton. He was a tailor and he sponsored them when Arthur Calwell, Australia's first Immigration Minister under the Chifley Labor Government, opened the doors to those whom he described as "these unfortunate survivors of Dachau and Belsen and Buchenwald and Auschwitz."<sup>1</sup> Immigration was limited to relatives of members of the Jewish Community already in Australia. So I was born in the back of a tailor's shop in Lygon Street, Carlton, but not withstanding that, I ended up being a Western Bulldogs supporter.

Q Whereabouts in Lygon Street?

A I think it's where the Keyhole Restaurant is, or was. I still can recall it. I lived there for about the first three years of my life, and I actually have a visual recollection of the street and a couple of the shopkeepers in the street. It was a good time. My parents came out here, like a lot of other displaced persons and refugees, without any language, without any money, without any job, and without any friends, and started from scratch. My father's story of survival is a remarkable one and probably too long for this interview. There is a documentary made about the sinking of three ships by the Royal Air Force, which incidentally liberated my father from German captivity. It is called *Typhoon's Last Stand*. Basically, it was a mess-up by the Royal Air Force which was given mixed intelligence just before the end of the war. There were three ships lying at anchor, off the North coast of Germany in Lubek Bay. The British

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<sup>1</sup> A.A Caldwell. *Be Just and Fear Notö*. 1972

believed that the ships contained German officers and soldiers on board, escaping with bounty to start a Third Front in Norway, and the Royal Air Force, Typhoon Squadron, was ordered to sink the ships. Unfortunately, the ships contained ten thousand survivors, remnants of the concentration camps who also survived the Death March just before the end of the War. The ships were sunk and only 350 survived, and my father was one of them. That's a whole story in itself. He survived, found his two sisters and my mother in Paris, married her and came out to Australia. He later brought his sisters to Australia to start their lives again.

Dad was ahead of his time, entrepreneurially. I remember not so much the early days when he scragged around the Victoria Markets to make a living for himself, my mother and myself. He got a break with a major real estate agency in Melbourne and ended up in real estate for about 25 years under his name, L. Jolson & Co, in Prahran. He did very well, and then launched into some projects which still exist at the moment. One was the Preston Market which was his concept and design and ownership for a long time. It was the first retail market built on traditional stallholder lines in Victoria. It was and remains very successful. The other one was *Leonda by the Yarra*. I dine out on the trivial pursuit question "Where does the name *Leonda* come from?" The answer is: my father's name was Leon, so there was the first part of the name. He had a partner called David, and there's the second part, making up the name *Leonda*. Before that, people may remember St. Moritz ice-skating rink, on the Upper Esplanade, St Kilda. Next door to that was a place called *Earl's Court*, which my father bought, and turned into a ballroom, and a conference centre which was the first of its kind in Melbourne. So, yes, he was ahead of his time. In 1972-73, he came up with a concept called the *Jolson Transport Plan*, which was to put low profile taxi ferries on the Yarra River, to ferry people from upstream into the city. He proposed building an underground car park on Herring Island, just off the freeway, and then have taxi ferries take people from Herring Island in to the city and from across the bay. He sourced the ferries from Holland and had feasibilities prepared and submitted to the government. There was general support for the idea, but the rowing lobby blocked it. I read recently that someone was proposing to run a taxi service from Williamstown, along the bay into the city, 40 years after my father's idea.

Q Perhaps they'll name the ferry service after him!

A Not many people know about it, but I might bring it to the authorities' attention. He was quite a businessman, quite an entrepreneur, and a survivor, for reasons which we might go into later. Hopefully, I've inherited his survival instincts.

## **Part 2 ("The Farm" and Cliff Pannam QC)**

Q I had the pleasure of meeting your father some years ago, and I found myself wondering about him as a younger man. He sounds to me like he was a very energetic individual, and very keen, naturally, to put the horrors behind him, and that's your memory of him, too, as a very energetic person?

A Yes. His stories were not of horror, but of survival, more of Hogan's Heroes-type stories. I can just picture him playing that role, and of course, coming out, having lost

all his family, and all his possessions and my mother's as well, the most important thing for him was education for his children. He used to say, they can't take education away from you. They can take everything else, but they can't take your education. So that was very much in his mind, and I don't know how they afforded to put me through school. I went to a State School, Toorak Central School, and that was OK, and Melbourne High School after that, and then he was pushing me into law. It wasn't something that I had thought of, but he thought it would be good to have a son as a lawyer. I went to Monash University in 1965. We called it 'The Farm', because it was like a farm. The Law Faculty hadn't been built. We used to share the Engineering Faculty facilities. The pavements weren't made, there was no lighting outside, so at night it was dismal, and quite often, you'd see cows walking amongst the buildings. That's why they called it 'The Farm'.

Q That's interesting. I haven't appreciated that. Of course, the desire for a good education was common to first generations of migrants in Australia. I wondered, nevertheless, despite your not necessarily thinking about law for yourself, were you yourself keen on learning it as a young boy? Obviously, you went to Melbourne High later, and that is a selective school for intelligent boys, so clearly, the belief that education paid off, in that sense, too. Were you yourself a driven young man?

A No, I was a poor student. I probably just got in to Melbourne High School. I think Malcolm Fraser was the Minister for Education in those days, and they were giving out Commonwealth scholarships quite easily, which was good for me and my parents. Yes, it was a selective school. I'd never regarded myself as a good scholar - I struggled. I wasn't a good reader, as I didn't come from a household where there was any precedent of books and learning. That didn't happen, so I struggled through.

At university, I didn't really appreciate the law at all, and what it meant. I'm a little bit critical of the education system back then, in terms of teaching students an appreciation of the law. It was probably because I was slow on the uptake.

I really didn't understand legal research, or how the law worked until I had been at the Bar for a number of years. I recall being junior to a very great advocate, one of the greatest at the Bar, Cliff Pannam QC. We (or more accurately, he) were running a difficult contempt of the Federal Court case for the Respondent, and he said to me words to the effect, 'You need to find some judicial authority that supports us. Go to the Supreme Court library. I don't care where you find it; you've got to find me a precedent which supports our case.' I went over to the library. It was the first time I did some serious legal research. He told me to go and look at the American jurisprudence if I couldn't find any Australian or English jurisprudence. So I went off into the American and Canadian sections of the law library, just leafing through indexes, looking at headnotes, and I came across a case that was decided by the Court of Appeal of Saskatchewan. The principle supported our case entirely, so I photocopied it. I wasn't enthusiastic about it, thinking it wouldn't carry any weight. I thought, 'Who's going to follow the Supreme Court of Saskatchewan?' I went back to Cliff's chambers, and I said, 'Nothing really there at all, but there's this case here,' and he looked at it, and he said 'Brilliant.' We relied on the decision in that case and won. I thought, 'Hey, this is great.' The research paid off. As I said, I was at the Bar for quite a number of years before I understood how to properly research cases, so the legal system, or rather the education system, hadn't taught me how to properly

appreciate the law, what it is, and how to go about researching. I regret that, because now that I have taken leave of absence, I've become very interested in reading books, in acquiring books, biographies and histories that I never read when I was too busy running cases in later years, but that was a great example of learning the method and value of legal research.

Q Perhaps all you needed was just a little bit of encouragement.

A Yes, indeed.

Q And a bit of a positive example. I'd like to ask you actually briefly about Cliff Pannam. Was there something in particular about him that inspired you in some way, or was it just simply the fact that he praised your efforts that started something for you?

