

## PHILIP DUNN QC

**Edited interview with Juliette Brodsky for Foley's List oral history and  
filmed by Elisabeth Crosbie, 22 March 2016**

### **Part 1 – Dark-suited Men**

Q Philip Dunn QC, it's my pleasure to be interviewing you for the oral history.

A It's my great pleasure to see the Bar and others doing an oral history. I had a small part to play in getting the oral history going, and I'm proud of it.

Q You have a CV of criminal trials longer than my arm – you've represented many Merchants of Menace. I saw that book title the other day – that must represent many of your clients.

A Yes, I've acted for murderers, psychopaths and the odd guilty person as well.

Q You've had an enormous amount of coalface experience when it comes to dealing with these people. The thing that strikes me in everything I've read about you is that nothing much has coloured your outlook, which is astonishing.

A Well, I'm sure my wife would say otherwise. I'm actually incredibly optimistic about people, and I've done several hundred murder trials or more. I've been in the criminal law for over 40 years. To my mind, there's two or three things that stick out: one is the part that chance or coincidence plays in a person's life, and it certainly has in mine. But (with) everything in crime, chance or coincidence plays a big role. Then there's the fact that most people lean to the good; they love their mums and dads, they love their kids. They mightn't live in Portsea or Toorak – they might go caravanning at Eildon - but they love their families and they want to do the right thing by them and I think that gets reflected a bit in the jury system. Ultimately, most people are right and decent.

Q The late Richard McGarvie, former Governor of Victoria –

A And a charming man.

Q Yes, a lovely man - he spoke of the wisdom of juries. That's what you're saying, too. Do they get it mostly right?

A They've changed a lot. When I started at the Bar, there wasn't a criminal bar. There were only a handful of people who did crime at a senior level: Bill Lennon and Jack Lazarus, people like that. They were followed later by John Walker and John Phillips, and so on and there was Frank Galbally and Ray Dunn who were solicitor-advocates. I remember as a law student and then as a barrister, we'd go and watch "Mr Frank" (Galbally) who would talk to juries about Christ dying on the cross for love. It was very emotive. In those days, if you go back fifty years, the jury pool came from only within a few mile radius of the GPO – suburbs like Richmond, Collingwood, Carlton, North

Melbourne, West Melbourne, Port Melbourne, South Melbourne and St Kilda. They were all working class suburbs and the jurors were all workers, and were a different kettle of fish to people now who are much smarter. But the same principles (apply).

Q I was reading “The Art of Persuasion” by Chester Porter QC –

A The black funnelweb spider!

Q Yes, he actually said that in the old days of jury selection, they didn’t want to chance having women on juries. Those women who did put themselves forward (for jury duty) were considered odd.

A There was this prejudice in those days. You saw that (mentality) firsthand in rape cases. Don’t forget, when I started, they were all men, dark-suited men, divided into Catholics and Protestants – that’s how the Bar was. The leaders of the Bar were patricians and we were terrified of them. When I came to the Bar – and my Bar Roll number is 862 - we kind of knew everybody. They had just added the extension to Owen Dixon and taken it up to 13 floors and they had the Bar Mess on the 13<sup>th</sup> floor, run by Mr and Mrs Unger. You would have lunch at the Bar Mess where the senior members would control the conversation and the thinking. There were only, I think, three women at the Bar when I came.

Digressing to the criminal law, it was revolutionary when Lillian Lieder and Betty King became female leaders at the criminal bar many years later. We were talking about Ronald Ryan’s execution before the interview started. If you go back to the very early 70s when there wasn’t a criminal bar, there was an understanding at the Bar that silks would, pro bono, do a murder trial for the Legal Aid. 90%-plus of all criminal work is Legal Aid, and nearly all murder trials are legally-aided. So what that meant was, when you had a murder trial, the Public Solicitor would ring up the Bar and find which silks were available. So, Philip Napoleon Opas finished up acting for Ronald Ryan. In *Lowery and King*, which was a case that I did in 1972, Phillip Cummins and I were the two juniors. The two leaders were (R.J.) Davern Wright and Harry Ogden, who both became County Court judges. Harry Ogden had a lot to do with setting up Leo Cussen (Institute). One was an insurance lawyer and the other was a common lawyer who did civil injuries and they got stuck in this bloody awful murder trial. They were good and decent people - they tried. They didn’t have the advocate skills that maybe some of the others did. But it was an unwritten law of the Bar that the senior members did pro bono work – it was an expectation. So that’s why if you look at the Law Reports in the 70s, at the murder trials, you find this odd and strange collection of silks leading juniors, doing murder trials. Now, if you had Jeffrey Sher you struck payload, or Neil McPhee, the “black prince”, who was the heir apparent to the “new Bar”. So, as the older, more Anglocentric, patrician members of the Bar like (Sir) Oliver Gillard moved over, the new wave was someone like McPhee. He’d fought in the Korean War, did law after the war, won a military cross, wasn’t born to privilege, he hadn’t gone to Melbourne Grammar or Geelong Grammar, (he was) publicly educated and bloody good. The “black prince” was seen as the new kind of broom coming along.

Q Why was he called the “black prince”?

A I think because he was a fairly heroic and brave character. I don’t know why he’s called the “black prince”, but that’s what he was known as. He was an outstanding counsel.

Q Was he influential for you directly?

A Not directly, because he didn’t do crime.

## **Part 2 – Reading with Jim Gobbo**

A When I came to the Bar, I read with Jim Gobbo. That was by chance, because my first wife’s father was (barrister) Peter Brusey who was great friends with Jim Gobbo. Peter Brusey and Victor Belson were on the second floor of Owen Dixon Chambers, two silks. Jim was the first New Australian Rhodes scholar and a heroic character, but a very modest man; he didn’t speak English when he came out from Italy at 13 or 14. He captained boats at Oxford. I followed into his chambers John Walker and a few others - Chris Canavan came after me. We were down on a quadrant at the northern end, I think, of the seventh floor. Going around the quadrant, there was Haddon Storey who later went into Parliament and Norman O’Bryan who later became a Supreme Court judge. He was a very austere man who always arrived on the bench early. Stuart Murdoch who later became a County Court judge and who had the Baldry and Marshall Bugatti. And then there was Jim Gobbo. Jim Gobbo was revolutionary because he would go down to Little Bourke Street and eat spaghetti. I thought that was very exotic – Victor Belson and Peter Brusey and a few others would come along - I loved it. That and listening to them talk.

Q Peter Brusey being English, did he feel an affinity with Jim Gobbo? Both being outsiders?

A I’m sure that was it; they were very close. Peter was a very interesting character, actually; he had juniors like Neil Forsythe – Brusey did a lot of tax work. Peter Brusey was a smart man and he got along very well with Jim Gobbo. My mother bought me a new suit at Ball and Welch, and I trudged into Jim Gobbo’s chambers at a quarter to nine on my first day. Once you’d signed the Bar Roll, you started practice: there was no Bar readers’ course in those days. He was there. So the next day, I came in 8.30 and he was already there. I turned up at 7.30 the following day – he was there. I stopped then and started coming in at 8. No matter how early I was, he was always there. He was a hard worker. He recommended town planning; he did town planning. I started off with Jim Gobbo, in my new suit. I used to devil Jim’s paperwork and mark some of the evidence exam papers, which you got paid for, which was helpful because I learnt a bit as I was going. My clerk who was “Gentleman Jim” Foley rang me up and said I had a family law maintenance matter out at Ferntree Gully. I thought, bloody hell. I borrowed a textbook from somebody and wandered out there. I thought cross-examining meant examining crossly, so shouted at somebody for a bit. The magistrate, Kevin O’Connor suggested I drive him back to Melbourne which meant stopping at

six hotels along the way and getting drunk. It was a different Bar; I didn't even know where the courts were, let alone what I was doing.

