

William & Lonsdale Lives in The Law

Ep73 The Hon. John Coldrey AM KC

Voiceover: [00:00:07] This is William and Lonsdale, a podcast about the legal ecosystem and the fascinating people who make it tick. Today, your host, Michael Green, speaks with the Honorable John Coldrey. When reflecting on John's work and contribution to the criminal bar in Victoria, the words legendary and iconic are entirely appropriate. Along with his decades defending in criminal cases, John was a founding member of the Criminal Bar Association. He even wrote and performed songs and skits in bar review nights with his close friend and colleague, Frank Vincent. Following in Frank's footsteps, John was one of the first advocates to go to the Northern Territory and work at the Central Australian Aboriginal Legal Service, which then led to his work as director of legal services at the Central Land Council, advocating for indigenous land rights. Not long after his return to the bar, he was made Victorian DPP, a surprising move for a man who had never prosecuted a single case. In 1999, John was appointed to the Supreme Court of Victoria. He also served as a member of the Adult Parole Board and Chairperson of the Victorian Institute of Forensic Medicine. John has had an exceptional life in the law, but for all the achievements and accolades, one thing is clear in this conversation. Whether with his family and friends, at the bar table or on the bench, John has never lost his sense of humor.

John Coldrey: [00:01:31] They had a model of the top of the human body, and they placed it on the bench near me for the witness to talk about the doctor. And I can remember counsel saying, now doctor, would you have a look at the dummy on the bench? And in what, you know, politicians would call damage control, I blurted out the one on the far right, please. And and, anyway, some radio station took it up, and I got the award of beak of beak of the week for for quite unmeritoriously.

Michael Green: [00:02:30] Our guest this morning in lives in the law is the Honorable John Coldrey, formerly a Justice of the Supreme Court of Victoria. Good morning, John. Morning. John, back to the start. Essendon, just after the Second World War in Melbourne, you were born there and brought up there. What was life like, late forties, early fifties, in Essendon?

John Coldrey: [00:02:51] Well, was always magnificent suburb, Michael, as far as I was concerned. It was a place where you could play sport in the street without being run over, and we played a lot of street football, which I suppose you'd describe as character building and scab creating really, because on the bitumen, I was a keen Essendon supporter, and the great footballer of the moment was John Coleman. Well, be frank, apart from the same first name and the first three letters of our surname, and joint membership of the human race, I had nothing in common with John Coleman. But I wanted to wear a jumper with number 10, which was his number. My mother, shall we say, was slightly underprivileged in the sewing department, and she said she couldn't do 10. I threw a bit of a tantrum, but she said she could do 11, which was the two strips. And there was a fellow who lived three or four doors down called Ron McEwen, who was a rover with Essendon at the time, and still in the Pantheon, so I settled for that.

Michael Green: [00:03:59] A very typical thing to be playing football in the streets in those days, I remember it myself. John, what about education? What education or what schools did you go to, and how did they lead you into the law?

John Coldrey: [00:04:09] Well, I went to Aberfeldy State School, and after about a year and a half there it burnt down, I had an alibi, I was home making sure the dog didn't eat my homework. But anyway, it meant that for about the next three and a half years, we'd go to the school, get on buses and we were bussed to Essendon State School, a lesser school of course, but in final year we came back to Aberfeldy, and it a very, it was a good school.

Michael Green: [00:04:38] And from there you went on to Essendon High School? Yep. And also a good school?

John Coldrey: [00:04:44] Yes, terrific teachers there. My father was very keen that I should get to a private school at some stage, and he kind of moved heaven and earth and finally Form III level, I was able to go to Wesley. But he was a very decent man, my father, and he said, Listen, I can get you into Wesley, but it's your choice. Do you want to go or not? I said, No, I want to stay at S and I. That's where all my mates were. And I didn't want to be at some school where I didn't know the kids, so I finished my education at Essendon High

Michael Green: [00:05:15] Essendon High wouldn't have typically had many kids who went on to do law at that time?

John Coldrey: [00:05:22] I was the only one in my year. When I first went to the school, there were 10 kids doing matric, as it was called, and I was the only one eventually that did law. And I can tell you, Michael, my first year at uni was pretty lonely, because I didn't know anyone. Well, did know my mates in other faculties and we often got together for lunch, but apart from that, was on my own.

Michael Green: [00:05:50] And what was law school like then, what, this is early 60s?

John Coldrey: [00:05:52] Yeah, 1960. Look, was, I think the lectures were pretty good. They taught, unfortunately, most of them, using what was called the Socratic method, which meant they came in and they asked questions of the various students, and you were supposed to sit in a numbered seat. And I can remember there was a very nice old fellow called Frank Maher who taught Introduction to Legal Method, and he'd asked me a question, and I go blah blah blah, he was a lovely old man, he'd say, Yes, that's a thought. Anyone else?

Michael Green: [00:06:24] What about sport? Did you play sport at university?

John Coldrey: [00:06:32] I did. My first year at uni, not knowing anybody else in the law faculty, I mean, were nice enough people, but they had their own cliques, And I would think that's probably the loneliest year of my life, first year at uni. But I played a fairly high level hockey in the top grade for Essendon, and Essendon had a policy that if you went to uni, they would give you a transfer to Melbourne uni on the basis that when you finished your course, you'd come back. I'm not sure how many did go back, so I made the top Melbourne University hockey team, and made a heap of friends that I've still got sixty years later from the hockey.

Michael Green: [00:07:08] I think we can say that those friendships have remained very strong, because you've just come back this week, from a weekend away of, with those sixty year friends.

John Coldrey: [00:07:17] Yes. That's right. A good week. I'm still recovering.

Michael Green: [00:07:20] I hope you didn't play hockey up there, John. So uni goes I mean, it it was uni, and you got through obviously, and progressed through to articles. Articles in those days, Tell us about that. I mean, they don't exist anymore.

