

William and Lonsdale – Lives in The Law Ep 27. HH Mag Abigail Burchill

Presenter [00:00:05] This is William and Lonsdale, a podcast about the legal ecosystem in Victoria and the fascinating people and stories that make it tick. This week, your host Michael Green, speaks with her honor magistrate Abigail Burchill, former barrister and one of only two Indigenous magistrates in Victoria. On top of her incredibly busy schedule in the Broadmeadows Magistrate and Koorie Court, Abigail has just undertaken training to sit in the Children's Court, which was previously not really something she saw herself doing. A warning to our Aboriginal and Torres Strait Islander listeners. This episode contains the names of people who have died.

HH Mag Abigail Burchill [00:00:40] I wrote myself off because I thought I just don't talk. 14. I feel I can really communicate and connect to adults. But with 14 year olds, I feel like I'm speaking a different language altogether. 14 year olds are a really tough audience. In fact, I found it and experienced the most when I was the president of Tawirri in visiting high school students and talking to them about careers in law. The thing that I noticed, particularly 14-year-old boys, is that they would just draw male appendages all the time. I felt that I could have said, this is a drawing competition today and I'm going to talk to you about careers in law at the same time. Everybody thinks you're such a great communicator with adults are going to be great in the children's court. I'm not there yet, but I would like I'm much more interested now in going down that path. And for the Aboriginal kids who were in the court and that primary question. Who's your mob? And there was one young guy who I asked that question to and he said, I'm Gunditjmarra. And I said, I'm Yorta Yorta and Dja Dja Wurrung. I said, Gunditjmarra warrior people, they're warriors. And he went, I am.

Michael Green [00:02:27] Our guest this morning in Lives in the Law is Abigail Burchill, a magistrate in the Victorian Magistrate's Court. Abigail, good morning.

HH Mag Abigail Burchill [00:02:34] Good morning.

Michael Green [00:02:35] Abigail I'd like to start by going back a long way into your family's history. There's a connection between your family and William Cooper, the man after whom the Justice Center on the corner of William Street and Lonsdale Street is named. Can you tell us a bit about William Cooper? Who was he and what did he do and the connection between him and your family?

HH Mag Abigail Burchill [00:02:52] Well, I'll start with my great grandfather, who is Thomas Shadrach James. And he was a Mauritian man, but he was known for his education and also being a lay preacher. And he was the person who taught on Mologa mission and then Kamerganja mission. Many of the leading leaders of the Aboriginal community like William Cooper and also Sir Doug Nichols, Bill Onus and Jack Patten. His background was that he came from Mauritius and he was studying medicine. Well, he, he was to study medicine and there was always this pushing in my family that there would be a doctor just like him. And my brother ended up being able to do that. He developed a tremor in his hands on the way to Australia and he ended up in a chance meeting, meeting Daniel Mathews, who was the manager of Malaga mission and then ended up becoming an educator on the mission. And it's the thing that I grew up with which was very educated people in our family, not only educated that were great leaders and were very strong in their leadership and determined in their leadership, and those values were very much from him. So his relationship with William Cooper is that he was his teacher and he taught

people more than just school curriculum. It was about people's democratic rights. And that was one of the primary and premier things and qualities that William Cooper had, which he was in the 1930s advocating and pushing for Aboriginal representation in Parliament for constitutional recognition of Aboriginal people. He was a force behind the 1967 referendum and he was doing that in the 1930s and people would see those as very modern things. They would see those things as very new in the Aboriginal community, but they're very, very, very old. So William Cooper, Sir Doug Nichols and Bill Onus were important people behind the founding of the Aboriginal Advancement League. That is now the league in Northcote, Thornbury, which is the hub for Aboriginal people now and which has been for Aboriginal activism and ideas and representation of Aboriginal issues. So he's really regarded as a justice man, and not just for the issues here, but also issues overseas. So he was protesting it World War Two about the treatment of Jewish people in Germany. And he was recently recognized with and honored with an award for that.

Michael Green [00:05:50] This is William Cooper.

HH Mag Abigail Burchill [00:05:51] Yeah.

Michael Green [00:05:52] And so there is a strong emphasis in your family on education and achievement. Which flowed through to your mum?

HH Mag Abigail Burchill [00:06:00] Yes.

Michael Green [00:06:01] And your mum. That had a big influence on you and your brother? Yes. To pursue education and to go as far as your abilities would take you?

HH Mag Abigail Burchill [00:06:09] Yes. And I also had in my father a great intellectual that our house was just surrounded by books. In fact, when I saw when my children were watching Harry Potter, I really identified with that because there were massive bookshelves, just full of books that you could read, whatever topic that you wanted. And Mum and Dad were always reading. And my dad taught me that you don't have to have a university education to be an intellectual, and that you can't look at people as something less because they haven't had a university education and what their knowledge and what their intellect might be. And through both those values, it taught me to respect everybody. But with Mum's strong sense of education and leadership and Dad's intellectualism and what the house being full of books and opportunity and encouragement, it was just perfect, I think, to then weather the storm of what is what education was like, I think for Aboriginal people going through school in the country and city at the time and which I did go to school.