Q Being thrown in the deep end like that, though, must have had a galvanising effect on you.

A It certainly made you jump around a bit. My second or third brief was a client who was careless driving, at Elsternwick, the Magistrates' Court. We had a conference and he started with a difficult question – he asked me where the Elsternwick Court was - and I had no idea. "You'll find it, it's quite easy." You would just go down there and plug away. You'd sit in court and watch what the other barristers were doing, talk to your master and talk to others.

Q With Jim Gobbo, given that he was in town planning and given that you were devilling for him, when did you form the idea that you wanted to specialise in crime?

A It happened by chance. My father-in-law, Peter Brusey was very keen that I do commercial work, and he said proper barristers have drafting skills. Later when I went to the London Bar, my clerk was horrified by my grammar and he blue-pencilled everything. I fell in(to crime), by chance, which I spoke about before. Someone got me to go and take a sentence for them. I met a solicitor called Abe Besant from the Public Solicitor's Office. Apparently wasn't very respectful to him and he then briefed me in a criminal trial. I'd only been at the Bar about eight weeks and didn't know what to do. So I fumbled my way through this trial. The client was Margaret Frances Glasheen, a prostitute who had lured the punter into a spot where her minder robs him. Our defence was identity but that got derailed halfway through the trial through some brilliant over-cross examination by me, which absolutely established my client was the person. The witness was very drunk who said when he went into the room, the last thing he saw was the Black Madonna of Krakow, a statue. Everyone fumbled at the photos and of course they saw the Black Madonna of Krakow on the mantelpiece. The defence then became duress. She was acquitted so I leapt up like Mr Frank did and thanked the jury profusely and the judge immediately told me to sit down. Those were the days.

### **Part 3 – Learning to be “Fearless and Prepared”**

Q So, where, along the line, did you learn to be “fearless and prepared”?

A Well, I don't recall saying those words. There's always a fear of being under-prepared. It's every barrister's nightmare. It's absolutely Murphy's Law. When you're working at night - and a working barrister will work, usually from Sunday to Thursday night, preparing for the witnesses and the case. You get anxious and if you're tired and go to bed, you can guarantee that witness (you didn't prepare for) will be the first one called in the morning. You've only got to get caught once or twice. Every witness, every case is an exam. It took me a long time to develop working and mental patterns and self-protection patterns as to how to do things and keep my desk between me and

my client. I learned a lot from people like Harry Ogden. In 1972, when I'd been at the Bar two and a bit years, with the Lowery and King trial, when Phil Cummins and I went down to do the committal at Warrnambool, there was nowhere we could stay. Nobody would take us.

Q Why?

A Because the whole town was so horrified by the girl's murder. I think her name was Rosalyn Nolte. We had to go and sleep thirty miles away. People were spitting at us as we went into court. Harry Ogden became my leader through that Public Solicitor pro bono scheme. He did a chronology in every case and every night he summarised what happened in court that day. That from 1972 became a habit of mine, which I've tried to instill into all my readers, to do the same things, to get on top of it.

Q It's the only way, isn't?

A Yes. There's no short cuts.

Q Has anyone ever tried to tell you otherwise?

A Oh sure. I was in a murder trial once with Bob Kent. The number one murder court in the 70s, 80s and 90s was the Fourth Court. That was the big one and that's when you knew you'd made it, when you did a murder in the Fourth. The judges, like the Hon. Norman O'Bryan - the father, not the son - were fearsome. You'd be in this court and do these trials and it was really quite terrifying.

Q Who's the worst judge you appeared before?

A The worst judges are the lazy judges. There are 63 judges in the County Court, and on any given day in 2016, there'll be five judges in the Supreme Court presiding over criminal cases. It's the judges who are lazy and cut the corners (that) are very irritating. Obviously, some judges are tough and some aren't. When I started doing those trials in the 70s, there were no tape-recorded records of interview, no videotapes - they were nearly all verbals. Armed robbery trials were the go. If you went down, you got 17-20 years. Barristers like Bob Vernon, Brian Bourke and Jack Lazarus would be cross-examining lying police officers in the presence of judges who would be horrified at the suggestion that police were making things up and in the end, clients got slam-dunked. So, it was not for the faint-hearted. Anyway, the trial with Bob Kent - a third barrister stood up and said he'd wing it. He had a "new approach" - he wouldn't read the brief and would come to it like the jury. We got off and he winged his way to a 21 year sentence. But there's no short-cut to this sort of work. None. Nowadays as I say, the Bar is a much more educated place. It was much simpler when I started.

#### Part 4 - Rats and bonfires

A Eventually when I got my own room, it was the hallmark of success to get a room on the eastern side of Owen Dixon Chambers, overlooking William Street. I was pretty pleased with that. I was in the quadrant at the southern end on the ninth floor. In my quadrant there was a silk called Brian “Nuts” Nettlefold, an old common law silk, with whom I was doing a murder trial, along with four or five criminal juniors. We were doing a trial before Bill Kaye, in the Eleventh Court. This was when the Eleventh Court rat made its appearance, with a flurry of dust, over the judge’s podium. So I pointed it out to Nettlefold who thought it was funny and said “There’s a rat up there!” to the judge, who took it personally: “Have you lost your senses?” Nettlefold said, “No, I’m telling you there’s a rat up there!” Anyway (Justice) Kaye went bonkers and kicked the jury out (to deal with Nettlefold) and all the Bar all turned up to see (the rat) and Stephen Charles who was Chairman of the Bar came over and represented Nettlefold and explained to the judge that there was a rodent up on the canopy.

Q Were there many rats over at the Supreme Court? What else lived over there?

A When talking about what lives over there – when they changed the rules and women came onto the jury and expanded the jury pool (which brought apprehension to the Bar), they discovered that in the design of the Supreme Court, which was patterned on the four courts of Dublin, there’s only a handful of female toilets. So they scattered robing rooms around the court. When I came to the Bar, you didn’t wear your robes in the street – it was an ethical offence. You had a bag and a locker and kept your robes in a locker in the Supreme Court in the robing rooms. The old lockers were made of cedar. When I signed the Bar Roll, I was given a locker key (but) I didn’t have any robes. Not long after that, they got in the (new) toilets and used the old robing rooms. But that’s how I got my wig (behind me). They cleaned out all the old furniture and the old cedar lockers and burnt them in the courtyard behind.

Q What a waste.

A Aha! They cleaned out the lockers and burnt them. Many of the old lockers had not been used for years. That wig there had disintegrated in two pieces, in a locker, along with a silk Bar jacket made for a much smaller man than I, and heaps of papers including some handwritten transcripts from the Kelly trial. That wig is very old, according to the wig man who fixed it up for me.

Q Do we know whose the wig was?