John Coldrey: [00:07:33] Well, in those days you had to do a year with a firm of solicitors, and by that stage I'd become a bit interested in criminal law, really from watching Perry Mason, and.

Michael Green: [00:07:45] Can I just tell our listeners, who aren't as old as you and I, John, that Perry Mason was an American TV show about a lawyer who never lost a case?

John Coldrey: [00:07:53] No, that was very impressive about him. Also impressive was his gorgeous secretary Della Street, who got the hormones jangling a bit. But anyway, Ray Dunn, who was a prominent criminal solicitor, used to lecture us in criminal procedure, so I thought it'd be fantastic if I could do my articles with Ray. So I wrote him a letter, and I got a reply saying, Well, I've got a relative doing articles next year, but if that falls through, I'll contact you. And it fell through, and he did contact me, so I did the next, well eighteen months really with Ray Dunn.

Michael Green: [00:08:29] Doing articles in those days, they weren't a structured thing or an organised sort of thing, they could be very different depending where you did your articles. Did you learn a lot from them? Did it prepare you for practise?

John Coldrey: [00:08:39] Well, think it did because for at least the first six months, I spent all my time sitting opposite Dunn at the bar table and he conducted cases. And he was a very, he would have been a very good barrister, very good cross examiner, so I had the benefit of that. Ray was a, hard to describe Ray by this, he'd been a terrific athlete. He got a blue in water polo, for example, at Melbourne Uni. By the time I was reading or doing articles with him, he could describe him, he was bald when he had a kind of head like a slightly deflated puss soccer ball I'd say, a huge belly and I was in his room, I was sat next to the fridge, which he went to quite often, facing a wall, but he was, I could hear everything that went on behind me. He could be quite aggressive, can

remember some solicitor ringing, obviously wanting a settlement in some civil case, and Ray saying, No, our offer's not going up. The only thing going up is our confidence. And then slamming down the phone. But he took me to an inquest where there'd been a police killing and I was allowed to carry one of his law books and we came along and there was a whole heap of photographers and television cameras there. I thought this was pretty good. He's talking out of the side of his mouth a bit. This is fame, son, fame. And I thought, this fame's pretty good. He said, Do now Frank Galbally will be appearing for the relatives. We've got to get him to do his block. Once we get him to do his block, we'll be right. Oh, yes, Mr Dunne. Didn't understand much of this, but we get into the courtroom. Oh, shit. It's Jack Galbally. Well Jack Galbally QC was a very able bourister. So he said, It's gonna be a bit harder. So anyway, Ray's niggling away as the case goes on and Jack's getting a bit more and more exasperated And he says to the magistrate, your worshipers, were, your worshipers, they're just trying to wrestle with a greasy pig. Ray would chuckle away and anyway, we got into the second day and Jack couldn't really take any more of Ray's niggling. He'd also give a bit back by saying to the magistrate, worshiped, he's not a well man you worship, he'd say, but Ray just chuckled at that and kept going. And on the second day, finally Jack Galbally threw his papers on the table and basically did his block and Ray led Ford, he said, we've got him son, we've got him. And we had, but that was Ray.

Michael Green: [00:11:17] So you learned about strategy and tactics

John Coldrey: [00:11:20] From Ray as well. I'm not sure they were the best, but anyhow.

Michael Green: [00:11:28] John, you're admitted in 1966, and in that year, you also get married. I'd like to say, was it a struggle to support yourself? My My guess would be, as an article clerk, you would have been making no more than \$20 a week, literally.

John Coldrey: [00:11:43] I think for the first six months about 10, and then Ray increased it to 20.

Michael Green: [00:11:49] And so what about supporting yourselves, you and your wife as a newly married couple?

John Coldrey: [00:11:54] My wife was an art and craft teacher at secondary school, and I suppose basically for a start, she supported us, for which I'm very grateful. So that's how we got through because there's a delay between doing cases and the money starting to flow, small though it was in those days. I remember going out to a magistrate's court with three briefs and the total came to \$51 and I came back and I thought, oh, basic wage is \$50 I've made \$51 in a day, this isn't bad. But anyhow, it got better.

Michael Green: [00:12:33] Six months after you're admitted, so you're still, I'd say on the bare bones of your backside, John, financially, I'm assuming, you come to the bar, no readers course? No. How do you learn your advocacy skills, and did it take you a long time to establish a practice?

John Coldrey: [00:12:50] Well, you had a reading period with a master, so first of all you could go in there, and it was either six or twelve months, I can't remember, and I read with a very able barrister called Kevin Coleman. So you didn't have any rent to pay, you parked in his room, you could go to court and watch him if you weren't in court yourself. But I'd benefited over the years from A, watching Ray Dunn in action, but B, instructing a whole lot of barristers who were criminal advocates and sitting opposite them in the bar table often taking notes and watching how they operated. So that was great benefit. And I spent quite a bit of time in the Magistrates Court, or the Court of Petty Sessions, as they called it then. In fact, I could have got a job as a taxi driver, Michael, orientating myself by the various courts of petty sessions around Melbourne. The good thing really about that area of practice was you had no depositions, you didn't know what witnesses were going to say until the moment they got up in court. So you had to be very agile and good on your feet to work out what line of cross examination you were going to take. And I also had a practice as if I lost a case, I'd go back and kind of do this post mortem, trying to work out what went wrong. So it was a kind of process of osmosis, it was the skills in the Magistrates Court, or petty sessions, or whatever it was called, but also from observing some of the better barristers in action.

Michael Green: [00:14:21] You must have established a reasonable practice, because after three years you could afford to take a year off and travel overseas. Was that a risk to take that?