Michael Green [00:07:28] And the country schools you went to were both in Mooroopna, near Shepparton, Primary School and high school in the seventies and eighties. I'm assuming this is when you were at school.

HH Mag Abigail Burchill [00:07:37] In the 80s.

Michael Green [00:07:39] You're a good student. Did you have an enjoyable school experience?

HH Mag Abigail Burchill [00:07:43] Well, I don't think you'd ever say that things are wholly not enjoyable or wholly enjoyable. I enjoyed study and I was determined and I think that's a quality that has got me through. When I'm given something, I'm just determined to

master it. And I had that in school, but I never found and it made more sense to me, lighter as an as an adult. I never found school, a place that I felt safe in. And experiences of racism and violence were very common.

Michael Green [00:08:24] When you say violence, can you give us an example of the violence? Example of the racism?

HH Mag Abigail Burchill [00:08:28] so it wouldn't be uncommon to be studying and then you'd feel a punch to the ribs and there were never slaps they are punches, hard punches. I remember a girl in primary school punched me so hard in the ear that it smashed her watch and cut all the back of my ear. And nothing was said of that. It was, well, you've got to toughen up. You've got to hit her back harder than what she's hit you.

Michael Green [00:08:58] Was this coming, your mum and dad?

HH Mag Abigail Burchill [00:09:00] No, that was coming from the school. My parents... There was very much you've got to be stronger than this culture. You've got to hit them back hard from everybody. That was the messaging from everybody. It didn't solve anything at all. In fact, I think it made conflict worse. Bullying was difficult. That's not just me for many kids. Like, I can remember times when my bike was thrown down a hill or spat on. Or I remember a girl used to every night follow me home from school and hold my jumper. If a car came and push me out onto the car and then pull me back again. And it stopped. One day when my brother was watching what was happening and she finally left and she went past my house. And then I saw this blur of him chasing her and pulling her off her bike and saying, you're never going to do that to my sister ever again. And she never did. So he was like my hero as he is in everything. But he really looked out and looked after me. And that was just a common experience for racism. I'll give you an example. We would regularly go to cultural trips to Rumbalara, a really important community hub. It's got a lot of history going back to when Aboriginal people moved, walked off Kameraganja mission, moved to the Maroopna Flats and then were finally given housing in Mooroopna and Rumbalara was a really important social health community hub and we would go to Rumbalara for visits and I would call out all of the Aboriginal children's names and then all of the other kids would start shouting out It's the coon patrol and for something when...

Michael Green [00:10:51] And this is in Australia in the eighties?

HH Mag Abigail Burchill [00:10:53] Yeah. And it was just so ... we all felt so shamed for going to a place where we should where we felt really we should have felt really proud, particularly with what Rumbalara I represented. And it is the it's an experience later on that I have tried very hard to understand and it's very connected with confidence with your identity and who you are. And when a big part of that is associated with great shame with your Aboriginality, that was very much the experience of Aboriginal people at the time. Being shamed to your core for who and what you are, something that you should be very proud of. I grew up with looking at people move across the street to get away from cousins, my relatives or my grandparents who are very proud, dignified people who were spoken to and treated like they were less than human, like animals. That is starting to change. But that was a very typical experience in Shepparton in the times in which I was growing up. One of the experiences I really remember was traveling to Shepparton to study French because Mooroopna High School didn't offer French. And on the way back then the taxi driver said he wasn't going to a particular place. He was laughing about it and I said, why aren't you going there? He said, because the coons live there. And I said, well,

you've got a coon in your car. And he then pulled over. This is halfway back between Shepparton and Mooroompa. So it was, it was a good eight-kilometer walk to get back to school and through a park that was just bush area. He pulled over and told me to get out because he didn't want coons in his car and nothing was said, nothing was done, no involvement, no human rights and Equal Opportunity Commission then nothing and no advocacy from the school or...

Michael Green [00:12:59] School knew what happened. You told the school what happened?

HH Mag Abigail Burchill [00:13:02] Yeah, because I was absent for a long time. I said I was kicked out of the car, but I don't feel aggrieved by my school or the experience that I had not teaching and getting students to their best. Because in a school where there is just so much structural and systematic disadvantage, teachers could never... Teachers weren't social workers. I don't think they could deal with some of the really pressing social issues which are at our school and all of the different places where people were at. So I don't for a second feel aggrieved to any of the teachers or the school because they were kind of set up to fail. That's why the school was the lowest, one of the lowest achieving schools in the state and why it has recently been shut down. But they send those teachers who were so significant that those kinds of teachers where you watch movies on, and they're able to lift people and I had marvelous teachers like that, teachers like Mr. Daneman and Mr. Cortese, who were just outstanding.

Michael Green [00:14:12] and yet the year 12 was chaotic. Two teachers resigned during the year, or retired?

