

William & Lonsdale – Lives in The Law

Ep21. Julian McMahon AC SC

Presenter [00:00:04] This is William and Lonsdale, a podcast about the legal ecosystem in Victoria and the fascinating people and stories that make it tick. Today, your host Michael Green speaks with barrister Julian McMahon. Julian is a senior counsel at the Victorian Bar, predominantly working in crime. He's highly regarded in the law for navigating long and complex trials in areas such as homicide, terrorism, corruption and fraud. But it was cases overseas defending Australians on death row that brought him to national prominence. In the early 2000s Julian defended Van Nguyen in Singapore and later Andrew Chan and Myuran Sukumaran. Part of the infamous Bali nine against drug charges that would ultimately lead to their untimely deaths. These cases had enormous impact in Australia on our politics and policy and of course, personally for Julian and everyone involved

Michael Green [00:00:57] In walking up here this morning, Julian to speak with you. I walk past a portrait of you in the foyer of Owen Dixon Chambers, and it was pointed out to me that it was painted by Myuran Sukumaran, the man who was on death row in Indonesia. How did he come to paint a portrait of you?

Julian McMahon AC SC [00:01:15] There was a woman in Melbourne called Mary Farrow, who out of the blue got in touch with Ben Quilty and said, these boys in Indonesia, they need mentors like you can you go and teach them something about drawing or painting. And I don't need to tell this audience about Ben Quilty, who is a fantastic guy. So, his answer was yes, so him and another guy, an Australian artist, called Matt Sleath, they went in and out of the prison and with Myuran, particularly in painting, he took to the life of a painter. Myuran had plenty of time on his hands, and Ben would make him draw, you know, like two hours every morning. I think before breakfast, that kind of routine draw, draw, draw. And as it turned out, Myuran became a very good painter indeed. And that was because of the mentoring of Ben and the friendship and many of us who would visit the prison we would be carrying art books up. Myuran had an art library that most artists would die for because every second visitor from Australia was carrying an art book. And he studied them all. He read them all. He worked all the time. He drew a lot. He painted a lot, you know, in the last few days before he died. I'm not sure how many paintings he did, but probably in the vicinity of 12 or 15 paintings. And quite a few of them are famous paintings now. You know, they were spectacular, really, and we were carrying them out. That was still wet and we had to carry them very carefully.

Michael Green [00:02:34] And what about you as a subject?

Julian McMahon AC SC [00:02:36] So everyone who visited Myuran would probably many people who visited would be set down on a stool and what he would do sometimes, he'd be running painting classes for all these prisoners and he'd bring you in as the lawyer and he'd sit me down and then they would, in Indonesian, be clearly making lots of jokes about my red face and, you know, a fat belly and so on. And he'd sketch me. And, you know, that was that kind of price he would extract if you wanted to have any serious conference with Myuran first, you had to sit on the chair and do that kind of thing.

Michael Green [00:03:28] This morning on Lives in the Law, our guest is Julian McMahon SC, a leading criminal senior counsel at the Victorian Bar. Welcome, Julian. Julian. You didn't take the traditional path into the law. You didn't finish secondary school, go to law

school and go straight through and join a law firm. You took a different path, which involved the classics Latin and ancient Greek. Could you tell us a bit about that?

Julian McMahon AC SC [00:03:54] Well, it was probably a reflection of immaturity. If nothing else, you know, I didn't really have a life plan. And so, I thought I would start at the beginning and go back to the classics and work my way through.

Michael Green [00:04:06] Had you done the classics at school?

Julian McMahon AC SC [00:04:07] Yeah, I was very privileged in my education, I'd done Latin and ancient Greek through the HSC

Michael Green [00:04:14] At some stage, and that's an arts degree, I guess.

Julian McMahon AC SC [00:04:16] Yes,

Michael Green [00:04:17] At Melbourne University, you have to switch across to law. Why did you make the change?

Julian McMahon AC SC [00:04:22] That was really out of respect for my father. You know, I had this privileged education and I was enjoying myself wandering through an arts degree. And in those days, it was free. So, I was doing more subjects than were necessary, taking time off to travel, you know, very much from another era. And on the other hand, my father, who had really financed my life to the age of 18, had not gone to school. He grew up on a farm in a very poor family, and he was beginning to get more concerned about what my life was looking like. And so, I kind of just took the heat out of it by taking up law. I was interested in and of course, my sister by that stage was probably towards the end of her law degree. Or maybe it finished and I was interested. But it wasn't really a life plan. It was some more study in a different area, I suppose.

Michael Green [00:05:17] Julian, your professional career started at the Commonwealth AAT, Commonwealth AAT is not a tribunal we hear a lot about. Could you explain to us where it fits into the legal landscape?

Julian McMahon AC SC [00:05:27] Sure. So, the Administrative Appeals Tribunal. It deals with Commonwealth legislation. As everyone would know, lots of Commonwealth legislation affects our lives, maybe from tax or Comcare for people who are injured and so many other areas. Now in that legislation, if decisions are made which you disagree with, there'll be some appeal rights and eventually a lot of that legislation leads into the AAT and decision makers there.

Michael Green [00:05:52] And what did you do with the Commonwealth AAT?

Julian McMahon AC SC [00:05:54] I was an associate to one of the deputy presidents. His name was Ian Thompson. In the early days, for instance, Gerry Brennan went on to be chief justice of the High Court, was in charge of the Commonwealth AAT. So, at the top level, they've had some very serious jurists and each state had a deputy president and Ian Thompson was victorious and I needed a job. So that's how I ended up with him.