A No, not praise, but Cliff's work ethic and keen mind is that is something that I do recall and I appreciate. Cliff was the consummate advocate. His research and preparation was superb, and his delivery was superb as well. He could articulate the principles of law and argue the cases clearly and persuasively. I did a lot of junior work with Cliff, that included going up to Mt. Macedon where he lived, spending nights preparing cases. He had a beautiful house up there, which he lost in the Ash Wednesday fires. I went up there a day or two after the devastation to help him clean up with Alan Goldberg QC and Master Tom Bruce. We sifted through the rubble and put out hot spots that were still active. It was a tragedy. Cliff lost his home and some valuable possessions. He also lost his dog. The only thing we retrieved was some coins.

### **Part 3 (Law, Economics and Jealous Lawyers)**

Q You were doing jurisprudence at Monash University, but as you were saying a moment ago, that didn't inspire any great love of law itself.

A I actually didn't finish jurisprudence. At Monash, it was a requirement that one completed a combined course, and the standard course was law and jurisprudence. I started with law, and jurisprudence, but then switched across to economics. I didn't understand what relevance jurisprudence had for me at that time.

Q What about economics? Did that stoke any great fires of interest in you?

A No.

Q No? So the theory didn't appeal to you, in any sense?

A It did, but I remember part of it was statistics. No, that was in the subject psychology that I chose as part of my jurisprudence subjects. I failed statistics twice, I think.

Q They're not the most exciting things in the world.

A No, stats wasn't, although economic theory wasn't too bad, but I wasn't going to go off in to an economics career, and I wasn't sure I'd go off in to a legal career either at that stage, and I didn't start at the Bar straight away.

Q What did you do?

A My articles were at a firm then called Blake & Riggall. It became Blake Dawson, and it recently merged again to become Ashurst. The old name of Blake and Riggall has now merged into oblivion. Blake & Riggall was one of the oldest law firms around at that time, and I was very lucky to get articles there. I enjoyed my time there very much. I was there for a year of articles and was asked to stay on. I stayed for a year after articles. I developed very early on a concern about clients coming to see solicitors initially, having to pour out their grievance to their solicitor, and then having to go off to meet a stranger, a barrister, who only sees the client for a very short space of time. They run their case and, generally, have no further contact with the client. I was espousing the concept of having in-house counsel at that stage. That was 1972 - 1971 or 1972 or thereabouts. It wasn't attractive to the Blake & Riggall partners. I then applied for, and was considered for an appointment as Sir Ninian Stephen's first associate to the High Court. Unfortunately, in discussions with the family, I decided that I would withdraw my application. I had to approach Sir Ninian with my decision, which was very embarrassing, but he was such a polite gentleman that he made it easy for me. But people at another firm heard of my concerns about a split profession, and a firm then called Ellison, Hewison & Whitehead, which became Minter, now Minter Simpson, poached me and said, "We'll give you a shot at this. Come over as house counsel." It didn't work, because the litigation lawyers were jealous. Apart from one appearance as Counsel in a County Magistrates Court, they didn't give me the appearance work in the Chambers courts, or at the Magistrates Court, and I ended up taking photographs at industrial accident sites, which didn't appeal to me, so I went to the Bar, in 1973.<sup>2</sup>

Q Industrial accident sites like Westgate Bridge, for example?

A Not as big as that, no. For example, a factory where a worker had a finger chopped off. I went out and photographed the workplace and equipment for the insurers; or motor accident sites. It wasn't fulfilling. That year at Minter wasn't fulfilling, it didn't work out, so I went to the Bar. I did enjoy however meeting and learning from some very experienced litigators and commercial lawyers at Ellisons.

Q But why were the litigation lawyers jealous? What exactly did they feel was so wrong about what you'd proposed?

A I think it was me having a status above them, getting the kudos rather than them. I wasn't getting the referral work. I didn't complain. I didn't go to the partner who brought me across and said, "Look this isn't working. Why don't you talk to them?" It was just a year that I just wasn't happy. But I enjoyed the people there, I learnt from great practitioners such as David Jones who became the first solicitor appointed as a Judge to the County Court. I also remember fondly Tim Hewison, Tom Hanrahan, Ian Davis and Henry Von Bibra. Ian and I are close friends now. I learnt a lot from them. Henry von Bibra was the partner who brought me across. He was a character, so I enjoyed all of that, but the practice of the law as a solicitor wasn't fulfilling, and as I said, I then went to the Bar.

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<sup>2</sup> Two bad decisions in my legal career - not taking up the position of Associate to Sir Ninian, and not understanding the valuable role that barristers play in a divided profession providing independent expertise to clients and solicitors.

**Part 4 (First Years at the Bar and “Darcy” Dugan)**

Q So you signed the Bar Roll in 1973?

A Yes, October it was.

Q Yes, and who did you read with?

A I read with Alan Goldberg.

Q Was Alan a mentor to you?

A Yes. Alan had a very, very busy practice. Revolving doors, all hours of the day and night. He was involved in a very heavy arbitration at the time, and I didn't get really involved in it with him. Cliff Pannam was next door, so I had a lot to do with Cliff when Alan wasn't in his chambers. Alan's work ethic and preparation attention to detail and the range of clients he acted for and the breadth of work he undertook inspired me. I did not then decide that I would do commercial work like Alan, because when I went to the Bar. I think the late Jim Foley was my clerk for the first year, and then Kevin Foley took over when Jim retired. Kevin Foley advised young barristers not to specialise too early, but rather to get a feel for everything, and that's what I did. So I had a very broad practice early on. Because of Alan's major arbitration, I did not get to see a lot of his advocacy until I was against him early in my career. I had a building case against my old master, and that was an experience.

Q In a good way, or a bad way, or a little bit of both?

A It was a good way, seeing Alan in action and being opposed to him. It was an arbitration involving cracked concrete out at Sunshine in unstable earth foundations, and it was a good contest in good spirit, but it was hard-fought, and so I learnt a lot there. The first number of years at the Bar, maybe even six, seven, eight years, I was doing mainly the Magistrates' Court work and I loved it. I look back on those times as being probably some of the best. You have magistrates who you'd know, and they'd respect you. There was one in particular, whose clerk would adjourn the court for lunch and he'd say, "Silence, all stand. This court stands adjourned until *about* a quarter-past two", because he knew the magistrate rarely returned at that time. The Magistrate enjoyed the company of barristers for lunch. He liked his *Autumn Brown* sherries, and a quarter-past two would come and go, and we'd still be at lunch. We probably settled a lot of cases over lunch, but that was the way it was then. Probably early mediation was when the magistrate would ask each counsel in the presence of each other, "What's in this?" And he'd give a kerbside assessment "Go off and settle it" - it made sense.

Q Who is this magistrate who you were speaking of so fondly?

A I thought you'd ask me that.

Q It wasn't "Darcy" Dugan?

A No, Darce (as he is affectionately known) was another character. I have a great story about Darce. No, it was Ken Pommeroy.

Q That's very interesting.

A Darce was good. Can I get back to Darce, while I remember?

Q Yes, absolutely.

A One of the early cases I did at Minters, was to act as counsel for a client at the Morwell Magistrates Court. It was a paternity suit, and a local young lady had accused my client of fathering her child, and she was asking for maintenance for her child. My client denied that he was the father, but admitted having sexual intercourse with her. One of the defences in those days was that if you could prove that she had sex with others during the gestation period, it would create doubt as to who the father might be, and that could be sufficient for a finding in favour of the defendant. I drove to Morwell for the day and took my wife with me for the drive (and to see me in action!). I stood up, and announced my appearance, and the clerk of courts said, "This court will sit in camera. Anyone not having any business in the Court, please leave, and of course, my wife had to leave. I stood up and I said, "Excuse me, your worship. I'm a little embarrassed. My wife has come all the way from Melbourne with me. He looked around the courtroom and said, "Wife? I can't see your wife, but if that lady there would come and sit at the Bar table, then she can be your instructor. So that's how he overcame that. That was the way in which Darcy dealt with "complications".