HH Mag Abigail Burchill [00:14:17] A teacher, one teacher retired and another teacher. I'd be interested to see what might what Mr. Oster's view on it and how she explains it. And this is my recollection, because most of the children most of the kids weren't studying VCE. They were doing what the equivalent is a VCAL and their heads and a heart just weren't in it. So classes were rowdy and they were difficult. And I could just remember there were times where it was, I'm not I'm not teaching. If you want to if you want to come in and learn, you can come in and learn in where she was based. And it was a really chaotic year and most of the students weren't there to go to university or learn. So it was really disruptive and there were huge just missing pieces of knowledge that I was able to understand that when I went to university because I saw in year 12 when I didn't get the marks that I really wanted to see as my failure, my fault I wasn't good enough. And I certainly shouldn't be looking at something like university where's my mum saw it for what it was. How could you, in those conditions ever go well? You weren't really taught how to even study. I see that with the education opportunities that my kids have had and they're taught how to prepare and study for exams and they drilled with that doing past exams, things like that. I only learned that at university. Was it? It was a really big learning curve, but it all made sense when I started to understand all those things which you could do to go well in an exam.

Michael Green [00:16:09] So coming from that background and I think you said year 12 marks weren't good enough to get you into law as you wanted to, but you wound up getting into law. How that came about?

HH Mag Abigail Burchill [00:16:19] Well, that goes back to one of the people who you started off with, which is my mother. She's a person where nothing is ever going to get in

her way. She just doesn't chip away the things that she'll chip away. And there's things that she would just smash.

Michael Green [00:16:37] So she's a force of nature.

HH Mag Abigail Burchill [00:16:38] She is she's a force of nature with capitals. And then the next thing that I heard is you're going to Melbourne Uni. I've got you a place at a residential college there. You're going to Ormond College, you're all set up. And so then I was off to Melbourne University.

Michael Green [00:16:59] You're at law school, but you're finding it a struggle. Why was it a struggle and how did you overcome the struggle?

HH Mag Abigail Burchill [00:17:06] Well, like going into the legal profession and my journey through the legal profession, I found it a big culture shock in really relating and identifying the people who are around me every day. I was lucky enough to grow up on country and to be able to experience country in a healing way. During my year 12, with all of the stress that was going on, and one thing that my mom and dad gave me, in addition to the force of nature, education, intellectuals and things like that, is balance. They were really fit people. And one thing that we would regularly do is guide to we call it Gammel Swamp, which is the local state forest. It was really important for me to be on country and around people. And then all of a sudden I was off country. I was around people who I didn't identify with. I was still carrying a real sense of personal failure about not getting what I needed to do, to what I saw legitimately get into law. And I felt embarrassed about that. It took a many, many years to stop feeling that way and to find peace with that. And I had also very tangible, missing pieces of knowledge that I had to very quickly make up. So for all of those things happening at the same time, it was very difficult. I did have a sense of determination where I would not fail. It was just not in me to do that. I loved what I was reading and learning. It was fascinating. And I finally felt as though I had found my people in the sense of being in an area of knowledge that I really enjoyed. Then came into place a lot of luck in people who supported me because I didn't reach out to them at all. One of the key things with the Koorie Student Liaison Unit and that was headed at the time by Lisa Belair and she identified as an Aboriginal activist and a poet. And the people in the Koorie Student Liaison Unit at the time were really emerging leaders, writers. For example, there was Tony Birch with Professor Tony Birch and there was Gary Foley. There was many people who had become real shakers and movers in the Aboriginal community, and they were all there. So it really gave me my Shepparton country in Melbourne with the, with the Koorie student liaison unit and then at Ormond College there was a tutor who really recognized and took me under her wing and completed those missing pieces of knowledge both in my study skills, writing and confidence. And she really built up those things. So Professor Katrina Shonky she was extremely important for that and the other person was Professor Ian Malcolm in my exams. And it was always a problem with, with, with exams where I'd always have the knowledge but I could choke. And I don't think exams are the best measure of knowledge at all. And Professor Malcolm gave me it. The most important thing is he listened. He listened to what my experience was. He listened to that as an Aboriginal person. My frustration that I had the knowledge. But I found it sometimes difficult to express that in written communication. And he said, Then tell me, tell me, I will ask you the questions and you tell me your knowledge. And that's what I did and I passed. But it in doing that, it bridged the disconnect where I was able to then move into written communication to what I was able to express. And it was a watershed year. And then I was right, I was alright, I was able to get through the rest of my degree. The other thing that happened with my degree is that in my

second year then I won a cadetship with the Commonwealth DPP and every holidays I would go and work at the Commonwealth DPP and then study at Melbourne Uni. So financially it was a huge benefit but also translating what academically in the knowledge written form of law into practice. Then it made it very real and interesting and it really gave me a career path for my second year of university, which I don't think many students would have.

Michael Green [00:22:08] Not at all. That was my experience anyway. And my experience is also studying law and passing exams was nothing like practicing law. And therefore, to be in a situation where you were seeing it put into practice in the Commonwealth DPP would have been an enormous benefit, I would have thought. So you finish uni, you do your articles at the Commonwealth DPP and then you work there for the next 14 or 15 years. Most of the crime, when we think of criminal law, most of it we're thinking about is in fact the state law, murder, manslaughter, crimes of theft, etc., etc.. Where does the Commonwealth DPP fit into the legal or the criminal legal landscape? And what did you do there?