Michael Green [00:06:17] And why did he choose you?

Julian McMahon AC SC [00:06:19] Well, again, it was only because of Latin and ancient Greek. I walked into the interview. I was pretty shy in those days and I walked into the interview and he said, I see you've done Latin and ancient Greek, and I'd got very good marks in those, so and I said, yes, yes. And he said, I did great at Cambridge. So when can you start this job? Can you start next week? And so that was it. Very old fashioned interview, but I was very privileged to work with him. Yeah.

Michael Green [00:06:45] Why were you privileged to work with him? It has to be more than the classics, I guess.

Julian McMahon AC SC [00:06:48] Absolutely. He was a very intelligent man and he was a fine man, actually wrote about him when he died in the Victorian bar news. If people remember him and want to look him up. He had a spirit of public service, so he'd gone to Cambridge and then he'd served in the British Foreign Office all over the world. He was a magistrate during the Mau Mau uprising in Kenya. He'd worked in various countries in the Pacific or connected to the old British Empire. He loved the Queen more than he loved life. He was a hardworking, intelligent man with an attitude of public service that was a great way to start your career in the law, just to work alongside him and be at his beck and call.

Michael Green [00:07:28] But you leave there and you go to a commercial firm then called Sly and Weigel. Now I think part of Deakin

Julian McMahon AC SC [00:07:35] Norton Rose, I think.

Michael Green [00:07:38] Of course. And you do commercial litigation? Which one will not associate with you and your legal career? Did you enjoy commercial litigation?

Julian McMahon AC SC [00:07:47] Not a lot. I mean, I was suited to it because of just a combination of things. You know, for instance, that training in the ancient languages is actually good training for documentation, which is central to managing commercial litigation. But it didn't really suit me. But at that stage I was married, and over a few years we had three children, so certainly had to earn an income. And just from speaking to various people, I was steered that way. I really didn't know anything about it. I was there for about four years.

Michael Green [00:08:17] You've said that while you were there, you started a master's degree at Monash because you didn't truly understand what you were doing.

Julian McMahon AC SC [00:08:26] Yes. That's true, I well, I wasn't a model law student, that's for sure. In this day and age, I wouldn't have probably even got through a law degree. You know, the students these days work consistently and hard and produce a lot of work, whereas in my day we would... Many of us would work occasionally and work very hard in the days leading up to the exam. It doesn't work like that anymore. But the downside of that is for someone like me having gone through law in that haphazard way with a focus on my arts degree. When I'm sitting at a desk in a law firm, I was actually generally in a state of either panic or bewilderment or, you know, trying to learn very quickly. And so, after a while, I thought, you know, it just had to have a bit of a conceptual, intellectual grasp on the whole project. In those days, Monash were running a masters course in the city after work, and you could do a Master's degree by doing eight subjects, which is what I did. And that was great for me. I did the first few subjects that were related to my commercial litigation work, and then it did make sense, you know, so it was good.

Michael Green [00:09:29] It's something, I guess. Therefore, you might recommend to other young lawyers who don't truly understand what they're doing.

Julian McMahon AC SC [00:09:35] The young lawyers coming through now, some of them, quite a lot of them seem to be extremely talented and focused, and they don't need to do that because of the way they did their law degree. But for those who were plodding along behind more, more my kind, then I found a masters by coursework while I was doing work in the office to be a real pathway to a better understanding.

Michael Green [00:09:59] And it also had a significant influence upon your future career because Mark Weinberg QC, as he then was but later a Supreme Court and Federal Court judge, lectured to you. He had a big impact.

Julian McMahon AC SC [00:10:12] That's right. He came and gave a guest lecture. So, the lecture in evidence was Sue McNicol. Who's now Sue McNicol QC at the Victorian Bar. And she was a wonderful teacher. They were two hour seminars, so you could really get into a topic. There was a big table with about 20 people around the table, and every now and then she'd have a guest lecturer. And one day it was Mark Weinberg, and he was on his way to the High Court to argue a case within a few days. And so, I had never met him, but I'd heard of him. He was a bit of a legend because he was the dean of the law school when he was still, you know, an infant effectively, probably the youngest dean anyone I'd ever seen. So, there he was, running the arguments for his High Court case around the table, and he'd have a different line of questioning for every student. So, there were like ten or fifteen lines of questioning going during the seminar. There are very few people with the, you know, capacity to do that, and it was just inspirational and so exciting to watch and to listen, to be part of. And so, Sue McNicol and Mark Weinberg ran that class, and at the end of that class, I thought, what am I doing? You know, my idea of law had always been governed by Rumpole of the Bailey, which is what I thought. Really, that's what I thought lawyers did. Somehow, I was sitting in a commercial law firm, and then I just had this class with Sue McNichol and Mark Weinberg, and I thought, that's where I want to be.

Michael Green [00:11:34] Inspired by Mark Weinberg, Julian, you make a very abrupt change, you go from commercial litigation at Sly and Weigel to within a matter of weeks or maybe months to working at the OPP. How long were you at the OPP and what did you learn from it? In criminal law would have been entirely new to you.

