

IAN HAYDEN

**Edited transcript of interview with Juliette Brodsky for Foley's List oral history
filmed by Elisabeth Crosbie, 21 May 2015**

Part 1 – A Footballer in the Making

Q Ian Hayden, thank you very much for making time to be interviewed for Foley's List. You're on the verge of retiring, I believe, after a good 50 years' practice at the Victorian Bar – do you feel ready to take this step?

A Not quite ready - no!

Q: Are you going to continue on – is that the plan?

A: I'm going to continue, yes.

Q: I just saw Brian Bourke in the corridor who I previously interviewed for the oral history ten years ago – he must be coming up for 60 years at the Bar now. Or is it more?

A: I think it would be approaching 60 – (he signed the Roll in) 1955 - my word, very few have that longevity in this place.

Q: Does it seem like 50 years for you? Or more like a flash?!

A Like a flash. In fact, some periods jump out more than others. I haven't been a great diary keeper or anything like that – it seems to have passed very, very quickly.

Q: You gave an entertaining talk to a Bar cocktail party recently. In the course of that talk, did you have any advice for young barristers?

A: I recall suggesting that you can't take too many notes, which is not very useful these days. These days, you can – with laptops and iPads, etc – but I was more thinking of when I first came to the Bar.

Q: Did you ever learn shorthand? Once upon a time, a lot of barristers learned shorthand.

A: Yes, but wish I'd persevered.

Q: I'd like to start with a bit about your family background - where did you grow up?

A: I was born in Melbourne, but my parents moved when I was in primary school and I grew up in Wangaratta.

Q: Where you later came to play football.

A: Yes.

Q: And your schooling – what kind of scholar were you?

A: A fair scholar. I went through all the grades (at Champagnat College, Wangaratta) and normally got high marks in the non-mathematical things – history, English, literature and so on. I found those subjects interesting.

Q: You were also very sporty.

A: Loved sport. Loved it all my life.

Q: Did you have lawyers in your family?

A: There were two lawyers: one was my mother's brother-in-law, Arthur Welshman, who was married to my mother's sister, but he'd ceased to practise law and bought a farm before I met him. He had been a solicitor. The other one was Ray Dunn, and he was quite different – he was practising full-bore when I was a young kid. He was a very enigmatic figure: he wasn't a blood relation - he married my mother's cousin and best friend.

Q: Ray Dunn was to become a pivotal figure for you in your late teens and early twenties. You said he wasn't enigmatic figure and yet you called him "Uncle Ray". Did you talk to him at all about careers when you were young? Did he ever say to you, "Ian, I think you have the makings of a lawyer"?

A: No, I don't think so. There were three boys and one girl in the family. When we were living in Wangaratta, he would arrive with football jumpers – Richmond, of course – and other things associated with Richmond, and we thought that was terrific. Despite the fact he was very, very overweight, he'd been a reasonable sportsman when he was at university. Kicked a football and (played) cricket - I can't recall seeing him bat, but he had a habit of bowling quite fast (despite) his unathletic appearance. I didn't talk to him very much about his practice (in those days) but I knew that he practised in crime. It was more (that we talked) when I was doing law at University. But the profession of law I knew existed, because of Ray.

Q: So (your relationship developed) more when he saw you with winged heels on the football field? "There's my young man – my protege!"

A: (Laughs.) Don't know about winged heels, but he did want me to do articles with him when I started law, yes.

Part 2 – Melbourne University

Q: Was going to Melbourne University to study law a foregone conclusion for you?

A: When I matriculated, I wanted to stay in Wangaratta, and I learned you could do law by doing an articled clerks' course. I went to the Commonwealth Employment Service who told me about doing articles. One thought I had was doing commerce and journalism, but there was a fellow in Wangaratta, Bob Constable, who played on the same football team as me and worked at a solicitor's firm – he was doing articles. The CES rang around for me, and I started working with a solicitor (Mr McKenna). I wasn't there more than two weeks when I'd found out that they cancelled the course. It didn't re-emerge there until a different form, years later. So basically I had to come to Melbourne and go to university (there), and I'd become very keen by then. Some of the books I'd been given by Mr McKenna on criminal trials whetted my appetite.

