

William & Lonsdale – Lives in The Law

Ep 20. Chief Judge Peter Kidd

Voiceover [00:00:26] 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 to the chief judge of the County Court of Victoria, the Honorable Peter Kidd. In this episode, we will hear about his articles in a commercial from his shift to criminal law, the art of prosecuting the extraordinary period of his career spent in Bosnia at the war crimes tribunal, and, of course, his role now as the chief judge of the County Court of Victoria. Many of our listeners will know the chief well, as he is often in the media speaking about specific cases and our legal system more broadly, he strongly believes that clear thorough information about why and how decisions are reached by judges is an important aspect of his role. And to that end, he explains why he televised his reasons and sentence in the case of Cardinal George Pell.

Chief Judge Peter Kidd [00:01:18] It was about being transparent and making justice accessible. Obviously, that case is almost on its own with a very small collection of cases so that the demand and the benefit of having that directly broadcast was there. We can't impose a direct broadcast on the community. It has to be that appetite. And there was that appetite there in some ways that decision was about ensuring that the community was informed about my reasons. They can make their judgments on what they think of what I saying and I welcome them in fact I encourage them to make their own judgments on that. But so long as they are making those judgments on an informed basis and by telecasting it live, that was one way of ensuring that they heard all my reasons, heard the complexity of the sentencing process, having regard to the facts and circumstances in that individual case. But at least the community could access my reasons easily informed. So, they could say, well, the commentator says this, but I actually read what the chief judge says here, I don't agree. So, yes, it was access to justice, transparency, education.

Michael Green [00:02:56] This morning, we're talking with the chief judge of the County Court of Victoria, Peter Kid. Good morning, Chief, and thank you very much for coming along.

Chief Judge Peter Kidd [00:03:02] Thanks very much, Michael. It's lovely to be with you.

Michael Green [00:03:06] Peter, you're an Adelaide boy, and your upbringing, your schooling was in Adelaide. Looking back on it those years as growing up years, do many things particularly stand out to you?

Chief Judge Peter Kidd [00:03:16] Yeah, well, when I do reflect on my upbringing in Adelaide, I really have come to appreciate the opportunities that I was given. I had a comfortable upbringing with my family and really that provided me with every possible opportunity. The opportunities were really there for me to take. And it was an idyllic upbringing. So, I really got nothing but fond memories of my time growing up within the family and indeed at school, of course, nothing's perfect, but fondness is really the thought that comes to mind and really that extended also through university.

Michael Green [00:03:55] Well, speaking about university, you didn't do law to start with or you didn't decide to do law to start with. You decided to do a Bachelor of science majoring in geology. That's a long way from law. Well, why did you decide on that?

Chief Judge Peter Kidd [00:04:10] Well, it just shows how youth is not necessarily compatible with good decision making. Well, I at school studied the sciences and only one humanity, history, Australian history. And also, my family was more or less from a science background, not a law background, I don't come from a legal family and my father, a dentist, for example. So, law was just never on the horizons. And I wasn't sure what I was going to do, to be frank. Geology was of interest to me, not because I had a particular interest in rocks, but I thought mining might be a good career. Mining was big in South Australia. There were opportunities and I like the idea of perhaps an element of adventure travel throughout the country and perhaps overseas. And that's really probably what drove me in when I was 15, 16 towards geology. And then after school, I went traveling for a year and met a geologist. And over the course of a weekend, I changed my mind.

Michael Green [00:05:11] Why did you change your mind? What did that geologist say to you?

Chief Judge Peter Kidd [00:05:13] Well, he filled in the gaps of life in the mining industry. And, yes, there was that idea of not being bound to the office and not going to the one location every day. He just pointed out that you will spend months and months in isolated, terribly isolated locations. And that doesn't even change when you get married and you've got kids and presents particular challenges. And I was living with a family, picking apples, actually trying to fund my traveling in the United Kingdom in Norfolk. And he stayed for the weekend. So, it was over the course of many discussions, but it was really a life altering experience. So, after that, I reflected for a time and then I deferred geology at that point or science, and I've had the marks to get into law. And I thought, well, look, if I'm going to change from geology, pick a course, which gives me some options and having taken some advice, as we all do from various people, it seemed that law and economics I was actually originally going to study law and economics will give me the broadest possible scope. So, I recast my vote, so to speak.

Michael Green [00:06:19] Did you enjoy the Study of Law University?

Chief Judge Peter Kidd [00:06:21] Look, I did it varied, to be honest, some subjects I really loved and others I found incredibly dull. So, my experience with study and the law was probably a mixed one. It wasn't that I loved the law as a law student, but I didn't dislike it either. I was always glad that I did it. Even as I was moving through law school. I just didn't know where I'd end up with it. I wasn't one of these students who was so passionate about it that I would inevitably become a lawyer. In fact, as I was as the years were going through, I was even contemplating not becoming a lawyer. But it wasn't through any, you know, dislike of what I was studying. It just I wasn't passionate about it at that time.