Julian McMahon AC SC [00:11:51] It was new to me and I was lucky. I had a friend to arrange an interview, so I was at the OPP within about four weeks of the seminar that I was just talking about, I was completely ignorant of anything to do with criminal law. And so, I was there for almost three years and it was a great time to be there. The director was Jeff Flatman. The chief prosecutor was Paul Coughlin, and there are other people around like Jeremy Radtke, Chris Ryan and others. It was a great learning environment, and I really enjoyed my time there, but I hadn't been there that long before I realized the next step logical step was to go to the bar for me.

Michael Green [00:12:30] You come to the bar and you read with Paul La Cava in coming to the bar had you decided that you would be defense counsel, not a prosecutor?

Julian McMahon AC SC [00:12:37] I was probably torn from taking advice from different people. I read with Paul LaCava because the way things work back then, you know, Chris Ryan was chatting to me one day and I said, I'm planning to go to the bar, but I don't really

know anyone I could read with. And he said, just wait there, and he just made a call and said, you can read with Paul LaCava, go and have a chat to him. And so suddenly, Paul LaCava agreed to take me on as a reader. And what Chris Ryan knew and what I knew soon after arriving is that Paula Le Cava was a very old fashioned lawyer. In the good sense, he was able to do a building case one day in a murder case the next, and he was involved with professional insurance, all kinds of things. So, he's a really wide ranging lawyer in the old tradition. And so, it was great to read with him, but I really, I was set on being a criminal defense barrister and within a few weeks, that's the only work I ever did.

Michael Green [00:13:27] Julian, it's a great leap of faith to come to the bar as a young barrister without a big network of contacts to brief you. Did you come here without that network of contacts and did you take a punt that you could overcome the financial insecurity?

Julian McMahon AC SC [00:13:43] Yes, and yes. I certainly didn't have a network of contacts and I did take a punt, but I had a wife still do. She had a good job in the public service, and so we had a level of financial security that comes with that. So, it wasn't a wildly reckless punt. Also, one of the great things about the Victorian bar is you don't have to make a major financial commitment. So, if you fail and that was obviously a possibility, then you can leave without having lost all of your assets and without being in terrible debt and so on. So, although is a risk and a punt, you weren't going to lose everything if it went badly and I was very lucky. You know, a couple of people like Chris Ryan and Tony Howard, who I bumped into through knowing somebody else, they just gave me some very frank conversations about, you know, the sort of money that you would earn if you did this kind of work and the sort of bills and expenses you'd face. So, I had a sense of it. I mean, I never made much money at the bar. Certainly, in the first 10 years, I had three credit cards and it was just shuffling between three credit cards in the tax office, I'd say, for at least 10 or 12 years.

Michael Green [00:14:56] Julian, like many other guests on the show, you've talked about going to court as a junior barrister and sitting watching senior barristers run cases. You mentioned people like John Smallwood, a previous guest on the show County Court Judge, Paul Coughlin, who was at the OPP when you're a junior solicitor and is a Supreme Court judge in going to court and sitting in on people like this. Did you learn about being a barrister?

Julian McMahon AC SC [00:15:21] Absolutely. It's one of the tragedies of COVID is so many of our young barristers are doing cases through Zoom and not getting a chance to be in court and watching lots of other people over a whole day. When I was young, if I had time, I would go and watch people. In particular, I remember watching Robert Richter do some things in a trial which have stuck with me my whole career. Just little things, but of significant effect on a jury in terms of people like Paul Coughlin or John Smallwood. It was probably as much having conversations. I mean, I doubt very much whether they would remember those conversations, but for me, I would look at what they were doing and the way they approach things and thinking, Well, if I can do that, I'll be pleased with myself. You know, that would be worth reaching that level of understanding and skill and so on. And of course, each of them one was a whole career as a prosecutor, the other a whole career as a defense barrister, John Smallwood was doing so many hard defense trials, a lot of legal aid trials for people really at the margins of society. It looked like he was working himself to death. And, you know, he I'm sure he would say I may have even heard him say it on your podcast that he became a judge, really, because partly because he was so tired. But he was a fascinating and inspirational figure to watch. And Paul Coughlan as

a prosecutor, was extremely clever and learned the conversations I had with him I can remember things like we were working on a case, and the question was whether the case would be pulled, whether we'd enter a nolle prosequi. And he was talking about really the hardest decision a prosecutor ever makes is to decide to stop a case to say this case is stopping and we're not proceeding any further because of all the factors involved and watching him work through that and so on is very, yes, a privilege to watch and to watch and be around very experienced, very dedicated practitioners watching them do what they do.

Michael Green [00:17:16] And therefore, you would recommend to junior barristers, any junior lawyers if they get the opportunity, go and sit in court and watch senior people ply their trade.

Julian McMahon AC SC [00:17:27] Yeah, absolutely. I'm sure they get told that on the readers course. And you know, there are barristers on my floor who I know did that during their university days. So one of my friends used to go and watch Darcy Dugan, who was the chief magistrate, to sit in his court and watch all the things that Darcy would do and how he would talk to barristers and how they would respond back to him. You have to do other things, but I think it's an essential part of the learning because so much of what we do is not written down is not found in any textbook. It's about reading the court, knowing how to say things, knowing how to conduct yourself in all kinds of situations. And so watching experienced high quality barristers apart from being a lot of fun is, of course, very educational.

Michael Green [00:18:10] You get briefed in a very big case called Beldejev. As I understand, the case, had been on foot for about eight years and there had been 25 silks involved in it. What was going on there?

