

A CONVERSATION WITH HIS HONOUR CHIEF JUDGE MICHAEL ROZENES AO QC COUNTY COURT OF VICTORIA

VULJ Editors and invited students interviewed the Chief Judge of the County Court of Victoria, His Honour Michael Rozenes AO QC, on Tuesday 19 August 2014 at the College of Law & Justice, Victoria University.

VULJ: We will now commence the interview with His Honour. Questions have been grouped into three categories – general questions, questions related to the legal profession, and finally, questions relating to His Honour’s role as Chief Judge of the County Court of Victoria. Chief Judge, do you have a hobby or interest that you are passionate about? Can you tell us about this interest?

CJ: Yes. I enjoy bike riding and skiing. I’m also a hobby farmer - I’ve got about 10 acres on the Mornington Peninsula and I grow olives.

VULJ: Olives?

CJ: Yes, 328 trees, and this year no fruit. But it’s ok because I still get an excuse to play around with tractors and chain saws and generally make a nuisance of myself.

VULJ: If you could meet any historical or famous figure, who would you choose and why?

CJ: Good question. A couple of years ago I was doing what old people do and that’s cruising in a boat off the coast of Spain, and I decided to read a whole lot of Hemmingway which I’d read as a young man but hadn’t read for, 20 or 30 years. So I re-read about three or four of Hemmingway’s books and realised what a remarkable character he was, and how exciting it would have been to be a friend of his. He had access to some seriously famous people, he drank lots of alcohol and wrote fabulous books. There is something about his writing style that’s always been attractive to me and I’ve tried to pick it up and use it in my own writing style.

He had a distinctive writing style which was clear and minimalist. He was the master of the short sentence, seven, nine, ten words. He was emphatic, and easy to follow. I try to keep my sentences short, crisp and understandable.

VULJ: Chief Judge, what advice can you give law students who are making that transition from university to practice?

CJ: The transition from law school to practice is a serious one and it’s a big leap. My memories of university are filled with images of fun, but also of grappling with serious issues like conscription and the war in Vietnam. Legal practice on the other hand, is difficult and all consuming. One of the many challenges facing graduates today is that it has become so difficult to get a job as a law graduate. There are so many graduates and they are competing for fewer and fewer entry level positions. The fact is, not many graduates end up in practice, and employers are

fairly demanding of their employees. If you don't cut the mustard then you can go and there's a queue a mile long outside waiting for your job.

So my guess is that what you need to be concerned about is that if you want to practice, someone is going to drive you very, very hard and you need to be resilient to withstand that. There will come a time, after about two or three years when you will ask yourself whether this is really what you want to do.

There was a program that the Law Institute ran some years ago, that I participated in. The program was called 'Life in the Law' or something similar and the purpose was to pull together third year solicitors who presented as the greatest risk of leaving practice. These were the people deserting the profession in droves. The idea was to pull together 10 of these characters - from small firms, big firms, corporate, crime, family, suburban, city - a bit of a mix, and put them together with a person like me who was termed a 'survivor', someone who had managed to stay in the business for a long time.

The program involved us meeting once every month or two, for breakfast or after work for drinks, to talk about how you survive. In my first intake of these young practitioners, I think I lost all 10 of them in the space of two months. They had all decided that there were better things to do than work the sort of hours they were working.

I think my second lot was not much better. I went to the Institute and said 'something's wrong with this, you've got the wrong approach. You need to talk to the employers and find out why it is that they're squeezing their employees so hard, rather than talk to people like me to try and save them'. The answer was simple, 'for every one who left, there were another 10 waiting for the job'. So my guess is that's the thing you need to be acutely aware of - that it is a transition to a very serious, hardworking workplace and you need to build resilience.

The second thing I'd say about what it means, and this point is very much connected to building resilience, is that you can become very easily and quickly bogged down into a case centric or a job centric mindset. This is where nothing else matters except pushing through this number of files, or chalking up this number of billable hours, or giving your life and soul to this client for the next six months. In so doing, you might also be failing to see that you are meant to be enjoying life. You're meant to be participating in the community and getting involved with people, having some joy, and the ability to mix that sort of concentrated case centric or work centric view with a broader view of the community. Getting the mix or the balance right is essential for your longevity in your legal career.

