**Henry Jolson OAM QC Section 1**

Juliet Brodsky speaking with Henry Jolson QC. Henry, thank you very much for making time to be interviewed. It's a pleasure, thanks for coming here.

I'd love to start with a picture, a picture that goes back to the time when you were in utero, so to speak. A picture of your mother and father standing on the prow of a ship, looking out towards the sea, and your mother is pregnant and you're in her belly, of course. And essentially it was your parents setting out for a new life in Australia.

Would you like to talk a little bit about your parents, because your father in particular had led quite an extraordinary life up until then. Yes, that was in March 1947 and I was born in April 1947, so there was a chance I might have been born on the ship. They travelled from Paris, they'd been through the Holocaust, both parents had gone through the concentration camps, they knew each other from before the war but caught up with each other in Paris.

They were married in Paris and then my mother had an uncle, the only surviving relative in the world, who lived in Carlton and he was a tailor, so he sponsored them under the Arthur Corwell plan of finding homes for displaced persons. So I was born on the back of a tailor shop in Lygon Street, Carlton, but notwithstanding that I ended up being a Western Bulldog supporter. In Lygon Street, whereabouts in Ligon Street? I think it's where the Keyhole restaurant is or was.

I still can recall, I lived there for about the first three years of my life and I actually have a visual recollection of the street and a couple of the shopkeepers in the street. It was a good time, although they came out here like a lot of other displaced persons and refugees without any language, without any money, without any job, without any friends and started from scratch. My father's story of survival isn't a remarkable one and probably too long for this interview but there was a movie made about it called The Last Typhoon.

Basically it was a mess up by the Royal Air Force who were given wrong intelligence at the end of the war. There were three ships lying at anchor off the north German coast. The British believed that they were German officers escaping with some bounty to start a third front and the Air Force was ordered to sink the ships.

Unfortunately it contained 10,000 survivors or remnants of the concentration camps who survived the death march and the ships were sunk, 10,000 people, 350 survivors and my father was one of them. So that's a whole story in itself. So he survived that and came out to Australia and was ahead of his time in terms of entrepreneurship.

I remember not so much the early days when he struggled around the Victoria markets to make a living for himself. He was my mother and myself. He got a break, I don't know when, but he ended up in real estate, did very well and then launched into some projects which still exist at the moment.

One was the Preston market which was his concept and design and ownership for a long time. The other one was Leonda and I dine out on a trivial pursuit question, where does the name Leonda come from? My father's name was Leon so there was the first part of the name. He had a partner called David and there's the second part together and before that people may remember St Moritz ice skating rink up on the Esplanade.

Next door to that was a place called Oils Court which my father bought and turned into a ballroom, conference centre, first of its kind. So he was ahead of his time and I even recall 1972, 1973 he came up with a concept called the Jolson Transport Plan which was to put taxi ferries on the Yarra River to ferry people from upstream into the city, build an underground car park on Herring Island just off the freeway and then have ferries take, taxi ferries take people from Herring Island into the city and across the bay and that was in 19, as I said early 1970s and I read just recently that someone's proposing to run a taxi service from Williamstown along the bay coast into the city so he was ahead of his time.

Perhaps they'll name the ferry service after him?

Well not many people know about it but maybe I might bring it to the authorities attention.

So he was quite a businessman, quite an entrepreneur and a survivor and for reasons which we might go into later hopefully I've inherited his survival instincts.

**Henry Jolson OAM QC Section 2**

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

Oh yes, his stories were not of horrors, his stories were of survival, more of a Hogan's hero type stories and I can just picture him playing that role. And of course coming out, having lost all his family and all his positions and my mother's as well, the most important thing for him was education. And he used to say they can't take education away from you.

They can take everything else, they can't take your education. So that was very much in his mind and I don't know how they afford to put me through school. I went through a state school, Turek Central School, that was okay.

Melbourne High School after that. And then he was pushing me into law. It wasn't something that I had thought of but he thought it would be good to have a son as a lawyer.

And I went off to Monash University in the early days. We called it the farm because it was a farm. The law faculty wasn't built, we used to share the engineering faculty.

The pavements weren't made, there were no lighting outside so at night it was dismal and quite often you'd see cows walking amongst the buildings. So that's why they called it the farm.

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

No, I was a poor student. Probably just got into Melbourne High School. I think Malcolm Fraser was the Minister for Education in those days and they were giving out Commonwealth scholarships quite easily which was good. Yes, it was a selective school.

I'd never regarded myself as a good scholar. I struggled. I wasn't a good reader. I didn't come from a household where there was a precedent of books and learning. That didn't happen. So I struggled through.

At university I didn't really appreciate the law at all and what it meant. I'm a little bit critical of the education system, perhaps back then, in terms of teaching students an appreciation of the law. I really didn't understand legal research or how the law worked until I was a number of years at the bar and I recall being junior to a very great advocate, one of the greatest at the bar, Cliff Panam QC and we were running a difficult case and he said to me one day, I want you to go to this library.