Julian McMahon AC SC [00:18:22] It was always a big case Beldejev was charged with effectively two major drug crimes, which we could call the cocaine drug crime and the heroin drug crime. In the early days, he had plenty of money, it would seem, because he had lots of great barristers. Robert Richter was leading the charge for him and then Stephen Sherriff's, who's now passed away. And then there were several other accused. The case was fought, I would say. In retrospect, it seems it was fought particularly hard. There was a giant heroin trial, pardon me, joint cocaine trial as it was called, where a lot of silks involved that led to an acquittal. And then the heroin trial proceeded, but with a lot of pretrial argument which went to the High Court and back and just changing personnel all the time. And it went on for years. And then when I got involved, it had already been running, I think, for nine years. I was very lucky. Peter Ward, who's a famous solicitor from Galbally O'Brien, I think he'd been. We probably clashed heads a bit when I was a solicitor at the OPP, so he I think he was pleased with that. So, he briefed me. I was really far too junior to be briefed, but I was lucky and so I was in to Nick Pappas. That was two years full time.

Michael Green [00:19:25] I've heard criminal barristers say that they start their case with their closing address. The conception is put together in a closing address and then I work backwards from there with the evidence I need, et cetera, et cetera. Is that how you work?

Julian McMahon AC SC [00:19:38] Partly, when you have the luxury of a bit of time, you do three things at once, which is start at the beginning, start at the end and start in the middle. So, you read it from beginning to end in one sense and another sense, you're always taking notes and thinking about what would I be saying at the end of this? What will

the team be saying to the jury at the end of this? And then as you read summaries or some of the early statements, it will immediately lead you to some substantial documents that are or statements or records of interview whatever which are floating around in the middle between the beginning and the end. So, there are different ways of conceptualizing it. Some people talk about starting with big, wide circles. Jeffrey Shure, I think I heard who is a famous QC in Melbourne. He's retired, long retired now, but I think I heard him talking about that one day where, he had quite a strong accent, to start with a wide circle and, you know, move in and get the circles, get smaller and smaller, and then you get to the target in the middle. Everyone has their own way of doing it. Some of the barristers who are the most formidable, are very focused and skilled at putting everything together in electronic databases and so on so they can marshal so many pieces of information in the press of a button. I do struggle with that, but the juniors who I'm lucky to have around me, they don't struggle with that, so we meet somewhere on the road.

Michael Green [00:20:57] Is that one of the skills you look for in a junior nowadays? Maybe not back when you started, but good I.T. skills?

Julian McMahon AC SC [00:21:04] Yes.

Michael Green [00:21:05] And what other skills do you look for in a job?

Julian McMahon AC SC [00:21:07] Well, most of them do have compared to when I was younger, most of them do have very good IT skills. It's almost taken for granted now. I suppose the skills that you look for in a junior are like you look for in any colleague who's doing a big job with you. Strategy is everything. Judgment is everything. So, you want people who are able to think about strategies and who you think have good judgment and then you just have to work hard. So, you need people who are prepared and willing to work hard, not complain about working hard, but are willing to work hard because being a junior is in a big cases, very demanding. Often you have to do so much slog work to find the gem that someone has tried to bury deep under a lot of stone. So those are the two main things someone whose judgment you think is pretty good and who is willing to work hard, and pretty much everything else flows from those, I think.

Michael Green [00:22:03] Back onto the track of your career. After Beldejev, you're briefed as a junior to Duncan Allen in another big case, Wayne Strawn, an allegedly corrupt Drug Squad policeman. This takes up two and a half years of your time again. Were you happy to have your career grow in that way through a series of big cases? Or you just took whatever came? And this is what came, so you took it? Or you're aware that, well, I maybe I'm missing out on skills I might have learned appearing on my own running trials, on my own, cross-examining, on my own, etc.

Julian McMahon AC SC [00:22:32] All of those things are operating on your mind. You know, I did look sometimes with envy at some of my colleagues who were running two or three cases a week, which also meant finding time to have a week or two off here or there without much trouble. On the other hand, it really was for most of my career in those days, it really was "thank goodness I've got a brief" that was more important than anything else, really. Often these big cases don't start out that way. You don't realize it's going to go for a couple of years. You think it might? Well, this will go for months, and then it turns out to go for years and so on. And the Straughan case was very hard fought. You know, all the barristers in it, the senior barristers were really among the very best barristers in crime for running trials. Jeremy Radtke and Michael Tierney were prosecuting, and they're both formidable. And then Duncan Allen was famously excellent defense barrister. And so,

every inch of every yard of every mile was hard fought and it went for a long time in front of it. We spent a year in the Supreme Court in front of Justice Kolderie, who was a great crime judge, so it was just a really long, hard struggle. It's probably fair to say for each of the barristers in that case, it may have been the hardest struggle that they were in. You know, we were all completely exhausted at the end of it.

Presenter [00:23:47] William and Lonsdale are brought to you by Green List, one of the leading multi-disciplinary barristers lists in Australia. Greens List believe in promoting conversation around the ideas and issues that shaped not only our legal system, but our wider community.

Michael Green [00:24:08] Julian, while you were working on the Straughan case, you took on a pro bono case in Singapore for Van Tong Nguyen, who'd been sentenced to death for drug trafficking. Or maybe when you took the case on he'd just been charged with drug trafficking, there was no sense at that stage. How did it come about and why did you accept it? Pro bono got to make a living.