HH Mag Abigail Burchill [00:22:49] While the Commonwealth DPP prosecutes federal offenses and peoples go to and end in something that they would understand is a federal offense, is a drug importation, then there's also taxation offenses, Centrelink, fraud, migration, all of the things that the Commonwealth has power for that states don't.

Michael Green [00:23:12] And what sort of work did you do? Were you involved in large trials, drug importation, trials, etc as instructing solicitor?

HH Mag Abigail Burchill [00:23:21] I was, for me the exceptional thing about the Commonwealth DPP is that you were exposed to everything in every subject that you were working in. You were linked with excellent mentors and those were mentors where I've said that I started the cadet, the cadetship in my second year of university, and so all of those people would be offering all of the time if there was anything at university that didn't make sense, then they would help. The first person who I was linked to at the Commonwealth DPP was, is Jenny Bryant and great mind, great intellectual, great practitioner in had really good judgment in how cases were run. So to really be around her and watch what she did as an instructor and watched what she did in her cases was a really important learning tool for me. But it wasn't concentrated to one person. There were many, many, many people Stephen Young, Liz Tikki, Judy McGillivray, Mark Pedley, who was heading the Commonwealth DPP at that time as the lead solicitor. Then all of those people were always available all of the time. There was an open door policy. It took an enormous amount of stress out of what I was doing, and it's one of the things that I have found as a barrister and also from time to time now in getting calls or helping in that that kind of situation where you don't have anybody to ask the question off, you don't have anybody to talk to. It is just a complete torture and extreme stress to not have a go to person at the Commonwealth DPP. It was go to people always put the sleeves up, help support.

Michael Green [00:25:24] We're going to talk later about culture in the Koorie court, but it sounds like an excellent culture at the Commonwealth DPP.

HH Mag Abigail Burchill [00:25:30] It was, it was very supportive and again it was something that had balance in not just for the work rigor but also having social environments and social opportunities outside of work. It always made going to work something that I look forward to and this is at a time where I felt my sense of confidence

was still pretty fragile. And that was a really important part of my legal career where it wasn't about being Aboriginal and the focus was about being a really good lawyer and getting the skills to be there. My Aboriginality was respected but it wasn't in a negative way, which I associate with that royal court run Bellara, where it's the chain patrol. It was the complete opposite of that, people who are really interested and it was a really. Positive part and I think the Commonwealth DPP was really proud to have the experience of a cadetship that worked out really well.

Michael Green [00:26:33] During the time you were working at the Commonwealth DPP. You're president of a body called Tawirri? Two or three years as president. I'd never heard of the word before. What is Tawirri?

HH Mag Abigail Burchill [00:26:44] The organization is the Indigenous Law Students and Lawyers Association of Victoria, which is really the peak body for students and lawyers. Our membership have got we have a lot of people from all over the country because universities such as Deakin have got not just online, but have a lot of students from all over the country travel and go to the campus. We changed the name and we asked for community ideas about what's a good name for our organization. And we ran a competition and there was a group in Echuca that came up with the name stories. A broлга bird and because it was such a rare but beautiful bird, then we saw that's a great symbol for what we are and what we represent.

Presenter [00:27:37] 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 corporate gifting.

Michael Green [00:28:05] 2010 comes along and you come to the Victorian Bar. Had it always been an ambition of yours from the time you're a student and working at the Commonwealth DPP to practice as a barrister?

HH Mag Abigail Burchill [00:28:17] Well, I'd really experienced the relationship between solicitors and barristers, one that as a solicitor that there were some parts that I felt uncomfortable with. It was always lock in the brief fee to get the brief fee that's better for us than necessarily the barrister. And then I would be then having done that and not feeling great about it because I saw and by that point I had seen so many trials and seen the work that barristers do and then taking over enormous amounts of materials. And I think how on earth you're actually going to get through that? Then I didn't go to the bar. It took some pushing because I thought, why would I? Why would I leave this comfort to be talking and negotiating brief fees, which is not great for me, getting something really late, doing the hardest work that the solicitor doesn't have time to really do or and that space in thought to really prepare what needed to be prepared. Why would I do that.

Michael Green [00:29:28] Well, why did you do it?

HH Mag Abigail Burchill [00:29:29] Well, I had Dan Starkey say and he was putting pressure and he was doing it in a very smart way. How can you be the president of Tawirri, have had the experience and the career that you've had as a solicitor. When you're really ready to be a barrister, how can you not go to the bar when we need more Aboriginal barristers to improve the number of barristers? At that time, there was only one barrister at the time and I thought, well, I've been at the DPP a long time. If I'm going to push and

progress, then that's something that I should do. I had a lot of offers on the way through except to make it a bit easier, like not doing the bar exam that the year in which I went to the bar was the first year that they introduced the bar exam. I was told it could be waived to make it easier and it would have made it a lot easier. I had three little three young children at the time, but I thought, I'm not sitting. If I can't do that exam, I shouldn't be at the bar. If I don't know that material, I should be at the bar. So I sat the exam. It all worked out and then I'm here.

Michael Green [00:30:42] What I'm hearing, of course, is your mum and dad and the idea put in your head that you are meant to be a leader and to show leadership to your community and you follow through on that.