Q How was the case resolved, in the end?

A My client lost, and he just drove off into the sunset, playing his guitar. He didn't really care in the end.

Q I wonder how the former French Minister for Justice would fare if she had you for her counsel now! That's a very interesting case going on at the moment over there, about establishing paternity (of her child).

A I remember that, before the Morwell Court was opened that day, I told the Clerk of Courts that I was appearing for the Respondent. The Clerk must have known of the Complainant's reputation because he said, unkindly, "Are you calling the local football team?" I said, "No, but do you know anyone who might have slept with the Complainant?" That was my first appearance as an advocate. I actually called as a witness a young policeman who said that he had had sexual intercourse with the Complainant during the relevant period. Darcy Dugan leaned forward and wryly asked, "So, you think you might be the father?" The witness retreated. We probably lost the case based on the similar facial features shared by the infant and my client.

## **Part 5 (The "First" Builder's Labourers Federation Royal Commission)**

Q People I've interviewed have all spoken fondly of days of working in magistrates courts - Petty Sessions Courts and the like - and most agree on the importance of having a broad and general practice, which clearly you do, too. When did you think about specialising? When did you start to head down that path? Were there any particular cases, or some pivotal moments where you started to think "OK, these are the areas I want to start heading towards"?

A I did it the other way. I did it by exclusion. Rather than say, "I want to only appear in particular type of cases", I declined categories of work that didn't interest me or that I thought might require specialisation too early in my career. For example, one of the areas that I dropped was crime.

Q Why did you drop that? That's such a fascinating area.

A It is, and I regret not taking criminal cases, although I did accept a brief to appear in the Children's Court on behalf of a "nice young lad" or so described by my instructing solicitor, the late Frank Galbally, who had been charged with malicious wounding. He was acquitted. As we left the court, the prosecuting detective smiled and said "It won't be long before we get you again". Much later in his notorious life he was charged and acquitted of the murder of two policemen in Walsh Street, South Yarra. Subsequently he was himself murdered. In crime, is where I think the role of the advocate is especially important to the client, more so than in a commercial dispute where, more often than not, it's not the human client's money that's at stake but corporate money, or an insurer's money. The individuals you're dealing with don't have the same emotional attachment to the outcome. So I regret not continuing with crime. I think that is where the real law is practised and the laws of evidence are strictly applied. I've never appeared in front of a jury, and I regret that as well. I think that's something that's part of being a barrister. I got very close, but we settled the case. It was a civil jury, but we settled the case, so I never appeared in front of a jury. I dropped off Family Law because that was a whole area of specialty. If you do family law, generally you just do family law. If you do criminal law, you just do criminal law. Gradually, I was left with just a very general commercial practice. I call it a debt-collecting practice, as you're just changing hands from a claimant or respondent, and we get paid for that. I got into the construction area, construction disputes area that seemed to be coming my way a lot. I also developed a specialty in Customs Law, which I really enjoyed.

Q Was this during the BLF era?

A I don't recall. Now, the BLF - there are a few stories in that one. I was in the first BLF Royal Commission with BLF boss Norm Gallagher and that was an amazing learning curve for me. I was a young barrister, acting for two of the central players in the investigation. I don't want to go in to too much detail because of confidentiality issues. I actually learnt a lot about politics and about the construction business in the Royal Commission. Unfortunately, the investigation went off on a tangent. What those assisting the Commission were trying to uncover was evidence of industrial espionage such as on-site blackmail, kickbacks and a whole lot of other illegal or improper practices, but no-one would talk - neither developers, builders or subcontractors. What the Royal Commission did uncover was a very expensive beach house at Yarram owned or occupied by Gallagher, paid for, or built from materials or labour supplied, by the developers and or contractors.

Q It was a very dirty time, and a very dirty series of dealings. Did you at any stage fear for your own life, or those of your clients? Were there concerns, because things got pretty close to the wire in a number of instances?

A Yes, one of my clients was pressured by the police to secretly tape-record Gallagher, which he refused. That was pretty heavy stuff. But the funniest thing was the level of



unnecessary security surrounding the Commission. A hearing room was set up in Hawthorn and it was suggested it had bulletproof windows with secure entry points. I remember the first day that I attended the hearing. I couldn't find the way into the hearing room. I walked around the building, and I found a door that was unlocked and walked in. I sat at the Bar table, alone for a short time, when a uniformed security man tapped me on my shoulder and asked, "How did you get in here?" And I said, "I just went around, and came in the side door." He said, "Don't tell anyone; they'll have my job, because you're meant to go into the front door through security." The front entrance required you to go in to a sealed chamber with one-way windows, and state what your business was and provide ID before they let you in. It was overkill. But was I ever concerned? No, I don't think so.

Q That's a relief. Because I know there were some pretty unsavoury characters, and you'd know about it, of course, very well.

A But we weren't at risk. I'm not sure if the Painters and Dockers Royal Commission was before the BLF Royal Commission, in which Frank Costigan QC was the Royal Commissioner. I had the privilege of sharing chambers with Frank for a long time. I remember asking the question: Did he ever feel scared for his life whilst he was running that inquiry? He said he didn't because, in his view, they could always get another Commissioner. "If they kill me, they can always get another Commissioner but they can't replace witnesses." The same with me. I mean, why would they want to heavy me? My client can just get another barrister.

### **Part 6 (Kevin Foley "Hasten Slowly")**

A But I think that was a turning point in my career, because obviously there was a lot of publicity about (the BLF), and I don't know, I had a very broad practice, defamation, which I enjoyed, a lot of defamation work.

Q And defamation was pretty sexy then, and if anything, it's even sexier now.

A It is. You could get trapped in some pretty detailed law and procedure. It was difficult to run a defamation case because the possibilities can go all over the place, but I enjoyed the challenge.

Q I might ask you about that briefly, because I interviewed (retired judge) David Levine in Sydney not long ago, and he talked about what he said was a fairly pivotal case in defamation law, in the late '70s, about some architect who "nearly choked on his breakfast" about some article he'd seen about himself in a (news)paper. (David Levine) said that was when defamation started running to what he called "the hurt feelings aspect", whereby people started taking much more personally than they had previously, articles for example, that were written in the paper. Was that about the time that you were also working, and did you notice that same sudden ascent, if you like in the hurt feelings aspect of defamation cases?

A No, not really. I was more caught up with the ability of a defamation case to backfire and there are so many twists and turns. I think the Americans coined a phrase which I often told clients, namely: "the truth hardly ever catches up with the lie", so even if the client succeeds, there is a risk that his or her reputation and credibility remains

tainted. Depending on the issues and defences relied on by the defendant, all is open for cross-examination. If you act for a defendant who alleges what was published was true, then unless that defence succeeds, the monetary penalty for failure can be severe. And then there are all of these qualified privileges rules. I found it quite interesting to work my way through it all.

Defamation wasn't a big part of my practice, but it was an enjoyable part. I got into construction disputes fairly early in my practice at the Bar. One leading commercial or corporate case that I ran before I took silk lifted the corporate veil and changed the law in Victoria, making non-participating directors liable for the debts of the company if the company incurred debts whilst it was insolvent. A non-participating wife who, as a director, signed the annual returns of the company in which she was a director, was held liable for the debts of the Company that were incurred during the time that the company was unable to pay its debts as and when due. Her husband was, alone, running the business of the company at the time, and the wife knew very little about the finances of the business. I acted for a creditor of the Company, a supplier of goods to it. The Company was placed in liquidation. The husband director died, leaving very few assets. There was a Court of Appeal decision in New South Wales, which held against holding a non-participating director liable. When I opened the case to the judge, he said words to the effect, "But Mr Jolson, isn't there a Court of Appeal decision in New South Wales, which is persuasive authority against your client succeeding?" I responded by saying that my task was to demonstrate that that case was wrong, and shouldn't be followed in Victoria. So there was the challenge. I succeeded in my stated task. The law changed, and that was a great buzz to me, but not to my wife and some of her friends and I suspect the majority of "husband and wife" companies where the wife is usually the non-participating director.