Julian McMahon AC SC [00:24:27] I'd had quite a lot to do with the Vietnamese community ever since my university days. And at that precise time in December 02, I was acting for a woman whose story I'll always remember because she had suffered so much when the pirates on different times took over her boats as it was coming from Vietnam to Australia. So, her story will never leave my mind, and I remember that well, and then she had an interpreter, and that interpreter was a friend of the mother of Van Nguyen. So, when Van Nguyen got arrested in Singapore December 02, the mother was without resources and didn't know what to do. She spoke to the interpreter who came and spoke to me, and that's how we took the case.

Michael Green [00:25:06] How did the case play out? I mean, obviously it's in Singapore. You're one person here in Melbourne. You're going to need assistance here and assistance in Singapore. How did it play out had to work out?

Julian McMahon AC SC [00:25:18] Well, the assistance here started... I contacted a friend who just opened his own firm, Theo Magazzis, and he's now a very well-known Melbourne defense solicitor. And I asked him to help, and of course he did, and then looking at Singapore law you actually needed to be a QC to argue a case if you were a foreigner. So, I spoke to Duncan Allen. I mean, we would have got a QC anyway, and he told me to go and see Lex Lasry, who I'd never met. So, I went to see Lex, and I remember being a bit scared about it because, you know, he's kind of a grand figure in the eyes of young barristers. And so, I said to him, you know, this case, we don't know how it'll play out, but it'll obviously require a lot of work and its overseas and there's no money. It's pro-bono. Can you do it with us? And he just accepted, of course. And so, then he led the team until the execution in December 05. That was the Australian team. Then a couple of times we went to Singapore. He sought the right of appearance, which was permissible under Singaporean law, but the Law Society opposed that for reasons which, you know, I've never really understood. Essentially, they were saying it's a simple case, doesn't need a foreign QC, and it was anything but a simple case after being knocked back twice we couldn't do it again, and we were very lucky to find a very senior lawyer in Singapore who died during the case in Melbourne. And he was here to see us and died in a hotel in Melbourne was very sad. His name is Pillay Krishnan. He was a great lawyer and a fearless lawyer in Singapore, which is a great quality there. And he was running the case for us and he had a junior barrister called Joseph Tasiro who took the case and then ran it. And Joseph, as we didn't know at the time. But Joseph was very courageous in taking that

case because although we didn't know it, he had applied with his wife to come and live in Australia with their two little children. So, we unfortunately put him in the hot seat because of the delicate political situation, he wondered, we didn't know, he never told us for years that he might jeopardize his process of moving from Singapore to Australia and then Van Nguyen we lost every step of the way, and then he was executed in December 05.

Michael Green [00:27:27] Where does Joseph and his family live now?

Julian McMahon AC SC [00:27:31] In Sydney, he came to Melbourne, came to the Melbourne bar and he read with me. But then after a while, they moved to Sydney.

Michael Green [00:27:36] You're a glutton for punishment because you immediately move into a terrorist trial. In fact, the first terrorist trial, I think named Benbrika. You've said about terrorism that we're not a very sophisticated nation in the way we talk about human rights. And so, bracket creep is very real and happening all the time. What does that mean?

Julian McMahon AC SC [00:27:56] Starting after 9-11? We introduced a wide range of laws to deal with terrorism, especially around 2005 and subsequently as well. The powers of a number of different agencies like ASIO and the Australian Federal Police just kept growing, with terrorism being the justification. There was legislation introduced like the National Security Information Act, which is extremely strong legislation. So, it's playing out in Canberra now with the case of the involving the East Timor and the lawyers involved in

Michael Green [00:28:30] The bugging of the Cabinet Room or something like that?

Julian McMahon AC SC [00:28:32] Yeah, that's right. And you know, in that legislation, for instance, a barrister can be jailed for asking an impermissible question. You know, it's very severe legislation. And so, you know, the journalists are probably the most sensitive to this now is they've had raids on their homes and things like that. So, we do have this creep that's been going on. I think one of the reasons it doesn't alarm people greatly is because our culture, the Australian culture is not to be too authoritarian in the exercise of power. I know there are faults, you know, left, right and center if you go looking hard. But the way the country works, we don't really suffer from laws which exist, which could be much more burdensome and onerous in the application on citizens. But the trouble is the framework is there and the framework keeps growing. So, there's no doubt we're in a time of great flux. Things are changing rapidly in societies and more rapidly than has been the case in most centuries. Every now and then there's a surge and we're in a surge of change at the moment. And so we have to interrogate things like rights and what's happening to them, and we have to maintain that tension, which I don't think we've done very well between the rights of individuals on the one hand and what appears to be the inevitable growth of power of central agencies and government and so and it's a tension that we need to work on in order to protect a free and democratic way of life, which it's not like politicians sit around saying, let's how can we take a free and democratic way of life? But the nature of agencies, institutions, governments and the people who exercise a lot of power is to grow. And we have to be very alert to that, and I'm not sure that we have been very good at being alert to that.

Michael Green [00:30:23] You, Lex Lasry, take on another case, this time in Indonesia, where two young men, Andrew Chan and Myuran Sukumaran, are facing the death penalty. Runs for nine or 10 years in the Indonesian legal system, which is very different to ours and I assume very different to the Singapore legal system with the previous case had been. What were the circumstances of that case?