I said I don't care where you find it, you've got to find me a precedent which supports our case. I just went over there and it was the first time I really did some legal research. He told me to go and look at the American jurisprudence if I couldn't find any English jurisprudence and so I went off into the American section of the law library and just going through, leafing through indexes, looking at it and I came across this case.

It was the Court of Appeal of Saskatchewan and the principal supported our case entirely so I photocopied it and I wasn't enthusiastic about it. I thought who's going to follow the Supreme Court of Saskatchewan and I went back to Cliff's Chambers and I said nothing there at all but there's this case here and he looked at it and he said brilliant and it actually carried the case and I thought hey this is great. You know the research paid off and that was you know as I said I was at the bar quite a number of years so the legal system or the education system hadn't taught me the way to appreciate where the law is, what it is and how to go about researching and all that and I regret that I would have because now in my, I've taken leave of absence, I've become very interested in books, acquiring books, biographies and histories that I never read when I was too busy researching the law in later years but that was a great example of legal research working.

Well perhaps all you needed was just a little bit of encouragement. Yes indeed. And a bit of a positive example.

I'd like to ask you actually briefly about Cliff Pannon. Was there something in particular about him that inspired you in some way or was it just simply the fact that he praised your efforts there that started something for you? No, certainly that was something that I do recall and I appreciate but not the praise. Cliff was a consummate advocate.

His research and preparation was superb but his delivery was superb as well, how he could articulate the principles of law and argue the cases and I did a lot of work with Cliff including going up to Mount Macedon, spending nights preparing cases and of course he had a beautiful house up there which he lost in the Ash Wednesday fires and I went up there the day after to help him clean up, it was a tragedy but he was just a great example of what it was all about.

**Henry Jolson OAM QC Section 3**

You were doing jurisprudence at Monash University, but as you were saying a moment ago, that didn't inspire any great love of law itself. Well, actually, I didn't finish jurisprudence. At Monash, it was a requirement you do a combined course and the standard course was law jurisprudence.

I did law, started jurisprudence, but then switched across to economics. Again, probably the jurisprudence part of it had no relevance for me at that time.

What about economics?

Did that strike any great fires of interest in you? No.

No? The theory didn't appeal to you in any sense? It did, it did, but I remember part of it was statistics. Oh, no, that was in psychology. I failed statistics once or twice.

They're not the most exciting things. No, that wasn't stats. Oh, economic theory wasn't too bad, but I wasn't going to go off into an economics career.

I wasn't sure I'd go off into a legal career as well. I didn't start at the bar straight away.

What did you do?

My articles were at a firm then called Blake and Riggle. It became Blake, Dawson, and now Alshurst or something. The names just merged into oblivion.

But Blake and Riggle was one of the oldest law firms around at that time, and I was very lucky to get articled. I enjoyed that very much. I was there for a year of articles, stayed a year afterwards, and I developed very early on a concern about clients coming to see solicitors initially, having to pour out their grievance, and then having to go off to meet a stranger called a barrister who only sees them for a very short space of time and runs their case.

I was espousing the concept of having in-house counsel at that stage. That was 1971 or 72, thereabouts. That wasn't attractive to the Blake and Riggle people.

I then applied for and was appointed Sir Ninian Stevens' first associate to the High Court. Unfortunately, in discussions with the family, I decided that I wouldn't take up the position. I had to go and see Sir Ninian, and it was very embarrassing, but he was such a polite and a gentleman that we got over that.

But in the course of that, people at another firm heard of my criticism of having to split off the profession, and clients come to see the solicitor and a firm then called Ellison, Hewis and Whitehead, which became Minters and now Minters Simpson. They poached me away from Blake's and said, look, we'll give you a shot at this, come over as house counsel. It didn't work because the litigation lawyers were jealous.

They wouldn't give me the appearance work in the chamber's courts or the magistrates, and I ended up taking photographs at industrial accident sites, and that didn't appeal to me, so I went to the bar in 1973.

Industrial accident sites, like Westgate Bridge, for example?

Not as big as that. No, some factory where a worker had the finger chopped off, I went out and photographed them for the insurers or motor accident sites.

It wasn't fulfilling, that year at Minters, it wasn't fulfilling. It didn't work out, so I went to the bar. But why were the litigation lawyers jealous exactly?

What exactly did they feel was so wrong about what you proposed?

I think it was me having a status above them, getting the kudos rather than them.

I wasn't getting the referral work. I didn't complain, I didn't go to the partner who brought me across and said, look, this isn't working, why don't you talk to them? It was just a year I just wasn't happy. I enjoyed the people there, I learnt from the people there.

David Jones was a huge litigation farce, he became a first solicitor appointed to the county court. Tom Hanrahan, he was also, Ian Davis, I learnt from a lot. And Henry von Bibbra, Henry von Bibbra was the partner who brought me across, he was a character.