Michael Green [00:06:58] One of the themes that seems to run throughout your life, Peter might be even to this day, is love of travel. And you finish uni. Yeah. And you take a year's break. And travel again. Where did it take you?

Chief Judge Peter Kidd [00:07:11] Yes, I do, well, I've always loved traveling and I've traveled a lot throughout university as well. And I've been to various places. I suppose in my mind, my kind of travel, there's an element of adventure travel to it. It's going to destinations which are otherworldly, which can be difficult to get to and which offer great cultural enrichment, but also challenges. So, over the years, in middle of the university, I traveled from Hong Kong through Deng Xiaoping's China for several months and then on the Trans-Siberian through Soviet Russia to East Berlin, which was really the adventure of a lifetime. And on other occasions I've been to French West Africa and North Africa,

learned some French in Montreal, taught English in Japan. So, I suppose a lot of my free time in my younger years was very much directed towards earning money to travel. And then when we had the long summer holidays back then, I'd seize the moment or I'd take a year off, which is what I did twice, once before we name months after uni.

Michael Green [00:08:15] And did you do that, and will you continue to do it for the purpose of experiencing other cultures and seeing how other people live their lives?

Chief Judge Peter Kidd [00:08:22] Yeah, look, it's often difficult. I often wonder how do I articulate why I've always been passionate about that. And I suppose for me it's the idea of experiencing another world, the cultural experience, the linguistic experience. I mean, it enlivens all your senses, sights, food, everything.

Michael Green [00:08:47] Chief, you come home and you've already arranged while you're away or prior to going away, your articles at Mallesons King Wood Mallesons, now in Melbourne. Why did you leave Adelaide?

Chief Judge Peter Kidd [00:09:00] Well, I'm not even sure I can articulate exactly why. I think I just knew at some point, probably through university, that I would come to Melbourne or Sydney. And I just felt as a 21, 22, 23 year old that I wanted to experience establishing myself somewhere else in a bigger city. And it so happened I got the articles at Mallesons. So, it turned out to be Melbourne

Michael Green [00:09:30] We'll obviously get to your career as a barrister and then as a judge. That part of your life has been mainly in the criminal law. But with Mallesons, you working at a large commercial firm, no crime there at all, I would have thought. What was it like? What did you learn from being in a different environment of commercial law?

Chief Judge Peter Kidd [00:09:48] Well, I think I learned from my experience at Mallesons the discipline of work. I saw university and my time at university as being not a transition to work, but as a separate chapter of my life. I would use my holidays, as I've said earlier, to work and earn money and travel. So, when I started work at Mallesons, whilst I worked before at plenty of casual jobs, I hadn't experienced the discipline of professional work. So, in some ways, I'm not sure I was that ready for it. I learned what was required to not only meet the needs of an employer and clients, but to pursue a career of some kind. And that included not only the hours, but learning how to write. And these are some basic skills, which I don't think I really had. And Mallesons taught me that when I say right, I'm talking about writing well, right. Legally and logically and in a way simply as well. So that was a great skill. Those are two things that I took out of my time at Mallesons, the discipline of focus and work and the capacity to write well and in a timely fashion.

Michael Green [00:11:02] And from my own experience in those times, we all came out of university without those skills to be able to write clearly and lucidly and in a legal way. And when you worked, when you had good articles and worked at a good firm, they were the sorts of things they taught you.

Chief Judge Peter Kidd [00:11:16] Yeah, yeah, that's exactly right. And I did have terrific supervision, I must say. It's one of the things I think I do lament at. I don't want to sound like a Neanderthal, but I do look at the younger generations coming through university. Of course, they have those skills because they need to go into all these internships from a very early stage. And that's all very well. But I do wonder what they're missing out on,

which we were lucky enough to experience, which was another type of life for a period of time.

Michael Green [00:11:48] After Mallesons, you make quite a severe turn in your career and you go into the criminal law. Why did you do that? How did you do that?

Chief Judge Peter Kidd [00:11:56] Well, whilst I indicated before how much I appreciate my time at Mallesons, what they taught me, I wasn't really engaged with the type of work. It didn't excite me and I was looking for something different. Indeed, there were moments when I think I was contemplating whether I would remain in the law. Now at university I did do well in the criminal law subjects and I found them interesting. So, I thought to myself, well, before making that decision, I should perhaps try practicing criminal law. And so, I start to apply for some criminal law jobs. And one of them was the Commonwealth DPP and I secured a position there. So really, it was part of my career journey.

Michael Green [00:12:40] Can I just for the non-lawyers who may be listening to us or to the non-criminal lawyers who may be listening to us. Where does the Commonwealth DPP sit in our criminal justice system? What does it do?

