

William and Lonsdale Lives in The Law

Ep 84. Judge Liz Gaynor

Voiceover: [00:00:05] This is William and Lonster, a podcast about the legal ecosystem and the fascinating people who make it tick. Today, your host, Michael Green, speaks with her honor, Judge Liz Gaynor, former judge of the County Court of Victoria. Long before she was appointed to the bench, Liz worked as a duty solicitor with Victoria Legal Aid before coming to the bar in 1985. There, she built an extensive criminal defense practice, appearing in matters ranging from murder and serious assault to sexual offenses, drug trafficking, kidnapping, and fraud. She was appointed to the county court in 2002 where she would go on to spend more than two decades presiding over criminal matters. But despite ultimately finding her place in the courtroom, Liz's first year to resolve the law was uninspiring, to say the least. She was so disheartened by life in a suburban law firm that shortly after being admitted, she walked away from the law to pursue another passion, journalism. It wouldn't become her lifelong career, but she learnt a lot, had a fantastic time, and gathered more than a few great stories along the way. A side note, later in the episode, we'll hear about one of Liz's sentencing addresses that ended up all over the media and went viral on TikTok. If you haven't seen it, I highly recommend you go to the link on our website to get the full picture of her extraordinary mum spray as it has been affectionately named.

Liz Gaynor: [00:01:30] And I always remember I got sent off to cover a news conference with Bette Midler. You know, like it was nothing special, but anyway, she did this news conference, she'd come out here and I remember they handed her a carton of Big M, which had not been out for long and they were very proud of it. She took a big mouthful and spat it. Just went, oh, that's full of toxic chemicals. It was fantastic. Anyway, I came back and wrote a sort of a what I thought was a really cool feature piece of about 48 bars and this fantastic old journal. I said, what do you think of this? And he had a look and he whittled it down to four. It was just fantastic.

Michael Green: [00:02:39] Our guest this morning in Lives in the Law is Her Honour Liz Gaynor, formerly of the County Court of Victoria. Now a reserve judge of the County Court of Victoria. Good morning Liz.

Liz Gaynor: [00:02:50] Good day Michael.

Michael Green: [00:02:51] Liz we'll go back to the start because it's an interesting start. Not many people come from a family of 12 children. Yeah. And particularly being the eldest, so you're the boss of 11 siblings. Was it a legal family? Did you grow up in a legal family, was an expectation that you'd be a lawyer?

Liz Gaynor: [00:03:05] No, no my father was a lawyer but there wasn't a sort of a history of law in my family. I think he was the first member of his family to become a lawyer so it wasn't a sort of legal dynasty if that's what you like, yeah.

Michael Green: [00:03:20] And what about siblings? Do any of your siblings done law like you?

Liz Gaynor: [00:03:22] I've got one brother who did law but he didn't really practised.

Michael Green: [00:03:26] Okay, so but you had the influence of your dad in the background there somewhere.

Liz Gaynor: [00:03:30] Yeah, not that much.

Michael Green: [00:03:32] You get through school, you go to university. It seemed to me on reading the notes that both school and university were more a social occasion for you than an educational occasion. Absolutely.

Liz Gaynor: [00:03:43] My parents were extremely strict, extremely Catholic. There were 12 kids in sixteen years and it was a very, and both of them were martinettes.

Michael Green: [00:03:53] We should say there and your mother's still alive in her nineties.

Liz Gaynor: [00:03:56] Yeah, she's still alive. But they were both pretty much martinettes and you're expected to, life very much about helping and how enormous amounts of housework and helping and a great deal of strictness. So I got a scholarship to college and moved out of home when I was 17 and I'd really not allowed out much and so it kind of went to my head.

Michael Green: [00:04:23] And going to your head means that you didn't have a smooth journey through university, there were a few bumps on the way.

Liz Gaynor: [00:04:29] Oh yeah, no, failed a few times. I remember I ended up in front of the unsatisfactory progress board where they asked me if I'd ever consider an alternative career. I failed contract twice. I think I failed equity and I failed trusts. Yeah, it was I did not cover myself with glory. I did get an honor once but that was almost I didn't realise I'd got one. I just assumed because you had three separate groups of numbers and I always went to the group of numbers with the parts and I remember standing trembling in the nut because I think it was a year after I'd failed three subjects or something and looking for my number thinking three seventy four, 377 and I was 375. So it went 374, 376. I thought, no, I failed again. I'm gonna have to tell someone. I'm a little dad. Anyway, got an honor at third class. It didn't even occurred to me to look.

Michael Green: [00:05:31] You and I got a lot in common, Liz. You just brought back memories to me there. I got one third class honor in my first year. Yeah. And like you're looking up on those notice boards at the old law school at Melbourne, my number wasn't there. Yeah. And my heart sank. Sank. And then I looked up higher. I was in the third class honor, so it never happened again.

Liz Gaynor: [00:05:51] Well, at least you looked. I just sort of, oh, well, and turned sadly away. So yep.

Michael Green: [00:05:56] Now your dad's got a he's a partner in a firm here in the city, Renick and Gaynor. Yeah. And you do your articles there in 1979? Yeah. Did you enjoy articles?

Liz Gaynor: [00:06:05] No, I didn't.

Michael Green: [00:06:07] Why not?

Liz Gaynor: [00:06:07] Well those were the days when you, and I mean it was partly my fault, I never even thought about what area of law I wanted to practise in. And in those days you know, you just finished law and scrambled around and hoped you'd get articles basically. So I ended up at the Cambroil branch doing probate and conveyancing which were not areas of law that I found stimulating or enjoyable.

Michael Green: [00:06:29] But you got through your articles.

Liz Gaynor: [00:06:31] Yeah I did, I did, yep.

Michael Green: [00:06:32] Admitted in 1980. Yeah. But then you do something interesting that I found very interesting. You step away from the law for a year or two?

Liz Gaynor: [00:06:42] Three years.

Michael Green: [00:06:42] Three years? Yeah. What did you step away to do?

Liz Gaynor: [00:06:45] Well, I just, thought my career in the law was over, that the only thing I was ever going to be was a conveyancer or a probate and I just thought I'm just not doing this. And so I'd always kind of liked the idea of journalism. I had never put it down. Again, I think I would have been very discouraged. That would have been seen as a kind of seedy, unreliable career path to follow. But in those days you could get what was called a graduate cadetship. So I wrote away to the various news organisations and I got a graduate cadetship with Australian Associated Press and I worked there for three years.

Michael Green: [00:07:26] Now Australian Associated Press, it didn't publish a newspaper?

Liz Gaynor: [00:07:30] No, it's a wire service. It's called AAP. When you see a lot of articles today, know, contribution from AAP. So it's a bit like an Australian version of Reuters, know, the various news services, media outlets subscribed to it and so that's what it was.

Michael Green: [00:07:46] And so what did you do? Mean, they say to you go to the court and be a court reporter or?

Liz Gaynor: [00:07:51] Yeah, was great. I went everywhere. I used to do police rounds and state rounds and industrial rounds and it was fantastic. Really, really enjoyed it. Did someone, I mean journals

Michael Green: [00:08:02] Have got a particular way to write. Remember a journalist once telling me that you've got to get everything in the first three paragraphs.

Liz Gaynor: [00:08:07] That's right.

Michael Green: [00:08:07] And then you'll hold them.

Liz Gaynor: [00:08:08] The first three parts or you're done.

Michael Green: [00:08:10] Did someone teach you all that?

Liz Gaynor: [00:08:11] It was sort of on the job really because you sent your story away and it would be edited. So there are sub editors. So they grow through your story and you sort of learn from what sub editors do to your story. The great thing about where I worked, there were just all these great old journos they'd gone through. They'd left school, they'd been copy boys and they'd worked their way up and they were the most fantastic, wonderful personalities. And I'd sort of grown up in a fairly conservative suburb and I'd gone to a very conservative school and this was just like heaven on a stick. I just loved these and they were so good to me. But I got to go everywhere and they had, I mean they had offices all around Australia but I used to get sent up to Canberra when parliament was sitting because it was sort of like a tag team, they'd have question time and you'd go in and you'd take a question and an answer and then you'd go out the back and turn it into a story.

Michael Green: [00:09:09] Someone else would be in parliament.

Liz Gaynor: [00:09:11] And they'd take

Michael Green: [00:09:11] To While you see would do, yeah.