A: No – got no idea. I had it patched up and wore it. When they were burning everything that was in the lockers, I grabbed a clerk’s stool that was on the heap which I gave to Remy van der Wiel. At home, I’ve got a chair and a stool from a judge’s chambers. A couple of us were pulling things off the bonfire heap. Old judges’ chairs, paintings, footstools...it was a great big bonfire. They got rid of it all so the judges could have new furniture. They were just burning all these things – it was a bit like Nazi Germany burning books.

- Q That is just awful. When you were a child, you actually wanted to be a historian.
- A I did, actually, yes.
- Q Did that cause a certain amount of angst, seeing all these historic things burned?
- A I thought it was outrageous. And the same thing happened down at Colac. I was down at the Colac Court, doing a trial, years ago when it was being rebuilt and they were trashing and burning everything there. The Bar tables, everything. Someone took the coat of arms behind the judge's chair; another barrister rescued the big court books that went back to the days of someone, William O'Flaherty being fined two shillings for cutting off a Chinaman's pigtail in the 1880s. Most of these things have been destroyed. When I was hacking around Ringwood and off to places like that – Jim Gobbo gave me a good bit of advice - he told me to get myself an overcoat.
- Q Courts get draughty in the winter.
- A Yes, the second thing was to look around all the op shops, buy the old crime books and barristers' memoirs. I was lucky to buy a chunk of Owen Dixon's library; several tea-chests of his books. He was worried about his eyes, apparently, there were about 40 books on eye exercises and there was this childish handwriting in lead pencil in the Notable Trials series of his – I later found out he had a son who wrote in his books.
- Q Didn't anyone else want his books?
- A No, nobody was interested.

### **Part 5 – Catastrophic Events**

- A When you worked in crime, the old Melbourne Magistrates' Court in Russell Street was the central hub where things started for us – original hearings, committals or whatever it might be. In my time at the Bar, I've had three catastrophic events. One was on the day of the Russell Street bombing, where I was doing a committal. Some barristers would go out to the pub at lunchtime, but we'd gone to get a souvlaki at Lebanese House in Lonsdale Street. It was about 200 metres away when the first bomb went off and we all got tossed around. I was (also) at the Magistrates Court in the 11<sup>th</sup> Court upstairs, the day Raymond "Chuck" Bennett was shot dead.
- Q Was that reenactment I watched on "Tough Nuts" accurate?
- A Yeah, pretty right. There's a door at the top of the stairs –that's where Brian Kane who had the orange wig on, stepped out.
- Q So they do say it was Brian Kane. It wasn't (retired policeman) Brian Murphy (who killed Ray "Chuck" Bennett)? There was speculation it was him.

A Brian “Skull” Murphy is an interesting, robust character – I launched his book. But no, it was Brian Kane that shot (Ray “Chuck”). I didn’t see him, but that’s what the dogs barked. Brian Kane was later shot in the Quarry Hotel (in Carlton) – a straight Godfather situation. I did the trial with Raymond Chuck Bennett –

Q The Great Bookie Robbery. What was the third catastrophic event?

A I was with Mike Rozenes, and we were in the Fourth Court. We loved going there. We went out of Owen Dixon Chambers with a swagger - junior criminal lawyers, doing a trial in the Fourth. We were doing a robbery trial involving Painters and Dockers and there was a high level of security. In the court next door, Howard Nathan was the judge, hearing a matrimonial matter. Some lunatic came in and tried to shoot Howard Nathan and shot two or three others dead in the court.

Q What year was that?

A Oh, God, it would have been in the 80s, I guess. Frank Vincent was there, too. We were in court and the next thing, you heard the sound of heavy gunfire – a shotgun or rifle. The judge was whisked off the bench, everyone was told to get down and our police officers from the robbery squad, who were the bravado blokes anyway, rushed out. A fellow called Fingers Finlay tackled the gunman and brought him down; he’d murdered two or three people in the court. The whole Supreme Court was then locked down. You’d got dead bodies, you had the homicide squad and technicians. The rumour went down around the Bar that the shootings had taken place in our court and that we’d been murdered. I remember coming out with Mike Rozenes of the front entrance of the Supreme Court and there were 80 or 100 barristers waiting on the step of Owen Dixon Chambers and this cheer went up as we came out. “Yay!”

Q Huge relief all round.

A Especially for me!

### **Part 6 – The Magnetic Drill Gang**

Q You just alluded to the Great Bookie Robbery a moment ago. It was one of your earlier trials.

A It, was yes.

Q You acted for Norman Lee, the one person who was apprehended.

A Yes, Normie Lee who was later shot dead by the special operations group – (he) was doing a robbery with (Stephen) Barci and (Stephen) Asling out at Tullamarine. I had a brief to represent the special operations group at the coronial inquest in the murder of Lee and attempted murders of Barci and Asling. Barci was shot and had his arm blown off in the attempted murder of another accomplice, (Stephen) Asling who was (later) charged for the murder



of an old client of mine, Graham “the Munster” Kinniburgh, a pretty interesting character.

Q Did you act for (Kinniburgh)?

A Yes, lots of times I acted for him. He was a safebreaker.

Q An old-style crook.

A Yes, this is before drugs. The guys who did armed robberies were tough nuts. They were hard men. There was a certain honour among thieves then. There was a smaller crew that were safebreakers and Kinniburgh was clearly one of them.

Q Des Moran - wasn't he a safe-breaker too?

A Yes, he was part of that Kinniburgh group. They were all pickpockets, actually. If you look at the Victorian Law Reports, there's a case called the Queen and Mutch, about the definition of “loiter” – can you loiter in a public place, namely a tram? Now “Mickey” Mutch was the great-grandfather of the Moran clan. They lived at 36 Langs Road, Ascot Vale. “Mickey” Mutch taught Joe Moran, the father, and the sons, Des “Tuppence” and Lewis (Moran), to be pickpockets at the trots at the Showground and when the Show was on. The better ones graduated to be safebreakers. It was a very small crew. Those guys like Kinniburgh and the pickpockets - if truth be told - they weren't interested in personal violence. That wasn't their go. They graduated from being pickpockets to being “shoppers”. They would rob anything from Rolex watches at Prouds to fur coats. Out of them came the Kangaroo Gang – “King Arthur” Delaney, O'Callaghan - all those fellows who went over to London and were bold and brazen thieves.

Q You represented them too.

A I did. They were very, very likeable rogues, not into drugs and they weren't into violence. Kinniburgh was part of that crew. They filtered down until you had what was known as the Magnetic Drill gang. They were probably the most successful thieves in contemporary Australian history. When the Westgate Bridge was built, they had to use high tensile steel. They brought out these special high quality magnetic drills (to do the job). A number of these drills were stolen. The first big (robbery) (the Magnetic Drill gang) did was on an Australia Day weekend. They believed any roof was vulnerable. They got into the bank up at Murwillumbah in NSW, which was a collection point for used notes. Notes were made of cloth and paper in those days and would wear out in five or six weeks. There was continuous recycling of notes. Damaged notes were picked out and stored in bundles in the central bank at Murwillumbah, which is a huge old Victorian bank. On a Friday on the long Australia Day weekend, somebody went through the roof. They drilled through one of the tumblers, put a labrascope in. They estimate it took them about 90 seconds to open the safe. They cleaned out six or seven million dollars, over twenty years ago.

Q That's certainly impressive for that time.