Q (Your clerk) Kevin Foley, in all of this, was he realising your talents in this regard, and directing (cases to you) accordingly?

A Yes, Kevin would very keenly follow the career paths of all of the barristers on his list. As I said before - he used to say, don't hasten too quickly, just get a feel for everything and find where your niche is. And if you've found your niche, then yes, he would be supporting you there. Not relevant to anything I've just said, but something else has come to mind which I remember Kevin saying. One of the biggest problems for young barristers has always been getting paid in a timely manner, and constantly chasing fees. Sometimes you wouldn't get paid by defaulting solicitors, and Kevin used to say to be aware of solicitors who have the reputation of delaying or failing to pay fees, saying "You may as well not work, and not get paid, than work and not get paid, so choose your solicitors carefully." In the early days (1970s to 80s) we, as young barristers didn't talk about payment of fees upfront, or security for fees. Payment was based on the honour system. We knew we would get paid eventually, but it could be six or twelve months after the fee slip was rendered.

Q I hope that (solicitors not paying fees) didn't happen to you too often, did it?

A No, but I know that it still happens. A colleague of mine who recently ran a long case interstate, had to sue the solicitor for payment in the Supreme Court. So even in 2012, 2011-12, it's still happening. You've got to be careful, and I think counsel and clerks are more vigilant now in getting money in or somehow securing payment of fees.

- Q I spoke to a clerk not long ago who said that in his view, email has been the biggest problem of all, because very unpleasant missives get fired back and forth, and he said it's so much better for him to just simply hop on the phone when there's the situation of an outstanding payment, and just broker it, so to speak, on the phone, carve out some kind of arrangement that both are reasonably happy with, and then you don't have that nastiness that he says has got worse and worse, in his view, in these recent years.
- A Yes, I'm always in favour of direct communication. And that's what led me to mediation. Or did it lead me? No, that was a consequence of me going into mediation.

### **Part 7 (The Road to Mediation)**

- A But I became a little unsatisfied in being an advocate litigator, because more often than not, you would spend a lot of time and energy preparing cases, charging quite high preparation fees and the case settles for reasons another than legal vindication. As counsel you don't get to run the case, present the argument that you have formulated, and test your forensic and advocacy skills of persuasion. There is a great satisfaction when you do run the case, and you succeed. But anecdotal evidence suggests that approximately 85% of the cases settle, so you might end up having a fat fee-book, but you don't get the satisfaction of standing up and being an advocate, and being an actor, being in theatre, all of that.

It was fortuitous that in 1985, or thereabouts, I got a call from Judge Leo Lazarus of the County Court. He was in charge of the Building Cases List, which was bogged down with a backlog of cases waiting to be heard. He said to me - I don't know if you know Judge Lazarus, but he was straightforward and fairly blunt.

- Q Was he related to (barrister) Joan Rosanove? Was he her youngest brother?
- A He could have been.
- Q I know her maiden name was Lazarus, so I'm just curious, but yes.
- A He could've been. Our conversation on the phone went something like this:

*Q "Hey, Henry. Are you familiar with these new (1983) Building Cases Rules?"*

*A "No, Judge."*

*Q "Do you know they've given me the power to order the parties to a building dispute to mediation?"*

*A "No, Judge."*

*Q Do you know that they give the power to appoint mediators to mediate the dispute?"*

*A "No, Judge,"*

Q “Do you know what a mediator does?”

A “No, Judge.”

Q “You’d better find out, because I’m appointing you, George Golvan and Maurie Phipps as a mediator in the list.”

We had to find out what mediators do, and basically, it was to try and settle the cases before they went to trial, to try and get rid of the backlog of cases. This was well before the early 1990s where New South Wales had a thing called “Settlement Week” in which the Supreme Court ordered compulsory settlement conferences to try and clear the backlog of cases awaiting trial. The “Spring” and “Autumn” Offensives followed in Victoria in 1991 and 1995 respectively. In the Spring Offensive, 762 cases waiting for trial were reviewed by a panel of judges. 280 were sent for mediation and 104 cases were settled at mediation. The Victorian Supreme Court's Spring Offensive was regarded by the Court as a success. A little over 50% of the cases referred settled during mediation. In the Autumn Offensive, 150 cases were referred to mediation and a total settlement rate was claimed of 79.35%.

The claimed success of those initiatives set the course for the development and acceptance in Victoria of what became known as *court annexed mediation* but which I prefer to call *court referred mediation* to separate the courts from the process as much as possible. I am pleased to have played a part in that development.

Q Was settlement week in NSW one of Sir Laurence Street’s initiatives?

A Yes I think it might have been, but the Victorian County Court initiative in 1983 that I have referred to was well before then. So we consulted the books, but there was not much theory that we relied on. Basically we brought the parties together, and “banged heads”. We were getting some good settlement rates, up around the 75 to 80% mark. Judge Keon-Cohen in the Victorian County Court followed the example of the Supreme Court and had a massive purge on cases in the causes list. The Bar and the solicitors were asked to, and did, volunteer their time to be mediators. So we cracked a lot of cases, and from there on, I became more interested and got more and more involved in mediation and learning more about the theory of negotiation and mediation. Like a lot of other negotiators, I was influenced heavily by the late Roger Fisher of the Harvard Law School who wrote “*Getting to Yes*” and with whom I had the privilege to teach at his “*Getting to Yes*” workshops in Australia in the mid 90s. I then gradually became a full-time mediator and arbitrator. I did a lot of arbitrations, and then I got involved in the sports law, and conducted a number of sports arbitrations.

Q But had not Leo Lazarus appointed you, do you think you would’ve moved into mediation as quickly as you were subsequently moved into it?

A Yes. I was quite keen on the philosophy behind mediation. I would’ve got there eventually but the consequences of the phone conversation I had with Judge Leo Lazarus in about 1985 got me into mediation a number of years earlier than I would’ve otherwise.

Q Because you're certainly acknowledged here as a pioneer of court referred mediation. I'm interested because ADR - Alternative Dispute Resolution - has been around for quite a number of years, but the trend towards mediation, as you pointed out a moment ago - that's really only been going on since the early '90s or thereabouts. I wondered, because when I learned of your role in all of this, if there had been some combination of your own personality perhaps, together with perhaps the kinds of cases you were running at the time that had led to this, or whether there were other things? I can see now from what you were saying that there was a backlog issue that had to be actually dealt with in any case, and necessity became, in a way the driver for you.

A That's right, yes, but my personality also, I think, assisted. I would rather communicate and talk openly about a client's concerns with a view to try and resolve it at an early stage, to avoid having this cost escalation, and the delays, and the frustration at the end. Even with an imposed decision by a judge, or a third party arbitrator, both sides are not a hundred per cent satisfied, because there are cost consequences. You never get all your costs back. So you'll be out of pocket, the time involved in directing your energies away from your core business in to a different world, different culture, different language, such as the legal system is. Courts and arbitral tribunals often can't give to litigants complete satisfaction that accommodates their needs and interests which may be different to their strict legal rights.