Liz Gaynor: [00:09:12] Yeah, it was practically a tag team. And you did radio stories as well. So you'd have to ring up and you'd do your radio story which was present tense and you'd phone it through to the copy girls, they type that and they type it. Then you come back to the office and you do the news story. And the news story is in past tense. I really enjoyed it.

Michael Green: [00:09:33] And worked overseas as well?

Liz Gaynor: [00:09:35] Oh, I did. Not because I not because I was sent there, I just decided, you know, I was in my late twenties I was going to go overseas. So yeah, I very kind, I got a job in the London office for a little while and I basically went travelling and backpacking as well. And I got a job at a newspaper in Nottingham and I worked there for a while.

Michael Green: [00:09:54] And at the end of that period you wanted to get a job with The Age you applied to and you got an offer from The Age.

Liz Gaynor: [00:10:00] No I didn't get an offer from The Age. The Age was sort of like the paper to write for. And I used to do shorthand classes and Age and their early Age cadets as well as so jealous of them because AAP was not high on the

Michael Green: [00:10:19] Of It was a poor relation, was it?

Liz Gaynor: [00:10:21] It was a bit of a poor relation but in fact it wasn't. It was a poor relation in that it was a wire service. Yeah, I think it was rather looked down on and yeah, I had sort of visions of myself writing long interesting articles

Michael Green: [00:10:39] Pinion pieces for the age.

Liz Gaynor: [00:10:41] That I thought and all that sort of stuff. Anyway, no, I wasn't offered a job. I wrote away to the agent and said, would you be interested? And they said, yeah, yeah, we would. And I don't know whether I got scared or it was a bit of a pivotal moment. I think I suddenly realised that And I'd started feeling not quite comfortable with what I was doing, not because of anything that was wrong. I mean, I really loved it. I don't know that I had quite the the sort of internal fortitude to be a journalist. I've I've always had a sort of rather ingratiating way of approaching, and that's not what you meant to I couldn't really see myself as a fearless reporter. And there was something about and this is not meant as an insult to journalists at all. There was something about watching what other people did and coming in. And that's not, of course, accurate because when you're a journalist, you are doing something. But I kind of wanted, I just had this uneasy feeling that it wasn't going to quite be for me.

Michael Green: [00:11:40] And therefore did you happily, willingly come back to the law or was it really your only option?

Liz Gaynor: [00:11:46] No, I started really thinking about you go through this no man's land period. Like in my twenties, I changed jobs quite a lot of times and that wasn't a comfortable experience because people got their articles, they got a million files. It was like that was their lives from arrow to the end of the globe. I kept shifting and moving and a friend of mine who's a change management expert once said to me, when people are about change, it's like the forty years in the desert. You go through this period where you're not quite sure what's coming next but you know there's change sort of coming. So I really, really had a thug and then luckily a job, I just started thinking Lorigan and my heart sank and then someone suggested, well, no, I know what it was. I was gonna go to the bar, I decided, which is a bit of a rash jump but in those days lots of people did that. They'd finish their articles and go to the bar. And then luckily, I don't know how it came to my attention, there was a job to be a duty solicitor at Legal Aid and I was hoping I could change it, I at least sort of as a barrister I could try and break into areas of law that interested me. Not that I really knew what they were, but then this job came up for Legal Aid and I applied and I got it.

Michael Green: [00:13:03] You say, in the notes here you said that the first time you appeared in court was a revelation. Yeah. You'd come home.

Liz Gaynor: [00:13:09] Yes. I think a lot of people who love advocacy feel that way.

Michael Green: [00:13:14] Yeah. I was sort of surprised that with a legal background in your father's firm and doing your articles etcetera, that you hadn't thought about the bar back then.

Liz Gaynor: [00:13:22] My father was a man with strong opinions and he actually died young. So he died about three months before I saw the article, very articles, very suddenly. But used to talk a little bit about being embarrassed. It was not a good option. It wasn't secure. You didn't do this. Didn't That was one of those things. I was rather You you were one of these men who you'd sit at the dinner table and you would hear his thoughts and that was one of them. So I never thought of it.

Michael Green: [00:13:53] Okay. So you have two years at VLA?

Liz Gaynor: [00:13:56] No, one year.

Michael Green: [00:13:57] One year was it? Yeah. Okay, so what sort of work did you do at VLA?

Liz Gaynor: [00:14:01] It Straight a away. I got sent Appearance work? Yeah, appearance work immediately. And I think that's what it meant about the coming home. Just loved appearing in court. And I also, and strangely, I loved the people that I represented. I just enjoyed the people I represented so much. Not everyone, there's been some shockers over the years. But no, I just love the courtroom, I love the coming, the going. I was sent out to Prayer and Magistrates Court which is now closed. And I was sent out with another barrister, Steve Russell, he and I had our start there. Yeah, so Steve and I were the newbies on the block and we'd go out every day and go to the Prime Magistrate Court. And then once a week, you'd go to Pentridge, you'd go to Fairley, you'd go Wynn Layton, you'd go to Tirana and you'd go to what was the place that started with A? It was where wards of state who were younger than 10 were held, I've forgotten. But you went to all of those places to interview, to see who needed legal aid, that sort of thing.

Michael Green: [00:15:06] But on a daily basis out at Paran, all those four days of the week at Paran, I'm assuming you didn't have the luxury of sitting with a client like we're sitting here now No. Taking It was all on the run.

Liz Gaynor: [00:15:17] It was absolutely on the run. Look, just somehow it suited me. I think I was just luck or I don't know what it was, but it suited me. I don't wanna say unconceited, but I just had a knack because I found everyone so interesting. But I just had a knack for picking up what a person, what was going on with someone. And of course, you're just doing it over and over. You were doing multiple appearances a day.

Michael Green: [00:15:38] And these are please, not contests.

Liz Gaynor: [00:15:40] Oh no, please, yeah. No, and you go in the cells on the Monday and of course those are the days where all the drug scene was down at St Kilda and it was all heroin. So Piran Court, these are Piran cells that was attached to the Piran Police Station were just full of all these all these drug users that had been picked up and they're all screaming, get me out of Don't do cold turkey. You you ring out Maria. You

know, she loves me, so you ring out Maria. And he's like, you know, your your nephew says that you you will go Sheriff. No. Last time he come out, he's still in my wedding ring and my VCR. I am done. And then he go back to the cells and he'd say, aunt Marie, why have a bar have you been you know? And they'd say, oh, she's a beautiful woman. They go back and she won't have a bar. And they go, she's an old city. It was completely different. So yeah,

Michael Green: [00:16:32] It was So you but I mean, really, you were just thrown in the deep end then you either swam or you drowned. Yeah,

Liz Gaynor: [00:16:37] That's right.

Michael Green: [00:16:38] And you learned to swim very quickly.

Liz Gaynor: [00:16:39] Yeah, I don't know, quickly. I mean, I'm sure I made some shocking mistakes, but I loved it. Yeah, I just loved it and it was just, it was so full of life. It's just people everywhere and you had these various magistrates, there were courts of doom where certain magistrates sat. Fantastic The chief magistrate out there was this incredibly kind man, Jack Maloney, everyone loved him. And we went in the cells one day and there's this big buzz in the cell. So what's going on? He said, one of my colonies said, someone's dead. I said, what do you mean? He some idiot burned Jack Maloney's house. And then we can't think the holes that killed him was gonna find this blood. Anyway, Jack was fantastic. He was just a very good kind man. He was just beautiful and very kind, you know. He knew you were new and he was just beautiful.

Michael Green: [00:17:31] Yeah. So you did this for twelve months. Yep. Loved every minute of

Liz Gaynor: [00:17:35] It, almost

Michael Green: [00:17:35] I did close love it. Yeah. And then you come to the bar.

Liz Gaynor: [00:17:39] Look, I would have stayed longer at Legal Aid. I really, really loved it. But in those days, it was pretty rough and ready and the pay was really low and there wasn't much of a career path forward except into management. So I sort of felt sort of bad but I'd worked really hard for them. My last day there, I did 14 appearances. I

mean, there's a couple of Germans thrown in there too. And I also had a stint down at the children's court which was the old coroner's court in Batman Avenue and that was fantastic too. I loved that. That was really but that's tough work.

Michael Green: [00:18:14] So coming to the bar, were you did you come in the time of the Reader's course?

Liz Gaynor: [00:18:20] Yeah.

Michael Green: [00:18:20] The Reader's course had started.

