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John H. Phillips, a regular contributor to this *Journal*, died in Melbourne on 7 August 2009. He was greatly admired as a criminal lawyer. His death leaves a space in these pages that it is impossible adequately to fill. He was 75 years of age at the time of his death.

John Phillips was born in Melbourne on 18 October 1933. He was educated at convent schools and De La Salle College. He took his LLB degree at the University of Melbourne, graduating with honours. Whilst studying, he worked in humble pursuits to supplement his income, including as a grape picker. He was admitted as a solicitor of the Supreme Court of Victoria in 1958 and called to the Victorian Bar soon after. He quickly developed a reputation as a master of trial techniques. His legal skills and interests lay especially in criminal law and the law of evidence, so necessary in criminal trials. He was noted as a cross-examiner. In part, his skill grew out of hard work on his briefs. But it was refined by his charming, unassuming manner, which was liable to deceive his victims into thinking that he was harmless or even on their side. In and out of court, his good manners and unflappable courtesy were legendary.

At the Bar, J.H. Phillips rose through the ranks. Earlier in his career as a barrister, he worked pro bono in Aboriginal communities in the Northern

Territory. He was elected a member of the Victorian Bar Council between 1974 and 1984. He was appointed a QC in 1975 and called to the English Bar in 1979 by Middle Temple. He served as the first Director of Public Prosecutions in Victoria between 1983 and 1984 and was elected Chairman of the Criminal Bar Association between 1980 and 1984.

During his years as leading counsel, John Phillips appeared in many great trials in Victoria and other Australian jurisdictions. Thus, he defended Lindy Chamberlain on the charge of murdering her baby daughter, Azaria, at Uluru in 1980. The jury's guilty verdict and subsequent challenges in the appellate courts became a *cause célèbre*. Although the High Court of Australia, by majority, affirmed the conviction, many doubts remained, particularly over the forensic evidence tendered at the trial by the Crown. See *Chamberlain v The Queen [No.1]* (1983) 153 CLR 514 and *[No.2]* (1984) 153 CLR 521. A later Royal Commission concluded that the conviction was unsafe and Mrs. Chamberlain was freed. In consequence of his experiences in that trial, J.H. Phillips became a strong proponent of the establishment of the Victorian Institute of Forensic Medicine so as to even the scales in the scrutiny and to assure the impartiality of forensic evidence in criminal matters.

In 1984, J.H. Phillips was appointed a judge of the Supreme Court of Victoria. He resigned that post in 1990 when he was appointed to the Federal Court of Australia and as Chairman of the National Crime Authority (NCA). Although there were precedents for judges holding commissions in the Executive Government (as in law reform commissions) his appointment to the NCA proved controversial because

of the traditional separation of the judiciary in Australia from the process of prosecutions. His role in the chair of the NCA was described as “transformative”, but remained like other elements in his public career, the subject of dispute.

In 1991, J.H. Phillips resigned his federal posts and returned to the Supreme Court of Victoria as its Chief Justice. This was the post he held until his retirement in 2003. During his time as head of the Court, John Phillips expanded its outreach to the public; promoted the appointment of the first women judges; introduced computer technology and improved administration; and participated in the creation of a separate Court of Appeal. His strong support for women in the law was evidenced by his attendance at women lawyers’ associations meetings and by the arrangements he made, when the requisite number had materialised, to constitute the first Full Court in the history of the Supreme Court of Victoria, comprising only women judges. By deft co-operation between him and the first President (Justice John Winneke), many of the tensions that had marred the development of the Court of Appeal in New South Wales, were avoided.

J.H. Phillips was unusual for a senior judge in Australia in that he promoted legal and other links with cultures not normally on the Australian legal radar, notably France, Greece, Italy and Japan. He was a frequent participant in multi-disciplinary conferences held on the Greek Islands where he displayed to the full his catholic interests, and talents as a baritone. Allegedly, he was sometimes heard practising his scales in his judicial chambers. At one meeting of the Council of Chief Justices of Australia and New Zealand, he sang to his assembled peers. It is an innovation unlikely to be repeated in the foreseeable future. His wide

talents were evident in a number of books that he published, most of them on legal themes: *Advocacy with Honour*, *The Trial of Ned Kelly*, and *The Expert Witness*. He also wrote several plays including one on *The Trial of Socrates* and another on *The Last Hours of Vincent Van Gogh*. In his spare time, he penned the biography of the Australian poet, John Shaw Neilson and wrote and published poetry of his own.