As I said, communication is important to me. I found that lawyers become filters, and I developed my own analysis of conflict model about this. Clearly people in a commercial dispute had a relationship at one stage. They could talk to each other. They did a deal, they worked together, and then they fall out, and find they are unable or unwilling to talk to each other effectively in order to resolve the dispute. So they go off to independent lawyers, and then it's the lawyers who are talking, not the clients. The lawyers have their own language and they filter things unwittingly, or wittingly. When it comes to a negotiation between lawyers, and you superimpose another level of barristers further removed, the discussion is conducted in a different language. In my mediations, and I'm thankful that the legal profession, barristers and solicitors, trusted me enough for me to say, at a particular point in the mediation "Let me speak with the decision-makers alone without lawyers", and they let me go off and have a chat with the decision makers (the client) who I bring to a full circle, where I assist them to listen and talk to each other, and in which forum they can say, for example, "Put all this crap aside. What I am really saying is this, this, and this. I think we can work together. We have a good business. What I really need to resolve this is a fairer distribution of profits, more time off, more say in the management decisions, etc..." and other things come out when the clients talk directly with each other which shifts the dynamic and can produce an unexpected resolution. I just found that a very interesting and stimulating thing to do. The mediation usually starts with the parties and their lawyers not willing to give anything away, with fixed positions, and aggressive attitudes. Gradually, as the day unfolds, they open up, and you get to a meaningful discussion. I never give up because I am no longer surprised by a sudden change in mood or direction by just one sentence or comment that can open the door to a resolution. I found that human behaviour quite stimulating.

Q And I would imagine psychologically enormously rewarding, because you feel like something's been done.

A And rewarding, and that's what I wasn't getting out of building up nervous energy in preparing for a case, knowing or not knowing whether I'm actually going to stand up and open my case to the judge, and run the case, or whether we're going to settle it.

### **Part 8 (ADR on the Rise)**

Q I've often wondered with barristers I've interviewed what happens with all that thwarted adrenalin that they get, and I know some of them are literally sick at the beginning of the day.

A Yes.

Q I've heard about that many times, and I've found myself thinking, "What does this do to them in the long run?" and I don't know how to calculate that.

A It's often gut-wrenching, it is. I think it's been documented on TV. A leading criminal barrister used to dry-retch before going into court.. I was junior to a lot of senior counsel, and I could feel the nervousness in even experienced advocates, but why?

Q The other thing that's very interesting in all that you're talking about - it's often been said about barristers, and the profession of law, advocacy generally, that it's very adversarial, whereas what you're talking about is not really adversarial at all, it's quite a different type of consciousness that's brought to it. It's clear to me from what you're saying that you found (mediation) far more not just fulfilling, but you found you reach resolution in a much more useful kind of way, so clearly, that means something to you as well. Why aren't more lawyers getting into mediation? I know quite a number of them have got in to it now, and are working in it, but can you see this ultimately, maybe not replacing more traditional ways of exercising law, but do you see it perhaps taking over maybe two-thirds of what we see as legal practice?

A 15 years ago, in 1997, I wrote an article that was published in the Australian Dispute Resolution Journal on that very point<sup>3</sup>. It was titled *Judicial Determination: Is It Becoming the Alternative Method of Dispute Resolution?* Against the view of some authors who thought mediation in the courts would not survive, I foreshadowed that mediation would become the primary method of resolving disputes. And it has. I read recently that one commentator observed that. In most cases, and in most jurisdictions throughout Australia, courts now have the power to compel mediation, although they use that power sparingly. However, it is usual now, that before you can get a trial date you will be required to go to mediation. So since we started back in the mid-80s, there has been a change in culture and attitude to mediation.

The National Alternative Dispute Resolution Advisory Council, (NADRAC) some years ago recommended to the Federal Attorney-General, that in courts exercising Federal jurisdictions, and Federal tribunals, if a matter is going to be mediated, it has to be mediated by a qualified mediator who has passed an accepted mediator accreditation course, and who has been accredited National Mediator Accreditation System. Incidentally, as Chair of the Victorian Bar ADR Committee, I commissioned, in 2006, and my committee designed and established, the Victorian Bar Mediator and

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<sup>3</sup> (1997) 8 ADRJ 103

Advanced Mediator Accreditation Scheme recently described by the Chair of the Victorian Bar as *“a ground breaking initiative long before the establishment of the 2008 National Mediator Accreditation System.”*

As a result, a lot of barristers, and solicitors of course, seek accreditation and the accreditation courses are not cheap. My experience has been that the marketplace will determine who gets the jobs as mediators, and there aren't all that many people who get the major commercial disputes to mediate. In the personal injuries field, there are a lot of mediations being conducted and there's been some editorial and academic criticism that they're not really mediations because, for example, they don't bring the parties together. It's all negotiation between lawyer and lawyer. It's just a settlement forum, it's not a mediation in the pure sense. I think there are very few people who are confident and competent enough to actually mediate in the pure sense where they use open language, and divert people away from being aggressive, and can handle people in difficult situations, by the use of appropriate mediator intervention skills.

Q You are a foundation member and a former Chair of the Law Council of Australia Alternative Dispute Resolution, and Mediation & Arbitration Committee Foundation. What I'm wondering is when you were doing that, did you try to put forward initiatives or recommendations that might lead to a greater number of lawyers developing that competence and confidence that you're speaking about? Do you feel what you did might've helped achieve that a little?

A I was a foundation committee member, so I wasn't running the show. I was a fledgling lawyer. But I do recall, in 1989, we (that is the Law Council of Australia ADR Committee) adopted a policy for mediation to be applied throughout the profession and in the courts, and if you pulled it out now, would be so relevant to today.

The Law Council of Australia in 1989 adopted its policy on ADR which "*among other things encourage(d) the development by Courts of flexible practices to facilitate the consensual resolution of disputes pending litigation without penalty to its hearing priority*". A number of principles were catalogued which were later adopted by the Standing Committee of Attorneys Generals in Australia. I am proud to have been a co-author of that document 23 years ago that has been adopted and applied today.

I am also proud to have been involved as principal draftsman and on the drafting committees of the LCA ADR Committees that drafted Model Rules and Regulations for Court Annexed Mediations; Guidelines for Mediators; Ethical Standards for Mediators; and Guidelines for Solicitors Acting in Mediations.

I pay tribute to other members of that committee and in particular to former Chairs before me, Alan Limbury from Minters in Sydney - he was the Chair immediately before me - and before him, Geoff Davies QC who was then of the Queensland Bar and who later became President of the Court of Appeal of Queensland. Mary Walker of the Sydney Bar succeeded me. So we provided the model, I believe, for others to follow and to implement into their own jurisdictions, and that's also very satisfying.

## **Part 9 (Playing by the Rules)**

Q Shortly after, actually, that time, you were appointed QC in 1991, but I notice looking through your CV, that really, in the 1990s, things got moving for you in many ways. Governance became big for you, and your involvement in sports law, and I want to get on to that in a moment. I wonder if your experiences with mediation in those early years was also leading you to a greater sense of concern about the way organisations are governed and I suppose in a sense, the regulation of behaviours. Was that starting to preoccupy you, even after you'd taken silk? You seemed to head off in a somewhat unorthodox, or maybe not really that unorthodox, but a different direction to what some silks would've done.

A Yes, I'm not sure whether governance is the word. I had no plan. I hadn't planned my course by reference to any issue or issues. I just fell into things, I guess. Perhaps being involved in organisations was something I enjoyed doing. I've been involved in rewriting the constitution of a number of organisations. For example, when I was Commodore of the Eildon Boat Club from 1995 to 1997, I rewrote its constitution. Most recently, I rewrote the constitution for Maccabi Australia, the roof body governing Jewish Sports Clubs in Australia. I rewrote or amended the constitution of the Western Bulldogs Football Club some years ago. I didn't undertake that work just for the sake of it but to bring the constitution up to date.

Q Up to date with what, exactly?

A Just contemporary governance issues.

Q Were other clubs up to date?