And that leads me to the next point, which is, I don't think it's good enough for you just to be employed. I think you need to be engaged. The difference between the two is that one is working, and the other is participating in your profession. You do need to participate in your profession. You need to pick up the challenge presented by constant and inevitable change and be part of that change. The legal profession, unlike any other professions that we know of, appears to be run by the old grey haired men. I need to choose my words carefully here; they are usually old, they are usually grey haired, and they are usually men. Sometimes we see women get to the fore but it's not that often and it's a shame because that is precisely what the legal profession needs. We need more women and we need greater diversity amongst those shaping the profession and the legal system of the future. That is the gift of youth, you can take on the

challenge of reforming and shaping the system. You are the legal leaders of tomorrow. It's your system and you need to be involved in its reform.

So, I think the main message is to be heard, be vocal, have an opinion, get involved, sit on committees, look at law reform, look at the politics of the profession. Don't just get bogged down into making a quid and doing nothing more than worrying about your clients; that is a very narrow perspective on what is ultimately a very important profession.

VULJ: The next question relates to maintaining a work/life balance. Do you have any suggestions?

CJ: I think it's hard. I wouldn't be truthful if I told you that was easy. I talk about that to the Judges in the Court all the time. I talk about that to the young professionals whom I speak to on a regular basis about coming to the Bar, and it's a challenge for all of us. I always remember when I tell this story about a famous man who died, and there was a very substantial funeral. He was a seriously important legal personality and his son read a eulogy in front of a packed church and he said, 'I remember my father, he was a crack of light under the study door.' I was shattered by this, I immediately rushed home and embraced both of my children and said, 'Was I just a crack of light under the study door?' and I got a mixed response to that: 'Oh well, you didn't come out and watch me play footy, and you didn't do this, and you were always away on Circuit, and you worked every second Saturday and Sunday'. So you've got to be a little bit careful that it doesn't become all too important. There are other things in life, and you'll be a better person if you embrace the other things in life. You can become dreadfully boring as a lawyer. The only people that find lawyers attractive and interesting are other lawyers.

VULJ: The Walk for Justice demonstrates and celebrates the legal profession's commitment to access to justice. How important is the power of pro bono lawyers to people experiencing problems or at risk of homelessness?

CJ: Putting aside homelessness for a moment, I've got no doubt that pro bono work, like all volunteer work, is the very foundation of a cohesive society and that's whether they're carers for people who are ill, grandparents like me who look after grandchildren, or pro bono lawyers who look after people who can't access legal aid. Our systems don't work well, or well enough, if the community doesn't make a contribution to making sure that people, who otherwise would fall through the cracks, don't fall through the cracks. If I had my way it would be a mandatory component of every lawyer's working life that they would contribute a percentage of their time to doing something for nothing.

It's a satisfactory way of participating in the justice system. I think there's great joy in giving, just as there is in donating to worthy causes, helping people who can't find their own way. It's a good thing to do and it will make you a better person if you do it. So the answer to your question is that it is very important.

And the harder things get, the more important it becomes because there is now a greater class of people who are unable to access justice than ever before. As government's tighten up on budgets, as Legal Aid runs out of money, as more and more people have to find their way into the justice system, there's less and less money to go around. And even those that do get in and

have some money, they don't keep it for long because it's an expensive business – and probably I'm sure you've got some more questions about that later – but it is far too expensive.

VULJ: In relation to the use of fixed costs in the legal industry, there has been more talk that lawyers should move away from the inflexible approach of fixed fees. What are your views on such a potential change?

CJ: Lawyers do have an obligation to make sure that people have access to justice because without lawyers it's difficult to deliver justice in a number of areas. If you ask the Judges in my Court about what it's like to have unrepresented people appear before them, they'll say it's a serious challenge. It's difficult to manage, their cases are difficult to resolve and there is an extra strain on judicial time.

I think that lawyers need to tailor fees to meet reasonable expectations of some people who haven't got that much money. When you say 'fixed fees' you mean that there's a fixed fee one size fits all? Well, it can't be because people can't pay that way. Do I think lawyers should charge by way of billable hours? Also, no.

VULJ: There has been a great debate, and some trepidation, in legal circles around the world about abolishing the billable hour. Do you think there is a place for the billable hour in the legal profession?