HH Mag Abigail Burchill [00:30:53] Well my mum to do those things which at times was quite overwhelming and stressful in what had to be done and the expectations and the pressure. Then my dad, it's okay, doesn't matter. It will all work out. It'll all work out. Don't worry about it. In a way, not that it would be failure, but if it didn't work out, I knew that it was going to be okay. So I had both dual influences which worked for me.

Michael Green [00:31:23] You come to the bar. Like many young barristers, you're juggling a lot of balls, a young family, obviously a marriage and establishing a practice as a barrister. I want to focus on the establishing the practice. How did you do that? Were you a heavy socialite or did you network all the time? How did you develop a practice apart from the Commonwealth DPP? Because that's a natural source of work if they respect you. But I assume you didn't want to just be a prosecution barrister, you wanted to do defense work as well. How did you develop that practice?

HH Mag Abigail Burchill [00:31:55] Because of other forces of nature, Julian McMahon, Senior Counsel. He is a force of nature. Again, like my mother in capital letters, I was able to read with Julian and then he became my network. He would just work on the phones and talk me up to the point that I would say, please don't say that. I feel like you're misrepresenting me. He would say she's done the hardest, the biggest drug trials and really complicated matters, because if you have something like that, you should give it to her. There's no one else who could really do it. And that's when my first drug trial, he was the one. And I was I would have waited a good two years to do that trial. I had just barely finished the bar readers course. And then he rang me. He said, I've got your first trial. And that was one of many out of body experiences that I had at the bar. And at the bar is the one place where I had extreme out of body experiences where I the vibrations in my body from the stress. Getting a brief late. Running into the daunting prospect of a trial. I felt I was levitating from my body and I learned that it wasn't going to actually kill me. I thought that level of stress could actually end in my end. And it didn't.

Michael Green [00:33:27] And hence, as I say, what doesn't kill you makes you stronger.

HH Mag Abigail Burchill [00:33:31] It did. And there's nothing better than the satisfaction of doing something that is extremely stressful and overwhelming, breaking it down, doing it bit by bit, and getting to the end point of it, that is the most intoxicating feeling that you could experience as a practitioner and that that kind of experience. I had more at the bar because it was more difficult. It takes you constantly out of your comfort zone at the end point of how you feel and the knowledge and the experience and also the judgment, because that's one of the biggest qualities that you can have in this profession, is your judgment and its experience and the knocks, the hard knocks that create that judgment.

Michael Green [00:34:27] So, Abigail, from what you said, when you were faced with what appeared to be an overwhelming case, you had a late brief. It's got many, many facets to it. And what do I do? Your practice, your procedure, your way through it was to break it down into manageable bites and work at it. One bite at a time.

HH Mag Abigail Burchill [00:34:49] Yeah, that's. That's how I always approached everything that I was in. Because if the question or the situation can engulf you to the point where you don't achieve anything, and once you're engulfed, you're in a really emotional space. It's a panic space at that point. And the only way in which you can take control is by being able to reengage, thinking as soon as things are intellectual again, then you can think through something and then you have to break it down into little pieces and get through. Sometimes just each second, each hour, each day. There's a cheat's way, which many people engulfed in a situation would just call Theo Cassimatis QC. And I was so lucky to be his, his junior, because on that question of judgment, he has it. His mind is just magnificent in his understanding of law, but judgment at the same time and his kindness to his juniors. But I could not get over the amount of calls that he constantly got for the answer, the answer to those engulfing situations. And he'd always take the call. He would always give the answer. So there is a cheat's way to get through things, and it is the Theo Cassimatis solution.

Michael Green [00:36:21] But for your own future, it's better to take the Abigail Burchill solution, which is to break things down into bit by bit by bit. And then work on them bit by bit by bit. And that way when the next overwhelming situation arises, you've got a path to follow.

HH Mag Abigail Burchill [00:36:35] It is I've always found that the thing I found always against me was time. I just and I would always say to myself, I've just had the time to just think this through and the time to break things down. So I could I could get across it faster. And I was lucky in that my husband facilitated so much time for me to do that thing that you are asking me about, about that method of just breaking it all down and doing things bit by bit, because you can't do that unless you're given the solitude and the space of some time to do those things. When you're in a profession that is a busy enough as it is and your home life is busy enough as it is, it makes doing that really difficult. So if you do have to go to people who you can ask for direction on how to accelerate that process, then that is an important thing to do. You've got to be surrounded by people who can help with that.

Michael Green [00:37:38] Your husband was a lawyer as well?

HH Mag Abigail Burchill [00:37:40] Yes, he was with the Victorian Government Solicitors Office. I always thought that he was the one who should have been the magistrate or judge he's an intellectual, so good at law, so good at law that his favorite subjects were advanced constitutional and advanced administrative law. And he with the kids and where we were going gave that up. He now runs his family's cheese factory business, and he was a person who's home every day when the children get home from school. I think he's had to make extraordinary sacrifices which have helped me. There will always be those people, often silent people, uncredited people who are largely responsible for the successes that are then credited. I'm able to do things like this and be seen in the way in which I am, and it takes a lot of boxes coming from an Aboriginal background and doing the things that I've done because of what my husband has done for me, my family have done for me and the sacrifices that they've made for me and the people who were luckily

there and those forces of nature who are supporting me. That is the only reason why, because I easily could not have been here at all.