So I enjoyed all of that, but I just wasn't getting the practice of the law as a solicitor, it wasn't fulfilling, and as I said, then went to the bar.

**Henry Jolson OAM QC Section 4**

So you signed the bar roll in 1973. 3 October it was, yeah. Yes, and who did you read with? I read with Alan Goldberg.

Ah. Yeah. And Alan's mentorship to you? Alan had a very, very busy practice, revolving doors, all hours of the day and night.

And he was involved in a very heavy arbitration at the time. And I didn't get really involved in it with him. And Cliff Panham was next door.

So I had a lot to do with Cliff when Alan wasn't in his chambers. But work ethic and, again, preparation and the type of work he had really spurred me on to, not deliberately saying I'm going to do commercial work like Alan, because when I went to the bar, I think the late Jim Foley was one year there and then Kevin took over and Kevin was great in assisting young barristers and not to hurry along too much, not to say I want to specialise too early, get a feel for everything. That's what we did.

So I got a very broad practice early on. But from Alan, I could see what a major practice he is with his clients. And I didn't get to see a lot of Alan's advocacy until I was against him early in my career.

I had a building case against my old master and that was an experience. That was an experience.

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

It's a good way. Again, seeing Alan in action. It was an arbitration involving cracked concrete out at Sunshine in unstable earth foundations and it was in good spirit but it was hard fought and so I learnt a lot there.

The first numbers of years at the bar, maybe even six, seven, eight years, I was doing the Magistrate's Court and I loved it. And I look back on those times as being probably some of the best. You'd have magistrates who you'd know and they'd respect you and there was one in particular and I yearn for those days and I think I've been quoted recently saying that, the days when you'd go out to the magistrate's court and the clerk would adjourn the court for lunch and he'd say, silence all stands, this court stands adjourned until about quarter past two because he knew the magistrate enjoyed the company of barristers for lunch and he liked his autumn browns, his sherries and quarter past two would come and go and we'd still be at lunch.

Probably settled a lot of cases over lunch. But that was the way, probably early mediation was when the magistrate would ask each counsel, what's in this and he'd give a curbside assessment, go off and settle it. It made sense.

Who is this magistrate that you are speaking of so fondly?

I thought you'd ask me. Wasn't Darcy Dugan of course? No, Darcy was another character. I had a great story about Darcy but Kevin Pomeroy, yeah.

Ken Pomeroy, Ken Pomeroy. Right, oh that's very interesting. No, Darcy was good.

Can I get back to Darcy while I remember? Yes, yes, absolutely. One of the things, that's right, at Minter's they did send me up to one of the clients to act as counsel at Morwell or Mully Magistrate's Court and it was a paternity suit and a local lady there or girl had accused this guy of fathering a child and she wanted maintenance and he denied it. And one of the defences in those days was if you could prove that she had sex with others, during the gestation period, it would create a doubt.

And I went down there as a very young solicitor, strike advocate, and I took my wife with me for the drive to come down there and see me in action. So I got up, announced my appearance and the clerk of courts immediately said, this court will sit in camera, anyone not having any business, please leave. And of course my wife had to leave and I stood up to Darcy and I said, look, excuse me, I'm embarrassed, my wife's come all the way from Melbourne with me.

And he looked around and he said, wife, I can't see your wife, but if that lady there would come and sit at the bar table, then she can be your instructor. So that's how that became that. And that was the sort of way in which things were done.

It was quite good. How was the case resolved in the end? My client went down. And he just went off into the sunset playing his guitar.

He didn't really care at the end of that. I wonder how the French former Minister for Justice would fare if she had you for her counsel now. That's a very interesting case going on at the moment over there.

Establishing paternity. Well, that's right. Well, when I went to the clerk at the morning and said, I'm appearing for Mr. So-and-so, they knew of this lady's, this girl's reputation.

And the clerk said, are you calling the football club? I said, no, but do you know anyone? Yeah. And that was an experience too. I learned from that as well.

**Henry Jolson OAM QC Section 5**

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

I did it the other way. I did it by exclusion. Rather than say I want to do this, I dropped off things that didn't interest me, that I thought wouldn't, and I have regrets about that. For example, one of the things was crime.

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

It is, and that's my regret. Also, because that's where I think the role of the advocate is important to the client, more so in a commercial dispute where you're dealing with a person, with clients whose money, it really isn't the corporate money or insurer's money, and the individuals you're dealing with don't have the same emotional attachment to the outcome. So I regret that.

I think that's where the real law is practised and the laws of evidence you need to know. Plus, I've never appeared in front of a jury, and I regret that as well. I think that's something that's part of being a barrister, really.

I got very close, but we settled the case. It was a civil jury, and we settled the case. So I have that regret.

So I dropped off that family law. I dropped off because that was a whole area, especially, and if you do family law, you just do family law. If you do criminal law, you just do criminal law.