Chief Judge Peter Kidd [00:12:52] Yeah, well, we have to DPP's, the Director of Public Prosecutions, we've got a Commonwealth one and a state one. Both DPP's prosecute the serious indictable or high level crimes that come before juries and they prosecute on behalf of the state or the government, both DPPs, the Commonwealth included are independent of government. So, the DPP would decide whether or not to prosecute someone for a particular crime and what charges they make that independently of politics and then they prosecute them or brief counsel on their behalf to prosecute them. The difference between the Commonwealth and the state is simply this that the Commonwealth prosecute crimes against federal laws such as importation of drugs, because that's where it crosses the borders in that they are commonwealth or federal crimes or tax fraud. We know that income tax, we pay our income tax to the federal government. So, there's a fraud committed upon the tax department. It's a commonwealth crime. So, they prosecute the Commonwealth crimes and the state DPP prosecute state crimes, which is all other crimes such as murder, rape, burglary, robbery, etc.

Michael Green [00:14:03] While you're at the Commonwealth DPP, it became apparent to you that you want it to be a barrister, that really your career path is going to be as a barrister, not a solicitor.

Chief Judge Peter Kidd [00:14:11] Yeah, it did quite early on, I think. Firstly, if I look back on my life and I asked myself what were the best decisions I've ever made? That's right up there at the top going to the Commonwealth DPP because it was a career defining decision. I discovered that I really enjoyed working in crime and I enjoyed working with people in crime, including the barristers that we were briefing. And I was involved in some really interesting cases. I was learning a lot. I really loved that job. But I could also see the great benefits of being a barrister and the excitement of being a barrister at that time. So very early on, I think it's probably a decision I made within the first year or so that I would go to the bar. And it was just a question of time then. And being at the DPP was a great opportunity to sort of have my training wheels on to learn the fundamentals about criminal procedure and the law of evidence in particular, because, of course, that plays a critical role with crime and also to some extent, court craft by observing the barristers that I was briefing. It also enabled me to make some good contacts because you need contacts at

the bar in order to get briefs. So, there were lots of positives and it was just then a question of timing.

Michael Green [00:15:29] So you come to the bar and with these contacts you've made, pretty soon you're busy as a junior barrister. And busy in... Not quite big cases. Very big cases.

Chief Judge Peter Kidd [00:15:39] Yeah, I was I was lucky.

Michael Green [00:15:40] There was murders of Bega schoolgirls, the Silk Miller police murders working in big cases like that as the junior barrister, relatively new to the bar. Was it a huge culture shock in some ways? Were you in deep water and swimming very hard?

Chief Judge Peter Kidd [00:15:55] Well, yes, I was. But I mean, the Silk Miller case was a bit later on. But the bigger murders case, the as the Grollo case, Bruno Grollo attempt to divert the course of justice case early on. I think probably everybody feels that when they first go to the bar, whichever role they're playing, it's a challenging environment. And you're so accountable being on your feet, whether you're a junior in a large case or you're running your own case. There are challenges to both. And of course, during this period, I was also running my own smaller cases, but I always found which wherever I was at the bar and it really didn't matter whether it was the commencement of my career mid-career. I always had the sense that I was in deep water pedaling hard underneath and trying to remain calm to everybody else, I of course, you learn to manage your stress and performance pressure as you become more experienced, but you don't lose it altogether. It's always there.

Michael Green [00:16:58] Can I go down the track of junior counsel? So, in a large case where there's a silk, who's leading you, you're a junior counsel and a solicitor who's instructing both of you. How are the roles split up? What is the role of the junior counsel? How does the junior counsel function in that in those relationships?

Chief Judge Peter Kidd [00:17:15] Yeah, well, each relationship can be different that perhaps drawing on some of my own experience and the way it worked with me and the seniors and also with me when I was a senior and I had Junior's. First you work as a team, which is just terrific. It's one of the great joys of the bar to be a member of a team, whether you're prosecuting, defending and the team. Of course, it also extends to the solicitor. There's a split of the work. Full accountability lies with the senior counsel ultimately. But if you've got a good relationship and there's a competent junior, you're able to split the work. So, you might split the witnesses for example, the senior counsel will take the most significant witnesses, not all of them, but most of them. And in the junior counsel might take several other cohorts. You'll split the legal argument if you've got a good relationship and everybody's confident in their own abilities. And of course, insofar as forensic decisions are concerned and tactics that they're the subject of many, many joint discussions and conferences over, you know, in big cases, months,

Michael Green [00:18:22] huge pressure in big cases. I made the observation that the peaks of pressure that barristers work under are far higher than the pressure that solicitors work under solicitors. It's an it's a constant pressure never goes away. Barristers in running trials, the peaks of pressure are enormous. And it's a 24/7 thing when a trial is running. I don't think barristers, it never leaves their mind. What is the trial they're running? How do barristers in general and how do you in particular cope with those peaks of pressure?