Julian McMahon AC SC [00:30:47] Well, that case was known as the Bali nine case. They got arrested on 17 April 2005. Nine Australians. Unfortunately, the cases went through the courts very quickly. It was a giant circus at the time. Schapelle Corby had been arrested the year before, and I remember reading years ago that during her early days in the system of justice in Indonesia, she was the most recognizable face in Australia. It was a giant circus, and the Bali nine trials went very quickly, and by the middle of 2006, a number of them, especially Sukumaran and Chan, had been sentenced to death three times trial appeal and final appeal. Now, around about that time, the families got in touch with Lex Lasry because for those who don't remember, the Van Nguyen case attracted a lot of publicity, and Lex was the public face of that. And he often spoke in the media about what to say, often at appropriate times about the death penalty and the senselessness of the death penalty. So, he really led the development of that argument back into the public arena in a significant way. And because of his status in the community and the legal profession, when he spoke, people listened. And so, by the time Van Nguyen was executed, Lex had made quite a lot of significant comments about the death penalty. And it was in the public mind in the background. This the Schapelle Corby saga, which was never going to end in her death. But again, Indonesia and its legal system was suddenly in the public mind. And then comes the Bali nine. So, the circus was in town. They were sentenced to death three times. Then Lex got involved in Lex, got involved to help him, and we went to Indonesia in 2006 to find local lawyers to run the case for Sukumaran and Chan. We were very lucky to get what turned out to be probably the best lawyers in Indonesia. I had asked around in a number of countries asking questions if I wanted a lawyer in Indonesia who had the following qualities and they were the kind of qualities we would ask for here in Australia. You know, extremely good lawyer. Extremely courageous. Without any doubt, free from corruption and so on. Because as the Indonesians say themselves, their own system is bedeviled with problems to do with corruption. So, we didn't want to be in that kind of network. I'd been sent to the same lawyer by people in three different countries. Mulya Lubis. He ran a firm and he was a prestigious, excellent lawyer, a doctorate from America and so on. And so he eventually took on the case that we see we had to visit him several times to get him to take the case, and we found out later it was a huge professional burden for him to take on the case because unfortunately, in Indonesia, there's a bit of an attitude that if you act for a villain like a drug trafficker, it's because you're empathetic, sympathetic, almost part of the network and you're taking all this money and you have a low standards. Nothing could be further from the truth when it comes to what Mulya Lubis. But nevertheless, we put him in that position. He eventually agreed to take the case, get a team of truly brilliant young lawyers around him. We were very lucky. Our clients were very lucky. So unfortunately, at that time, they'd been sent to death three times. There were media stars in all the bad ways. We never really repaired the damage, so we spent nine years fighting all kinds of cases. Constitutional cases, administrative law cases, further appeals in the Supreme Court. But in the end, politics took over and they were executed in April 2015.

Michael Green [00:34:08] These men in the time that they spent in jail and going through the legal system repeatedly, as I understand, developed significantly as human beings. Could you tell us a bit about their journey home, how their journey through living in prison, going through the system and how they ultimately faced their death deaths?

Julian McMahon AC SC [00:34:25] I guess they were lucky at the time Kerobokan prison in Bali was a very relaxed prison. It was hopelessly overcrowded, and it was governed by a kind of lots of interlocking mutual understandings, very different to the way a strict prison might run here. That's changed now. It's much stricter now, but in those days, it was pretty

relaxed. So, someone like any of us could go in and visit with a plastic bag full of food, for instance, and just hand it over and I could take a guest in. I'd go and see my client. I could take a guest in who might be a teacher in English or in art, and then the guest could just go back and forth whenever they wanted to. So, what happened in the first few years... Nothing happened. They were just your typical young kind of punks in prison with the swagger and the toughness and so on. But then around about 2008 2009, they gradually realized that they had to choose between leading a good life in prison or a completely wasted life. Prison is full of drugs and gangs and violence and so on, and so they were either in that or out of it. They decided to be out of it. And so, in the corner of the prison, which was if you think of a large rectangle prison down in the corner, there were a couple of rooms like cleaning closets and classrooms and so on, filled with junk. And over a year or two, the boys persuaded the governor, who was a big thinking guy to clean out the rooms and let them run classes there. And so that became what I used to call the Tafe. You know, they end up running classes in about 10 different things. English, philosophy, T-shirt making, exercise so many different things. And they gradually began running effectively a school in the prison. And that led to multiple shifts of attitude in all kinds of areas. When it came time for them to be executed, they were prisoners writing letters to the governor and the president saying, please execute me, not them, because they're so needed and I'm not needed. You know, those kinds of letters. They really changed a lot of lives and they did a great job. So, when they died, when they were executed, they were very they had a lot of personal pride because they knew they'd done everything they could to save themselves and to make atonement for the silliness of their drug crimes and also to improve the lives of the prisoners around them. So, they died with a lot of dignity.

Michael Green [00:36:41] I don't know if these quotes come from you, Julian, or someone else, but I find them interesting, and I ask you if you could explain them to us, please. One quote is "executions are always a matter of politics, not justice". And the other quote is "anyone who is in favor of the death penalty is in favor of the killing of innocent people". Are they quotes from you?