A I think the AFL was directing clubs to have a look at their constitutions, because most of them were old and did not incorporate changes to the laws over the years. When I was president of the Australian Bobsleigh and Skeleton Association for four years or so we rewrote the manuals and rewrote standards of conduct. I also helped the AOC with its Olympic Team Selection Agreement and By-laws. I fell in to bobsleigh because Will Alstergren who has just taken silk. He was for many years the captain and pilot (driver) of the Australian bobsleigh team. He was at the Bar, and he spoke to me about his involvement in bobsleigh in about 2000. I laughed. I mean, whenever you say "Australian Bobsleigh team", people laugh, and recall the movie *Cool Runnings*, the film about the Jamaican Bobsleigh team. Anyway, I ended up getting involved with Will because he said the organization needed better management and restructuring so I agreed but not before I got a little taste for the sport.

I knew very little about bobsleigh so Will suggested that I act as manager of the team that was to compete in the World Push Championships 2000 which is the summer version of the winter sport on ice. It consisted of competitions between the winter teams over a number of heats and finals each heat consisting of a timed push and sprint in a bobsleigh on wheels set on a flat track over a distance of 35 metres from a running start. When I was told that the annual competition was, at that time hosted each year by Prince Albert of Monaco in Monte Carlo, I went looking for my passport. When I returned from Monaco, after meeting the Prince and getting a taste for the competition (and a taste of the life in and around the host Principality) and



being around elite athletes and taking part in an international sporting event, I told Will *ó ðl'm in!!ö*

- Q You say there was no special plan in all of this, but I can't help but think at the same time, in these last dozen years, maybe longer, there's been more of a spotlight directed now to standards of conduct in the sport profession, and that is interesting because at the same time, there you are, you're busy drafting and redrafting constitutions and being involved in people's behaviour, codes of behaviour and the like. What do you think it is? Do you think there is just simply that there is just more that we hear about now, or have there often been problems with behaviour that needed regulation? Has it been the governance structure of clubs that was really perhaps in part to blame for issues that we've been seeing more recently? Or is it none of these things, just a coincidence?
- A No, I think we've seen cultural changes in the community generally, in terms of no longer tolerating racial vilification, gender bias, discrimination, child-molestation, drug use and abuse. A whole host of community cultural behavioural issues are coming to light and more and more, there are duties imposed on people who control or govern sports and who control or come in to contact with young vulnerable people. It's just something that the community is becoming more conscious of. The controllers of the sport and community groups or organisations concerned are at risk of sanctions if they don't take measures to ensure that their constituents are following proper guidelines and conform to acceptable behavioural standards. Most recently, with the Royal Commission into child abuse, some organisations have approached me wanting to put in place guidelines for its management staff and coaches who look after young athletes, and young children to ensure that the controllers, the administrators and coaches are aware of appropriate conduct expected of them in certain circumstances.
- Q So in a sense, with all the heightened awareness, people who have these days of their rights, there's now an equal growing awareness of their responsibilities?
- A Yes, very much so.
- Q Perhaps that's a good thing from your point of view?
- A Awareness, certainly.
- Q Awareness, and hopefully exercising those responsibilities appropriately.
- A Yes, and I've got it somewhere - the Australian Olympic Committee Team Selection Agreement (which every athlete who wants to be considered for selection must sign) is quite thick, with schedules and addendums setting out a number of rules of conduct relating to discipline and disciplinary procedures; Olympic Intellectual property; doping requirements and use of drugs; adherence to the World Anti-Doping Code; medical requirements; gambling; media guidelines; marketing and sponsorship; insurance; dispute resolution; etc.
- Q Is it too onerous?

- A I think for an athlete, it's too much to expect them to read it and understand it, and for them to then go off to a lawyer to have it interpreted I think is too much. It's got to be simplified, written in plain language.
- Q You don't suppose that with all these responsibilities that in one sense, it's been partly the reason why some athletes have reported suffering depression after all the enormous expectations that are put on them? There's also this corollary of all these, as you say, these obligations they're meant to be aware of? We're hearing a great deal at the moment about athletes and their problems.
- A I think the athletes understand the basic obligations to compete fairly within the spirit of the rules of the sport, not to cheat, not to breach the doping codes nor bring their sport, the AOC or the Olympic movement into disrepute. That should be fairly obvious to them. That's not too onerous I wouldn't have thought. I think it's more on the administrators and the coaches and people who have the care and conduct of young athletes and vulnerable people and where the buck stops up at the top, the committees or the boards who run the sports. They, I think, are feeling the pressure. They have to do something, obviously, to make their constituents aware of what the acceptable standards are, make sure that the standards are enforced, and that they have appropriate means for dealing appropriately with people who depart from those standards. That imposes heavy responsibilities on those who control the sport.
- Q Have you considered writing in depth about all of this, given your quite considerable involvement in sports law in the last thirty years?
- A I have, but I haven't had the time and more recently, I haven't had the energy. Things might change. I like writing, but it's just a matter of time and energy.
- Q Just returning briefly to mediation, when I interviewed Sir Laurence Street recently, he was talking about how for some people, mediation cannot be satisfying because they have a thirst, as he put it, for justice. That means they want their day in court. Have you had clients like that who have been resistant to your advice?
- A Yes, there are always clients who want "their day in court", but then part of the mediator's role is to explore and understand and ensure that the party understands what they are asking for. I would ask that person "What do you mean by *your day in court*, or what do you mean by *justice*? Let's talk about what it means, and how you're going to achieve it, and will you achieve it?" Because part of my routine is to ask each side, "OK, what happens if you don't settle today? What's going to happen tomorrow? What's going to happen next week? When are you going to come to trial?" We go through that in detail, and the cost involved, and then I say, "you have the opportunity to settle here and now, to walk out of here, and put this behind you." Quite often, wanting the day in court is then balanced against a whole lot of other factors, and I would not accept lightly without challenge, a statement such as "No, I'm not interested in settling, I'm going to court." And I would ask and explore with the party, why it was important to go to trial, and whether their best interests are achieved that way? But there will be people who are reluctant to settle for example, bureaucrats who don't want to make a decision in the mediation room. They would rather have a judge make a decision and if it's adverse to that party, they can say, "it wasn't me, it was the judge who made the decision."

- Q That's because of their training and keeping their backsides covered, isn't it?
- A Yes, they just don't want to make a decision. There are other cases where a statutory authority requires a judicial interpretation of a statute under its administration.

### **Part 10 (A Designing Barrister)**

Q Henry, earlier on, you spoke about your father's entrepreneurial spirit, but you didn't actually speak about your own entrepreneurial spirit! I would like to ask you, in fact, because I had no idea this was you. You set up a business a number of years ago called Ravensdale, which imported wigs from England. You set it up in partnership, I understand, based on the name Ravenscroft, which is the English firm which specialises in legal gear, and legal wigs, and the like. You also actually designed the prototype jabot that Victorian Bar members wear (today), and I'm just fascinated by all this, and how you decided to get it in to wig design, jabot and wig importing, and all the rest of it.

A Again, it wasn't planned. It was something that just happened. The name 'Ravensdale' is a real name. John Ravensdale started a business in 1912, I believe, tailoring jackets for the Bench and Bar. I don't think he made gowns. His son, also called John, took over the business from his father. Their company was called J. Ravensdale and Son Pty Ltd. One day I went to their premises in a small upstairs 'studio' in Swanston Street to get some robes made by John. It was at a time when Owen Dixon Chambers West was being built which included some retail space on the ground floor in Lonsdale Street. I suggested that there was some retail space being made available in the new building and that he would be right in the middle of the legal precinct if he moved there. We talked about that, and he said he was closing down, that he was getting old, and would shut down at the end of the year, (or whenever it was). I asked whether he had somebody to take over or sell the business to. He said he was too old and wasn't interested. I told him that was a shame after all these years.