A They then did another dozen banks, including the ANZ in Chinatown, Sydney and then they stopped. They stopped. They stole millions and millions and millions of dollars and they stopped and not one of them's been caught. They never tried to do that again.

Q Obviously had the sense not to try it again, do you think?

A Well, I think they were just smart guys.

### **Part 7 – Altruistic criminal barristers**

A I regard the Victorian Bar as a great place. The day I became a barrister was one of the greatest days in my life; I'd recommend it to everyone. I've had great comradeship and great friendship. A lot of good times in my life I associate with the Bar. I was lucky that I read with Jim Gobbo. I was lucky that I got involved in crime. After I'd had my own room in William Street a while, when Mike Rozenes came to the Bar, he and I had a talk, and we decided it was important for young barristers to satellite around mentors. So we gave up our window rooms on William Street and took internal rooms on the first floor in Owen Dixon chambers, where the Essoign Club now is. When I came to the Bar, it had been a government office. When the Bar got those rooms back, they turned it into chambers and controversially some barristers (Merkel, Pannam, Goldberg and Hampel) got double and triple rooms across the front (facing the Supreme Court). At the back of the first floor was John Walker, John Phillips (later Chief Justice of the Supreme Court of Victoria) and Jack Lazarus, the three kings of the criminal bar. And George Hampel we saw as our natural leader who had inspired us. Rozenes, Jeremy Rapke and I went down to the first floor and took internal rooms so that we could be around the big boys. They were very happy days. Then in 1983, Alan Goldberg, (Ray) Finkelstein, (Ron) Castan, (Ron) Merkel, (John) Middleton and (Cliff) Pannam rented the 27<sup>th</sup> floor at 200 Queen Street. They took over more than half the floor and 40% of the floor was taken over with John Walker as our leader of the floor. So Rozenes and I linked up with Richter, Julian Leckie and Tony Howard who came out of Latham Chambers and we set up the first complete standalone criminal chambers. We went there (Aickin Chambers) in 1983 and professionally those were some of the happiest days in my life. We had the crossover between the criminal blokes one side and the commercial blokes on the other and this coincided with the Bottom of the Harbour tax schemes and commercial crime. It was a happy crossover; professionally very exciting. Nine judges came out of that criminal set I was in, magistrates and others. It was just a fabulous time to be a barrister.

Q It was certainly an interesting time. When I spoke with Colin Lovitt and the setting up of the Criminal Bar Association, he said when alluding to the 1970s, that the criminal bar used to be treated as a poor relation.

A Yes, shabby and a bit disreputable. Along with divorce lawyers, they were thought to be the ne'er do-wells.

- Q So obviously then, things took on a whole new dimension.
- A The Criminal Bar Association in Victoria was set up by (Colin) Lovitt and Michael Kelly, Lex Lasry and others. It was an inspirational move and it's provided guidance, education and cohesion to the criminal bar in Victoria. I think the Victorian criminal bar's the best criminal bar in Australia. Who looked after the Bali 9? Who went up to Bali time and time again, at their own expense? It was members of the Victorian criminal bar. Or Nguyen in Singapore? The Victorian criminal bar has been a very strong force for cohesion at the Victorian bar, pro bono work and raising standards.
- Q Have other criminal bars in other states followed their example?
- A Never as cohesive as the Victorian Bar.
- Q Why is that?
- A I don't know.
- Q Because you're right – it has been mainly Victorian barristers who've done pro bono work in those overseas cases.
- A I think it's a geographical thing. In Victoria, for a long time, everything was together. There was Owen Dixon East and Owen Dixon West. There are now 16 chambers around Melbourne but they're all in close proximity. In Sydney, the chambers are scattered from one end of town to another. In Adelaide and Perth, it's a tiny bar – not enough room for a separate criminal bar. And in Brisbane, it's different again.

### **Part 8 – Sex and Drug offences**

- Q Let's return for a moment to the Great Bookie robbery. You spoke before about the pickpockets and the safecrackers. I thought the Great Bookie Robbery was the biggest amount of money stolen.
- A Whoever organised the Great Bookie Robbery was a very smart operator.
- Q It wasn't Ray "Chuck" Bennett?
- A He was maybe the boots on the ground, but no – the person who organised the Great Bookie Robbery was always said to be someone else. In those days, there was one or two people, I'm told, you could go to if you had an idea. So if you wanted to roll the Bookie Club, there was a fellow. You'd go to him and he'd strategise it for you. The Bookie Club was on the second or third floor of a building in Queen Street, in the heart of the city. Prior to the robbery, they "crocodiled" or bypassed the alarm system and started jamming the lift irregularly six weeks before the robbery, so it was breaking down all the time and people got used to the lift getting stuck between two floors. The robbers got in and removed the fire escape door –

(INTERRUPTION BY JUNIOR BARRISTER)

- A That's my jury. The guy's a pilot (who's) charged with sexually interfering with his stepdaughters for years. Those are terrible cases – they're word against word cases. Sex cases are hard, especially acting for Christian Brothers and priests. Nearly half the jury panel wants to be excused; they say it doesn't matter what the evidence is - they can't be impartial.
- Q Is that a recent development?
- A Yes, it is. It's gone in cycles. When I started doing heroin trials, juries' eyes glazed over – they didn't like it a bit. On the other hand, with culpable driving, you could say to a jury "Couldn't a man have a few glasses of beer after work?" And they'd acquit. All the time. They wouldn't now; over the breath limit, you'd be found guilty.
- Q That's because of the public education campaigns.
- A And sex cases - it's probably because of that silent thing that never was spoken about in the past. How people got away with it for so long, I have no idea. I have a firm view that the way we deal with sex offender trials now is not the way.
- Q Would you say it's adding insight to injury?
- A I think it traumatises the victims; it doesn't help convince them it's not their fault. If you go through a process of being cross-examined, I think there's post-traumatic stress laid on top of the victims. Treat it like the measles or the flu and move along. With the perpetrator, it's got little to do with sex and a lot to do with their personality problems, being disempowered in their relationships. They need help; you can't interfere with children.
- Q Would you prefer to see something in place (for sex crime trials) like in New Zealand where they have a restorative justice approach? Would that work better in these sorts of cases?
- A I know this is a favourite thing of (former Attorney-General) Rob Hulls and I've discussed this with Mike Rozenes, the former County Court Chief Judge. I've become an advocate for the restorative justice scheme; I think it's a great idea. If you think about the way we deal in our criminal courts with problems in the adversary system with the Judeo-Christian moral ethic, coupled with this Dickensian system of jails where we punish, we'll look back in a hundred years' time and say, "We could have done better". When you look at those guys now charged with murder, many of them have come out of boys' homes, had hopeless upbringings. Give them a job, for God's sake – why can't we give them a job and give them a life? Drugs – what a problem – the so-called war on drugs has long been lost – let's look at another way to tackle this problem. Anyway, that's the ramblings of an older man.
- Q You did act for the late Carl Williams.
- A Yes, I've acted for a lot of those guys.
- Q So there is a firsthand insight into what the drug trade does?

- A For them, it's all about money. Then they believe their own rubbish after a while.
- Q But they're not "tourists" – didn't you use that term once?
- A No, they're not tourists – they don't come and go from it – they're players. Once they become involved in the easy, fast money – and of course, now with ice, it's a whole new game again – it's every parent's worst nightmare that your children are going to get involved. I mean, I have a colleague who's been a heroin user for 40 years. He's an addict, but he manages it. Plenty of barristers take cocaine – more in Sydney than here.