Q: By then, you were also a very promising young football player, initially playing for Wangaratta. When did you become conscripted to Richmond? Ray Dunn is in the Richmond Football Club Hall of Fame. I'm thinking of the early 60s – is that right?

A: I started law in 1958.

Q: But you were also doing football at that time.

A: That was the deal with my parents. Ray came up with Morry Fleming and Jack Dyer – I'd had approaches from other football clubs while I was playing in the Wangaratta senior team. There were active recruiters going around the country in those days - they didn't have the draft – it was rather different then. Ray wanted me to come down and have a run at Richmond. My parents were going to help me if I didn't play league football until I'd finished law. Because I was 16, I had to go before a panel – the fact that I'd been playing football with men up to the ages of 35 for a year or two at that stage was a factor in my getting into Melbourne University and into law– and then it was a matter of accommodation. With my parents, I went to Newman College where I stayed for four years. I'd done some part-time jobs since the age of 12, but (paying for my accommodation) was initially beyond my parents' means. The rector could see that we were having trouble with the financing part and started asking me about World War 1. The reason he did that because they had an unused scholarship for descendants of people who'd been killed in World War 1. I had a great-uncle who'd fought in the war, and so I got the Stollerman scholarship which helped with half the fees, not through any merit of my own. I think the football helped a bit there, too, because it was very important among the colleges then – I was expected to play for the college.

Q: Do you have any strong memories of Sir Zelman Cowen, who was Dean of Law at that time, or any of the lecturers?

A: I loved his lectures. He was wonderful and a larger than life personality. I've always admired him. I can't remember specific topics in his lectures, but he was so approachable and such a good lecturer. Some lecturers weren't at all that good, but

(Sir Zelman) made it quite exciting to get into the logic of law. I couldn't imagine a better lecturer of constitutional law.

Part 3 – Articles with Ray Dunn

Q: So, when did you become articled to Ray Dunn? (The Hon.) John Coldrey, I notice, had also worked for Ray Dunn. I imagine there's a fair few Victorian Bar alumni who did their articles at his firm?

A: Yes, yes. Ray died in 1971, at the age of 60.

Q: (Of) diabetes?

A: Yes, he died down in Gippsland where he had his holiday home. Certainly, Supreme Court judges such as John Coldrey and George Hampel did their articles (with Ray) – County Court judges and barristers such as Bill Lennon. It was a great grounding for litigation, generally, particularly (in) criminal law – (Ray) was happy to teach you. He'd have you sitting in his room while he had conferences, but he had an unusual lifestyle in some ways. He never touched alcohol during the week, but he would start drinking on Friday night and then again on Saturday at the football. By Saturday night, he'd fall asleep on the couch and then recover on Sunday and go to an Italian restaurant he normally went to, and eat pasta. This never varied.

Q: Not good for the diabetes, I would imagine

A: No.

Q: He was described as a brilliant tactician. Did any of your own technique derive from Ray Dunn's approach?

A: He was a wonderful tactician and strategist, mentally very agile, very quick to sum up a situation – I don't think I could ever be as quick as he was. He was very good at finding a weakness and exploiting it, ordering other witnesses out of court so they wouldn't hear a witness giving evidence. He was most unusual, Ray – he practised in the Magistrates' Court, but they were important cases he was dealing with. They were people who had businesses that were illegal – and his was a thriving practice. Top of the list were SP bookmaking. Every country town had SP bookmakers, so did the city; until the TAB came along, it was a huge industry. Ray would organise his own circuit of SP bookmakers – he'd start in the Western District, then go to Geelong, Colac and Warnambool, or north to Shepparton and Wangaratta – he'd have things organised every week. It's amazing, the number of things that were illegal in those days that are now legal. Other clients were sly grog people who sold alcohol out of their homes, because of the restrictive hours we had in Victoria. Every suburb had a house where you could buy a drink after 6 o'clock on Sunday. There was a very funny rule called "bona fide traveller" - if you travelled 25 miles one way and

then back another, you (were allowed to) have a drink. It was watched very carefully by the police! (Ray) also had pickpockets, “Fingers Maroney” and a fellow called Bolt whose nickname was “Thunder” that he (Ray) would appear for. He had a theory that the police can’t really catch a pickpocket. What happens is, they know someone’s a pickpocket. They see him get on a tram, they wait to see his movements, but (the police) never really see them with the wallet. (The pickpockets) worked in twos – one would unsettle the victim and the other would make off with the wallet. (Ray’s) theory was that the police filled in a few gaps, they’d watch two people and knew the techniques. His cross examination was extremely good on that.