Chief Judge Peter Kidd [00:18:49] A couple of things. Firstly, there's nothing like pressure when it comes to having to focus. Focus is really what gets you through. You've got a job to do. You start the case and you know that there will be an end to the case, even a really long and difficult one. And especially as you become more experienced, no matter how challenging and stressful a situation you find yourself in, you've probably been there before. And you know from experience that there's a start, middle and end to the case. One technique of getting you through that process or that journey is to focus on one day at a time, one issue at a time, one witness at a time, get through to the end of the week and get a bit of a breather on the weekend. It might not be as much as you'd normally get, but you do get a bit of a breather and you start again the next week and you apply the same discipline. And before you know it, you're halfway through the case. And of course, eventually you come out the other end and that's the only way you can achieve this. And to maintain that level when and of course, there's an element of professional pride, you are there to perform. Someone is relying upon you to perform, to act for them for this case, no matter how difficult it is. And your professional pride just focuses the mind and you do get through it. I mean, I've been there like everyone found myself feeling completely overwhelmed by the pressure. Somehow, I've always been able to find a way to fumble my way through.

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Michael Green [00:20:53] Most of your work as a barrister was as a prosecutor, I'm interested to learn more about the difference between how prosecutors conduct cases and how defense counsel conduct cases. We've had defense counsel tell us that before they ever get into court, they prepare their closing address to the jury as a bit of a roadmap through the trial and I guess to keep them on point. Did you do the same thing as a prosecutor or did you have a road map? And what sort of road map was it?

Chief Judge Peter Kidd [00:21:22] The answer is yes. And in fact, I would say as a prosecutor, you need to have a road map because as a prosecutor, you are building the building and you need to be able to open the case and in order to open the case, and for those listeners who are not familiar with the criminal law or the practice of jury trials, the first thing that happens in a trial is the prosecutor stands up and outlines the facts and circumstances in support of their case to the jury. They don't argue it, but they identify how they intend to prove the case, what elements are involved and what the evidence is there to support and which witnesses they'll be calling. So, a prosecutor, almost by definition, has to carefully map out where the case is going to go. They need to identify the schedule of witnesses, for example, who they're going to call first, which cohort first, what are the forensic issues that they need to grapple with and get and speak with witnesses about or have further statements taken from? Are there any pretrial issues that need to be ventilated? And in today's practice of the criminal law, all the substantive pretrial matters need to be identified in advance, by contrast with the practice of 20 years ago where things were done more on the run and more on the first day of the trial. If there were any tricky issues today, such as do the Crown rely upon accused running away from the scene as evidence of guilt? Once upon a time, prosecutor didn't need to identify that precisely before the commencement of the trial, whereas today the law actually requires the prosecution to do that. And these are all good things, good developments, likewise the

duty of disclosure, which is which really is about the prosecution and the police who are behind them, must disclose all the relevant, potentially relevant, relevant evidence to the defense well in advance of the trial. And that's a much more rigorous process than it used to be. So that also requires the prosecutor to think about what are the issues in the trial and where is it going in order to understand what needs to be disclosed. So, these things are all very important. So, the short answer, that was a long answer. So, the short answer is yes. And I would say that if a prosecutor hasn't done that, then they haven't properly prepared for the case.

Michael Green [00:23:35] Am I right in assuming that, whereas for defense, it's the closing address which shapes their case, whereas for the prosecution, it's the opening to the jury which shapes their case?

Chief Judge Peter Kidd [00:23:45] Yes, shape shapes probably a good phrase. I mentioned before that the prosecutor can't argue the case and the prosecutor can't say why they should accept a particular witness over someone else in his or her opening. That's must be reserved for the final address. But broadly speaking, I think that's a that's a fair comparison.

Michael Green [00:24:06] Now, this theme keeps coming up in your career, chief, of the travel bug. You decide to go to Europe and do a masters at the University of Geneva in your own phrase, you roll the dice in making that decision to leave your career sort of mid-career here in Melbourne. But that leads on to what appears to me to be an extremely interesting and important phase of your career.

Chief Judge Peter Kidd [00:24:29] Well, that was and it was a very exciting phase in our career. We and I say we, because this was a collective decision made between my wife and myself to go overseas. At that time, we had two young children, very young children, two girls. They were two and four at the time. And we wanted to our family to have an overseas experience. We wanted the opportunity for the children, the kids to learn another language. And I had always been interested in war crimes. So, we decided that they were the vehicle which satisfied all of our all of these motivations would be for if I could for me to get into a university and to do a masters, basically war crimes, which is what it was. And that's what we did with Geneva and we lived there, we were going to live there for 12 months. It was a bit shorter in the end because I got this job. So, we're there for that period and the kids went to the local French kindergarten and school. And then I did say that I rolled the dice in a way by going over there because there was no guarantee that we were going to get we were going to get a job after that. But we were lucky enough. Through a few contacts at the university, I discovered that at the war crimes chamber in Bosnia, which was just being established, they were actually looking for people at that time. And if there's one thing you need to know about international organizations, they're are incredibly cumbersome and slow beasts when they get themselves established. But once they get to the point when they want someone, they want someone now. And I happened to be there at that time, ready, willing and available. So, within a week or two of discovering this opportunity, I'd been down there, I'd been interviewed. And I I've got the job as an international prosecutor. And we then went to Bosnia and lived there for, I think a little over three years

Michael Green [00:26:19] When you were working as a prosecutor in Australia, here you're prosecuting on behalf of the state of Victoria or the Commonwealth of Australia. Who were you prosecuting on behalf of?

