

Sam Main interview with Lord Justice Thorpe

[00:00:00]

Sam Main: Well it's Thursday the 1st August, my name is Sam Main, I am a member of the Inner Temple Oral History Group and I am at the Royal Courts of Justice sitting opposite Lord Justice Thorpe for an interview for the project. Lord Justice Thorpe, if I could ask you to introduce yourself for the record and tell us a little of what your role has been here at the Court of Appeal.

Lord Justice Thorpe: Right. I was 75 years of age on the 30th July, Tuesday of this week and by statutory provision I cannot longer sit as a judge. So I'm about to launch myself back into a new career as a self-employed arbitrator, mediator, operating out of my old Bar chambers, now 1 Hare Court, but in my day one might have called buildings. And so, maybe it's a suitable time to look back to my beginnings in the Inn, which commenced when I was reading Law at Oxford between 1957 and 1960.

Sam: Was a career in the law what you'd always wanted to do?

Lord Justice Thorpe: No. I read Law at Oxford because Classics Greats which had been my previous speciality just seemed to onerous. [00:02:00] Law seemed an easier option. And so when I left Oxford, I thought I'd get a job in the city, in a merchant bank, but having been rejected after an interview with a bank.. can't remember what it was, it was a small merchant bank, I decided to do the Bar instead, because at least there I would be self-employed.

Sam: Once you'd decided on a career in the Bar can you describe how you came to do pupillage and how easy or difficult you found it to find a pupillage?

Lord Justice Thorpe: Mmmm. Well in those days, you could walk in to a pupillage anywhere. And you paid a fee of a hundred guineas to burden your pupil master. At Balliol where I was at Oxford, there was a society for the lawyers called the Younger Society, and old members used to come back to the annual dinner. And it was there that at the annual dinner, that I arranged my pupillages, first one at One Crown Office Row, which was a set with a large number of Balliol men and particularly, Alan Ough who was then the Head of Chambers, Raymond Phillips, who was my [00:04:00] Pupil Master, and having done six months there, it was quite obvious that I wasn't going to achieve the sort of high standard that they set for any incoming tenant. So I veered off to Mitre Court Buildings where I was offered a six month tenancy by a very agreeable man called Dick Bedington, who I'd met at a Younger Society dinner, and he went on to become a stipendiary magistrate, whereas Raymond Phillips went on to become a high court judge. And having done my six months at 1 Mitre Court, they kindly offered me a tenancy, and indeed, tenancies in those days were easy to achieve in all sets save the most prestigious, and 1 Crown Office Row, was I would say, about the most prestigious set at that date.

Sam: In your view, was the ease with which a pupillage and tenancy could be got a good thing? Did it produce the best barristers?

Lord Justice Thorpe: Well, it was related to the work that was available. There wasn't that much work about, so there weren't that many people who wanted to come to the Bar. And I remember in those days, I had a friend [00:06:00] who was a pupil in 4 Pump Court, and there were juniors there who were taking pupils quite well established but probably still in

their thirties, and they used to play bridge every afternoon because there wasn't anything else to do. It was all much more companionable, much more the atmosphere of a club then. And the Bar was much much smaller, from memory I think only about 1500.

Sam: You've spoken about pupil masters that you have, did you have the opportunity to work on any cases with them? Or do you remember any particular advice that they gave you for your career?

Lord Justice Thorpe: Well. Raymond Phillips, by the time I was with him, was Junior Counsel for Rating, he was Treasury Counsel for Rating. And rating was an extremely esoteric topic, and we used to go to the Lands Tribunal where I would understand very little of what was going on. And then sometimes we used to go to the House of Lords because the rating cases went right up and I remember sitting in the House of Lords, the committee room, a hot summer's day, and all the windows were open, and I didn't have any idea really. So it was sort of snooze time. But Raymond Phillips was a most kind and delightful mind, and he was also a very good all round advocate [00:08:00] for his elegance, his fastidious presentation, you could find few equals. And I remember him doing things like applications for a betting shop license to a licensing committee, or undefended divorces, I mean a million miles away from his sort of expertise at rating. But he would always do the application or present the petition with the same delicacy and restraint.

Sam: Do you remember your first case?

Lord Justice Thorpe: My first case?

Sam: Yes.