CJ: No. My guess is that if you're smart and quick you'll be cheap won't you? And if you're slow and unwise, you'll charge your client a lot of money to learn on the job. I'm not sure that clients should be paying for lawyers to learn on the job. There should be a fair fee and it shouldn't depend upon how long it takes the lawyer to find the point. Now I know that is probably not a popular view, but I haven't been a solicitor now since 1971. In those days, there was no such things as billable hours, at least not in the firm that I worked in. But I know it's a fairly standard approach to billing now and I know that lots of firms make lots of money out of it. I'm not sure it's very equitable, but it's not something I know enough about to comment fairly.

VULJ: Chief Judge, if I could just make a comment on that. I think you're right, I think the billable hours are becoming something which is less favourable in certain law firms. The abolishment has been talked about a lot in legal scholarship and also in commercial circles, so hopefully what you're saying might come to fruition.

CJ: I don't know that the profession can continue to use billable hours when they put a junior lawyer onto a case and then say 'Go and find the answer'. 100 hours later the junior lawyer comes up with an answer that a senior lawyer would have known in one hour, and yet the client's going to be billed for 100 hours of the junior lawyer's fees instead of one hour of the senior lawyer's fee; that can't be a good system. Junior lawyers need to learn on the job, they need guidance and mentoring but the firm should be paying for this, not the client. Ultimately, it's the firm that will benefit from the training they have invested in the junior lawyer, not the client.

VULJ: What in your view is the biggest change needed in the legal industry?

CJ: Well, I think the legal system needs to be more accessible to more people. It's currently not accessible for a number of reasons, one is cost, and I still think that cost is a major stumbling block in the path of justice for some people. I think we don't have enough courts and so delay becomes a real issue. Some people are waiting for years to get their cases brought before the courts. Our courts aren't as technically advanced as they might be to deliver the savings that we know technology can deliver, and so our cases sometimes take too long.

Those things should be capable of being fixed, but the law is not the easiest place in which to bring about change. The law is traditionally conservative in its thinking, it tends to look backwards in order to look forwards, it's rooted in precedent, it looks to see what we used to do, in order to work out what we're now doing. In a system like that, that is engineered to look backwards, there's not as much inventive thinking amongst lawyers as there could be.

What I mentioned to you before about the role of the grey haired old men or the seniority principle, means that the steering of the system is done by older people whereas it probably should be grabbed by younger people who have got new ideas, who are courageous, who are bright and clever and who haven't yet got bogged down in the more traditional ways of doing things. I think if we let that happen we'll get a bit more innovation and excitement about our legal system, which I would encourage. I say this to all young students, get in there; get involved.

I believe that the people with the most innovative ideas are probably all people under the age of 40. They are the inventors, the innovators, and they're the drivers of our future. It's the older people who are getting a bit tired. That's why I want to excite you all about getting involved early because you've probably got some ideas and if you yell loud enough someone will listen. You can be instruments of change and you shouldn't wait and just take your turn until you become grey haired and old and fixed in your ways before you have a voice about that.

VULJ: Chief Judge, in your day-to-day work, what are the main differences between your previous role as the Director of Public Prosecutions and that of your current role as Chief Judge of the County Court of Victoria?

CJ: First of all, there's 24 years in between the two. I started at the DPP in 1991 and I left there in 1996. I went back to the Bar for five years, and then I went to the Bench in 2002 and I've been there ever since. The DPP is a pyramid structure where I sat at the top of the pyramid and every function that the office conducted was a delegated function of the Director. I was the decision maker that decided what happened and what didn't.

In the Court, I'm just the first amongst equals. There are 65 Judges and although I manage the workplace in which they discharge their judicial duties, each of them are individual and independent judicial officers exercising an independent judicial mind. I don't have control over decisions in the way I did as DPP, not even close. I do manage the physical environment in which Judges work, I oversee the listing of cases and the management and prioritisation of work and the administration of the Court. I learned a great deal from when I was the DPP because most barristers know nothing about administration of anything, let alone management. They're just sole practitioners as it were. So running an office of – I think it was then 300 people in each State of the Commonwealth – with a budget, and with HR and OH&S issues, and other similar

issues, that was all a huge learning curve for me so I felt fairly reasonably equipped when I came to the County Court to manage it.