Chief Judge Peter Kidd [00:26:28] Yeah, look, I think probably strictly speaking, the court of Bosnia, it's the state of Bosnia, strictly speaking, is the state of Bosnia. But it's a little bit more complicated than that because the war crimes chamber was established to take crime, take prosecutions back from the international tribunal. But you've got the international tribunal in The Hague prosecuting or hearing trials for the war crimes arising out of the former state of Yugoslavia. And the international community had decided that that had to be wound up. It was incredibly costly. And they also decided that it was in the interests of justice, that cases be prosecuted within the countries themselves closer to where the crimes were committed. And we all know that there's good sense in that. That's why we prosecute crimes in the regions, for example. That's why crime works, why we hear trials in the regions here in Victoria, close to where within the community where the crime has been committed. So that's what the international community was trying to do. One of the reasons for being there, one of the reasons you had international prosecutors there and international judges there was to ensure that we were independent of any local or domestic prosecutor or judge. I know, that's a complex answer to the question. But it was complex

Michael Green [00:27:46] In this war. I will now go back to a legal question because it interests me; here in the state of Victoria, and in this County Court, you are applying the law of the state of Victoria. What law was being applied in the war crimes chamber of the court of Bosnia?

Chief Judge Peter Kidd [00:28:01] The laws of evidence and procedure were essentially adopted or adapted from the international tribunal. And so, your next question will be, well, what laws apply for international tribunals? And the answer is it's a mixture of the British common law or the English common law system and the European Continental or Napoleonic system. So, it draws on both. How does that translate into practice? Well, again, it's very complex. Perhaps I'll just give a couple of examples. The law of evidence largely comes from continental Europe. That basically means that most evidence goes in, it's admissible and it's a question of weight. So, there aren't all these arguments about the admissibility of evidence that we have here. We've got that for good reason of course, because of juries, we can't have evidence misused. So, they're hearsay. That kind of evidence would all go in. And then you're just arguable. It's hearsay, secondary hearsay, sorts of little weight. And so that's very much adopted. The European approach. As for the fundamental structures of the trial, the standard of proof, the burden of proof, more or less, that comes from the English common law standard of proof being beyond reasonable doubt, the burden lying upon the prosecution, the prosecution being required to exclude any hypothesis consistent with innocence. Those kinds of propositions come from the English system, which also find their way into a lot of the international human rights instruments. And then perhaps another area which I found really challenging, which is more European than English, is they really didn't apply the laws of precedent there. So, you would have different chambers and different judges feeling at liberty to interpret the law differently from their brothers and sisters or indeed from precedent, a precedent in inverted commas, a so-called precedent up in The Hague at the international tribunal if they saw fit to depart from it. Others approach that more strictly. And that was very difficult because you often just didn't know what the law was then, and it was more open to idiosyncratic interpretation. So that just a couple of examples of the legal quagmire that we found ourselves in.

Michael Green [00:30:22] It's all very well to have a love of adventure travel, but to live in an area which has been part of a civil war in which there must have been huge tension still in the area of potential violence with a young family is a different thing. It sounds like an

absolutely intriguing and unique legal experience. But what was it like to live there as a family in this extremely volatile situation?

Chief Judge Peter Kidd [00:30:45] Well, we went there certainly not just because of the legal experience. We were probably equally we went there for the family experience and the personal experience. I would I would say that overall, our time in Bosnia was one of those periods in life where every sense and every emotion was engaged and alive for the full period of time. I don't think we had a boring moment there. We experienced emotions and tragedy that we just never thought we never thought existed. Right from the get go, though, it was quite confronting. You arrive in this city, the journey from the airport, the airports further out of town, like all airports as that driving you in to where we were going to live on the road there are some really significant bombed and burnt buildings. I always find it confronting seeing, burnt out buildings that are just standing there. And then as you get closer in to the town and indeed on our very street where we lived, there are bullet holes everywhere. So, you just reminded wherever you looked that this was a city which experienced a really brutal war. And also remember the first weekend that we went walking out to the old Turkish town, which is in the middle of Sarajevo, we found ourselves walking along the street and there were these what appeared to be red waxed areas on the pavements. And we asked about those and they represented where civilians were shot dead by snipers. So there just these there were these physical... You were immersed in these physical reminders as to why you were there, because, of course, we were there for that reason to obviously prosecute war crimes. You know, I was I was working on these cases and of course, when you're working on these cases, they're not two dimensional. I'm not reading them in a book anymore like I did in Geneva. These are unbelievably traumatized people, I've never come across as and certainly the extent of trauma that I saw there, you're you've got difficulty often getting them to court that that traumatized a lot of them would come back from overseas, that had been relocated overseas and trying to get some of them back was always difficult. When you got them back, you were trying to get them to the barrier, so to speak. In the meantime, you're thinking legally as well that there were some things that need clarification around the residence. They go through what we all know to be such a difficult exercise of cross-examination. And some of these people, nobody trains you to deal with people like that with trauma at that profound level when and certainly not day after day, month after month. And, you know, in three years, the case went for two years. And my wife's dealing with we've made a lot of Bosnian friends since we've been there. There's not one Bosnian family, not one Sarajevo family that didn't suffer terribly during the war or doesn't have a story. And as your friendships grow, they tell you about it naturally, that's what happens, especially when they know what we do. So, this grief, this was a city, a country heaving with grief and we are immersed in it. I don't want anyone to feel for us because we chose to go there and we could leave. And I was paid well to be there. But in a funny sort of way, we felt somewhat guilty because of that,