Following his retirement from the Supreme Court of Victoria, John Phillips was appointed Provost of the Sir Zelman Cowen Centre within the Victoria University in Melbourne. He greatly encouraged the formation of the law school at that University. His support was later acknowledged by the conferral of the honorary degree of Doctor of Laws. He held a keen interest in institutional law reform, and in 2000-03, he was convenor of the Commonwealth Law Reform Agencies' Conference. Some lawyers of more ordinary talents may not have fully appreciated the multitude of skills that J.H. Phillips displayed and his whimsical personality. But to any who got close to him and felt the warmth of his nature, his generous spirit and unerring kindness were winning elements in the man.

Out of recognition for his wide experience in the criminal law, as counsel, DDP, crime authority head and as a trial and appellate judge, J.H. Phillips's appointment to the Board of this Journal was particularly appropriate. His name appears first in (1993) 17 *Crim LJ* iii. He stood down from the Board in 2003. However, in Vol.28 (2004) he appeared, with the Hon. C.W. Pincus, as one of the two 'occasional contributors' who had served as senior judges in their past.

Whilst on the Board, he began to contribute short and highly readable essays (often little more than a page of text) under the title “Phillips’ Brief”. The first such brief was published in (1999) 23 *Crim LJ* 108 titled, intriguingly, “Snapshots in Sepia, Spain 1936”. It told the story of the summary trial and execution of a judge in the unhappy time of the Spanish Civil War. The next Brief grew out of his meeting with Dr. Arpad Göncz, President of Hungary. It recounted the experience of those who had lived through the “show trials” in that country between 1949 and 1956: “An Independent Counsel” (1999) 23 *Crim LJ* 238. Evocative, perfectly crafted essays, they were welcomed by the readers of these pages. They showed us that, whatever weaknesses the criminal justice system in Australia displays, it still has many advantages over others in time and space.

Perhaps my favourite “Phillips’ Brief” was his description of “The Political Ned Kelly” (2002) 26 *Crim LJ* 362. It recounts the declaration of “The Republic of North-Eastern Victoria”, said to have been found inscribed on a scrap of paper in Ned’s pocket when he was arrested. It was later allegedly suppressed by the government of the day.

Whilst he was still struggling with the cancer that would finally end his life, J.H. Phillips continued to send essays to the editors. Earlier this year there appeared his contribution “Losing One’s Cool” (2009) 33 *Crim LJ* 55. It tells the chilling story of the trial of Colin Ross for murder in 1921. It describes, at once, the perils of forensic evidence that obviously haunted the writer and the dangers of unexpected admissions made by a client in the course of a trial, which confront every criminal advocate.

In years to come, readers of this *Journal*, hastening through its pages for some analysis on a technical point of criminal law, will stumble upon the “Phillips’ Briefs”. They will be arrested by the subject matters and beguiled by the elegance of the writing. It is enough to say that there are not many Australian judges or lawyers who could so consistently produce prose of such a character. This *Journal* therefore salutes John Phillips. It does so beyond the high legal offices he held. It records an affection and respect for him as a civilised man whilst holding significant public positions.

A Requiem Mass was sung for him in St. Patrick’s Cathedral, Melbourne. The principal tribute was given by his successor as Chief Justice of Victoria, the Hon. Marilyn Warren AC. In the place of honour sat his widow, Helen Phillips (née Rogers), also a warm and engaging personality, whom he had married in 1962. He left two sons and a daughter and seven grandchildren. The family can know that, unusually for a judge or an advocate, John H. Phillips was valued by a very wide circle of people in Australia and elsewhere, far outside the boundaries of law. Given his talents as a writer, it may be hoped that the Supreme Court of Victoria will retrieve, and produce a volume of, his unpublished speeches, given in the office of Chief Justice. Of this we can be sure. They will be infinitely more readable than most examples of that *genre*.

MICHAEL KIRBY