Some months later, I went to buy a shirt in High Street, Armadale, and I noticed a brochure on the bench that had a photograph of a barrister outside the Supreme Court. I asked the salesman what that was all about. He told me that the boss wanted to get into the legal market. I asked to be introduced to the boss whose name was Eugene Notermans. He was and I believe still is a very well-known retailer in High Street specialising in tailor-made shirts and suits. He confirmed that he was interested in getting into the legal market. I thought, 'there's an opening'. I went back to John Ravensdale, and I asked John for the chance to find someone who might like to buy the business. He said there was just him. He was right. The only item of value was a beautiful old full length swing mirror bordered in a mahogany frame. I think I paid him fifty dollars for a 6 months option to buy the business name J. Ravensdale and Son, and the mirror only. I never intended to buy the business or run it. I thought it was a pity that such a long established and exclusive business would simply cease to exist when there was a possibility that there was someone who might be willing to continue and possibly expand it. So with the option in hand, I went back to Eugene, and I suggested that here was his opening into the legal market he wanted. He could have the name, whatever goodwill went with it, a retail outlet right in the heart of the legal

precinct, and the mirror. He was interested but would not commit unless I was in as well as he had no knowledge of the legal market. I balked at that suggestion saying I was a barrister, not a retailer.

Subsequently, I mentioned the opportunity to my colleague and friend Bruce Walmsley, who was, and is, also a barrister on Foley's List. Bruce was known around the Bar then as a bit of an entrepreneur having sourced, amongst other things, the bulk purchase of bar fridges for supply to the new chambers. He thought the Ravensdale idea was a good one so to cut a very long story into a manageable one, Bruce and I and Eugene ended up in partnership in a business called *Ravensdale*. We took a lease in the new retail premises on the ground floor at 525 Lonsdale Street, Owen Dixon Chamber West. We fitted it out with carpet and furniture borrowed from the Supreme Court and we sourced the wigs from Eden Ravenscroft in London. We imported the wigs and Eugene's tailor shop made the jackets. We found an academic gown-maker in Cheltenham who then made our robes. We supplied the Judges and Associates with their judicial robes, and the tipstaves with their uniforms. Our philosophy was to supply the Bench, Bar and Courts with everything they needed for Court and domestic attire. For example, a barrister might want but didn't have the time or inclination to go out of their way to buy, for example a handkerchief from Myers because it was too far to walk.

We wanted to give them a one-stop shop, in or near their chambers. It was wonderful. We had made-to-measure suits, and we were importing suits as well, such as Zegna suits and other major labels. We had a laundry pick up service, and contemplated a travel agency and barbershop! After a while, for me, it just got too much. I said, "Hang on, I'm a barrister, not a retailer", so I got out of it, and Bruce stayed in it for a little while.

Along the way, I developed an idea for a false front jabot. Traditionally, barristers would wear a shirt with a detachable conventional collar and, for court, would remove the collar and attach a highly-starched collar and separate tabs. They then put on their jackets and robes. With the wig, on it got oppressively hot, even on warm days. I got the idea of a false front that could be slipped over a T-shirt and under the vest and robe. I fiddled around with some designs, and Eugene made up a number of prototypes. He was the shirt-maker and I came up with the design that I registered on behalf of Ravensdale. What it meant was I could wear a T-shirt, and just put this jabot over the top, and put my gown on, and no-one would know. I have let the design lapse. Someone else is making them now, but still under that design. It is now used extensively by the Australian Bars and in the United Kingdom, in Papua New Guinea, and most of the common law countries, such as India, where robing is required. We also designed a Bar tie which we produced with a Bar logo which is current now. We designed a Bar diary, with an exclusive legal directory in it. I'm not sure whether that's being produced anymore. But as I said, it got too much ultimately, time-wise, and I wasn't a retailer and didn't have my eye on the bottom line. Eugene wanted to open a store within a store when David Jones was refurbished, and it was at about that time that we split from Eugene. Bruce and I ended up running Ravensdale and my secretary became our manager. It was still too much for me as it took me away from my practice. So I left it to Bruce. I think all I got out of it was a pair of cufflinks.

- Q With õguiltyõ and õinnocentõ on each one?!
- A Yes, plus the kudos. We had some fun.
- Q It's great that you designed the (Bar) jabot. I do remember reading stories about Hollywood stars wearing crinolines and then crumby old bedroom slippers underneath. As you say, appearances are really all what it's about, and why be uncomfortable when you've got to spend maybe a whole day standing up in court? So that's fantastic. I had no idea, that's something definitely to be proud of. The business itself is completely gone?
- A Yes, Bruce also passed it on, and I think Ludlows in King Street took whatever there was there, and all the intellectual property. I haven't retained any interests in the business. I think Ludlows is now across the road in Lonsdale Street are probably still supplying gowns and other legal paraphernalia. I don't know where the wigs come from. *Ravensdale* was a great idea at the time but required experienced full time retailers to keep it going. It had great potential. I offered the business to Henry Bucks and we came very close to an agreement for it to take over the business and the lease. Unfortunately we did not close the negotiations. What a pity. It would have been very satisfying to have the Ravensdale name and business continue especially by Henry Bucks.

### **Part 11 (The Australian Football League Peace Team)**

- Q You were made a Living Legend at the Bar in September 2012, and that's something to be very proud of, and you were given an Order of Australia too, earlier in the year, and you've been a director of the Western Bulldogs. However this is very topical at the moment. You actually were part of a peace team delegation to Jerusalem last year, and I'd like you to talk a little bit about that, because with all the terrible ongoing tensions going on between Israel and Palestine, the peace team delegation was a very significant initiative.
- A Yes. It's the AFL, Australian Football League, Peace Team that competed in two International Cups, held by the AFL. One in 2008, and the last one was last year, in 2011. The Peace Team is made up of an equal number of Israelis and Palestinians. The inspiration for that came from a girl called Tanya Oziel who lives in Sydney who's a fanatic AFL supporter and an absolute dynamo. She thought of the idea of bringing people in conflict together through sport, and in particular, through the AFL. I have been involved with an organisation called the Peres Centre for Peace, which bears the name of the current president of Israel, Shimon Peres, and it was set up fourteen years ago, in partnership with a counterpart on the West Bank called the Al Quds Association for Dialogue & Democracy. Its mantra is õPeople make peace, not Governmentsõ. They are two non-government organisations whose principal aim is to bring the civilian communities together on both sides through a whole range of joint activities. Sport is one of them - (also) agriculture, law, joint kindergartens (one of which I sponsor) in which Israeli and Palestinian children and their teaches and parents share the classroom and playground, young teachers, young leaders who could influence their polititians, They are jointly running very successful programs,

although during times of tension, as recently those relationships are tested. I got involved back in 2008, and I just thought it was a wonderful idea. Robert DiPierdomenico or Dipper was the coach then and again in 2011. We want to bring the team back in 2014 for the next competition. They are keen, and we are in contact with them through a Facebook site, so we were watching the e-conversations from both sides during the current five-day war. The conversation was hostile at times, but they kept focusing on what their adopted goal was - that despite all the difficulties, they can live and play together. So it was an amazing thing to see the messages through all of this. I have been to Israel, with Dipper and with Martin Flanagan, senior writer with the *Age* newspaper. We visited the West Bank, and met the boys on both sides, and conducted joint training sessions. In 1980 the coach and chaperone of the Palestinian members of the Team was, at a former time, Yassar Arafat's bodyguard, and he was jailed by the Israelis for anti-Israeli activities. I asked him about his experiences and why, when he got out of jail, he started the peace movement with the Peres Centre on the other side. He said, simply, 'We can't go on like this for another sixty years', and that's the message for him. So, I've become the Australian Ambassador for the Peres Centre for Peace, and they made me the Ambassador for the Peace Team as well as a spokesperson. We have amazing stories from when the boys were out here. I mean, they lived together, they played together, they support each other, and yet their communities over there, and the governments, are in hostile conflict with each other. The Peace Team is a great example of what can be done.