Michael Green [00:34:06] What they call survivor's guilt.

Chief Judge Peter Kidd [00:34:07] Well, yeah, I'm not I'm maybe but I'm not a survivor in the sense that they are. But there's no doubt that I we both felt some guilt because we were internationals, well paid, seeing and hearing about these stories. And I was I felt guilt about getting these witnesses to the barrier and seeing them very traumatized, even though, you know, in the end they wanted justice. So, it was a really, for us, it was just an emotionally challenging experience. But at the same time, it was just so enriching and rewarding and with the generosity of the people, you know, the friends I told you about, who would tell that they were really deep, good friends and we felt privileged. It was a very

safe experience. I've got to say that, the war had finished well and truly there was no shooting when we were there walking away from a street perspective, it was actually incredibly safe. There was no street crime at all. We always felt safe. We didn't live in a compound. I had one episode there, which was a safety issue with one of the persons I was prosecuting, and that was a bit scary there for a few weeks and we were under guard for a period.

Michael Green [00:35:23] Why did you need the protection? What was happening that particular moment that required the family to be prepared?

Chief Judge Peter Kidd [00:35:29] Well, I was prosecuting a person. In fact, he was a Muslim. And Sarajevo was largely Muslim town by now. Used to be multi-ethnic before the war. But there are very few Serbs and Croats there. Now it's very largely Muslim. So as long as I was prosecuting in a broad sense, it was friendly territory that I prosecuted this Muslim for some executions, a video had come out in the United States of four prisoners of war who had been captured. It was on the video. They were being interrogated in a very lonely forest, which is where you do not want to be taken prisoner. And it was clear from the video that from the fear in their eyes that this was unlikely to end well, and it didn't. It ended up with bullets in their backs. And I prosecuted the security officer who was present at the scene for failing to stop that mistreatment and those executions. There's an element of controversy over the prosecution of a Muslim because they saw themselves as the victims in the war is another example of the politics coming into the situation. And he came from an area of Bosnia. And there was a lot of anger out there about the decision. And he was on bail. And at one point, we got intelligence that he had a gun and he was looking for me. So, he blamed me personally, which is another different experience from prosecuting. He where I always considered and I always felt that I was looked at as an instrument of the system, whereas there he blamed me personally. I was actually ironically, I was in the middle of my concentration camp case where I was prosecuting Serbs. And they had pulled me out of that case because this bloke chasing me down with a gun somewhere. And then I had all the four Serbs accused in the case via their lawyers sending me their best wishes. It was the whole situation was there was a craziness to it. At times. It at times it felt slightly surreal. He actually got acquitted, having been acquitted. He obviously didn't see the need to kill me anymore.

Voiceover [00:37:43] William and Lonsdale are brought to you by Greens List, one of the leading multidisciplinary barristers lists in Australia. Greens List believe in promoting conversation around the ideas and issues that shape not only our legal system but our wider community.

Michael Green [00:38:03] Let's get back to I was going to say dull and boring old Melbourne, but after about four years in Bosnia, you come home, you work as a prosecutor for the Victorian Office of Public Prosecutions. You become senior crown prosecutor. You take silk. All of this is leading up to you being appointed chief judge of the County Court of Victoria was being a judge something that you aspired to? I mean, in years gone by was sort of the crown of a barristers career was to be appointed a judge. There are far more barristers now, and therefore that's not the case. Some barristers aspire to be judges, some don't. Was it something that you had thought about and thought I would like to be a judge?

Chief Judge Peter Kidd [00:38:41] No, but that's probably more a product of the fact that I. I tended to only look at the sort of a year ahead in my career. That's the way I've always been. And I've never mapped out where I am going over the next five years. I've never

done that. I mean, going to Bosnia as an example of me not doing that. And when I came back, it was the same. What I was interested in. A career was important to me and not suggesting it wasn't. I wanted to succeed and I wanted to get the best work. But I was addressing those questions more in the short to medium term, never in the long term. So that probably explains why I never really considered that down the track.