### **Part 9 – Drug use in the legal profession**

- Q I'll be asking Con Heliotis about Andrew Fraser, the solicitor who went to jail.
- A I met Andrew Fraser when he was an articled clerk. He was married to a ballet teacher at MLC, he was an athlete for the Box Hill harriers and he bred budgerigars in a backyard in Canterbury. I had a lot to do with Andrew Fraser. I was at 200 Queen (Street), Aickin Chambers, and we did a lot of work together. When his wife left him, he then underwent this metamorphosis and finished up living in Albert Park. He grew a ponytail, drove a Porsche and he got into the gear. I gave him Alan Bond as a client; I gave him a lot of clients. I introduced him to Brian Rolfe and Bob Galbally and they became joint partners. And I fell out with (Andrew) shockingly. I was having my 55<sup>th</sup> birthday party the day he was arrested. Everyone was coming in, not shocked but huddling and worried what was going to happen, who was involved and where it was going. Rumour had it he used cocaine with all sorts of people. He came to our chambers actually; Robert Richter and I had then moved to Lonsdale Street and set up Crockett Chambers with Con Heliotis and Terry Forrest. He (Fraser) came in and said, "Who's the lucky person who's going to act for us? You'll make your name, acting for me." He was full of brass. I'd fallen out with him so badly at that stage; I remember when Chris Dane came over to me and said "You'll have to write him a character reference, you've known him longer than anybody". I said, "I can't do it". He said (in the great Chris Dane way), "Hey, ya walking on a jungle path in Africa and there you see a man in quicksand up to his neck. Ya reach out and you lift him. Ya gotta help him". I said, "Oh, blow him" – I just couldn't bring myself to do it.
- Q It would have been hard for you to reach that point.
- A I haven't really described it, but our relationship breakdown involved money and a breach of trust and I was outraged. We'd known one another since when he was an articled clerk. I'd known him a long time. Suzie Weiss who's now a magistrate - Suzie Cameron, as she was then - Charlie Nikakis – they all worked with him and they all felt betrayed.
- Q You mentioned a counsel before who uses heroin. Andrew Fraser has spoken publicly about drug use in the legal profession. You're very active on panels about drug use – you feel strongly about it?

A Yes, I do. I remember lobbying (former premier Jeff) Kennett and others for Victorian drug law reform when we were trying to get a safe injecting facility up at the church. We lobbied for all sorts of things: I believe what's happened in Sydney with the safe injecting room is a good idea; I'm very strongly of the view that we should decriminalise heroin and other drugs like that. I've seen very closely the impact of ice. I act for these guys all the time - the traffickers, suppliers and importers. This is a problem we've gotta have a new approach to. Hard policing isn't the only way to deal with this.

Q What about harm reduction, which has been a strategy of the Australian Drug Foundation?

A Absolutely. I know in parts of Europe they've advocated harm reduction, different to Australia. There's something there we can follow through on, but if you talk about drug use at the Bar, sure. There was a marijuana bar – always plenty of blokes, some of them no doubt judges now – who took coke.

### **Part 10 – Strategies for coping**

Q What about the notorious Negroni Club?

A Yes, the Negroni Club down at the Botanical Hotel - all sorts of people went there. (Forensic psychologist) Tim Watson-Munro used to give the psychologist's report for once a month. I've been to those lunches at the Negroni Club – it was great for a long time, but turned out different in the end. But why do some of those people become addicted? Why did Tim Watson Munro become addicted?

Q Yes, he was in that Australian Story (about his downfall), and so were you.

A Tim Watson Munro came out of that 55<sup>th</sup> party I mentioned. I actually went down and had a talk with a senior officer in the drug squad and asked "What are you charging him with trafficking for – he's a user – can't this be resolved in some way?" He said "Oh, fuck him. He's given evidence and got all these bloody drug dealers off – he can carry a bit of the load." So, ultimately (Tim) did a deal; to get a bond, (he) had to provide some assistance to the authorities which turned Andrew Fraser violently against him. "The Doc" ended up baulking giving evidence against some of his mates and so he got the worst of everything.

Q You mentioned in that program that he had the additional difficulty you didn't have – he had to deal with people's anxieties and provide insights into people like Julian Knight, the Hoddle St killer. You said people like Tim were "in the grip of a meat hook". Although you're dealing constantly with criminals, you don't take in what people are putting out emotionally and psychologically, whereas Tim was in a different situation – and it became too much.

A I'm sure it did. In the criminal law, where it can jam into you is with historic sex offences. I'm a common lawyer who deals with the trials that come in the door – I do my fair share of sex, drugs, rapes, robberies and the rest of it - but there are people who specialise in this stuff, and it has a corrosive effect on the

soul. There's a solicitor up in Sydney, Greg Walsh who uses very good quality "gun" barristers like Phil Bolton, Graeme Turnbull, Tim Game, Lizzie Fullerton –

Q You don't think of yourself as a gun?

A They're very good, those fellows. No. I've acted for people when they say they've had enough - they find it hard to do the work every day. It ultimately has a corrosive effect on you and your soul. People who do that work (every day), it ultimately has a corrosive effect on your soul. When I started at the Bar, the criminal bar were great drinkers and lots of them got divorced. I got divorced – I look back on that as a great tragedy of my life. I was married to a very good person. I'm extremely lucky that I met my (second) wife twenty years ago. It's hard for women, for partners, to be around people who are being beaten up psychologically the whole time and taking the load.

Q Doesn't the Bar provide assistance to members of the Bar dealing with these things? Isn't there a little more help given these days to barristers?

A I remember giving a talk with Robert Richter about work-life balance. I was Chairman of Foley's List a long time -

Q For twelve years? Up until fairly recently?

A Yes. I was desperate to get women onto the list; but that's only part of the problem. You've got to not only get them but hold them because they have babies, and all these other problems that men don't get. The Bar was very much a male bastion. To get women and keep them was bloody hard. When I was chairman of that list, we spent a lot of time cherrypicking them, getting childminding services, etc. But there's a greater problem than keeping women that the Bar has been slow to come to, and that's looking after the mental health and balance of its practitioners. My wife's an ex-newspaper editor. Just second-hand, my life drives her into a frenzy of anxiety. Every day there are many moving parts. You're about to start a trial, it's meant to last a week. You arrive, the judge is sick, or a witness isn't available. The next day the audiovisual system breaks down – there's so many moving parts, and suddenly the trial lasts two weeks which means all the other commitments fall over. You leave court with conferences lined up.... I'm rabbiting on, but everything can go overtime. You either allow a lot of time around where you are, or you go mad.

Q You can't be rigid and controlling, in other words.