And gradually, I was left with just a very general commercial practice, so-called. I call it debt-collecting practice. You're just changing hands from a claimant or respondent, and we get paid for that.

I got into the construction area, like construction disputes area. That seemed to be coming my way a lot.

Was this during the BLF?

Ah, BLF. There's a big story in that one, a number of stories, because I was in the BLF, the first one with Gallagher, the first Royal Commission, not the subsequent one, and that was amazing. I was a young barrister acting for two of the principal players in this whole thing, and I don't want to go into too much detail because there's some confidentiality issues there, but that's where I actually learned a lot about politics, about business, and that Royal Commission went off on a tangent. What they were trying to find was evidence of industrial espionage on site, blackmail and a whole lot of things, and they couldn't.

No one talked. Everyone went silent. All they did was they came up with a very expensive beach house down at Yarram, I think, that Gallagher had, and all of the developers had been supplying materials.

But I acted for one of the very high-profile developers and his project manager, and it was tough on them. It was tough on a lot of the developers.

It was a very dirty time and a very dirty series of dealings. Did you at any stage fear for your own life or those of your clients? Was there concerns? Because there was some...

Well, they... Things got pretty close with the wire in a number of cases. Yeah, yeah, and I had a client, one of them, who was prevailed upon very heavily by the police to wear a wire so that they could trap Gallagher, and he refused to do it, and pressure was put on my client, and that was pretty heavy stuff. But the funniest thing was they set up this hearing room in Hawthorne, and they had bulletproof windows and secret ways to get in and codes and things.

I remember the first day that I went to appear, I went there, didn't know how to get in. I walked around the building, and I found a door that was open, and walked in, and I saw the... I sat at the bar table, and this uniformed security man come, which is... He said, how did you get in here? And I said, well, I just went around, came in the side door. He said, don't tell anyone, they'll have my job, because you're meant to go into the front, and you go into a sealed chamber with one-way mirrors, and you state what your business is before you can get into the hearing room.

It was just overkill. Was I ever concerned? No, I don't think so. Oh, that's a relief.

Because I know there were some pretty unsavoury characters, and yes, you know about it, of course, very well, but... But we weren't at risk. Sorry for interrupting you, but I remember, and I'm not sure if that Painters and Dockers Royal Commission was before the BLF, and Frank Costigan, who was a Royal Commissioner, you know, the late and great Frank Costigan.

We shared chambers for a long time, and I asked him that question. Did he ever feel scared for his life whilst he was running that inquiry? And he said no, he said he didn't, because they'll always get another Commissioner. If they bump me off, they'll always get another Commissioner.

It's the witnesses who should fear for their life. Same with me. I mean, why would they want to heavy me? Just get another barrister.

**Henry Jolson OAM QC Section 6**

But I think that was a turning point in my career because obviously there was a lot of publicity about that. And from, I don't know, I had a very broad practice, defamation, which I enjoyed, a lot of defamation work. Defamation is pretty sexy.

It became sort of entrapped in some pretty detailed laws and difficult to run a case because the nuances can go all over the place. I enjoyed that.

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

No, not really. I was more caught up with the ability of a defamation case to backfire. I think the Americans coined a phrase, which I often told clients, that the truth hardly ever catches up with the lie. So even if you win, your reputation, credibility is all open for cross-examination. If you take the defence of absolute truth, then you can become a cropper, and all of these qualified privileges, rules, I found that quite interesting to work your way through it all.

Defamation wasn't a big part of my practice, but it was an enjoyable part. But I got into construction, as I said, that was a lot. One case, again, which probably helped me along the way was changing the law in Victoria, making non-participating directors liable for the debts of a company, e.g. the wife who signs the annual returns, the husband's running the business.

I acted for a creditor against a supplier of goods to a company that went broke, and the husband was running the business. He died, business went broke, and my client then said, well, the other director's wife, non-participating, should be made liable. There was a Court of Appeal decision in New South Wales, right against my proposition, and when I opened the case to the judge, he said, Mr Jolson, he said, isn't there a Court of Appeal decision in New South Wales, which I'm not bound to follow, but would be persuasive, that's against you? That's the beginning.

I said, yes, Your Honour, and my task is to demonstrate that that case was wrong, and you shouldn't follow it. So there was a challenge, and I got up, and the law changed, and that was a great buzz.

I'm sorry, I was just going to ask you, Kevin Foley, in all of this, was he sort of realising your talents in this regard, and directing things accordingly? Oh yeah, Kevin would be very keenly following the career paths of all of the barristers, and when I said before, he said, don't hasten too quickly, just get a feel for everything, and just find where your niche is, and if you found your niche, then yes, he would be supporting you there, and not relevant to anything I've just said, but something's come out of my mind, which I remember Kevin saying, one of the biggest problems was always barristers getting paid, chasing fees, and sometimes you wouldn't get paid, and Kevin used to say, you may as well not work and not get paid, than work and not get paid. So choose your solicitors carefully. It's a risk if you're not going to get paid well, because in those days, we didn't talk about fees up front, or security for fees, it was on the honour system.