Lord Justice Thorpe: Well I do actually because I happened to have the fee book bound in Corter leather with 'Fee Book' in gold in front, which was the method by... which was the record for... there was no I.T, no computers, everything was written so the senior clerk no doubt using my money bought a Corter leather record and entered in, in his own hand the date, the case and the fee paid. And the first entry in the book was for.. I think ten guineas for presenting an application at at a transport [00:10:00] tribunal. But when I look through the entry for the month of May 1962, I see that I was in court most days, but earning two pounds four and six pence, or three pounds five and six pence, for defending motorists on careless driving charges, three pound five and six if you had to go out of Central London, but two pound four and six was the going rate for appearing at a magistrate's court in the middle of London.

Sam: Was most of your work in Central London?

Lord Justice Thorpe: Yes. Yeah I didn't go far outside London.

Sam: And it would have been right at the beginning that you had to join one of the Inns of Court. Do you remember when and why you joined Inner Temple?

Lord Justice Thorpe: Yes, I mean I was an Oxford undergraduate, I wanted to get the dinners eaten. I had a great uncle by marriage called Richard Bush-James who had been a very fashionable specialist in divorce in the twenties and the thirties... and then the war had intervened and he was a disappointed man, and he said to me, 'whatever you do don't come to the Bar, it's a rotten life'. But I knew he was a member of the Inner Temple, and of

course he was a bencher. And I thought oh hell I'll give it a go, and I thought well if Richard's there [00:12:00], that's good enough, so I joined the Inner Temple.

Sam: And his comments didn't dissuade you?

Lord Justice Thorpe: Not a bit. No.

Sam: Well during the Second World War the Inn suffered quite extensive damage from the bombing, didn't it, it was rebuilt thereafter particularly with Lamb Building being moved. Had that work finished by the time you attended?

Lord Justice Thorpe: I think it had. I have no recollection of building work, although maybe some was still going on when I started coming for dinners. I don't remember any building work.

Sam: So how did the Inn look compared to today?

Lord Justice Thorpe: I think it looked very much the same. I don't remember it looking any different. Of course all the post-war build would have been newer and shinier than it is now.

Sam: And you've spoken about dining sessions as well. Do you remember any particular sessions, and the benefit you had from being able to sit with senior members of the Bar?

Lord Justice Thorpe: No I was a thoroughly irresponsible youth. And we used to come from Oxford just to eat the dinner. So we'd come from Oxford on the train, maybe two or three of us, and sometimes hall was quite, as it were, overdone, overbooked, and we would linger 'til the end in the hope that we could just sign the book and go away, without having to eat the dinner. And then we'd go off and I don't know, go to the theatre or something, yes. So I don't remember the dinners particularly, although in those days the [00:14:00] allocation was of wine to each mess of four, and I seem to remember that the allocation was something like two bottles of wine, and half a bottle of port to each mess. And if you were in a mess of four where there were one or two who didn't drink, I mean you could really get, you know, pretty well away on the allocation to the mess.

Sam: Did you ever manage just to sign the book without eating the dinner?

Lord Justice Thorpe: Oh yes. We used to do that quite regularly.

Sam: And besides the dining, did the Inn offer any other training or anything of that nature?

Lord Justice Thorpe: I don't think so. I really don't think so. I mean there were a few scholarships that you could apply for, but they were quite few and far between. I do remember that I did get some sort of student grant which meant that the Inn paid the hundred guineas to the pupil master, I don't think I paid that out of my own pocket.

Sam: So you've said a little bit about your early practice, your pupillage. Where does your interest in family law stem from?

Lord Justice Thorpe: Well. 1 Mitre Court Buildings had been the preeminent set for divorce before and after the war, and there was a sort of line of heads of chambers, Charles

Hodson who became a Law Lord, then he was followed by Seymour Karminski who was in the Court of Appeal. He was followed by [00:16:00] Jack Simon who became Lord Simon of Glaisdale in the House of Lords, and they were the preeminent advocates in the Probate Divorce And Admiralty Division. And when Jack Simon left to become First Solicitor General and then President of the Family Division, the chambers were pretty well depleted, and there was nobody of similar stature to follow. But there were two very good juniors, Trevor Reeve who afterwards became a Family Division judge, and Basil Garland who became a registrar in the divorce registry at Somerset House. And they have very good junior practices, so that the sort of eminent firms would come to Mitre Court Buildings with their junior work.