VULJ: In the past you've highlighted that public understanding of the courts is a matter of utmost importance. After 10 years in your position do you still find this to be the case? Furthermore, how would you implement change in order for the public to have the best understanding of the courts as possible?

CJ: Let's start off with the fundamental principle. The fundamental principle is that the rule of law will only be an effective part of our great democracy if there's respect for it. Understanding the rule of law, and therefore understanding the instruments that deal with the rule of law is critical and the public needs to be informed and they need to understand. If you go back several generations, people just accepted that Judges who walked around with wigs on their heads and wore red dressing gowns knew everything and no one ever challenged them. It was respect born essentially out of ignorance and the sense that people automatically respect the position because judges, like priests, like headmasters and politicians, are very important people and they therefore must know what they are doing.

But the world has become much more cynical over the last 30 or 40 years and people now question everything and rightfully so. It's not good enough just to say 'We are the courts and therefore we know what we're doing and you need to just do as you are told, as it were, and have respect for us'. We need to earn it, and my guess is that we earn it by being consistent, by being transparent, by being clear, by being just and by making sure that the public actually knows what we are doing.

However, this is not just a problem for courts. The community needs to have a hunger for knowledge as well. We need to teach what the courts do in our schools and universities. It should be almost mandatory for students to learn about the operation of the courts just like it would be to learn about the operation of parliament and the other civic institutions. We need to understand how our society works so that we don't get surprised when things happen that catch us sometimes a little bit off guard.

The courts have in the last 10 or 15 years become very proactive about making sure that what they do is clearly out there in the community in one way or another. We publish our judgments, keep the doors of the court open, some courts televise their proceedings, we talk to students day in and day out. There would be thousands of students coming through the courts every year meeting judges, seeing how the court works, listening to what's being said about the courts; it's an important part of our job.

VULJ: Could I ask, what's your view of exposure of the courts and judges' decisions on social media?

CJ: I think we sometimes have a real issue about how our message gets out, and so far the fundamental way in which a judge explains his or her decision is to write a judgment and that is it. Again, traditionally our judges have not spoken about those matters once they have been finalised and there are only rare occasions when, heads of jurisdiction usually but sometimes individual judges, stand up and make a public commentary about the decision making process. It

has not been part of our system of communication. There have been many inaccurate and critical things written about courts, which can sometimes be difficult to deal with but so far the courts have not engaged in that dialogue at all.

In relation to Facebook pages and Twitter and other mediums commenting about what this judge said and what this judge didn't say, is actually no different to Neil Mitchell and Jon Faine making the same commentary on talk back radio. The courts don't respond, they tend to respond through their judgments. But I'm interested in what you think about that. Do you think we should?

VULJ: Going on what you said before with the younger generation, the younger generation are extremely in tune with social media, it might be another way to advance some particular views on judgments that might be coming out; but again I see the sensitivity in regard to the court's position?

CJ: The Court has a Twitter account and we tweet. We tend to tweet that we've just done something or are about to hand down a judgment and then direct you as to where you can find the judgment, but it's not a commentary and it's not a dialogue. It's a one way conversation. We engage with Twitter because we see it as an extension of our web page where we post recent sentences and judgments of some public interest. Commentary on the other hand would be very difficult. Who would make the comment? It couldn't be the judge who had just handed down the judgment, so it would be some other commentator who would say 'Well, today His Honour said so and so. What His Honour really meant by that was such and such'; it just can't work, it's not that easy.

VULJ: Do you think you could get a Judgment in under 140 characters?

CJ: No. [laughter] Gee, I wish I could – I wish I could.

CJ: It would be nice if we could be more concise, but that is not always easy to do because we are subject not only to scrutiny by the public and the press, but most importantly we are under tremendous scrutiny from the Court of Appeal. When you make a judgment your reasons have to demonstrate a path of reasoning and it is imperative to take into account everything that needs to be taken into account. Evidence and arguments have to be weighed and you must be able to explain how you reached a decision because everyone is entitled to understand in a very clear way. That takes time. Some judges are better than others. Some can write in 10 pages where others are unable to write in 110.