You do the work, you put your bill in, and maybe six months later, or 12 months later, you get paid.

I hope that didn't happen to you too often, did it?

No, no, but I know now some colleagues of mine who run long cases, one in particular has had to sue the solicitor, so even in 2012, 2011, 2012, it's happening. You've got to be careful.

I think council and clerks are more vigilant in getting money bits and pieces up front, so the bill doesn't get to run away too quickly.

I spoke to a clerk not long ago who said that in his view, email has been the biggest problem of all, because very unpleasant missives get fired back and forth, and he said it's so much better for him to just simply hop on the phone when there's a situation of an outstanding payment, and just broker it, so to speak, on the phone, carve out some kind of arrangement that both are reasonably happy with, and then if you don't have that nastiness that he says has got worse and worse in his view in recent years.

Yes, look, I'm always in favour of direct communication.

**Henry Jolson OAM QC Section 7**

That's what led me to mediation. Well, did it lead me? No, that was a consequence of me going into mediation. But I became a little bit unsatisfied in being an advocate litigator because quite often you would spend a lot of time preparing cases, charging a lot of fees, clients having to pay, and you settle.

You don't end up running the case, presenting the argument that you have formulated to see whether you can persuade the judge that you're right because there's a great satisfaction when you run the case and you succeed in the sense that your prediction has been vindicated. That's fantastic. But in 83, 84% of the cases, they settle.

And so you end up having a fat fee book, but you don't get the satisfaction of standing up and being an advocate, being an actor, being theater, all of that. (Your moment on the stage) And in 1985 or thereabouts, I got a call from Judge Leo Lazarus of the county court.

He was in charge of the building cases list. And he said to me, and I don't know if you know Leo, but he was straightforward. He was fantastic.

Leo Lazarus, he said. Was he related to Joan Rosemary? Was he her youngest brother?

It could have been. I know her maiden name is Lazarus, so I'm just curious.

But yes, go on. Could have been. And it went like this.

He said, hey Henry, he says, you know these new building cases rules that I've got? Because he was in charge of the building cases list, which would bog down. I mean, you couldn't get a case on. He said, I said, no judge.

He said, well, do you know they've got the power for me to appoint mediators? And I said, no judge. He says, do you know what a mediator does? I said, no judge. He says, well, you better find out because I'm appointing you as a mediator in the list.

And George Golden and myself and Morrie Phipps, who's a federal magistrate, were appointed way back then. So we had to find out what mediators do. And basically, it was to try and settle the cases before they went to trial, to try and get rid of the backlog of cases.

And this was before the early 1990s where New South Wales had a thing called the Spring Offensive, I think it was called, where...

One of Sir Laurence Street's initiatives.

Yeah, yeah. So this was before then.

So we consulted the books and there was not much theory that we could... Basically, we brought the parties together and banged heads and tried to settle. We were getting some good settlement rates. And then following on the Spring Offensive in New South Wales, I think we had... I've forgotten.

Chief Justice John Phillips picked up... I think it was before him in the county court, it was Keon Cohen, said he's gonna call over all the cases and we'll have this massive purge of cases and the solicitors will volunteer their time to be mediators. And so we cracked a lot of cases. And from there on, I got more and more involved in mediation and learning more about it and the theory of it.

And I then gradually became a full-time mediator and arbitrator, did a lot of arbitrations. And then I got involved in sports law and did some sports arbitrations. But had not Leo Lazarus appointed you, do you think you would have moved into mediation as quickly as you were subsequently? Yeah, I was quite keen on it.

And I think with the... We called it the Autumn Offensive, I think, rather than the Spring Offensive. We all put names to it. I thought it was a great idea.

So perhaps, it was a number of years. I got into it a number of years earlier than I would have otherwise. Because you're certainly acknowledged here as a pioneer of court-referred mediation.

And I'm interested because ADR, Alternative Dispute Resolution, has been around for quite a number of years. But the trend towards mediation, as you pointed out a moment ago, that's really only been going on since the early 90s or thereabouts. And I suppose I wondered, because when I learned of your role in all of this, I wondered if it had been some combination of your own personality, perhaps, together with perhaps the kinds of cases you were running at the time that had led to this, or whether it was other things.

And I can see now from what you're saying, there was a backlog issue that had to be actually dealt with in any case. Necessity became, in a way, a driver for you.

But my personality also, I think, assisted. I would rather communicate and talk openly about a client's concerns with a view to try and resolve it at an early stage to avoid having this cost escalation and the delays and the frustration. At the end, even with an imposed decision by a judge or a third-party arbitrator, both sides are not 100% satisfied because there are cost consequences. You never get all your costs back.

So you'll be out of pocket. The time involved in directing your energies away from your core business into a different world, different culture, different language, being the legal system, it wasn't. And as I said, communication with me was important.