And so I started picking up small work for great firms like Charles Russell. And then I tried to diversify and I did a bit of everything. I used to do a lot of public enquiry work, I used to do parliamentary work before parliamentary committees, planning type work in front of parliamentary committees, the parliamentary Bar was still on its feet, and there was a brilliant advocate there whose name temporarily escapes me.... he was almost the best advocate I think [00:18:00] I ever heard. When he opened a case in front of a parliamentary committee it was so clear, so persuasive. It was only I gradually drifted into doing... I think it was the statutory development that really launched me in family work. The Divorce Reform Act 1969 and most particularly the Matrimonial Proceedings and Property Act 1970 introduced a new jurisdiction equitable redistribution of money on divorce, and that suddenly revived, created a young Bar full of opportunity, whereas the old Bar, the Probate Divorce and Admiralty Bar through the 1960s was really in the doldrums, there wasn't that much work and it was all a bit depressing, completely out of touch with the social mores of the 1960s, I mean it was a complete mismatch between the way people behaved and thought, and the law that was applied in the event of divorce. So suddenly there was a blazing new opportunity with the statutory reform, and I became a specialist in what now would be called 'big money divorces.' [phone rings] Hello? I told you I had to have it off because they're having to do the number transfer and I can't turn it on 'til 4 o'clock. [00:20:07]

[00:00:00]

Lord Justice Thorpe: Phone call interruptions are not what you expected, where were we?

Sam: No, you were talking about your growing career in equitable redistribution.

Lord Justice Thorpe: Yeah that's right, I became more and more a specialist working for the specialist firms, there was a sort of... I think they used to call them the 'magic circle' or something like that. Only eight or ten firms in London really mattered. And I particularly was instructed by Charles Russell who at that date were the leading firm, and maybe still are, and probably I did.. 60% of my work was for them.

Sam: So looking back would you say there is a particular point of breakthrough, where your career moved on to specialise in this type of work?

Lord Justice Thorpe: Well, it's a sort of gradual process. I think I took silk on the basis.. on the foundation of my work in ancillary relief, but I used to do quite a lot of private family law, because in those days, people, rich people, litigated much more over their children than they do now. They would fight care and control, in custody cases they would fight education cases, whether the child went to school A or school B, they'd fight a bit about faith issues, whether a child should go to [00:02:00] a Catholic school or a Protestant

school. I can think of Jewish cases where there would be a big issue about whether the child should go to an orthodox or a liberal synagogue. All that seems to have completely disappeared now, but it was plenty of work for expensive juniors or young silks in that sort of area.

And I did all sorts of other things in silk, not very often but occasionally. I remember doing some case in the House of Lords about what constituted a month, or I don't know maybe it was landlord and tenant, and what was a month, and I won in the Court of Appeal I think, and lost in the House of Lords. So I was doing other things, but not very often. I remember doing a planning enquiry over a house outside Oxford when they were putting through the M40 route. I had rather a success there, I remember Malcolm Pill was leading for the Department of Transport. I didn't know him then but he became a good friend when we both ended up in the Court of Appeal. So that was that, and then the big break-through... I mean I think I did get a sort of, a real almost.. an inspiration when I was in silk, I was doing big cases and having big successes, I acted... I had a big success for Jagger when he was divorcing [00:04:00] from his first wife, big success in establishing jurisdiction in London and then big success really in the almost paltry sums that he got away with paying his wife. I mean I acted for the wife of Teeson, and I can't remember his name now but he was the big cheese, his father had made a collection of pictures and then he considerably extended it. And this was the divorce from one of his wives, I think she came from Peru or something like that... very difficult client, and she'd sacked a number of firms of solicitors and a number of leaders before I got the brief for the final hearing. But those are the sort of cases that were challenging.

Sam: Do you remember the outcome of that particular case?

Lord Justice Thorpe: I think we didn't do at all well. It was all about fantastic jewelry which was in dispute between them. I can't remember whether she said it was gifted to her and he said no it was always only made available to her, and I had a jolly good case on the documents and had quite a successful cross-examination of the Baron. [00:06:00] But Michael Eastham who was the judge and a very good judge too, he wasn't buying any of my presentation, he had a very good instinct for who was... who had merit and who hadn't and I think he quite clearly saw that my client hadn't merit, particularly because she sat in Switzerland and refused to come to the trial, so I was dependent on what inroad I could make in cross-examining the Baron. And I don't think Michael Eastham bought any of it and I think he found roundly against us, but whether.. I've got a vague idea that although he succeeded in court, he never did manage to get the jewelry out of her, I think that he couldn't enforce his order, I think, but I might be wrong about that.

Sam: It was 1980 that you took silk, wasn't it.