VULJ: Thank you, Chief Judge. In your opinion is there enough support provided to people who appear before the court with mental impairment? What would you recommend for future resourcing and management?

CJ: The number of people who appear before the courts with mental impairment issues is undoubtedly one of the biggest problems confronting the legal system today. As a young practitioner, it wasn't that often that mental impairment issues were submitted as mitigating

factors for offending. The insanity defence, as it was then called, was limited to a very small number of, usually, murder cases, and then only to avoid the death penalty which was a mandatory penalty. But very many of our cases today have mental impairment issues and it is a serious challenge to the courts and a serious challenge to the community that so many people with mental impairment issues are falling into the criminal justice system. If you go and visit the prisons you will find there is a huge number of people in custody that arguably really should be somewhere else.

VULJ: Chief Judge, would you express that mental impairment is something that's new or is it just an expression of a new diagnosis?

CJ: In the past, there used to be talk about 'crazy people' and no one quite understood what they were. But today we understand far better what has happened to them. We see far too many young people with mental impairment issues. We are now being told that cannabis – modern cannabis – used by young teens has permanent deleterious effects on the brain, and we're finding drug addicted and drug influenced psychotic people right throughout the criminal justice system. Previously heroin was thought to be a major problem, but in terms of the impact on individual behaviour, heroin makes people drowsy and puts people to sleep. Ice is another story, and we are seeing a lot of people in our system who are severely affected by methamphetamine committing very violent acts and performing very poorly at the end of it and when they end up in the custodial environment they become a serious burden to the system because they are seriously ill. It is a major issue and I don't think it is getting any better.

VULJ: Chief Judge. Do you believe the rise in Serious Injury applications as reported in the County Court of Victoria 2012-2013 Annual Report is a reflection of changing values in the Victorian community or more that people have better knowledge of and access to the court?

CJ: The issue I was commenting on in the Annual Report was this – our civil jurisdiction comprises a third of our judges, and the vast proportion of the work they do (approximately 70%) is in the Damages and Compensation List producing adjudicating 'serious injury applications'. They are a gateway to common law damages claims. Before a litigant can issue in our Court for damages for an industrial accident or motor car accident, they have to demonstrate that they have suffered a serious injury. The test of whether or not something is a serious injury or not is a complex one. It has very difficult legislation underpinning it, and it takes three days to work out in front of a judge.

My criticism was that too many of these cases are defended by the insurers. There is a concern that they are making a lot of plaintiffs jump to try and get through this little gap and they are making it very hard for them. But they lose about 87 per cent of the cases every year. So my commentary was about the impact on our judges who are writing 30 page judgments and taking two or three days to hear them in court and another day out to write the judgments. And the question I was asking was - if you were an institutional litigator, why would you run cases where you lose 87 per cent of them? Someone somewhere has got the setting wrong and they are running the wrong cases, because if you were a litigant and someone said to you 'You've got an 87 per cent chance of losing this case', would you go ahead with it?

VULJ: No.

CJ: Of course you wouldn't. If someone said to you 'You've got a 50/50 chance', you might have a go, but not if you've got an 87 per cent chance of losing. The question is why do they run these cases if their failure rate is so high, and that was the question I was posing in the Annual Report.

VULJ: Is this because the defendant's insurers are actually putting the plaintiff to task?

CJ: There is a perception that they are slowing it down and making it a bit difficult and that they perhaps have some larger plan in mind. My objection was that the court should not be used as part of this plan. I would like to think that a model litigant like an insurer or a government, would weigh a case carefully and decide whether there was an even chance of winning it before deciding to go ahead.

VULJ: Chief Judge, do you believe judges have enough discretion in sentencing, and do you see judicial discretion expanding or diminishing in coming years? What are the benefits of judicial discretion?

CJ: I will answer the last question first. Governments respond to what they perceive to be public pressure – for example from the popular press– and they respond by making all sorts of promises about increasing penalties. It is harder for governments to get courts to increase penalties because judges operate with a large amount of history, experience and involvement. All of us have come through the system and most of us have got 20 and 30 years' experience about how the sentencing process works.