Liz Gaynor: [00:18:21] But it didn't cost what it costs now and there was no exam. So I could not have gone to the bar on today, I could not have afforded it. My father had died, there were still six children at school when he died. I was earning not very much money. I managed to save up. Going to a bar is expensive, it's not just the Reader's Course, you've got to fund yourself for that first year or so while you're establishing yourself. So I've got real concerns about I'm very, very pleased that they changed the exam around the Reader's Course but it's still an extremely expensive exercise and that's very tough for people applying these days, paying off HECS fees. Absolutely, yeah. And how do you buy a house and all that sort of thing, particularly in crime. Yeah, so I may not, if conditions were as they are today, I may not have gone to the barrack. I think I could have afforded it, couldn't have done it.

Michael Green: [00:19:13] It's an interesting point you raise, something we maybe should explore further, but not this morning.

Liz Gaynor: [00:19:18] I'd like

Michael Green: [00:19:18] To comment, when I say like, I found it interesting and I'd like to know more about it. That the best way to learn advocacy is by going to court, observing, making your mistakes. Listening to lectures, etcetera, is not even a second best way of No, learning to be an

Liz Gaynor: [00:19:33] No it's not. Because nothing replicates the experience of actually doing it. And you are gonna make enormous mistakes. And once you are standing on your feet, you have to bring out or develop skills that they're crucial, they're

your toolkit. And you don't get them from, I'm not saying there's anything wrong with lectures or listening to things or theory, but appearing in court, nothing replicates it and watching people appear in court. But just the emotional experience that the sort of body feel of standing up in court, the learning to develop that sort of vast array of antennae that you need when you are an advocate, you're watching a judge, you're watching a witness, you're watching a jury, all those sorts of things that comes from doing. It's really no different to expecting an apprentice bricklayer to learn by lectures. He's not gonna learn how to be a bricklayer until he's actually laying bricks and doing it and being told what he's doing wrong and doing it over and over and over. It requires unlearning.

Michael Green: [00:20:42] Elizabeth, it's interesting what you have told us about learning advocacy and then previously your time at the VLA, particularly at Perran Magistrates Court. You've also said in the notes here that the Magistrates Court is the toughest venue.

Liz Gaynor: [00:20:56] Oh absolutely.

Michael Green: [00:20:57] Why is that?

Liz Gaynor: [00:20:58] Well, first of all there's a pressure of time. You have got just dozens and dozens and dozens of cases. So you cannot belabour a magistrate. They have got very, very full days. So you're not gonna get up there and do a beautiful drawing. So you've gotta be succinct. But you've also, I don't know what it's quite like now but in my day, you used to have the old records of interview typed up by police and they could be admitted whether they were signed or unsigned. So you spend an awful lot of time cross examining police, you're also face to face with police. So, and it still happens, you go in and you've got a client and they've got a sandwich with the lot which means that they've been charged with every single version of a particular charge and you've got to go in and negotiate it out. And you'll often get quite hostile police and in my day they were incredibly sexist and quite menacing and pretty demeaning. You then go into a magistrate who may be exhausted or jaded. It's like they're sitting up behind a bench and having cases thrown at them.

Liz Gaynor: [00:22:07] Just throwing at them, throwing at them, throwing at them. And people respond to that in varying ways. I talked about gorgeous Jack Maloney who was such a beautiful comment. A lot of magistrates, they get angry and they're over born or

impatient and they won't hesitate to let you know. So that's what you're facing, the pressure of time. Your case may not be particularly special and someone who's keen to get on has only got so long to spend on your case. So you really, in a way you have to be extremely thoughtful as well when you go to the magistrate school. If you're gonna make your mark and you're one of many and you've got a client who's not done anything particularly different, you've really gotta have to think about, what am I gonna do to make this bloke, because it's nearly always blokes, my client special here and get the attention that they need. So yeah, it's really tough. You are fighting for your place in the career. It's a bit of a bare pit.

Michael Green: [00:23:00] My recollection from back then and even a bit earlier than that was with all those pressures, nine times out of 10 or maybe 99 out of 100, magistrates got it right.

Liz Gaynor: [00:23:11] I wouldn't necessarily agree with that.

Michael Green: [00:23:13] Well you know more than me, that's all I'm asking.

Liz Gaynor: [00:23:14] No, wouldn't. And you know, it's decades since I was in the magistrate, no they didn't. Running a contest in the magistrate's court was an almost impossible exercise and they didn't get it right. And they were both judge and jury. And look, just depended on the magistrate as well but no, I think they were often really

Michael Green: [00:23:34] Very pro police.

Liz Gaynor: [00:23:35] Very pro police. And the thing was because in my day too, lot of them had been former clerks of court and the police stations were attached to the courthouses so they socialised together a lot. But also I think, I know from my own experience of having been a judge, you do shift once you are sitting on that bench and it's up to you. But no, they were very, very pro police and particularly in the country where they knew people and they developed a bit of a fiefdom and that sort of thing. It was it was a really tough, tough atmosphere.

Michael Green: [00:24:06] When you came to the bar, when you first leave VLA and come to the bar, did it take your time to establish a practice? Did you have a time because as you've said, the expense of going to the bus, sitting out for practice is

significant. Did you have a time when you were worried about, you know, can I make a go of this because I'm not writing enough fees?

Liz Gaynor: [00:24:25] No, I was lucky. I saved enough to live on for a year. Well I thought it's amazing. I just lived on a smell of an oily rag

Michael Green: [00:24:35] For years. Vegemite sandwiches.

Liz Gaynor: [00:24:37] I did virtually Vegemite sandwich. I remember I'd give myself \$10 a week for petrol, that sort of thing. But I managed to save \$10,000 and that was gonna carry me through for a year. But because I had been at legal aid, they were so good to me. They briefed me right from the start. And in those days, it wasn't that common. Legal aid was not seen as a desirable workplace by people in the law. Again, it was kind of like the AAP of the legal world, but they were so good to me. So I got a steady trickle of work right from the start. I was forever grateful to Legal Aid for that.

Michael Green: [00:25:12] Now this is forty years ago roughly?

Liz Gaynor: [00:25:14] Yeah, I went to the bar in 1985.

Michael Green: [00:25:17] So forty years ago, it was a very different world.

Liz Gaynor: [00:25:20] Yes it was.

Michael Green: [00:25:21] Were there many other women barristers?

Liz Gaynor: [00:25:24] No, I certainly wouldn't say I was frontline but I was probably not far behind. No, there weren't many women barristers and I was very used to being the only woman in the room.

Michael Green: [00:25:35] And then on the bench, no women on the bench or very few?

Liz Gaynor: [00:25:38] I think there were one or two, I think Jane, just trying to, no, I don't think there were. I still remember Sully Brown and Margie Riscali, the first women I was around when they were the first ones appointed. So it was around that time, no,

very few. And seriously, you would walk into a courtroom, particularly in the county court and there was evident consternation in the air that a woman was appearing. This was gonna be tricky.

Michael Green: [00:26:05] That's pretty challenging. How did you deal with it?

Liz Gaynor: [00:26:08] I grew up in a time when women had to negotiate that in their lives all the time. There were all these assumptions about not as competent, not as good at. Women who wanted to step out of traditional molds were an issue, were a problem. So anything you virtually wanted to do that was outside the norm, there was Well, it ranged from that's ridiculous to, are you sure? Oh, that's a bit worrying. Have you thought about this? Have you thought about that? There really was a belief that I think that women were emotionally and intellectually not cut out for certain things or not up to certain things and no hesitation in telling you that. And of course I grew up Catholic and the Catholic church was very keen to make sure that women understood that as well. So I was very used to negotiating and that's not to say I didn't find it difficult, but I think part of me almost accepted that that's the way I was going to be seen and probably, and I think many women of my generation were the same, kind of accepted it and believed they had to work harder because they weren't quite as capable as the men because that was the brainwashing of the time.

Michael Green: [00:27:20] Tell me if I'm wrong, but I would have thought being the eldest of 12 children may have helped you as well. There may have been a degree of toughness that other people didn't have.

Liz Gaynor: [00:27:28] No, I don't think that's right. I think no, because the regime at my, it was not a rough and tumble household, all right? It was a highly structured, highly disciplined household that I grew up in. It wasn't that sort of scrapping it out. You know, learned how to fight in the backyard with me, brother Tommy. It was not that sort of play. It was more that I was really used to negotiating and navigating my way through disapproving strict regimes. That's what stood me in a good stead. And I was used to sounds terrible. I had an instant knack for pleading because I was a really good gruff. It was sort of like, Elizabeth, your report card has arrived and down to well, dad, there it you know, love because I grew up in such a strict regime, I was really good at talking my way out of things and working at and getting around stuff and when to bend and

sway, that's what it trained me for. And a lot of the magistrates and judges that I appeared in front of were very strict. Expected you to jump and I knew how to do all that. I knew how to jump through hoops. That probably sounds terrible but anyway that's what I was good at.