John Coldrey: [00:14:29] I don't know whether I was a disillusioned, but I wanted a bit of a break from the daily grind. I had a very good practice, I was in court virtually every day. I had a very good clerk in Kevin Foley and Jim Foley, his father. The way it really happened was that I wanted to do a year studying criminology at Cambridge, and I'd done two years of criminology at Melbourne. And so we wrote to Cambridge and I had some referees, and finally the letter came back and my wife was very disappointed I was knocked back. So in a sort of misplaced gallantry perhaps, they said, well never mind that, who'd want to stay in Cambridge for a complete year, let's go around the world. So anyhow You were a risk taker, John. Well, it was quite different in those days. You could get around the world ticket for \$2,400 economy of course, but as long as you kept, you could go anywhere you liked as long as you kept going in the one direction. So we got ourselves a ticket each, round the world ticket, and then you could also buy a car duty free, providing you picked it up in a foreign country. So we bought a Renault four for \$900 Renault agreed they would buy it back, and eventually we sold it back after 40,000 kilometres for about \$600 so it was a pretty cheap vehicle. And we had a Maruchel tent and we camped all over.

Michael Green: [00:16:00] You're away for year, you come back in 1971, Again, what about re establishing a practice? I mean, do you come back to avoid and you've got to start again like you're a reader?

John Coldrey: [00:16:10] No, it didn't seem to happen like you see, I've been away twelve months and never lost a case. So that was probably a help.

Michael Green: [00:16:16] That enhanced your reputation.

John Coldrey: [00:16:19] Well, I've done nothing to damage it in the meantime. So, and Jim and Kevin Foley were terrific. I mean, they just took up where I'd left off and I've found myself getting briefs up in murder trials, which was kind of a great ambition for a criminal lawyer. A lot were with silks, QCs, but I did a number myself as well.

Michael Green: [00:16:47] John, I was interested, you did murder trials both on your own and as a junior to a silk, at a time when the death penalty was still in force. Yep. Did that add a layer or many layers of extra stress and tension to everybody involved in the process? The fact that there was potentially going to be a death penalty imposed?

John Coldrey: [00:17:00] I don't think so. Well, first of all, was very fortunate, because in the cases I did, there were about 10 of them, while death penalty was still in existence, there were only two convictions for murder, and they were both juveniles, so they couldn't be hung, so I never had heard the death sentence read out. But I think the reality was that after Ronald Ryan was hung, the outcry, the public outcry, was so great that it was highly unlikely that anybody else was going to be hung, unless it was the most heinous crime. And those sort of crimes didn't happen very often. So if you were appearing for the average accused, you weren't really concerned that they'd be hung.

Michael Green: [00:17:46] Were you typically looking to get a not guilty verdict for your accused, or was it more often that you were hoping to get it knocked down from murder to manslaughter?

John Coldrey: [00:17:52] Well, it was both. I think the first case I did, as Rumpole will say, alone and without a leader, was a case where my young client had stabbed somebody, he was being attacked, and the Crown came and said, We'll take a plea to manslaughter. And I said to the client, Don't accept the worst you could ever do in this case is manslaughter and you might get a total acquittal. Well of course, one effect of that was to increase the pressure on myself, but very fortunately he was totally acquitted, so that worked out alright. But I was never personally concerned that any of the people I appeared for would be hung.

Michael Green: [00:18:38] Still remaining on this period of time, I guess, you were still a junior barrister before you were silk, you appeared before Mr Justice Lush in the Supreme Court, I guess murder trials, and you formed the opinion that he was the best judge you ever appeared before, and you actually tried to model yourself on some of the things he did. What made Mr Justice Lush an outstanding judge?

John Coldrey: [00:18:56] Well, he had this capacity to isolate the essential issues and explain the issues to the jury in understandable language. Look, was very encouraging. I can remember you'd cross examine somebody and sit down. If he thought you'd done a good job and you'd sat down at the right time, you'd kind of get a nod from him, which was very encouraging. And one of the most difficult cases I did was a fellow who'd shot his wife as she was sitting in bed with the eight year old daughter next to her. And his

defence was that the wife had grabbed at the barrel of the gun and had discharged. That wouldn't have got him an acquittal, but it might have got him a manslaughter. The real difficulty in the case was trying to cross examine an eight year old girl who'd lost her mother. If you put a foot wrong and if the poor child cried, I think that would have been the end. But anyhow, the jury retired and we had to go up and see Justice Lush for some other reason. I went up with the prosecutor and we dealt with that other matter, but then Lush said to me, I don't know how this case is gonna turn out, John, but I want to say this, nobody could have done more for their client than you did. Now, a young barrister hearing that from a senior judge was just fantastic.

Michael Green: [00:20:23] And therefore what impact did it have upon you as a judge?

John Coldrey: [00:20:26] You don't precisely model yourself on anybody, because you've got your own personality, but as near as I could I tried.

Michael Green: [00:20:36] And be encouraging for counsel, who you thought were doing a good job?

John Coldrey: [00:20:39] Oh yeah, I remember on one occasion I had a prosecutor in front of me who lost two murders in a row, and he lost two in the sense that they were acquittals. So I rang him and I said, Look, don't change anything you're doing. You are prosecuting fairly and properly. Don't worry about those verdicts, you'll get those in the course of your career. Just keep doing what you're doing. And he did, he was a very good prosecutor, I had to become a county court judge. So, you know, if you had a chance to encourage people, well I've been encouraged, so why not encourage others?

Michael Green: [00:21:15] Yes, it's a theme that comes across in our podcasts all the time, that people who have had successful lives and careers, almost invariably, have had generous mentors who have helped them, and therefore I guess it's incumbent upon all of us, as we get older, to try and do the same. John, you made a comment, there's that old sore in the law that you, in cross examination, never ask a question you don't know the answer of, but you actually challenge that.

John Coldrey: [00:21:41] Well, I think the real approach is never ask a question where you mightn't be able to handle the answer, and in order to be able to handle the answer,

you really have to think through the possible answers you might get. And that involves preparation. When we used to instruct students in criminal law, which I did for a while, there were the five, well there were actually seven P's, but I only give you five of them. Proper preparation prevents poor performance. The whole secret is to prepare properly. You're dealing with human lives and that's part of the profession, but you've got to realise that you've got to make the effort.