And I found that lawyers become filters. And I've developed my own model about this. Quite often, people in the commercial dispute had a relationship at one stage.

They could talk to each other. They did a deal. They worked together.

Okay, and then they fall out. They can't talk to each other, so they go off to independent lawyers. And all of a sudden, it's the lawyers who are talking, not the clients.

And the lawyers have their own language, and they filter things unwittingly or wittingly. And when it comes to a negotiation between lawyers, and then you superimpose another level of barristers further removed, the discussion becomes a different language. And in my mediations, and I'm thankful that the legal profession, the solicitors, trusted me enough to say at a particular point in the mediation, let me speak with the decision makers alone without lawyers.

They let me go off and have a chat. And I bring the decision makers back the full circle where they do talk to each other. And I can say, look, put all this crap aside.

You know, what we are really saying is this, this, this. You know, you've hurt my feelings. And other things come out when the clients talk directly with each other.

And I just found that a very interesting and stimulating thing to do to start at the beginning of the day. And you've got these dynamics where people are sitting like this, the body language is all protective, and I'm not gonna give things away. And gradually it opens up, and you get to a meaningful discussion that then you'd never give up because you can be surprised by just one sentence can change the whole dynamic.

I just found that human exercise quite stimulating. And I would imagine psychologically enormously rewarding. You feel like something's been done.

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

**Henry Jolson OAM QC Section 8**

I've often wondered with basses, I've interviewed, what happens to all that thwarted adrenaline that they get? And I know some of them are literally sick at the beginning of the day. I've heard about that many times. I've found myself thinking, what does this do to them in the long run? It's gut-wrenching, it is.

Some people, and I think it's been documented on TV, one of the criminal boys had a half-hour suit and he used to dry reach before going into court. And I know that. I was junior to a lot of senior people and I can feel the nervousness in even experienced advocates.

Why? The other thing that's very interesting about all that you're talking about, it's often been said about barristers and the profession of law, advocacy generally, that it's very adversarial. Whereas what you're talking about is not really adversarial at all. It's a quite different type of consciousness that's brought to it.

And you're saying, and it's clear to me from what you're saying, that you found it far more, not just fulfilling, but you found you reach resolution in a much more useful kind of way. So clearly that means something to you as well. Why aren't more lawyers getting into mediation? I know quite a number of them have got into it now and are working in it.

But can you see this ultimately even, well maybe not replacing more traditional ways of exercising law, but do you see it perhaps taking over maybe two-thirds of what we see as legal practice? Some years ago, I've forgotten, maybe eight or nine or ten years ago, I wrote an article just on that. And it was alternative dispute resolution. Is it going to become the primary means of resolving disputes? And it has.

And I think I read recently, some academic has said that, that that has now become the primary means of resolving disputes. And in most cases, in most jurisdictions throughout Australia, courts have got the power to compel mediation, although they use that power sparingly. But quite often, before you get a trial date, you will be required to go to mediation.

And so there's been a change in culture. Also with NADDRAC, the National Alternative Dispute Resolution Advisory Council, recommending to the Attorney-General, Federal Attorney-General, in courts exercising federal jurisdictions, and federal tribunals, if a matter is going to be mediated, it has to be mediated by a mediator who is qualified, who has passed the course and has been accredited. So a lot of barristers, a lot of lawyers, of course, are seeking accreditation and have to pay somewhere between $1,200, maybe up to $2,000, $3,000 to become accredited.

So there's a whole industry that has been set up for people to become accredited. My experience has been is the marketplace will determine who gets the jobs as mediators, and there aren't all that many people who get the major commercial disputes. In the personal injuries field, there are a lot of mediations being conducted, and there's been some editorial and academic criticism that they're not really mediations because they don't bring the parties together.

It's all negotiation between lawyer to lawyer. It's just a settlement forum. It's not a mediation in the purest sense.

So I think there are very few people who are confident and competent enough to mediate in the pure sense where they can use the open language, divert people away from being aggressive, and handle people in difficult situations.

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

Well, I was a foundation committee member, so I wasn't running the show. I was a fledgling lawyer. But I do recall in 1989 we, that's the committee, adopted principles for mediation to be applied throughout the profession and in the courts. And if you pulled it out now, it is so relevant to today.

So it was a historic document which has relevance throughout. And I'm pleased to say I was part of that. On the Law Council, probably, I don't know, it was under my chairmanship or, look, I paid tribute to Alan Limbury from Minters in Sydney.

He was chair before me. Geoff Davies became president of the Court of Appeal in Queensland. He was president before me, so the predecessors.

But we at the Law Council ADR Committee, we, and I was the principal draftsperson, we established guidelines for mediators, ethical standards for mediators, guidelines for solicitors acting in mediations, and we had the Attorneys-General adopt them all, which was, again, great. So we provided the model, I believe, for others to follow to implement in their own jurisdictions. But we were right up, you know, in 1989 we started with a statement of principles and throughout 1990 and 2000 or whatever, we formulated these guidelines, and they've become, I think, standard.