Q: What those police needed was iPhones, to catch them in the act!

A: (Laughs) Yes.

Part 4 - Ray Dunn

Q: Where was Ray’s firm?

A: In Queen Street.

Q: Whereabouts in Queen Street?

A: 178 Queen Street. The building’s still there. Ray was on the eighth floor.

Q: That must have been a fascinating apprenticeship for you.

A: Yes, it was great – you saw plenty of action, heard a lot about his theories (you heard the one about pickpockets) – he had a lot of others, too. He won the Supreme Court prize at the University in the early 1930s; he had an amazing practical brain for the cut and thrust of the criminal justice system.

Q: So, why did he never want to be a barrister?

A: He was asked that on many occasions. He told me what happened. In answer to that, Ray’s father was a policeman (who) went through the ranks to Assistant Commissioner around the time when (Ray) was starting his practice. His father told him if (Ray) hung out his shingle, he’d make sure he got plenty of work. He was confident of his (son’s) ability and that happened. (Ray) was doing so well financially and I think he enjoyed it. (Ray) had a large number of friends who were police and magistrates. I think he would also have bristled at some of the restrictions at the Bar that (would have been) more onerous on him than as a solicitor. But that sort of background – his winning the Supreme Court prize, becoming a Master of Laws – (it) could have taken him to the High Court.

Q: Just quickly, (in 1967) he apparently forced the Victorian Government to amend the Motor Car Act (1958) and he secured an acquittal for a truck driver

accused of exceeding the blood alcohol limit. That was a pretty interesting achievement.

A: He had a great skill in picking weaknesses in legislation and exploiting them.

Q: Have you ever done that?

A: I have. The details are complex – it was to do with a probationary licence – but not to the degree that Ray did. They would go to no-one else but Ray because he was known to be the expert in that area - that's where he picked up faults in the legislation. So much so that the Head of the Licensing, Gaming and Vice would sometimes discuss it with him.

Q: Why didn't you stay with Ray Dunn and become a solicitor?

A: He never had a partner so you'd never think of staying on with him and becoming an employee solicitor. He encouraged me to go to the Bar; I was with him 18 months. A lot of people were getting terrible money for doing articles – some did it for no money, but he paid me 20 pounds a week. I was also working in a hotel. Everyone who'd preceded me was with him for only 18 months, but that was the maximum. I couldn't imagine him with a partner. Even though I was closer to him than a lot of people, I never gave it any thought. He would have let me stay another year or so, and probably given me an increase in salary, but he was a one-man band.

Part 5 - A Bunged Knee

Q: On the side of all this, you were by this stage playing football for Ray's club, Richmond. Did you ever call him "Uncle Ray" in front of everybody else?

A: No! (Laughs)

Q: I didn't think so! There's a lovely description of you here: it says in 1963, you won Richmond's leading goalkicker award booting 25 goals in 15 games. You received three Brownlow Medal votes in your last full game of league football – the opening round match of the 1964 season against Footscray at the Western Oval. And then, it says here, you were "renowned for being a strong mark, but was sometimes astray when kicking for goal."

A: That's true.

Q: Is that how you did your knee in?

A: No, not kicking for goal. I wrecked my knee in that game early in 1964. I looked like having a good year, but I ruptured two important ligaments, one called the anterior cruciate ligament (the most important in the knee), the media ligament and I also tore the cartilage – they couldn't do anything with the ligaments in those days.

Q: Were you disappointed?