Michael Green: [00:22:22] John, to lighten things up a bit, tell us about the bar reviews.

John Coldrey: [00:22:26] Well, bar reviews were really the idea of a fellow called Dave Ross, QC, who's no longer with us, but they didn't have bar dinners in those days, so they had these dining in nights. And Ross had the idea that it might be liven them up to have these reviews. Actually, I'm quite wrong, they did have some bar dinners, where the guest speaker was usually so boring. So this was a different approach. A few of us were involved. I wrote a lot of the stuff. Frank Vincent and I did a poor man's Peter Cook and Dudley Moore exchange, where we'd send up senior barristers and judges unmercifully, you could get away with it.

Michael Green: [00:23:06] Were they in the room watching it?

John Coldrey: [00:23:08] Oh yeah. Most of them were. It was a very small bar in those days, and people don't realise the bar was about 120 people, plus the judges, you could fit in the common room upstairs. I managed to kind of get a few things off my chest, I wrote the Magistrates song, so I've got a little bit from the Mikado, which started, you know, I refuse to be impeded by the principles of law, for I'm a magistrate, a near celestial state, and daily I'll acclaim against excesses I abhor, with his wisdom that's innate, I'll detail what I hate. So we got off our chest about magistrates and then there was the prosecutor's song, the gendarmes duet, with this stirring restraint, we prosecute, we prosecute, put in the boot, put in the boot, and so on.

Michael Green: [00:23:56] You were also involved in the formation of the Criminal Bar Association, which is a significant body and significant to this day. What was the genesis of that?

John Coldrey: [00:24:04] Well, the criminal bar was kind of growing, but it was basically ignored. We had no representatives on the bar council, we were a small group, and the fees that were being paid were extremely small compared with other sections of the bar. You'd do a murder trial, you'd get a brief fee of \$141 Per day? No, that was the brief fee, that was the first six hours. So that was the genesis. We wanted reasonable fees and to be taken notice of as an important group at the bar. There were four of us, Frank Vincent, myself, Colin Lovett, and a fellow, John Hassett, who later became a Crown Prosecutor, and was how it started, and it grew from there, and we were able to negotiate with legal aid and public solicitor and so on, and the fees became more reasonable. And it remains a significant body to this day. Yes, it does. Yes.

Michael Green: [00:25:08] John, let's get back on to the track of your career. When you've been at the bar, I'm thinking now probably eight or ten years, so you're an experienced and quite senior junior. You're briefed to appear in the Beach Inquiry. What was the Beach Inquiry, and what role did you play in it?

John Coldrey: [00:25:24] Well, the Beach Inquiry was set up to inquire about the conduct of the Victoria Police. There'd been a number of complaints and the government had set up the inquiry. Barry Beach was the commissioner or chairman, and the lead counsel, I suppose you'd call it, was a fellow called Cairns Villeneuve Smith, who was an extraordinarily good bastard. Anyhow, I got the Guernsey as his junior. On the other side, John Phillips, who later was Chief Justice and John Walker, both very able criminal bastards were appearing for the police. It went for 18 months, helped me buy a home. It was never out of the papers. Every day, and they even had a special logo for the police inquiry in the newspapers. They couldn't take photos in the court, but there were lots of photos of us walking up and down the steps outside the court. Anyhow, that, as a result of that, Beach made a number of findings against various police officers. And the police threatened to work to rules and all sorts of things, which I found very ironical, because if they'd worked to rules in the first place, we wouldn't have had the inquiry. But from my perspective, the greatest thing that was achieved was the start of the movement to get electronically recorded records of interview. One of the problems was the armed robbery squad at the time. I got hold of all the, through the police liaison, a whole lot of records of interview done by the armed robbery squad over a period of years, in which the accused had claimed that they were fabricated, they were all unsigned, and we didn't have computers in those days, so I laid

them all out on the floor of my chambers, and went round looking from one to the other, and I found that in the unsigned records of interview

Michael Green: [00:27:17] Of many accused who made that stage of in jail.

John Coldrey: [00:27:20] Oh yeah, they were in jail, and probably had committed the offence, but that's another matter, but what came to light were all these common phrases, Quite unique phrases. You know I did at mister X, being the police officer. I've had a good run up to now, it had to end. A whole lot of phrases like that. There might have been about four or five of these. So on the final day of the inquiry, I cross examined this particular policeman, and having established that these accused were different ages, had different employment records, different educational attainments, and all the differences, and then I hit him with the fact that they'd all used the same phrases. Well, had no, he just said, oh, that's what they said. He had no explanation for that. And I invited him to produce to the inquiry any signed records of interview in which the same phrases appeared, and of course it never happened. So Beach made adverse findings in relation to that. So that was the start of this campaign, to get interviews electronically recorded. It took a while, it wasn't until I became DPP and conducted investigations into all this that the government under Jim Kennan, who was a very sympathetic and reformist Attorney General, brought in the law that in indictable offences, there were no admissions to be provided to the court unless they were tape recorded. And that, I would say, that's possibly my greatest achievement in the law, but certainly during my time as DPP.

Michael Green: [00:29:01] It was interesting to me that around this time, I guess maybe at the maybe at the end of the Beach Inquiry, you take up, or a significant part of your practice becomes appearing in the Northern Territory. I'm assuming it would have been inconvenient, it may have been financially disadvantageous, and it lasted for several years. Why did you take it on?