Michael Green [00:38:57] But you are here, Abigail. And in the year 2017, you became a magistrate. You were relatively young lawyer to become a magistrate. Could you tell us what the process is to become a magistrate? And why did you make the decision to apply?

HH Mag Abigail Burchill [00:39:12] I had been encouraged to apply even earlier in my career than when I was appointed much earlier. And that was at a time when I thought, I've got nowhere near the skills even to be a magistrate. I applied, didn't go anywhere at that stage, didn't go anywhere for many years. And in that time, I was always trying to do things what can make me better? If down the track I do get appointed as a magistrate. And that's why the bar was so important to go to. I always kept myself busy trying to build knowledge, build judgment. All of this was going to help me if I was appointed. And then after encouragement, encouragement, imploring, applying, finally it happened. Happen to the point where I thought that it was a joke because I didn't think that it was going to happen. When I did get the call. The other reason why I was surprised is that there were many people who could have and should have been appointed magistrates before me who still could and should have been appointed as magistrate.

Michael Green [00:40:23] But that's always the case, be it magistrates, be it county court, Supreme Court or even High Court. There are always many, many talented people who don't get the call or don't want to get the call. So that's just a fact of life. But why did you want to be a magistrate? Why? I mean, you are. I mean, you're having a good career at the bar. Many barristers, of course, love the bar so much that they want to leave. But you saw that as something worth doing. Was it a leadership team thing again within the Aboriginal community?

HH Mag Abigail Burchill [00:40:51] Never leadership. And I've never seen myself as a leader in the Aboriginal community. We have a lot of leaders in our community, we have a lot of activists in our community and I mean that word in a really positive way. But I've always thought what was underestimated is small L leadership being in those little spaces where there isn't anybody else to do something effective. An example of that was the Bolt case, where.

Michael Green [00:41:25] The Bolt case is a defamation case.

HH Mag Abigail Burchill [00:41:28] Against Andrew Bolt. It wasn't a defamation case. It was a right racial vilification case.

Michael Green [00:41:33] Against the journalist Andrew Bolt?

HH Mag Abigail Burchill [00:41:35] Yes. And two of the parties in that case were my uncles, Graham and Wayne Atkinson and Andrew Bolt had written a series of articles with the headline It's Hip to Be Black. And I knew that my uncles had devoted their entire life to the service of Aboriginal people and equity and justice for Aboriginal people. It came at an enormous cost to them personally in what they had to sacrifice to achieve those things. So those articles one were wrong, but they were incredibly hurtful to their core. They felt at the time, and they had already gone through a devastating litigation with the Yorta Yorta case, where they had to see that the tide of history had wiped away their connections to country, and losing that case left them with a feeling the law is never going to give an Aboriginal person justice. It certainly won't give us justice. And I was a bit like them too. I saw it like

them and I went home and I spoke to Don, my husband and I saying about the articles and he said, Just do something about it. Why don't you start a legal action, a legal action like a racial vilification action? And we then put together that case through Tawirri. My uncle was able to get Wayne Atkinson was able to get Ron Merkel involved and it was really successful. But the decision and the impact in that had in restoring my uncle's faith back in the legal system, that there is some kind of justice, then that small owl leadership was really important in that case. And it's the reason why I wanted to be a magistrate in small L leadership in justice, and seeing many cases that come before your court at least being fair, even for a person who's at the losing end of a decision, he felt that that was done in a fair way and in a just way was there were important values that I had learned from my family that I wanted to bring into the position that I became.

Michael Green [00:44:01] Currently. Abigail, you are sitting on the Koorie Court at the Broadmeadow Magistrates Court. We've had an earlier guest, Judge John Smallwood, tell us about the Koorie Court, but could you remind us please of the structure of the court, how it functions and why you think it's important that there be a Koorie court?

HH Mag Abigail Burchill [00:44:21] Well, the Koorie Court was established after the Royal Commission into Aboriginal Deaths in Custody and an important outcome of that was community involvement, particularly in justice issues. And the Aboriginal justice agreement was created that really created an infrastructure of Aboriginal voice for the justice system.

Michael Green [00:44:45] Can I just clarify that within the State of Victoria, yes. Not a Commonwealth wide thing?

HH Mag Abigail Burchill [00:44:51] Yes. And as a result of that, the Koorie Court was established, it was operating in other states and a very similar model I think to Western Australia or South Australia was established in Victoria, but the peak of the court was to be as cultural as it could in that offenders appearing before the court appeared before their elders. It's a sentencing court only. So only people who are pleading guilty to an offense will appear in the Koorie court. There's factors about the court which are really different to mainstream Aboriginal people who have been mainstream and in Koorie court have said, I wish mainstream court was like this because there's time. Magistrates Court is a very busy court, it's a high volume court, it's just minutes. You've got minutes in your case and a lot of people would find that very dehumanizing and really callous to that very question of - Why are you here in the first place? You can't answer that in a couple of minutes. But in the Koorie Court, a lot of time and focus is on just that. The other thing is that like the Children's Court, everybody is seated and everybody is seated at the same table and often the tables are round and they really represent features of Aboriginal life. Important features like community and the community of people who are sitting at that table are introduced with elders playing the key role in the sentencing in what is a sentencing conversation. And I'm sure if any magistrate or judge would speak actively that they keep out, that they let that conversation take place between the person appearing and the elders. The sentencing decision is a decision for the judicial officer who's sentencing on that day.