Lord Justice Thorpe: It was in 1980. And actually the big thing for me was the last thing I really did which was the Cleveland Inquiry which lasted about nine months, and I was Counsel to the Inquiry and I'd not done much of that sort of public law work, and I'd not done any work on child abuse or anything like that, so it was a big learning lesson for me to really get into [00:08:00] what became the modern world of public law, Children Act public law, because of course that preceded the Children Act by several years and influenced the content of the Children Act. But for me it was a huge privilege to do the... to be counsel to the inquiry, not least because I learned so much.

Sam: And just for the record, what was the inquiry about?

Lord Justice Thorpe: It was all about a rash of... something like 170 children were removed from their families by the local authority on the advice of a local pediatrician called Doctor Higgs who with another colleague, I think he was called Wyatt, and the two of them got a bee in their bonnet, in their collective bonnet about the anal abuse of children, so they were more or less pronouncing that all of these children had been anally abused so the local authority removed them from their homes, and their good faith was... I mean they were perfectly sincere but they were just completely wrong.

Sam: And what did your role as Counsel to the Inquiry involve?

Lord Justice Thorpe: Well you know, Counsel to the Inquiry is there to ensure.. he's really a servant to the Inquiry to ensure whoever is conducting the Inquiry, in that case it was Baroness Butler-Sloss getting [00:10:00]... it was a collaboration, getting the evidence that she would find helpful, getting it out. So I would have a daily discussion before and after court as to what would be helpful to her, and what would not be helpful. And then I had to deal with all the Bar because there was something like seventeen parties, many of them with leading and junior counsel, perhaps more, so there were probably about forty members of the Bar there, and you had to keep them more or less happy. So we used to all have lunch together every day and we developed a very good companionship at the Bar, so that people didn't get too upset when they weren't allowed to call the witness they wanted to call, or.. they didn't like the way I cross-examined one of their witnesses or whatever or whatever. It could have been, could have become a bad-tempered company, but actually it was a very happy interlude for all of us, I think. It was a combination of local Bar, the north-east circuit and Londoners. And we all got... we made lasting friendships.

Sam: You said that the pediatrician was completely wrong. Can you give us a little idea about how the inquiry itself unfolded towards that conclusion?

Lord Justice Thorpe: Well, of course we had a lot of [00:12:00] help from eminent experts, and particularly a marvellous, marvellous doctor, who was a child psychiatrist called Doctor Colvin, Doctor Israel Colvin, known to all the world as Izzy, and he really set the standard because he produced a sort of, I mean he was a brilliant man, and he produced a sort of, what I remember as a sort of definition, which he thought would be acceptable to the broad church of the specialist medical professions, so that in leading evidence I would say, well have you considered Professor Colvin's definition or whatever... do you agree with it? And if they said yes, we were developing consensus, and if they said no, you would say well why not? And how do you.. et cetera. You could draw out differences and I think there were two elements, there was the sort of... the pediatric expertise, you know, what was an anal fissure, if there was an anal fissure what did it mean, and then there were all the mental health professionals because it seems that.. I look back on this with some surprise but I think the leading child psychiatrists were having an influential [00:14:00] role, not just in advising what should happen to children, but also in advising as to the propensity for abuse, or the probability for abuse, and there was a well-known specialist called Arnon, Doctor Arnon Bentovim from London, who'd taken quite an extreme position, and I think he was quite a contentious figure, although he was a very eminent man, and a very clever man. But I think there are all sorts of strands of professional rivalry or competition, which the inquiry drew out, and largely lay to rest.

Sam: With children being involved, being the subject of the Inquiry, it must have been a very emotive topic. Did you find that, as with perhaps more recent inquiries there was the same intense public interest and press coverage?

Lord Justice Thorpe: Huge public interest. And huge press coverage. Yes I mean it was... nothing like it had been seen before or was seen afterwards, because of course it touched every family, every parent. These were very often middle-class people, readers of *The Daily Mail* and *The Daily Telegraph*, who were finding their children removed from them. And so, there was intense [00:16:00] public interest, particularly because it could all centre on the two doctors, Doctor Higgs and Doctor Wyatt, who could be shown to be directly responsible for the opinions which had led the local authority to intervene. So were they demons or were they mad, or... you know there was a great deal of newspaper speculation and intense interest in their evidence, when they were called eventually to give evidence to the Inquiry and to explain themselves. And we had... Baroness Butler-Sloss had two assessors, or maybe three, three. One was a chief constable of the police, one was a chief director of social services and one was very eminent pediatrician, and certainly the riding instructions that I got when Doctor Higgs came to give evidence, was not to rough her up, not to be too... not to cross-examine, not to give her a tough cross-examination, because the pediatrician assessor was a very very sensitive man, Doctor Hull, Professor Hull, and he didn't want to see another pediatrician as it were, crucified. And I think in the end [00:18:00] she continued to work as a pediatrician although she was debarred from doing anything to do with child abuse, or child protection.