A: Oh yes, I only became gradually aware that I wouldn't be able to play again – the cartilage could be repaired but not the (anterior) ligaments. Some people got back playing (with the posterior cruciate ligament) – I tried hard to, doing a thousand exercises with the knee, but it didn't really work. I could play tennis and I tried footy again the following year, but the knee went on me in the last practice match and so that was the end of that. I loved it and felt I was coming into good form, and enjoyed my time at Richmond and made friends there. I think Ray was somewhat disappointed, too, as I was his protégé. He used to say to me, "You'll be a better footballer than a lawyer". He suffered a bit with me. Yes, to answer your question, I was very disappointed.

Part 6 - Early years at the Bar

Q: You came to the Bar and you signed the Bar Roll in 1963. You just decided to get on with something else?

A: Yes.

Q: So you came to the Bar – who did you read with?

A: Norman O'Bryan. His father, Sir Norman O'Bryan was a great Supreme Court judge and Norman was a wonderful jury advocate. I saw him address juries on a number of occasions – I haven't seen any better.

Q: What about Frank Galbally?

A: Oh, he was unique. Frank would only be in criminal cases (whereas) Norman would prosecute in criminal cases but he also worked in personal injury cases. They were different, but Frank was a master of the craft – he could say things that others couldn't really get away with. He was very gifted - Christ would sometimes get a mention in his speeches.

Q: Hence that shaft of light through the court window on the apocryphal day when Frank was addressing a jury.

A: Yes, he was a great orator. Norman was a great jury advocate, but didn't do the sort of things Frank did (though) he was gifted too. (Norman) was very helpful and accommodating. He was interested in sport himself; we spoke a lot about that and he had a sense of humour. I was lucky to have Norman O'Bryan as a mentor.

Q: How long did you read with Norman O'Bryan – where was his chambers?

A: Right here on the 8th floor. It was a new building then. The barristers were scattered (in four separate buildings) before that. The only one that's remained is

Equity Chambers. Jim Gobbo was a couple of doors down – uncle of Nicola who’s been at the Bar and now come back. Norman was very efficient, very organised, which was good to see.

Q: Are you like that?

A: No, I’m not. I was very late in getting onto computers – I had papers flying everywhere. When you mentioned Frank Galbally, his was the biggest criminal practice in Melbourne at the time I was doing articles; Ray’s was second. But they had different criminals they worked for; the SP bookmakers weren’t despised in country towns and were seen as catering to a need. Ray used to become upset with Frank when Ray had a secretary that he trained (but) would then finish up and go to Galbally’s. Ray was very friendly with Frank’s older brother Jack who was a parliamentarian and they were a similar age, but he was in competition with Frank. One case where I first saw them in court together – Frank was very involved in Collingwood Football Club, whereas Ray was involved with Richmond. There was a footballer charged with resisting arrest at a Christmas party on commercial premises. He was about 18 stone and strong as an ox (but) wasn’t a criminal. Ray appeared for the police, which means that Frank who appeared for the Collingwood footballer must have cross-summonsed the police. They had a go at each other all the time (in court) – it was a lot of fun watching them.

Q: Marvellous theatre.

A: Yes, it was good theatre. The other time I saw them at the Bar was a few years later at an inquest where Ray was appearing for the police and Frank appeared for the relatives of the deceased, Neil Collingburn. That (inquest) also went for several days.

Q: What was the verdict?

A: It was one of the last coroners’ juries in Victoria. They said the policemen should be committed for trial for manslaughter, so Frank won the day. Collingburn had a ruptured spleen and bruises all over the place. There were students from Monash and Melbourne (universities) marching: “Justice for Collingburn”. Ultimately the two police officers were acquitted.

Part 7 – Foley’s

Q: During all this time, were you getting lots of briefs from the beginning?

A: Yes, I was busy.

Q: You were with Foley’s – you must have had a fair bit to do with the late Jim Foley.

A: Yes, Jim was very wise, a complete gentleman – very inspiring in the ways he went about things – he gave you the right advice. He'd previously worked at Muir's. He wanted the best for his barristers. He had everyone's respect – he had wisdom, I think. Kevin (Foley) came some dozen or so years later; he was a different person to his father, but wonderful to me. Whereas his father was quiet and reserved, Kevin loved a joke and had a lot of personality. I went to the football with Kevin about three or four times; he barracked for Collingwood, I barracked for Richmond. He died pretty young at 64. Jim was there until 1978, and Kevin was probably 1994. They were both wonderful. I trusted Kevin implicitly throughout those years.