Michael Green: [00:28:49] Well another thing that you were good at but you said initially you weren't and found very difficult was cross examination.

Liz Gaynor: [00:28:56] Yes.

Michael Green: [00:28:57] Which I found really, again interesting to think gee, a successful barrister and a judge found cross examination difficult?

Liz Gaynor: [00:29:03] The concept of it is it's a real knack and it's a real skill. And I mean, examination, successful cross examination is not about getting up and overawing the witness with your amazing personality so that they confessed that they in fact committed the murder. You are in a conflict situation when you are cross examining and charging in boots and all. And it was very much the fashion when I started. The hot shots at the criminal bar were big, macho, colorful men who did precisely that. But they also knew about the fatal one question too many where everything you've built up gets wrecked. It's quite a delicate operation. You have to go into a cross examination, know exactly what you want and tying the witness to that. And tying the witness isn't brow beating them, it's about putting things in a way so that they're agreeing to concepts that you need for your final address basically. So you can see it when you're doing workshops, which I've done many of. The immediate way people go about during cross examination is that they'll put something and then they'll get an answer and then they'll start arguing with the witness. And that's just the natural way it works and that is not the way you do cross examination.

Liz Gaynor: [00:30:20] The thing that helped me, it finally fell into place. It's more about the concept became clear. Never ask a question starting with how, what, when, where or why. For some reason, someone said that to me and thought, Oh, that's how it works, right, now I get how it works. It was just that I didn't quite understand it. I understood pleading, I always understood how to do a plea but how to do cross examination, that sort of intellectual concept, that did it. Once I knew that, it all fell into place and for me it was quite a delicate picking exercise. That was just my style. And my style in a trial was

always, and I used to say this to clients, I'm not gonna go and savage this bloke's throat, all right? I need this, this and this. And so the idea is you you work out very precisely what you need, you get the witness out, and then it was always the big final address once it once everyone had gone home and no one could say anything to you. Could come back at you. Yeah.

Michael Green: [00:31:16] And and that succeeded for you?

Liz Gaynor: [00:31:18] It did.

Michael Green: [00:31:19] So you come to the bar, the VLA support you?

Liz Gaynor: [00:31:22] Yeah, they were great, they were great.

Michael Green: [00:31:24] How soon were you doing trials, moving from the Magistrates Court to the County Court?

Liz Gaynor: [00:31:29] Took me a little bit longer because I was a woman. I still think women take longer to move up from summary to indictable. I'd say I got my first trial after a couple of years, yeah.

Michael Green: [00:31:40] That's still pretty quickly.

Liz Gaynor: [00:31:43] Yes, yeah, yeah, it was, it was, yeah. I think people moved to trials more quickly than I did for sure.

Michael Green: [00:31:51] And you enjoyed the work?

Liz Gaynor: [00:31:53] I found it terrifying at first, I love final addresses but I found trials absolutely terrifying. And also I didn't junior people, you just went straight in and did trials, you were on your own. Yeah, it was absolutely terrifying.

Michael Green: [00:32:08] So you didn't junior people, you hadn't sat there at the bar table watching a silk run a trial.

Liz Gaynor: [00:32:15] Never.

Michael Green: [00:32:15] When you had time spare time did you go across to court and sit in and watch trials?

Liz Gaynor: [00:32:20] I did. I watched a lot of trials. I also had fantastic open door system at the bar, I just used senior barristers or people in my chambers. I had a really good readers group, really close readers group. We all leaned on each other incredibly heavily. During those first few years, you'd run concepts by I was incredibly fortunate, my great mate Julie Sutherland and I were at the readers course together, we just leaned on each other all the time, we ran things past each other all the time. We just talked about it, talked about it, process, process, process, process, you know, those sorts of things.

Michael Green: [00:32:53] And so the collegiality of the bar which the bar prides itself on

Liz Gaynor: [00:32:57] It's fantastic.

Michael Green: [00:32:58] Yeah. It's a real thing.

Liz Gaynor: [00:33:00] It's a real thing. It's a very real thing. And it's a very important concrete part of a person's progress through the ranks and in shaping your capacity as a barrister. The conversation out of court is incredibly important. The running concept by discussing what you're doing, those sorts of things. I always say, you know, for every hour in court there's three or four hours of preparation outside and part of that preparation is talking about running it past other colleagues, yep.

Michael Green: [00:33:28] And I also read in the notes that you deliberately chose chambers with people who you could have those collegial

Liz Gaynor: [00:33:34] Experiences Absolutely. Number one, mean it makes for a much better workplace. You come into work every day and you've got friends and mates there and I had great, really great chambers. I was in the old Equity Building and I loved that and that was full of criminal barristers. It served a double purpose in terms of companionship and comradeship, those sort of things. But also you absolutely have to have people you can run things past.

Michael Green: [00:34:01] Yeah. Otherwise it's a very solitary life as a barrister.

Liz Gaynor: [00:34:04] It is a solitary life and it's probably not as successful a life. Need that input, you need that discussion,

Michael Green: [00:34:10] Yeah. Vicarious trauma, you said you don't think you've suffered from it.

Liz Gaynor: [00:34:15] No, amazingly not. Amazingly, I'm not sure why. I'm really not sure why. Mind you, I don't think human sensibilities, the way we were brought up, I look back at when we were little kids, when I was a little child in the Catholic books of the martyrs, the stories about how various saints died and

Michael Green: [00:34:36] Thought you wanted to be a martyr?

Liz Gaynor: [00:34:38] You thought, no, I didn't really. I'd rather someone else. I was very grateful to the martyrs but no, I didn't want to be one. But the sort of children exposed to a lot more, in a funny way protected, but brutality was much more on the table. I don't know what it But that sounds a bit too simplistic. I'm not sure what it was but no. But you went to school, kids got hit. You were used to physical punishment yourself. You were used to a lot of criticism. You were used to being in trouble all the time and that there's something wrong with you because you're a child and you have to be straight. There was something about that. So I think it's probably harder for younger people today who brought up with a great deal of it and I think it's admirable, sensibility about what children are capable of emotionally taking in this sort of this. We were kind of hardened I think to some extent.

Michael Green: [00:35:33] Interestingly you were because by the mid nineties, according to my notes, you were often briefed to defend men accused of sex crimes, Yeah. Was that difficult?

Liz Gaynor: [00:35:42] No, it wasn't. I'm fortunate that I didn't come through at a time where pedophilic offences were as prolific as they are now. I didn't do a lot of that work and for some reason as well, I seem to get a lot of stupid young men in their late teens, early 20s, and I'm in no way excusing their behaviour, but drugs, nightclub were not a big they play such a big part in terms of the adult sexual offending that goes on now and

the world wasn't as sexualised either. So I just had a lot of these stupid young blokes who, and I'm not excusing it at all, unless you held up a neon sign saying no, there was an assumption that a girl was saying yes. And so there was an amount of immaturity there that somehow made it more palatable. Also, to be perfectly honest looking back, I think proper knowledge of how damaging sexual assault is was not fully understood, it was still emerging in those days. In some ways that may have been protective to me as well. I did have one or two, I remember having one or two cases where I just sort of thought, I do not wanna do this. But yeah, I don't know how I'd go today I must say.

Michael Green: [00:37:09] And so going back to your cross examination where you said you keep it very simple and you don't ask those four or five questions of who and how and what.

Liz Gaynor: [00:37:16] No, I was a really short cross examiner.

Michael Green: [00:37:19] The same thing in sex trials,

Liz Gaynor: [00:37:21] You Absolutely.

Michael Green: [00:37:22] Would you, as a woman, and you, think did you say Julie Sullivan was doing a lot of them as well? Yep. Did you attack, well that's not really the right word, your case is different than a male barrister might attack?