Sam: You mentioned that was 1987, it's right that in 1988 you became a judge of the High Court, isn't it, having been a recorder since 1982. Why did you make the change to become a judge after all mixed practice, then a full time judge?

Lord Justice Thorpe: Well, it's a brave man who refuses the offer of the High Court bench, with all the challenges and opportunities it presents, because it's not necessarily an end in itself, but a stepping stone, a first or a second step on the judicial ladder. And I had practiced in silk for eight years, and they had been eight very stressful years, I had had a lot of responsibility and a lot of stress, and so I was quite glad to get into calmer waters. So I never regretted the decision, I have never regretted the decision, because I think that a silk's practice at the level I was working is only sustainable for a relatively brief period. [00:20:00] Either the stress becomes too great or younger rivals begin to eat away at your practice and you then get to a plateau and then a decline, so I didn't want to be in that position, I was quite glad to go out on the top of the wave, the crest of the wave.

Sam: And you stepped up again to the Court of the Appeal in 1995 didn't you. Again, why the further step?

Lord Justice Thorpe: Well I mean obviously, nobody... very few people would refuse the offer of the Court of Appeal. It's a fundamental shift from doing trial work to doing appellate work. And again when you've done trial work.. I'd done trial work for maybe seven years, and that was enough, trials are sometimes very burdensome. And the appellate work is all together more detached, you're not having to deal with witnesses, or listen to witnesses, it's simply, a court of review. And although I was quite young when I came here, and quite diffident, I found my role here by opting for family specialisation [00:22:00] and more specialisation and more specialisation and all the while I was working outside the arena of the court. I was developing my interests in inter-disciplinarity through the Presidents Interdisciplinary Committee which became in due course the Family Justice Counsel. My interest in international family justice which began with the Presidents International Committee which matured into my role as head of International Family Justice, and I was also heavily involved with ancillary relief reform, creating and chairing something called the Lord Chancellor's Ancillary Relief Working Group, and we introduced major procedural

reforms which made the litigation of money dispute much more practical. So I was always working in these areas of what I would call judicial activism. And in the end I was hugely rewarded because the Family Justice Counsel was very interesting in its early years, but even more was I rewarded when I became head of International Family Justice, was able to develop the service [00:24:00] that my office provides. And I would have retired well before the statutory termination had it not been for the international work. I mean I completed my fifteen years of service in 1994 and I would have been tempted to retire... no I mean 2004. I would have been tempted maybe to retire then, if it had not been for the impetus that the international work gave me, the opportunities that it gave me world-wide, tremendous opportunities, particularly in developing this idea of judicial collaboration. But I don't suppose you want to talk about the present, you're more interested about the past, aren't you?

Sam: Well what does the International Collaboration... how does it work? Do you see international disputes growing?

Lord Justice Thorpe: Well it's all so well recorded and its outward manifestation is the Hague International Judicial Network. But again, I don't think that's particularly interesting. I think that if you're as it were... doing a project on oral history, the most interesting is to trawl the distant memories, [00:26:00] because anybody in ten years time could tell you about judicial collaboration and international family, but what I could perhaps try and retrieve is memories of how completely different the world was then. Do you know the legal profession, the practising bar, was tightly confined within the circuit system, so that you had to join the circuit, and when you joined the circuit, for many people that defined the work that you would do, because in those days if you were a solicitor, and wanting say, junior counsel or leading and junior counsel for a case in say, Gloucester, you were confined to the members of the Western circuit. And if you wanted to bring in a junior from London, say, you had to also brief a circuit junior to sit beside him, never open his mouth, collect a fee, just for being there. It was a curious world. And the social cohesion on the circuits was very tight indeed. They used to have a mess, a Bar mess every night. In the city, where the red judge was sitting, so if the red judge went from Bristol to Exeter then the Bar would follow, and the Bar would all eat together at night in the Clarence hotel, and they would have their own cellar there, the Bar mess cellar in the hotel, so they would simply drink their own wine. [00:28:00] Completely different world.