Michael Green [00:39:31] It's interesting in these positions in the law, be it chief judge of the County Court, Chief Justice of the Supreme Court. How much training you don't get for these positions? Was it the same for you?

Chief Judge Peter Kidd [00:39:43] Very. Oh, yeah, definitely looked at the role of chief judge, I think it's fair to say, is a complex one and multifaceted. And I was trained in one facet, and that's the law and criminal law in particular, and court craft. But if I were to break up the role of the chief judge, then you could probably break it down into three components. One component is the courtroom work. I'm a judge running a trial, presiding over a trial. Obviously, the most obvious example hearing pleas. The second component of being the chief judges is managing the court generally. Of course, the court comprises three hundred staff and 70 to 80 judicial officers. Of course, I don't manage the judicial officers with the court work inside the courtroom or the decision making. They are independent of me, but I'm responsible for ensuring that effectively that there's a roof over their head and that the electricity and the lights turn on. Now, it's a lot more nuanced than that. That role I've discovered involves me investigating and making decisions with respect to infrastructure, the capacity of the court, when we're going to exceed that capacity. Where do we go when we exceed that capacity? What should future courts look like? That involves me working on initiatives and projects with respect in court technology. And obviously another component of that work involves me dealing with questions of pastoral care with judges, management staff on more serious issues. If it rises to my level, you know, all of the above, I had no training and you've got to learn on the job. The largest management role I ever had before this was managing a small team on a case. Might be might have been a big case, but it was a small team of maybe a collection, half a dozen people. And then there are other components of that role. Similarly, with running the court that were completely new, such as media engagement. And that's another role that I've just learned on the on the job. And the third component of my role is, is as chief judge, is I play a role in the wider justice system, as a member of courts council and as one of the heads of jurisdiction. And one thing that probably has changed over the last 10, 20 years is the both from a legislative point of view, but also from a practice point of view. The courts are far more collaborative and collegiate and collective in their approach than they used to be. So, I've got a role to play there. And that, of course, was new. You know, apart from the court work, I had little to no experience in any of the other aspects of the role of chief judge

Michael Green [00:42:11] Now having had experience of fulfilling the role of chief judge, and it's all of the facets of that role, are there any particular parts of the job that you enjoy more than others?

Chief Judge Peter Kidd [00:42:21] Yes, well, I do like the fact that it's multifaceted. I think I should say that that's an aspect of the job that I really enjoy, even those aspects where I felt out of my depth and I've had to find my way through, I always enjoy going to court. I enjoy working on infrastructure. I enjoy the interaction between infrastructure and technology and how that might manifest itself in future courts and what the courts might look like and how we might do our cases. I find that big picture thinking really fascinating and challenging, and I've always enjoyed the public engagement and media work that's

important to me. And another area that I find particularly rewarding is, is judicial education, making sure that the judges have the sort of opportunities that they want and that they need for future education, whether it's at the court workshops, seminars or through the judicial college. These are things which I think are really important for a modern judge. I'd certainly treat that as a priority

Michael Green [00:43:26] Following up on one or two of those areas. You have you got a particular interest in educating the community about the court and the law in general, and that's part of your media engagement, I guess. Can you give us some examples of how you do that and why you think it's so important? I'm interested to know. I mean, I agree with you very much. It's important. And hopefully our podcast, you're doing a little bit of that, but you've got a major role in doing it. I'm interested in your view of it.

Chief Judge Peter Kidd [00:43:51] Yeah, well, the courts are important to the community. We're one arm of the democracy, one of the three legs to the stool, if you like. We also carry out really weighty and consequential work, which has a real impact upon the community. The community also has, I think, a huge appetite to know about what's happening in the courts. Now, you don't need me to tell you that. You just need to turn on the news every night, no matter what the station, by the way, there's always a report about a court case or more. You open the paper no matter what the paper, left, right, middle or whatever you like. There are stories about court cases that has always said to me that the community want to know about what's happening in the courts. So, I know that there's that appetite there, and we also know that from various studies and surveys. And then you add to that what is perhaps my sort of general concern is that I don't think traditionally that the community has received that the level of education information they need about what's happening in the courts. Now, the media plays a very important role in disseminating the work of the courts, and we rely upon them. And in many instances, they do a really good job, but not in all instances. They're selective by nature in what they report upon. Of course, they've got their own narratives and they've got their own interests. They need to get ratings. They need to sell papers. And they've got, in some cases, a narrative that they want to pursue. So, they'll fit their reporting, they choose their cases, and they'll also slant their writing with respect to those narratives. And that's fine. And as I said, in many, many instances, there's no difficulty with what takes place. But too often, the general narrative which is conveyed through the prism of the media, is that especially with respect to sentencing, is that courts are out of touch, that we're not alive to the issues in the community or the sentiment of the community. And our sentencing standards are pointed to as proof positive.