Q: Barristers I've interviewed have different views about specialisation. Yours was a broad practice.

A: My barrister's online profile is inaccurate. I did personal injury work in the 70s until I stopped going to the country. My practice is primarily crime, murders and road traffic, and disciplinary boards. I've appeared for a lot of doctors over the years, pharmacists, the Public Service. I guess specialisation has been growing over the time I've been at the Bar. There were only a handful who specialised when I came to the Bar, but that changed. I don't know, really, Juliette, what's best – it is good to specialise because it's the way things are going.

Part 8 - The Walsh Street trial

Q: Were there any cases that stayed with you a long time afterwards?

A: Oh, the Walsh Street trial stayed with me. Because it was such a high profile trial, when I came back to chambers one day, people asked how it was going – we'd reached the stage of doing addresses - and I said I thought there would be acquittals. I was confident my client would be acquitted; I thought they were all going to be acquitted. Nobody could believe it because it was such a monster crime, and the publicity indicated that, but there were complications in the police case.

Q: Who did you act for?

A: I acted for Tony Farrell, who was number 3 on the presentment. Number 4 was Trevor Pettingill, who was represented by Chris Dane. I thought that it would be a very harsh jury that would convict Trevor Pettingill. There was really very little evidence against him.

Q: But he came from a notorious crime family.

A: He wasn't a leading member of the family in the way Dennis Allen and Victor Peirce were, but it was a pretty thin case against him. But there was more evidence against the other two (Victor Peirce and Peter McEvoy). The problem they had was that the main Crown witness lacked credibility – they needed him to gell the case

together and there was a problem about who was who. The descriptions were so vague – my main submission to the jury was that you couldn't say there was any more than two involved – they were in a lane and no-one ever saw four involved. There was a lot of prejudice because the jury knew they were criminals, with an anti-police view. At the same time, there was a lot of police shootings going on in Victoria.

Q: And the police in this case were young -

A: They were set up in an ambush. Victor Peirce's wife didn't live up to her evidence and I think the case fell apart. The contrast with the Russell Street bombing – the police had absolutely no idea who committed that crime – they did not know. With the Russell Street bombing, the forensic evidence - they built a case from the ground up while trying to get information from the underworld, and it was the forensics that in the end solved the bombing. It was someone who lived up the country, and who had a history. But the case was out of the blue - it wasn't like the Walsh Street killing.

Q: What was the personal regret or emotion for you in that particular (Walsh Street) case? There were innocent victims in both cases. Given that you had the very difficult task of representing people from a known crime family, what was the residual regret for you?

A: I felt in relation to my client that justice was done– the evidence just wasn't there (to convict him). They were both just terrible crimes. The Walsh Street execution and the Russell Street bombing – I suppose they were hoping to take out up to 10 or 12 (police) and that's just abhorrent. I think the police were so certain, in Walsh Street, of relying on getting someone to inform. There was no forensic evidence (though) - no identification found of the shooters. The two (crimes) had a different atmosphere. I think there was a feeling that Walsh Street had been a botched investigation. I don't want to go into any more detail. It's understandable, coming two years after Russell Street, you can understand the reaction of the police force - that the police wanted to get someone, but it was too soon.

Part 9 - The Longford Cinema Shooting

Q: In 1979, there was a shooting at the Longford Cinema in South Yarra. This happened, I understand, during a private screening in the interval when two men argued, and one pulled a gun which injured four people. You acted for the accused – would you like to talk about that case?

A: Yes, I don't know where the story of two men arguing comes from; I've heard it before, but nothing like that actually happened. Have you seen the video of the aftermath of the shooting?

Q: No, only newspaper pictures of bloodstained people being carried out on stretchers from the cinema.