And there were very few chambers outside London, so that you know the circuit work was done by circuit chambers, which were generally London chambers. But they would work the circuit, they would travel the circuit, and in those days, for instance, you would not find a member of the Bar who did not wear a bowler hat to come to work. And there was a sort of convention that you would always raise your hat to a high court judge if you were a junior and you recognised him as such. You know, the world was much more dominated by the legal and judicial professions. They used to have a policeman who would stand, would man the crossing between the law courts and the Temple, so when the judges rose and they wanted to go to lunch as they left the law courts, there would be a policeman there to stop the traffic, and as they crossed he would smartly salute the judge.

And the life on circuit was extraordinarily old-fashioned, I mean I didn't really experience it until I began as a deputy, a high court judge, sometimes covering a high court judge who was ill, and going to a judge's lodgings in Norwich or Sheffield, or anywhere you like. I mean it was [00:30:00] so old-fashioned, the lodgings were maintained for the judges, and very often they had been there for a very long time. Sometimes they were part and parcel, I mean in Stafford the court was built in the late eighteenth century, the court, and the

judge's lodgings, all one complex. And almost the staff behaved as though they were still before the Second World War. And I seem to think... did we used to change for dinner? Certainly if anybody was asked we would change for dinner, it was all very formal. And the high court judges were really hugely powerful and significant, there were fewer of them. And that world has completely disappeared. I can remember in Norwich the lodgings were about maybe two miles from the court, and you would have, there would be a car provided of course, and a chauffeur driver, some very big black car. And yes you would have a police outrider on a motor-bicycle. But in Norwich they would have a succession of police outriders so the judge on his journey, the car never slowed, let alone halted, so that at every cross-roads, at every lights, there would.. the police [00:32:00] rider would be up ahead, so that you went through as though you were the Queen. I think that's completely changed, I don't think they have cars any more, I don't know what they do, they probably have to walk to court.

Sam: And the change, do you think its a result of a change in public perceptions?

Lord Justice Thorpe: Oh I think so. Yes, yes. I mean we're a much more egalitarian society now than we were then. I mean that was very very evident. Nowadays, you know the Bar is much more diverse, and much more tolerant, I think, of individuality than it was then. There was an expected way of behaving, there was an expected social type and you were expected to conform to that type, not everybody did but those who didn't, didn't have a particularly easy passage, so there was a sort of premium on conformism which has gone and I think well, we're all, we are better but it has gone.

Sam: And so if we perhaps move back a bit. You came up to the Court of Appeal in 1995. How did you find sitting on a panel of three compared to hearing cases by yourself, reaching decisions [00:34:00] alongside your colleagues?

Lord Justice Thorpe: I found it difficult, because as the junior member of the constitution on the left-wing I found myself doing all sorts of cases about which I knew very little. I would not often get a family case, and very often the presiding judge would be eminent and very senior, and I think they expected a greater contribution than I was able to, or felt confident to make, so I think I tended to be rather a passive and silent member of the court. Probably more diffident than those joining the court would be nowadays, and I didn't really find my stride until I had become more senior and was able to concentrate more on family appeals. I mean there were plenty of family appeals because when I first came you didn't need permission to appeal in family. And that was a very very excellent innovation. The introduction of the permission filter which winnowed out all these hopeless family appeals, and we could focus on... we could choose what we wanted, because by and large [00:36:00] the trial judge didn't give permission it left it to us to decide. We could choose what we wanted and we were really the... and still are the court that moves and moulds the family law as far as it's permissible for judges to do that.

In those days virtually nothing went up to the House of Lords. It's different now because since Baroness Hale got to the House of Lords they have a real expert in family justice, and they've been taking many more appeals but still we are the court that is the ultimate court for most family appeals. And I particularly worked with Baroness Butler-Sloss who had come here immediately after Cleveland in 1988. And then I followed her seven years later and we sat a great deal together when she was President... before she was President, yes, and after she became President we developed a system whereby I as the supervising judge would select what I thought were significant family appeals and we would then sit together so that she would preside, I would be maybe on her right, and a

third member of the court on her left, a non-family specialist. And we did a lot of cases in that way within that system and that was a very [00:38:00] gratifying period for me because she was very generous and would often leave me to write the first judgement. Particularly in the money appeals she would expect me to write the first judgement. And maybe in the international cases. And then when she left I was the senior family specialist in the Court of Appeal for many years until really I suppose... oh no there was.. Alan Moore was my contemporary but actually he arrived in the Court of Appeal about six months before I did, but he chose.. he took the other choice he chose to be a generalist, he chose the more general expertise in the Court of Appeal and would have a go at anything, so he was not doing so much family work.