Julian McMahon AC SC [00:36:59] Well, I probably have said both of them at some point. I doubt if they originated from me, but they they're both slightly exaggerated. But the message is clear enough to say that executions are as a matter of politics, not justice. Let's take Singapore as an example, which is, although it doesn't execute a lot now, it still aims to be a regular executioner. You go through the justice system; the judges decide that you will hang. Then the question is, is there a chance for clemency? So that goes to cabinet and that becomes a political decision. Cabinet, is perfectly free to at law to recommend to the president that there be clemency. So, it's like our cabinet recommended to the Governor-General that something happen. If the cabinet recommends it to the Governor-General, it will happen. So, each execution in Singapore is actually a political decision, not a legal decision. There are cases going on right now. There's a young man with an IQ of 69, and there's an international outcry at the fact that he's about to be executed. And the only reason he wasn't executed a few days ago is because he got COVID. So, he's probably the only person on Earth for whom getting recovering from COVID will mean that he gets killed. So, despite the legal system being similar to ours, ultimately the decision to execute is a political one with variations on that theme. That's true all over the world. People will be familiar with media stories. You know, will the governor in this state, in America, in that state prevent the execution from going ahead. So, it's a political decision after the legal system has run its course and send troops to Indonesia. The president has taken people off death row in Indonesia and on other occasions has not. Whichever president it might be over the last few decades. So that's what that means.

Michael Green [00:38:38] And that's really, it's going the cabinet to make a recommendation to the president. They're thinking, how is this going to play politically?

Julian McMahon AC SC [00:38:45] One assumes, you know, it always changes from country to country, but underlining it that's what you assume. What's often said about Singapore is that they don't want to lose face. The other quote was, you know, if you're in favor of the death penalty in favor of killing innocent people. And the reason that's definitely not my quote, but the reason people say that, especially in America, is that statistically looking at the history of the death penalty, it's just not possible to hold the view that no one who's innocent, that there have been no executions of an innocent person. There are lots of different ways of looking at the numbers and the statistics. But what's emerged in America? They talk about the four per cent rule based on using a lot of math to do with outcomes in health and diagnoses in health, and comparing that kind of analysis to numbers in criminal justice systems and looking at exonerations and so on. So, in America, they almost take it for granted that about four per cent and possibly a lot more, but about four per cent are surely innocent, not to mention the when you study the cases in detail. I think the defense lawyers who study the cases in detail would say the number is significantly more than that. So, if you say, well, I'm in favor of the death penalty in America, you also have to be saying, and that necessarily means I know and I'm content with the fact that innocent people will be executed as well. And that's a way of jarring, of having a jarring sentence in a conversation because an upright person might say, Well, I'm in favor of the death penalty for the following reasons it's the only way that true justice can be done and so on. And you say, well, you know that innocent people get executed as well. So, you're in favor of that as a. Way of implementing the bigger picture, and people don't like to say yes to that proposition

Michael Green [00:40:26] Personally for you. Julian, your clients who were executed, you have got to know them well. You've got to know them at a human level, not just as clients I'm sure. And so, there's that human connection person to person. How's it affected you? I mean, it's no longer a punishment in the Australian legal system, and therefore you're one of the few people in Australia who have been exposed to it. How have you coped with it?

Julian McMahon AC SC [00:40:48] Well, looking at the Indonesian case, for example, Sukumaran and Chan in Melbourne, Lex was the leader of that team until he became a Supreme Court judge in order to fill that gap. I ended up engaging with a whole lot of other people. We ended up with a team of about eight. I'm sure many of your listeners would know the barristers Tony Trude, Mike O'Connell, Pete Morrissey, Megan Titanosaur, Scotty Johns. Those were at least most of them. And then we had two solicitors Veronica Akow, Alex Wilson. So that's a team of a big team of people dedicated to the case, working very hard at the end of the case, there's no doubt that all of us were deeply affected after the execution. And so, I'm the reason I'm saying it's not just like, how do I feel when you asked that question, what I see in my mind is a whole group of people who were really belted and deeply affected and still are. There's no doubt we all were wounded by that. Everyone in that case carries those wounds and everyone needed to recover one way or another. You know, it's there's no pretending that it doesn't hurt you.

Presenter [00:41:56] Lives in the Law is proudly sponsored by City Maps illustrated. Their recent publication, The Melbourne Map, is a celebration of our wonderful city. This stunning hand-drawn illustration, which took more than three years to create, is available as an art print, jigsaw puzzle and calendar the perfect acquisition for your home office or

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Michael Green [00:42:24] There's a body called the Capital Punishment Justice Program in which you've been active and you've said it may be the most significant thing that you have done. Could you tell us about the program and why it's the most significant thing you think you've done?

Julian McMahon AC SC [00:42:37] So Capital Punishment Justice Project, that's called it used to be called Reprieve Australia, and it was started by a group of Melbourne lawyers, including Richard Bourke, who is now spent the rest of his career in New Orleans as a death penalty lawyer. Gradually, the name was changed to Capital Punishment Justice Project. Growing out of that, which has been running for 20 years. Monash University, through the dean of the law school, Brian Horrigan. Eventually, we got to the point where they created a new body within Monash University called Los Justice, which is like an institution which is dedicated to issues regarding the death penalty. So that's research, training, advocacy and so on. Now that's linked in with a small group of similar academic institutions around the world Cornell, Oxford and so on. So now we have in Melbourne, we have a dynamic with not just in Melbourne, we have a dynamic NGO called CPJP who are linked into pretty much all of the death penalty units in Asia. And behind that running alongside perhaps might be better. We have an academic body led by a great scholar, Mysay To, they're focused on research and big picture, long term, intellectual, academic kind of approach to the issue. And all of this has been supported by the Department of Foreign Affairs. And so, they open doors for us and facilitate all kinds of things at different times. So now we have this critical mass of people in Melbourne and Australia that who are linked in to the people on the ground fighting the death penalty in all the countries in Asia where people get executed. You know, it involves a lot of people. You know, I think over time it will be a game changer in Asia because it gives a place of refuge in a place for people to look to. If you're under pressure somewhere in Asia dealing with the death penalty, you have a friendship group and an intellectual support group in a much safer place. It's all about breaking down silos which exist in all these countries and creating a stronger, interlocking network. And that's definitely happening.