Michael Green [00:46:55] You're currently sitting at Broadmeadows. The magistrate there who's in charge of the Broadmeadows Magistrates Court is Rose Falla and she is the only other Indigenous magistrate in in Victoria with you. You've said she's made it a very cultural place, even more so than other Koorie courts. How so? What do you mean by that?

HH Mag Abigail Burchill [00:47:15] Magistrate Falla, she's now at Melbourne Magistrates Court and she was the first Aboriginal magistrate. So she's very much been a role model for me. It's completely subjective how I have, how I speak about Broadmeadows being very cultural. That is how I experienced it as an Aboriginal woman. She's a Watjbaluk Wamba Wamba woman. Her father, Uncle Kevin Coombs is an extraordinary leader in our community and who sat at Broadmeadows Magistrates Court as well. And it had a very unique, unique factors at the time when I started with many Aboriginal people who were working from Broadmeadows Magistrates Court sometimes, and that is it's a Koorie support officer, there were, there are Aboriginal support officers also working in the Family Division of the Children's Court. So there are a lot of Aboriginal people out at Broadmeadows Magistrates Court to the, to the point where I thought we had our own majority from everybody else and it made it such a brilliant, safe cultural space to be in and that very much came together on Koorie court days. There is an intuitive strength watching Magistrate Falla when she is running her Koorie court with that first prime question of who you are. Her knowledge of all of the genealogies and connections for all of the Aboriginal family groups is massive, and her being able to understand are your so-and-so's son. And I understand about what's happened in your family. And they'll often be a history of trauma and suffering that she understands about, and she can interpret that. And the elders know that as well. So it gives a very close understanding of where that person's coming from, which is very supportive, to often extract what is the important thing about why that person is where there is, which is often trauma and it's important to get it out. And they are masters at being able to extract and support trauma in a very healing way. And we don't get to see other judges or magistrates sit. But I have seen how unique she is able to do those things.

Michael Green [00:49:54] Coming out of the Koorie Court, it being a sentencing court, the depth you go into to understand the person's position and how they got there, I'm assuming, and please tell me if I'm right or wrong. There aren't too many custodial sentences coming out of Koorie Court. Or is that wrong?

HH Mag Abigail Burchill [00:50:09] I need to have a look at the statistics. If an offense is objectively serious and involves extreme forms of violence or it's mostly in violence, offending that a person's Aboriginality is not going to be the reason that they're not sent to a custodial sentence. And there are custodial sentences and there will always be custodial sentences. But the focus of the sentencing mind on the issues, particularly on overrepresentation of Aboriginal people and trying to divert Aboriginal people from custody and the harm the custody is for Aboriginal people is at the top of the list as it should be. But what is also top of the list is if there is an alternative, then that alternative has to be with treatment and support. And that is a big factor of the court record that it isn't one appearance. People will come back on monitored sentences. They will have to face their elders and be accountable to their elders. So they're given maximum attention for cultural support and responsibility for why they're there and treatment. And that is a long, big picture that a person will go through before they end contact with the court.

Michael Green [00:51:40] And having raised that question of custodial sentences, I think I should make the point that First Nations people are 3% of the Australian population, but make up over 25% of our prison population. And therefore we need to be doing something a whole lot better than we've been doing it in the past.

Presenter [00:52:01] William and Lonsdale is 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 [00:52:19] Back to you and your life. Have a go. So you're sitting in both the Koorie Court and the mainstream Magistrates Court. Is there such a thing as a typical day for you and could you explain to us what a typical day holds for a busy magistrate?

HH Mag Abigail Burchill [00:52:32] Well, a typical day in any Magistrates Court is high volume, lots and lots of cases. It's a thing that marks the Magistrates Court from other courts. And again, I go back to my mother and teaching me the life skills to deal with large volumes and very repetitive cases. She's kind of my Mr. Miyagi in wipe on, wipe off living. She taught me in year 12 and this was the balance fitness side. She would get me up in year 11 and 12 at about 5:30 every morning to go swimming in a 12 and a half meter pool, going back and forth, back and forth. And we would do 100. She would do 110. It got me tuned in the zone of being able to do something that is highly repetitive to get to that endpoint. And that's how I find some of my case. I just feel like I'm just going in that 12 and a half made a pool, but breaking it down, just getting each case, not being too worried about the volume, and then I'm not going to get through it, but to try and keep my pace, take my cool, because she could easily get overwhelmed by the number of cases that we have to decide every day. And many of them are very complicated and involve people like many Aboriginal people coming through the court that involve a lot of trauma. In that 3% of cases we're looking at the overrepresentation of Aboriginal people in the in prisons. You would also find 99% of people will have a history of trauma, particularly family violence, will have impairments, whether they they are mental impairments or an intellectual disability, and often have addiction because of what life has been. And you're trying to break down some of those because even in 5 minutes could be a transformative moment for a person. If you can try and pick things up and give some solutions for where you are and be respectful from who they are and why they're there, whether they be an accused, an offender, a complainant, a witness being able to manage all of those things is a daily task that we do.