Sam: And sitting with two other judges, a judgement may be passed down on which all three agree, or on which two agree on a particular conclusion... did you very often find yourself in the minority or the majority?

Lord Justice Thorpe: I don't remember being particularly in the minority save there was a case in which... I was definitely outvoted by the President and Lord Justice Walker in a case involving transsexual marriage, and I was [00:40:00] for redefining to allow the transsexual to marry, but they were against it. And in the end of course the tide came my way because the European Court of Human Rights put increasing pressure on the UK to change and yeah. Then I remember being outvoted in another case which was all about... oh dear oh dear... habitual residence. And I think it may even have been a benefits case, and the issue was whether the habitual residence could be acquired more or less on arrival or whether an appreciable period was necessary, and I think I was in minority in the Court of Appeal and I had no support in the House of Lords who sided with the majority.. so there were occasions. On both occasions, those two cases, both went to the House of Lords and on both occasions the appeal was dismissed, but I remember them and yes, disagreement was not usual, it's quite rare. In my experience I would not dissent lightly. I do remember one case where I think there were two commercial judges and they did not agree [00:42:00] and I had to side with one or the other and I hadn't really understood the point which was quite abstruse and I chose one and I think rather diffidently said I gratefully agree with Lord Justice X et cetera, and I rather think it went to the House of Lords and the appeal was allowed, I think I chose the one wrong.

Sam: And you've spoken about sitting alongside commercial judges... more recently some academic commentators have identified cases where they've said there's been somewhat of a difference between the reasoning reached by commercial judges, and yourself as a family judge. For example, they've looked at the more recent case involving an oil executive and his wife, and looked at the comments you made about being careful against presenting more powerful parties with a more open road in a fast car. This difference between perhaps family judges and commercial judges, is it something that you've perceived from the bench or is it something that those looking from afar have overstated?

Lord Justice Thorpe: No no no no. That's the case impressed. And they weren't commercial they were chancery lawyers, and because the point impressed was the extent to which the family trial judge could pierce the corporate veil, so I deliberately chose to sit with two chancery judges, so that the view of the company law specialist would be properly imported. And they [00:44:00] saw it as company lawyers and they outvoted me, and I found the judgement of Lord Justice Rimer extremely persuasive, I thought it was a very good judgement and I'm not surprised that on that corporate law point he was upheld in the House of Lords. Of course the House of Lords as it were saw that there was a conflict between law and justice, and the two corporate lawyers spoke for law, and I think I spoke

for fairness, and so in a way the Supreme Court fudged it, because a) they found for law, upholding the majority, but b) they found for fairness because they had to find another legal mechanism to reach the fairness, to satisfy the fairness point.

And I was outvoted by the same two judges in a habitual residence case but again I had particularly asked that we should sit together, because I valued their contribution. I can't remember what the case is called, it's a sort of Pakistani case and it's a habitual resident, it might be called A, I never remember all these letters, but that has gone to the Supreme Court. And we will wait to hear what they say, I mean it's an interesting point that anybody can see is interesting [00:46:00] as to whether a child that has been born in a foreign jurisdiction which has never set foot in this country can be said to be habitually resident here. And I said yes, in exceptional circumstances, why not? And they both said no, no no that won't do. And the Supreme Court will have to rule on that.

Sam: And we spoke a little bit about academic scrutiny of your judgements. It's right, isn't it that sometimes you've been scrutinized in other ways, for example by the individuals involved in the case, even protestors, for example you had a Fathers for Justice campaigner on your roof in August 2008. Against that background...

Lord Justice Thorpe: Yes yes. I mean the Fathers for Justice brigade picked out a few judges and rather went for them. And I was one of them. And they were a nuisance. The man on the roof maybe got the biggest publicity but I'd had them twice before that, and then the final time they came they did quite a lot of damage. The first time they damaged the property, and on the last occasion the poor old ministry of justice had to pay up to make good the damage, and I think it cost them over 10,000, making good the damage that they'd done. So they were a nuisance, but I understood that they felt impotent, and the only way they could express themselves effectively was to do outrageous things, and of course they some great successes, [00:48:00] I mean, that wonderful attack on Blair in the House of Commons was really a brilliant piece of theatre. They had something pretty good at Buckingham Palace too. So they were... well you have to admire their ingenuity and their originality in designing protests that will catch the headlines.