Liz Gaynor: [00:37:32] Very much so. It was de rigueur in those days. This big impressive, dominating barrister would keep a complainant in the witness box for two or three days. And it was a horrible way of doing things, but it either worked or it failed spectacularly. Either the complainant just got to the point where basically bugged you mate and would firm up or they'd completely collapse and that's really unfair. I must say I never felt comfortable cross examining children. I never enjoyed that exercise. It just never felt right to me that that's the way you go about it, that it needed to be much quicker. It never felt right to me to belabor and go over and over and over. The job was, my job was to show that the prosecution had not proved its case beyond reasonable doubt. That was all I was there for. That was a case of humiliating, dragging it out, that sort of thing. And I didn't think it worked either. I just thought that, just never liked that approach, I never thought that worked. And so my way of dealing with a complainant in a sexual assault was to work out exactly what was wrong with the case. Usually based

on her statement going through and just making that point, dealing with them fairly quickly, getting them out and then deconstructing it in a final address when they weren't around. I'm probably not explaining it very well but that business of keeping a complainant or a child in the witness box and just belabouring and hacking at them, I didn't like it personally and from a professional point of view I didn't think it worked.

Michael Green: [00:39:11] And then the rules around those cases now are different maybe?

Liz Gaynor: [00:39:15] Oh, it's much harder to defend sexual assaults these days, far harder than in my day.

Michael Green: [00:39:20] The rules provide more protection possibly for the complainant? Absolutely, yep. And rightly so?

Liz Gaynor: [00:39:26] I think so, yeah. I think it's evened up. I get a little bit, look, this is probably very controversial. By the end of my time at the bar and I did quite a lot of that work and I think Julie and I were probably the first two women to get a lot of work in this area. We were just, but I worry about the adversary system and sexual offending. I don't know if it is capable of properly containing both the rights and needs of a complainant and the rights and the needs of an accused. I just think it's too blunt an instrument and I'd formed that opinion by the late nineties. I just I don't think it yeah. I think there are problems with it.

Michael Green: [00:40:10] Have you thought of solutions to the problem? Not in The serial system is all we've had for the last

Liz Gaynor: [00:40:16] Oh, yeah. I don't have a situate. Look, not that I know a great deal about I think it should be more inquisitorial, more investigative. I definitely think there are aspects around psychological aspects, expert evidence aspect that should be brought into these cases. But I also, and this is probably controversial too, I think the way we deal with sexual offending in sentencing is far too blunt an instrument as well. There are plenty of other ways of going about it. It's very rarely a happy outcome. You've got someone who's undergone, they are saying, a sexual, sexual and that's serious. And they either go away feeling that they haven't been believed or you've got someone very, very often, you'll have say a young person with no prize who's saying, I

thought it was okay. And they might, I'm not and this is not the usual person that ends up in court on a secular affinity but there are people who do and they're looking at six or the four if they go down. It's terribly serious for everyone and I'm probably explaining it really badly. Our system does not cover all the myriad serious issues that arise in a scenario like this. And we've done a great deal to change the system and it's just 200% better than it was when I was practising. But it's still not okay. It's still not okay in my view. And that a complainant that someone who's been sexually assaulted should feel that they've been assaulted again through the court process is obscene. It is obscene, and there's got to be a better way of doing it.

Voiceover: [00:42:10] William and Lonsdale is brought to you by Greenslist, one of the leading multidisciplinary barristers lists in Australia. Greenslist believe in promoting conversation around ideas and issues that shape not only our legal system, but our wider community.

Michael Green: [00:42:30] Liz, I'd like to go backwards actually to your early days at the bar. Yep. Prior to you doing trials. You did a lot of work in the children's court.

Liz Gaynor: [00:42:39] I did, I did.

Michael Green: [00:42:40] And I must say, I hear the word children or the words children's court and I think all children committed a crime and they've got their own particular court. But in reading the notes, really it seems to me that a lot of the work in the Children's Court is more about what used to be called custody of children and things like that.

Liz Gaynor: [00:42:55] Yeah, there's two divisions in the Children's Court. There's the criminal division and the family division. So the criminal division is precisely what it says, it's dealing with children who have committed criminal offences. The family division is around making used to be called wards of state, removing children or building in orders to dysfunctional families or seem to be dysfunctional, yep.

Michael Green: [00:43:21] Did you work in both divisions?

Liz Gaynor: [00:43:23] I did, I did a lot of work in both.

Michael Green: [00:43:24] Is there an equal amount of work in both divisions?

Liz Gaynor: [00:43:26] Yeah, and the family division is one of the most difficult areas I've ever worked in. I just, I was always acting for the beleaguered parents.

Michael Green: [00:43:38] And they had a government department

Liz Gaynor: [00:43:40] It's

Michael Green: [00:43:40] Seeking to take

Liz Gaynor: [00:43:41] Care of child when child protection comes in. And I just found that work incredibly hard. The first thing I'd like to say is this work, it's so undervalued and so underappreciated. It's one of the lowest paid areas of work that you can get as a barrister and it's the ramifications and the consequences for the people you are acting for are more profound than anywhere else that I have ever worked in. You get families split up and we do not provide a great alternative to families. And what I found horrifying when I was working in that jurisdiction is the lack of appreciation of what it means to a child to be removed from a family. And this fabric that you tear that can never, never be mended, where you send a child and what happens to a child once they are removed from that family. In those, they're quite brutal sometimes too. You would have a child made a ward of state. The aim ostensibly was reunification but then after a period of time it would be decided the child was gonna be in permanent care, They were never going to be returned. And the parents could see them four times a year or something. It was just, I was horrified by it. These days, I think the system has changed a little bit in that where you've got case conferences, things like that, parents actually have representation. But it was almost had a star chamber quality to it in terms of what happened once a child was removed. And I have seen just over and over and over again, I saw it when I was appearing for people, I've seen it as a judge part of the back made award of state. We

Michael Green: [00:45:24] As don't though that's the solution to the problem.

Liz Gaynor: [00:45:26] No, it's almost like it's a prior. Start off, you're a water state, your life is haywire from there. We do not seem to have a system. We do the same in my view with sentencing. We do not build in the supports that people need. You've got

generational trauma, like you've got poverty and you've got lack of education and you've got trauma in parents themselves at that generational trauma and it just goes on and on and on. We do not put things in place that write that. And this played out in family division of the children's court. And where you just simply don't have those supports that people need to successfully love each other and be with each other and have that family unit that everyone wants. People's lives get ripped apart in that jurisdiction.

Michael Green: [00:46:15] In that jurisdiction, in that context, who was Rosemary Crosley who you came across?

Liz Gaynor: [00:46:21] Oh, that wasn't in the Children's Court.

Michael Green: [00:46:22] Oh, wasn't it?

Liz Gaynor: [00:46:23] No, that was in the Guardianship Board. Was, what happened was that that was a case where my experiences in the children's court were incredibly useful. I was a barrister. So Rosemary Crosley was a very, she was a very famous disability activist and she worked for the Spastic Society and she developed a system called Facilitated Communication whereby a cognitively impaired adult who might even be non verbal suddenly was able to communicate by means of a keyboard where they sat with their wrist being held by what was called a facilitator. And they would type things out and suddenly lo and behold, you have the discovery that this person who to all intents and purposes was incommunicative and couldn't speak and couldn't communicate on any level discovered to have an innate intelligence that simply wasn't able to physically express itself except through this means devised by her and it became very successful and used throughout adult training centres all throughout Victoria. It went on for years. Anyway, all this

Michael Green: [00:47:36] Sounds dodgy to me when someone's holding the person's hand.

Liz Gaynor: [00:47:39] Well it was, it was extremely, she in fact very famously, there's a book called Annie's Coming Out where her claim was that this very disabled young woman who was at a place called St Nicholas' was in fact fully mentally able and she won custody of that young woman. In any event, what happened was that at a training centre, all of a sudden the young women at this daily training centre started complaining

via these facilitators that they were the subject of sexual abuse by their families. There were about three of them. And I got to act for the family of one of them. And this case turned into a trial of the whole system. So there were all these trials held where the facilitator would work with the, in this case, the particular young woman who'd developed meningitis when she was six months old and was assessed to have the mental capacity of a three year old. I might say she was a child of an extraordinarily loving Italian family and I acted for the family. Anyway, this young woman sat with a facilitator who held her wrist. They had headphones and different questions were fed through the headphones to see whether this system worked or not. And I appeared in that case and it was found to be that the system did not work. The young woman was sent back to her family and Rosemary Crosley's facilitated communication was ceased to be used in the training centres around Victoria, the adult day training centres.