But the quick fix is to lift the penalties and the best way to lift penalties is to remove discretion from judges and put in baseline sentencing or mandatory minimum sentencing, and say, 'Well, you can't get less than this'. And yet we all know that there is not one size that fits all and that cases should be determined on close consideration of the circumstances of the offending, and the circumstances of the offender. The Judge should be, with the broadest possible discretion, able to draw distinctions between those two people, or those two extremes, and to fix an appropriate penalty. If you want to sentence by calculator or computer, you do not need judges. If you want judges to be judicial and to sentence appropriately then you need to give them broad discretion.

The answer to your question is that discretion is being slowly whittled away and it is not a good thing.

VULJ: And final question – what do you want to be doing in five years?

CJ: If I knew what the answer to that question was I would have been doing it five years ago. [laughter] I trust that what I will do is something that matters and I want to continue to make a contribution. I think one of the good things about being a Judge, and one of the good things about being the Commonwealth DPP, and one of the good things about being a pro bono lawyer is that it is good to do things for the community, to make a contribution, to be different to someone who does nothing. I think making a contribution is one of the greatest satisfactions

in life. I would like to keep on finding things that enable me to make a contribution to the community. I believe the ability to make a contribution has been some of the best highlights of my career. Even talking to you guys is a contribution, which I enjoy enormously.

VULJ: Well, they're the official questions.

CJ: Well let's have unofficial questions.

VULJ: Chief Judge, do you think it is of benefit for students aspiring to be judges to be involved or affiliated with a political party?

CJ: No. I accept that there is politics in all aspects of life, but I don't think it will help you or hurt you if you are a member of a political party. It might help you if the party of which you are a member of is in a position to do something for you, and it might not help you if they are not. But neither will make you a good judge.

VULJ: So what is the best way to be a good judge?

CJ: Be a good lawyer – it's simple – and we want the best lawyers to be our judges.

VULJ: Do you think there is such a thing as an objective truth?

CJ: I imagine there are, but how do you establish them? I don't think the rules by which we run our system are necessarily designed to arrive at objective truth. They arrive with a result that may be just, it just may not be the objective truth, but that might just be a semantical difference.

VULJ: In this day and age of social media where information is sent to our screens and phones, do you think it makes it harder for juries to have a balanced opinion?

CJ: Absolutely. In fact, if there was ever a challenge that social media presented that was really serious for courts it is the impact it has on our decision makers – the jurors. We give very detailed instructions to juries about what not to do, but these days information is everywhere.

I'll give you an example – if someone wrote something very prejudicial about an accused person who was about to face trial, the sort of rule of thumb has always been that if you wait for six months, the newspaper will be fish and chip shop paper and people will have forgotten about it. But because what was written six months ago is there every second for the rest of everyone's life on social media the idea that things will go away with the passage of time is nonsense.

We have to believe that when we tell jurors, 'Don't go and search this person's name out on the internet. Whatever you find there is unreliable, untrustworthy and you can't bank upon it. Just stick to the evidence in this case', those instructions actually work.

VULJ: It's like blind faith.

CJ: It is quite difficult because the minute the jury hears that this person has been convicted three times before of exactly the same offence, what chance has that person got of getting a fair

trial? Some juries might think alright, we know he has killed three people before, but it doesn't mean he's killed this person' – maybe, but it is an extraordinary risk to take.

There are some people in our community who are starting to question whether the jury system will continue because of this, and that would be a serious loss.

VULJ: In reference to mental impairment, I was just wondering what the percentage of people was who are self-represented?

CJ: We are very lucky in the County Court because in our criminal jurisdiction we don't see many unrepresented people. Most of our people will qualify for Legal Aid or have enough money to pay for representation. We see lots of unrepresented people in the civil side of litigation. In fact, over 70% of self-represented litigants appear in the Commercial Division in the County Court. Many self-represented litigants are people who have got serious shortcomings and who perceive that they have been the subject of some injustice by a Council dealing with them inappropriately or the local doctor or whatever it is, and they start issuing legal proceedings. These are very difficult cases. Some litigants go on to become vexatious litigants and querulants and they are a major resource issue for the courts. In the County Court we now have a full-time Self-Represented Litigant Co-ordinator to assist people trying to navigate the system without representation.

In the Magistrates' Court, VCAT and in the Family Court where Legal Aid is less available, the unrepresented litigant is a serious issue. There are lots of them and many of them have got all sorts of issues that make it difficult for them to conduct the litigation reasonably.