Q Sport is a great unifier, and I know that film (*Invictus*) made not long ago about Nelson Mandela is a very good illustration of all of that. You must find yourself wondering, though, despite the undeniable success of the Peace Team, how do you think it might have been if you had instead worked in a place like Jerusalem? For example, your mediation specialisation, bringing that to bear in a situation where there seems to be ongoing and almost ultimately irreconcilable conflict?

A I'm confident that it won't be irreconcilable. I think the governments have a public persona, where they have to consider their constituents. The Palestinian authority has to deal with Hamas, which is opposed to any resolution with Israel and seeks its destruction and obliteration by force, and the Israeli coalition government has to rely on the support of the Right and religious parties which take a hard line on any discussion with the Palestinians. I think there are discussions in the background. Which keep the door to settlement open. Negotiation certainly is a big thing in the Middle East at the political level without concluding any peace agreement despite a number of attempts over the years. With regard to mediation, I've actually been asked to go over there last year to run a workshop with the Palestinian policy makers, and Israeli policy makers, in relation to court referred mediation, and how it's done here, and whether they could use it there. but I became ill, and I couldn't go. I'm looking forward to being able to do that in the middle of next year, but so far as mediating the dispute that's been going on for so long, there are far more qualified negotiator/mediators around the world who are trying to do that, and I don't know if I would be able to do anything. I haven't even thought of it, and I wouldn't aspire to it. I don't know, I'd have to think very carefully.

Q It's always possible though, that an outside person could bring a fresher perspective.

A But you've got (Tony) Blair.

Q I was going to say that, but perhaps they don't have a fresh perspective. (Former politicians have) been in the game for a long time.

A I don't know. I'd be pushing pragmatism as the key thing, to accept the conditions on the ground as they currently exist. I think if you debate history as to who was there first, no one is going to succeed in persuading the other of the historical claims. There have been too many revisionists rewriting history. The debate will go on forever, so that's unproductive, so you put that aside, and you look again at pragmatism I would use the example of Yasser Arafat's bodyguard who said, "We can't go on like this for another sixty years." You'd go to the people, and you'd say, "Think of your children. What are you leaving them? You're leaving them a mess. You've got to fix it now," and there are countless examples where they have gotten on with each other at the community level, for centuries as well in contemporary times. There's a groundswell, in Israel and on the West Bank of the youth there who are sick and tired of it all, although there are people in Israel saying that they can live with the status quo, "let them throw missiles, we'll continue to live as best we can as we have for the last 60 years." But they can't continue that way. I'm not a Kissinger. There are very well-qualified people trying their best to bring some sense into the whole thing, but as far as my experience and expertise in court and its referred mediation, I'd love to go over there and tell them what we're doing here, with the hope that they would adopt our model. That would be very satisfying.

Q So there's nothing at all like it?

A I don't believe so, not as an institutionalised form of mediation.

## **Section 12 ( "And the Beat Goes On...." )**

Q Turning to your own life, though, Henry - with your children, are any in the law? Did you set that example, or did you discourage them from going into law?

A I discouraged them from practising law but I did encourage them to study selective law subjects, to give them a better way of understanding and thinking about problems and problem-solving. Our oldest, who's forty-two, is practising as a lawyer but not for about 10 years since completing his Articles. He finished his articles, and that was it. He was always into music, and was a disc jockey through university. After his Articles he went on to importing disc jockeys from around the world and sub-contracting them around clubs in Australia. He then formed his own band, and at forty-two, he's still got his band. They are recording and have been very successful. He is now an in-house lawyer for a family property company. He recently had a son. Our second son is a very successful architect and has two sons. Our daughter is a psychologist and she has three young children. Our youngest son is in property finance and development. He was recently married to a practising lawyer! I have been married for nearly 44 years. My wife is not a lawyer.

Q It strikes me that would be something that most schools would benefit from, starting earlier, too, because let's face it, human nature being what it is, some understanding (of law) could be very beneficial. Have you thought about perhaps something along those lines?

A No.

Q But clearly, through your children, in any case, it's something they took on board.

A Yes.

Q In a funny way, they've actually ended up doing things that I suspect were always in you anyway, and certainly, (in) Leon as well, your father.

A Yes, the creative things.

Q Yes. With your illness in recent years, Henry, has that turned your mind to any particular things in terms of a legacy that you feel that you are hoping you'll leave?

A I'm very comfortable at the moment with what I've achieved and with the recognition of that recently. The Order of Australia was obviously a great honour, but to be recognised by my peers at the Bar as a so-called legend that is an honour of the highest order. Firstly, I thought it was a joke when I was rung and I was told that I had been nominated and will be inducted as a "Living Legend of the Victorian Bar Hall of Fame". I was humbled when I saw others of the list who were nominated as Legends. I thought they were legends when I came to the Bar in 1973. To me, to be recognised by my peers; that is the ultimate. So I am content that I perhaps have left a legacy, but I haven't finished. There's a lot of projects still to do.

Q What are you wanting to achieve?

A I'd like to introduce mediation into the Palestinian and Israeli legal system, I'd like to bring the Peace Team back again in 2014, I want to continue learning to play percussion instruments and to that end I have joined the Australian Percussion Academy. I want to live to a ripe old age so long as I am physically and mentally intact.

Q Are you a drummer?!

A Up here (pointing to head).

Q Are you the Ginger Baker of the legal profession?!

A I don't know. No, I don't think so. I've always been a percussion pretender to my children. So they bought me a drum kit for my sixtieth birthday, I am now nearly 66. I was teaching myself until I became ill a short time later. I just wasn't able to do anything for a few years whilst I was receiving treatment. When I felt stronger I joined the Australian Percussion Academy in late 2011, culminating in me playing percussion on stage at the Sidney Myer Music Bowl for the Australia Day concert 2012. That was an amazing experience, so I'm continuing with that.

Q Are you more of a rock drummer, or a jazz drummer?

A I love all music. One of the things that's happened through my illness was meeting a rock legend who was diagnosed with same illness as I have. We have become, as he called it, "blood brothers". We speak often about our treatment, about we feel, and we encourage each other to be positive and "hang in" through the rough times. So I have become a rock groupie. I'm following his music and go to the major rock revival



concerts in which he plays. He was lead singer and songwriter for the Mastersø Apprentices.

Q Jim Keays?

A Jim Keays.

Q Yes, thatø right.

A We had another øblood brotherø, Graham Johnson, a member of the Bar and former State Coroner, who was in our little group of multiple myeloma patients. We were under the care of the same Bone Marrow Transplant unit at the Alfred Hospital. Unfortunately he did not survive a bone marrow transplant and died recently. I had just been discharged from the Alfred Hospital after my bone marrow transplant. We shared the same ward in hospital. It was a great blow to me to lose one of my øblood brothersø and depressed me greatly.

However, I needed to get on with life, so I have rekindled my interest in rock. I like all music, whatever it is. Percussion covers all genres and all instruments from triangle to serious concert base drums, classical drums. In January 2013, I will take a course in Salsa and Congo Percussion with the Percussion Academy.

Since my diagnosis in 2005 I have seen two of my sons married, I have been blessed with two more grandchildren. I have six all together, and they are all projects of mine to work on. I want to do some writing and reading and again, and with my energy back, contributing further to the Bar, in ADR and just general administration. Whether I go back to active practice, I donø know. I have to reassess things in the New Year after I have my fourth bone marrow transplant.

Q Henry Jolson, itø been a very great pleasure listening to you, and talking to you.

A Thank you very much for the opportunity.

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