A On the other hand, you might have a genuine belief, crossing your fingers that things will work out. With a brief, I never let it go. Yesterday with this sex case (where I've got the jury out), I'd addressed the jury on Friday. I worked on the case and had a few more thoughts over the weekend. I had an hour or so to go yesterday, with my closing address. I'd had a longstanding commitment to the RAD board yesterday afternoon and thought I'm safe - I had a junior on this case, I'd had numerous conferences with that client, and thought I could fit everything in. I get to the court yesterday morning and the judge doesn't go on the bench for half an hour. I think gee, I'm starting to cut

this fine. When he did come on the bench, he said, we've got a difficulty - one of the jurors' wives has died, we have to deal with that now. I've got a team of character witnesses waiting out at the RAD board and all these things (organised) and I hadn't finished my address in front of the jury. So you gotta be fatalistic about it. Mind you, I've learned a lot from the master, Brian Bourke who taught me a lot about court-hopping and managing that part of my life. He was the king of it. There are some things you can manage, and things you can't. What will be, will be. There's a slip rule, a bit of room to manoeuvre.

Q That sounds like the cornerstone of what keeps you mentally healthy.

A: I think it probably does, but it drives my wife crazy.

### **Part 11 – The “RAT” (Rational Alternative Theory) and the Value of Images**

Q I'd love to ask you about your case preparation. I believe you have the Rational Alternative Theory -

A Ha, the RAT!

Q Yes, the RAT. Is that like the Rational Actor Theory that they teach in political science at university, where a person works out everything that could conceivably happen?

A It's not quite like that, but it works like this. I'll tell you a short story which I stupidly told George Hampel years ago and he now repeats to readers. When you're doing a trial, there's a fair adrenalin surge and anxiety goes on a lot of the time. At night, you find it hard to go to sleep, thinking about the case, and you sometimes wake up with ideas. So I keep a pad by my bedside table. I was very troubled by a trial and I suddenly had a lightbulb moment. I sat up and wrote it down. Then I went to sleep really well for five hours. When I woke up, I'd written down, in shaky handwriting, "The Crown has to prove its case beyond reasonable doubt." Which is the cornerstone of criminal justice! The Crown says the only possible explanation for this set of facts is guilt. If you have a rival or rational alternative theory, then the Crown can't prove its case beyond reasonable doubt. So what I tell my juniors is that you always look for the RAT – it's not just a matter of attacking the Crown witnesses, it's that rival theory that explains the facts. That's the hard bit. In order to do that, you have to first of all master the factual matrix and the best way to do that is a chronology - either a timeline or document chronology where things all flow in order. I remember when I was doing the Grollo trial (*R. v Grollo, Flanagan and Howard*, 1995 – 1997) with Con (Heliotis) and others –

Q A very long-running trial that was.

A (I represented) Major Flanagan – what a complete fruitloop he was. He was an ex-Commando, one of the three accused, and bivouaced for months on the top of the old County Court building until a judge caught him one day (abseiling) down outside the building. He also slept in a foxhole in the Botanical Gardens – he was quite crazy... The RAT. Michael Brereton was the instructing



solicitor, great mate of (Andrew) Fraser's – (he's) an outlaw living in Thailand now – enormous problems with the Tax Office. He had a bevy of glamorous instructing solicitors in short skirts and high heels. We were acting for (Major John) Flanagan. Greg Lyon was the junior. I did the chronology, we did the documents and everything else and then Michael Brereton said, why don't we do (the defence) diagrammatically? (INTERRUPTION BY JUNIOR LAWYER) See you in the morning.... Law student who's been following my trial. Some are more enthusiastic than others - I've got flotillas of them.

Q I'm sure you do.

A So, what we did - it cost Grollo 25 grand. We got a graphic designer to come up with a diagram of the RAT. Without going into the complexities of the case, it was a very simple explanation for the RAT in a diagram. When I opened the defence, I put it on a board and gave the jury a copy. The trial went 18 months. I was told later that after the jury saw that diagram, they decided (Bruno Grollo) wasn't guilty.

Q So visuals work better for juries?

A I have no doubt. If you go back to when I started in the criminal law, people were used to taking information through their ears: sure, television was around in the early 70s, but they read papers or they read books. These days with computer screens, people take in information visually. People by and large remember things as images or pictures. So, part of the advocate's job is to persuade the jury of the RAT and to do so in a way that diagrammatically they can remember. You can say "Captain Cook left Plymouth in 1762" and it's a fact you have to remember. Or "It was a sunny day in Plymouth, and the bluebells were out and there was a smell of jasmine in the air, in the late afternoon, and Captain Cook was saying goodbye to his wife. The street was cobblestones so you couldn't quite keep your balance...." Then you start to build a picture: people start to build an image in their mind.

Q: But that's an advocacy talent you'd be drawing on anyway - you do have to build an image for the jury?

A You have to, and it has to make sense. I was lucky doing all those trials in the early days with those senior common law and equity silks. When I spoke about the pro bono days, I was blessed by watching good ones – I learned by watching tradesmen at work. When I was in London, there were cross-examining chambers, which had been there for 400 years. The barristers who did their pupillages learned from people who'd learned from people who'd learned for people who were cross-examining about horses and carriages causing accidents or people fighting duels, or surgeons who'd been barbers. The skills were passed continuously through those chambers. The Bar is a collegiate place and the Victorian Bar is as skilled as anywhere, but not everyone has become a judge, so you've got lots of old people who've been doing it for ages and that gives a greater acquired knowledge.

Q Well, that's one thing automation won't be able to take care of. There have been concerns in the legal profession about what will end up automated –

- A It probably will be the standardising of sentencing and things like that, but the criminal law's not Cinderella – one size doesn't fit all.
- Q What do you think of the alternate name in the 19<sup>th</sup> century for barristers – pleaders? You don't see yourself as a pleader, do you?
- A Not really, no. I'm a common lawyer, not a pleader. But I did find a lot of inspiration in films like "Witness for the Prosecution". I found those very exciting.

### **Part 12 - Hell's Angels and Hippos**

- Q You've practised in every state.
- A I've practised in every state. I've been very, very lucky – I'm a fortunate person. I went over to Perth a long time ago and started acting for bikies over there.
- Q Did they ever give you a jacket?
- A No. Mind you, I did the Hell's Angels – Comancheros trial up in Sydney. I keep the desk between me and them. We had to broker a standstill agreement between the Comancheros and the Hells Angels, meet the sergeant at arms and so on. The bikies are very simplistic how they do agreements – they arrange things and you move to different places. We said we can't have fighting while the trial's on. I was acting for the head of the Comancheros, a guy called Mick Hawi. But I made a mistake in Parramatta – it was a cold night, and I looked at a Hell's Angel's beanie and said, "That beanie's better than your beanie". That didn't go down so well. I was staying in Sydney, in a corporate leased apartment in Elizabeth Street. My name's not listed there. Three nights later, at about half past 11, there's a knock at the door. I opened the door and there were three or four Hells Angels. They handed me a package and said "Do you like our beanie? Here's one".
- Q I'm glad they have a caring cuddly side.
- A When I went to Perth and acted for the Coffin Cheaters, the solicitor was George Defteros. Then I was briefed by Rob Mazza who's now a Supreme Court judge over there, to act for Carmen Lawrence, the ex-premier of Western Australia, who was charged with perjury. That was a hot, hot trial.
- Q The Penny Easton trial?
- A Yes, the prosecutor had been picked and he hated Carmen Lawrence. He was gunning for her big-time. The client was a very intelligent woman, and there was this back room full of people like Joan Kirner and a support base. I had a hard time keeping them under control and stopping them from protesting and demonstrating. When (Carmen) was acquitted, that led to a lot more work, in Western Australia. I've done lots of trials in South Australia. Through George Hampel and the advocacy training program, I met some solicitors and barristers in South Australia; Peter Hammill who's now a Supreme Court

judge in Sydney, who acted for a co-accused. He was knitting a Collingwood scarf when I met him in the motel and I said “Who’s this bloke?” He’s a decent human being. Up in the Northern Territory, in the old days, we used to do the Legal Aid stuff. I was opposed to Lizzie Fullerton who’s now a judge.