There are lots of people who are unrepresented and who have some mental health issues and it explains why they are unrepresented. It is difficult to explain to a person with a mental impairment why they have no case, or why their case is not the way they think it is. They sometimes have fixed views about things and they want their day in Court. They sometimes yell and scream at you and, it is a difficult task for the Judge to manage that sort of litigant.

VULJ: When you were a student did you aspire to be a Chief Judge one day?

CJ: No. In fact, to be perfectly honest with you, I resisted the temptation to take up judicial office because for a long time I saw myself as an advocate. I loved being a barrister, I thought it was the best job in the world. But time moves on and you have to change things, but I never thought I would be a Judge.

VULJ: How do you decide whether you want to take on Prosecution as opposed to Defence?

CJ: My view is that as a lawyer you should do both because you will be a better lawyer if you do. It used to be the case that prosecutors just prosecuted and defenders just defended and you were either one or the other. I think good advocates will do both and that is in the best interests of our system as well. Today we have a 'Cabrank' rule which means you take the case that's offered to you regardless of whether it is for the prosecution or the defence. You become a better advocate as a result because you can see the way things are done in a defence and see the way things are done in a prosecution and you continue to learn and practice both.

VULJ: I was just wondering from your perspective as a Judge looking down at the advocates aiming to conduct their affairs, what are some of the things that have impressed you from the Judges' perspective?

CJ: The best advocate is a prepared advocate, which means understanding where you want to go, how you intend to get there, and what evidence you have to work with. That can be a major exercise. The key to the preparation is understanding the issues in dispute and narrowing your submissions and your questions to address that issue. One thing that many young barristers don't grapple with early on is the idea that advocacy takes place in an adversarial system. So it's about crafting an argument or discrediting your opponent's argument. It's about being persuasive rather than just meandering through a cross-examination with no real goal or point to the exercise. Good advocates know when to stop questioning or stop talking. They make the point, once, powerfully and it is much more effective.

The greatest concern for Judges is when people just stand up and have a general ramble and you really don't know what they want, or where they are going.

Advocacy is a skill and it can be learnt. There are some absolute natural advocates who clearly understand what communication is all about and know how to use it. If you want to be a good advocate, you need to go and watch other advocates at work and learn from them. It is something that can be learnt. There are a number of advocacy courses where basic skills are taught about communication, getting to a point, understanding it, knowing how to get it across, understanding how to work with the Judge and how to deal with your opponent.

VULJ: Do you have a favourite Hemingway book?

CJ: I think *For Whom the Bell Tolls* is probably my favourite book. I thought the collection of short stories, *The Snows of Kilimanjaro* – was fantastic. *The Old Man of the Sea* is of course a classic. They're all fabulous. I immensely enjoyed the Spanish stories because they were stories about struggle and injustice, and the struggle of poor people, about fascism, and bloodshed and love. They capture the imagination, and are easy to read.

VULJ: Chief Judge, you say your olives aren't growing this year?

CJ: Yes.

VULJ: My mother and my father and my grandparents and my great-grandparents they all grew olives and they grow anywhere.

CJ: Well, why don't you send them down to my place. [laughter] I have got about 382 trees. They were planted in lots of about 100. As each child got married I put in 20 trees and then when the grandkids came along I put another 20 or 30 in, so the oldest trees are about 15 years and the youngest are about three or four. Last year I was told, that there was an unexpected climatic event that occurred in November when something happened on the Mornington Peninsula involving a fierce wind, and a drop in temperature. The result was that all our trees flowered well but there was virtually no fruit. The fruit on the trees wasn't worth picking, so unfortunately we have no oil this year.

VULJ: I've spent many afternoons with my grandfather picking olives. Who picks olives with you?

CJ: I used to pick and our family used to pick, but then I noticed that whenever they came down to do the picking they drank all the beer [laughter], ate all the sausages, and went to sleep. [laughter] No one picked the fruit. So now I have a commercial person who comes to do it. The oil is good; it is very nice oil.

VULJ: Chief Judge who's your favourite football team?

CJ: Collingwood. I am a serious fan. It's a bit tragic. It has been a terrible last couple of months, just shocking. It was definitely not our year.