John Coldrey: [00:29:22] Well, I suppose I've always been an advocate for social justice, and Frank Vincent had started to go up there and he convinced me to go. Some other very able people had gone, Geoff Eames, who went on to the Supreme Court, and he went up, he was the first one working for the Central Australian Aboriginal Legal Service. So I went up and first time Frank and I were doing a murder, I got off the plane

in Alice Springs. I couldn't believe I was still in Australia, the way that indigenous people, didn't have anywhere, a lot of them know where to live, were in the Tide River and just the general atmosphere and attitude I found just appalling. I remember going out to the scene of the alleged murder on a settlement nearby, the house hadn't even been cleaned, was blood all over the walls and the stench was extraordinary. Anyway, that was my introduction to Alice Springs. But so Frank and I and other people went up, usually to do the murders, over the next few years, and I found, I think I was spending, well we're both spending about a third of our time in the Northern Territory. In fact, that the Northern Territory Police put in a claim for increased wages, and one of the grounds for the claim was that they were being cross examined by Vincent and Cauldre. They hadn't been cross examined much up until then.

Michael Green: [00:30:44] I would have thought that was a badge of honour, John.

John Coldrey: [00:30:45] Well, we didn't mind.

Michael Green: [00:30:47] You must have loved the Northern Territory, John, because after doing that work up there for several years, you accept the position of director of legal services at the Central Land Council. And I'm assuming that's not criminal work?

John Coldrey: [00:31:00] No. That was that was land claims. I'd having done the criminal work, I I'd formed the view that really people weren't going to be able to advance until they'd got some of their land back. They got onto their country and they could practise their traditional rituals and so on. The country that was available was pretty narrow because it had to be an inalienated crowned land. Now pastoral lease was regarded as alienating the land, so it was limited. If the Department of Aboriginal Affairs could buy pastoral lease, there was a loophole. They could then claim the land of the pastoral lease. So a fellow, Ross Howie, who later became a county court judge, and before he means, they went from callous, the legal criminal law identity, to the land council. They commenced these land claims, because they were all friends of Frank and myself. And Ross Howie persuaded me to go up and succeed him, and I must have been ready for another break, but the family came and

Michael Green: [00:32:08] Was it difficult for the family?

John Coldrey: [00:32:09] Well, they had to change schools, and my wife Karen then taught at local high school. I think overall, if you asked them, might they be pleased they went. Completely different aspect of life up there. The land claims themselves were big productions. There were anthropologists and so on who'd have to interview the traditional owners and we produced these big claim books. A lot of the evidence was group evidence, but we'd go out to the land and basically conduct the claims out there. We were often, we were just camping. It was just amazing. I remember being at Balgo, which was just over in the West Australian border and the claim was in the territory adjacent, and I'm interviewing these old fellas, blokes saying, yes, in the old days we used to have bones through our nose. And I thought, oh yeah? So writing it down, I look up and they've all got these twigs, instead of the bone, it's through the nose like this. Then we went out onto their country, which they hadn't been on for years, but everything had been passed down in the oral history. We were coming along this area of, well first of all, the leader kept pointing because we were trying to find a sacred site, and everything looked the same to us, and after about five or six hours travel, we got to the sacred site, spot on, which was fantastic really. And then we were coming back, there was all this savannah, looked identical to me and he said, stop. And he said, you dig here, we'll find water. Oh yeah? So they got out a shovel and dug this kind of square hole. It was dry, I thought, oh, okay. Then about a minute or two later, all this water started seeping in until it filled up before. I mean, it was extraordinarily impressive people.

Michael Green: [00:33:52] And this man remembered this from some time in the past?

John Coldrey: [00:33:57] He'd been told. He hadn't been.

Michael Green: [00:33:58] He'd never been there before.

John Coldrey: [00:34:00] No. No. He'd been told all about it. It amazing. But we did mining agreements as well, and look, it was one of the best periods of my life, I think.

Voiceover: [00:34:18] William and Lonsdale is brought to you by Greenslist, one of the leading multidisciplinary barristers lists in Australia. Greens List believe in promoting conversation around the ideas and issues that shape not only our legal system, but our wider community.

Michael Green: [00:34:38] John, I think you were there for about three years? Yeah. Two and a half.

John Coldrey: [00:34:43] Two and a half.

Michael Green: [00:34:44] In the territory. Then you come back in 1984. What to me was a strange position for you, having been a defense advocate your whole career, you accept the position of Director of Public Prosecutions here in Victoria.

John Coldrey: [00:34:56] Yes, it was a bit strange. I was concerned, it seemed to me, that there was a movement afoot to weaken people's rights. There was talk about, in some types of cases, perhaps drug cases, reversing the onus of proof, or reducing proof beyond reasonable doubt to the balance of probabilities. I must have been easily influenced, Michael. John Phillips, who was the first DPP, who again had never prosecuted, he said, Oh, you should take it, John, you did a great job. So I agreed to take it on. Well, I only ever gave one press conference, it was Jim Kennan, his attorney said, I just want you to give the one John. So we sit down and I was a bit mischievous, said, well the first thing I want to say is that I come to this job with a number of prior convictions. Jim kind of slumped and said, you know, my conviction in the need for proof beyond reasonable doubt, my conviction in the presumption of innocence and so on, and I had a few of those that got us a few headlines, but that was about six and a half years.

Michael Green: [00:36:00] And as DPP, were you regularly appearing in court prosecuting cases or possibly appeals, or were you mainly an administrator, a manager in the office?

John Coldrey: [00:36:09] No, I didn't prosecute anything. My record is complete, but look, there were endless meetings, they created this committee, which unfortunately became known as the Coldrick Committee. We looked into a whole area of the criminal law, I had police members and judges, there was quite a group of people. We changed the criteria for prosecuting in the first place to reasonable prospect of conviction. It had been a bit looser than that, but the test was if there was no reasonable prospect of conviction, you didn't go ahead.

Michael Green: [00:36:42] Did this apply, so that's indictable offences, assume. Yeah. Did it also apply to the Magistrates Court and police prosecutions in the Magistrates Court?