A: Well, the evidence was that my client attended the Longford Cinema with a six shot revolver, a 45, and he discharged the shots at people as they came out during intermission. Most of the bullets hit people. There was some contested or unclear evidence that that person (gunman) had gone into the theatre while it was in darkness, endeavouring to ascertain where people he was interested in were sitting. My client made a record of interview where he answered all the questions, and it went to the jury as a truthful account of what occurred, and he didn't say anything about going into the cinema beforehand. He said he went there with a revolver and was going to warn Sertaj not to go near his sister, and he panicked when he saw the people come out – he suddenly thought for the first time that (Sertaj) might be armed.

Q: In a cinema?!

A: Yes, in a cinema. In a sheer panic, he believed that (Sertaj) had committed murder in Pakistan and was on bail for it for a time, and there was some basis for it. Even though the father had Indian restaurants, they were all Pakistanis. The following morning, the police actually found a pen gun in one of those standup wastepaper bins. The pen gun is not uncommon in Pakistan – it's not very big, but can kill. It was in the trash, and was admitted into the trial, though we couldn't connect the pen gun to Sertaj and he may never have had it – someone else may have thrown it away because the police were there. There were no fingerprints on it. A bit of a mystery. Charlie in his interview with the police certainly mentioned that Sertaj might be armed, and that he hadn't really thought about that until he was actually there doing what he was doing. We had some Pakistani expert saying these sort of guns are often home-made, and commonly used in Pakistan -

Q: Why was that important to establish, in particular?

A: Well, the defence couldn't prove that Sertaj had that gun, but Charlie knew about pen guns and it made it perhaps more likely that his account may have been true – it raised a reasonable doubt – with Sertaj having (previously) being charged with murder. The families knew each other, and Charlie's family didn't think much of Sertaj's family. It came out circumstantially that the father – he was the boss of the family - had become very upset that Sertaj from this other family who he regarded with contempt, had asked his daughter out. It was a crime against his family's honour, and perhaps Charlie was there as a result of his father wanting him to do something about it. The other thing that helped Charlie was his lack of convictions - (he had) character evidence - he'd been a managing waiter in his father's restaurant and appeared extremely inoffensive. He was acquitted of everything – there was something like 22 counts - he should have been convicted of attempted murder, I think, in these circumstances.... You've got to satisfy beyond reasonable doubt that there was intent to kill. In any event -

Q: You secured an acquittal.

A: There was very little sympathy for Sertaj – I didn't say "you've got to acquit (Charlie) of everything", but "you've got to establish intent to kill beyond any reasonable doubt". (The acquittal) was a bit of a surprise. I would have thought it an amazing result if he'd been convicted of unlawful wounding, which is an alternative to attempted murder. Attempted murder is a funny thing because you have to prove an intent to kill – whereas for murder, it's an intent to kill or intent to do serious injury. I had a case in 2010, in Geelong whereby a bikie had gone around to one of the rival clubhouses. People were standing out the front of it, and he emptied his gun – he thought he saw one of them making a move, as if he had a gun and so on. One was killed and so he was charged with murder, and he was charged with three or four counts of attempted murder. He was also charged with intentionally causing serious injury. The jury convicted him of murder and acquitted him of the attempted murders, so they accepted the prime submission from the defence that with all they've heard about bike clubs, the last thing you'd want to do is kill these people because straightaway you've got a police investigation – they usually shoot each other in the legs. The jury must have distinguished between (those actions) - I think that verdict was right.

Q: Out of interest, Ian, the late Richard McGarvie spoke of "the wisdom of juries". Do you share that view?

A: Yes, I do. The Crown didn't want to put "reckless" murder – they put that he intended to kill. Juries seem to be able to work things out and get it right. You asked if I ever represented anyone wrongfully convicted - I can recall being upset at times in the Magistrates' Court, but they were minor matters. Generally speaking, with serious crimes, juries get it right. – whether it be guilty or not guilty.

Part 10 - The Pong Su case

Q: In the early 2000s, there was a navy ship that intercepted a carrier ship, the Pong Su which was found to be carrying a large stash of heroin. You acted for the (Pong Su) captain. Some of the accused were deported, which was meant to be a signal for lack of tolerance for drug-smuggling – but it does contrast with what happened recently in Indonesia (with the executions of drug smugglers Andrew Chan and Myuran Sukumaran).