Michael Green [00:45:54] And maybe the community through the media has the idea that judges have got an open check, so to speak, in their sentencing they've got just blue sky out there and the judge can pick a figure and say this is the sentence, which, of course, is not the case.

Chief Judge Peter Kidd [00:46:09] Yeah. And so, yeah, that's right. And so, you've got those three things that I've lined up there which says we're important. We do really important work. There's an appetite out there, but they're not getting the full picture. So, what to do about it? And I think the, well one of the answers to that is for us, the courts, to communicate more about the work that we're doing and in better ways.

Michael Green [00:46:33] Well, then looking into the future, we're talking a bit about the future now, we may have had a snapshot of the future in the last 18 months because of the pandemic and the way the courts have had to function throughout the pandemic, as I

understand it. There's obviously a backlog of work has built up, but you have found ways to keep the court functioning under difficult circumstances. When parties to cases can't come to court, their representatives, their barristers, solicitors can't come to court. Because of these adjustments you've had to make in the pandemic. Can you see things being different permanently into the future?

Chief Judge Peter Kidd [00:47:06] Yes. Two things have happened over the course of the pandemic and both need to be spoken about within this context. The first is that the courts did quickly move to dealing with matters online through various different platforms, whether it's WebEx or Zoom, the non-jury matters in particular in the transactional and procedural hearings. We move very quickly across all jurisdictions, crime, common-law commercial to do that. And then in the non-jury jurisdictions we also conducted a lot of online hearings even which were of a substantive nature, a contest and nature, like a commercial case involving documentary evidence and indeed all evidence and cross-examination so that we've been able to maintain and keep up with our lists over the course of the last 18 months online. And sometimes it's a bit of a hybrid. Sometimes the judge might be in court, counsel might be in court, but everybody else might be out of court. It always depended upon the restrictions in place at the time, which we wanted to respect and also what we were able to do safely in accordance with our protocols. The greatest challenge we've had is jury trials. During the course of the significant lockdowns, we had to suspend criminal jury trials and civil jury trials, although with civil jury trials they were able to continue with causes instead of jury trials. We had judge alone trials in crime as well for a period they no longer exist, they're now off the books, but the number of judges and trials that was conducted was relatively modest. The bottom line is we had to suspend those jury trials and we've got a backlog, which we are now addressing. We recommence with jury trials at the start of the year. We did that still under quite significant restrictions, but we were conducting the jury trials under a social distancing system, using two courts per trial where the second court was used as the jury room. And we empaneled remotely from the jury pool room to ensure that we never had at any one time a congregation of too many people in the one space. Now we're back to single courtroom use, which is which is good. As for the future, having regard to our experience over the pandemic, I've got no doubt that there's opportunity there for us to use the remote experience to conduct a cohort of transactional or procedural matters remotely. There will always be some exceptions, of course, to make the interests of justice, and we need to identify where those parameters are as to what ought to be conducted remotely, which we're in the process of looking at the court. And we need to articulate the rules around that. Then you've got your more substantive hearings, like the ultimate substantive hearing is a trial which involves evidence, cross examination, live witnesses, documents, and then perhaps at the far end of that exception, at the far end of that description of a substantive trial, is a criminal jury trial. I think for the future, most of the substantive hearings will be done in person, and probably the remote experience will supplement but not supplant substantive hearings. For example, if there's a medical doctor witness, an expert who's from a hospital, and we'd be more inclined to take that evidence remotely perhaps, than we were before or maybe an interstate witness. So, there's no doubt those opportunities will present themselves. But we need to remember that while there are great opportunities for effective use of the remote approach with the smaller, shorter, more procedural type matters in a more ideal world, in a post covid world, substantive hearings require generally on site presence. We one needs to remember that courts are there for the people. They need to be seen to be operating. They need civic presence. People ought to be able to walk in off the streets and into a courtroom and watch a trial going on. That's part of the scrutiny of what we do here. And then quite apart from that, whilst we've managed with some complicated cases, with evidence and cross-examination in the light, remotely or difficult, please, remotely like it's

not best practice and only best practice. Now it's adequate, but it's not best practice. Now, when we get the chance to get back to normal, justice needs to go back to best practice, but to sensibly and reasonably take on the experience and the learnings from covid at the same time.

Michael Green [00:51:50] We have been talking this morning to Chief Judge Peter Kidd of the County Court of Victoria. Chief, thank you very much for your generosity in giving us so much of your time to us this morning and telling us so much about your life in the law.

Chief Judge Peter Kidd [00:52:05] Thanks very much, Michael. I enjoyed it.

Voiceover [00:52:14] Show notes from today's episode can be found at [Greenslist.com.au/podcast](https://greenslist.com.au/podcast). There you'll find links to things 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 and subscribe, rate and review the show. It really helps others find out about us. 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. With covid restrictions limiting numbers inside the County Court of Victoria. We are currently recording our shows at 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 the discussion here today.