Michael Green: [00:49:17] Strange story, I mean for Rosemary Crosley was it purely a financial thing? Was she just seeking to make money out

Liz Gaynor: [00:49:23] Of it? I've got no idea, I've got no idea. She went to America, I've got no idea what motivated her. Mean she was extraordinarily successful. It may have been that she started off truly believing this and then became caught up in her own success. I really don't know. But I do remember being terrified of cross examining. She was a very strong personality and my assessment of her evidence at the time was that she undid herself.

Michael Green: [00:49:48] Moving on, the year 2000. Yep. You face a major personal challenge.

Liz Gaynor: [00:49:54] Yeah.

Michael Green: [00:49:55] You were diagnosed with breast cancer.

Liz Gaynor: [00:49:57] Yes, yes, that's right.

Michael Green: [00:49:58] Did you have to stop work immediately for treatment?

Liz Gaynor: [00:50:01] I I had to have, I had a lumpectomy and then I had chemotherapy and radiotherapy, radiation. I was off work for about fifteen months.

Michael Green: [00:50:10] And you're having treatment three weeks out of four or something like that?

Liz Gaynor: [00:50:13] Yeah, yeah, I mean it goes in stages. It's changed now but in those days, first I had the operation, had the lumpectomy and that was followed by chemotherapy and then followed by radiotherapy, excuse me.

Michael Green: [00:50:26] It crossed my mind, Liz and obviously I'm no expert. Could stress of work have contributed to this?

Liz Gaynor: [00:50:32] Well there's a very famous practitioner called Gabon Mattei who's very much, there's the forefront of a medical movement, probably best said in the book, *The Body Keeps the Score*. So that stress certainly does. And I led a very stressful life at that time. Being a defence barrister, a criminal defence barrister is an incredibly stressful occupation. I had small children and I had stepchildren living with me as well. And I remember it, and I was a smoker, all of those things. Yes, but the BRCA gene, the breast cancer gene runs in my family, but I'm the only one to have gone on to actively develop breast cancer.

Michael Green: [00:51:11] But here we are sitting here today discussing it, which

Liz Gaynor: [00:51:13] Yeah, is it's very grateful too. So you had fifteen

Michael Green: [00:51:17] Months off work. Yeah. When you came back to work, a) did you practise immediately?

Liz Gaynor: [00:51:23] Oh yeah, back into trial straight away.

Michael Green: [00:51:24] Straight in and straight away. Straight away, yeah. What about confidence? Did it affect your confidence having fifteen months off having such a Well, major health

Liz Gaynor: [00:51:31] Always did, but when I had my kids, you know, I'd be off for a few months and oh, how can I do it? No one will ever brief me again. And I'm sure no one would ever brief me again. It just picks up, like you just don't expect it. Yeah, just life went back to normal.

Michael Green: [00:51:46] But you should tell people that every barrister from the most successful in all walks of the legal world suffer from I'll never be briefed again,

Liz Gaynor: [00:51:57] Absolutely, where will the brief come I know. And you would know as a former client, is it just quiet or is it just me? It's an internally insecure profession. Absolutely. And it doesn't matter how long, I never went through protracted periods of having no work ever. I was very, very fortunate. Well, mean, it wasn't always flat chat but there was always work. But oh no, no, it was never safe. Something was always going to go wrong.

Michael Green: [00:52:24] Soon after that, think soon after you'd come back to work, you were appointed to the County Court.

Liz Gaynor: [00:52:29] I was, Rob Hulse was the Attorney General and he had made a decision that he was going to even up the numbers in the County Court. And it was sort of, the writing was kind of on the wall. I could see senior women being picked off. And so really I sort of look at my appointment, it's sort of ten thousand hours of work and a bit of luck.

Michael Green: [00:52:51] You know. So you weren't really surprised when the offer came?

Liz Gaynor: [00:52:55] No, because I could see other women before me being approached, I could see there was a particular policy. I felt a bit guilty, I felt like I jumped the queue.

Michael Green: [00:53:04] Because you weren't old, you weren't

Liz Gaynor: [00:53:06] No, was 40 in your fifties or anything like seven and it was probably a little premature. I do think to be a really good judge, your ego needs to have stopped bouncing off the wall a bit more than mine had when I got appointed.

Michael Green: [00:53:21] But it wasn't a hard decision to make?

Liz Gaynor: [00:53:23] No, no it wasn't. I had just applied for silk and I was really worried about, I had made the link between stress and breast cancer. My children were

seven and 10. I did my trials really hard and really meticulously. I had this that you owed it to your client. This was such a big responsibility. I was worried about what I was gonna be like, whether I'd get, I was worried I'd develop breast cancer because of the way I worked, because of the intensity with which I worked and what I felt I owed to clients and what I, I look back now it was a bit over the top really. But yeah, I just had this very strong view about

Michael Green: [00:54:03] I think if I was charged with an offence, I'd prefer someone like you than someone who didn't take it that seriously.

Liz Gaynor: [00:54:08] You know, it's really hard. You know that a person's, particularly when you're doing the really serious heavy stuff, you know, if you don't do it right, if you don't give it everything, their lives, they're going to jail for years and years. It's an incredibly heavy burden. Yeah, I was really Well, I knew that wasn't gonna change and I had a huge sense of responsibility in that sense and yeah, was worried I'd get sick again.

Michael Green: [00:54:34] And so the offer's made and you accepted?

Liz Gaynor: [00:54:38] I did, I did, yeah.

Michael Green: [00:54:39] An easy transition to being a judge?

Liz Gaynor: [00:54:41] No, it wasn't. Wasn't. I really missed the bar. I loved appearing in court. I was a bit of a show pony. I really enjoyed the performance. I missed doing final addresses and big Sarah Bernhardt, Flourishing Please and all those. I missed that a lot but I was tired than I realised. The thing I found fascinating was I was really physically uncomfortable for the first year on the bench and I mean physically.

Michael Green: [00:55:08] Sitting up there.

Liz Gaynor: [00:55:10] Yeah, not in and I mean as opposed to emotionally. I realized I was withdrawing from adrenaline. Oh. I was used to it was almost like I had a bit of an adrenaline addiction. I was a bit jittery. Yeah. Yeah. I calmed down after a while. But yeah. I and I missed the collegiality of the bar and all those sorts of things, which I think most people who are appointed to the bench do. I love the

Michael Green: [00:55:33] Same bar. Let's let's what sort of a judge were you?

Liz Gaynor: [00:55:37] Oh god. I don't know. It's very hard. Well I mean,

Michael Green: [00:55:43] There's a sense to me that there's a couple of phases. You said early days you maybe weren't the judge you look back on, wish you had been, early days. Had been a very different judge later in your interacting with accused people, families of accused people, sentencing, etcetera. So just take us through that journey, how you started off and then how you developed and why you developed.

Liz Gaynor: [00:56:07] I felt a bit of a sense of unworthiness when I was first appointed. I felt like I jumped the queue. I never saw myself as a great lawyer, but I discovered I knew far more law than I realised. It's just that you soak it up along the way, but legal argument was never my preference. What was I like at the start? Oh, I think I had a bit of a big hit, probably. I think what was hardest was when you're a defence barrister, you don't see many of your colleagues at work because it's usually you and the prosecutor. I knew the prosecutors in court far better than I knew a lot of my colleagues. It's kind of hard when you start seeing the various capacities and standards, particularly if you've been embarrassed that it sets a very high bar for yourself and a high sense of responsibility. So I had a bit of trouble coping with what I perceived as people not putting as much in as they should or what they brought to the courtroom. I think it was pretty judgemental about that. What I did really like about being a judge straight away was working out how to put in place outcomes that I thought were fair, that sort of reflected the humanity that I would like to see the law reflect. I never got over the, it's probably gonna sound a bit stupid, the incredible honour of when you are acting for someone who is charged with a criminal offence, they are in crisis.

Liz Gaynor: [00:57:36] And you have to walk into their world. You have to know everything about them. They have to take you into their confidence and you have to sit through this with them. You have to walk your ass shoulder to shoulder. There's a great honor in that, there's a great responsibility in that. And somehow over time I was able to inculcate that into the way I judged. It's like, okay, we're going on this journey. Can I say, this is not something I do with sex offenders because you're often dealing with a very different psychological makeup there? But when you are dealing with someone who's been charged with a criminal offence, you will uncover a host of trauma and

drama and deprivation and things that ring your heart and you're also looking at how do we turn this around? How do I make this better? What can we do? What can put in place here? How can we go, oh god, I'm sounding like a bloody heartbeat. It's almost you start a judge, like sometimes there has to be jail, that's it. But that capacity to put things in place that might work and spin out over time, I really enjoyed that process.