Q Can I ask about the starving hippopotamus?

A Yes, that’s Warren Anderson. Why someone hasn’t written his lifestory is beyond me. A lunatic but remarkable. He grew up on a dairy farm in Margaret River in Perth, a remarkable person who left school at 13 and was a thistle-cutter. At 18, 19, 20, he was living in a humpy. Down on the beach twenty miles away, there was a community of fishermen and one of the fishermen had a daughter. To use my grandmother’s phrase, they started stepping out together. He married her when he was 21, 22 and they finished up owning Boomerang in Sydney Harbour. He was godfather to Keating’s kids and he became a property developer and started billions of dollars of supermarkets. It’s a story of rags to riches to rags. He owned Tipperary in the Northern Territory - from Lord McAlpine he bought a zoo, a bit like Jurassic Park, in a few thousand square acres. He was a big supporter of the Liberal Party despite his friendship with Keating. A case started, saying he was starving his hippopotamus and being cruel and nasty. It was a great case – he briefed an interstate silk who happened to be me – he got lucky - and that led to other work. Sydney I go to three or four months a year, but my wife’s barred Western Australia. It’s a long way to go and boring for her if she comes over and I’m obsessed by the case, so Perth’s gone by the board a bit.

### **Part 13 - The Red Baron, John Elliott and the perils of moustaches**

Q Speaking of Robert Richter, he’s as well known as you.

A He’s a leader of the Victorian Bar.

Q I did read that “Melbourne identity” Mick Gatto has him tattooed on his chest.

A Yes!

Q Are you tattooed on anyone’s chest?

A No. Robert is a very good barrister. When I separated from my (first) wife, I had nowhere to go and I finished up living in Robert Richter’s house for months. Then I got embarrassed and he bought a house two doors down and said (I) could live in it.

Q That was very generous.

A I wrote out an amount every month for the rent and at the end of twelve months, my accountant said he had these twelve cheques from Robert Richter that hadn’t been cashed. I went to Robert and said “What are you doing to me?” Robert said he didn’t know how I was travelling and he hadn’t wanted to embarrass me, so he hadn’t cashed them. He’s a very decent human being.

I'm very blessed - we've shared chambers over 33 years. Longer than a marriage, actually.

Q It is a marriage in some ways.

A It is. I've shared chambers with Robert and never had an argument with him, he's been nothing but helpful to me and nothing but a decent human being.

Q I'm interested that, in common with Jim Gobbo, Robert spoke no English when he first came here.

A No, they didn't.

Q And they both schooled themselves to speak perfect English.

A: When Jim Gobbo goes back to Italy, the people in his Veneto hometown gather to hear this northern Italian (parlance) from their grandparents' day when he speaks. Jim's a very decent human being. But Robert is amazing, very bright, very intelligent. I was acting for John Elliott and had a fallout with him for very trivial reasons. We had this meeting at Jeff Sher's house – he was the senior silk running the show for Elliott. I'd been acting for Elliott for some years, throughout the National Crime Commission and the Elders trial. It was getting closer to a prosecution and (Elliott) got a tipoff that he was about to be arrested by a guy called (Michael) Seymour, a federal policeman. So we had this crisis meeting (at Sher's house). This bloody meeting went all day. Jeffrey Sher's wife, a very strong woman, won't let anyone smoke in the house, so Richter and Elliott went out the front door (to smoke). I was between marriages and I actually had a date that night. I was very keen to go on that date, and there were all these strategies going on about how to handle what was coming next. Somebody came up with the bright idea that they'd challenge Seymour – that he wasn't a properly sworn Victorian police officer, or something - and (by then), everyone was a bit fed up and said "Let's do it". I said "That's a crap idea – they'll just find somebody else - you'd be wasting your money". I had a moustache in those days, and Elliott said he didn't trust men with moustaches and if I wasn't in the boat with the crew, get out. I said, "I'm not being antagonistic. Seymour doesn't have authority; they'll find somebody who does. Crap idea." He said "I never liked you – you've got a moustache.". So I said "Fuck you" and went out the door. Two blocks away, I thought "What have I done? It's going to be a red-hot trial!" The conferences went on for years in Sher's chambers! Anyway, Robert Richter took my place and did a better job than I'd have done; he had this great victory and it gave him a lot of prominence.

Q But why didn't (Elliott) take exception to Robert Richter who has a beard and moustache?

A I don't know!

Q Is that when he got the nickname The Red Baron?

A No, it was from when his hair was red. It's grey now.

Q Does John Elliott ever cross the road when he sees you? Has he forgiven you?

- A I do see him now from time to time, but it's not a subject we ever discuss. I was really annoyed with him, actually.

#### **Part 14 - Foley's and the Way Forward**

- A When I came to the Bar in '69-70, I read with Jim Gobbo and I was very fortunate that Foley's became my clerk. Foley's and Devers were the two dominant lists. As I recall, there were five barristers' clerks. Foley's was run by an absolute gentleman, Jim Foley, a white haired old man. His son Kevin was a bustling and energetic man and various members of staff who later went to be clerks, in opposition to Foley's, I guess. He was a powerful influence over the list, Jim Foley – a man of considerable integrity. When I joined, there were probably 400 barristers at the Bar. The entire Bar could sit down for the Bar Dinner at the Bar Mess on the 13<sup>th</sup> floor including one memorable night when someone tried to throw Harry Shaw out the window, but that's another story. The new judges would always speak at the Bar Dinner. When Jim was no longer there, Kevin Foley took over and he was very strongly connected to the various heads of public service, the DPP, the Public Solicitor's Office – all a bit of an Irish mafia in those days and Foley's always had a very strong criminal list. When Kevin Foley died, it was a great blow because he was a powerful leader and very innovative. Foley's was the first

list to bring in computers and computerisation – they were way ahead of the pack, probably because Kevin’s son was involved in computers. When he died, there was great concern as to what would happen to the list, and the list became the first barrister-owned list as opposed to a clerk having a private interest in the barristers’ making money. So the barristers owned the list and appointed John Kelly who came out of the Law Institute. Jack Winneke was the first list chairman, who would meet with John Kelly and Paul Grieve as the bookkeeper. Paul Guest took over the chairmanship, a dashing man –

Q Yes, I’ve seen his Olympics pictures

A He was a male model. When Paul became a judge, he approached me and asked if I’d become chairman. We strove very hard when running the list to be inclusive of women and to do all mod cons. Little things took time because we weren’t businessmen, but the list prospered. It, Dever’s and probably Green’s are probably the three dominant lists. It was my secret aim to restore Foley’s as the dominant criminal list for the Bar. We raided another list – Meldrum’s – and stole 30 of their best criminal barristers. That was like an undercover operation but it gave us great power and restored our list to balance. While I was chairman, we recruited smart juniors, as many women we could get, and I’m proud of the fact that we’re back where we were when I started at the Bar. We rely on the strength of the group – we work as a pack. The list will stay strong and prosper.