Michael Green [00:54:59] I understand you're doing some training to be a magistrate in the Children's Court. Are you going to head there? Do you think you might go to the Children's Court? And how does the Children's Court differ from the Koorie Court, the mainstream magistrates court, the drug court, whatever court?

HH Mag Abigail Burchill [00:55:13] I never thought I would. I've just done training where it's definitely something that I would like to do. I wrote myself off because I thought I just don't talk. 14 I feel I can really communicate and connect to adults, but with 14 year olds, I feel like I'm speaking a different language altogether. 14 year olds are a really tough audience. In fact, I found it and experienced the most when I was the president of Tawirri and visiting high school students and talking to them about careers in law. The thing that I notice, particularly 14 year old boys, is that they would just draw male appendages all the time. I felt that I could have said, this is a drawing competition today and I'm going to talk to you about careers in law at the same time. Everybody thinks you're such a great communicator with the adults are going to be great in the Children's Court. I was able to watch and I was able to watch some excellent magistrates while I did my training. Magistrate Gibson and Magistrate Pillay. And they were very good. I'm not there yet, but I would like I'm much more interested now in going down that path. And for the Aboriginal kids who were in the court and that primary question who's your mob? And there was one young guy who I asked that question to and he said I'm Gunditjmara and I said, I'm Yorta Yorta and Dja Dja Wurrung. I said, Gunditjmara warrior people, they're warriors. And he

went I am! We had that cultural conversation where not just for him but his family, that they felt she's going to look out for him, that she respects his culture, she understands it and there aren't any Aboriginal magistrates in the Children's Court and they should be. Because when I spoke about...

Michael Green [00:57:14] About overrepresentation.

HH Mag Abigail Burchill [00:57:16] Yeah, and I speak about those transformative moments for young people, the earlier you can do that, so much more important. So that would be a real reason the earlier you can do things and get in and to learn from the kids who are coming before you, I think that it would be a good experience.

Michael Green [00:57:37] Abigail. Your performance through school and through university I find very impressive. But you tell me, in fact, that you are the underperformer in your family. And there is an over performer. Who's that over performer?

HH Mag Abigail Burchill [00:57:49] Well, my brother, the person who stopped the bully from.

Michael Green [00:57:53] Two years younger than you. Your little brother came to the rescue?

HH Mag Abigail Burchill [00:57:56] Yes! He's very effective. I jokingly say to my family that I'm the black sheep because of Luke's achievements and his skills. He's one of the best communicators I've ever heard.

Michael Green [00:58:12] Can I just clarify? He's a medico, isn't he?

HH Mag Abigail Burchill [00:58:14] Yes.

Michael Green [00:58:15] Are they good communicators normally?

HH Mag Abigail Burchill [00:58:16] Well, this is where he changes things. He is a cardiologist and he's currently running or directing adult congenital health at the Mayo Clinic in the US. He's a person who I've really looked up to when I looked at structural disadvantage or difficulties at school. He was in and experienced those structural disadvantages, but he still blitzed his exams. He got 100% in legal studies. It's funny that he went into the into medicine. I think one of the things that helped him that he intuitively did was perhaps maturity in, in the timing of his studies because he took time out in year 11 to go to South Africa. I think it was a real eye opener for him going to a different country and also South Africa as it was at that time. But he came back with a great deal of maturity and focus on his studies. He did year 11. He changed schools and went to Shepperton High School, and these are his own input. No one at all was telling him maybe this might help and he's done that through all of his career. So he I'm his biggest fan. I adore my brother. I miss him not being here.

Michael Green [00:59:42] And you're the black sheep.

HH Mag Abigail Burchill [00:59:43] Yes. Although my mum, if she was here, you would see her starting to rock. She'd get a bit annoyed, saying, you're not any black sheep. I say that I'm proud of both of you and I love you equally and I see you equally.

Michael Green [00:59:58] Abigail, thank you very much for coming along this morning. It has been fascinating hearing about your life in the law and it's been educational as well. It's been a wonderful morning. Thank you very much.

HH Mag Abigail Burchill [01:00:08] Thank you for the invitation.

Presenter [01:00:13] Shownotes from today's episode can be found at [Greenslist.com.au/podcast](https://greenslist.com.au/podcast). There you'll find links to things we've talked about in this episode, a transcript of the show, and some wonderful photos of our guests. If you're enjoying Lives in the Law, please tell your networks. Subscribe, write and review the show. Your host is former lawyer and Greens this clerk, Michael Green. Our show is produced and edited 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. We're coming to you from the iconic Owen Dixon Chambers on the corner of William and Lonsdale Streets in our beautiful city of Melbourne. We acknowledge The Wurundjeri People of the Kulin Nation as the traditional custodians of this land and pay our respect to their elders, past and present. There is no doubt that conversations about justice have been taking place on this land for thousands of years, and we are privileged to continue the discussion here today.