Michael Green: [00:58:50] Is there much you as a judge can do? Is there much our system allows you to do?

Liz Gaynor: [00:58:56] Yeah, well it's got better and worse at the same time. We now have mandatory sentencing. I mean sentencing has always been a highly politicised process. You've always had political parties climbing madly on each other's backs to punch the sky and say, we're the toughest on crime. There's so much fear and understandably around criminal offending. Like the effects of criminal offending are devastating on people. The solution to it is always jail, jail, jail, jail. And we have got far more effective tools at our disposal than we've ever had before that we are not using. And I have yet to see a government of either who properly commit to a system of rehabilitation that protects the community as it goes along and results in a better long term outcome. I have never seen a government brave enough to do that. And there are ways of doing it without letting out people on the street to rampage around and repeat their offending. They won't do it. They won't commit to it.

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Michael Green: [01:00:29] In trying to bring about those sort of outcomes, I understand you adopted an informal sort of approach to sentencing.

Liz Gaynor: [01:00:38] Oh very much so, yeah. One of the things I found over time became, particularly when I was appearing in the higher courts where it's very formal, client is sitting in the dock at the back of the court and it's like they're watching about a play about their own lives. There is language use they don't understand, people are talking about them. They often will not perhaps have a clue about what's going on until

they're backed down in the cells and their barristers explaining it to them. Now there are good reasons for that in terms of order and being able to conduct proceedings, but it always struck me as kind of strange. I always used to take my clients over to court beforehand and say, this is a court, this is where you'll sit. So they at least understood, introduce them to the associate, the tip stone. So everyone knew what was going on. And sometimes of course you've had clients who were experienced in appearing in court and don't need that. But so much of what in the background of people who are habitual offenders is a lack of self esteem, a lack of, which of course is covered up by aggression and self soothing by substance abuse, those sorts of things. You can do a great deal as a judge by actually showing respect to someone even if they have been an offender. By saying, I see you, I see your life, I see what's happened to you. What you're doing is not okay, understand that, but I see, I see what's going on here. And it's sort of like it allows a person to not think, which I think a lot of offenders basically do, I'm scum, I'm worth nothing. No one cares about me and rightly so.

Liz Gaynor: [01:02:17] And that will be covered up. They won't really even realise that that's what they think, but life has often led them to feel that way about themselves. And so it's got, I'm not worth anything, I've got nothing to lose, my life's never gonna get any better and substances, self soothing are integral to the way they operate. And this is what I know and this is what I'm comfortable with. And very often you'll get people in there and the courts actually recognise this around the 35 to 40 year age mark, they start going, I'm jack of this, I'm sick of this life, I wanna change, I don't know how to do anything about it. And it can take a long, long time. This has been a habitual way of offending, but they don't have family or substance or support. They have often been the victims of child abuse of one form or another since the early days. They are chock a block full of trauma which triggers them off. We've got things like trauma informed therapy that can actually heal that now. We know, psychologists know that severe childhood trauma can change the development of your brain, that the emotional side of the brain will develop disproportionately to the rational side of the brain, that it can even interfere with the bridge between the two hemispheres of the brain. And we actually know how to approach that and we should be taking a far more scientifically, rationally based attitude towards offenders. Like if I had my way, I would have far more access to your really intense assessment of people that I was sentencing and I would have a range of places I could send them beyond just the punitive jail.

Michael Green: [01:04:00] Are there such places? Are they here now or in England?

Liz Gaynor: [01:04:02] No. No. We need them. Not really. There's a place called Rivergum, which is a a secure therapeutic environment for people on supervision orders. I've had a couple people go there with one bloke in particular was there for two years. And the change in him was remarkable, just remarkable. But he couldn't get it, it was a secure therapeutic community. I would love to be able to say, you either go to jail or you go to this secure therapeutic community and you are gonna get treatment whether you like it or not. And to work with these people, but to have people who are already traumatised by their life and to say, go into this incredibly stressful, traumatic environment and then come out and don't offend again is so stupid, I can't believe it. And it's not about bleeding hearts and it's not about excusing appalling behaviour because I don't. But the way we deal with it is, it's so based on political considerations, what's the press going to say, those sorts of things. You can keep the public safe if you build the right places and you can work with people so they don't re offend or that the danger that they present on release from custody is far less than it is now. We have, at one stage I think the re offending rate for people from jail was eighty four percent. And the courts over and over and over, when you are sentencing, look at your prize, they go right back to when they're kids. And you are asked to and you say to them, we're sending you to jail and when you get out, let's hope that's taught you a lesson and you don't do it again. They go out to cohorts of other people who've offended families that aren't there, kids and you know, we go on and on. We know all about it. It's just a stupid chaotic landscape. The trouble is you look at other regimes overseas where there is intense rehabilitation. Their re offending rate is minuscule compared to ours but it's not politically feasible and governments aren't gutsy enough to sell it and explain it.

Michael Green: [01:06:02] No argument from me, Liz.

Liz Gaynor: [01:06:04] Yeah.

Michael Green: [01:06:05] You get involved in rehabilitation to some extent. Yeah. But I understand having Zoom calls. You've had Zoom calls with

Liz Gaynor: [01:06:12] Oh yeah, no, did that a lot. I did that a lot. I was on the drug court which is an entirely therapeutic alternative to sentencing where you actually, and I had all those years of going out to the jails and working with clients. It's really, I like

having that one on one with people who are caught up in the criminal justice system. But yeah, we have a court integrated services programme in the County Court which is magnificent. I'm so grateful to them. So I would often adjourn sentencing for, defer sentencing for a year and put them on what's called KISP bail. And what that involves is they would work with KISP personnel, the psychological drugs, accommodation, dental, dental, medical, all those sorts of things. And I would get a report every month from the KISS team and I would have a Zoom and I would have a meeting with, and I mean, lots of judges do this, I just loved this system. And once a month we would have a Zoom meeting and I'd say how they're going in a chat and how they're going in. That was really good, I really liked that.

Michael Green: [01:07:16] Any data on the success rate of

Liz Gaynor: [01:07:18] I've only

Michael Green: [01:07:19] Got or anecdotally?

Liz Gaynor: [01:07:20] Anecdotally, it was hugely successful. I reckon I had about a 90% success rate with that. They were terrific. And the fact that you are actually talking to them, it's not like I became best friends with them or anything like that. But, you know, what's happening here? Why? What's going on here? Tell me what's happening. There's this this this idea, I'm probably not explaining it well, that I'm a human being and I'm being respected even by a judge. I'm worth it. And oftentimes in those sessions, I'd be having a go at them. But I think a judge can be really useful there too because sometimes the KISS team would say, look, can you have a go? They're doing this, this and this. And I'm seen as the punitive part of the equation anyway. So I can march in and say, come on, mate, this isn't working and if you don't pull your finger out, I'm pulling this bail. All right? So you've got a month to get your act together or you're done. If you've got me, that sort of stuff or another week you go, you have done incredible, this is fantastic, keep it up, that sort of thing. You can be part of, used as part of the whole team of keeping this person

Michael Green: [01:08:25] And this system is still going on.

Liz Gaynor: [01:08:27] Oh yeah, it's in the County Good, it's fantastic.

Michael Green: [01:08:29] It's a pity we don't know more about it in the general community instead of headlines about we need to put more people in jail for longer periods.

Liz Gaynor: [01:08:36] I know. The one that I find really fascinating, you know, there is so much trouble now with violence from teenagers and it's terrible violence and there's like myriad reasons behind that, things have changed very much and the children's court regime is very much rehabilitation front and centre but it's not been able to in that sort of current climate to contain some of the enormous violence that these kids are getting up to, right? Now this is a program that was confronted in Glasgow in the early two thousand, had the highest murder rate in Europe, and a lot of it was from teenagers. We're experiencing that now, that number of kids in custody on homicide related charges, I think it's at an all time high. But one of the difficulties when you let it And children are more likely to get bail because the idea is custody will be actively damaging. You're creating a crook if you like. And the problem was that the bail that's been handed out for these kids isn't structured enough. My understanding was it's an hour supervision a week or intensive bail was two hours a week and that's not enough. So there's a thing called the violence reduction unit which this state government's been investing in And there's a pilot project of the enhanced bail programme which no one knows about.