John Coldrey: [00:36:49] Well, we didn't have any control of those, so the burden of proof was still on the crown to prove the case beyond reasonable doubt. We did tinker with the standard for committal proceedings and try and increase that a little bit as well. The one thing I did disagree with John Phillips on and the Commonwealth DPP at the time, John had this view that if the person to be prosecuted was very high profile in the public eye, then even if you didn't reach the standard of reasonable prospect of conviction, you should prosecute to clear the air. Well I was absolutely opposed to that. The same standard applies to everyone, it doesn't matter who you are, and that I think, well certainly prevailed in my time.

Michael Green: [00:37:37] Was at this time that mandatory electronic recording of records of interview, or it became mandatory?

John Coldrey: [00:37:44] Yeah, that's Which you mentioned earlier. Yes, that's when it happened. I remember Mick Miller, who was the Chief Commissioner of Police, coming to see me. Mick was the best Commissioner of Police we've ever had in this state, terrific fella. And he said, you know, John, let's try and have video, not just the audio, because that'll show the relationship between the suspect and the interviewing police. We got that for the homicide, but it was a bit expensive for everywhere apparently, but that was a start, I've got to say. We looked at other areas too, taking of DNA, fingerprinting and so on. It was objective evidence, and we made that easier with a number of safeguards, so

Michael Green: [00:38:25] So it was a rewarding time for you, that period, as DPP?

John Coldrey: [00:38:29] Yes, it was.

Michael Green: [00:38:31] It leads on to you being appointed to the Supreme Court in 1991. I'm assuming after being DPP for about six years, that's almost a formality.

John Coldrey: [00:38:40] It is, it happened to John, myself and then I think it was old, Bernie Bongiorno was the next one and then at some stage, Jeff Flatman, Paul Coghlan and so on, there's a whole history of it.

Michael Green: [00:38:51] There's a nice story, John, on you telling your dad about you being appointed to the Supreme Court.

John Coldrey: [00:38:56] Yeah, well my father was in hospital, he was very ill and he clearly wasn't gonna come out. And there was considerable delay between my retiring as DPP and the announcement of the appointment. So I said to Jim Kenner, well my father's gonna die Jim, I wanna be able to tell him that I'm going on the court. And Jim said, well you go ahead and tell him. I was very grateful. He'd always wanted to be a solicitor himself, but having left school at 14, it was a bit harder.

Michael Green: [00:39:28] Absolutely. Interesting when you go on to the Supreme Court, you don't do criminal work for at least twelve months because you've been involved in so many matters as the DPP, and therefore you work in the civil division for those twelve months or more. Yep. On my reading of your life story, John, you hadn't done any civil work at all, Zero. Starting with articles that Ray Dunn. Oh, sorry. Maybe at the land council.

John Coldrey: [00:39:51] Oh, well, yeah. They were pretty unique cases.

Michael Green: [00:39:55] So how did you handle civil work?

John Coldrey: [00:39:56] Well, I didn't find it very easy. There were there were precedents that you you mates on the court gave you in terms of charging a jury and that sort of thing, but it was difficult. I can remember doing a Messrs. Certainly Omer trial early on in the piece and a number of counsels, John Barnard who used to terrorise young judges, he was for the defence and Jack Rush was for the plaintiff. I remember in the morning, my tip staff would come up and say, Mr Barnard wants the jury kept out. I get this sinking feeling in my stomach, what is it today? Anyway, the case went on and on and I finally charged the jury and John Barnard got up and said, well, know, that was appalling. The best thing you could do is to charge the jury and resign immediately. That

was the gist of it. Whereas Jack Rush said that was an absolute paradigm charge that should be taken and used by the judicial studies board.

Michael Green: [00:40:52] Do you remember the outcome of the case? Did it go Jack's way or John's way?

John Coldrey: [00:40:56] Went Jack's way.

Michael Green: [00:40:59] With your career, John, and this is a really a general question for people who are made judges, was it an easy transition from being an advocate to being a judge?

John Coldrey: [00:41:08] No. In some respects, it was a relief. You'd see a witness and you'd think, oh, that's pretty good, how am I gonna cross examine him? You think, oh, I don't have to, that's what the Barrister's gonna do. So that was a bonus, but the other difficult thing was you hear a submission from counsel and you think, gee, that's pretty good. And then you hear from the other side and you think, gee, that's pretty good, God, I've got to decide, I've got to decide this.

Michael Green: [00:41:39] And you've got to decide on a logical basis, you can't decide along which one you thought was better.

John Coldrey: [00:41:43] You go to a back room and try and make your decision. Look, it's like anything else, when you get more and more experienced, get more confident. I remember George Hamfel, rather gloomily said to me after I was appointed, he said, the first five years are the worst.

Michael Green: [00:42:03] And that proved to be true?

John Coldrey: [00:42:04] Well, don't think it was five years, but I got out, mainly got out of the civil after a year or so.

Michael Green: [00:42:10] Back to crime where you were more comfortable. I'm interested, you, John, and think every criminal practitioner I've ever spoken to, is a big

fan of juries. Can you explain to us why juries, why you are such a big fan, why it's so important, why they do such a good job?

John Coldrey: [00:42:25] Well, first of all, there's a multiplicity of views rather than just you. Really, I think they bring democracy into the criminal law. They all come in with different experiences of life, and they've got to judge the witnesses, and I've found them really pretty well spot on, I've got to say. Also, there's an ulterior motive I suppose, means you don't have to write a judgement. I mean, you get their verdict, they don't have to explain it. So overall, I'd be in favour.

Michael Green: [00:42:55] Were there any cases that stand out in your memory where you thought juries got it wrong, or you would have disagreed with their verdict? Yeah, well

John Coldrey: [00:43:01] There were several where I would have perhaps brought in a manslaughter verdict, where they brought in murder and vice versa, but that was always open to them. In seventeen years there were two cases where I think they got it wrong, completely got it wrong. They were both acquittals.

Michael Green: [00:43:16] And you thought there was enough evidence there to prove guilt beyond a reasonable I did. Some jurisdictions in Australia now have judges alone doing criminal trials, aren't they?