And that's also very satisfying.

**Henry Jolson OAM QC Section 10**

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

Again, it wasn't planned, it was something that just happened. The name Ravensdale is a real name, John Ravensdale started a business in 1912, I believe, tailoring jackets and I don't think he did gowns, I'm not sure, for the bar and the bench, and his son took it over and I went down, I think, to get some robes made. Everyone went down to this little room in Swanton Street up the stairs.

It was at a time when Owen Dixon Chambers West was being built and there was some retail space in Owen Dixon Chambers West and I said to John, you know there's some retail space being made available in this new building, I said why don't you move up there and you'd be right in the middle of the legal precinct and he talked about that and he said no, look, I'm in fact closing down. I'm getting too old and I'm just, at the end of the year or whenever it was, I'm going to shut down. I said, well what about your son? Well, you've got someone that's a pity, they've had this name going called Ravensdale, John Ravensdale, it was called John Ravensdale and Son.

He said no, he wasn't interested and I thought, well that is a shame and some months later I went in to buy a shirt in High Street Armidale and I noticed a brochure on the bench and it had a photograph of a barrister outside the Supreme Court and I said to the salesman, I said what's all this and he said, oh the boss wants to get into the legal market and I said, oh, can I meet the gentleman, Eugene Notemans, he's a very well-known retailer in High Street, tailor-made shirts, tailor-made whatever and he said, yes, he wants to try and get into the legal market. So I thought, here's an opening. I went back to John Ravensdale and I said, John, will you give me the chance to find someone perhaps who might like to buy the business from you? He said, well there's no business because it's me.

He was right and the only item of value was a beautiful old mirror, a swing mirror. So anyway, I think I paid him $50 for an option on the business, on the name only and six months to find someone. It wasn't me, I wasn't going to do it.

So with signing up, I went back to Eugene. I said, Eugene, here's your opening, would you like to buy the business? You know, get the name and you've got a tailor shop already. And he said, I won't do it unless you're in it.

And I said, no, I'm embarrassed, I'm not a retailer. And I saw Bruce Wormsley once and Bruce is a bit of an entrepreneur at the bar. He's on Foley's list and he said, hey, that doesn't sound like a bad idea.

So to cut a very long story into a manageable piece, Bruce and I and Eugene ended up in partnership in a business called Ravensdale and we took a lease at Owen Dixon West and we sourced the wigs from Eden Ravenscroft in London. So we had a connection and we imported the wigs. Eugene's tailor shop made the jackets.

We found a gown maker, academic gown maker in Cheltenham who then made our robes and the philosophy was that barristers are notorious in shopping for themselves. If they needed a handkerchief, they won't go down to Myers, it's too fast. So we wanted to give them a one-stop shop and it was wonderful.

We had suits, we were importing Zegna suits and a whole lot of things and tailor-made bespoke tailoring and we needed a wear. Anyway, after a while it just got, for me, it just got too much. I said, hang on, I'm a barrister, not a retailer.

So I got out of it. Bruce stayed in it for a little while but in the course of it, we were looking at things like, well for me, this jabot, traditionally what barristers do is they would have a detachable collar on a cotton shirt and they'd go to court with this winged, highly starched collar and tabs and they put their robes on and under the wig, stinking hot and it got too much for me and I thought, this is crazy. We might be able to have a false front, a little dicky collar and I'd just fiddle around with some designs and Eugene made some prototypes because he was a shirt maker and we came up with that and I registered it on behalf of Ravensdale and what it meant was I could wear a T-shirt and just put this jabot over the top, put my gown on and no one would know.

And I let the design lapse. Someone else is making them now but still under that design and it's now used in United Kingdom, in Papua New Guinea, all the Commonwealth countries, India and that's great. And also in the course of this idea that was a good idea at the time, we designed a bar tie which we produced with a bar logo which is current now.

We designed a bar diary with an exclusive directory in it and I'm not sure whether that's being produced anymore but as I said, it got too much ultimately time-wise. I wasn't a retailer, I didn't have my eye on the bottom line, it was all on sales and we split from Eugene. Bruce and I ended up running Ravensdale.

My secretary became our manager and as I said, it just got too much. So that was, I think all I got out of it was a pair of cufflinks. Yeah, plus the kudos.

We had some fun. Well, it's a very good, it's a great principle that you designed the jabot around. I do remember reading stories about Hollywood stars wearing crinolines and then crummy old bedroom slippers underneath and as you say, appearance is really all it's about and why be uncomfortable when you've got to spend maybe a whole day standing up and doing it.

So yes, that's fantastic. I had no idea. That's something definitely to be proud of.