Sam: Against that background, do you think judges are being politicised in the sense that they're being perhaps, targeted now by groups with a particular view?

Lord Justice Thorpe: I don't think it's too bad, really. We've got a good press office here that's an innovation because when I began there wouldn't have been a press office. The press office do, here as I see it a very good job.

Sam: And some months ago, I believe it was Lady Justice Hallett who spoke out and said perhaps in some situations there may even be a need to protect judges.

Lord Justice Thorpe: Well of course, in family it is a matter of concern. Australia went from fully robed judges to almost shirt sleeved judges and I think there may have been one or more fatalities. And I think they went back to robes to try and put a stop to that. Judges have been [00:50:00] shot in this country. I think a family judge in the North was shot on one occasion...was fatally shot. And recently, or not that recently maybe two ago, a judge in our strip was shot. So I mean there is a risk, but all life is risk so I wouldn't be necessarily thinking we should be introducing stricter security. I mean of course we have a security screen here in the RCJ but I'm sure anybody with determination and ingenuity could outwit the machine or the system. But I think our best safeguard is to try and be..to try and win the respect of the general public and be seen to be well... doing our best in

difficult circumstances. And if we have the respect of the broad majority, you can never... the extremist, the madman, you can never protect against that.

Sam: We've spoken a little bit about your developing career, how did your involvement with Inner Temple itself change during that time?

Lord Justice Thorpe: Well I've never been a very... inhabitant (?) of the Inn particularly until recent years where I've become much more involved, particularly [00:52:00] since I started living in the Temple. But I've always had my main home in the country, and I've always regarded London as the place where I earn the money to spend in the country. So, I intended through all my years, certainly my middle years, to get out of London at the earliest possible opportunity. So I've not been particularly... I mean I particularly declined to put my name forward to be Treasurer of the Inn because I didn't want to be tied up at weekends when I could be at home in the country. I'm a country boy and I've never been a city boy. And of course, there's nowhere more city than the Temple.

Sam: And so you've mentioned that you spend a bit of your time in the country, do you have particular interests there?

Lord Justice Thorpe: Yes .. through all my Bar years I was breeding race horses, breeding horses to race. Or in the earlier period buying horses to race and then breeding horses to race, and when I stopped that, and I stopped immediately I left the Bar, not because of any sort of.. not for appearances but just because I couldn't possibly sustain what is a pretty expensive interest on a judge's salary. And then, ever since then I've done, just.. I'm a sort of dedicated farmer, but I just do.. ever since the horses left I've just done beef cattle, and I keep that up, I'm just going to make a call. [00:54:03]

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Sam: So you became a bencher of the Inn didn't you?

Lord Justice Thorpe: I did yeah. Before I became a judge. I became a bencher as a silk. I was elected as a silk.

Sam: And did your involvement with the Inn change once you'd become a bencher?

Lord Justice Thorpe: Yes it did because I got on, I was put onto the Executive Committee, all that sort of thing. I did maybe three of six years on the Executive.

Sam: And other functions of the Inn, perhaps as we tie the interview up, the Inn has increasingly become a forum for debate, perhaps examples being criticism by Lord Justice Moses of the Quasar scheme, and another example being the launch of the Marriage Foundation by Mr Justice Coleridge being examples. Do you have any views on the Inn as a helpful, a suitable forum for these sorts of debates, discussions?

Lord Justice Thorpe: Well I'm very grateful to and admiring of anything that the Inn does to stimulate discussion and the opportunities that it provides for, yes the development of ideas and the exchange of ideas. And it's wonderful that the Inn can afford to do that because it's financially more secure and prosperous than it used to be. And it's particularly [00:02:00] valuable that it brings together people of such different ages and specialities and experiences, so I would applaud all that the Inn does in those directions. I think the

Inns are wonderful institutions. I think it's good that they are in competition for future generations, and that competition obviously sharpens the development of scholarship funding, and social opportunities and I mean all that they do to make the Inn more lively, more relevant for the next generation is hugely important.

Sam: So looking back at this point, is there a particular point in your career so far that you would say was a high point?

Lord Justice Thorpe: Well I think I've had two high points. One, the work that I did in silk between about maybe 1983 and 88 that sort of thing, that was a high point, and then the work that I've done as head of International over the course of the last however many years it is, eight years, that has been hugely successful, hugely rewarding, something [00:04:00] I can look back on with real satisfaction.

Sam: Master Thorpe thank you very much for participating in the project.

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