John Coldrey: [00:43:25] Yep, they do.

Michael Green: [00:43:26] Do you think they're going to come in? Will we get them in Victoria because of the complexity of trials?

John Coldrey: [00:43:30] I think we will. You may still have the option, but basically I think there's so much the complexity is really the scientific evidence. Well, is an example, but also some of the pathological evidence, there's, there'll be more and more science, I think, involved and that's better, in some cases better dealt with judge alone.

Michael Green: [00:43:52] If a judgment has to be written, it might slow things down, mightn't it?

John Coldrey: [00:43:56] Oh, does slow things down, that's the problem. There've been a couple of these cases in New South Wales, where it's taken weeks, and the person's in limbo, probably in custody, the verdict.

Michael Green: [00:44:09] But you think it's likely to come?

John Coldrey: [00:44:10] Yeah, it won't be universal, it'll still be a choice.

Michael Green: [00:44:12] In making, in counsel advising a client on the choice, it'll vary from case to case, assume, it's not a, wouldn't think, well, they're going more often they'll go to a judge alone, and more often they'll go to a jury.

John Coldrey: [00:44:24] No, I think you'd have to size up your client. If your client's going to give evidence, they're basically likable, and you think they can withstand cross examination, you'd probably go with the jury. In some cases, where you might feel the jury wouldn't take to your client, you might want the approach of a judge.

Michael Green: [00:44:45] Judge alone. John, you're involved in a very interesting case, or a petition for mercy in fact. Colin Ross was the man's name, he was convicted and hanged about one hundred years ago. Number one, how did the petition for mercy come about? Who cared one hundred years later, and how does that sort

John Coldrey: [00:45:02] Of thing play out? Well, it's an interesting case. They normally say that justice delayed is justice denied. That wasn't the case in Colin Ross's case, the killing was New Year's Eve, he was arrested on the January 7, his trial was in February, his appeals were all dismissed right up to the high court in March, and he was hung in early April. That was pretty swift, I won't say swift justice because it wasn't justice in his case. Part of the problem, the case involved a young 12 year old school girl who was murdered and her body was found up near where the Eastern Market used to be in Melbourne.

Michael Green: [00:45:43] Up in Bourke Street there?

John Coldrey: [00:45:44] Yeah. Near In that area.

Michael Green: [00:45:46] Up the top.

John Coldrey: [00:45:47] There. Fella, Colin Ross, ran a wine saloon and so some witnesses, some prostitutes who reckoned they'd seen the girl in his wine saloon, they weren't very reliable. I mean, he always denied it, so I'll be clear on that, but there were some hairs found on a blanket in the wine saloon, and the so called expert, he had some scientific qualifications, he had none in assessing hair, Said that the hair on the blanket belonged to the dead girl. So they said the case went through and he was hung. A fellow called Kevin Morgan wrote a book, I think it's called The Gun Alley Murders, years later, and he was given access to the exhibits from the original trial. Now normally they would be destroyed, but amazingly, because the was such a small item, it was still there as part of the Crown brief. And so the hair was analysed by a fellow called Doctor James Robertson, who's an absolute world expert.

Michael Green: [00:46:49] And this is only ten or fifteen years ago or something?

John Coldrey: [00:46:52] Yeah, Robertson said without a doubt, the hairs are not human hairs, they're hairs of a dog. And this fella had a dog, but that undercut the whole, well, basis of the conviction really. I mean, he'd never confessed to anything, he denied it all the time. So there was then a petition of mercy from his relatives, his descendants, and ironically enough, the descendants of the young girl also joined in the petition of mercy.

Michael Green: [00:47:20] Because the relatives of Colin Ross had gone to them and said, will you join us?

John Coldrey: [00:47:24] Well, I don't know what happened behind the scenes, but they were just as keen to get to the truth. I was referred to the Supreme Court, and Marilyn Warren as Chief Justice referred it to three of us. Senior Criminal Judge? Yeah, Bernie Teague and Phil Cummins. I got the job of going through it all. The first divinity was there was no transcript. However, in the Supreme Court library they had newspapers from that time. They were bound in the huge volumes, actually mad because they're big broadsheets. So the Age and the Argus were the papers in Melbourne at the time, and so I got them up into McChambers. I think most of the

reporters in those days were good shorthand writers. So the descriptions of what occurred and the evidence was extremely detailed, and also coincided. There was no discrepancies of any note in the reports in the newspapers, so I was able to use that as the basis for what had occurred. So anyway, I wrote this piece which Bernie Teigen and Phil Cummins agreed with, and so we obviously couldn't have a new retrial, but it was open to the Attorney General, Rob Hulls was the attorney, to pardon Ross, and he did so.

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Michael Green: [00:49:13] John, you retire in from the bench, from the Supreme Court in 2008, but you are on the adult parole board for maybe the next four years, I think?

John Coldrey: [00:49:22] I think that's about right, yeah.

Michael Green: [00:49:24] Parole's very controversial at the moment. Well, the popular press keep highlighting events where people on parole re offend, particularly in violent crimes, obviously. Can you tell us how the system works, and are there any changes that you think could be made to improve it?

John Coldrey: [00:49:39] I think the first thing that ought to be said is that parole is essential if people are not going to be released into the community without any supervision at all. It's important that there is supervision. Once they are released, the key factors that I found in not re offending is obtaining employment and obtaining stable housing. If you don't get those, there is a chance that you'll re offend. People released on parole have a parole officer, this was in my time anyway, have a parole officer assigned to them, they go for interviews, they're asked about problems they might be encountering and so on. And they have to come in and also report to the parole board. This again was in my time, I'm not sure what's happening now. It was an interesting time and we sat in panels of three, often I'd sit with Darcy Dugan, who was, you know, the fantastic chief magistrate in his day, and Jim Berg, an amazing Aboriginal leader.