A: The people who were convicted weren't on the ship, they were in the hills above Lorne where the ship pulled up, and that's where the drugs came - off the ship. There was no doubt about any of that, and the ship went on to Sydney, chased by a police vessel, and ultimately the Navy. The ship finished up going into Sydney harbour and the arrests were made there.

Q: The deportations were meant to send a strong signal. The crew and the captain were acquitted – they said they weren't aware they were carrying heroin. They had no idea?

A: The captain said the ship was going to pick up secondhand BMWs in Melbourne. That's what he said when he was arrested – he had no knowledge of any heroin on board at all, and he gave evidence for several days. On the other hand, it wasn't a massive ocean liner and these were very large bags of heroin, which came on the ship at some stage – so one may wonder, particularly because there were communications from the captain which could have been incriminating – asking orders about what he does now, he's being followed by police and things like that. Part of the Crown case was that the ship was doing unusual things – the case went for a long time.

Q: It was a few years.

A: Yes, counting legal argument – it went from 2004 until 2006. But if the captain got acquitted, then the crew also had to be acquitted because they were all following captain's orders. They charged the fellow called the political secretary, even though he didn't have much to do with running the ship – but it enabled us to cross-examine him about North Korea. The captain and Chief Officer were North Korean – the ones in the dock were all North Korean. The ones who pleaded guilty were Singaporean Chinese in Melbourne, staying at Crown Casino and who were going to Lorne to pick up the heroin – they confessed – they knew the heroin was coming. They were all charged, but the ordinary crew members were discharged at committal. The political secretary was like a chaplain who reminds them of their Communist duties, and who ministered to the crew – he was charged because the allegation was that he was considered equal to the captain. Nothing would happen without the political secretary knowing about it. The cross-examination mainly relied on the unusual behaviour of the ship – the ship changed its registration, purchased new flags, things like that. North Korean ships don't usually come to Australia. It was the first in about sixty years, and certainly not down to the south coast –

Q: So they were bound to attract attention.

A: The Americans gave the information to the Australian Federal police right from the first, because they keep an eye on everything North Korea does. So the Federal Police followed the cars and there were about 50 of them waiting for the ship to arrive. They saw the dinghy with the heroin in it. One of the persons in the dinghy, which capsized, was washed up on the rocks and killed; the other was arrested and got 20 years. They wouldn't get those sort of sentences in Indonesia.

Q: The North Koreans were effectively drug mules. I saw that the Australians scuttled – blew up - the ship. Was there any international outcry about this – did anyone go on about “barbaric Australians”?

A: No. Not that I know of.

Q: Don't you think that contrasts with other nearby countries which want to send out messages about what happens to drug smugglers?

A: I'm against the death penalty but that's beside the point. But they didn't get to the very top, the people financing it – so the top in relation to the Pong Su is uncertain. The prosecution thought it was the North Korean government, which was short of money, as it often is. They called in some experts on North Korea. The captain had been a captain in the North Korean merchant navy, and he was given this job. I think that the jury knew that the North Korean captain would be in a bad situation – his family would be at risk if he didn't do what he was told. That's my longest jury address, that one – three days.

Part 11 - Australia's first "sting"

A: There was one trial I was going to tell you about which was interesting – it was the first of the trials which they use the phrase "a sting" –

Q: Was this a drug case?

A: No, in drug cases, they go undercover and make a purchase – they've been doing that for twenty or thirty year. This sting was a first in Australia – it was a case of culpable murder. The allegation was that a man, Totalu, had strangled his girlfriend because she was two-timing him. They didn't have much evidence and so they decided to use this sting method. It started in Canada; the homicide squad sent details of the case over to the group in Canada to work on – they had psychiatrists, investigators and so on. They sent back a pack to the police here which included sixteen scenarios that have to be played out. If one (of the scenarios) works, the person goes along with it and starts admitting guilt in the clearest possible way. The police actors organise it in such a way as to suit the (accused) concerned.