Michael Green [00:44:39] So you've spent a long time and a lot of your energy and effort, Julian, in these pro-bono cases, but you need to generate an income to pay your bills like everybody else. Could you paint us a picture of your overall practice because it can't have been only pro bono matters?

Julian McMahon AC SC [00:44:54] No, no, of course not.

Michael Green [00:44:55] But in running this practice, which I'd like you to tell us about, had you been working 24 seven for months at a time, years at a time to keep all those balls in the air?

Julian McMahon AC SC [00:45:04] Well, some years have certainly been harder than others, but you know, my wife has been a full time worker while raising all the kids. So, you know, I might get the publicity, but she's done a giant load, and that's also meant we've had a permanently secure income. There are plenty of people who might want to do more pro-bono work, but it's just not practical because they have to pay every bill. Well, I haven't had to pay every bill and I have, I think what could be fairly described as a standard practice in criminal law. And as things have turned out, I've said a couple of times defense, criminal law, but it didn't really necessarily start out that way. You know, I'd worked at the

OPP. And so, when I came to the bar, I was offered work from the state in the Commonwealth, and I sort of spoke to them about and said, look, I'd like to be free from just being known as someone who worked at the OPP and became a prosecutor, so I did defense work. And as it turned out, I've just been busy really ever since in defense work. I have a normal practice. I would say the briefs on my desk, what you'd expect from someone who's been around for 20 years. You know, I've got relatively serious cases to just typical areas of criminal law, like crime or like murder or rape or those kinds of cases.

Michael Green [00:46:22] Constant in your career to me, early days at least, and maybe, I mean, up until then, you mentioning Lex Lasry excellent mentors. Did you seek out mentors? Has it been good luck? And what role do you think they have played in your development as a barrister?

Julian McMahon AC SC [00:46:36] Mm-Hmm. I'm not sure whether I sort them out. I've been lucky to fall into the company of lots of people who I greatly admire. I haven't picked out mentors. I've kind of come across people like, say, Coughlan or Smallwood or David Ross and others and just realized the qualities. And so, the nature of the bar is that it's not strange to try to learn from and watch and observe older senior people at the bar works like that. In fact, in a sense, the bar encourages that, that's the way things get transmitted from one generation to the next, so I haven't really sought them out. I mean, I was lucky with Ian Thompson, that's for sure, because that was my first job. I didn't have a clue what I was doing, and as it turned out, I was working for a very admirable person and person who understood. What it meant to be a senior lawyer and a judicial officer. And so that was a very fortunate start. And then I really do think luck has a lot to do with these things. When I went to the OPP, I'm not saying it ever had ratbags, but it was just it wasn't guaranteed that the people I would work with would be fine people. But in fact, they were. You know, when I got into chambers and got to work on the Van Nguyen case, it wasn't guaranteed that the leader I went to find would be a fine person. But there it was. You know, it's there's a lot of luck in those things.

Michael Green [00:47:55] Looking back, there seems to have been a strong emphasis on social justice. I don't think these things are just happenstance. I think there's reasons why we go down certain paths in our life. Where do you think the social justice influences were when you were a young man or a child?

Julian McMahon AC SC [00:48:13] In my particular case, it was the attitude of my parents for sure. My mother was a country nurse when we moved to the city, she was a night nurse at the aftercare hospital in Victoria Parade, where the typical patient was probably someone with an alcohol problem, probably a veteran probably sleeping rough. She'd be cooking food for people and we'd be running food around those kinds of things. That was, you know, that was the way she lived and her friends lived and so on. Even when they became prosperous and dressed in the best outfits from Georges, they would still be cooking meals for someone they knew who was hungry or in need. And so that was just, you know, that's not my family or me. That's I think that's a widespread way of life for many Australians. And I was very privileged to go to a Jesuit school where many of my teachers were very well-educated men who could have done anything in life and chose to teach at privileged schools and then half their life. They'd probably teach in the slums in Manila or in the remote sections parts of India. And then they might come back after 10 or 20 years of that and be teaching me Latin or Greek or whatever. So, they were very inspirational and they were, it was taken for granted that you don't leave people behind, that the measure of how society works is how we look after the people at the margins to the neediest and so on. Because of a few circumstances, I'd probably put in the position of

articulating that. But lots of people have exactly those attitudes and they just do it without anyone knowing about them.

Michael Green [00:49:44] Julian, thank you very much for giving us your time today. It's been a fascinating story, and we'll watch with interest the future of it.

Julian McMahon AC SC [00:49:52] Thanks for having me.

Presenter [00:49:58] Show notes from today's episode can be found at Greenslist.com.au/podcast. There you'll find links of things talked about in this episode. A transcript of the show and some wonderful photos of our guests. Your host is former lawyer and Greens List clerk Michael Green. Our show is produced by me, Catherine Green, mixed and mastered by Windmill Audio and recorded by Alex Macfarlane, who also wrote and performed all the music for the series. If you're enjoying Lives in the Law, please tell your networks, subscribe rate and review the show. 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 this discussion here today.