Sometimes if you had an indigenous bloke, youth, Jim would say, now it's time for a little chin chat, he'd call it. And they'd start to tremble a bit and Jim could really read the riot act, often starting with, I know your parents, and I know how they'd feel about your conduct, and you know, he was terribly effective.

Michael Green: [00:51:07] And because there's a culture of great respect for elders, therefore people like Jim, the offender has a natural, not exactly fear of them, but great respect for them.

John Coldrey: [00:51:16] Great respect. Oh yeah, well Jim, still going Jim, but he's a man who commands great respect. So that's the way it's got to work. The workload in my time was enormous, you'd come in and there'd be a pile of folders there. Some you could deal with on the papers, others you'd have called the people in and you'd get a report first from their parole officer. We used to go to the prisons a lot, which was always, I thought, a very worthwhile exercise. In later years, it tended to be all done by video. I think you really need to be there, but that's all changed. It's, as I said, important for the safety of the community that we have parole.

Michael Green: [00:51:56] But in an ideal world there would be a job and housing for people who are on parole, and that must be a great difficulty really.

John Coldrey: [00:52:02] Well it is, and I don't know that people understand crime as, well understandably, they don't understand it as much as they should, because if you look at a so called criminal, you look at somebody who's usually been socially deprived, poorly educated, had a complete, because of those factors perhaps, a lack of opportunity in life, they often experience poverty, and in many cases they've got some sort of mental disability. I think the kind of master criminal is very rare in our community. John, for fifteen years after your time,

Michael Green: [00:52:42] A long time, you chaired the Victorian Institute of Forensic Medicine. Yep. I wasn't aware of its existence, and I've got no idea, or didn't until I read the papers, what it does. So what does it do, and where does it stand in the system?

John Coldrey: [00:52:56] Well, what what happened was that after John Phillips appeared in the Chamberlain trial, and Lindy Chamberlain was convicted, John was

appalled by the standard of scientific and forensic evidence presented to the court, the so called experts from the Northern Territory. Following various episodes, we had the Moorling inquiry, where Judge Trevor Moorling looked into the Chamberlain case, and was highly critical of the so called expert evidence in that case. So what John set out to do, well I think he started probably when he was DPP, to create a totally independent institution that could provide expert evidence to the court in all cases. So John Cain Sr. Was very supportive prime mover, as was Jim Kennan, the attorney at the time. The idea was that they would not only present evidence in terms of pathological evidence, cause of death, but toxicological evidence about drugs, and also evidence about violence when the person's not dead, cause of injury. So that was created and a fellow called Stephen Cordner, Professor Stephen Cordner, became the first director. He was there for about twenty four years. Stephen Cordner, my estimation and not just mine, would be probably the foremost forensic pathologist in the world. It's a big call, but he is excellent.

John Coldrey: [00:54:26] Even when I was a judge and you saw Stephen come through the doors of your court, you thought, well now we've got to get some straight shooting reliable evidence delivered in a way that juries could understand. So that's the organisation I joined. John Phillips, when he retired from the, or no, even before he retired from the court, he was the first chairman. Then he was followed by Marilyn Warren as Chief Justice. Then Marilyn asked me if I would take over from her because of the workload was too much being Chief Justice and on the council. So I was happy to do that, but it is, as I say, an amazing organisation. We have people coming from all over the world to study there really. We can't take too many, but people do come and study. We've set up organisations in Africa and in Asia where we hold conferences and so on, but I found it very rewarding. As to how it fits in with coroners, well the coroners, are, well, they're magistrates who have been assigned a coronial role. They couldn't function without the institute, because the institute provides all the causes of death, the toxicology and so on.

Michael Green: [00:55:45] So all of the scientific evidence that goes before magistrates relating to the death of a person comes from the institute?

John Coldrey: [00:55:52] Yeah. Oh, okay. Yeah. Of course, that enables the coroners to make a finding, and this is closely liaison of course, between the institute and the

coroners. But the other role of course, of the institute is to give evidence in crimes of violence and murders and so on, drug cases. Just for example, we had our chief toxicologist give evidence in the recent mushroom case that everybody knows about.

Michael Green: [00:56:18] It's interesting, I was unaware of its existence, but clearly when you think of that mushroom case, extremely important in the criminal justice system. So we better wrap it up. Don't want to embarrass you, but you've had a long and illustrious career. That goes without saying. But I'm always interested to hear what people like you would say to the young John Coldrick in the 1960s, the law students of today, the young barristers and solicitors of today, looking back over such a career, what would you say to them?

John Coldrey: [00:56:47] Well, I saw that question, Michael. I think the first thing I'd say to law students and young barristers is recognise your luck. The greatest hogwash in my view foisted upon the community is the assertion that all persons are born equal. In the luxury of life, people are not born equal, they inherit different physical and mental capacities. Some people have loving and nurturing parents, others suffer from domestic violence. Some are born into wealth and privilege, others into poverty. So if you're studying law, or you're practising law, you've experienced for a start genetic good fortune. It's not your achievement that you're bright enough to do law, it's your random inheritance. Now always bear that mind, and if you use it to serve the clients that fate throws you away to the best of your skill and ability, then good luck to you, You're doing something worthwhile. If your overriding objective is to make as much money as you possibly can, well then I'd say to you, you'd be better off trying business as a profession. The other thing I'd say is, whatever area of law you undertake, your most valuable attribute, your most valuable position is your integrity. Never ever sacrifice that to the short term achievement of a result for a particular client. So finally, I think I say good luck, you'll be part of an honourable profession with the capacity of achieving great good for the community in which you live. I think it's enough pontificating from me.

Michael Green: [00:58:31] I don't think it's pontificating, John, I think your life and career bear those words out, and therefore I thank you on behalf of everybody for such a rich and enlightening conversation we've had this morning. Thanks very much.

John Coldrey: [00:58:42] Well, thank you, Michael. I hope I haven't rabbited on too much. .