Liz Gaynor: [01:09:54] And that's where you've got kids who have been engaged in series of any They've got electronic monitoring, so they've got an electronic basis at bracelet, but it's also been combined with up to forty hours a week of intensive support. That can involve the school return, re education, drug treatment, family counselling, those sorts of things because these kids usually come from families under huge stress. One of the things that's most remarkable to me over the years is ninety percent of everyone I've ever dealt with in the criminal system has been male and of them, I'd say 90% of them haven't got dads. So you've got family dysfunction and this is a remarkable programme. It's been a pilot programme. My understanding is it's been one of the most successful of its kind in the Western world that you hear nothing about that. Now that's an actual solution to teenage violence that we're facing. That is an actual solution. But the program ends next April. And it's really interesting. The electronic bracelets, that actually helps them because they know they're gonna be they're gonna be detected. So

they don't, you sort of take away that notion that you, a wild, disturbed teenager, have to exercise self restraint. So that's sitting there. No one knows about that either.

Michael Green: [01:11:17] Two more things I want to cover, Liz. One was a very gratifying encounter you had with a woman who'd been before you. You were at a Therapeutic Justice Conference. Yes. And this woman was there as

Liz Gaynor: [01:11:31] Well. Won't say no because I don't want to embarrass her but it was one of the most humbling experiences of my life. She had had your typical quite wretched poverty stricken violence filled victim from the time she's born basically. She now goes around talking about at conferences like this Therapeutic Justice Conference, to judges conferences, things like that, about what it's like being a person who experienced what she did. I'm putting it really badly. So she appeared in front of me years and years and years ago. Essentially she was in an extremely abusive relationship. She was subjected to very severe domestic violence. I've got no doubt that she was offending because of her spouse. At the time she was in court unbeknownst to anyone, she had a bleed on the brain which was from domestic violence. She just sat there, she said she was terrified, no one spoke to her. Her barrister said, I'm not here to support you, I'm here to get you as little a jail sentence as I can. She was absolutely helpless and terrified. And she talked about her experience as a person with an acquired brain injury sitting in court undetected, unsupported, what it's like to take that into account. Anyway, she is one of the most impressive people I've ever met. She's one of those people who you just just know she's been through the fire and she's got this sort of zen like quality about it and a very wry sense of humor. I I was extraordinarily impressed with her and I went up afterwards and said, thank you so much.

Liz Gaynor: [01:13:07] I ended up giving her a hug. I thought she was amazing. Anyway, I didn't realise this and neither did she because I looked very different in those days. But it turned out unbeknownst to me that I had been the judge that sentenced her. And the awful thing about it, she said, what made the hugest difference to her, this massive difference to her, I didn't even remember doing it, is that at the time I said to her, I don't wanna sentence you, but I have to. And she said she just hung onto those words while she was in jail. And I just felt humbled up by that, not by my own fabulousness by any but that was such a small thing for me to do. It took so little for me to do that. And it meant so much to her because her position was so piteous and

wretched and powerless. That was the that's the bit. That was just a sort of me saying it because I was joined, I developed by that stage, the years developed a practise of talking to accused people directly in court. So they understood things and understood what was happening and why and all that. But something as tiny as that to mean so much for her, I found just gut wrenching and I've never forgotten it. And she's an amazing extraordinary person. I'm very privileged to have had anything to do with her.

Michael Green: [01:14:22] You're also not scared to call people out when they need to be called out. And you achieve national notoriety, don't notoriety not the right word, celebrity.

Liz Gaynor: [01:14:34] Yeah, I'd say notoriety is probably better.

Michael Green: [01:14:37] For doing so, for two young men who had stabbed Tony Mockbell in prison, what happened there?

Liz Gaynor: [01:14:43] Well, you know, I don't know that this received the wholesale approval of the legal community and I don't know that it's something that judges should engage in. Look, I'd gone in there and these young blokes, they were 20 and 21, which is not the most magnificently mature stage of a young man's life. Anyway, they were in jail and stabbed Mock Bell and it wasn't the day they were cousins and there was actually a small celebration for one of them for his 20 birthday. And there was something going on between the Islander group, is known as GFAM and I apologise if Ireland I understand that's not necessarily a politically correct term anymore, but anyway, and mock belt. Who knows? There was some story in the Herald Sun about this. Anyway, that's as one of them was stabbing, he said, Happy birthday, because. And I thought a lot about that. And I've got five brothers, I've got a stepson and a nephew who I've raised and my own son. And I've had a lot to do with boys around that age and it's a really stupid age. And that just really struck me at the time. In any event, I knew there was gonna be a huge amount of press attention, so I had prepared this very correct 15 page sentence, take into account this, into account that. And it was on Zoom from the jail because that had arisen as a result of COVID. The first thing that happened was some young bloke who's clearly a mate of this came into court and he was high on something and he raised a triumph fist at the screen, a sort of solidarity thing and then, oh, here we go.

Liz Gaynor: [01:16:24] And these two young kid blokes come in and they thought they were heroes. And this was the great occasion. They're looking out over the court and they're laughing and all that sort of thing. They weren't actually in the court. Anyway, I'm reading out my sentence and I tend to go down these and blah, blah, blah, and I've gone through it, I've got to about page 10, I just had enough. I just had enough. I just looked up at them and I know what these young blokes are like in jail too. They make the old older prisoners' lives a misery. And I just lost it and I went them. I did it for about four minutes and then, oops, hang on. Just and I didn't want her walking out of there thinking they were heroes, when they were in fact idiots. And court's meant to mean something, it's meant to mean something. And yeah, I just thought I've had enough. So I gave him what someone afterwards said was a mum spray and what was funny was my son was working in a pub at the time, he said, I hope you realise all the security at my pub at G fam. Do you think about me? He said, Funnily enough darling, no. Anyways, it's alright, they thought it was okay. But yeah.

Michael Green: [01:17:27] It's been a fascinating life in the law that you have lived Liz. And Anna's three years as a journalist too. I think that might be unique. In my experience it's unique with lawyers.

Liz Gaynor: [01:17:38] Oh, I think there's a few I was not a distinguished journalist. You were a

Michael Green: [01:17:44] Journalist for three years.

Liz Gaynor: [01:17:45] It was good. It was so rackety and fantastic. I got to see a lot.

Michael Green: [01:17:50] Looking back, have you got any pearls of wisdom you'd like to pass on to the young Liz Gainor, I mean her twenties backpacking around and not deciding what she wanted to do, not being aware of where she wanted to go?

Liz Gaynor: [01:18:07] Not really, the main thing was I was just always so intensely self critical. I think I've just caused myself so much suffering over the years about, Oh, you did this wrong, you did that wrong. Shame spirals every ten minutes, that sort of thing. Yeah, that was amazing. Just to have a little more faith in myself, I think. I mean, probably doesn't sound as if I haven't had faith in myself because I've had lots of enthusiasms, but along the way on the journey, I've spent an awful lot of time ripping

myself to shreds over, you did this badly, oh my God, how could you have done that? Haven't had a lot of moments where I have done something and sat back and given myself a pat on the back. Yeah, that intense self criticism was the main thing. When you say pearls of wisdom, not real. Look, the main thing is I think the pearl of wisdom is that kindness and love, and this is gonna sound really stupid, are incredibly important and incredibly effective. And I just wish the law was more reflective of them. That is what the life of the law should be.

Michael Green: [01:19:11] Wonderful Liz, thank you. No one could disagree with that. And that's not just the law, that's at the whole of our community.

Liz Gaynor: [01:19:17] The whole of our community, yeah.

Michael Green: [01:19:18] But thank you for coming in this morning and talking to us and telling us about your life in the law. It's been wonderful to listen.

Liz Gaynor: [01:19:24] Thanks very much Michael. Thanks for the opportunity.

Voiceover: [01:19:34] Show notes from today's episode can be found at greenslist.com.au/podcast. There you'll find links to things we've talked about in this episode, a transcript of the show, and some wonderful photos of our guests. If you're enjoying lives in the law, please tell your networks, subscribe, rate, and review the show. Your host is former lawyer and greens list clerk, Michael Green. Our show is produced and edited by me, Catherine Green, mixed and mastered by Windmill Audio, and recorded by Alex McFarlane, who also wrote and performed all the music for the series. We're coming to you from the iconic Owen Dixon Chambers on the corner of William And Lonsdale Streets in our beautiful city of Melbourne. We acknowledge the Wurundjeri people of the Kulin nation as the traditional custodians of this land and pay our respect to their elders past and present. There is no doubt that conversations about justice have been taking place on this land for thousands of years, and we are privileged to continue that discussion here today.