In my case, this fellow had no prior convictions. He was a printer who went to work every day and so on - he had a nice girlfriend in Punt Rd, who was strangled with her own scarf. He was a suspect because he was in a relationship with her, but there wasn't any evidence. So the police actors went to work. One day (the printer) was on the tram and an attractive lady (a policewoman) got on, and said she was selling raffle tickets for a box of liqueurs. My fellow won (the prize) and had to go to Southbank two days later to collect his prize, for a dinner there. There were all these police fellows throwing money around, they were well dressed and said they were all from Sydney and didn't know their way around Melbourne. They asked if he'd be their driver. So he eventually became their driver – on probation - and they paid him a lot of money.

He finds out that they have an illegal brothel in Collingwood – he drives someone there in a black suit who comes out with about twenty or thirty thousand dollars, and my client is given a couple of thousand dollars. They then tell him the “big boss” is coming down from Sydney to attend the Grand Prix. Eventually they get to a point, the thirteenth scenario - where he’s either going to be in or out. If he wants to be “in”, they need to be sure he has no police record. He said no, no, no I haven’t - they press him, and press him, and one day he tells them about the killing in Punt Road which he said he had nothing to do with. “Oh, you should have told us that...” He’s told they can only fix it if he tells them the truth. Doesn’t matter if he’s guilty or not guilty, but in this “organisation”, he has to tell the truth when the boss comes down.

Q: “You must come clean.”

A: Yes, you can’t keep things from this “boss”. He hates lies more than anything.

The “boss” comes down and stays in Crown Towers with a beautiful view, and they tell my client that he MUST tell the “boss” the truth. The “boss” is wearing a white dressing gown and has some Chivas Regal, but he doesn’t pour out any for my client, and tells him he’s heard a bit from the others. So the guy starts confessing, as if he’s talking to a priest: “How did you kill her?” “With her scarf.” “What happened to the scarf?” “I threw it in a vacant car” (which was subsequently found by the police). The police had never released any details of the crime scene but every detail (of what happened to the woman) fitted.

Q: When did they say “You’re nicked”?!

A: After it was over with the “boss”, his operative told him to meet them at a café in Brunswick. He goes to the café and is arrested.

Q: “‘Allo, ‘allo, ‘allo...”

A: He started denying it, but they show him the video (of the confession to the “boss”). He denied it to the very end. In my conversations with him, I thought it was a good idea to offer manslaughter (to the Crown) but it didn’t happen, and so the result was inevitable. He was still saying he didn’t do it – and that lost him credibility in front of the jury. After the woman was deceased, whoever did it, cleaned her up, put her in a new nightgown. I’ve no doubt he did it, but was probably sorry – a spur of the moment thing.

I appeared for a grandmother who’d been two-timed by her boyfriend. She was charged with going from Ringwood and shooting the female, named Edith, who was part of the two-timing. She threw her in a wastebin. The evidence was overwhelming but (the grandmother) denied it to the end. The jury came back, wanting to know if they could convict her on manslaughter, and the judge said no, they couldn’t - she was guilty or not guilty of murder. There are often cases where a person categorically denies everything, but they’re so much better off telling the truth and admitting their guilt, and then seeing what sort of result they get.

Part 12 - A good life

Q: How do you look after your health? Your work is physically and emotionally draining, especially in the areas you practise in.

A: I support a family. I try these days to get a reasonable amount of sleep. For my age, I think I'm reasonably fit physically –

Q: Except that knee!

A: I have the full knee replacement these days. I met my wife at a hotel next door to Ray Dunn's offices in the city – it was owned by my wife's parents. We've been married 50 years in August (2014) and 50 years at the Bar the year before. She's very helpful.

Q: A strong family life....

A: Yes.

Q: When I interviewed Brian Bourke some years ago, he said he wasn't interested in taking silk. You never applied, either?

A: No. There weren't many silks back in the 80s who practised only in crime. I had a large family (to support).

Q: It can be financially insecure. Did people say maybe you should (take silk)?

A: Oh yes, two Supreme Court judges would have been my referees. I would have got it, but you never know unless you try. What I was concerned about was my boys – I felt they needed me. I thought, being a silk, I'd be so engrossed in things... Anyway, I never applied.