Q What was the problem with clerking in the 70s?

A There was an anxiety to expand the existing clerking. The organisation is big and slow-moving, the Bar. It’s more sophisticated now. BCL, which was run by Allan Myers and people like that, owns the buildings, a rich and powerful organisation and the Vic Bar is housed in buildings leased by BCL, unlike other bars in Australia. What led to the growth of clerking lists was that those old chambers were small. The big chambers are now 200. They are computerised and the blessing for us as Victorian barristers is that we don’t have to collect our own fees – we leave it to the clerk, unlike the other states. The most significant difference between England and us is you can have CRM - customer relationship programs (where you can say who’s briefing you, come up with email lists). So we came up with the idea of the clerk sending an email to confirm the brief. You can then get an idea of how many briefs, who’s paid, who they like briefing, who they don’t – gets you greater control. Through the Foley’s list committee, we’re venturing into becoming more modern. In England, they do marketing, the clerks run the diaries but they’re employing people to prepare newsletters, etc. That’s probably the way clerking will go in the future. It’s hard to market Foley’s as a standalone brand. With crime, when I was there, we offered the services of barristers to speak at legal firms and seminars. We have Foley’s February where we invite

solicitors for breakfast and talk criminal law topics. The other areas of practice – family law, commercial law, etc - are meant to do the same. That system which was set up has worked pretty well.

### **Part 15 – “Not for the Faint-hearted”**

- A Life at the Bar is not for the fainthearted. You don't get paid every week. Evernthing you do is uncertain. You walk on shifting sands and even solicitors can be treacherous. The shark evolved perfectly thousands of years ago, but the Bar has to be a changing beast. There's the continual falling off of people; there's a natural attrition that's a bit harsh. I did set up a system to assist people who were having trouble getting work, but it's often by chance.
- Q Is that what you really mean when you say you're lucky?
- A Yes. But I'm lucky anyway.
- Q I do want to ask you – before the interview, you mentioned Father Brosnan who was the Pentridge Prison chaplain.
- A He was there when it was a very awful place. Many years ago, when The Munster knocked at my door, he said he'd seen The Shawshank Redemption and said it was Pentridge in the 1960s. He was there when Ronald Ryan went over the wall. Father Brosnan was a very kind and decent human being. I remember talking to him because he stood by the side of Ronald Ryan when he was executed. (Father Brosnan) said he was in the presence of Satanic forces when he was hanged, because it was wrong. There were many instances where he brokered peace deals and prevented people from committing further horrible offences. (Father) Peter Norden took over from him, a different cut and a good man, but Father Brosnan was legendary.
- Q Father Brosnan had his religion to sustain him. You don't...?
- A That's what I never understood about Jack Lazarus. Jack Lazarus was a formidable criminal barrister and he would soldier on in the most unbelievable cases with complete strength. In talking with him over the years, I realised that he was a complete Marxist and despised the system and hated police.
- Q Where did he get the Marxism from? His elder sister was Joan Rosanove, whose maiden name was Lazarus.
- A I don't know. His son is my eye doctor, a charming man. But (Jack) believed the police were agents of an imperialist capitalist force. Perhaps he saw that in every case he did.
- Q So it was a kind of McCarthyism in reverse.

A: It was, and he was unstoppable! You watched Jack Lazarus at work – he was on Foley’s List. He didn’t have a charismatic presence. He was a tiny man (with) a flat voice but he was persistent and had an intensity of purpose. In advocacy, that makes a huge difference. “If they really believe this, and I’ll tell you why...” It’s powerful.

Q Would Jack Lazarus’ intensity work now, do you think?

A It would. I’ve done lots of cases with Robert Richter and Con (Heliotis). You watch the good ones at work; they believe what they’re doing.

Q But they must (in order to succeed).

A I did a drug importation trial. By the time I addressed the jury, I believe this guy was innocent. I was dejected when I came home; it’s amazing how you psyche yourself. I’ve never won a case in front of a jury where I thought the guy was guilty as sin. What I’m trying to say is, if you don’t believe in what you’re saying, you can’t convince them. If you don’t have a RAT, then you can’t convince your grandmother.

Q Of course, this is the attribute (in barristers) that is most misunderstood.

A It is.

### **Part 16 – Life’s Lessons**

Q There’s never been a lull in your career, has there?

A I’ve been lucky.

Q You’ve been busy, right from the beginning.

A I’ve been lucky.

Q I read that you like to spread out all your papers on a big table.

A Yes. I was envious that Colin Lovitt when he was in his early 60s learned to touch-type. Cliff Pannam told me his handwriting was so terrible that he went off and got taught to write properly; he wouldn’t use a computer. My writing is like chicken’s scratchings. Sadly for me, I’m a two-fingered typist and wasn’t taught to rewrite legibly, so I handwrite and I dictate things. I have a table where I like to see things spread out, my chronologies, and do it that way. Pete Morrissey next door has a whiteboard, so sometimes I use that, to work through the RAT.

Q Would you say that the RAT has been responsible for just about all your strike rate – your successes?

A Yes, it’s helpful, but I’ve also calmed down a lot.



Q Calmed down?

A Yes, I used to be far more aggressive with judges and witnesses. There was a school of thought at the Victorian Bar that said arguing with judges wasn't a bad thing. You could turn to the jury and say "Poor me", but somewhere along the line I figured that wasn't really smart.

Q What about (I'm quoting Rumpole here) judges who suffer a case of premature adjudication?

A I love John Mortimer – fascinating character, and well understood by us who work in that field. The other thing I wanted to say – I told you about starting with Jim Gobbo – what a kind man, he put up with egocentric pugnacious barristers. He put up with these barristers who didn't do what he told them – though Chris Canavan did – they became criminal lawyers. But he gave of his time, books and knowledge. When Mike Rozenes and I decided to get chambers, I thought about Equity (Chambers), and I'd gone to Jim Foley and he said "stay at the centre, don't go out". That was good advice. We were surrounded by good people: John Walker, Jack Lazarus, John Phillips, George Hampel – they were all on Foley's. There were no female role models.

Q: Not even Joan Rosanove?

A No, no women. In those days, I was blind to (gender disparity at the Bar). All I wanted to be was a barrister in the Fourth Court and do a murder trial.... The comradeship and fellowship.... I saw the judges of the time not as troglodytes but as senior men who deserved my respect. When we went over to Aickin Chambers in 1983, it was the happiest time of my life professionally – everyone helping each other. They were good people. Jeannette Morrish who became a judge and Felicity Hampel was there for a while - some very good women came along. We should have been more encouraging and embracing of women, but we were caught up with ourselves. Then we came here to Crockett Chambers at 530 Lonsdale. We've tried hard to get women here. As I finish my time here at the Bar, I've been surrounded by very good people who've given of their time and young juniors who are desperate to become criminal lawyers. A bit different to me; they have a strong sense of social justice. I think that's what Rumpole is about - he had a deep belief in justice. I like to think these chambers have a strong sense of social justice. There's Richter, Con Heliotis - there are a lot of good barristers in these chambers. Sadly, only half of them are Foley's people. I think the Bar is a unique profession and long may it prosper.

Q Well, Philip Dunn, it's been a very great pleasure listening to you.

A I could tell you lots more stories.

Q Please do!

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