The business itself has completely gone? Yes, Bruce also passed it on and I think Ludlow's down in King Street took whatever there was there and all the intellectual property and I haven't retained any interest there and I think Ludlow's across the road in Lonsdale Street are probably still supplying gowns and things. I don't know where the wigs come from.

**Henry Jolson OAM QC Section 11**

You were made a living legend at the bar a couple of months ago, September 2012, and that's certainly something to be very proud of, and you were given an Order of Australia too earlier in the year, and you've been a director of Western Bulldogs, but this is very topical at the moment. You actually were part of a peace team delegation last year, and I'd like you to talk a little bit about that because with all the terrible ongoing tensions going on between Israel and Palestine, the peace team delegation was a very significant initiative. Perhaps you could talk a little bit about your role in it and what it entailed.

Yeah, well it's the AFL, Australian Football League, peace team that competed in two international cups held by the AFL. One in 2008, and the last one was last year in 2011. The peace team is made up of an equal number of Israelis and Palestinians.

The inspiration for that came from a girl called who lives in Sydney, who's a fanatic AFL supporter and an absolute dynamo. She thought of the idea of bringing people in conflict together through sport, and in particular through the AFL. I have been involved with an organisation called the Perez Centre for Peace, which bears the name of the current President of Israel, Shimon Perez, and it was set up 14 years ago in partnership with a counterpart on the West Bank called the Al-Quds Association for Dialogue and Democracy.

And they are two non-government organisations whose principal aim is to bring the civilian communities together on both sides through a whole range of joint activities. Sport is one of them, agriculture, law, kindergarten.

**Henry Jolson OAM QC Section 12**

Turning to your own life though, Henry, with your children, are any in the law? Did you set that example or did you discourage them from going into law? I discouraged them, although our oldest, who's 42, is a lawyer and he's practising as a lawyer. But he didn't want to do law, he finished his articles and that was it. He was always in music and he was a disc jockey through university.

He went into importing disc jockeys from around the world and subcontracting them around. He then formed his own band and at 42 he still got his band. And they're recording and they're very successful.

And he's a lawyer, but he's an in-house lawyer for a family in property. My second son's a very successful architect. Our daughter is a psychologist, bringing up three young children.

And the youngest is in property, not in law. And I did not encourage any of them to go into law. I did encourage them to perhaps do selective law subjects to give them a better way of understanding and thinking about problems and problem solving.

Not necessarily a law degree, but some key subjects.

It strikes me that would be something most schools would benefit from, starting earlier too. Because let's face it, human nature being what it is, some understanding, it couldn't dare be very, very beneficial. Have you thought about perhaps something along those lines?

No.

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

Yes.

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

With your illness in recent years, Henry, has that turned your mind to any particular things in terms of a legacy that you feel that you are hoping that you leave? I'm very comfortable at the moment with what I've achieved and with the recognition recently, as you mentioned before, the Order of Australia was obviously a great honour, but to be recognised by your peers at the bar as a so-called legend, firstly I thought it was a joke when someone rang me and said, you've been nominated or will be inducted, and then I looked at some of the legends who have been, I mean they were legends when I came to the bar already. To me to be recognised by your peers that way is the ultimate. So I'm content that I have left a legacy.

I haven't finished. There's a lot of projects still to do. Like what are you wanting to do? Well, I'd like to bring mediation to the Palestinian and Israeli legal system.

I'd like to bring the peace team back again in 2014. I've joined the Australian Percussion Academy to learn percussion. I'd like to do that seriously.

You're a drummer. Up here. You're the ginger baker of the legal profession? I don't know.

No, I don't think so. Look, I've always been pretending, I suppose, to my children. So they bought me a drum kit for my 60th birthday and I was learning the drums.

Then I became ill and I just wasn't able to do anything. And then I got on with life and one of the things I did was to join the Australian Percussion Academy in late 2010, culminating in me playing percussion on stage at the Sydney Myer Music Bowl for the Australia Day concert. An amazing experience.

So I'm continuing with that. Are you more of a rock drummer or a jazz drummer? I love all sorts of music. One of the things that's happened through this illness is I met another legend, a rock legend, who's got the same illness as I have.

And we've become blood brothers in the terms of mentoring each other and pulling each other through. So I've become a rock groupie. I'm following his music.

He was lead singer and songwriter for the Masters Apprentices. Oh, Jim Keyes. Jim Keyes.

Yes, that's right. And so I've rekindled my interest in rock. No, like all music, so whatever it is.

And percussion covers everything from triangle to serious concert-based drums, classical drums, marimba, everything. Anyway, so that's that. Obviously, since I was diagnosed, I've got a son married, two more grandchildren, I've got six altogether, so they're projects of mine, all of them.

Writing, reading, again, with energy back, contributing further to the bar in terms of ADR and just general administration. And whether I go back, I don't know. I'll have to reassess things in the new year after I have some more treatment as to what I want to do.

It's been a great pleasure listening to you and talking to you.

Thank you very much for the opportunity.